Strengthening World Heritage protection in the Pacific

An exploration of Solomon Islands’ implementation of the World Heritage Convention

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LLB (Dist) BSc (Hons)

This thesis is presented for the degree of Doctor of Philosophy of The University of Western Australia

School of Law
2017
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Stephanie Clair Price

1 March 2017
Abstract

The *World Heritage Convention* requires State parties to implement the legal measures needed to conserve the World Heritage sites within their borders. However, protecting World Heritage under law is challenging in many countries, including in Solomon Islands and the other independent Pacific Island States. This research investigates the implementation of the *Convention* in the Pacific, with a focus on Solomon Islands, to identify options that could improve the legal protection of World Heritage in that region. This is achieved by exploring World Heritage conservation at two scales.

Firstly, the *Convention* regime is analysed in the Pacific context, to understand the opportunities and challenges it presents for the recognition and protection of Pacific Island heritage. Only eight of the 1,052 sites on the World Heritage List are within the independent Pacific Island States. This research considers why the region remains under-represented, despite the international community’s efforts to improve the balance of that List. It explores the potential for the *Convention* to be utilised in the region, by examining the nature of Pacific Island heritage and the meaning of the concept of ‘World Heritage’. It also considers the extent to which Pacific Island nations can implement World Heritage protection measures that are appropriate for their context. This involves analysing State parties’ protection obligations and the structural elements of the *Convention* regime, with reference to key features of Pacific Island States, including their land tenure and legal systems.

Secondly, Solomon Islands’ implementation of the *Convention* is investigated, focusing on its only listed World Heritage site, East Rennell. That site comprises one-third of the island of Rennell and the surrounding marine area. It is under customary tenure, and is owned and occupied by the East Rennellese people. It was the first listed World Heritage site in the Pacific Islands, and the first place to be inscribed based on its natural heritage values and its protection under customary law. Consequently, its listing was heralded as a landmark in the implementation of the *World Heritage Convention*. However, East Rennell is now on the List of World Heritage in Danger, due to the threats posed by extractive industries, invasive species, climate change, and the over-harvesting of certain
animals. The site’s protection under law must be strengthened if those threats are to be addressed.

This research analyses the nomination and inscription of East Rennell, exploring the links between those processes and the site’s protection. The disparity between the local and global significance of the area and the challenges it poses for the conservation of the site are investigated. The Solomon Island government’s approach to World Heritage protection is also considered, to understand why it has failed to strictly protect the site. The study also involves analysis of the protection of East Rennell’s World Heritage values under customary and State legal systems, with reference to the principal threats to those values. To assess the strength of the site’s protection, the customary laws and governance structures of East Rennell are considered, and key legislation is analysed. In addition, legal and practical issues influencing the operation of customary and State legal systems are explored.

From this, regional- and national-level options that could improve the legal protection of World Heritage in Solomon Islands and other similar States have been identified. These options relate to issues such as the nomination and listing processes, the World Heritage Committee’s decision-making, and the provision of assistance to Pacific Island States. Specific recommendations concerning the amendment and implementation of Solomon Islands’ legislation are also made.

A socio-legal approach is taken in this research, allowing both black-letter legal analysis and an exploration of the context within which legal systems operate. Hence, the methodology involved reviewing relevant literature and legislation, as well as empirical research comprising interviews and legal work undertaken by the author in Solomon Islands. The study could inform the development of measures to strengthen the protection of East Rennell, which may ultimately lead to the site’s removal from the List of World Heritage in Danger. More broadly, the lessons learned from Solomon Islands’ experience could be utilised by other Pacific Island States and organisations to improve their efforts to implement the World Heritage Convention.
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Acknowledgements

First and foremost, I want to say thank you to the people of East Rennell for allowing me to visit your incredible home, and for your wonderful hospitality. Thank you also to my colleagues in Solomon Islands, at the Public Solicitor’s Office and Live and Learn Environmental Education. I owe special thanks to Haikiu Baiabe, for support, advice and assistance with Live and Learn’s East Rennell project, and to Gwen Tovosia and Anna Price. I am also grateful to the people working within the Solomon Islands government who agreed to be interviewed for this research. The wonderful friends I made in Solomon Islands also deserve a mention – particularly my housemates in Tehamarina, Ngossi and East Kola. You helped make my time in the Solomons among the most memorable years of my life.

I am indebted to my principal supervisor, Professor Erika Techera, for her guidance and advice concerning this research and academia more broadly. Thanks also to my second supervisor, Associate Professor Catherine Kelly, for your feedback and encouragement. I also wish to thank Dr Richard Ingleby, whose workshops on research and academic writing have improved my thesis significantly. In addition, I acknowledge that this research was supported by an Australian Government Research Training Program (RTP) Scholarship.

To my fellow PhD students at the UWA Law School – it has been wonderful to share the PhD rollercoaster with such a great group. Thanks also to my mum, Tricia Price, for editing my work, and to both my parents (Tricia and Roger) for their unwavering belief in me. I am also grateful to my brother Ivan for his help preparing the maps in this thesis.

Finally, thank you to my partner Pete for your love, patience and support. To our beautiful daughter Lily, who was born mid-way through my PhD - thank you for your smiles and cuddles, and for helping me keep everything in perspective. And to our son Isaac, who was born shortly before this thesis was submitted, thanks for giving me an extra incentive to reach the end. I am looking forward to the next chapter of my life with all of you.
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<td>CBEM</td>
<td>Community Based Environmental Management</td>
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<td>CCA</td>
<td>Community Conservation Area</td>
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<td>Convention</td>
<td>World Heritage Convention</td>
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<td>Convention bodies</td>
<td>World Heritage Committee and the Advisory Bodies</td>
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<td>CRMD</td>
<td>Chief Roi Mata’s Doman site (Vanuatu)</td>
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<td>EIA</td>
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<td>ERWHTB</td>
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<td>GRLA</td>
<td>Gold Ridge Landowners’ Association</td>
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<td>ICCA</td>
<td>Indigenous and Community Conservation Area</td>
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<td>ILO 169</td>
<td><em>International Labour Organisation’s Indigenous and Tribal Peoples Convention 1989</em></td>
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<td>IUCN</td>
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<td>ICOMOS</td>
<td>International Council of Monuments and Sites</td>
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<td>ICCROM</td>
<td>International Centre for the Study of the Preservation and Restoration of Cultural Property</td>
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<td>LALSU</td>
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<td>LLEE</td>
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<td>LMMA</td>
<td>Locally Managed Marine Area</td>
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<td><em>Mines and Minerals Act (Cap. 42)</em></td>
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**MM Regulations**  
Mines and Minerals Regulations 1996

**MPA**  
Marine Protected Area

**Operational Guidelines**  
Operational Guidelines for the Implementation of the World Heritage Convention

**OUV**  
Outstanding universal value

**PA Act**  
Protected Areas Act 2010

**PA Regulations**  
Protected Areas Regulations 2012

**PAAC**  
Protected Areas Advisory Committee

**PNG**  
Papua New Guinea

**PSO**  
Public Solicitor’s Office (Solomon Islands)

**RAMSI**  
Regional Assistance Mission to the Solomon Islands

**Resource laws**  
The Forest Resources and Timber Utilisation Act (Cap. 40), the Mines and Minerals Act (Cap. 42), the Environment Act 1998, and provincial business licence ordinances

**Resource orders**  
‘Resource orders’ and ‘resource management orders’ made under provincial ordinances

**SIG**  
Solomon Islands government

**UNCED**  
United Nations Conference on Environment and Development

**UNCHE**  
United Nations Conference on the Human Environment

**UNDRIP**  
United Nations Declaration on the Rights of Indigenous People

**UNESCO**  
United Nations Educational, Scientific and Cultural Organisation

**WH**  
World Heritage

**WHC**  
World Heritage Convention
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PART 1

INTRODUCTION
Chapter 1: Introduction

1.1 Introduction

The independent Pacific Island States\(^1\) are home to a diverse array of heritage sites. These include impressive marine and terrestrial ecosystems, sites evidencing the settlement of the region and the development of island societies, and places of significance due to their connection with the traditions, customary knowledge, and practices of Pacific Islanders. Eight sites within these States have been inscribed on the World Heritage (WH) List,\(^2\) including East Rennell in Solomon Islands, which is the focus of this research. That site is under customary tenure, and is owned and occupied by the people of East Rennell. It was the first listed WH site in the Pacific Islands, and the first place anywhere in the world to be listed based on its natural heritage values and customary protection. Consequently, its inclusion in the WH List was heralded as a landmark in the implementation of the World Heritage Convention\(^3\) (the Convention), which established an important precedent concerning the acceptance of customary law as a sufficient basis for the protection of natural WH sites.\(^4\)

However, East Rennell is now on the List of WH in Danger, threatened by the impacts of extractive industries, invasive species, climate change, and the over-harvesting of certain animals.\(^5\) Addressing these threats is likely to require a range of actions, including strengthening the protection that the site enjoys under law. Furthermore, there is a need to ‘identify and communicate lessons learnt’ from East Rennell,\(^6\) to assist with the implementation of the Convention at similar sites.

The Convention requires State parties to undertake the legal measures needed to protect their WH,\(^7\) but does not mandate any form of legislation that must be implemented. It therefore allows State parties to tailor their WH protection laws to suit their context. This

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2. See Table 2.
3. Convention Concerning the Protection of the World Cultural and Natural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘World Heritage Convention’).
7. World Heritage Convention arts 4-5.
creates a substantial opportunity for the *Convention* to be utilised by Pacific Island States to protect their WH in a manner that is consistent with the nature of their heritage, their land tenure, and their legal systems. Despite this however, developing and implementing effective laws remains challenging for many Pacific countries, including Solomon Islands. If East Rennell is to retain its WH listing, it is imperative that its legal protection be improved. In addition, if the representation of Pacific heritage on the WH List is to increase, and if the *Convention* is to be successfully utilised to conserve significant sites in the region, greater understanding of its implementation in the Pacific context is required.

The aim of this research is therefore to identify options that could strengthen the legal protection of WH in Solomon Islands and other Pacific Island States sharing similar characteristics. This is achieved firstly by investigating key characteristics of Pacific Island States and the *Convention* regime, to assess the potential for Pacific heritage to be recognised and protected under that law. Secondly, the opportunities and challenges associated with the legal protection of WH in Solomon Islands are explored. This involves critically analysing the nomination and inscription of East Rennell on the WH List, as well as the legal and practical issues affecting the site’s protection under customary and State legal systems. From that analysis, options for improving the protection of WH under law have been identified. The research could inform the development of measures to address the threats to East Rennell, which is necessary if the site is to be removed from the List of WH in Danger. More broadly, the lessons learned from Solomon Islands’ experience could be utilised by other Pacific Island States and organisations to improve their efforts to implement the *Convention*.

### 1.2 Introduction to the *World Heritage Convention* regime and its implementation in the Pacific region

#### 1.2.1 The *World Heritage Convention* regime

The *Convention* was adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in November 1972. Among other things, it was a response to growing international concern about the impacts of human activities on cultural sites and wilderness areas, as well as increasing appreciation
of the interrelationship between culture and nature, and the need to preserve heritage for future generations (see 3.2.1 for further discussion).

The drafters of the Convention intended that it would apply to sites of significance to humankind, rather than places possessing only local or national significance.8 Thus, pursuant to the Convention, the concept of ‘WH’ is restricted to sites that have ‘outstanding universal value’ (OUV).9 State parties have the primary responsibility for safeguarding such places, and must take ‘effective and active’ measures to achieve that end.10 However, as the deterioration of WH constitutes a ‘harmful impoverishment of the heritage of all the nations of the world’,11 the Convention also establishes a system of international assistance to help State parties comply with their duties.12

The Convention has never been amended, and this would be a ‘long and risky’ task13 as there are now 192 State parties.14 Despite this, the Convention regime has evolved, because the Convention document itself only establishes a framework. It creates the key structural elements of the regime, namely:

- the WH Committee (an executive decision-making body comprising 21 State parties);
- the WH List (a list of sites that the WH Committee considers have OUV); and
- the WH Fund (a fund administered by the WH Committee, used to assist State parties and others to identify and protect WH). (See Table 1 for further details).

However, the Convention gives the WH Committee and State parties substantial discretion to determine how it should be implemented.

To facilitate the implementation of the Convention, the WH Committee has adopted the Operational Guidelines for the Implementation of the World Heritage Convention (the Operational Guidelines).15 That document prescribes procedures concerning matters such

9 World Heritage Convention arts 1, 2.
10 Ibid arts 4-5.
11 Ibid preamble para 2.
12 Ibid arts 6-7.
as the preparation of nominations for the WH List,\textsuperscript{16} monitoring and reporting,\textsuperscript{17} and the provision of international assistance to State parties.\textsuperscript{18} Importantly, the Operational Guidelines also prescribe the requirements that a site must meet before the Committee will consider it eligible for WH listing.\textsuperscript{19} These requirements require consideration of the site’s value and significance, as well as its protection and management.\textsuperscript{20} When the Committee decides to inscribe a property on the WH List, it adopts a ‘Statement of Outstanding Universal Value’ for the site, which is intended to become the basis for the future protection of the site.\textsuperscript{21}

Although the Operational Guidelines are not legally binding, they are critically important because they underlie much of the Committee’s decision-making.\textsuperscript{22} By amending the Operational Guidelines, the Committee has been able to influence how the Convention is implemented in response to changes in the international community’s views towards heritage and its protection.\textsuperscript{23} As will be explored in chapters 3 and 4, through this process the Convention regime has evolved to better facilitate the recognition and conservation of Pacific heritage.

\textsuperscript{17} Operational Guidelines 2016, UN Doc WHC.16/01, part III.A.
\textsuperscript{18} Ibid parts IV-V.
\textsuperscript{19} Ibid part VII.
\textsuperscript{20} Ibid part II.
\textsuperscript{21} Ibid paras 77-78. The requirements for WH listing are analysed at 3.3 and 4.3.3 of this thesis.
\textsuperscript{22} Ibid paras 154-155.
\textsuperscript{23} See, eg, Strasser, above n 13, 245-246.
### Table 1: Key features of the World Heritage Convention regime

<table>
<thead>
<tr>
<th>Feature of the regime</th>
<th>Explanation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>World Heritage</strong></td>
<td>Sites (including monuments, groups of buildings, and natural features) that meet the definition of ‘cultural heritage’ and/or ‘natural heritage’ in Articles 1 and 2 of the Convention. Essentially these definitions say that sites are ‘WH’ if they have OUV. The Operational Guidelines prescribe several criteria and requirements a site must meet to be deemed to have OUV.24</td>
</tr>
<tr>
<td><strong>The World Heritage Committee</strong></td>
<td>An executive body established under the Convention, comprising 21 State parties elected for 6 year terms.25 The Committee’s decision-making powers include determining whether sites should be inscribed on the WH List26 or the List of WH in Danger,27 whether States should receive international assistance,28 and administering the WH Fund.29 The Committee also examines the state of conservation of listed WH sites through a monitoring and reporting system.30</td>
</tr>
<tr>
<td><strong>The World Heritage List</strong></td>
<td>A list of sites that the WH Committee considers meet the definition of WH.31 Before a site can be listed, it must be nominated by the State party within which it is located.32 It must also have been included in the State party’s Tentative List.33</td>
</tr>
<tr>
<td><strong>Tentative List</strong></td>
<td>A national inventory prepared by a State party and submitted to the WH Committee, of the WH within the State.34</td>
</tr>
<tr>
<td><strong>The List of World Heritage in Danger</strong></td>
<td>A list of sites on the WH List compiled by the WH Committee, which are threatened by serious and specific dangers and which require major operations in order to be conserved.35</td>
</tr>
<tr>
<td><strong>The World Heritage Fund</strong></td>
<td>A fund established under the Convention, comprising (among other things) compulsory and voluntary contributions from the State parties.36 The WH Committee determines how the resources in the fund are spent.</td>
</tr>
<tr>
<td><strong>The Advisory Bodies</strong></td>
<td>The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN).37 They monitor the state of conservation of sites on the WH List,38 and (in the case of ICOMOS and IUCN) make recommendations to the WH Committee concerning properties nominated for inclusion on that list.39</td>
</tr>
</tbody>
</table>

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24 Operational Guidelines 2016, UN Doc WHC.16/01, parts II.D-II.F.
25 World Heritage Convention arts 8(1), (9(1)); Operational Guidelines 2016, UN Doc WHC.16/01, part I.E.
26 World Heritage Convention art 11(2); Operational Guidelines 2016, UN Doc WHC.16/01, para 24(a).
27 World Heritage Convention art 11(4); Operational Guidelines 2016, UN Doc WHC.16/01, para 24(c).
28 World Heritage Convention art 13(3); Operational Guidelines 2016, UN Doc WHC.16/01, part VII.
29 World Heritage Convention art 13(6); Operational Guidelines 2016, UN Doc WHC.16/01, para 24(f), part VII.
30 World Heritage Convention arts 11(7), 29; Operational Guidelines 2016, UN Doc WHC.16/01, para 24(b), part IV.
31 World Heritage Convention art 11(2); Operational Guidelines 2016, UN Doc WHC.16/01, part II.
32 World Heritage Convention art 11(2); Operational Guidelines 2016, UN Doc WHC.16/01, para 63.
33 World Heritage Convention art 11(1); Operational Guidelines 2016, UN Doc WHC.16/01, para II.C.
34 World Heritage Convention art 11(4); Operational Guidelines 2016, UN Doc WHC.16/01, part IV.B.
35 World Heritage Convention art 15; Operational Guidelines 2016, UN Doc WHC.16/01, part VII.
36 World Heritage Convention art 8(3); Operational Guidelines 2016, UN Doc WHC.16/01, para 30.
37 World Heritage Convention art 14(2); Operational Guidelines 2016, UN Doc WHC.16/01, para 31(d).
38 Operational Guidelines 2016, UN Doc WHC.16/01, para 31(e).
1.2.2 World Heritage in Solomon Islands: The listing and protection of the East Rennell World Heritage Site

Solomon Islands is an independent Pacific Island nation, comprising around 1,000 islands stretching across 1,450km between Bougainville and the northern islands of Vanuatu (see Figures 1 and 2). It became a signatory to the Convention in 1992, and East Rennell (its only listed WH site) was listed in 1998. The site encompasses the southern third of the island of Rennell, which is located 236km south of Honiara (the nation’s capital), within the Rennell and Bellona province. It also includes the area extending three nautical miles into the sea (see Figure 3).

Figure 1: Map of the independent Pacific Island States
Map made with data from Natural Earth. Free vector and raster map data @ naturalearthritisdata.com.

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40 WHC Res CONF 203 VIII.A.1, WHC 22nd sess, UN Doc WHC-98/CONF/203/18 (29 January 1999) 25.
Figure 2: Map of Solomon Islands
Map made with data from Natural Earth. Free vector and raster map data @ naturalearthdata.com.

Figure 3: Map of the East Rennell World Heritage Site
Rennell is a raised coral atoll, the dominant feature of which is the brackish Lake Tegano, which covers almost 18% of the island. Apart from the lake, the island is mostly covered with dense forest that is home to several endemic plant and animal species (see Figures 4 – 7).

Figure 4: Lake Tegano (Stephanie Price, 2013)

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42 Ibid 13.
Figure 5: View from Lake Tegano (Stephanie Price, 2012)

Figure 6: View from limestone cliffs along the southern coast of East Rennell, looking eastwards over dense forest towards Lake Tegano (Michael Woodward, 2011)
Figure 7: View from limestone cliffs along the southern coast of East Rennell, looking down on the marine area within the southern side of the World Heritage site (Michael Woodward, 2011)
East Rennell is under customary tenure, and is owned and occupied by the East Rennellese people pursuant to their customary land tenure system. Their ancestors arrived on the island from the Wallis and Futuna Group and thus the East Rennellese are of Polynesian descent. Today, approximately 750 people live within the WH site, mainly in four villages located on the southern boundary of the lake (see Figures 3, 8 and 9). They live predominantly subsistence lifestyles, relying on fish from the lake and sea, and resources from the forests and their gardens. As will be explained throughout this thesis, the conservation of the WH site is intrinsically linked with their customs and livelihoods.

Figure 8: Hutuna village, East Rennell World Heritage site (Stephanie Price, 2012)

43 Ibid 23.
45 See, eg, Wingham, above n 41, 27.
East Rennell was inscribed on the WH List as a ‘natural’ site. The Committee considered that it warranted listing due to the island’s role as a ‘stepping stone in the migration and evolution of species in the region’, and because of the speciation processes that have occurred there.\(^{46}\) The cultural heritage values associated with the site were not recognised in the listing, which has ongoing implications for the site’s protection (discussed further in chapter 5).

In deciding to inscribe East Rennell, the Committee considered that the ‘protection and management’ requirements for WH listing were met because the site was under customary tenure, and its natural environment enjoyed protection under the customary legal system of the East Rennellese people.\(^{47}\) To supplement this customary protection,
the Committee called upon the Solomon Islands government (SIG) to implement a management plan and legislation to ensure the long-term conservation of the area.48

Since East Rennell was included in the WH List, the threats to the site’s natural environment have increased (see chapter 6). The area is now threatened by logging and mining, which is being carried out in West Rennell49 and which may commence within the WH site boundaries in the near future.50 Invasive species, climate change and the over-harvesting of coconut crabs and marine species, could also damage the site’s OUV.51

As will be explained in chapter 6, at present it appears that customary protection is unable to protect the site’s WH values from these threats. Furthermore, although the site now has a management plan52 and some protection under State legislation, it has been put on the List of WH in Danger.53 Safeguarding East Rennell’s OUV in the long term will require a range of actions, including strengthening the protection of the site under law.

1.2.3 World Heritage in the Pacific Island States: The implementation of the Global Strategy

East Rennell was inscribed on the WH List in the context of the Global Strategy for a Representative, Balanced and Credible World Heritage List (the ‘Global Strategy’), which was adopted by the Committee in 1994 in response to growing concern about the under-representation of certain regions and types of heritage sites on the WH List.54 The Global Strategy is a framework and operational methodology for the implementation of the Convention. It aims to create a more representative and balanced WH List by, among other things, encouraging States in under-represented regions to sign the Convention, and to prepare Tentative Lists and nominations that will help fill the gaps in the List.55 The Global Strategy also led the Committee to adopt a priority system for its assessment of nominations, favouring nominations that will improve the balance of the WH List.56 The

48 Ibid.
49 The term ‘West Rennell’ is used here to describe all parts of the island of Rennell other than East Rennell.
50 See, eg, Dingwall, above n 5, 4.
52 Wein, above n 44.
53 The Committee placed the site on the List of WH in Danger in 2013: see WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM.20 (5 July 2013) 68. The site has been retained on that list at all subsequent meetings, including the most recent (2016) meeting: see WHC Res 40 COM 7A.49, WHC 40th sess, UN Doc WHC/16/40.COM/19 (15 November 2016) 69.
54 WHC Res CONF 003 X.10, WHC 18th sess, UN Doc WHC-94/CONF.003/16 (31 January 1995) 41-44. See also Operational Guidelines 2016, UN Doc WHC.16/01, paras 55-58.
55 Operational Guidelines 2016, UN Doc WHC.16/01, para 60.
56 Ibid para 61.
Pacific has always been under-represented on the WH List, so it is a focus of the *Global Strategy*.

The *Global Strategy* has had some positive outcomes for the Pacific region. As explored in chapters 3 and 4, it contributed to the Committee broadening its interpretation of the concept of WH, which has made the WH List more open to the diverse heritage sites that exist around the world. This includes ‘cultural landscapes’ (sites that reflect the interaction between humans and their environment), which are common in the Pacific, and are now recognised as a category of WH site. The *Global Strategy* also encouraged the acceptance of different models of WH protection such as that offered by customary tenure, which is significant in the Pacific where there is a high percentage of customary land.

More generally, workshops and studies conducted as part of the *Global Strategy* increased awareness of and interest in the *Convention* regime in the Pacific. Twelve of the 14 independent Pacific Island States are now signatories, and eight sites within these countries have been listed (see Table 2). In addition, the *Global Strategy* created impetus for the development of the *Pacific 2009 World Heritage Programme*, which was adopted by the Committee in 2003. This programme was a significant development as it was the first initiative specifically focused on WH in the region. It provided a framework for efforts to improve implementation of the *Convention* by Pacific Island States, including through awareness raising and capacity building. As a follow up to this programme, an action plan for implementation of the *Convention* in the Pacific for the period 2010-2015 was prepared. That has now been superseded by the *Pacific World Heritage Action Plan 2016 – 2020*, adopted by representatives of Pacific Island nations at a regional WH meeting in Fiji in 2015. It provides strategic guidance by specifying regional and national actions designed to address the challenges associated with identifying and protecting Pacific WH.

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57 Ibid para 47.
58 Badman et al, above n 4, 27.
Table 2: Overview of the implementation of the World Heritage Convention by the independent Pacific Island States

<table>
<thead>
<tr>
<th>State party</th>
<th>Date of signature of the Convention</th>
<th>Name of World Heritage Site</th>
<th>Year of inscription on the World Heritage List</th>
<th>Cultural, natural or mixed site</th>
<th>Relevant criteria (para 77 of the 2016 Operational Guidelines)</th>
<th>Brief summary of the site’s World Heritage values</th>
<th>Land tenure and human occupation of the World Heritage site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Islands</td>
<td>2009</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Federated States of Micronesia</td>
<td>2002</td>
<td>Nan Madol: Ceremonial Centre of Eastern Micronesia</td>
<td>2016</td>
<td>Cultural</td>
<td>(i), (iii), (iv) and (vi)</td>
<td>Comprises more than 100 islets containing the remains of stone palaces, temples, tombs and residential domains built between 1200 and 1500. Evidence of the complex social and religious practices of island societies during that time.</td>
<td>Customary tenure. Uninhabited.</td>
</tr>
<tr>
<td>Fiji</td>
<td>1990</td>
<td>Levuka Historical Port Town</td>
<td>2013</td>
<td>Cultural</td>
<td>(ii) and (iv)</td>
<td>First colonial capital of Fiji. Example of the architecture of European colonisation. Demonstrates interactions between Pacific islanders and colonisers that occurred as part of colonisation process.</td>
<td>5.95ha privately owned freehold land, 0.5 ha owned by the State.</td>
</tr>
<tr>
<td>Kiribati</td>
<td>2000</td>
<td>Phoenix Islands Protected Area</td>
<td>2010</td>
<td>Natural</td>
<td>(vii) and (ix)</td>
<td>Comprises over 400,000 sqkm of marine and terrestrial habitats. A relatively pristine mid-ocean environment, hosting high marine biodiversity. Contains numerous sea mounts, and is a breeding site for many species.</td>
<td>State owned. No permanent inhabitants. About 50 people live there, associated with park management.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>State party</th>
<th>Date of signature of the Convention</th>
<th>Name of World Heritage Site</th>
<th>Year of inscription on the World Heritage List</th>
<th>Cultural, natural or mixed site</th>
<th>Relevant WH criteria (para 77 of the 2016 Operational Guidelines)</th>
<th>Brief summary of the site’s World Heritage values</th>
<th>Land tenure and human occupation of the World Heritage site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marshall Islands</td>
<td>2002</td>
<td>Bikini Atoll Nuclear Site</td>
<td>2010</td>
<td>Cultural</td>
<td>(iv) and (vi)</td>
<td>Provides tangible evidence of the birth of the Cold War and the nuclear arms race. Demonstrates the effect of nuclear testing on island populations.</td>
<td>Customary ownership. State owns area below high water mark. 25 inhabitants.</td>
</tr>
<tr>
<td>Nauru</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Niue</td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Palau</td>
<td>2002</td>
<td>Rock Islands Southern Lagoon</td>
<td>2012</td>
<td>Mixed</td>
<td>(iii), (v), (vii), (ix) and (x)</td>
<td>A large lagoon including 445 islands. Remains of burial sites and rock art bear testimony to the island communities that existed there over some three millennia. Has high conservation value because of its spectacular marine and terrestrial biodiversity.</td>
<td>Under customary tenure. Ownership of the site has been the subject of several court cases. No permanent inhabitants.</td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>1997</td>
<td>Kuk Early Agricultural Site</td>
<td>2008</td>
<td>Cultural</td>
<td>(iii) and (iv)</td>
<td>Comprises archaeological evidence of transformation of agricultural practices around 6,500 years ago.</td>
<td>Customary tenure. Subject to government lease. Approximately 150 inhabitants.</td>
</tr>
</tbody>
</table>

67 Republic of the Marshall Islands, Bikini Atoll Nomination by the Republic of the Marshall Islands for Inscription on the World Heritage List (2010) 64-65. This nomination dossier states that most Bikinians were relocated from the site before it was used to conduct nuclear tests from 1946: at 58.


<table>
<thead>
<tr>
<th>State party</th>
<th>Date of signature of the Convention</th>
<th>Name of World Heritage Site</th>
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<th>Land tenure and human occupation of the World Heritage site</th>
</tr>
</thead>
<tbody>
<tr>
<td>Samoa</td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Samoa</td>
<td>2001</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>1992</td>
<td>East Rennell</td>
<td>1998</td>
<td>Natural</td>
<td>(ix)</td>
<td>Encompasses Lake Tegano (the largest lake in the insular Pacific), dense forest and a marine area. An important site for the study of island biogeography because of the speciation processes that have occurred there. Hosts several endemic species.</td>
<td>Customary tenure. Customary tenure. Approximately 750 inhabitants.</td>
</tr>
<tr>
<td>Tonga</td>
<td>2004</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tuvalu</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Vanuatu</td>
<td>2002</td>
<td>Chief Roi Mata’s Domain</td>
<td>2008</td>
<td>Cultural</td>
<td>(iii), (v) and (vi)</td>
<td>Cultural landscape comprising three sites associated with the life and death of the last Paramount Chief of Roi Mata. Reflects the continuing chiefly system, and the connection between people and their environment.</td>
<td>Customary land. No residents within WH site. Around 670 residents in the buffer zone around the site.</td>
</tr>
</tbody>
</table>

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70 Wingham, above n 41, 5.
71 See above n 44.
Despite the successes of the **Global Strategy**, imbalances in the WH List have increased since it was adopted. Today less than 1% of all listed WH sites are located in the independent Pacific Island States (see Figure 10). While a perfect regional balance is neither desirable nor achievable, the magnitude of the imbalance suggests that impediments to the listing of Pacific sites remain.

Several factors influence the composition of the WH List including the politicisation of the listing process and the composition of the Committee. Fundamentally however, the Pacific is under-represented because sites can only be listed if they are first nominated by the relevant State party, and to date the rate of nomination by Pacific nations has been low. A key reason for this is that economic and social development is a higher priority than heritage conservation in many Pacific Island States, particularly those such as Solomon Islands that are classified as ‘Least Developed Countries’ (see 2.4.1). In addition, most Pacific countries only signed the Convention within the last 15 years (see Table 2), giving them less time than others to prepare nominations. They have also (at least historically) had less interest and involvement in the Convention regime, in part because they were not involved with its drafting (see 3.2.1). The lack of expert resources including comprehensive inventories of Pacific heritage places also impedes the development of nominations. While two thematic studies conducted as part of the Global Strategy have alleviated this lack of literature, many Pacific Island governments still lack the resources to prepare a nomination dossier with the requisite level of detail.

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77 *World Heritage Convention* art 11(3).


79 The two thematic studies are: Anita Smith and Kevin L Jones (eds), *Cultural Landscapes of the Pacific Islands* (ICOMOS, 2007); Ian Lilley (ed), *Early Human Expansion and Innovation in the Pacific: Thematic Study* (ICOMOS, 2010).

80 The requirements for a nomination dossier are prescribed in the Operational Guidelines 2016, UN Doc WHC.16/01, part III.B, annex 5. As noted by Bertacchini and Saccone, preparing nomination dossiers is very costly: see Enrico E Bertacchini and Donatella Saccone, ‘Toward a Political Economy of World Heritage’ (2012) 36(4) Journal of Cultural Economics 327, 331.
Another likely contributor to the low rate of nominations is that many Pacific Island States lack strong legal frameworks for heritage protection.81 To be eligible for WH listing, the Committee considers that a site must be adequately managed and protected.82 While the Committee now recognises that a site may meet this requirement because of its customary protection,83 a customary system is seldom able to deal with all contemporary threats to a site’s WH values.84 Consequently, in practice, additional measures, including State legislation, will often be required to safeguard the site. The lack of effective heritage legislation in many Pacific Island States thus contributes to the region’s under-representation on the WH List, as well as directly hampering protection at a local level.

The Pacific 2009 World Heritage Programme aims to build the capacity of Pacific Island States to implement the Convention. However, it has not yet substantially improved ‘the institutional capacity of Pacific Island governments to protect and manage their heritage or to support customary owners to do so’.85 In recognition of this, increasing the effectiveness and coordination of policy and legislation for WH protection remains one of the aims of the Pacific World Heritage Action Plan 2016 – 2020.86 This highlights the importance of the present research, which seeks to identify options for strengthening the legal protection of WH in the region.

82 Operational Guidelines 2016, UN Doc WHC.16/01, paras 78, 97.
83 Ibid para 97. The Committee’s decision to recognise customary protection of WH sites is analysed in 4.3.3.
84 See, eg, Smith, above n 59, 5; Chris Ballard and Meredith Wilson, ‘Unseen Monuments: Managing Melanesian Cultural Landscapes’ in Ken Taylor and Jane L Lennon (eds), Managing Cultural Landscapes (Routledge, 2012) 130, 132; Pepe Clarke and Charles Taylor Gillespie, Legal Mechanisms for the Establishment and Management of Terrestrial Protected Areas in Fiji (IUCN, 2009) 2.
Figure 10: Regional distribution of World Heritage sites
Data sourced from UNESCO, World Heritage List Statistics <http://whc.unesco.org/en/list/stat#s1>
1.2.4 Strengthening the protection of World Heritage in Solomon Islands and other Pacific Island States

The Pacific Island States have a history of regional cooperation, as evidenced by numerous regional organisations and treaties. Pacific regionalism presents a significant opportunity for strengthening WH protection. It has been fostered by meetings and workshops held in the Pacific as part of the implementation of the Global Strategy, which have provided Pacific islanders with opportunities to meet and discuss common issues. Importantly, regional cooperation has enabled the Pacific Island States to articulate their views to the Committee more forcefully, which may have influenced its views concerning the meaning of WH and its protection.

The most significant example of this was the Pacific Appeal, which was presented to the WH Committee by representatives of the Pacific Island States in 2007. That document brought the vision of Pacific islanders concerning their heritage and the Convention to the world stage. It explained that the Pacific ‘contains a series of spectacular and highly powerful spiritually-valued natural features and cultural places’, unlike other regions which comprise extensive monumental heritage. Furthermore, Pacific islander heritage is ‘holistic, embracing all life, both tangible and intangible’ and is understood through cultural traditions. The implementation of the Convention in the region must be considered in the context of these types of heritage places. Importantly, the Pacific Appeal also highlighted that the protection of this heritage ‘must be based on respect for and understanding and maintenance of the traditional cultural practices, indigenous knowledge and systems of land and sea tenure’ in the region. This includes recognition of customary legal systems, which continue to govern many aspects of the lives of Pacific islanders. Those systems not only form part of the heritage of the Pacific, they have also

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87 There are now more than 300 regional organisations in the Pacific focused on a range of issues including economic, religious, commercial, educational, technical, professional, cultural, sporting and environmental issues: Ron Crocombe, The South Pacific (University of the South Pacific, 2001) 591.
89 For example, the regional WH workshop held in Suva, Fiji in December 2015. For details of other meetings and workshops, see, eg, Smith, above n 59.
91 Ibid annex I para 11.
been utilised to manage natural resources and culturally significant places for millennia, and can thus contribute to efforts to preserve WH.

The Pacific Island States exhibit ‘legal pluralism’, in part because both State and customary legal systems operate there⁹⁴ (see chapter 2). Developing and implementing heritage protection legislation in a legally plural context can be challenging. As has been noted:

In many Pacific countries a tension remains between national legislation for protection of World Heritage properties (in compliance with the State party’s obligations under the World Heritage Convention) and the rights of customary land owners. Developing legal protection for Pacific Island heritage that recognizes the rights of customary owners and satisfies international standards established in very different social, cultural and political systems, remains a great challenge and will require flexibility and cultural sensitivity in World Heritage system.⁹⁵

This challenge is exacerbated by the fact that in the Pacific region there is ‘limited financial and human resources, skills and capacities within communities, and institutions to adequately manage the region’s cultural and natural heritage’.⁹⁶ Consequently, most Pacific Island States do not have well established frameworks for the protection of culturally significant places, and while many have laws for the protection of natural areas, such laws are rarely consistently implemented and enforced.⁹⁷ To improve this situation, greater understanding of the role of, and the relationship between, State and customary laws in the context of WH protection is needed.

### 1.3 Research questions and scope

The overall aim of this thesis is to identify options that could strengthen the legal protection of WH in Solomon Islands and other Pacific Island States sharing similar characteristics. To achieve this aim, the following research questions will be explored:

1. What challenges and opportunities are presented by the *Convention* regime for the recognition of Pacific Island heritage as WH?
2. What challenges and opportunities are presented by the *Convention* regime for the protection of Pacific Island heritage?

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⁹⁴ Legal pluralism is commonly referred to as the existence of two or more legal orders in the same social field: Sally Engle Merry, ‘Legal Pluralism’ (1988) 22 Law and Society Review 869, 870; John Griffiths, ‘What is Legal Pluralism?’ (1986) 24 Journal of Legal Pluralism 1, 12.

⁹⁵ Smith, above n 59, 9.


⁹⁷ Smith, above n 59, 9-10.
3. Does an assessment of Solomon Islands’ involvement in the Convention regime, and East Rennell’s nomination to and inscription on the WH List, help explain any of the contemporary issues associated with the site’s protection? If so, how?

4. To what extent are East Rennell’s WH values protected under custom, and what issues influence customary protection in practice?

5. To what extent are East Rennell’s WH values protected under State legislation, and what issues influence the implementation of those laws in practice?

6. Based on the above, what options, if any, could be employed to improve the protection of WH in Solomon Islands and other Pacific Island States sharing similar characteristics?

1.3.1 Research questions 1 and 2

These questions are addressed in Part 2 of this thesis. That Part begins with chapter 2, which sets a foundation for the legal analysis in the remainder of the thesis. It explains the types of heritage places prevalent in the Pacific and the legal systems that operate there. It also examines the scope for WH protection under customary and State legal systems, and identifies key issues influencing that potential. The identified issues are explored further in subsequent chapters.

Question 1 concerns the recognition of Pacific Island heritage under the Convention regime. It is addressed in chapter 3, which explores the development and meaning of the term ‘WH’, and explains the implications of the Committee’s changing interpretation of that concept for the Pacific region.

Question 2 deals with the challenges and opportunities associated with the protection of Pacific WH under the Convention. It is answered in chapter 4, through an analysis of the structure of the Convention regime and the obligation of State parties to protect WH. That chapter explains key developments that have influenced the Committee’s approach to heritage protection, and their relevance for Pacific Island States.

Many Pacific Island States share common characteristics, so it is instructive to consider issues that may influence WH protection across the region. Consequently, as explained above, Part 2 of this thesis has a regional scope. The regional analysis demonstrates that
the findings of this research concerning Solomon Islands (in Part 3) may have relevance for other Pacific countries. It also enables the identification of options for strengthening WH protection that could be taken at the regional level (see chapter 9). The analysis is however limited to the independent Pacific Island States (Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea (PNG), Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu). Other States and overseas territories in the Pacific are not within the scope of this research, because of their different histories, legal and governance systems, and/or territorial status.

1.3.2 Research questions 3, 4 and 5

These questions are addressed in Part 3 of this thesis (chapters 5 – 8).

Question 3 asks whether an assessment of Solomon Islands’ involvement in the Convention regime, and East Rennell’s nomination to and inscription on the WH List, help explain any of the contemporary issues associated with the site’s protection. These issues are explored in chapter 5, through an examination of the rationale behind Solomon Islands’ signature of the Convention and its nomination of East Rennell. The nomination and listing of East Rennell are critically analysed with reference to the Operational Guidelines, and implications for the ongoing protection of the site are identified. The analysis is necessary to determine whether any lessons can be learned from Solomon Islands’ experience for the listing of further sites in that country and elsewhere.

Question 4 concerns the protection of East Rennell’s WH values under customary law, and is addressed in chapter 6. That chapter begins by explaining the key threats to the site’s WH values, namely extractive industries, invasive species, climate change, and the over-harvesting of certain animals (see 6.2). It then considers the scope for those threats to be addressed through the customary legal system, and the issues influencing customary protection in practice. It reviews available literature on customary land tenure, practices and governance, and comments on the willingness and ability of the East Rennellese people to protect WH (see 6.3).

Question 5 requires an assessment of the protection of East Rennell’s WH values under State legislation, and is addressed in several chapters. Following the examination of
customary protection in chapter 6, an introduction to State legal protection of WH in Solomon Islands is provided (see 6.5). The chapter identifies relevant legislation as well as significant gaps in Solomon Islands’ legislative framework. It also highlights key issues influencing the implementation and effectiveness of relevant laws.

Legislation of particular relevance to the protection of East Rennell is then analysed in detail in chapters 7 and 8. Chapter 7 focuses on laws concerning resource use (namely the taking of particular species, and logging and mining) as well as biosecurity laws. These laws regulate matters that relate to some of the key threats to East Rennell’s OUV, so their implementation could contribute to the site’s conservation. Chapter 8 focuses on the direct protection of the site under protected area laws. In these two chapters, the legislation is critically analysed to determine the scope for it to contribute to safeguarding East Rennell’s OUV. In addition, the legal and practical issues influencing the operation of the laws in practice are explored. These chapters therefore provide both a comprehensive analysis of existing legislative provisions, as well as a realistic picture of the extent to which these laws could be used to protect the site.

A comment on the scope of chapters 6 – 8 is warranted here. As East Rennell is a natural WH site, these chapters are limited to considering the role of law in addressing the key threats to the site’s natural heritage values. It is recognised however that while East Rennell was inscribed on the WH List because of its impressive natural environment, the significance of the area to its customary owners is quite different. It is their home, the foundation of their culture, and the basis of their livelihoods. It is regrettable that the cultural significance of the area to the East Rennellese people was not recognised in the site’s listing (see 5.3.1). Furthermore, there is a pressing need for work to assist the East Rennellese people to safeguard their traditional knowledge and cultural identity, which are the heritage values they perceive to be in most need of preservation98 (discussed further in 1.4). However, the fact remains that East Rennell is a natural WH site, and thus the WH Committee is primarily concerned with the preservation of the island’s natural environment. Consequently, as this thesis examines WH rather than heritage more generally, it focuses on measures to protect the natural attributes of East Rennell. Mechanisms to help the East Rennellese people preserve other aspects of their cultural identity are outside the scope of this work.

98 Smith, above n 85, 605.
1.3.3 Research question 6

Question 6 concerns the identification of options for strengthening the protection of WH, and is addressed in chapter 9. Reflecting the structure of the thesis, the options are provided at the regional- and national-level. The scope of the identified options reflects the research questions as framed above. For example, while the research assesses the roles of the Committee and the Advisory Bodies in the WH listing process and in decision-making concerning the protection of WH sites, it does not analyse all aspects of their work. As such, their role in activities such as capacity building, awareness raising, education campaigns and monitoring are not assessed.

Furthermore, it is recognised that many of the threats to East Rennell are related to a range of social, economic, political and cultural issues, and addressing or mitigating them is likely to require action at a broader scale than is possible or appropriate through the Convention regime. Chapter 9 thus focuses on realistic options that could be taken within the ambit of that regime. Broader issues that influence WH protection in Solomon Islands, such as the relationship between trade and WH, and mechanisms to finance conservation initiatives, are not considered as part of this research. They should however be explored through subsequent work.

1.4 Research methodology

The research was conducted in the discipline of law. This allowed critical analysis of key provisions of the Convention, how they have been interpreted, and their implications for the legal protection of Pacific WH. It also enabled an analysis of the implementation of the Convention in the context of the legally plural nature of Solomon Islands, including an examination of the contribution of customary and State legal systems to WH protection. A socio-legal approach has however been taken. Such an approach is warranted where there is significant variation between the form of a law and its practical effect.99 This is certainly the case in Solomon Islands, where (as discussed in 2.4.1) much legislation relevant to heritage protection is not routinely implemented or enforced.

A socio-legal approach recognises that ‘[e]mpirically, law is a component part of the wider social and political structure, is inextricably related to it in an infinite variety of ways, and can therefore only be properly understood if studied in that context’. 100 It allows an assessment of not only the ‘law in books’ but also the ‘law in action’. 101 Thus, while this research includes black-letter legal analysis, it also considers the practical realities associated with implementation of legislation.

This approach is reflected in the methodology utilised for this study, which involved desk-based analysis of primary, secondary and some grey literature, supplemented by empirical research. Literature referred to included Conventions, legislation, decisions of and reports to the WH Committee, and government and non-government reports. Reflecting the socio-legal nature of the research, academic literature from a range of disciplines in addition to law was utilised, such as archaeology, heritage, anthropology, cultural studies and the natural sciences. Most of these materials were available via the world wide web or in hard copy.

Requests were made to personnel within the Solomon Islands Ministries responsible for WH, for any documents they held concerning East Rennell. The only documents provided by the Ministry of Environment, Climate Change, Disaster Management, and Meteorology were publicly available elsewhere. The Ministry of Culture and Tourism provided a file of documents, approximately 1 inch thick, containing a seemingly random selection of documents, most of which related to the site’s nomination. There was no indication that other documents existed but were not being proffered. The lack of archival information held by these Ministries may be due to a combination of poor centralised record keeping, the loss of government documents during the ethnic tensions, 102 and/or the SIG’s limited involvement in the management of East Rennell. This presented a challenge for this research in terms of providing a historical account of WH in Solomon Islands and understanding the SIG’s current position on the Convention. The latter issue was however mitigated to some extent by the interviews conducted as part of the empirical component of this study (discussed below).

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100 Phillip Thomas, ‘Curriculum Development in Legal Studies’ (1986) 20 Law Teacher 110, 112.
102 The tensions are briefly explained in 5.4.1.
In addition to literature analysis, two forms of empirical research informed this study. Firstly, it draws upon my experiences working as an environmental lawyer in Solomon Islands between May 2011 and October 2013. This included 18 months as a lawyer for the Landowners’ Advocacy and Legal Support Unit (LALSU), which is part of the Public Solicitor’s Office (PSO). During that time, I provided legal advice and representation to landowners on conservation, logging and mining issues. I then worked as a legal adviser for Live and Learn Environmental Education (LLEE), on a project funded by the Australian government designed to strengthen protected area governance and natural resource management at the East Rennell WH site. I was engaged by LLEE to assist with the process of registering East Rennell as a ‘protected area’ under the Protected Areas Act 2010, which had then recently come into force.

During my time in Solomon Islands, I visited East Rennell four times, including as a lawyer for LALSU (to raise awareness among the local communities about a proposal to log the area) and as an advisor for LLEE (to assist with general meetings of the Lake Tegano World Heritage Site Association, and to discuss the declaration of East Rennell as a protected area) (see Figures 11 and 12). While working for both LALSU and LLEE, I frequently consulted with people working within SIG, and participated in stakeholder meetings concerning the WH site attended by representatives of SIG, the East Rennellean communities, and aid donors.

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103 The Public Solicitor’s Office is an office established under the Constitution, to provide legal advice and assistance to persons in need: see Solomon Islands Independence Order 1978, sch (‘Constitution of Solomon Islands’) s 92.

104 Live and Learn Environmental Education is a non-government organisation established to promote sustainability and equity: see www.livelearn.org.

105 The project was run by the Australian Department of Sustainability, Environment, Water, Population and Communities (now known as the Department of Environment and Energy), with funding from AusAid’s Pacific Governance Support Program. For details of this program see International Heritage Section, Department of Sustainability, Environment, Water, Population and Communities, Australian Government, ‘Australian Capacity Building Support for East Rennell World Heritage Area 2007 – 2013’ in Anita Smith (ed), World Heritage in a Sea of Islands: Pacific 2009 Programme, World Heritage Papers 34 (UNESCO, 2012) 66.

106 The Lake Tegano World Heritage Site Association is discussed at 6.3.2.
Figure 11: The author discussing a logging application with community members in central Rennell in February 2012 (John Marnell, 2012)

Figure 12: The author and Haikiu Baiabe assisting with general meetings of the Lake Tegano World Heritage Site Association in September 2013, as part of Live and Learn Environmental Education’s protected area project (Gwen Tovosia, 2013)
This work in Solomon Islands gave me insight into the country’s legal systems, and the environmental and developmental issues it faces. It allowed me to experience first-hand the challenges associated with implementing and enforcing State conservation legislation and laws regulating extractive industries, especially in remote places such as Rennell. This work has therefore informed my analysis of the legal protection of WH, particularly the potential for the Protected Areas Act to contribute to the conservation of East Rennell.

The second form of empirical research utilised in this study involved semi-structured interviews, conducted with people who are working, or who have worked, for the SIG on matters relating to WH. Six interviews were conducted, in person in Honiara (see Appendix). The interviewees were chosen because they had worked on WH matters and they were based in Honiara. They held mixed positions within government, with some being Ministers and others having more practical involvement in the protection of East Rennell. The small number of interviews reflects the fact that not many people within the SIG have had substantial involvement with WH. Through my research, I did identify a few others who had worked in this area, but it was not feasible for me to travel to the islands where they lived to interview them.

In designing and conducting the interviews, I was cognisant of ethical and cultural considerations. This was particularly important given that I am not a Solomon Islander. For example, the interviewees were not asked to divulge confidential information, nor to critique the Solomon Island government’s implementation of the Convention. Interviews were conducted in a mix of English and Solomon Islands pijin. Prior to being interviewed, the interviewees were asked whether they consented to being quoted, and whether they wished to remain anonymous. All those interviewed agreed to be quoted, but only some consented to being named.

The aim of the interviews was to determine what the interviewees perceived to be the opportunities and challenges associated with WH protection. They were therefore asked to comment on issues such as the SIG’s role in the protection of a WH site under customary tenure, the Committee’s approach to the protection of East Rennell (particularly its request for logging and mining on the island to be banned) and the assistance SIG wants from the international community. The interviews provided important insights into how the Convention regime is perceived by people working within
the SIG, including helping to explain why the government has not yet acted to strictly protect East Rennell. Obviously some caution must be taken in accepting the results of this empirical research, given the small number of interviewees. Furthermore, my position as a legal adviser for LLEE, and the fact that I am not a Solomon Islander, may have influenced the interviewees’ responses. I do not however consider that this latter issue substantially impacted the research, as the interviewees seemed quite candid in their discussions with me.

To supplement the perspectives on WH that I gained through my work and research in Solomon Islands, I attended the WH Committee annual meeting in Bonn, Germany in 2015. This allowed me to view the Committee’s deliberations concerning East Rennell, and to discuss the site with interested parties, to better understand how the issues surrounding its conservation are perceived at the international level.

Three aspects of the methodology warrant additional explanation here. Firstly, this research did not involve any interviews with members of the East Rennellese communities. It is evident from existing research that many East Rennellese people are disappointed with the WH program, in part because it has failed to deliver them substantial tangible benefits. I did not want to exacerbate these feelings by conducting further consultations that would not directly improve their livelihoods. Furthermore, I considered that interviewing members of the East Rennellese communities for the purposes of this research could jeopardise my work as a legal adviser for LLEE. If I had conducted any such interviews, some people might have formed the view that I was only working on the LLEE project to benefit my own research. As this could have undermined LLEE’s work, I only interviewed current and former government employees.

Secondly, no empirical research to document the customary legal system of East Rennell was conducted, despite this being a critical gap in the literature (see 1.5.4). The reason for this was my belief that any such research must accord with the aspirations of the East Rennellese people. For the people of East Rennell, WH conservation cannot be discussed separately from the preservation of their cultural heritage. Indeed, as Smith has found, the

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heritage that they consider to be in most need of protection is linked to their traditional knowledge and their cultural identity, not the site’s WH values.\textsuperscript{108} To safeguard their culture, the East Rennellese communities have expressed support for a project to ‘record their biocultural values, including land tenure, environmental knowledge, traditional resource use, crafts, songs and dance’.\textsuperscript{109} Consequently, it is difficult to see how empirical research on customary protection of WH values could be ethically conducted in isolation of a broader project to investigate, document and conserve Rennellese culture, in accordance with the priorities of the East Rennellese people. That broader work is beyond the boundaries of the discipline of law (and my expertise) and thus outside the scope of this thesis. Ideally, any measures taken to protect the natural environment of the area should be integrated with such work. Thus, the present research (which concerns the legal protection of the environment) could inform or form part of a broader project aimed at conserving the natural and cultural heritage of East Rennell.

The absence of empirical research on customary protection means that a somewhat State-centric approach is taken in this research. For example, customary protection is explored in part of chapter 6, while two chapters (chapters 7 and 8) are devoted to analysis of relevant State legislation. This does not derogate from the importance of this work, as appropriate and effective State laws are critical for the long-term protection of the site. Furthermore, the ‘voice’ of the East Rennellese people has not been ignored. In addition to the insights I gained from visiting East Rennell, some literature documents the views of local communities’ concerning WH.\textsuperscript{110} As noted above, those reports indicate that many East Rennellese people are disappointed with the lack of tangible benefits they have received from the listing of their land, and they are legitimately concerned about food security and other livelihood issues. These perspectives feature heavily in my analysis of the legal protection of the site under both custom and State law in Part 3 of this thesis. The fact that analysis of State legislation dominates that Part does however confirm the need for further empirical research on customary protection of the site.

Finally, a comparative analysis between East Rennell and other Pacific WH sites has not been undertaken. This is because although Pacific Island States share some common characteristics, their eight listed WH sites vary, including in terms of the criteria which

\textsuperscript{108} Smith, above n 85.
\textsuperscript{109} Ibid 605.
\textsuperscript{110} See above n 107.
justified their listing, their land tenure and whether they are inhabited (see Table 2). Consequently, the benefits of a comparative study were considered to be insufficient to warrant the substantial loss of detail that would result from broadening the research focus. In addition, as explained above, this research was informed by empirical research undertaken in Solomon Islands, which I could not feasibly duplicate in other States. Although a comparative study was not undertaken, the commonalities shared by many Pacific Island States (discussed in chapter 2) mean that the findings of this research into Solomon Islands could have relevance for other nations in the region. Future research could involve a comparative analysis, to investigate whether lessons learned from other jurisdictions could be utilised to improve Solomon Islands’ implementation of the Convention.

1.5 Literature review

While literature focused on WH in Solomon Islands is very limited, a broad range of literature is relevant to this research. The review below provides an outline of this existing work. It divides the literature into four broad overlapping categories: WH and its protection (1.5.1), legal pluralism and the legal systems of Solomon Islands (1.5.2), heritage protection under customary legal systems (1.5.3); and the protection of WH in Solomon Islands and other Pacific Island States (1.5.4). The review focuses on key literature and key issues only. A more detailed examination of relevant works is provided in the body of the thesis. The review does however demonstrate that the present research makes an important contribution to the body of knowledge concerning WH, particularly Pacific WH sites under customary tenure.

1.5.1 World Heritage and its protection

Analysis of the Convention regime in the present research is based on the Convention document itself, the Operational Guidelines, and related literature including decisions of the Committee, reports prepared by intergovernmental organisations such as UNESCO and the Advisory Bodies, conference proceedings and strategic documents. In addition, a wide body of academic literature has been drawn upon, including chapters of heritage texts, and articles in journals from disciplines including law, archaeology, heritage, anthropology and cultural studies. The most comprehensive examination of the
Convention regime is a commentary edited by Francesco Francioni, which analyses the treaty article by article. Among other things, it covers the concept of WH, the structures that comprise the regime, and the duties of State parties and the international community. Other useful assessments of the Convention as a whole have been published by legal scholars such as Forrest and Boer and Wiffen.

In addition, there is a broad body of literature dealing with aspects of the Convention regime, such as global policy issues and matters affecting specific sites. Of particular relevance to this research is literature exploring the Global Strategy and the composition of the WH List, the development and changing interpretation of the concept of OUV, and the recognition of ‘cultural landscapes’ as WH. Scholars writing on these topics come from a range of disciplines including heritage studies, economics, archaeology, anthropology, geography and law. Among other things, this literature (which is explored in chapter 3) assesses the impact of the Committee’s approach to OUV on the composition of the WH List. Relevantly, Anita Smith (an archaeologist with extensive experience in the Pacific) has shown that the Committee’s broadening interpretation of what constitutes cultural WH has increased the potential for sites of significance to Pacific islanders to be listed. Chapter 3 builds upon this existing literature by considering the implications of these changes for the protection of Pacific sites.

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112 Forrest, above n 75.
113 Ben Boer and Graeme Wiffen, *Heritage Law in Australia* (Oxford University Press, 2006).
Just as the Committee has expanded the range of sites that may be considered WH, it has also broadened its approach to how such places may be managed and protected. As explored in chapter 4, existing literature shows that it is now widely accepted that heritage sites cannot be preserved in complete isolation from the impacts of humans, nor can they be separated from development activities or social changes.118 Furthermore, the important role played by Indigenous people and local communities in the implementation of the Convention is now recognised.119 As a result, some commentators have called for WH sites to be managed through rights-based approaches, placing human rights on an equal footing with conservation.120 In addition, the 2007 United Nations Declaration on the Rights of Indigenous People (UNDRIP) is now commonly used as a basis for advocating for greater involvement of Indigenous people in the implementation of the Convention.121 As such, several studies have highlighted instances where Indigenous peoples’ rights were not adequately respected in these processes,122 or presented case studies documenting attempts to ensure that UNDRIP is complied with.123 Again, this work has been written by academics from several disciplines, such as geography, anthropology and social science.

The present research on East Rennell demonstrates the need to approach WH protection in the context of sustainable development, but also the challenges associated with balancing conservation and development in practice. It adds to the literature that confirms


121 See, eg, Ekern et al, above n 120; Disko, above n 119; Hales et al, above n 119; Ekern et al, above n 120; Peter Bille Larsen, World Heritage and Evaluation Processes Related to Communities and Rights: An Independent Review (IUCN, 2012).


the critical role of local communities in WH protection. This research supplements that existing work, by exploring the role of local communities in terms of their ability and willingness to protect WH under customary and State legal systems.

1.5.2 Legal pluralism and the legal systems of Solomon Islands

Solomon Islands, like the other Pacific Island States, is a legally plural State. Although there is no universally accepted definition of ‘legal pluralism’, it is commonly defined as the existence of more than one legal order in a social field.\(^{124}\) The existence of legal pluralism is now accepted by many academics,\(^{125}\) despite ongoing debates, including how to define the boundary between non-State law and other non-legal social phenomena.\(^{126}\) Literature addresses issues such as the types of legal orders that exist, whether particular orders are rightly construed as ‘law’, and the relationship between State and non-State legal systems\(^{127}\) (see chapter 2). A monograph by Miranda Forsyth (a legal scholar who has written extensively on State and non-State law in the Pacific) provides a comprehensive synthesis of literature on this topic.\(^{128}\) Her work includes a discussion of the possibilities and limitations associated with the application of the concept of ‘legal pluralism’ in Melanesia.\(^{129}\) Among other things, she notes that legal pluralism establishes non-State justice systems as a legitimate field of study, thus facilitating their investigation.\(^{130}\) As a result, the concept is now increasingly used to frame legal analyses of topics such as human rights,\(^{131}\) development,\(^{132}\) and access to justice.\(^{133}\)

Solomon Islands exhibits legal pluralism in part because of the existence of customary legal systems developed by Solomon Islanders, and the State system adopted upon the

\(^{124}\) Sally Engle Merry, ‘Legal Pluralism’ (1988) 22 Law and Society Review 869, 870.

\(^{125}\) Forsyth notes that there is some debate about the precise extent to which legal pluralism is accepted: see Miranda Forsyth, A Bird That Flies with Two Wings: Kastom and State Justice Systems in Vanuatu (ANU E Press, 2009) 38.

\(^{126}\) Ibid 38.


\(^{128}\) Forsyth, above n 125.

\(^{129}\) Ibid 44.

\(^{130}\) Ibid.


\(^{132}\) Brian Tamanaha, ‘The Rule of Law and Legal Pluralism in Development’ in Brian Z Tamanaha, Caroline Sage and Michael Woolcock (eds), Legal Pluralism and Development: Scholars and Practitioners in Dialogue (Cambridge University Press, 2012) 34.

\(^{133}\) Government of the United Kingdom (Department for International Development), Safety, Security and Accessible Justice: Putting Policy into Practice (2002).
nation gaining independence from Britain. Thus, the present research on WH protection requires consideration of customary laws, State legislation and their interactions.

Analysis of Solomon Islands’ State legal system for the present research has been based on the country’s Constitution and relevant national and provincial legislation. In addition, academic literature has been drawn upon, primarily from journals focused on the Pacific region or legal pluralism. Jennifer Corrin is a key legal academic researching this topic, having explored issues such as the historical development of the State legal system, the Constitutional hierarchy of laws, and the complex relationship between State and customary laws.134 Although not always using the terminology of legal pluralism, the interactions between State and customary laws in relation to subjects such as land135 and forestry136 have also been investigated. These studies highlight numerous legal and practical issues arising from these interactions, demonstrating that the optimal relationship between the two systems is yet to be identified. The present research expands upon this body of work, by exploring the interactions between State and customary legal systems in the context of heritage protection.

Selected works in journals of history, culture, anthropology, geography, and social sciences have also been utilised. Those articles have been reviewed through a legal lens, to explore the issues influencing the operation of Solomon Islands’ legal systems in practice. For example, there is a broad body of literature concerning governance and State-building in Solomon Islands.137 Key works are referred to in chapter 2 to help

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137 See, eg, Judith Bennett, Roots of Conflict in Solomon Islands - Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism, State, Society and Governance in Melanesia Discussion Paper (Australian National University, 2002); Sinclair Dinnen, ‘The Solomon Islands Intervention and the Instabilities of the Post-Colonial State’ (2008) 20(3) Global
explain the current political and economic climate in Solomon Islands, which influences the SIG’s ability and willingness to protect WH.

Although customary legal systems remain integral to the lives of most Solomon Islanders,\(^{138}\) there is little hard data on them.\(^{139}\) Importantly, customary systems have not been codified, and vary throughout the country,\(^{140}\) so site-specific analysis is needed to ascertain the applicable customary laws and governance structures. Generally however, the literature demonstrates that customary systems remain highly relevant to most Solomon Islanders,\(^{141}\) but in some places they are weakening, which is impeding their ability to deal with contemporary issues and disputes.\(^{142}\) The present research contributes to knowledge in this area by exploring the implications of this for WH protection.

1.5.3 Heritage protection under customary legal systems

Interest in exploring the potential for customary legal systems to contribute to the protection of the natural environment derives in part from increasing acceptance of the benefits of local approaches to achieving sustainable development, and the growing recognition of the rights of Indigenous peoples. This has spawned research into local approaches to natural resource management, often referred to using terminology such as community-based environmental management (CBEM), locally managed marine areas (LMMAs) and Indigenous and community conservation areas (ICCAs).

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141 See above n 138.

Much of the literature on local approaches in the Pacific (which is referred to in chapters 2 and 4) focuses on marine areas, as they are considered to be more discrete and ‘manageable’ than terrestrial areas, and more directly relevant to the lives of many Pacific islanders. There has been some analysis of local approaches to the management of terrestrial areas, but there is substantial scope for more.

The literature demonstrates that the traditional practices, ecological knowledge, and customary legal systems of Pacific islanders can form the basis of sound contemporary natural resource management. Factors influencing the effectiveness of such approaches include the strength of customary governance, the degree of cohesion within the local community, and the nature and source of the threats facing the ecosystem. Although this literature tends to focus on safeguarding the natural environment, it has broader relevance for Pacific heritage places given the close connection between culture and nature in that region. While some studies explore the interactions between State and customary laws in this context, there is little analysis of Solomon Islands and that which exists is dated.
and limited to marine areas. The present research therefore helps to fill this gap in the
literature.

To date, only a ‘handful’ of places under customary management have been inscribed on
the WH List.149 Most of these are subject to co-management systems, under which the
government and local resource users share power and responsibility for the area.150 For
example, the co-management regimes being implemented at some WH sites in Australia
have been analysed.151 These approaches have emerged to allow Indigenous people
greater decision-making powers over their traditional lands,152 to ensure that their
aspirations are incorporated into environmental management initiatives,153 and as part of
the reconciliation process.154 Literature explores issues such as the development of the
concept of co-management,155 processes by which Indigenous peoples have been
incorporated into management approaches,156 the institutional arrangements that facilitate
such approaches157 and case studies of particular sites.158 Co-management is an effective
approach in some places. However, it is unlikely to be appropriate in States such as
Solomon Islands where many places are owned and occupied by customary owners who
rely on the land for their livelihoods,159 and the government has limited resources and
capacity to participate in site management. As such, literature concerning co-management
regimes does not derogate from the need to analyse WH protection in the Pacific context.

Some analyses of heritage protection in other regions is however instructive. For example,
assessments of African heritage laws160 discuss how colonisation redefined African

149 Smith and Turk, above n 147, 26.
150 Berkes, P J George and R J Preston, ‘The Evolution of Theory and Practice of the Joint Administration of Living Resources’
(1991) 18(2) Alternatives 12, 12.
151 See, eg, M Nursey-Bray and P Rist, ‘Co-Management and Protected Area Management: Achieving Effective Management of
Tony Corbett, Marcus Lane and Chris Clifford, Achieving Indigenous Involvement in Management of Protected Areas:
Lessons from Recent Australian Experience, Aboriginal Politics and Public Sector Management Research Paper 5 (Centre for
Australian Public Sector Management, 1998); T Bauman, C Haynes and G Lauder, Pathways to the Co-Management of
Protected Areas and Native Title in Australia, AIATSIS Research Discussion Paper 32 (2013); Melanie Zubra et al, ‘Building
Environmental Management 1130; Joseph J Speeder and Harvey A Feit, ‘Co-Management and Indigenous Communities:
152 Bauman, Haynes and Lauder, above n 151, 9.
153 Nursey-Bray and Rist, above n 151; Corbett, Lane and Clifford, above n 151, 1.
154 Bauman, Haynes and Lauder, above n 151, 10.
155 See, eg, Ryan Plummer and Derek Armitage, ‘Crossing Boundaries, Crossing Scales: The Evolution of Environment and
156 See, eg, Corbett, Lane and Clifford, above n 151.
157 See, eg, Bauman, Haynes and Lauder, above n 151.
158 See, eg, Zubra, above n 151; Rosemary Hill, ‘Towards Equity in Indigenous Co-Management of Protected Areas: Cultural
Planning by Miriuwung-Gajerrong People in the Kimberley, Western Australia’ (2011) 49(1) Geographical Research 72.
159 Smith and Turk, above n 147, 23.
160 See, eg, Paul Mupira, ‘Implementation and Enforcement of Heritage Laws’ in Webber Ndoro, Albert Mumma and George
Abungu (eds), Cultural Heritage and the Law: Protecting Immoveable Heritage in English-Speaking Countries of Sub-
Saharan Africa, ICCROM Conservation Studies 8 (ICCROM, 2008) 79; Albert Mumma, ‘Framework for Legislation on
Immoveable Cultural Heritage in Africa’ in Webber Ndoro, Albert Mumma and George Abungu (eds), Cultural Heritage and
heritage from a Western perspective, and shifted responsibility for managing cultural heritage from communities to central colonial governments. Consequently, scholars have found that African legislation often fails to appropriately recognise the role of customary legal systems, and greater community involvement in cultural heritage preservation is required. Josephine Gillespie also advocates for greater recognition of the role of local communities in WH protection. Her doctoral thesis exploring the regulatory framework that applies to Angkor Wat provides a comprehensive analysis of the protection of a WH site in the legally plural Cambodia. She argues that heritage protection laws should pay more attention to legal and normative structures and systems that are already in place, such as those developed by local communities. These studies therefore demonstrate the need for State heritage protection laws that supplement and strengthen existing customary protection, a contention which is confirmed by the present research in the Solomon Islands context.

1.5.4 The protection of World Heritage in Solomon Islands and other Pacific Island States

Information on Pacific sites on the WH List can be found in the sites’ nomination dossiers and literature such as WH Committee decisions and reports of the Advisory Bodies. While some sites have been the subject of academic research, there remains substantial scope for further analysis, particularly concerning the legal issues relevant to their conservation.

A key work on WH in the Pacific is Adam Trau’s 2013 doctoral thesis, which focused on Chief Roi Mata’s Domain in Vanuatu. Trau’s study provides a detailed analysis of the global and local dimensions of WH as they apply to that site. In papers that form part of

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that work,\textsuperscript{164} Trau and others argue that the local communities who own the area are integral to its protection, and the heterogeneity of views held by community members concerning the development and conservation of their land must be recognised. They also emphasise the need for heritage protection measures to be accompanied by locally beneficial economic development. Other literature on Chief Roi Mata’s Domain explores issues such as the nomination process, and key environmental, social and economic issues influencing the site’s management and protection.\textsuperscript{165}

Literature on the Kuk Early Agricultural Site in PNG is more limited, but highlights numerous challenges associated with the nomination and management of that site.\textsuperscript{166} These include the limited capacity of the PNG government to undertake these activities, the contested nature of the site’s land tenure, and the diversity of views held by the site’s owners. The potential WH listing of the Kokoda Track has also been analysed in a doctoral thesis by Amy Reggers.\textsuperscript{167} In that work, Reggers assesses the potential for a co-management approach to be used in the management of the site and the development of the tourism industry there. Her thesis provides insights into the complexities involved with negotiating the development and conservation of customary land, in which multiple stakeholders have an interest.

The other listed Pacific Island WH sites have been researched in disciplines such as history and anthropology, but literature on their legal protection is relatively sparse. For example, research on the Bikini Atoll WH site in Marshall Islands addresses issues such as the site’s history, and the variation between the global and local significance of the site.\textsuperscript{168} There is literature on the Levuka Historical Port Town in Fiji explaining the history


\textsuperscript{165} See, eg, Meredith Wilson, Chris Ballard and Douglas Kalotitti, ‘Chief Roi Mata’s Domain: Challenges for a World Heritage Property in Vanuatu’ (2011) 23(2) Historic Environment 5; Ballard and Wilson, above n 84, 130.


of the site, the range of heritage values it expresses, and the site’s nomination and listing.\textsuperscript{169} Palau’s listed WH site (the Rock Islands Southern Lagoon) has been the subject of substantial scientific and archaeological analysis.\textsuperscript{170} Analysis of the Phoenix Marine Protected Area in Kiribati has also been mainly been undertaken from a scientific perspective.\textsuperscript{171} While some of this literature refers to customary and State laws relevant to WH conservation, it contains little analysis of the laws or their interactions.

The present research concerning Solomon Islands utilises literature such as East Rennell’s nomination dossier, WH Committee decisions, reports prepared by the SIG and the Advisory Bodies, correspondence between the SIG and other stakeholders, and media reports. The analysis also draws upon the existing academic literature on the topic, which is mainly found in heritage and archaeology journals. That existing work contains relatively little legal analysis. For example, Smith has provided insights into the site’s nomination and management, and the views of the East Rennellese people concerning WH.\textsuperscript{172} However, while her work touches on legal protection issues, because of her disciplinary focus, she does not explore them in detail. Similarly, while Kasia Gabrys and Mike Heywood (who lived and worked at East Rennell between 2008 and 2009) have documented aspects of their work on the island,\textsuperscript{173} they have not explored the issues surrounding legal protection.

Literature on customary protection of East Rennell is limited. While several reports and documents have recommended that the site’s customary protection be researched,\textsuperscript{174} this


\textsuperscript{172} Smith, above n 85; Smith, above n 117; Smith and Turk, above n 147.

\textsuperscript{173} Gabrys and Heywood, above n 44.

\textsuperscript{174} In 2004, the WH Committee requested that IUCN assess the state of conservation of East Rennell, including documenting and assessing the effectiveness of the customary protection of the property; see WHC Res 28 COM 15B.12; WHC 28th sess, UN Doc WHC-04/28.COM/26 (29 October 2004) 79, 79. The 2007 East Rennell management plan identifies documenting the traditional knowledge and customary practices of the East Rennellese communities as a future management action: see Wein,
has not yet been done in a comprehensive manner. Existing literature (explored in chapter 6) does however provide some insights. For example, reports of early expeditions to the island by anthropologists, ethnologists and others who researched the folklore, language and religion of its people contain some information concerning customary land tenure, practices and governance structures. More recent literature by Gabrys and Heywood\(^{177}\) and Allen et al\(^{178}\) highlight some issues with contemporary customary governance at the site. However, as noted in 1.4 above, further research to document customary protection at East Rennell, based on multi-disciplinary empirical research, is needed.

The analysis of the protection of East Rennell under State law is based on relevant legislation, including the *Forest Resources and Timber Utilisation Act (Cap. 40)*, the *Mines and Minerals Act (Cap. 42)*, the *Environment Act 1998*, the *Fisheries Management Act 2015* and the *Biosecurity Act 2013*. Secondary literature concerning the logging and mining industries has also been drawn upon. For example, several scholars have explored the weak regulation of the logging industry.\(^{179}\) Mining laws have been analysed less (as the industry is newer) but research is increasingly identifying critical problems with the

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\(^{175}\) See, eg, Dingwall, above n 5, 28. Some reports state that some documentation of customary protection has been undertaken. See, eg, the WH nomination dossier for East Rennell (adopted by the Committee in 2012) noted that a recent scoping study has begun the task of documenting customary values and traditional management practices. Adoption of Retrospective Statements of Outstanding Universal Value, WHC 36\(^{s}\) sess, UN Doc WHC-12/36.COM/5E (15 June 2012) 55-6; WHC Res 36 Com 8E, WHC 36\(^{6}\) sess, UN Doc WHC-12/36.COM/19 (June-July 2012) 225. However, the author’s research did not reveal any report of these surveys, so it appears they were not completed.


industry’s regulation. While this existing work helps explain the context within which logging and mining laws operate, to date there has been no assessment of the ability of landowners and SIG decision-makers to utilise that legislation to protect heritage sites. In addition, there has been little academic analysis of the Environment Act 1998, with which logging and mining companies must also comply. This thesis explores these issues and thus contributes to the body of knowledge concerning the regulation of extractive industries in Solomon Islands.

This thesis also considers the potential for the East Rennell WH site to be conserved through its declaration as a ‘protected area’ under the Protected Areas Act 2010. That law, which came into force in 2012, has not yet been thoroughly examined in academic literature, so the analysis is based principally on the legislation itself (supplemented by empirical research). There has also been little analysis of other similar legislation in the Pacific. For example, Vanuatu’s Environmental Management and Conservation Act 2002 allows for the establishment of community conservation areas which share some common characteristics with protected areas set up under the Protected Areas Act. However, the Vanuatu Act has not been extensively analysed. There is therefore a vital need for detailed examination of the Protected Areas Act in the context of WH protection, particularly given that WH Committee is calling upon SIG to implement that law at East Rennell. This research helps fill that gap in knowledge, by providing a comprehensive analysis of the Act, and by identifying legal and practical issues that are likely to be encountered in its implementation.

1.6 Key terminology

1.6.1 Customary legal systems, customary laws, customs and kastoms

This research uses the term ‘customary legal system’. Adopting Miranda Forsyth’s description of a ‘kastom’ system, a ‘customary legal system’ encompasses ‘traditional norms of behaviour that are backed up by a sanction of some description (either positive


181 An exception is Techera, above n 145.

182 ‘Kastom’ is the pijin term for ‘custom’. 
or negative) administered by a member or members of the local community, or a chief at some level of the chiefly hierarchy’ as well as the processes by which disputes are dealt with.\textsuperscript{183} The system therefore involves customary norms, governance bodies, and dispute-resolution processes.

Customary norms are variously described in different contexts as ‘customs’ (or the equivalent Pijin word ‘kastoms’) or ‘customary laws’. These terms are used interchangeably in common parlance\textsuperscript{184} and some academic literature.\textsuperscript{185} They are broad terms, subject to numerous definitions. One definition of kastom is that it encompasses ‘indigenous ideologies, relationship to and management of land, moral frameworks, dispute management, gender relations and social organisation’.\textsuperscript{186}

As explored in 2.3.1, there is some debate as to where the boundary between ‘custom’ (or ‘kastom’) and ‘customary law’ lies. It is commonly argued that a custom becomes law through uniform practice and the peoples’ subjective belief that the norm must be complied with,\textsuperscript{187} but in practice determining whether a custom has reached that threshold is difficult.\textsuperscript{188} No attempt is made here to further the debate concerning the distinction between custom and customary laws. In this thesis, the terms are used interchangeably to describe the norms that form part of a customary legal system.

1.6.2 Customary protection and traditional protection

The term ‘customary protection’ is used in this thesis to describe the protection provided to a heritage place through the operation of a customary legal system. The Operational Guidelines and other literature use the term ‘traditional protection’\textsuperscript{189} to mean the same
thing. In this thesis, the ‘fortress’ style approach to protected area management (which was prevalent in Western countries in the early years of the implementation of the Convention) is referred to as the ‘traditional’ approach. Thus, to avoid confusion, the term ‘customary protection’ is used here rather than ‘traditional protection’.

1.6.3 Customary land, customary ownership, and customary owners

‘Customary land’ is land held pursuant to customary law. Rights over customary land depend on the applicable customary laws, which vary throughout the Pacific (see chapter 2). Like most other relevant literature, this thesis uses the terms ‘customary ownership’ and ‘customary owners’. However, it is acknowledged that customary tenure is better thought of as a complex and flexible system of rights and obligations, rather than a system of ownership. Thus, people who have the right to occupy and/or use customary land do not ‘own’ that land in the Western sense of that word. While it is acknowledged that references to ‘customary ownership’ and ‘customary owners’ misrepresent the true nature of Pacific land tenure, those terms are used for convenience purposes (see 2.3.5 for further discussion). Legal issues associated with the terminology used in legislation to describe people with rights to customary land are explored in chapters 7 and 8.

1.6.4 World Heritage

The term ‘WH’ is not defined in the Convention, and in fact only appears in the treaty’s preamble. The Convention instead applies to ‘cultural heritage’ and ‘natural heritage’, terms which are defined in Articles 1 and 2 respectively. Essentially, to meet one of these definitions a heritage site must possess OUV.

In common parlance, the terms ‘WH’ or ‘WH site’ are often used to refer to a place inscribed on the WH List. However, despite the visibility of the WH List, the Convention does not just apply to listed heritage sites. Pursuant to the Convention, State parties have obligations with respect to the protection of all properties that fall within the

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192 Carducci, above n 193, 113.
definitions in Articles 1 and 2, irrespective of whether those sites have been nominated for or inscribed on the WH List.\textsuperscript{193}

In recognition of this, the terms ‘WH’ and ‘WH site’ are used in this thesis to refer to all heritage sites falling within the definitions of ‘cultural heritage’ and ‘natural heritage’ in Articles 1 and 2 of the \textit{Convention}, not just those on the WH List. Where necessary for clarity, places that meet the definitions in Articles 1 and 2 and that have been inscribed on the WH List are referred to in this thesis as ‘listed WH sites’.

1.7 Thesis structure

As explained in 1.3, this research involved answering six questions. This thesis is divided into four parts, which are aligned with those research questions.

\textbf{Part 1} comprises this introductory chapter (\textit{chapter 1}).

\textbf{Part 2} addresses research questions 1 and 2. It comprises three chapters exploring the context for WH protection in the Pacific and the application of the \textit{Convention} regime in the region.

- \textbf{Chapter 2} sets a foundation for the analysis in later chapters, by providing an introduction to Pacific Island heritage, land tenure and legal systems.

- \textbf{Chapter 3} considers the scope for Pacific Island heritage to fall within the \textit{Convention} regime, through an exploration of the origins of the concept of ‘WH’ and its interpretation by the Committee. Issues associated with the recognition of Pacific Island heritage as cultural or natural WH are identified.

- \textbf{Chapter 4} assesses the protection of Pacific Island heritage under the \textit{Convention} regime, by analysing the structure of that regime and State parties’ obligations with respect to the conservation of WH sites. The implications of the Committee’s changing views on WH protection for the Pacific are examined.

In Part 3 the focus narrows to Solomon Islands. That part addresses research questions 3, 4 and 5, and comprises four chapters:

- **Chapter 5** analyses Solomon Islands’ early involvement in the *Convention* regime, and the nomination and listing of the East Rennell WH site.
- **Chapter 6** explains the key threats to the WH values of East Rennell and their potential impacts. It assesses the scope for those threats to be dealt with under custom and through management plans. It also provides an introduction to State heritage protection legislation, by identifying relevant laws and explaining the context within which they operate.
- **Chapter 7** analyses key laws that relate to the threats to East Rennell. It covers legislation concerning resource use (the taking of species, and logging and mining) as well as biosecurity. It examines relevant legislative provisions, and assesses the potential for the laws to contribute to WH conservation.
- **Chapter 8** considers the scope for direct protection of WH under protected area laws. The *Protected Areas Act 2010* is critically analysed, and issues that are likely to be encountered in its implementation at East Rennell are identified.

The thesis concludes in Part 4 (chapter 9) by answering research question 6. It identifies options that could in time lead to incremental improvements in the protection of WH in Solomon Islands and other Pacific Island States.
Part 2

World Heritage Protection
in the Pacific
Chapter 2: The Pacific Island context

2.1 Introduction

As will be explored throughout this thesis, many of the opportunities and challenges for the implementation of the <em>World Heritage Convention</em>¹ (the Convention) in the Pacific relate to the nature of the region’s heritage, the legal systems that govern its people, and the context within which those systems operate. This chapter therefore explores these issues and examines their relevance to the protection of World Heritage (WH). It does not aim to provide a comprehensive analysis of all characteristics of Pacific Island States that impact on heritage protection, and indeed it would not be possible to do so within one chapter. Rather, the purpose of the chapter is to identify and examine key issues that help explain the opportunities and challenges for the protection of Pacific WH, and thus to set a foundation for the legal analysis in later chapters.

This chapter is based on primary and secondary literature from an extensive range of sources, in disciplines including law, heritage, natural sciences, anthropology, history, economics and politics. It builds upon that existing work by analysing the identified issues through a legal lens, and in the context of WH protection. While the broad scope of this chapter risks masking the diversity that exists within the region, the commonalities shared by Pacific Island States have been focused on to explore the relevance of this research on Solomon Islands to other States.

The chapter begins with an examination of the nature of Pacific Island heritage, including natural environments, landscapes reflecting the settlement and development of island societies, and places associated with European and American contact with the region (2.2.1). The key threats to such places are also noted (2.2.2). As will be explained, much heritage of value to Pacific Islanders comprises landscapes and seascapes, evidencing interactions between people and their environments. Another common feature of many Pacific heritage sites is that they possess both natural and cultural values.

¹ <em>Convention Concerning the Protection of the World Cultural and Natural Heritage</em>, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘World Heritage Convention’).
The chapter continues with an introduction to the legal systems of the Pacific Island States. It explains how a legacy of colonialism is the creation of legally plural States, in which both customary and State laws apply (2.3.1). After briefly outlining the development of Pacific legal systems (2.3.2 and 2.3.3), the chapter demonstrates how customary legal systems have been shaped by outside influences, but nevertheless remain integral to the lives of most Pacific Islanders (2.3.4). Laws concerning customary land tenure are examined in some detail, because many heritage places in the region are under customary ownership (2.3.5).

The scope for customary and State legal systems to contribute to WH protection is then assessed (2.4). The chapter considers the potential for customary and State legal norms to regulate matters relevant to heritage conservation. It also explores the economic, social and political context within which these systems operate, which influences the capacity and willingness of both customary landowners and Pacific Island governments to protect heritage sites. Based on this analysis, it is argued that greater understanding of how customary and State legal systems operate and interact could improve the conservation of the region’s spectacular natural and cultural sites.

### 2.2 Pacific Island heritage

Few inventories of heritage sites in the Pacific have been prepared, and those that exist are limited in scope and/or reflect the interests of foreign researchers rather than Pacific Islanders. Smith and Jones’ 2007 study of cultural landscapes, and Lilley’s 2010 study of early human expansion in the region significantly enhanced the body of knowledge concerning Pacific heritage. However, the character and diversity of culturally significant sites has not yet been comprehensively documented. Similarly, few ecosystems in the Pacific have been thoroughly researched. Despite these gaps, literature demonstrates that

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3 Anita Smith and Kevin L Jones (eds), Cultural Landscapes of the Pacific Islands (ICOMOS, 2007).
5 Lilley and Sand, above n 2, 24.
the region’s heritage places are diverse and face a range of threats, so no one form of
heritage protection legislation will be appropriate and effective at all sites.

2.2.1 Forms of heritage prevalent in the Pacific region

(A) Heritage comprising the ‘natural’ environment of the Pacific Islands

The Pacific region comprises diverse marine and terrestrial ecosystems. Its marine areas
range from deep ocean trenches to coral reefs and large enclosed lagoons,\(^7\) and support
more marine biodiversity than any other region.\(^8\) Within the expansive Pacific Ocean lie
thousands of islands, with varied geologies, topographies, ecologies and climates.\(^9\) They
include ‘continent’-like landmasses, high volcanoes, atolls and raised coral limestone
islands.\(^10\) Many are home to a variety of terrestrial species, some of which are endemic
(i.e. unique to that place). Biodiversity and endemism are particularly high in the west of
the region (including in Solomon Islands),\(^11\) but much lower in areas where islands are
smaller and more remote.\(^12\)

The terrestrial and marine environments of the Pacific comprise the natural heritage of
the region. However, few are pristine. Direct and indirect human influences on island
environments began when the region was first settled, resulting in impacts that varied
from marginal disruption to much more significant changes.\(^13\) Some environmental
change was caused as settlers attempted to make their new island homes more ‘familiar
and manageable’\(^14\) by introducing new plants (such as coconut, banana, taro, yam,
cassava, paw paw and breadfruit) and animals (including pigs, dogs and chickens).\(^15\)

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\(^7\) See, eg, Richard Herr, ‘Environmental Protection in the South Pacific: The Effectiveness of SPREP and its Conventions’ in
Olav Schram Stokke and Oystein B Thommessen (eds), Yearbook of International Co-operation on Environment and

\(^8\) See, eg, Govan et al, above n 6, 16.

\(^9\) See, eg, Anita Smith, ‘The Cultural Landscapes of the Pacific Islands’ in Anita Smith and Kevin L Jones (eds),
Cultural Landscapes of the Pacific Islands (ICOMOS, 2007) 17, 18.

\(^10\) See, eg, Paul Dingwall, ‘Pacific Islands World Heritage Tentative Lists’ in Anita Smith (ed), World Heritage in a Sea of
in Oceania: Challenges and Opportunities’ in Anita Smith (ed), World Heritage in a Sea of Islands: Pacific 2009 Programme,


\(^12\) See, eg, Smith, above n 9, 18.

Human Geography 219, 222; Frank R Thomas, ‘The Precontact Period’ in Moshe Rapaport (ed), The Pacific Islands:
Environment and Society (University of Hawai‘i Press, 2013) 125, 133-134.

History 299, 304.

\(^15\) See, eg, Ibid 304; Nunn, above n 13, 219; Smith, above n 9, 28.
Settlers caused other changes by clearing and burning forest, cultivating land, constructing permanent features, altering fresh water resources, and hunting native fauna species.

On some islands, settlers caused considerable environmental degradation. The clearing and torching of land to allow for shifting cultivation and garden crops altered island vegetation, and increased erosion and soil degradation. Island animals were vulnerable to the introduction of fauna species and other human activities because they evolved in areas with few terrestrial predators. Consequently, settlers caused the extinction of some fauna species, particularly ground-dwelling birds, and marine creatures were often depleted due to over-harvesting.

Pacific Island settlers not only modified their environment to suit their livelihoods, but also developed customary laws regulating the use and management of their land and natural resources. Today, many Pacific Islanders still possess ‘deep traditional knowledge about their sea and forests and elaborate traditional practices expressed through dances and customary rites of their environment’, which evidences their close connection with their environment.

In regions such as the Pacific, where Indigenous people continue to possess cultural and spiritual connections with their environment, the concepts of ‘nature’ and ‘culture’ may overlap. A key characteristic of Pacific Island heritage is therefore that the distinction between ‘cultural heritage’ and ‘natural heritage’ is often blurred. This presents
challenge for the implementation of the *Convention*, which deals separately with cultural and natural sites (see 3.3.1). It also raises questions about the appropriateness of Pacific sites being recognised as natural WH sites (see 3.3.2).

(B) **Heritage reflecting the settlement and development of Pacific Island societies**

Large-scale monuments are relatively rare in the Pacific region. More commonly, Pacific heritage places exemplify the settlement of the Pacific Islands and the development of islander societies.

Some commonalities and differences that exist across the Pacific can be explained with reference to the three geo-cultural regions: Melanesia, Micronesia and Polynesia (see Figure 13). There are limitations associated with any analysis based on these geo-cultural divisions. Such an analysis risks masking significant variation within the regions. In addition, characteristics attributed to one region may be found elsewhere in the Pacific. The geo-cultural divisions do however help to explain some important characteristics of Pacific Islanders. For example, as discussed below, the three regions were settled at different times and from different sources, contributing to the cultural and ethnic diversity of Pacific Islanders.

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Ballard and Wilson, above n 26, 130.

27 Of the Pacific Island States, Fiji, Papua New Guinea, Solomon Islands and Vanuatu are within Melanesia; Cook Islands, Niue, Samoa, Tonga and Tuvalu are within Polynesia; and Federated States of Micronesia, Kiribati, Marshall Islands, Nauru and Palau are within Micronesia.

The first phase of settlement of Melanesia occurred between 30,000 and 50,000 years ago, and involved the settlement of ‘Near Oceania’ (New Guinea, the Bismarck Archipelago and Solomon Islands). These migrants, often referred to as Papuans, lacked the technology to migrate any further than the Solomon Islands, so settlement stalled there for thousands of years. Around 4,000 years ago, Austronesians (a Southern Mongoloid population from southern China) arrived in the region. Their technologies enabled sailing crews to survive longer at sea, allowing them to settle the eastern parts of Papua New Guinea (PNG). From there, settlement expanded multi-directionally, with the Austronesians reaching outer Solomon Islands, Vanuatu, New Caledonia, Fiji, Tonga and Samoa by around 3,000 years ago. Settlement paused there for over 1,000 years.

During the next phase of settlement, which started between AD 700 and AD 1,000, settlers continued their expansion beyond Samoa, to settle eastern Polynesia.

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31 See, eg, Ron Crocombe, *The South Pacific* (University of the South Pacific, 2001) 44.
32 See, eg, ibid 45.
33 See, eg, Irwin, above n 30, 51.
35 See, eg, Nunn, above n 13, 220.
36 See, eg, Thomas, above n 13, 127.
37 See, eg, Irwin, above n 30, 52.
same era, some Polynesians ventured westward, establishing settlements on the outlying islands in Melanesia and Micronesia. These islands are now referred to as ‘Polynesian Outliers’, and include Rennell in Solomon Islands which was settled by people from the Wallis and Futuna group. Hence, while most Solomon Islanders are of Melanesian decent, the Rennellese are Polynesian. One consequence of this is that some customary laws of the Rennellese people (including their land tenure system) differ significantly from those in other parts of Solomon Islands (see 6.3.1).

Settlement of Micronesia began around 3,500 years ago, but some islands were only settled during the last millennium. Current evidence suggests settlers arrived from several sources, including early movements from South East Asia, and later movements from Melanesia and Polynesia, contributing to the considerable cultural diversity within that region.

Pacific heritage places can help us understand early human expansion throughout the region. These places include archaeological sites, but also landscapes reflecting the settlement and development of island societies. Some such landscapes contain evidence of the settlers’ transportation and adaption of systems of agriculture and land tenure, while others demonstrate the location and layout of traditional villages, and contain physical features that Pacific Islanders have constructed like burial places, fences and gardens.

Pacific landscapes may be relics, or they may play an active role in contemporary society because of the continuing living traditions associated with them. The continuity of these traditions is commonly demonstrated through stories, and through customary knowledge and practices. Intertwined with these traditions are the customary legal systems (including land tenure systems) of the sites’ owners, which also form part of the heritage of the region. Indigenous customary law is itself a critical element of Indigenous culture.

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38 Smith, above n 9, 24.
40 See, eg, Smith, above n 9, 24.
42 See, eg, Smith, above n 9, 22.
43 Lilley (ed), above n 4.
44 Smith, above n 9, 32-45.
45 Smith, above n 9, 58.
46 Ibid.
Thus, a place may gain its heritage significance from the traditions, customary laws and governance systems that are associated with it.

These characteristics distinguish the cultural heritage of the Pacific from many other regions, which has two key implications for this research. Firstly, the WH Committee’s early focus on the preservation of the types of heritage prevalent in Western States for many years hampered the recognition of Pacific landscapes on the WH List (see 3.3.2(A)). Secondly, the protection of Pacific landscapes will often require different approaches to those employed in other regions (see chapter 4).

(C) Heritage reflecting European and American contact with the Pacific Islands

Pacific Island heritage also comprises sites and landscapes reflecting contact made by Europeans and Americans with Pacific Islanders. Evidence of events such as the conversion of Pacific Islanders to Christianity, colonisation, and activities associated with World War II, contribute to the diverse heritage of the region.

The first European contact with the Pacific occurred around 500 years ago, when the Portuguese arrived at the west of the region and the Spanish arrived at the east. In the early 19th century, European and Americans began to travel to the Pacific to exploit resources like sandalwood, beche de mer, pearl shell and whale oil. However, these activities did not require large permanent settlements, so they did not leave a legacy of heritage places. Greater changes to Pacific Island societies were caused by missionaries, who visited the Pacific from around 1800 and quickly converted much of the population to Christianity. The work of missionaries is evidenced in the region’s architecturally distinct and diverse churches, and the location and layout of villages (as people were often moved from their traditional communities to larger settlements based around a church). Missionaries also influenced Pacific Island heritage by prohibiting some customary practices they considered to be pagan (see 2.3.4).

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49 Beche de mer is processed from holothurians, commonly known as sea cucumbers.
50 Smith, above n 9, 25.
53 Smith and Jones (eds), above n 3, 56.
54 Fischer, above n 34, 109.
Although colonisation occurred relatively late in the Pacific, by 1900 all Pacific Islands except Tonga were controlled by foreign States, including Solomon Islands which became a British protectorate in 1893. Some heritage places in the region reflect the process of colonisation in an island environment, and interactions between the colonisers and the population. For example, colonisation was accompanied by the establishment of large scale extractive industries such as mining and plantations, which impacted Pacific landscapes including through the disruption of customary practices and tenure systems.

Many significant battles of World War II occurred in the Pacific, causing loss of life, the destruction of villages and gardens, and damage to island landscapes. In Vanuatu, Solomon Islands, PNG and some Micronesian islands tangible evidence of the war can be seen in sites evidencing key battles, intensive bombing, large scale construction (such as airfields) and the use of wartime machinery. Nuclear weapons testing carried out by the United States and France forever changed the natural and cultural heritage of some parts of the region, including the Marshall Islands. Sites reflecting these important global events form part of the rich heritage of the region. However, as will be discussed in 3.3.2, the global and local significance of such a site may be very different, which can influence local peoples’ involvement in the site’s protection.

2.2.2 Threats to Pacific Island heritage

The region’s biodiversity is vulnerable as many islands are small and host unique species. While some environmental change in the Pacific Islands was caused by early settlers (see 2.2.1(A)), the rate of change accelerated with the arrival of Europeans and Americans. Agricultural expansion, plantations and extractive industries are continuing
to damage Pacific habitats, driven by forces such as population growth, urbanisation and increasing consumption. Marine biodiversity is also being affected by over exploitation, a shift from subsistence to commercial operations and destructive fishing methods, as well as land based activities that damage coastal vegetation and cause sedimentation and marine pollution. Further threatening heritage, social and economic changes are contributing to the loss of traditional knowledge and the weakening of customary governance.

Compounding these threats are the effects of climate change, which are likely to be profound in the Pacific. Sea level rise will cause the loss of habitable land on many islands, and increasingly frequent and intense storms may affect biodiversity, fisheries and crops. These changes will affect Pacific landscapes, as well as national economies and the livelihoods of many people. Pacific Island governments already face the difficult task of balancing development with heritage protection (see 2.4.1), and climate change is likely to increase that challenge.

Some activities that threaten heritage are driven by Pacific Island governments and multinational companies seeking to benefit from development, whilst others are undertaken (or at least authorised) by Pacific Islanders themselves. Traditionally, people in the region relied on subsistence agriculture supplemented by fishing, gathering and hunting for their livelihoods. Today, most subsistence based economics are increasingly becoming commercialised, and the food security of many islanders is being comprised by urbanisation, population growth and declining crop yields. In addition, globalisation and modernisation have influenced food preferences and livelihood choices, and Pacific Islanders increasingly want to participate in the cash economy. Limited opportunities for paid work lead some to authorise tourism, agriculture, extractive industries, and other

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65 See, eg, P Gerbeaux et al, Shaping a Sustainable Future in the Pacific: IUCN Regional Programme for Oceania 2007-2012 (IUCN, 2007) 3-5.
66 See, eg, Michael King, Ueta Fa’aasili, Semisi Fakahau and Aliti Vunisea, Strategic Plan for Fisheries Management and Sustainable Coastal Fisheries in the Pacific Islands (Secretariat of the Pacific Community, 2003) 1.
72 See, eg, Storey and Abbott, above n 71, 421.
developments on their land in return for cash and in-kind payments, which can damage heritage places. Consequently, heritage protection in the Pacific is often intimately related to both national and local economic development.

As Pacific heritage sites are diverse and face a range of threats, different approaches will be required to secure their protection. However as explained in the next section, all Pacific Island States exhibit legal pluralism and most have high rates of customary land ownership. These characteristics provide a common link between many heritage places in the region.

2.3 Pacific Island legal systems

‘Legal pluralism’ is commonly referred to as the existence of two or more legal orders in the same social field. It is therefore not a characteristic of a law or legal system, but of a social field (for example, a nation, region or community). Pacific Island States are legally plural, in part because their Indigenous and colonial histories have created both customary and State legal systems. This section begins by explaining the concept of legal pluralism and its relevance to this research (2.3.1). An introduction to the development and contemporary relevance of customary and State legal systems in the Pacific is then provided (2.3.2–2.3.5), laying the foundation for later analysis concerning their role in heritage protection (2.4).

2.3.1 The concept of legal pluralism and its application in the Pacific Islands

Legal pluralism gained attention during the 1970s, as legal analysis of governance arrangements in former colonies became more common. Due to its origins, the early focus of legal pluralism was on the relationship between customary and State legal norms...
and institutions. Sally Engle Merry, a much-cited legal pluralism academic, described this field of study as ‘classic legal pluralism’. Since the 1970s, the concept has expanded to encompass other forms of non-State law in both colonised and non-colonised societies. This broader definition (described by Merry as ‘new legal pluralism’) considers the ‘complex and interactive relationship between official and unofficial forms of ordering’. In addition to local, national, regional and international legal systems, new legal pluralism facilitates consideration of customary, religious, economic, community and other non-State systems. Pursuant to this broader definition, most, if not all, societies exhibit legal pluralism. However, it is often experienced more intensely in developing countries (such as the Pacific Island States) because of the diversity of legal systems that operate there, the qualitative differences between them, and the lack of an effective overarching framework for regulating their interactions.

As explained further in the sections below, in the Pacific customary legal systems were developed by islanders over time to regulate their daily commerce, civil life and land tenure. When the islands became colonies and protectorates, new laws enacted by the colonial legislature or the controlling country were introduced, but customary systems continued to operate often with the sanction of the controlling nations. At independence, the States adopted systems of law and governance reflecting the outgoing colonial governments, but customary systems remained highly relevant to most Pacific Islanders. Independence also led to the States becoming subject to international legal norms (such as the Convention) and other forms of law, further enriching their legal pluralism.

Legal pluralism is contrary to the theory of legal centralism, which posits that ‘law is and should be the law of the state, uniform for all persons, exclusive of all other law, and administered by a single set of state institutions’. Miranda Forsyth (who has

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76 Tamanaha, above n 75, 390.
77 Merry, above n 73, 872.
78 Merry, above n 73, 873.
79 See, eg, Tamanaha, above n 75, 397-399.
80 Merry, above n 73, 873, 879; Tamanaha, above n 75, 375.
84 Griffiths, above n 73, 3.
comprehensively analysed the development of legal pluralism) notes that while some commentators contend that the concept enjoys wide support, others have challenged that proposition. As Forsyth notes, this may be because the concept is subject to several theoretical debates, including how to define the concept of ‘law’. Non-State norms exist on a spectrum, ranging from prohibitions that non-State officials may enforce through sanctions, to norms that constitute mere etiquette or good manners. This raises the question of ‘where do we stop speaking of law and find ourselves simply describing social life?’ In the Pacific context, this question is most acutely seen in a consideration of when ‘customs’ may be considered law.

Custom can be described as the ‘social norms and practices that make up local approaches to dispute management and everyday social regulation in communities’. It is therefore a broad term, encompassing things like traditional leadership systems, conflict mediation, ceremonial exchange, beliefs, and rights to land, sea and resources. ‘Customary law’ is a component of the broader concept of custom. However, this begs the question of how to distinguish customary laws from other customs. It is commonly argued that a custom becomes law through uniform practice and the peoples’ subjective belief that the norm must be complied with, but in practice determining whether a custom has reached that threshold is difficult. Issues that complicate the analysis include how widespread customary rules must be before they can be classified as laws, and how long it takes for a custom to transform into a law.

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86 Forsyth, above n 75, 38.
87 Ibid.
89 Merry, above n 73, 878.
95 Corrin Care, above n 188, 32.
96 Parisi, above n 187, 5.
Tamanaha contends that the lack of any clear definition of what constitutes a ‘law’ places the concept of legal pluralism on tenuous footing.97 Others contend there is little utility in attempting to formulate such a definition.98 For example, Twining proposes that the distinctions between legal and other norms are largely unnecessary because ‘in most contexts not much turns on where, or even, whether the line is drawn’.99 This argument is particularly strong in the Pacific where, as will be explained below, the customary system is central to the lives of many and the State often only has marginal significance (see 2.3.4). No attempt is made here to further this debate, and the terms ‘custom’ and ‘customary law’ are used interchangeably.

2.3.2 The development of customary legal systems in the Pacific region

There is no single customary legal system in the Pacific region, or within any Pacific Island State. Rather, numerous distinct customary legal systems developed, as the traditional settlers transported and adapted laws and governance models to suit their island environments. Cultural diversity is greatest in Melanesia, because it contains the region’s largest landmass (New Guinea), settlement began up to 50,000 years ago, and a mixing of Papuan and Austronesian cultures occurred there.100 Consequently, Melanesian customary legal systems vary from island to island, and sometimes even from village to village,101 often coinciding with different linguistic and ethnic groups.102 In contrast, cultures developed much later in Polynesia and Micronesia.103 Polynesian countries like Samoa, Tonga and Tuvalu comprise one dominant cultural group and little linguistic diversity, and are thus among the most ethnically homogeneous societies in the world.

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97 Tamanaha, above n 75, 392.
98 Woodman, above n 88, 45; Merry, above n 73, 889; William Twining, ‘Legal Pluralism 101’ in Brian Z Tamanaha, Caroline Sage and Michael Woolcock (eds), Legal Pluralism and Development: Scholars and Practitioners in Dialogue (Cambridge University Press, 2012) 112, 114.
99 Twining, above n 98, 114.
102 Nicholas Menzies, Legal Pluralism and the Post-Conflict Transition in the Solomon Islands (Hertie School of Governance, Berlin, 2007) 4.
103 Fischer, above n 34, 28-42.
today. Micronesian culture is also relatively homogenous. In some countries in these regions, a customary law may apply country-wide.

Customary laws originally developed when Pacific Islanders had no knowledge of writing or printing, so they were communicated orally and by actions. While Pacific Islanders are increasingly documenting their customary laws, most remain unwritten. The oral nature of customary laws allows them to be applied flexibly and adapted to suit new situations, and has facilitated their continuing evolution (see 2.3.4).

Traditionally, customary laws gained their legitimacy from some form of customary authority within a governance arrangement. Although governance systems varied, most Pacific Islanders lived in separate communities controlled by one or more chiefs or other leaders, who regulated peoples’ lives based on the community’s customary laws. Marshall Sahlins developed the much-cited classic model of Pacific Islander governance. This model describes Polynesian chiefs as gaining their rank through inheritance, with power residing in the position of ‘chief’, rather than an individual person. The limited scholarship on Micronesian governance suggests that this model applied in that region as well. In contrast, the model describes Melanesia as comprising ‘big man’ societies, where leaders achieved their status, rather than inheriting it. For example, a leader might gain status through their skills and their involvement with the community, which allowed them to achieve wealth and distribute it, thus gaining favour among the community members. These leaders tended to exert authority over smaller political units than Polynesian chiefs, so Melanesia has traditionally been characterised by greater social fragmentation than other parts of the Pacific.

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107 See, eg, Corrin, above n 79, 309.
109 See, eg, Hviding, above n 101, 255.
110 Allen et al, above n 90, 34.
111 Corrin and Paterson, above n 106, 1.
114 Sahlins, above n 112.
115 Ibid.
116 McLeod, above n 113, 7.
While Sahlins’ classic model demonstrates basic variations in leadership types in the Pacific, it has been criticised as an over-simplification. For example, while Solomon Islands was primarily characterised by ‘big-man’ systems, there were also hereditary systems, and systems where status and hereditary title coexisted. Today, the term ‘chief’ is used to refer to many different types of local leaders in Solomon Islands. Regardless of the type of traditional leadership that existed in Pacific Island societies, as explained in the next sections, all customary legal systems were substantially changed by outside contact.

2.3.3 Colonisation and independence

During the 19th century, some Polynesian leaders developed laws that applied across all or most of the country, to expand their control over that area. However, in most parts of the Pacific no laws applied at the national scale until the islands fell under the control of outside nations. This began in the late 1800s, and by 1900 all Pacific Islands were under some form of European or American control. Following colonisation, new laws were enacted by the legislature of the controlling country or that of the island colony, imposing a new form of governance on Pacific Islanders.

While the colonising nations imposed new systems of law, they had limited resources to govern their colonies, so to maintain social control they allowed and/or encouraged customary legal systems to continue. Initially, customary and ‘formal’ legal systems operated independently, except in disputes about customary land where colonial courts were authorised to apply custom. However, over time, customary law was given a greater role within the formal system.

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120 Corrin and Paterson, above n 106, 2.
121 Ibid 2-3.
122 Wesley-Smith, above n 83; Corrin, above n 83, 309-310.
124 Ibid. For example, in the British Solomon Islands Protectorate, native courts were established and authorised to apply native customs: Native Courts Ordinance 1942 s 10.
When the Pacific Island States achieved independence, the governments of the new States reflected those of the colonising nations. For example, when Solomon Islands obtained independence from Great Britain in 1978 it adopted the Westminster Parliamentary system, with a unicameral Parliament and the British monarch as the head of state. In some States, traditional leaders were given a formal role within the government. This has not occurred in Solomon Islands so customary governance bodies there have no legislative backing. Consequently, the strength of such bodies (including their ability to enforce customs relating to WH protection) is highly dependent on their legitimacy within the relevant local communities.

As well as the governance structures of the controlling nations, introduced laws that were in force before independence were retained, to ‘fill the gap’ until the Pacific Island legislatures amended or replaced them. Solomon Islands retained laws of the United Kingdom as in force on 1 January 1961, and the rules of common law and equity.

While independence was not used by Pacific Islanders to revert back to their customary systems of law and governance, it did provide an opportunity to formalise and strengthen the position of custom within the State system. The Constitutions and legislation of all Pacific Island States except Tonga, now recognise customary law as a source of law either generally or in the determination of certain disputes. In Solomon Islands, customary law is recognised as a valid source of law, to the extent that it is not inconsistent with any Act of Parliament or certain other written laws. Although complex issues remain regarding the application of customary law by State institutions, its formal recognition in Constitutions and legislation has given it status in modern Pacific Island States. It also continues to be applied independently of the State systems by customary leaders, and

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125 Some Pacific Islands are still under the rule of other nations. For example, American Samoa, New Caledonia and French Polynesia. However, such places do not fall within the scope of this research: see 1.3.
128 In the lead up to Solomon Islands’ independence, the idea that a Council of Elders (comprising an elected group of chiefs) would constitute an upper house was discussed. However, the idea was ultimately not accepted. See Clive Moore, Decolonising the Solomon Islands: British Theory and Melanesian Practice, Working Paper 8 (Alfred Deakin Research Institute, Deakin University, 2010) 17-18. The only role of chiefs recognised under Solomon Islands’ State legislation is in the resolution of disputes over rights to customary land (Local Courts Act (Cap. 19) s 12(1)).
129 Solomon Islands Constitution of Solomon Islands s 3.
130 See generally, Corrin and Paterson, above n 106, 16-19.
131 Constitution of Solomon Islands sch 3, para 3.
indeed it is the most relevant form of law for many Pacific Islanders. Consequently, although legally custom is only valid to the extent that it is consistent with State legislation, it is somewhat of a fallacy to consider State law as being at the apex of the hierarchy of laws.

As explained in the next section, while customary legal systems remain relevant to many Pacific Islanders, contemporary systems rarely reflect those that existed before European contact.

2.3.4 Contemporary ‘customary’ legal systems

Customary legal systems are often erroneously interpreted as being the systems that existed in the pre-contact period. That interpretation fails to consider the profound changes to Pacific Island societies and legal systems caused by European and American contact with the islands.

Early impacts on traditional societies included the introduction of foreign diseases and the movement of men away from their communities to work on plantations, both of which caused substantial population losses. Missionaries were another early influence, through prohibiting some traditional practices and moving communities to larger villages, which changed leadership structures. In Solomon Islands, missionaries also changed customary legal systems by installing local leaders and introducing systems of punishment and reconciliation. In some places (including Solomon Islands) customary
beliefs and practices were influenced by their integration with Christianity so there is now significant overlap between customary and local Christian rules and governance.\textsuperscript{143}

Customary legal systems were influenced by the introduction of new colonial rules, some of which limited the jurisdiction of customary laws.\textsuperscript{144} Colonisation also introduced a new system of law that people could access if they were not satisfied with the customary system, effectively demoting custom within the legal hierarchy.\textsuperscript{145} Pacific Islanders themselves also changed customary laws, often modelling them on formal laws,\textsuperscript{146} particularly when customary laws were being applied as part of the State system.\textsuperscript{147}

Colonisation also affected traditional governance structures, although the impact varied significantly throughout the region. As colonisers found the centralised, unified governance structures of Polynesia easier to work with than the more disparate governance arrangements in Melanesia, they often sought to adapt the latter to meet their needs. In Vanuatu for example, except in a few places where chiefs already existed, the British introduced the concept of ‘chiefs’ to help them negotiate with the natives,\textsuperscript{148} and now chiefs are central to ‘customary’ governance systems in that country.\textsuperscript{149}

The modern notion of ‘chiefs’ is also a product of colonisation and its aftermath in Solomon Islands. The pacification of the Solomon Islander population by the protectorate government (including through the suppression of head-hunting and the slave trade) had destroyed the source of wealth of many big-men, thus undermining their power base.\textsuperscript{150} The protectorate government also affected traditional leadership by appointing some Solomon Islander men as leaders, many of whom were later given prominent roles in native tribunals, further elevating their status.\textsuperscript{151} However, the population was divided as to the legitimacy of these leaders.\textsuperscript{152} In the 1940s and 1950s, during protests against colonial rule, Solomon Islanders themselves led efforts to install invented forms of

\begin{thebibliography}{99}
\footnotesize
\bibitem{119} \textit{White, above n 119, 4; Allen et al, above n 90, 65; Anne M Brown, \textquoteleft Custom and Identity: Reflections on and Representations of Violence in Melanesia\textquoteright \ in Nikki Slocum-Bradley (ed), \textit{Promoting Conflict or Peace through Identity} (Ashgate, 2008) 183, 190.}
\bibitem{101} \textit{Corrin Care and Zorn, \textquoteleft Legislating Pluralism\textquoteright , above n 101, 51.}
\bibitem{90} \textit{Ibid.}
\bibitem{89} \textit{Ibid.}
\bibitem{92} \textit{Jean G Zorn, \textquoteleft Customary Law in the Papua New Guinea Village Courts\textquoteright \ (1990) 2(2) \textit{The Contemporary Pacific} 279, 306.}
\bibitem{114} \textit{Lissant Bolton, \textquoteleft Chief Willie Bongmatur Maldo and the Role of Chiefs in Vanuatu\textquoteright \ (1998) 33 \textit{Journal of Pacific History} 179, 180.}
\bibitem{117} \textit{Forsyth, above n 92, 430.}
\bibitem{90} \textit{Allen et al, above n 90, 8-9.}
\bibitem{90} \textit{Ibid.}
\end{thebibliography}
Indigenous governance, which ultimately led to the development of the universal notion of ‘chiefs’ in the country.\textsuperscript{153} As such, it has been said that in Solomon Islands:

The dispute-management and governance systems and processes established at… [the time of colonisation] continue to have significant repercussions in the way in which justice and governance are presently observed and practiced at the local level.\textsuperscript{154}

Contemporary ‘customary’ legal systems are therefore the product of several influences that have shaped both norms and governance institutions. These systems continue to play a significant role in most parts of the Pacific,\textsuperscript{155} regardless of whether they are truly traditional or not.\textsuperscript{156} Their contemporary relevance does however vary between and within countries.\textsuperscript{157} They also continue to change and adapt, influenced by forces such as Western education, the cash economy, globalisation, migration, and inter-marriage, which in some areas is causing them to weaken.\textsuperscript{158} Respect for some traditional leaders is also diminishing, leading to a breakdown in customary governance.\textsuperscript{159} As will be explored later in relation to East Rennell, the contemporary relevance of a customary legal system influences the effectiveness of customary protection of WH (see 6.3).

\textbf{2.3.5 Customary land tenure}

Land is fundamental to the lives and livelihoods of many Pacific Islanders. Most still have access to their customary land, which forms the basis of islander communities.\textsuperscript{160} Land in the Pacific has therefore been described as a ‘basic element of human security in the region’.\textsuperscript{161} As explained below, rights to customary land are principally governed through the applicable customary tenure system, but State laws are also relevant.

\begin{itemize}
\item \textsuperscript{153} Ibid.
\item \textsuperscript{154} Ibid 7.
\item \textsuperscript{155} See above n 134.
\item \textsuperscript{156} White, above n 119, 2.
\item \textsuperscript{157} Zurstrassen, above n 134, 3.
\item \textsuperscript{158} See, eg, Brown, above n 143, 190; Corrin, above n 101, 147.
\item \textsuperscript{160} Jim Fingleton, Pacific 2020 Background Paper: Land (Commonwealth of Australia, 2005) 5.
\item \textsuperscript{161} Brown, above n 143, 191.
\end{itemize}
Soon after outsiders made contact with the islands, alienation of customary land began in most Pacific Island States (for example, to missionaries, traders and planters). Once the islands became colonies, most colonial administrators enacted laws to restrict alienation on the grounds that it might remove the basis of subsistence for the Indigenous populations. Some States still have laws restricting alienation, and the proportion of land under customary tenure in the region remains high (see Table 3). Nearshore marine areas in some States may also be customarily owned. Therefore, most heritage sites in the Pacific (whether they be terrestrial or marine) will include areas under customary ownership. In Solomon Islands, alienation was permitted until 1914, so only 87% of land there is customary land.

### Table 3: Distribution of land by system of tenure

<table>
<thead>
<tr>
<th></th>
<th>Public</th>
<th>Freehold</th>
<th>Customary</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cook Islands</strong></td>
<td>Some</td>
<td>Little</td>
<td>95</td>
</tr>
<tr>
<td><strong>Fiji</strong></td>
<td>4</td>
<td>8</td>
<td>88</td>
</tr>
<tr>
<td><strong>Niue</strong></td>
<td>1.5</td>
<td>0</td>
<td>98.5</td>
</tr>
<tr>
<td><strong>PNG</strong></td>
<td>2.5</td>
<td>0.5</td>
<td>97</td>
</tr>
<tr>
<td><strong>Samoa</strong></td>
<td>15</td>
<td>4</td>
<td>81</td>
</tr>
<tr>
<td><strong>Solomon Islands</strong></td>
<td>8</td>
<td>5</td>
<td>87</td>
</tr>
<tr>
<td><strong>Tokelau</strong></td>
<td>1</td>
<td>1</td>
<td>98</td>
</tr>
<tr>
<td><strong>Tonga</strong></td>
<td>100</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Tuvalu</strong></td>
<td>5</td>
<td>&lt;0.1</td>
<td>95</td>
</tr>
<tr>
<td><strong>Vanuatu</strong></td>
<td>2</td>
<td>0</td>
<td>98</td>
</tr>
</tbody>
</table>


164 Corrin and Paterson, above n 106, 285. For example, in the British protectorate of Solomon Islands, the grant of perpetual estate to foreigners was initially permitted, but later prohibited under Land Regulation 1914 (King’s Regulation No. 3) s 3.

165 For example, in Solomon Islands, only a Solomon Islander can hold an interest in customary land (Land and Titles Act (Cap. 133) (Solomon Islands) s 241(1)).

166 Ron Crocombe, ‘Tenure’ in Moshe Rapaport (ed), The Pacific Islands: Environment and Society (University of Hawai'i Press, 2013) 192, 193. In Solomon Islands, there are conflicting High Court decisions concerning customary ownership of land below the high-water mark. In Allardvce Lumber Company Ltd v Laore [1990] SBHC 46, the Court ruled that the foreshore could be customary land but the seabed could not. In Combined Fera Group v Attorney General [1997] SBHC 55 the Court found that the seabed could also potentially be under customary tenure. For further discussion see Stephanie Price et al, Environmental Law in Solomon Islands (Public Solicitor’s Office, 2015) 31-32.

167 Of the eight World Heritage Sites in the Pacific Island States, seven are either partly or entirely comprised of customary land (Nan Madol: Ceremonial Centre of Eastern Micronesia, Levuka Historical Port Town, Bikini Atoll Nuclear Site, Rock Islands Southern Lagoon, Kuk Early Agricultural Site, East Rennell and Chief Roi Mata’s Domain). See Table 2 in 1.2.3.

168 Alienation was prohibited by Land Regulation 1914 (King’s Regulation No. 3) (UK).


171 Includes Crown land and land owned by provincial and local governments.

172 Includes land that is not strictly freehold, but has similar characteristics, such as ‘perpetual estates’ which exist in Solomon Islands (Land and Titles Act (Cap. 133) s 112(1)).
Except in Tonga (which has no customary land), in the Pacific Island States rights to customary land are determined according to the applicable customary laws. These laws are often underpinned by closely guarded local knowledge of genealogies and histories, and oral rules and histories that can be easily confused and manipulated by people seeking to rely on the laws to exercise their rights or enforce them against others. As a result, local people sometimes hold different opinions concerning applicable customary rules. Consequently, in Solomon Islands for example, disputes over rights to customary land are the most common form of dispute, which can hinder heritage conservation efforts.

Customary land tenure laws vary significantly throughout the Pacific, because they were developed and adapted by settlers to suit their island environments, and because of the diverse impacts of colonisation. This variation makes it difficult to make generalisations about such laws. However, some features are common to many places:

1. Much literature (including this thesis) and legislation refers to customary ‘ownership’ and customary ‘owners’. However, those terms over-simplify Pacific land tenure. Under customary laws, people generally do not ‘own’ land in the Western sense of that word, but rather have rights to it vis-à-vis other people. Rights and obligations are overlapping, as rights of individuals or small groups may be nested in rights of broader groups. Thus, customary tenure is better thought of as a complex and flexible system of rights and obligations, rather than a system of ownership.

2. Customary land is commonly owned by a group, but the size of landowning unit varies. For example, in Solomon Islands the landowning unit is often quite

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173 Corrin and Paterson, above n 106. In Solomon Islands for example, this is provided for in the Land and Titles Act (Cap. 133) s 239(1).
174 White, above n 119, 10.
176 Allen et al, above n 90, 18.
177 For example, in Solomon Islands, the Minister for Environment cannot declare an area to be a ‘protected area’ under the Protected Areas Act 2010 if there is a dispute over the ownership of the land (Protected Area Regulations 2012 reg 14(3)). See chapter 8 for analysis of this legislation.
178 Smith, above n 9, 24, 41.
179 Jean Guiart, ‘Land Tenure and Hierarchies in Eastern Melanesia’ (1996) 19(1) Pacific Studies 1, 7; Crocombe, above n 166, 192.
180 Crocombe, above n 166, 192.
181 John Fingleton (ed), Privatising Land in the Pacific: A Defence of Customary Tenures, Discussion paper 80 (The Australia Institute, 2005) ix.
large, like a line, clan or tribe. In other countries, the unit may be a smaller such as a family or extended family, or even an individual in some places. On Rennell, where people are of Polynesian descent, land is held individually by male members of the lineage, which differs from other parts of Solomon Islands (discussed further at 6.3.1).

3. Some people within a landowning group may possess stronger claims than others. For example, the rights of males are generally superior to females. People who have worked the land, stayed in the vicinity and/or contributed to the community may also have stronger rights. In addition, although rights to land are generally held by a group, group members do not necessarily have equal say over what happens on their land. Key decisions are often made by the senior members (for example, the chiefs).

4. Customary land is usually acquired by inheritance, either through the matrilineal or patrilineal line. Again, the use of the term ‘inheritance’ here varies from the Western understanding of that term. In the Pacific, land rights arise at birth but cease upon death.

5. In some places rights to land are flexible. When the laws were developed, community life was often unsettled, making it difficult for fixed land laws to emerge. In addition, land boundaries were commonly natural features, which could be shifted by nature or people. Tenure laws were often adjusted to take into account new circumstances, and the need to redistribute land.

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183 Ibid 275.
184 Ibid.
185 Ibid 269, 275.
186 Samuel H Elbert and Torben Monberg, From the Two Canoes: Oral Traditions of Rennell and Bellona Islands (Danish National Museum and University of Hawaii Press, 1965) 10.
187 Ron Crocombe, ‘Overview’ in Customary Land Tenure and Sustainable Development: Complementary or Conflict (South Pacific Commission, 1995) 5, 10-11; Crocombe, above n 166, 192.
188 Fingleton, above n 160, 7.
190 Fingleton, above n 160, 7.
191 See, eg, Donald Denoon, ‘Pacific Edens? Myths and Realities of Primitive Affluence’ in Donald Denoon, Malama Meleisea, Stewart Firth, Jocelyn Linnekin and Karen Nero (eds), The Cambridge History of Pacific Islanders (Cambridge University Press, 2008) 80, 94.
192 Corrin and Paterson, above n 106, 289.
193 Ibid.
194 Fingleton, above n 160, 8.
6. Like other customary laws, in many places laws regulating land tenure have changed significantly since pre-colonial times.\textsuperscript{195}

In addition to customary laws, State laws regulate the ownership of and dealings in customary land. In Solomon Islands, these laws cover issues such as land acquisition,\textsuperscript{196} land disputes,\textsuperscript{197} extractive industries,\textsuperscript{198} and conservation.\textsuperscript{199} Understanding the interactions between State laws and rules governing customary land tenure is critical to an assessment of WH protection. As this research will show, in Solomon Islands some challenges associated with implementing relevant legislation stem from the laws’ failure to appropriately accommodate the variety of customary land tenure rules that exist in that country (see chapters 7 and 8).

\subsection*{2.4 Protection of World Heritage through Pacific Island legal systems}

\subsubsection*{2.4.1 World Heritage protection under State legal systems}

The governments of the Pacific Island States have comprehensive law-making powers, which could be exercised to enact laws for the protection of heritage. For example, the National Parliament of Solomon Islands has the power to make ‘laws for the peace order and good government’ of the country.\textsuperscript{200} Some Pacific Island States also have sub-national levels of government, whose legislative powers are more limited but may encompass heritage protection. For example, Solomon Islands’ nine provincial assemblies\textsuperscript{201} have the power to enact ordinances dealing with issues such as ‘cultural and environmental matters’, ‘land and land use’ and ‘rivers and water’.\textsuperscript{202} Furthermore, under the Solomon Islands \textit{Constitution}, national and provincial legislation overrides customary law to the extent of any inconsistency,\textsuperscript{203} so State laws could be enacted to protect a heritage site notwithstanding its customary ownership. However, as explained below,

\textsuperscript{195} See, eg, Denoon, above n 191, 90.
\textsuperscript{196} For example, the \textit{Land and Titles Act} (Cap. 133).
\textsuperscript{197} For example, the \textit{Land and Titles Act} (Cap. 133); \textit{Local Courts Act} (Cap. 19).
\textsuperscript{198} For example, the \textit{Forest Resources and Timber Utilisation Act} (Cap. 40); \textit{Mines and Minerals Act} (Cap. 42); \textit{Environment Act} 1998.
\textsuperscript{199} For example, the \textit{Protected Areas Act} 2010.
\textsuperscript{200} \textit{Constitution of Solomon Islands} s 59(1).
\textsuperscript{201} The nine provinces of Solomon Islands are Central, Choiseul, Guadalcanal, Isabel, Makira-Ulawa, Malaita, Rennell-Bellona, Temotu and Western Province: see Figure 2.
\textsuperscript{202} \textit{Provincial Government Act} 1997 ss 31, 33, sch 3.
\textsuperscript{203} \textit{Constitution of Solomon Islands} sch 3 para 3.
political, economic and social considerations affect the willingness and ability of Pacific Island governments to do so.

(A) Development and heritage protection in the Pacific Islands

Heritage protection is not a high priority for Pacific Island governments.\(^{204}\) As an officer of the Ministry of Environment commented when interviewed for this research, States in the region are ‘flooded with international obligations’,\(^{205}\) so the Convention is just one of the treaties governments are attempting to comply with. In addition, they have limited resources to dedicate to heritage protection. Per capita economic growth rates are generally very low,\(^{206}\) as economic development has been hampered by the islands’ small size, limited resources, geographic dispersion and isolation from markets.\(^{207}\) Solomon Islands, Kiribati, Tuvalu and Vanuatu have particularly weak economies and are categorised as Least Developed Countries.\(^{208}\) Consequently, economic and social development is (understandably) a higher priority for many Pacific Island States.\(^{209}\) This is reflected in the budgets of the Ministries charged with implementing the Convention. A 2012 study found that no such Ministry had an adequate budget for heritage protection,\(^{210}\) presenting a significant challenge for the conservation of Pacific WH.

The fact that some Pacific Island governments are economically dependent on activities that can harm heritage is a further challenge. For example, in Solomon Islands, substantial government revenue is earned from the logging industry,\(^{211}\) which has caused widespread

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\(^{205}\) Interview with a conservation officer in the Ministry of Environment (Honiara, 2 August 2013).


\(^{209}\) See, eg, Herr, above n 7, 43; Tabbasum, above n 204, 34; Peter Shelley, ‘Contracting for Conservation in the Central Pacific: An Overview of the Phoenix Islands Protected Area’ (2012) 106 *Proceedings of the Annual Meeting (American Society of International Law*) 511, 514.

\(^{210}\) *Final Report on the Results of the Second Cycle of the Periodic Reporting Exercise for Asia and the Pacific*, WHC 36th sess, UN Doc WHC-12/36.COM/10A (1 June 2012) 22.

environmental and social damage. In the Pacific (as elsewhere) the tension between heritage protection and economic development can influence the State’s willingness to implement the Convention (discussed further in 6.5.2 and chapter 7).

(B) Governance issues and the (ir)relevance of State legal systems

Many Pacific Island States are plagued by governance issues, which are barriers to heritage protection. These issues contribute to the lack of relevance and legitimacy afforded to the national level of governance by many Pacific Islanders, which limits the effectiveness of the State legal system.

Several factors contribute to these governance problems, beginning with the colonisation process. The boundaries of most Pacific Island States were determined by colonial powers and not based on cultural or geographical logic; so many States had little sense of national unity before colonisation. This feature is most prevalent in Melanesia, where islanders did not have a long history of contact and cooperation, but less significant in areas with greater ethnic, linguistic and cultural homogeneity. In some States including Solomon Islands the independence process did not engender nationalist sentiments, as it was initiated from the top-down rather than from a struggle by the people. This lack of national unity has made it challenging for many governments to establish a strong presence among their populations, particularly in rural areas. Post-independence State-building in some places has been further impeded by political instability, weak parliaments and executive governments, and corruption, and exacerbated by the lack of many checks and balances found in countries with larger populations.

216 Fischer, above n 34, 249; Sinclair Dinnen, ‘The Solomon Islands Intervention and the Instabilities of the Post-Colonial State’ (2008) 20(3) Global Change, Peace and Security (formerly Pacific Review: Peace, Security and Global Change) 338, 347. An exception to this is Samoa, where from the 1930s there was an indigenous independence movement: see, eg, Crocombe, above n 31, 438.
Melanesian national governments have been particularly unstable. Reflecting the ‘big-man’ style of leadership characteristic of many traditional societies, politicians in Melanesia often see their role as rewarding the people who voted for them (generally a sub-group of their electorate) rather than implementing policies in the broader public interest219 (such as protecting WH). Instead of being members of well-established political parties, these politicians tend to form loose coalitions, with affiliations frequently changing, contributing to political instability.220 Governance issues contributed to the conflicts experienced in some States, such as the secessionist struggle in Bougainville, coups in Fiji, and the ethnic tensions in Solomon Islands.221

These issues exacerbate the lack of relevance and legitimacy afforded to the national level of governance and law-making by many Pacific Islanders, particularly those living in rural areas (discussed at 2.3.4). In the ethnically diverse Melanesia, people’s main association rests with their clan, tribe and island, rather than with their State,222 and the idea of a national government is often viewed as foreign.223 While this characteristic is less evident in Polynesia, some in that region still view their national government with suspicion.224

In Solomon Islands, the relevance of the national government is further diminished by the fact that most people do not rely on the State for their day to day needs. They live predominantly subsistence lifestyles, and social services (where they exist) are often provided by non-State entities such as churches.225 Disenchantment with the government has been fuelled by limited opportunities for rural development, decreasing provision of government services and the perceived greed of politicians, many of whom who have benefited significantly from the logging industry.226 In addition, many people are not aware of or do not understand State laws, because they are rarely translated into local languages or explained to the public.227 Thus, the State legal system in Solomon Islands

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219 Reilly, above n 104, 482-483; McLeod, above n 113, 8.
220 Dinnen, above n 214, 57.
221 Solomon Islands’ ethnic tensions are explained briefly in 5.4.
222 Reilly, above n 104, 482; Bennett, above n 139, 14; Ian Frazer, ‘The Struggle for Control of Solomon Island Forests’ (1997) 9(1) Contemporary Pacific 39, 44.
223 Bennett, above n 139, 14.
224 Wesley-Smith, above n 83, 151.
226 Dinnen, above n 214, 58.
227 Klingelhofer and Robinson, above n 82, 9.
is of marginal significance to much of the population,\textsuperscript{228} which means many have little impetus to comply with State heritage protection laws.

\section{The (lack of) implementation and enforcement of State laws}

Pacific Island States have historically poor records of compliance with and enforcement of some State laws, including heritage protection legislation.\textsuperscript{229} In some cases, this is because the legislation is based on a ‘command and control’ approach to regulation, which is a poor fit in the Pacific.\textsuperscript{230} Furthermore, government ministries charged with enforcing the legislation are under-resourced, impeding their ability to carry out their statutory duties.\textsuperscript{231} This challenge is exacerbated by the geography of some States. Solomon Islands, for example, comprises almost 1,000 islands stretching across 1,450km of ocean. Enforcement of State laws in isolated places requires substantial human and financial resources, which are often beyond the capacity of the government. A further challenge is the highly ‘Honiara-centric’ nature of Solomon Islands’ State legal system, with most courts and the bulk of legal services being located in the nation’s capital.\textsuperscript{232} This makes it extremely difficult for people living on the outer islands to access the court system, to enforce their rights under State legislation.\textsuperscript{233}

A lack of implementation and enforcement also hampers the effectiveness of many provincial ordinances. Solomon Islands’ provincial governments could play an important role in heritage protection, including through monitoring and enforcing compliance with national and provincial laws. However, while some provinces have enacted relevant ordinances, few have been effectively implemented.\textsuperscript{234}

\begin{footnotesize}
\bibitem{228} Allen et al, above n 90, 45.
\bibitem{229} Laurence Cordonnery, ‘Environmental Law Issues in the South Pacific and the Quest for Sustainable Development and Good Governance’ in Anita Jowitt and Tess Newton Cain (eds), Passage of Change: Law, Society and Governance in the Pacific (ANU Press, 2010) 233, 238; Final Report on the Results of the Second Cycle of the Periodic Reporting Exercise for Asia and the Pacific, WHC 36\textsuperscript{th} sess, UN Doc WHC-12/36.COM/10A (1 June 2012) 43; Ben Boer and Pepe Clarke, Legal Frameworks for Ecosystem-Based Adaptation to Climate Change in the Pacific Islands (SPREP, 2012) 25. See generally, Price et al, above n 166.
\bibitem{230} Govan, et al above n 6, 17.
\bibitem{231} See above n 204.
\bibitem{232} Allen et al, above n 90, 44-45.
\bibitem{233} A promising development in this regard is the recent publication of the Solomon Islands Environmental Crime Manual, which is aimed to assist members of the Royal Solomon Islands Police Force to identify and enforce environmental crimes, including those committed under logging and mining laws, the Environment Act 1998 and the Protected Areas Act 2010: See Katrina Moore, Solomon Islands Environmental Crime Manual (Solomon Islands Government, 2015). In time, this may lead to some improvement in the enforcement of such legislation.
\end{footnotesize}
Due to the challenges referred to above, in States such as Solomon Islands, heritage protection is unlikely to be achieved in a purely centralised manner. The potential for customary legal systems to contribute to WH protection must therefore be considered.

2.4.2 World Heritage protection under customary legal systems

Pacific Islanders have repeatedly stressed that the operation of the Convention in the region ‘can only be effected through recognition of local customary and other forms of tenure of land and sea, and traditional custodianship of cultural heritage.’ In some cases this is because customary systems form an integral part of the heritage value of the place (see 2.2.1(B)). Customary laws can also contribute to the protection of other forms of heritage, including the natural environment.

Over time, Pacific Islanders developed management practices to regulate access to and use of land and resources. In some parts of Solomon Islands for example, customary practices restricted access to important sites, regulated the consumption of certain species, and limited some peoples’ harvesting rights. Around the Pacific, practices such as this coevolved with customary laws and tenure systems, and hence all are integrated. Pacific Islanders also developed processes for making decisions and resolving disputes.

The motivation behind Pacific Islanders’ development of customs governing rights to land and resources varied. A much cited paper by Johannes noted that Pacific Islanders understood that their vital fisheries resources could be depleted, so they developed management techniques to guard against this. However, the idea that all Indigenous people lived in harmony with nature is no longer well accepted. For example, a study

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238 Scherl and O’Keefe, above n 236, 1.


of customary marine management in Melanesia found that human population densities there were generally too low to generate the population pressures required to stimulate a conservation ethic. Therefore, the reverence that Pacific Islanders have for nature cannot be confused with the possession of a conservation ethic. While resource management in some communities was driven by a desire to conserve resources, other motivations included allocation of resources and customary and religious beliefs.

The existence of these different motivations has implications for the contemporary role of customary systems in WH protection, as it cannot be assumed that Indigenous values are consistent with the conservation of heritage. However, even where customary management was not designed for conservation, it may still provide the basis for good resource stewardship. Thus, the role of customary systems in the protection of natural heritage places is being increasingly recognised.

The potential for WH protection under customary legal systems is however limited. Throughout the Pacific, many systems have been weakened by colonisation and later influences (see 2.3.4). Customary laws are today less relevant to some young people, particularly those who have moved from their village and been exposed to other ideas.

The availability of the State system as an alternative dispute resolution mechanism and the loss of respect for chiefs and traditional practices and protocols have also reduced the legitimacy of customary legal systems. Thus, customary resource management in some parts of the Pacific is not strong.
Furthermore, customary systems are seldom able to deal with all pressures affecting heritage places. As Crocombe has noted:

No traditional precedents exist for chain saws, bulldozers, hunting rifles, metal traps, power torches, spearguns, scuba gear, filament nets, dynamite, outboard motors or global markets for timber, coral, bird of paradise feathers, sea shells, clams for soup and nautilus shells for tourist mantel pieces.

Similarly, Ballard and Wilson have said:

Community control, in and of itself, is seldom sufficient as a basis for long-term management under novel conditions that include pressure to sell or lease land, to sign contracts for timber, fisheries or oil-palm production, or to enter into agreements for protected natural or cultural areas.

Importantly, customary systems often cannot protect a site against activities undertaken by outsiders, or threats arising from beyond the area under the jurisdiction of the relevant customary governance body. Therefore, even if a site is subject to customary protection, other measures (including State legislation) will usually be needed to ensure its long-term conservation.

2.5 Conclusion

Pacific heritage is diverse, encompassing impressive natural landscapes, and sites associated with the development of island societies or later events of global significance. While the law alone cannot ensure the protection of these places, it plays an important role. Pacific Island governments have broad legislative powers, but legal, political, economic and social issues influence their willingness and ability to develop and implement heritage protection laws. Such laws must be tailored to the nature of Pacific heritage sites, the resource capacities of the governments, and the legal and land tenure systems prevalent in the region.

The growing acceptance of the concept of legal pluralism has given non-State legal systems increased legitimacy in academic discourse. Thus, as Twining has noted, ‘a conception of law confined to state law…leaves out too many significant phenomena

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251 Ballard and Wilson, above n 26, 132, 149; Smith, above n 204, 5; Pepe Clarke and Charles Taylor Gillespie, *Legal Mechanisms for the Establishment and Management of Terrestrial Protected Areas in Fiji* (IUCN, 2009) 2.
252 Crocombe, above n 31, 26.
253 Ballard and Wilson, above n 26, 132.
254 Jonathan M Lindsay, *Creating Legal Space for Community-Based Management: Principles and Dilemmas* (Food and Agriculture Organisation of the United Nations, 1998) 3; Veitayaki et al, above n 159, 41.
255 Forsyth, above n 75, 44.
deserving sustained juristic attention’ including customary law. In the context of WH, it is clear that customary legal systems, through their relationship with traditional practices and land tenure, are a key component of the legal framework of Pacific Island States. However, as this chapter demonstrated, while customary systems can contribute to WH protection, they have been significantly altered (and often weakened) since colonisation, and there are limits to the issues that they can deal with.

Legal pluralism requires consideration not just of the existence of multiple legal systems, but also the relationship between those systems. However, as Forsyth has noted, it does not greatly assist in working out how different systems of law can most effectively relate to each other. There is still a need for greater understanding of how customary and State legal systems can best operate and interact to support WH protection. This research therefore makes an important contribution to the literature by exploring these issues in the Solomon Islands context.

Building upon the foundation laid by this chapter, the next two chapters analyse the Convention regime in the Pacific context. Chapter 3 considers the scope for Pacific Island heritage to be recognised as WH, and thus to fall within the ambit of the treaty. Chapter 4 assesses the protection regime established by the Convention and its application in the Pacific.

256 Twining, above n 98, 114.
257 Merry, above n 73, 873.
258 Forsyth, above n 75, 46.
Chapter 3: The concept of ‘World Heritage’ and its application to Pacific Island heritage

3.1 Introduction

Chapter 2 introduced the nature of Pacific Island heritage and legal systems, and identified some key issues concerning the protection of heritage places. This chapter builds upon that analysis by exploring how Pacific Island heritage ‘fits’ within the concept of World Heritage (WH). This will be done by analysing literature concerning the history of the World Heritage Convention1 (the Convention), the Committee’s broadening interpretation of the notion of ‘outstanding universal value’ (OUV), and the scope for Pacific Island heritage to meet the requirements for WH listing. Based on that analysis, this chapter highlights issues relevant to the protection of Pacific sites, which will be explored further in later chapters.

The Convention does not define the term WH. Instead, sites that fall within the scope of the treaty are those that meet the definitions of ‘cultural heritage’ and ‘natural heritage’ in Articles 1 and 2 respectively. ‘Cultural heritage’ is defined as monuments and groups of buildings that have OUV from the point of view of history, art or science; as well as sites that have OUV from an historical, aesthetic, ethnological or anthropological point of view.2 ‘Natural heritage’ is defined as natural features, geological and physiographical formations and natural areas of OUV from the point of view of science, conservation or aesthetics.3 Therefore, WH is essentially a site that expresses cultural and/or natural heritage values, and has OUV.

The concept of WH can best be explained by examining the origins of the Convention. This chapter therefore starts with an exploration of the key developments that contributed to the development of the Convention, particularly the growing recognition of the interrelationship between humankind and the environment and the notion of intergenerational equity (3.2). It explains how the scope of the concept of WH reflects developments such as these.

1 Convention Concerning the Protection of the World Cultural and Natural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘World Heritage Convention’).
2 Ibid art 1.
3 Ibid art 2.
The chapter then explores the notion of OUV, which was introduced into the *Convention* to restrict the treaty’s scope to sites of global significance (3.3). As will be explained, the *Convention* does not define the term OUV, but gives the Committee the power to prescribe the criteria to be applied when determining whether a site meets that threshold. While the criteria initially set by the Committee were relatively narrow, emerging views concerning cultural diversity led to them being broadened. The criteria are now sufficiently broad to enable the listing of many Pacific heritage places, but impediments to the nomination of such sites still exist. In addition, the implications of listing sites which possess markedly different global and local significance warrant further consideration, including the challenges this presents for the sites’ conservation.

### 3.2 The concept of ‘World Heritage’ under the *World Heritage Convention*

The scope of the concept of WH reflects the era in which the *Convention* was developed. The *Convention* was a product of growing awareness among the international community of the need for broader international laws to protect cultural and natural places from the impacts of human activities, as well as increasing recognition of the interrelationship between people and the environment and the concept of intergenerational equity. The *Convention* introduced the umbrella notion of WH to encompass culturally and naturally significant sites of value to humankind, which must be protected for present and future generations. This made it the first international agreement to protect ‘heritage’, as well as the first to cover both cultural and natural places.
3.2.1 A brief history of the development of the World Heritage Convention

Laws to protect cultural properties and objects have a long history.\(^5\) Their progressive development cannot be described in a linear or logical fashion\(^6\) because each used different terminology to describe the items or places that fell within its scope, and defined such terms for the purposes of that instrument alone.\(^7\) In general however, the law evolved from focusing on the physical manifestations of culture (such as objects, individual monuments and buildings) to the more holistic notion of ‘cultural heritage’.\(^8\)

Laws for the protection of monuments and art work began to be enacted in Europe in the 15\(^{th}\) century, but were initially narrow in scope.\(^9\) As cultural monuments and objects have long been a ‘victim of war’,\(^10\) the first international legal principles and rules applying to such properties emerged through the development of the laws of war and international humanitarian law.\(^11\) The progressive codification of the international laws of war provided some protections to cultural properties in the event of armed conflicts.\(^12\) However, it was the immense destruction of cultural properties during World War II, and the subsequent establishment of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) that provided the impetus needed for the first comprehensive multi-lateral treaty to protect cultural properties.\(^13\)

The resulting agreement, the Convention for the Protection of Cultural Property during Armed Conflict 1954,\(^14\) affords protection to ‘cultural property’.\(^15\) It defines that term to

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\(^8\) See, eg, Forrest, above n 5, xxi.

\(^9\) Prott and O’Keeffe, above n 7, 34.

\(^10\) Forrest, above n 5, 56.

\(^11\) Francioni, above n 5, 223. For detailed discussion of the history of war and cultural heritage, see Forrest, above n 5, ch 3.


\(^13\) Forrest, above n 5, 78.


include monuments and objects that are worthy of protection because of their importance 'to the cultural heritage of every people'.

The term ‘cultural property’ was also used in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. Reflecting the subject matter of that treaty, it confined the term to moveable cultural objects. Like the 1954 treaty, it referred to heritage, stating that the illicit import, export and transfer of ownership of these objects is ‘one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property’. Therefore, although these laws did not establish an agreed definition of ‘cultural property’, they did introduce the concept of ‘cultural heritage’ into international law.

Unlike the concept of ‘cultural heritage’ the term ‘natural heritage’ was not used in an international law before the World Heritage Convention. A conservation movement began in the late 1800s in the United States, and gained traction in the 1960s when several landmark publications highlighted the impact of humans on the environment. With increasing evidence that rapid industrialisation and urbanisation were threatening natural areas, awareness about the impact of human activities on the natural environment turned to concern by the early 1970s. This led to the convening of the United Nations Conference on the Human Environment (UNCHE) in Stockholm in 1972, at which State parties adopted the now famous Stockholm Declaration. That conference ‘marked the emergence of international environment law as a separate branch of international law’ and led to a proliferation of treaties on the subject. While the Convention was not adopted at the UNCHE, its negotiation and drafting were intertwined with preparations for that conference, so it reflects many of the principles underlying the Stockholm Declaration.

20 Prutt and O’Keefe, above n 7, 8.
In the years leading up to the UNCHE, UNESCO and the International Council on Monuments and Sites (ICOMOS) sought to expand international legal protection of cultural properties by drafting a treaty for the conservation of monuments, buildings and sites of universal value. At the same time, the International Union for the Conservation of Nature (IUCN) was preparing a draft *Convention for the Conservation of the World’s Heritage* which would protect significant natural areas. When a working group established to assist with preparations for the UNCHE was asked to review these draft treaties, it recommended that they be combined into one agreement.

The working group’s recommendation built upon an idea raised by the United States in 1965 for the creation of a ‘World Heritage Trust’ that would preserve natural and scenic areas and historic sites. More generally, it reflected growing recognition of links between humans and the environment, which was increasingly being reflected in international agreements. The first such agreement was the *1971 Man and the Biosphere Program*, which sought to promote conservation and sustainable use of reserves. The link also underpinned the *Stockholm Declaration*, which begins with the bold declaration that ‘[m]an is both creature and moulder of his environment.’

Consistent with this trend, the working group’s recommendation was accepted, and the UNESCO/ICOMOS draft treaty on the protection of cultural properties was broadened to include natural areas. This expanded treaty became the *World Heritage Convention*, which was adopted by the UNESCO General Assembly in November 1972.

### 3.2.2 The use of the term ‘heritage’ in the World Heritage Convention

The *Convention* was the first international agreement designed to protect ‘heritage’. As noted above, previous international laws dealing with places of cultural significance had...
referred to ‘cultural heritage’, but had sought to protect the narrower concept of ‘cultural
property’.34 International environmental laws had addressed the conservation of ‘nature’
or specific flora and fauna, but not natural heritage.35

The shift in language from ‘cultural property’ to ‘cultural heritage’ in international law,
which was solidified by the Convention, was partly a response to the need to
accommodate cultural and natural sites under one agreement.36 ‘Property’ is a key concept
under Western law, which implies control by the owner and the right to alienate and
exclude.37 Because of the connotations associated with that term, it would have been
inappropriate to use it to describe features of the natural environment worthy of
protection.38 In addition, the term ‘heritage’ was more consistent with another view
emerging at the time, namely the need for intergenerational equity.

Before 1972, international environmental laws were limited in scope and based on the
idea that the environment should be conserved for the benefit of present (rather than
future) generations.39 In the 1960s and early 1970s, it was increasingly accepted that
certain cultural properties and natural areas are non-renewable resources that should be
preserved for future generations.40 Thus, a principle underpinning the Stockholm
Declaration was that humans should ‘protect and improve the environment for present
and future generations’.41 This principle would become known as ‘intergenerational
equity’, and is now firmly enshrined in international environmental law.42 As the policy
underlying the concept of ‘property’ is the protection of the rights of the possessor, that
term does not fit well with the principle of intergenerational equity. In contrast, ‘heritage’
is more consistent with the idea that some sites must be conserved for future generations,43
so was a more appropriate term for use in the Convention.

34 Forrest, above n 5, xxi.
35 Redgwell, above n 29, 64.
36 Francioni, above n 11, 229.
Property 307, 310.
39 Redgwell, above n 29, 64.
40 Blake, above n 38, 67; Francioni, above n 11, 229.
41 Stockholm Declaration, UN Doc A/CONF.48/14/Rev.1, art 1.
42 See, eg, Convention on Biological Diversity, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29
December 1993), art 22.
43 Francioni, above n 11, 229. For example, Aplin contends that ‘heritage’ implies a gift for future generations and benefits for
Lowenthal defines ‘heritage’ as ‘everything we suppose has been handed down to us from the past’: Lowenthal, above n 5, 81.
3.2.3 The scope of the concept of ‘World Heritage’

Heritage may be defined as ‘those valuable features of our environment which we seek to conserve from the ravages of development and decay.’\(^{44}\) However, it is a term of art so can have many meanings, in part because it is used in a variety of fields including law, architecture, art and archaeology.\(^{45}\) This chapter does not explore the meaning of the term in detail, as that has been done extensively elsewhere.\(^{46}\) However, three aspects of the concept of WH of particular relevance to the Pacific Islands will be highlighted.

Firstly, WH is limited to immovable heritage. Heritage can encompass many elements including cultural, natural, Indigenous, moveable, immoveable, tangible and intangible aspects.\(^{47}\) While WH may reflect some of these attributes, it does not include moveable heritage. In addition, while intangible heritage that is expressed in, or related to, a place may be considered WH, purely intangible heritage may not. These limitations can be explained by the fact that the Convention was ‘conceived, supported and nurtured by the industrially developed societies’ and thus it reflects ‘concern for a type of heritage that was highly valued in those countries’.\(^{48}\) It has therefore been said that the Convention regime is ‘not really appropriate for the kinds of heritage most common in regions where cultural energies have been concentrated in other forms of expression such as artefacts, dance or oral traditions’\(^{49}\) such as the Pacific. As will be explored in 3.3.2(A), there is scope for sites associated with intangible values to be considered WH. However, much of the intangible heritage of Pacific Islanders (including their traditional knowledge, customs, songs, stories and dances) is not directly protected under the Convention, which limits the treaty’s relevance in the region.\(^{50}\)

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\(^{46}\) See, eg, Aplin, above n 43, ch 1; Boer and Wiffen, above n 5, ch 1; Davison, above n 44; Lowenthal, above n 5; Maurice Evans, *Principles of Environmental Heritage* (Prospect Media, 2000) ch 2; Rodney Harrison, *Heritage: Critical Approaches* (Routledge, 2013) chs 2, 3.

\(^{47}\) Boer and Wiffen, above n 5, 7.


\(^{49}\) Ibid.

Secondly, WH encompasses both cultural and natural heritage, reflecting the origins of the *Convention* as outlined in 0. This creates potential for the *Convention* to be usefully applied in the Pacific, where the distinction between sites of cultural and natural significance is often blurred (see 2.2.1(A)). However, the dichotomy between natural and cultural WH sites under the *Convention* regime continues to present challenges for the protection of such places (see 3.3.1(A)).

Thirdly, WH is heritage that has OUV and thus has value to ‘mankind as a whole’.\(^{51}\) Heritage is an inherently subjective concept, as a site’s value depends on who makes that judgement.\(^{52}\) In the WH context, in practice the decision as to whether a particular site has OUV is made by the people who represent State parties on the WH Committee,\(^{53}\) so their views influence the scope of the concept of WH. The next section explains how the Committee’s relatively narrow interpretation of the term OUV for many years limited the extent to which Pacific heritage could be considered as WH.

### 3.3 The World Heritage Committee’s interpretation of the concept of ‘World Heritage’

The *Convention* does not attempt to protect all natural and cultural heritage, only that which is exceptional and thus has value for ‘mankind as a whole’. The term OUV was introduced into the *Convention* to limit its scope to such places, rather than sites of purely local, regional or national significance.\(^{54}\) As the term had not been used in international law prior to its inclusion in the *Convention*,\(^{55}\) it had no clear legal definition. The *Convention* also does not define the term or instruct the Committee to formulate a definition. However, the Committee is charged with determining whether a site should be inscribed on the WH List,\(^{56}\) and for defining the criteria by which a site may be listed,\(^{57}\) which has allowed it to give further meaning to the term OUV.

\(^{51}\) *World Heritage Convention* preamble para 6, arts 1-2.


\(^{53}\) *World Heritage Convention* art 12. A site may have OUV but not be included on the WH List, for example if the relevant State party has not nominated it. However, because the focus of the *World Heritage Convention* regime is on sites inscribed on the WH List, in practice the Committee’s decision as to whether a site has OUV (and therefore whether it should be listed) is central to the operation of the regime.

\(^{54}\) For detailed analysis of the origins of the term see Titchen, above n 4.

\(^{55}\) *World Heritage Convention* art 12. A site may have OUV but not be included on the WH List, for example if the relevant State party has not nominated it. However, because the focus of the *World Heritage Convention* regime is on sites inscribed on the WH List, in practice the Committee’s decision as to whether a site has OUV (and therefore whether it should be listed) is central to the operation of the regime.


\(^{57}\) *World Heritage Convention* art 11(2).
Early nominations for WH listing were assessed by the Committee and the Advisory Bodies in a fairly ad hoc manner. However, their decision-making became more standardised when the Committee included provisions to guide the assessment of a site’s value in the *Operational Guidelines for the Implementation of the World Heritage Convention* (the ‘*Operational Guidelines*’). The current (2016) version of the *Operational Guidelines* defines OUV to mean ‘cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity’. In addition, they prescribe several criteria and requirements that a site must meet to be considered to have OUV. As explained below, these criteria and requirements require an assessment of the site’s intrinsic value and how it is managed and protected (see 3.3.1). Over time, the Committee has amended them, reflecting changing approaches to heritage and its protection. Through this process, the scope of the concept of WH has been broadened, making it a better fit for Pacific heritage (see 3.3.2).

3.3.1 The requirements for World Heritage listing under the 2016 *Operational Guidelines*

(A) The criteria for the assessment of Outstanding Universal Value

Pursuant to paragraph 77 of the 2016 *Operational Guidelines*, to be considered to have OUV a property must;

(i) represent a masterpiece of human creative genius;
(ii) exhibit an important interchange of human values on developments in architecture or technology, monumental arts, town planning or landscape design;
(iii) bear an exceptional testimony to a cultural tradition or civilisation which may be living or historical;
(iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates a significant stage in human history;

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(v) be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture or human interaction with the environment;
(vi) be associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance;
(vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;
(viii) be an outstanding example representing major stages of earth’s history, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;
(ix) be an outstanding example representing significant on-going processes in the evolution and development of ecosystems and communities of plants and animals; and/or
(x) contain the most important natural habitats for in-situ conservation of biological diversity.

Two issues concerning these criteria warrant particular mention here: firstly, the dichotomy between cultural and natural WH sites; and secondly, the importance of the selected criteria to the ongoing protection of the site.

The Operational Guidelines previously contained two separate lists of criteria, one for cultural sites and the other for natural sites, reflecting the separate definitions of ‘cultural heritage’ and ‘natural heritage’ in the Convention. In 2003, the WH Committee resolved to merge these lists, but in practice sites meeting criteria (i) – (vi) in paragraph 77 are considered to be cultural sites, and those meeting criteria (vii) – (x) are considered to be natural sites. Sites meeting a criterion in each group are referred to as ‘mixed sites’. This dichotomy is reinforced by the existence of different Advisory Bodies for cultural and natural sites. In addition, UNESCO has published different guidance documents for the

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61 WHC Res 6 EXT.COM 5.1, 6th extraordinary WHC sess, UN Doc WHC-03/6 EXT.COM/8 (27 May 2003) 5.
62 Operational Guidelines 2016, UN Doc WHC.16/01, para 46.
63 The three Advisory Bodies are the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council of Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature and Natural Resources (IUCN). See Table 1 in 1.2.1 for description of their roles.
64 ICOMOS and ICCROM are the Advisory Bodies for cultural sites. IUCN is the Advisory Body for natural sites: Operational Guidelines 2016, UN Doc WHC.16/01, paras 32-37.
management of cultural and natural sites, and the WH Committee still refers in its documents and decisions to natural, cultural and mixed sites.

The Advisory Bodies are working to better coordinate their work, particularly in relation to mixed sites. In addition, the Committee’s recognition of ‘cultural landscapes’ as a category of WH site helped reinforce the link between culture and nature (discussed further at 3.3.2(A)). However, a clear distinction remains between the treatment of cultural and natural sites under the regime, even though a founding principle of the Convention was the intrinsic link between the two. Consequently, while recognising that it is problematic to separate Pacific heritage into ‘culture’ and ‘nature’, cultural and natural WH sites are discussed separately in 3.3.2 below.

The practical importance of the criteria for WH listing must also be recognised. Although the criteria are located in the Operational Guidelines not the Convention, they are critical for two key reasons. Firstly, a nomination for WH listing will be deemed incomplete unless it demonstrates how the site complies with the criteria. Thus, they impact the composition of the WH List. Secondly, they potentially influence the ongoing management and protection of the site. UNESCO’s WH management manuals note that a WH site should be managed to conserve all its heritage values. However, the Operational Guidelines state that a WH property should be protected to ensure that its OUV is sustained or enhanced over time. Consequently, in practice the criterion upon which a site is found to have OUV often becomes the focus of the Committee’s concerns regarding the site’s protection. For example, East Rennell was inscribed on the WH List based on the criterion that is now found in paragraph 77(ix) of the Operational Guidelines, and is therefore considered to be a natural WH site (discussed at 5.3.1). Reflecting this, the Committee’s resolutions concerning the protection of East Rennell have centred on threats to the natural environment such as extractive industries and resource harvesting (see 6.2). The preservation of the area’s cultural values does not fall directly within the remit of the Convention regime, even though from a local perspective nature and culture are intrinsically linked. At East Rennell, this exacerbates the disconnect between the

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68 Operational Guidelines 2016, UN Doc WHC.16/01, para 132(3).
69 See, eg, UNESCO et al, above n 66, 37.
70 Ibid para 96.
global and local perceptions of the site’s value, which is a challenge for its protection (discussed further at 3.3.2(B)).

(B) The conditions of integrity and authenticity

In addition to the criteria discussed above, the Committee considers that a site must meet the ‘conditions of integrity’ in order to be eligible for WH listing.\textsuperscript{71} An assessment of a site’s integrity considers the wholeness and intactness of the property.\textsuperscript{72} Among other things, it requires the Committee to consider whether the property contains all elements necessary to express its OUV, and whether it suffers from adverse effects of development or neglect.\textsuperscript{73} An assessment of integrity is therefore related to the issue of site boundaries, which is explored in 4.3.3(D).

A further requirement that applies to cultural sites is that they must meet the condition of authenticity.\textsuperscript{74} A property will be found to meet this condition if its value is credibly and truthfully expressed rather than being a copy or replica.\textsuperscript{75} Like the criteria, the Committee’s views concerning authenticity have changed since the requirement was first introduced, demonstrating increasing appreciation of the need for the OUV requirements to reflect the diversity of the world’s heritage (see 3.3.2(A)).

(C) Adequate protection and management

The Committee also considers that a site only has OUV if it has ‘an adequate protection and management system to ensure its safeguarding’.\textsuperscript{76} This requirement and its implications for the Pacific are explored in 4.3.3.

3.3.2 The Committee’s changing approach to Outstanding Universal Value

As the criteria and requirements for OUV are contained in the \textit{Operational Guidelines} not the \textit{Convention}, the Committee has been able to amend them to accommodate

\textsuperscript{71} Ibid para 87
\textsuperscript{72} Ibid para 88.
\textsuperscript{73} Ibid para 88. See also ibid paras 89-95.
\textsuperscript{74} Ibid para 79.
\textsuperscript{75} Ibid para 80. See also ibid paras 81-86.
\textsuperscript{76} Ibid para 78.
changing perceptions concerning heritage and its protection. Over time the Committee has broadened the criteria and requirements for cultural sites so that a greater range of heritage places are now eligible for WH listing (see (A)). The criteria for natural WH sites have also been amended, reflecting developments in international environmental law (see (B)). These changes and their implications for the Pacific are explored below.

(A) The criteria for cultural World Heritage sites

(A.I) The criteria for cultural World Heritage sites: Key changes to the criteria

The feasibility of prescribing criteria for assessing whether a site has OUV was debated by delegates at the first WH Committee meeting in 1977. Heritage is an inherently subjective concept, with the value of a piece of heritage depending on who is making that assessment. As a result, ‘the value of heritage may be skewed in favour of the current fashions favoured by those in the heritage industry’ as opposed to ‘reflect[ing] the views of those who ‘own’ the heritage’. At the 1977 Committee meeting, delegates expressed concern over how criteria would be applied given the subjectivity of an evaluation of heritage values, the potential impact of Western views on that evaluation, and the fact that heritage may be perceived differently by those within a culture as compared to those on the outside. Despite these concerns, criteria were included in the first version of the Operational Guidelines, and have been retained (albeit in a revised form) in all subsequent revisions.

The concerns described above have been played out. In the early years of the implementation of the Convention, the Committee (which was dominated by Europeans) was most concerned about the protection of ancient structures and the monumental heritage of Europe. This was reflected in its drafting of the criteria for WH listing, which

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77 For comprehensive analysis of the criteria for cultural heritage sites see, eg, Titchen, above n 4, in particular chs 5, 8; Jukka Jokilehto, What is OUV? Defining the Outstanding Universal Value of Cultural World Heritage Properties (ICOMOS, 2008), in particular chs 3-4.  
79 Gillespie, above n 45, 67.  
until 1992 favoured sites of value because of their architectural or artistic characteristics, rather than places with less tangible heritage values.\(^{83}\)

Soon after sites began to be inscribed on the WH List, the influence of the criteria on the List’s composition became a topic of discussion among the Committee and the Advisory Bodies. However, the Committee did not have a formal plan to address the imbalances that were emerging in the List until 1994, when it adopted the Global Strategy for a Representative, Balanced and Credible World Heritage List.\(^{84}\) The meetings and studies that preceded the adoption of that strategy highlighted the need for the Committee to reconsider what constitutes heritage of OUV, so that the List better reflects the diversity of heritage places around the world.\(^{85}\)

Discussions concerning the imbalances in the WH List also raised questions about the potential for sites demonstrating the interactions between people and the environment to be listed.\(^{86}\) Of particular concern was the absence of ‘cultural landscapes’ on the List, being places that illustrate the evolution of human society and settlement over time, as influenced by the natural environment, social, economic and cultural forces.\(^{87}\) Before 1992, there was some scope for cultural landscapes to be listed pursuant to the natural criteria, which referred to sites representing ‘man’s interaction with his natural environment’ and ‘exceptional combinations of natural and cultural elements’.\(^{88}\) However, there was confusion as to how these criteria should be applied, given that the definition of ‘natural heritage’ in Article 2 of the Convention is not sufficiently broad to encompass sites of that type.\(^{89}\) In contrast, ‘cultural heritage’ as defined under the Convention is clearly able to encompass cultural landscapes. Article 2 defines ‘cultural


\(^{84}\) WHC Res CONF 003 X.10, WHC 18\(^{8}\) sess, UN Doc WHC-94/CONF.003/16 (31 January 1995) 41-44. See 1.2.3 for discussion of the Global Strategy.


\(^{89}\) Titchen, above n 4, 209.
heritage’ to include sites that represent the ‘combined works of nature and man’, as well as buildings of OUV because of their place in the landscape.90

In recognition of these issues, in 1994 the Committee significantly amended the criteria for WH listing.91 It removed references to interactions between culture and nature from the natural criteria, and broadened the cultural criteria by moving from a ‘purely architectural view of the cultural heritage of humanity towards one which [is] much more anthropological, multi-functional and universal’.92 Among other things, this involved amending the cultural criteria to encompass sites associated with living cultures93 and places evidencing human interaction with the environment.94 The Committee also formally recognised ‘cultural landscapes’ as a category of WH site, and included guidance principles for the listing of such sites in the Operational Guidelines.95

The Committee’s broadening of the criteria corresponded with changing views concerning authenticity. The Operational Guidelines now state that an assessment of a site’s authenticity should be based on the Nara Document on Authenticity,96 which was adopted by participants at the 1994 ‘Nara Conference on Authenticity in Relation to the World Heritage Convention’.97 The Nara Document acknowledges that values attributed to cultural properties may differ from culture to culture, and within cultures, so judgements about authenticity cannot be based on fixed criteria.98 Rather, heritage properties must be judged within their cultural context.99 Importantly, the Committee now recognises that authenticity may be expressed through a variety of attributes including traditions, techniques and management systems; language and other forms of intangible heritage; and spirit and feeling.100 This has made assessments of authenticity more applicable to a range of cultural contexts.101

90 World Heritage Convention art 1.
91 WHC Res CONF 003 XIV-3, WHC 18th sess, UN Doc WHC-94/CONF.003/16 (31 January 1995) 64-68.
93 Operational Guidelines 2016, UN Doc WHC.16/01, para 77(iii), (vi).
94 Ibid para 77(v).
95 Ibid para 47, annex 3.
99 Ibid.
100 Ibid para 13.
(A.II) The criteria for cultural World Heritage sites: Application in the Pacific

The relatively narrow scope of the cultural criteria prior to 1992 may have contributed to the under-representation of Pacific Island heritage on the WH List. However, notwithstanding the expansion of the criteria, few sites in the independent Pacific Island States have been listed. Furthermore, only two of these are cultural landscapes (despite the prevalence of such places in the region) and only two represent the living cultures of Pacific Islanders. This raises the question of whether the cultural criteria still present impediments to the listing of Pacific sites.

This question was explored by Anita Smith, who concluded that the concept of OUV (as framed in the current criteria), and the arguments and evidence required to demonstrate that a site meets that threshold, can accommodate sites of value to Pacific Islanders. Her conclusion was based on several sites that were being considered for nomination or had been inscribed on the WH List, including Chief Roi Mata’s Domain in Vanuatu.

Chief Roi Mata’s Domain (a cultural landscape) was listed in 2008 on the basis of criteria (iii), (v) and (vi) in the 2008 version of the Operational Guidelines. The site comprises areas associated with the life and death of Chief Roi Mata, who died in around 1600AD and is credited with initiating important social reforms. Criterion (iii) was previously limited to sites that bore testimony to an extinct civilisation, but in 1994 was expanded to also apply to living cultural traditions and civilisations. While substantial archaeological research provides some evidence of the site’s heritage value, the site has OUV because of the local communities’ continuing customary knowledge of and respect for the place. Consequently, the expansion of criterion (iii) facilitated the site’s listing based on its association with the living traditions of its customary owners.

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103 In addition to Chief Roi Mata’s Domain, in support of her argument Smith refers to the listing of Papa hānaumokuākea, in Hawaii, USA as a mixed site, and two sites being considered for nomination: the ‘Yapese Stone Money’ site (a proposed transnational serial site from Palau and Yap in the Federated Sites of Micronesia) and the Sacred Site of Taputapuatea/Te Po and the Opoa Valley (in French Polynesia).
104 WHC Res 32 COM 8B.27, WHC 32nd sess, UN Doc WHC-08/32.COM/24Rev (31 March 2009) 170.
109 Smith, above n 102, 182.
When Smith conducted her analysis, Chief Roi Mata’s Domain was the only listed WH site within the independent Pacific Island States inscribed because of its association with living cultures. Since that time, a site in the Federated States of Micronesia referred to as ‘Nan Madol: Ceremonial Centre of Eastern Micronesia’ has been listed.\(^\text{110}\) That site contains remains of stone palaces, temples, mortuaries and residential domains bearing testimony to the development of chiefly societies.\(^\text{111}\) The continuing association of the site with social and ceremonial traditions and systems of customary governance was also recognised in the site’s listing.\(^\text{112}\) The inscription of Nan Madol therefore reinforces Smith’s finding that the expansion of the cultural criteria has opened the door for the listing of sites associated with the living customs of Pacific Islanders.

The Kuk Early Agricultural Site (Kuk) is another Pacific cultural landscape on the WH List. That site, in the western highlands of PNG, contains archaeological remains demonstrating a transformation of agricultural practices that occurred around 6,500 years ago.\(^\text{113}\) It was found to have OUV on the basis of criteria (iii) and (iv) in the 2008 version of the *Operational Guidelines*.\(^\text{114}\) Criterion (iv) applies to sites that illustrate a significant stage in history, and was expanded in 1994 from *buildings and architectural ensembles*\(^\text{115}\) to also encompass *landscapes*.\(^\text{116}\) This amendment made the criterion applicable to Kuk and potentially more relevant to other Pacific heritage places.

While the inclusion of Kuk in the WH List was important in terms of the recognition of Pacific landscapes, the site is what Smith describes as an ‘Oceanic or island expression of a global narrative’,\(^\text{117}\) rather than one representing the living traditions of Pacific Islanders. Smith notes that other cultural sites on the WH List in the region have also been found to have OUV because of their interpretation through global narratives: the Levuka Historical Port Town in Fiji is an example of European settlement in the Pacific

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\(^\text{110}\) WHC Res 40 COM 8B.22, WHC 40th sess, UN Doc WHC/16/40.COM/19 (15 November 2016) 217.


\(^\text{112}\) Ibid.

\(^\text{113}\) Government of Papua New Guinea, Kuk Early Agricultural Site Cultural Landscape - A Nomination for Consideration as World Heritage Site (2007).

\(^\text{114}\) WHC Res 32 COM 8B.26, WHC 32nd sess, UN Doc WHC-08/32.COM/24Rev (31 March 2009) 168; *Operational Guidelines 2008*, UN Doc WHC-08/01, para 77(iii)-(iv).

\(^\text{115}\) *Operational Guidelines 1992*, UN Doc WHC/2/Revised, para 24(a)(iv).

\(^\text{116}\) WHC Res CONF 003 XIV.3, WHC 18th sess, UN Doc WHC-94/CONF.003/16 (31 January 1995) 64-68. See *Operational Guidelines 2008*, UN Doc WHC-08/01, para 77(iv).

\(^\text{117}\) Smith, above n 102, 181.

\(^\text{118}\) Ibid.
Islands, which reflects the contact and interchange of values between colonisers and the Pacific Islanders;\textsuperscript{119} the Bikini Atoll Nuclear Test Site in Marshall Islands\textsuperscript{120} bears testimony to the birth of the Cold War and the nuclear era; and the Rock Islands Southern Lagoon in Palau is a mixed site, gaining its OUV from the remains of stone villages, rock art, cave deposits and burials, which evidence the development of Pacific Island societies, as well as its exceptional marine environment and biodiversity.\textsuperscript{121}

Documents such as the \textit{Pacific Appeal}\textsuperscript{122} suggest that Pacific Islanders are most concerned to ensure the protection of their ‘spiritually-valued natural features and cultural places’, which are related to the ‘origins of peoples, the land and sea, and other sacred stories’.\textsuperscript{123} While the cultural WH sites referred to in the paragraph above are significant, they are not examples of the types of places most valued by Pacific Islanders.\textsuperscript{124} Consequently, although the criteria for WH listing are now broad enough to accommodate such sites, impediments to their nomination and listing remain to be addressed (see 1.2.3). Furthermore, the implications of listing sites that possess very different global and local significance warrant further consideration. This latter issue is explored below, in the context of the inscription of Pacific places as natural WH sites.

(B) The criteria for natural World Heritage sites

(B.I) The criteria for natural World Heritage sites: Key changes

The natural criteria are those in paragraphs (vii) – (x) of paragraph 77 in the 2016 \textit{Operational Guidelines}. These criteria have been amended over time,\textsuperscript{125} but the changes have been less contentious than those made to the cultural criteria. The most significant amendments were made in 1994, reflecting the substantial developments in international environmental law that occurred in 1992.\textsuperscript{126} The United Nations Conference on Environment and Development held in that year led to the adoption of several instruments

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\textsuperscript{119} WHC Res 37 COM 8B.25, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 186, 186 para 3.
\textsuperscript{120} WHC Res 34 COM 8B.20, WHC 34th sess, UN Doc WHC-10/34.COM/20 (3 September 2010) 206, 207 para 3.
\textsuperscript{121} WHC Res 36 COM 8B.12, WHC 36th sess, UN Doc WHC-12/36.COM/19 (June – July 2012) 165, 165 para 3.
\textsuperscript{122} Presentation of the World Heritage Programme for the Pacific, WHC 31st sess, UN Doc WHC-07/31.COM/11C (10 May 2007) annex I (Appeal to the World Heritage Committee from the Pacific Island State Parties). The Pacific Appeal is discussed at 1.2.4.
\textsuperscript{123} Ibid annex I para 11.
\textsuperscript{124} For example, Brown has noted that the listing of the Bikini Atoll has privileged 12 years of the area’s history (1946-1958) and ‘reduced the Bikinian people’s story to a subplot’: Steve Brown, ‘Archaeology of Brutal Encounter: Heritage and Bomb Testing on Bikini Atoll, Republic of the Marshall Islands’ (2013) 48 \textit{Archaeology in Oceania} 26, 36.
\textsuperscript{125} For analysis of the development of the criteria for natural sites see Redgwell, above n 29; Titchen, above n 4, ch 5.
\textsuperscript{126} Redgwell, above n 29, 67.
that introduced new concepts to international law, including ‘ecosystems’ and ‘biodiversity conservation’. Those concepts are now referred to in criteria (ix) and (x). No substantial changes have been made to the natural criteria since 1994, however they were renumbered following the Committee’s decision in 2003 to merge the cultural and natural criteria into one list.

(B.II) The criteria for natural World Heritage sites: Application in the Pacific

Three sites in the Pacific have been inscribed on the WH List on the basis of natural WH criteria. The first was East Rennell in Solomon Islands, which was listed in 1998. It was found to meet criterion (ix) on the basis that it is a ‘stepping stone in the migration and evolution of species in the western Pacific’, and because of the speciation processes that have happened on the island, particularly in relation to bird life. The Phoenix Islands Protected Area in Kiribati was listed in 2008 based on criteria (vii) and (ix). It is considered to have OUV as an ‘oceanscape’ exhibiting exceptional natural beauty, and because of its contribution to evolutionary processes and the development of global marine ecosystems. In 2012, Rock Islands Southern Lagoon in Palau was listed as a mixed site. In addition to some cultural criteria, it was found to meet criteria (vii), (iv) and (x) due to its exceptional marine environment and biodiversity.

Studies undertaken by IUCN as part of the implementation of the Global Strategy for a Representative, Balanced and Credible World Heritage List suggest there is scope for the listing of further natural WH sites in the Pacific. IUCN has noted that natural heritage of OUV is not evenly distributed around the world, and therefore regional balance of listed natural WH sites is neither desirable nor achievable. Consequently, most IUCN studies focus on the global distribution of listed WH sites in terms of biogeographic realms, biomes and habitats, or themes such as wetlands, coastal areas, mountains, forests and geological sites, rather than their regional distribution. IUCN’s work did however identify

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127 Redgwell, above n 29, 75.
129 Adoption of Retrospective Statements of Outstanding Universal Value, WHC 36th sess, UN Doc WHC-12/36.COM/8E (15 June 2012) 55-6 (East Rennell, Solomon Islands); WHC Res 36 COM 8E, WHC 36th sess, UN Doc WHC-12/36.COM/19 (June-July 2012) 225.
130 WHC Res 34 COM 8B.2, WHC 34th sess, UN Doc WHC-10/34.COM/20 (3 September 2010) 165.
132 WHC Res 36 COM 8B.12, WHC 36th sess, UN Doc WHC-12/36.COM/19 (June - July 2012) 165, 165 para 3.
several sites in the Pacific Islands worthy of inscription on the WH List as natural sites. Hazen and Anthamatten’s analysis of the ecological representativeness of the WH List also highlighted that determining an optimal definition of ‘representation’ in the context of the natural listed WH sites is controversial, because of the diverse ways that site distribution can be assessed. However, they too identified some ecological realms that were clearly under-represented on the WH List, including the Pacific Islands. These studies do not suggest that the natural criteria in the Operational Guidelines present any barrier to the recognition of Pacific places as WH sites. The more pertinent question is whether it is appropriate to list such places purely based on natural criteria.

A variation between the global and local significance of a site can exist at any type of WH site. As noted in 3.3.2(A), many cultural sites in the Pacific have been found to have OUV because of their interpretation through global narratives rather than being representative of Pacific Islander values. A variation will almost certainly exist (and may be more pronounced) at natural WH sites in the Pacific, give that most environments also have cultural significance and are under customary tenure. As Ballard and Wilson have said, ‘classifying any Melanesian landscape as natural, whether under a national conservation programme or as a World Heritage site, effectively obscures a series of claims to cultural knowledge and ownership by local communities’. As such, the listing of natural WH sites in the Pacific can create a situation where the values that make the site eligible for inscription are very different to those that local communities attach to the property.

The question of whether Pacific places should be listed as natural WH sites should be considered on a case-by-case basis. It must be remembered that while the concepts of nature and culture are closely linked in the Pacific, not all significant sites will qualify for WH listing as cultural landscapes. It is likely that many such places will only meet the OUV threshold based on their natural values. Indeed, there are sites on the Tentative

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136 Ibid 264.

137 Ibid n 102, 181.

Lists of Pacific Island States which are identified as meeting natural heritage criteria only. If the listing of natural WH sites in the Pacific was ruled out, such places could not be listed at all (under the current Operational Guidelines). Whether that would be a better outcome than listing them purely based on natural criteria should be considered on an individual basis.

This thesis does not advocate against the listing of natural WH sites in the Pacific region. It does however argue that the implications of any disconnect between the global and local significance of a WH site should be explored at the nomination stage. Through the analysis of East Rennell in Part 3, this research demonstrates that inscribing a Pacific place based on natural WH values only can create or at least exacerbate challenges associated with the site’s protection. Strategies to safeguard the OUV of such a place will often need to try to bridge any variation between the site’s global and local significance, but achieving that can be difficult in practice. This issue should therefore be considered when deciding whether to nominate an area as a natural WH site.

3.4 Conclusion

This chapter has highlighted three key features of the concept of WH under the Convention. Firstly, it is limited to immoveable heritage, which limits the extent to which the Convention can be used to protect Pacific heritage. Secondly, it encompasses both natural and cultural heritage, reflecting the era in which the Convention was drafted. While this creates significant potential for the regime to apply to Pacific sites, a dichotomy remains between natural and cultural WH, which poses challenges for the recognition and protection of such places. Finally, WH is an inherently subjective concept, and the Committee’s assessment of the concept of OUV essentially dictates the scope of the regime. Over time, the Committee has broadened its interpretation of the concept, and has recognised ‘cultural landscapes’ as a category of WH site, which has allowed a greater range of Pacific places to meet the WH threshold.

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139 See Table 1 in 1.2.1 for explanation of Tentative Lists.
140 For example, a site referred to as ‘Tropical Rainforest Heritage of Solomon Islands’ (which is on Solomon Islands’ Tentative List) is proposed as a natural WH site.
Smith’s work demonstrates that the criteria for WH listing are now sufficiently broad to encompass many heritage places in the Pacific. However, such sites (particularly those associated with the living cultures of Pacific Islanders) remain barely represented on the WH List, so barriers to their nomination still need to be addressed. The implications of listing sites which possess markedly different global and local significance also warrant further consideration, including the challenges this presents for conservation.

As the boundaries of the concept of ‘WH’ are broadening, there is a corresponding need to also expand our thinking concerning how heritage places should be protected. The next chapter therefore examines the protection regime established by the *Convention*, and the Committee’s changing approach to WH conservation.
Chapter 4: The protection of Pacific Island heritage through the *World Heritage Convention* regime

4.1 Introduction

Chapter 3 explored the concept of ‘World Heritage’ (WH) and concluded that the Committee’s broadened interpretation of the notion of ‘outstanding universal value’ (OUV) has increased the potential for Pacific sites to qualify for WH listing. This chapter considers the protection of such places under the *World Heritage Convention* (the Convention). It explores the Convention regime, and changes to the Committee’s approach to WH conservation that have occurred since the treaty was signed. The analysis of these issues in the Pacific context, and through a legal lens, has enabled key opportunities and challenges concerning the protection of Pacific WH under law to be identified.

In the previous chapter, the concept of WH was analysed with reference to the *Convention* text (3.2) and the WH Committee’s interpretation of the concept (3.3). This chapter adopts a similar structure. It begins by exploring the Convention regime as established by the Convention text (4.2). It explains that the obligations imposed by the Convention on State parties and the international community (4.2.1 and 4.2.3), and the structural elements it creates (4.2.4), attempt to balance national sovereignty over heritage sites with the international community’s interest in the preservation of such places. Reflecting the era in which the law was drafted, the Convention does not mention the role of non-State actors, other than the three international Advisory Bodies (4.2.2). As will be explained, each of these features influences the scope for the Convention to be used to protect Pacific heritage.

The Committee’s changing approach to WH protection is then considered (4.3). The Committee’s views on this issue are significant because it has substantial decision-making powers, and it can influence the implementation of the Convention by State parties. The chapter focuses on three key changes of relevance to Pacific Island States:

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1 *Convention Concerning the Protection of the World Cultural and Natural Heritage*, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (*‘World Heritage Convention’*).
the Committee’s recognition of the relationship between heritage protection and sustainable development (4.3.1), its growing appreciation of the rights and roles of local communities in heritage protection (4.3.2), and its decision to allow sites protected through customary systems to be inscribed on the WH List (4.3.3). The chapter covers the international developments that contributed to these changes, relevant amendments to the *Operational Guidelines for the Implementation of the World Heritage Convention* (the ‘*Operational Guidelines*’), and implications for Pacific Island States.

This analysis demonstrates that the *Convention* protection regime is evolving. This is possible because the *Convention* text establishes a framework only, allowing the Committee and State parties to implement it in accordance with their contemporary views. Consequently, Pacific Island States have an opportunity to protect their WH in a manner appropriate to their context. Notwithstanding this, significant challenges arise from some inherent features of the *Convention* regime, provisions of the *Operational Guidelines*, and the nature of Pacific Island States. Key challenges identified here will be explored further in the Solomon Islands context in Part 3 of this thesis.

### 4.2 The protection regime established by the World Heritage Convention

#### 4.2.1 Balancing national sovereignty and the international community’s interest in World Heritage protection

Before the adoption of the *Convention*, most States maintained that State sovereignty was paramount, and should only be ‘pierced’ in relation to the most important of issues, such as human rights. Therefore, States tended to view heritage sites as being wholly subject to their sovereignty. Developments such as the 1954 *Convention for the Protection of Cultural Property during Armed Conflicts*, which declared that certain properties form

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part of the ‘cultural heritage of mankind’, reflected a growing view that the international community had an interest in heritage protection, notwithstanding State sovereignty.

In the years leading up to the adoption of the *Convention*, it also became increasingly evident that the international community could play a valuable role in heritage protection. This was highlighted by successful campaigns in the 1960s to rescue important heritage sites, led by the United Nations Educational, Scientific and Cultural Organisation (UNESCO). The most notable campaign aimed to save the Abu Simbel temples from rising waters of the Nile, caused by the Egyptian government’s construction of the Aswan Dam. In a demonstration of international commitment and co-operation, over 50 nations donated half of the $80 million required to relocate the temples. Campaigns to save cultural objects in Venice and Florence from flooding were similarly successful, making it clear to UNESCO that the *Convention* should promote cooperative efforts to protect heritage. Furthermore, during this era many States were achieving independence, and it was evident that they would need help to protect their heritage whilst also striving for economic development.

Due to these views, the *Convention* regime was designed to encourage international cooperation for the protection of WH, whilst not unduly intruding on State sovereignty. This is reflected in Articles 4 to 7 of the *Convention*, which set out the respective obligations of State parties and the international community in the protection of WH.

Articles 4 and 5 of the *Convention* contain the principal obligations of State parties regarding the protection of WH. Article 4 states:

> Each State Party to this *Convention* recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, 

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6 Francioni and Lenzerini, above n 3, 404.
10 Forrest, above n 3, 229.
where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

Article 5 then lists some broad measures that a State party must take to comply with its Article 4 duties (see 4.2.3 for further analysis).

Although the _Convention_ imposes the primary duty to protect WH on State parties, it acknowledges that such sites have value for humankind as a whole,\(^{12}\) and that State action may be insufficient to effectively protect heritage.\(^{13}\) Thus, pursuant to Articles 6 and 7, the international community also has obligations concerning the conservation of WH. Article 6 states that the international community has a duty to cooperate for the protection of WH,\(^{14}\) and as such each State party undertakes to help others comply with their _Convention_ duties, when requested to do so.\(^{15}\) Article 7 then says that ‘international protection’ of WH means ‘the establishment of a system of international cooperation and assistance designed to support State parties to the _Convention_ in their efforts to conserve and identify that heritage’. Read together, these articles confirm that the international community’s role is ‘secondary and auxiliary’,\(^{16}\) designed to supplement not supplant the role of the State party. This is confirmed by the _Convention_’s Preamble, which notes that although it is incumbent on the international community to participate in the protection of WH, collective action shall not take the place of action by the State concerned.\(^{17}\)

Through its delineation of the roles of State parties and the international community, the _Convention_ seeks a ‘delicate balance between national sovereignty and international intervention’.\(^{18}\) This can also be seen in the structural elements established by the _Convention_ (the WH Committee, the WH List and the WH Fund), which are analysed at 4.2.4. However, there remains a degree of tension between State sovereignty over heritage sites and the international community’s interest in their preservation,\(^{19}\) which has been a concern for some involved with implementing the _Convention_ since it was first adopted.\(^{20}\)

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13  Ibid preamble para 3.
14  Ibid art 6(1).
15  Ibid art 6(3).
17  _World Heritage Convention_ preamble para 7. See also _World Heritage Convention_ art 25; _Operational Guidelines 2016_, UN Doc WHC.16/01, para 233.
It is particularly evident when the Convention bodies (i.e. the Committee and the Advisory Bodies) and the relevant State party hold different views about a site. As will be explained in Part 3, this is the case in relation to East Rennell. This thesis argues that the chasm between the positions of the Convention bodies and the Solomon Islands government (SIG) concerning the protection of East Rennell must be narrowed so all parties can work cooperatively, as envisaged by the Convention (see 9.3.1).

4.2.2 The role of non-State actors in the Convention regime

While the Convention addresses the roles of State parties and the international community in the protection of WH, it makes little reference to the role of non-State actors in the protection of WH, other than the three international Advisory Bodies: the International Union for the Conservation of Nature (IUCN), the International Council on Monuments and Sites (ICOMOS) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM). These bodies hold significant positions within the regime, which is not surprising given they were involved with the development of the Convention (see 3.2.1). Their role includes making recommendations to the Committee on WH List nominations and applications for international assistance, and participating in Committee meetings, albeit in an advisory capacity.

The lack of references to other non-State actors in the Convention reflects the approach to the protection of heritage that was most common in industrialised countries when the treaty was drafted. That approach (often referred to as ‘fortress conservation’) arose from the conservation movement of the late 1800s, and is characterised by centralised State ownership, control and management. It reflects the Judeo-Christian philosophy that humans are set apart from nature and the belief that the purpose of conservation is to protect nature from people. When the Convention was adopted, fortress conservation was widely accepted by governments and protected area managers as being appropriate.
for the preservation of wilderness areas. That approach did not take into account the fact that humans have impacted ‘natural’ areas for millennia, or the practical need for collaborative approaches to conservation efforts.\(^{26}\) If regard was paid to local communities, it was generally only because they were viewed as a threat to the environment.\(^{27}\)

The traditional model for the protection of cultural properties was similarly based on State control. When the *Convention* was drafted, most places recognised as having cultural value were individual historic monuments or buildings, or other places under public ownership.\(^{28}\) The goal of conservation efforts was often to prolong the life of the physical fabric of such structures.\(^{29}\) Little attention was paid to the relationship between the structures and their surroundings, or the associations between the places and local communities.\(^{30}\)

Reflecting these approaches, the *Convention* imposes responsibility for the protection of WH on State parties, and contains little recognition of the role or interests of non-State actors operating at the regional, national or local level.\(^{31}\) This feature can be contrasted with later treaties, which recognise the involvement of a broader range of groups.\(^{32}\) Importantly, unlike later treaties, the *Convention* does not require or even encourage State parties to involve local communities in the identification of heritage places\(^{33}\) or their protection.\(^{34}\)

The impacts of the designation and protection of WH sites on local communities received little attention for many years.\(^{35}\) However, as will be explored in 4.3, since the *Convention*

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27 Ibid.
29 Ibid 24.
30 Ibid 12.
31 An exception to this statement is *World Heritage Convention* art 13(7), which requires the Committee to cooperate with international and national NGOs with similar objectives to the *Convention*. This article states that the Committee may call upon public and private bodies and individuals to assist with the implementation of its programmes.
33 Cf *Intangible Cultural Heritage Convention* art 11(b).
34 Cf *Convention on Biological Diversity* art 8(j); *Intangible Cultural Heritage Convention* art 15.
was adopted the international community’s approach to heritage protection has changed. Although the Convention has not been amended to reflect these views, the Committee now encourages State parties to ensure that the rights and roles of local communities are respected in the identification and conservation of heritage places, which has helped make the Convention regime a better fit for the Pacific context.

4.2.3 The State parties’ duty to protect World Heritage

This section analyses the terms of Articles 4 and 5, to understand what Pacific Island States are required to do under the Convention to protect WH under law. The analysis considers the meaning of the duties of ‘protection’, ‘conservation’, ‘presentation’ and ‘transmission to future generations’ (see (A)) and their relationship to the duty of ‘identification’ (see (B)). It also explains the discretion that State parties have to tailor their heritage protection measures to their circumstances (see (C)).

(A) The duties of protection, conservation, presentation and transmission of World Heritage to future generations

Although Article 4 refers to State parties having a duty to protect, conserve, present and transmit WH to future generations, the Convention does not define those terms. As such, State parties and the Committee are entitled to interpret them according to their ordinary meaning, in light of the purpose of the Convention. As explained below, the Committee has not sought to define the terms in the Operational Guidelines and, in practice, it does not strictly delineate them.

‘Protection’ is a term commonly used in international heritage laws, but it is not defined consistently or with precision in those laws. While the Committee does not define the term in the Operational Guidelines, it does specify that protection must ensure the safeguarding of the site’s OUV. As was noted in 3.3.1(A), this is one of the reasons why the OUV criterion upon which a site is inscribed is critical. The criterion not only signifies

37 See, eg, 1954 Hague Convention which says that the protection of cultural property shall comprise the safeguarding of and respect for such property (art 2); the International Cultural Heritage Convention defines the broader term of ‘safeguarding’ to mean measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalisation of the various aspects of such heritage (art 2(3)).
38 Operational Guidelines 2016, UN Doc WHC.16/01, para 96.
its eligibility to be included in the WH List, it also becomes the focus of the State’s duty
to protect the site.

Like the term ‘protection’, the word ‘conservation’ lacks any clear definition under
international law, and the Committee does not define it in the Operational Guidelines. In
the context of natural heritage, IUCN has defined ‘conservation’ as ‘the in-situ
maintenance of ecosystems and natural and semi-natural habitats and of viable
populations of species in their natural surroundings’. In the context of cultural places, it
was defined in the 1994 Nara Document on Authenticity as ‘all efforts designed to
understand cultural heritage, know its history and meaning, ensure its material safeguard
and, as required, its presentation, restoration and enhancement’. There is therefore some
overlap between the duties of ‘protection’ and ‘conservation’, both of which aim to ensure
the preservation of the property. However, ‘conservation’ is arguably broader, potentially
encompassing management, restoration and enhancement of the place. The concept of
WH management (which is now referred to in the Operational Guidelines) is explored in
4.3.3(C).

The duty to transmit heritage to future generations also overlaps with the duties of
protection and conservation. This duty is a manifestation of the principle of
intergenerational equity, which underlies the concept of WH (see 3.2.2). It requires State
parties to protect WH from damage and destruction so that it can be enjoyed by future
generations.

The final duty in Article 4, the duty of ‘presentation’, is also not defined in the
Operational Guidelines. It has been interpreted by the Australian High Court to mean
‘conserving and arranging [the heritage sites] to bring out their potentialities to the best
advantage’, which could involve the provision of lighting, access or other amenities. However, the protection of the property ‘is not to be sacrificed by presentation’, and
therefore arguably the duty to protect WH prevails over the obligation to present it.

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41 See, eg, Ben Boer and Graeme Wiffen, Heritage Law in Australia (Oxford University Press, 2006) 79-80.
42 This principle says that ‘the present generation should ensure that the health, diversity and productivity of the environment is
maintained or enhanced for the benefit of future generations’: Intergovernmental Agreement on the Environment (1992) s 3.5.2.
43 Commonwealth v Tasmania (1983) 46 ALR 625, 775 (Brennan J).
44 Ibid.
The Article 4 duties therefore have no clear definitions, and they overlap. The *Operational Guidelines* create further uncertainty in that some provisions refer to WH ‘protection’ in isolation,\(^{45}\) others refer to ‘protection and management’,\(^{46}\) and others use various combinations of the Article 4 duties.\(^{47}\) This inconsistent use of terminology may reflect a desire for brevity, as it would be unwieldy to specify ‘protection, conservation, presentation and transmission to future generations’ in each instance. It does however blur any distinction between the different obligations. In practice, the umbrella term of ‘protection’ is commonly used by the *Convention* bodies to encompass the obligations of State parties under Article 4, and that is the approach taken in this thesis.

(B) The duty to identify World Heritage and its relationship with the duty of protection

In addition to the duty of protection, Article 4 refers to a State party having an obligation to identify the WH within its territory.\(^{48}\) Once identified, the State party must submit an inventory of such places (known now as a Tentative List) to the WH Committee.\(^{49}\)

The duty to identify WH is closely related to the duty to protect it. A site cannot be included in the WH List unless it is first identified, documented and nominated by the State party in which it is located. States are legally required to protect all places falling within the definitions of cultural heritage and natural heritage in Articles 1 and 2 respectively.\(^{50}\) However, as a State cannot readily protect a place that it has not identified, its duty is generally considered to be limited to sites on the WH List.\(^{51}\) Consequently, sites that have not been identified and nominated by the State party will in practice not fall within the scope of the *Convention* regime. This means that the identification of WH is a crucial precursor to protection under the *Convention*.

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\(^{45}\) See, eg, *Operational Guidelines 2016*, UN Doc WHC.16/01, paras 3(e), 12, 15(c), 15(f), 49, 98, 99, 101, 103.

\(^{46}\) See, eg, ibid paras 8, 78, 96-97.

\(^{47}\) See, eg, ibid paras 1(b), 6, 40 refer to protection and conservation; para 5 refers to identification, protection, conservation and preservation; paras 7, 15(a) refer to identification, protection, conservation, presentation and transmission to future generations; paras 15(d), 15(g) refer to protection, conservation and presentation; paras 28(h), 40 refer to conservation and management; para 119 refers to protection, conservation, management and presentation; para 60(c) refers to protection, safeguarding and management.


\(^{49}\) *World Heritage Convention* art 11(1).


\(^{51}\) Francioni and Lenzerini, above n 3, 407.
As noted in 1.2.3, one of the causes of the under-representation of Pacific heritage on the WH List is the lack of inventories detailing heritage places in the region. While most Pacific Island States have now submitted Tentative Lists to the Committee, significant gaps in knowledge concerning the region’s heritage remain (see 2.2). Given the link between the identification and protection of heritage places, efforts to conserve the region’s heritage places must be accompanied by efforts to identify and document them.

(C) The duty to take active and effective measures to protect World Heritage

Article 5 requires State parties to implement ‘active and effective’ measures to ensure the protection of WH. Among other things, this provision requires a State party to integrate WH protection into planning programs, to develop services and research methods for its protection, and to establish centres for training in the conservation of WH. Importantly, Article 5 also requires State parties to ‘take the appropriate legal, scientific, technical, administrative and financial measures necessary’ for the protection of WH. This is the basis of a State party’s obligation to protect WH under law.

Articles 4 and 5 give a State party discretion to determine what particular steps it will take to protect WH. For example, while Article 5 requires a State party to take ‘legal measures’ to protect heritage places, it does not specify the form of legislation that a State must enact. Indeed, it does not require the State to enact new laws if they are not ‘necessary’. This feature of the Convention allows a State party to determine how it will comply with its Convention duties, and is consistent with the approach taken in other treaties signed during that era. It also reflects the broad scope of the concept ‘WH’, and the need for different actions to protect different types of sites. Some more recent treaties with a narrower scope are more prescriptive in terms of the measures they require State parties to undertake.

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53 World Heritage Convention art 5(a).
54 Ibid art 5(b).
55 Ibid art 5(c).
56 Ibid art 5(e).
57 Ibid art 5(d).
58 See, eg, the Convention on Wetlands of International Importance especially as Waterfowl Habitat, opened for signature 2 February 1971, 996 UNTS 245 (entered into force 21 December 1975). This Convention imposes broad obligations on State party only (art 4).
59 See, eg, Convention on Biological Diversity art 8; Underwater Heritage Convention arts 10, 12.
As well as not prescribing any particular steps that a State party must take to protect WH, both Articles 4 and 5 are couched in qualifying terms. Article 4 refers to a State party doing ‘all it can’ to protect heritage, ‘to the utmost of its own resources’. Similarly, Article 5 says that a State party ‘shall endeavour’, ‘in so far as possible’, and ‘as appropriate for each country’ to take the specified measures. While these qualifications do not give States discretion as to whether to comply with the obligations, they do allow States flexibility in the manner of compliance. Factors that may affect their response include economic considerations, the financial and administrative capacity of the State, its geographical size, the date it signed the Convention, the volume and significance of its cultural and natural heritage, whether the State has existing duties to identify and protect heritage under national law, political and cultural considerations, and the ownership of the heritage property.

As such, while a top-down State-centric model of heritage protection was prevalent in the era when the Convention was drafted (see 4.2.2), State parties are not legally obliged to take that approach. This is generally a positive feature of the Convention for Pacific Island States, as it allows them to adopt measures appropriate to their resource capacities, their plural legal systems, and the land tenure of their heritage places. However, the corollary is that the Convention itself provides little guidance to State parties on how to protect WH.

As will be explained further in 4.3, the Operational Guidelines now contain some guidance on what the Committee considers to be the appropriate approach to WH protection. In addition, manuals prepared by the Advisory Bodies and others aim to assist States to develop and implement management systems for WH sites (and other important heritage places) and provide some case study examples. However, the manuals are necessary high level and detailed guidelines concerning what constitutes an ‘appropriate

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60 Commonwealth v Tasmania (1983) 46 ALR 625, 698 (Mason J).
62 Ibid 242 (Mason CJ and Brennan J).
63 Forrest, above n 3, 243.
64 Carducci, above n 4, 113-114.
65 Boer and Wiffen, above n 40, 72.
legal measure’ for the purposes of Article 5 of the Convention remain lacking. The Pacific Island States may benefit from more guidance in this area, particularly those charged with protecting sites under customary tenure (see 9.2).

### 4.2.4 The structural elements of the regime: The Committee, the List and the Fund

#### (A) The World Heritage Committee

The WH Committee, an executive decision-making body established under Article 8 of the Convention, effectively represents the common interest of State parties in the preservation of WH. As explained in the sections below, it plays a central role in the Convention regime through its administration of the WH List and the WH Fund. The fact that all substantive decision-making powers are given to the Committee as opposed to the General Assembly of State parties, is a distinguishing feature of the Convention. It means that the composition of the Committee can significantly influence the operation of the regime.

The Committee comprises 21 State parties, elected by the General Assembly of State parties to the Convention. Its work is co-ordinated by the Bureau, which comprises seven State parties on the Committee. It is also assisted by the WH Centre, which has been the Secretariat for the Convention since 1992, and is responsible for the day to day management of the Convention.

Although the Convention requires that elections to the Committee ensure an ‘equitable representation of the different regions and cultures of the world’, to date Pacific Islanders have not been well represented. As the main decision-making body in relation to WH, many States seek membership of the Committee. New Zealand was a member

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70 World Heritage Convention art 8(1). The current members of the WH Committee are Angola, Azerbaijan, Burkina Faso, Croatia, Cuba, Finland, Indonesia, Jamaica, Kazakhstan, Kuwait, Lebanon, Peru, Philippines, Poland, Portugal, Republic of Korea, Tunisia, Turkey, United Republic of Tanzania, Vietnam, Zimbabwe.
71 Operational Guidelines 2016, UN Doc WHC.16/01, para 19. The current members of the Bureau are Angola, Kuwait, Peru, Poland, Portugal, Republic of Korea, United Republic of Tanzania.
72 World Heritage Convention art 14; Operational Guidelines 2016, UN Doc WHC.16/01, paras 27-29.
73 World Heritage Convention art 8(2).
between 2003 and 2007, and Australia has served several terms, but no Pacific Island State has ever been a member.

One reason for this is that the Pacific Island States only became signatories to the Convention relatively recently. Furthermore, it is debatable whether any such State has sufficient human and financial resources to serve effectively on the Committee. The implications of the lack of Pacific representation must however be recognised. It may explain why for many years the Committee interpreted ‘cultural heritage’ in a manner that effectively excluded places of significance to Pacific Islanders (see 3.3.2(A)). It may also explain why the Committee traditionally favoured State-centric approaches to heritage protection, which are often inappropriate in the Pacific (see 4.3).

It is not suggested here that the Committee has deliberately sought to exclude the Pacific from the Convention regime, but simply that its decision-making has been influenced by the perceptions and values of the mainly industrialised States that dominated its membership. In this regard, it is notable that the Committee adopted ‘enhancing the role of communities’ as one of its strategic objectives (discussed at 4.3.2) while Tumu Te Heuheu, paramount chief of Ngati Tuwharetoa (Aotearoa/New Zealand) was its chair. The recognition of this objective was significant for the Pacific, and demonstrates the impact a Pacific voice within the Committee can have on its approach to WH protection.

The Committee’s adoption of the Global Strategy for a Representative, Balanced and Credible World Heritage List (the ‘Global Strategy’) brought to the fore the need for the Convention regime to adapt to better fit the Pacific context. In addition, developments such as the Pacific 2009 World Heritage Programme and The Pacific Appeal have helped to highlight the views of Pacific Islanders to the Committee, and have contributed to its changing approach to WH and its protection. Research on cultural heritage in the Pacific in the last two decades has also actively contributed to this. To ensure that the regime

77 Vanuatu and Palau have applied for membership, but their bids were unsuccessful.
78 Bertacchini and Saccone have found that developed countries have greater capacity to gain membership to the WH Committee than developing countries: See Enroci E Bertacchini and Donatella Saccone, ‘Toward a Political Economy of World Heritage’ (2012) 36(4) Journal of Cultural Economics 327, 334.
79 The Global Strategy, the Pacific 2009 World Heritage Programme and the Pacific Appeal are discussed in 1.2.
continues to evolve to meet the views and aspirations of Pacific Islanders, efforts to inform the Committee of the Pacific perspective must continue, even if no Pacific Island State becomes a formal member (see 9.2.4).

(B) The World Heritage List

The WH List is the most well-known component of the Convention regime. It is a list of sites that the WH Committee has found meet the definitions of cultural heritage and natural heritage in Articles 1 and 2 of the Convention respectively, and has decided to include in the list on that basis. The Committee is responsible for defining the criteria by which sites may be inscribed on the WH List, and determining whether a nominated site should be listed. As noted in 4.2.3(B), despite the legal scope of Article 4, generally only sites on the WH List are considered to be subject to the State parties’ duty to protect. Thus, the Committee’s decisions concerning inscriptions on the WH List to a large extent delineate the scope of the regime.

State parties also play an important role in the listing process. The Committee can only inscribe a site on the WH List if it has been nominated by the State party within whose territory the site is located. As such, the consent of that State party is required for the site to be brought within the scope of the Convention regime. This requirement is an example of the delicate balance between respect for national sovereignty and the international community’s interest in WH protection that the Convention is trying to achieve (see 4.2.1).

Importantly, no other group or individual who may have an interest in the preservation of a heritage site (including customary landowners) can nominate the site for WH Listing. Thus, while the conservation of Pacific heritage is often highly dependent on local action, the Convention regime can only be used as the framework for the protection of such sites with the consent and involvement of the State party, at least at the nomination stage. As noted in 1.2.3, to date the rate of nomination of Pacific sites has been relatively low, and

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81 World Heritage Convention art 11(2).
82 Ibid art 11(5).
83 Ibid art 11(2).
84 Francioni and Lenzerini, above n 3, 407.
there is a continuing need to address the challenges that Pacific States face in the nomination of sites.

(C) The World Heritage Fund

In addition to determining nominations for inclusion in the WH List, the Committee is responsible for assessing applications by State parties for international assistance. As the primary responsibility for the protection of WH rests with the State party in which the heritage is located, a State is not automatically entitled to receive any assistance through the *Convention* regime. Rather, it must first submit a request to the Committee, which will determine the request based on the evaluation criteria in the *Operational Guidelines*. International assistance is primarily funded through the WH Fund, which comprises voluntary and compulsory contributions from State parties and money from other sources.

Pacific Island States fall within several of the Committee’s priority areas for international assistance. These include requests from least developed countries and small island developing states and requests that support the Committee’s strategic objectives, including the *Global Strategy*. However, the annual budget of the WH Fund is $US3 million, which is very small considering there are over 1,000 listed WH sites. Therefore, although international cooperation is a principle underpinning the *Convention* regime (see 4.2.1), the Committee’s capacity to fund projects designed to help Pacific Island States meet their protection obligations is limited.

Another limitation of the international assistance system is that only State parties can apply for assistance. This is logical, given that the *Convention* imposes the duty to protect WH on State parties. However, in practice it means that groups such as customary

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85 *World Heritage Convention* art 13(3).
86 Ibid art 4.
87 Ibid art 13(3); *Operational Guidelines 2016*, UN Doc WHC.16/01, annex 9.
88 *World Heritage Convention* chapter IV.
90 *World Heritage Convention* art 13(4); *Operational Guidelines 2016*, UN Doc WHC.16/01, paras 236-239.
91 *Operational Guidelines 2016*, UN Doc WHC.16/01, para 239(b).
92 Ibid paras 238, 239(e).
94 *World Heritage Convention* art 13(1); *Operational Guidelines 2016*, UN Doc WHC.16/01, para 233. An exception to this is that the Committee can provide international assistance to national or regional centres for the training of staff in heritage identification and protection: *World Heritage Convention* art 23.
landowners, non-government organisations and provincial governments, who may be directly involved with the conservation of a WH site, are at the behest of the relevant State party to access assistance through the *Convention* regime. If the State party does not apply for assistance, the Committee cannot mobilise funds from the WH Fund to help such groups conserve the site.

The case of Solomon Islands shows that State parties do not always apply for international assistance, despite the critical need for it. To date, Solomon Islands has applied for (and thus received) relatively little funding through the *Convention* regime,\(^95\) which has been a point of frustration for some Committee members. For example, the author observed that at the 2015 WH Committee annual meeting in Bonn, Germany, the Turkish delegate on the Committee stated:

‘Despite all the offers of money and technical help there is no response from the [Solomon Islands] State party. We are wondering why the State party is not cooperating? Some countries need assistance that they can’t get. This country gets all the assistance, but do not try and receive it.’

The SIG may have submitted few requests for assistance because it lacks the resources and/or capacity to conduct the detailed scientific, economic and technical studies that must precede an application,\(^96\) or to administer the assistance once it is received. Moreover, while Article 22 of the *Convention* allows international assistance to be granted for a broad range of activities (including research, the provision of experts and labour, the training of staff, and the supply of equipment),\(^97\) it does not necessarily extend to all initiatives that the State prioritises. For example, it does not allow for the funding of alternative livelihood projects, which are arguably necessary to ensure the long-term protection of East Rennell (see chapters 7 and 8). This may be one of the reasons why Pacific Island States continue to call for the establishment of a permanent Pacific WH Fund.\(^98\)

Furthermore, as this research will show, the protection of East Rennell is interrelated with a range of economic, social and environmental issues. While one-off grants from the WH Fund for specific projects may be of some benefit, addressing the full range of issues that


threaten East Rennell is likely to require a larger and longer-term investment than the Committee can currently provide. As such, the SIG and others involved with the protection of East Rennell will require assistance from donors and organisations outside the Convention regime to safeguard the site’s OUV.

4.3 The World Heritage Committee’s approach to the protection of World Heritage

The previous section explored the protection regime as established by the Convention text. It showed that the text creates a framework, and leaves the Committee and the State parties with discretion to determine how the Convention is to be implemented. This section explores the Committee’s changing approach to WH protection, as evidenced primarily through its amendment of the Operational Guidelines. The Committee’s views on how WH sites should be protected are significant because it has substantial decision-making powers under the Convention, including the power to inscribe sites on the WH List and to administer the WH Fund. In addition, the Committee can influence the implementation of the Convention by State parties, through the Operational Guidelines and its resolutions. This section focuses on three developments in the Committee’s approach to WH protection of importance to the Pacific. These concern the relationship between heritage protection and sustainable development (4.3.1), the rights and roles of local communities in heritage protection (4.3.2), and customary protection of WH sites (4.3.3). As this analysis will demonstrate, the Committee’s contemporary approach is more appropriate for the Pacific context than earlier top-down methods, but significant challenges remain.

4.3.1 The relationship between sustainable development and the protection of heritage

As noted in 4.2.2, when the Convention was adopted, wilderness areas and cultural properties in industrialised societies were most commonly protected through top-down approaches that sought to preserve the sites as ‘islands’ isolated from the impacts of human activities. While that approach is still used effectively in many places today,99

99 Barbara Lausche, Guidelines for Protected Area Legislation (IUCN, 2011) 76.
since the *Convention* was signed a new ‘conservation paradigm’ for heritage protection has emerged.\textsuperscript{100} Under this new paradigm, efforts to conserve the natural environment include a wider range of actors, are approached at a broader scale, and are pursued alongside social and economic objectives.\textsuperscript{101} Similarly, it is now widely recognised that cultural properties cannot be protected as museum pieces, separated from local communities and the broader economic and social changes occurring around them,\textsuperscript{102} so a more holistic, integrated approach to their preservation is required.\textsuperscript{103}

The emergence of this new conservation paradigm was triggered in part by the growing recognition of the need for ‘sustainable development’, often defined as development that ‘meets the needs of the present without compromising the ability of future generations to meet their own needs’.\textsuperscript{104} This concept became widely accepted at the international level in the 1980s, through the publication of documents such as the *World Conservation Strategy*\textsuperscript{105} and the *Brundtland Report*,\textsuperscript{106} which explored the relationship between development and environmental protection. The signature of the *Rio Declaration*,\textsuperscript{107} *Agenda 21*\textsuperscript{108} and the *Convention on Biological Diversity*\textsuperscript{109} at the 1992 United Nations Conference on Environment and Development (UNCED) firmly embedded the concept under international law. Achieving sustainable development remains a pillar of international policy, as evidenced by the United Nations General Assembly’s adoption of *Transforming our World: the 2030 Agenda for Sustainable Development* in 2015.\textsuperscript{110} That document arguably does not sufficiently acknowledge the contribution of heritage protection to the achievement of sustainable development. It does however note the need to ‘strengthen efforts to protect and safeguard the world’s cultural and natural heritage’.\textsuperscript{111}

As the concept of sustainable development only became widely used in the 1980s, it is not referred to in the *Convention*. The *Convention* does however reflect some of its

\textsuperscript{101} Phillips, above n 27, 19-20; Lausche, above n 99, 142; Borrini-Feyerabend, Kothari and Oviedo, above n 24, 2.
\textsuperscript{102} UNESCO et al, above n 28, 13.
\textsuperscript{103} Ibid 15.
\textsuperscript{104} World Commission on Environment and Development, *Our Common Future*, UN Doc A/42/427 (1987) annex cl 27 (frequently referred to as the *Brundtland Report* after Gro Harlem Brundtland, Chairman of the Commission).
\textsuperscript{106} World Commission on Environment and Development, above n 104.
\textsuperscript{109} *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) (‘*Convention on Biological Diversity*’).
\textsuperscript{110} *Transforming Our World: The 2030 Agenda for Sustainable Development*, UNGA Res A/RES/70/L.1, UN GAOR, 70th sess, UN Doc A/RES/70/1 (21 October 2015) (‘*Transforming Our World*’).
\textsuperscript{111} Ibid 22.
principles. For example, Article 4 requires State parties to ensure the transmission of heritage to future generations, in accordance with the notion of intergenerational equity that lies at the heart of sustainable development.\footnote{Rio Declaration, UN Doc A/CONF.151/6/Rev.1, principle 3; Transforming Our World, UN Doc A/RES/70/1, preamble para 6.} In addition, Article 5 requires State parties to adopt a general policy which aims to give WH a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs.\footnote{World Heritage Convention art 5(a).} This provision therefore supports holistic approaches to conservation, consistent with sustainable development.\footnote{Rio Declaration, UN Doc A/CONF.151/6/Rev.1, principle 4; Transforming Our World, UN Doc A/RES/70/1, preamble para 7.}

Despite these linkages, it took many years for the Committee to enshrine the principles of sustainable development in its \textit{Operational Guidelines}. A milestone in this process was the Committee’s adoption of the \textit{Budapest Declaration} in 2002.\footnote{Budapest Declaration on World Heritage, WHC Res 26 COM 9, WHC 26th sess, UN Doc WHC-02/CONF.202/25 (1 August 2002) 6 (‘Budapest Declaration’).} That Declaration recognises the need to ‘ensure an appropriate and equitable balance between conservation, sustainability and development, so that World Heritage properties can be protected through appropriate activities contributing to the social and economic development and the quality of life of our communities’.\footnote{Ibid para 3(c).} More recently, the General Assembly of State parties adopted the \textit{WH Sustainable Development Policy},\footnote{WHC GA Res 20 GA 13, 20th sess, UN Doc WHC-15/20.GA/15 (20 November 2015) 7 (‘WH Sustainable Development Policy’).} following the endorsement of a similar document by the Committee.\footnote{WHC Res 39 COM 5D, WHC 39th sess, UN Doc WHC-15/39.COM/19 (8 July 2015) 7; World Heritage and Sustainable Development, WHC 39th sess, UN Doc WHC-15/39.COM/5D (15 May 2015) annex.} The adoption of that policy was a clear acknowledgement of the need for heritage conservation objectives to be promoted ‘within a broader range of economic, social and environmental values and needs encompassed in the sustainable development concept’.\footnote{Ibid paras 13-33.} The policy contains provisions reflecting the various dimensions of sustainable development, namely environmental sustainability, inclusive social development, inclusive economic development, and fostering peace and security.\footnote{Ibid para 3G.}

These developments were particularly significant for Pacific Island States. As was explained in chapter 2, Pacific heritage often comprises landscapes and seascapes of
continuing cultural significance to the areas’ inhabitants and owners. For example, Chief Roi Mata’s Domain in Vanuatu is a cultural landscape representing the continuing Pacific chiefly system and respect for customary authority. In addition, many Pacific Islanders live subsistence lifestyles, and are highly dependent on their natural resources for their livelihoods. For example, the Rock Islands Southern Lagoon WH site in Palau is utilised by Palauans for subsistence harvesting of fish and fruit bats. Similarly, the customary owners of East Rennell depend on fish from the lake and sea, and resources from the forest within the WH site to support their livelihoods. An approach to heritage protection that involves the exclusion of all human activity from the heritage place and/or which does not recognise the cultural values associated with the natural environment, is unlikely to be appropriate in the Pacific. Consequently, the Committee’s efforts to integrate WH protection into the broader framework of sustainable development could make the Convention regime a better fit for the Pacific. As explained below however, more could be done to ensure that the Committee’s change in approach has practical impact.

The Operational Guidelines now refer to sustainable development, but they do not fully reflect the Budapest Declaration or the WH Sustainable Development Policy. For example, the Operational Guidelines state that the protection of WH is a significant contributor to sustainable development, and its principles should be integrated into heritage management systems. In addition, they acknowledge that WH properties may support a variety of uses that are ecologically and culturally sustainable and which may contribute to the quality of life of local communities. However, they do not refer to the need for State parties to seek an equitable balance between conservation, sustainability and development, as stated in the Budapest Declaration and the WH Sustainable Development Policy. They also do not refer to the need to protect and promote environmental, social, economic and cultural rights in the implementation of the Convention. The Operational Guidelines should be reviewed to identify the

124 Operational Guidelines 2016, UN Doc WHC.16/01, para 6.
125 Ibid para 132(5).
126 Ibid para 119.
127 Budapest Declaration, UN Doc WHC-02/CONF.202/25, para 3(c); WH Sustainable Development Policy, UN Doc WHC-15/20.GA/15, paras 1, 9.
amendments needed to fully embed the principles of sustainable development in the *Convention* regime. Indeed, following the adoption of the *WH Sustainable Development Policy* in 2015, the Committee foreshadowed that such changes may be required.129

In addition, the Committee needs to ensure that its resolutions concerning WH sites reflect the *WH Sustainable Development Policy*. As will be explained in later chapters, the Committee has repeatedly requested that Solomon Islands address the threats to East Rennell by banning logging and mining on the island, regulating the taking of species, developing a new management plan and implementing heritage protection legislation. There has been little acknowledgement in its resolutions of the critical role of local people in decision-making concerning WH protection nor their right to economic and social development. This may be contributing to the SIG’s failure to comply with those resolutions. It is argued in this thesis that if cooperation between the Committee and the SIG is to improve, future Committee resolutions must more strongly reflect the principles of sustainable development (see 9.3.1(A)).

### 4.3.2 The rights and roles of local communities in heritage protection

Since the *Convention* was adopted, it has become increasingly accepted that a broad range of actors can contribute to heritage protection, including local communities.130 The emergence of the notion of sustainable development as well as increasing recognition of the rights of Indigenous peoples,131 have contributed to this change.

The near universal acceptance of the concept of ‘sustainable development’ has highlighted the need for more holistic approaches to heritage protection, and drawn attention to the need for effective systems of governance, involving participatory and multi-stakeholder approaches.132 This is based on increasing recognition that local

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129  The World Heritage Centre and the Advisory Bodies have foreshadowed that such changes will be required: See, eg, *World Heritage and Sustainable Development*, WHC 39th sess, UN Doc WHC-15/39.COM/5D (15 May 2015) para 9, which states that once the policy is adopted, proposals for specific changes to the *Operational Guidelines* should be developed.

130  It is recognised that in some contexts there are critical differences between Indigenous people and local communities. However, for convenience, in this thesis the term ‘local communities’ is used broadly to encompass Indigenous people, unless the context dictates otherwise.


people’s ‘knowledge, perceptions, and cosmologies’ are important to managing heritage places,\textsuperscript{133} as well as ethical and moral concerns.

The important role of local people in achieving sustainable development is reflected in several documents adopted at the UNCED conference. For example, the \textit{Rio Declaration} recognised the vital role of Indigenous people and local communities in environmental management because of their knowledge and traditional practices;\textsuperscript{134} the \textit{Convention on Biological Diversity} called on States to maintain the knowledge, innovations and practices of Indigenous and local communities relevant for the conservation of biodiversity;\textsuperscript{135} and \textit{Agenda 21} devoted a chapter to exploring mechanisms for strengthening the role of Indigenous people and their communities.\textsuperscript{136} The concept of sustainable development therefore clearly supports more decentralised approaches to heritage protection than existed under the traditional State-centric model.

The role of Indigenous peoples in heritage protection has gained particular attention, reflecting increasing international acknowledgement of their rights. This is demonstrated by the establishment of international bodies such as the United Nations’ Working Group on Indigenous Populations\textsuperscript{137} and the Permanent Forum on Indigenous Issues.\textsuperscript{138} It is also evident from the adoption of international instruments including the International Labour Organisation’s \textit{Indigenous and Tribal Peoples Convention 1989 (ILO 169)}\textsuperscript{139} and the \textit{United Nations Declaration on the Rights of Indigenous People (UNDRIP)}.\textsuperscript{140}

\textit{ILO 169} is the only binding international law concerning the rights of Indigenous peoples. Among other things, it confirms their right to have their cultural values and practices protected,\textsuperscript{141} to participate in the formulation of development plans that may affect

\begin{itemize}
\item \textsuperscript{134} \textit{Rio Declaration}, UN Doc A/CONF.151/6/Rev.1, principle 22.
\item \textsuperscript{135} \textit{Convention on Biological Diversity}, art 8(j).
\item \textsuperscript{136} \textit{Agenda 21}, UN Doc. A/CONF.151/26/Rev.1, ch 26.
\item \textsuperscript{139} \textit{Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries}, opened for signature 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991) (’ILO 169’).
\item \textsuperscript{141} \textit{ILO 169} art 5.
\end{itemize}
them, and to the lands traditionally occupied by them. While it has limited direct application to the Pacific Island States, its adoption was a significant milestone in the growing appreciation of the rights of Indigenous people at the international level. This was solidified by the United Nations General Assembly’s adoption of UNDRIP in 2007. Although UNDRIP is not binding, many of its provisions reflect principles of customary international law and principles enshrined in human rights instruments. Thus, it is an emerging standard for the treatment of Indigenous people.

Top-down conservation measures involving stringent restrictions on Indigenous peoples’ access to and use of their lands, and measures developed without the full involvement of the affected peoples may be inconsistent with the provisions of UNDRIP. In contrast, more localised approaches to conservation find support in UNDRIP as expressions of Indigenous peoples’ self-governance, decision-making and autonomy, which are rights guaranteed by the Declaration. Such approaches may also be a means for Indigenous people to maintain their cultures, livelihoods and identities. As such, they may be consistent with other rights guaranteed by UNDRIP including the right of Indigenous people to maintain their spiritual relationship with the land, their right to practice their customs and traditions, and their right to the land they traditionally owned and occupied. UNDRIP also guarantees procedural rights, including the right of Indigenous people to participate in decision-making that affects them, which supports their full involvement in efforts to conserve their lands.

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142 Ibid art 7(1).
143 Ibid art 16.
144 Of the Pacific Island States (as defined in this research), only Fiji has signed it. Furthermore, under art 1, the Convention defines Indigenous peoples to include tribal peoples in independent countries whose social cultural and economic conditions distinguish them from other sections of the national community, and descendants of people who inhabited the area at the time of colonisation (ILO 169 art 1). In most Pacific Island States, Indigenous peoples comprise the majority of the population. Therefore, it is arguably not aimed at indigenous populations in such States: See Erika Techera, ‘Samoa: Law, Custom and Conservation’ (2006) 10 New Zealand Journal of Environmental Law 361, 367.
148 Stevens, above n 146, 186.
150 Ibid arts 11(2), 14, 34.
151 Ibid arts 26, 32.
152 Ibid arts 9, 10, 11(2), 18, 19, 25, 27, 32.
In the past, WH was often something that was imposed on local populations,\textsuperscript{153} and the impacts of WH listing on communities received little attention.\textsuperscript{154} However, as instances where the rights of local communities have been abused in the implementation of the Convention became better known,\textsuperscript{155} some academics have advocated for greater attention to be paid to such issues.\textsuperscript{156} In addition, many international organisations have called on the Committee to amend the Operational Guidelines to be consistent with UNDRIP.\textsuperscript{157}

The Committee has responded, to some extent.\textsuperscript{158} A milestone in the Committee’s changing approach was its inclusion of ‘enhancing the role of communities’ as one of its five strategic objectives,\textsuperscript{159} the other four being credibility, conservation, capacity-building and communication.\textsuperscript{160} The Committee decided to include the fifth strategic objective in ‘recognition of the critical importance of involving indigenous, traditional and local communities in the implementation of the Convention.’\textsuperscript{161} As noted in 4.2.4(A),


\textsuperscript{154} Gillespie, above n 35, 12.

\textsuperscript{155} For example, the Kenya Lake System in the Great Rift Valley was listed with little effective consultation with the area’s traditional owners, the Endorois people. Many of these traditional owners had been previously relocated from the area to create a wildlife reserve and tourist facilities. The African Commission on Human and Peoples Rights found that the listing violated the Endorois peoples’ right to development. For discussion see Peter Bille Larsen, World Heritage and Evaluation Processes Related to Communities and Rights: An Independent Review (IUCN, 2012) 19-20; Harry Jonas et al, An Analysis of International Law, National Legislation, Judgements and Institutions as they Interrelate with Territories and Areas Conserved by Indigenous Peoples and Local Communities (Natural Justice, 2012) 99-101. Rights violations have also been reported at many other World Heritage sites, such as the Chitwan National Park World Heritage site in Nepal (see United Nations Human Rights Council, Report by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya, Addendum: report on the situation of indigenous peoples in Nepal, A/HRC/12/34/Add.3 (20 July 2009) paras 35-37), and Lhasa, Tibet (see Amand Sinding-Larsen, ‘Lhasa Community, World Heritage and Human Rights’ (2012) 18(3) International Journal of Heritage Studies 297. For other case studies concerning human rights issues at World Heritage sites see Peter Bille Larsen (ed), World Heritage and Human Rights: Lessons from the Asia-Pacific and Global Arena (Routledge, forthcoming).


\textsuperscript{157} Not all State parties agree with this approach. For example, the International Work Group for Indigenous Affairs (IWGIA) reported that discussions at the 2015 World Heritage Committee meeting in Bonn, Germany ‘revealed strong resistance by many States Parties against adopting safeguards for the rights of indigenous peoples in the context of the World Heritage Convention’. IWGIA noted that a World Heritage Committee meeting member stated, in relation to the nomination of Kaeng Krachan Forest Complex in Thailand: ‘we are here at a prestigious committee of culture and heritage, we are not in Geneva on the Human Rights Council’; See International Work Group for Indigenous Affairs (IWGIA), 8th Session of the EMRIP: Joint Statement on Indigenous Rights and World Heritage (22 July 2015) <http://www.iwgia.org/news/search-news?news_id=1234>.


\textsuperscript{159} Operational Guidelines 2016, UN Doc WHC.16/01, para 26.

\textsuperscript{160} WHC Res 31 COM 13A, WHC 31st sess, UN Doc WHC-07/31.COM/24 (31 July 2007) 193, para 5.
this objective was adopted when the Committee was under the chairmanship of a paramount chief of Aotearoa/New Zealand, demonstrating the impact that a Pacific voice within the Committee can have.

In 2015, the Committee formally resolved that the rights of Indigenous peoples should be respected when nominating, managing and reporting on WH sites, and it made some amendments to the Operational Guidelines. The Guidelines now recognise that the involvement of local communities, Indigenous peoples and other stakeholders in the WH nomination process is essential for them to have a shared responsibility with the State party in the protection of the property. As such, State parties are encouraged to prepare nominations with the widest possible participation of stakeholders and to ‘demonstrate, as appropriate, that the free, prior and informed consent of Indigenous peoples has been obtained’. The Committee also supports the involvement of a range of actors in WH protection. The Guidelines state that a partnership approach to management is preferable, involving local communities, Indigenous people, non-government organisations and others with an interest in the property. Through these developments, the Committee has shifted towards an approach that is more likely to be appropriate in the Pacific, where Pacific Islanders have governed and managed their land and resources for millennia, and where governments generally lack the capacity and resources to administer, monitor and enforce top-down heritage protection laws.

While the Committee has moved away from a purely State-centric approach to heritage protection, the provisions of the Operational Guidelines have their limits. Importantly, they do not require State parties to involve local communities in the nomination and protection of WH sites, they merely encourage them to do so. In that sense, they fall short

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163 Operational Guidelines 2016, UN Doc WHC.16/01, para 123.
164 Ibid para 39.
165 Ibid para 40.
of what some commentators have sought. Furthermore, the nomination dossier ‘format and content’ requirements in the Operational Guidelines do not require the State party to specify the extent to which local communities have been involved in the nomination process, or whether their consent has been obtained. Consequently, the Committee may not have any information about these issues when assessing a nomination.

The Committee has also refused calls to establish an expert group to advise on matters concerning Indigenous people. A formal proposal to establish a World Heritage Indigenous Peoples Council of Experts was raised following a forum held in Australia in 2000. Several possible roles were discussed for the group, including ensuring consultation with local people, strengthening the management of existing sites, assisting with the development of management guidelines, and advising on the nomination and evaluation of sites. However, the Committee did not support the proposal, and the group is unlikely to be established in the foreseeable future. As such, Indigenous peoples still do not have a formal position within the Convention regime, which limits their ability to influence the manner in which the treaty is implemented.

The WH Sustainable Development Policy (discussed at 4.3.1) notes that recognising rights and fully involving Indigenous peoples and local communities, in line with international standards, is at the heart of sustainable development. It refers to the need to facilitate the participation of all stakeholders and rights holders, including Indigenous peoples and local communities in the conservation of WH sites. The policy’s adoption may lead the Committee to make further changes to the Operational Guidelines, perhaps addressing the limitations referred to above.

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170 Operational Guidelines 2016, UN Doc WHC.16/01, part IIIB, annex 5.


175 Ibid para 9.
4.3.3 Customary protection and management of World Heritage Sites

This section analyses the Committee’s decision that sites under customary protection and management are eligible for inscription on the WH List. Before exploring the implications of that decision for the Pacific, the protection and management requirements for WH listing will be explained.

(A) Adequate protection and management as a threshold requirement for World Heritage listing

A site is only eligible for WH listing if it has OUV. The Convention does not define the term OUV, but rather empowers the Committee to determine the criteria against which a site’s value will be assessed. The Committee has decided that to have OUV, a site must meet one or more of the prescribed criteria, as well as the conditions of integrity and authenticity. These requirements were analysed in 3.3.1. In addition, the Committee considers that a site must be adequately protected and managed to have OUV. Thus, paragraph 97 of the 2016 Operational Guidelines states:

All properties inscribed on the WH List must have adequate long-term legislative, regulatory, institutional and/or traditional protection and management to ensure their safeguarding. This protection should include adequately delineated boundaries. Similarly States Parties should demonstrate adequate protection at the national, regional, municipal, and/or traditional level for the nominated property. They should append appropriate texts to the nomination with a clear explanation of the way this protection operates to protect the property.

Paragraph 97 is supplemented by other provisions (discussed in (C) and (D) below) containing more detailed prescriptions about the management of sites nominated for WH listing, their boundaries and buffer zones. Through these provisions, the Committee is requiring the State party to provide some assurance that it will protect its WH. This is reinforced by paragraph 53 of the Operational Guidelines, which states that nominations for WH listing must demonstrate the full commitment of the State party to preserve the heritage concerned, within its means.

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176 World Heritage Convention arts 1, 2, 11(2).
177 Ibid art 11(5).
178 Operational Guidelines 2016, UN Doc WHC.16/01, para 78.
179 In this thesis, the word ‘customary’ is used instead of ‘traditional’: See 1.6.1.
The requirement in paragraph 97 is expressed as a mandatory requirement. Its mandatory nature is reinforced by UNESCO’s manual on the preparation of WH nominations, which states that a nomination will fail if this requirement is not met.\footnote{UNESCO / ICCROM / ICOMOS / IUCN, Preparing World Heritage Nominations (UNESCO, 2nd ed, 2011) 87.} However, the extent to which the provision is strictly or consistently enforced is debatable. As will be explored in 5.3.3, East Rennell was inscribed on the WH List following what appears to be little scrutiny of the adequacy of the site’s protection regime.\footnote{The nomination of East Rennell was assessed against the listing requirements in the 1997 version of the Operational Guidelines (UNESCO, Operational Guidelines for the Implementation of the World Heritage Convention, UN Doc WHC 97/2 (February 1997). The management and protection requirements for listing under this version were in some respects different to the requirements in the 2015 version. However, like the 2015 version, the 1997 version required listed sites to have adequate protection and management (paras 24(b)(ii), 44(b)(vi)). For detailed analysis of the nomination of East Rennell, see 5.3.3.} Other sites in the Pacific have also been listed despite the relevant Advisory Body recommending to the Committee that the nominations be deferred to allow the State party to strengthen the protection of the property.\footnote{The sites are Chief Roi Mata’s Domain in Vanuatu, Phoenix Islands Marine Protected Area in Kiribati, Rock Islands Southern Lagoon in Palau: See ICOMOS, Evaluations of Nominations of Cultural and Mixed Properties to the World Heritage List, WHC 32\textsuperscript{nd} sess, UN Doc WHC-08/32.COM/INF/8B1 (2008) 92 (Chief Roi Mata’s Domain, Vanuatu, Advisory Body Evaluation 1280), where ICOMOS considered that ‘the lack of legal protection for the core and buffer zone is a cause for concern’: at 98. See also ICOMOS, Evaluations of Nominations of Cultural and Mixed Properties to the World Heritage List, WHC 36\textsuperscript{th} sess, UN Doc WHC-12/36.COM/INF.8B1 (2012) 21 (Rock Islands Southern Lagoon, Republic of Palau, Advisory Body Evaluation 1386), where ICOMOS considered that the ‘legal protection in place is not yet adequate and thus overall the protective measures for the property are not adequate’: at 28. See also IUCN, Evaluations of Nominations of Natural and Mixed Properties to the World Heritage List, WHC 34\textsuperscript{th} sess, UN Doc WHC/10/34.COM/INF.8B2 (2010) 19 (Phoenix Islands Marine Protected Area, Kiribati, Advisory Body Evaluation 1325). Here, IUCN stated that the Phoenix Islands property does not fully meet the requirements of the Operational Guidelines in relation to protection and management: at 22.} It may be that the Committee’s desire to list sites in the Pacific to help address the imbalances in the WH List (in accordance with the Global Strategy) influenced its assessments of these places against its own listing requirements. Regardless, paragraph 97 of the Operational Guidelines (and the provisions that supplement it) are important because they make the protection and management of a site an issue for the Committee to consider at the listing stage. Furthermore, State parties who wish to secure a successful nomination are likely to try to ensure they meet the Committee’s requirements. As such, these provisions provide the Committee with an avenue to influence how State parties manage and protect their sites.

(B) The Committee’s recognition of customary protection and management of World Heritage sites

Like the criteria for WH listing, the protection and management requirements for the inscription of sites on the WH List have changed over time. In the Pacific context, the most significant change occurred when the Committee recognised that a site protected and managed through ‘traditional’ (referred to in this thesis as ‘customary’ – see 1.6.2) systems could satisfy these requirements. This amendment to the Operational Guidelines...
was a manifestation of changing attitudes towards the notion of cultural heritage (see 3.3.2(A)), as well as the growing recognition of the need for sustainable development (see 4.3.1) and the rights and roles of local people in heritage protection (see 4.3.2).

Under the 1978 version of the *Operational Guidelines*, all nomination dossiers had to outline the ‘means of preservation’ of the nominated site. At that time, the *Operational Guidelines* stated that the Committee must consider the ‘state of preservation’ of cultural sites nominated for WH listing, but there was no requirement for such places to be protected to any particular standard in order to be listed.

Adequate protection and management became a mandatory requirement for WH listing under the 1988 *Operational Guidelines*. This change was made to align the *Operational Guidelines* with the Committee’s practice in implementing the *Convention*. On several previous occasions the Committee had deferred nominations on the grounds that the sites were inadequately protected, on the recommendation of the relevant Advisory Body. The *Operational Guidelines* were therefore amended to state that protection legislation was essential for nominated cultural sites, and natural sites required long term legislative, regulatory or institutional protection.

In 1994, the *Operational Guidelines* were further amended so that a cultural heritage site under customary protection and management could qualify for WH listing. This change occurred around the time the *Global Strategy* was adopted, and can be seen as part of the Committee’s efforts to make the WH List more responsive to the diversity of the world’s heritage. Importantly, the change coincided with the Committee’s introduction of ‘cultural landscapes’ as a category of WH site (discussed at 3.3.2(A)). As Smith and Jones have stated, ‘[m]any landscapes of the Pacific Islands are managed according to

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184 Ibid para 13(iv).
185 Ibid para 8.
190 Ibid para 36(b)(vi).
192 The *Global Strategy* is discussed at 1.2.3.
customary practices and these practices will be the key to sustaining their values.’ It was therefore logical that the Committee’s recognition of cultural landscapes was accompanied by recognition of the customary systems that shape and protect such places.

The amendment of the **Operational Guidelines** to allow for the listing of sites protected through customary systems was initially restricted to cultural sites. However, during this era there was also increasing recognition of the role of customary systems in protecting natural areas. This is particularly evident in the work of the IUCN. Its 1994 guidelines on protected areas defined a ‘protected area’ as ‘[a]n area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means’. By including the words ‘other effective means’ in the definition, IUCN was acknowledging that protected areas could be managed through mechanisms other than legislation, including customary systems. This was reiterated by IUCN’s inclusion of ‘Indigenous Community Conservation Areas’ (ICCAs) in its list of protected area governance types (alongside governance by states, private governance, and shared governance). ICCAs are ecosystems ‘voluntarily conserved by Indigenous peoples and local communities, both sedentary and mobile, through customary laws or other effective means’. Given that IUCN is an Advisory Body under the **Convention**, these developments no doubt influenced the Committee’s approach to WH protection. In 1998, the Committee further amended the **Operational Guidelines** so that natural sites protected under customary mechanisms could also qualify for WH listing.

The Committee’s recognition of customary protection of WH sites was important for the Pacific, where much land is under customary tenure, and where people have practiced their own laws regulating land and resource use for thousands of years (see chapter 2). This change enabled the listing of East Rennell, which at the time had little State legislative protection (see 5.3.3 and 6.3 for discussion of customary protection at East Rennell). Customary protection was also recognised in the listing of the Rock Islands Southern Lagoon site in Palau, and the Chief Roi Mata’s Domain site in Vanuatu. The

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193 Anita Smith and Kevin L Jones (eds), *Cultural Landscapes of the Pacific Islands* (ICOMOS, 2007) 120.
194 IUCN, *Guidelines for Protected Area Management Categories* (IUCN, 1994).
197 Grazia Borrini-Feyerabend et al, above n 66, 40.
198 WHC Res CONF 203 XIV.3, WHC 22nd sess, UN Doc WHC-98/CONF.203/18 (29 January 1999) 56.
Palau WH site enjoys some protection under traditional cultural controls, such as *bul* (which are temporary restrictions imposed by village chiefs on certain activities).  
Similarly, the heritage of Chief Roi Mata’s Domain continues to be protected through *tapu* restrictions determined by the area’s chiefs, which seek to prevent the over-exploitation of natural resources.

However, as will be explored below and in the remainder of this thesis, the listing of sites based on their customary protection presents many challenges. Some of these arise from provisions of the *Operational Guidelines* concerning site management, boundaries and buffer zones (see (C) and (D) below). Furthermore, the listing of a site pursuant to its customary protection raises questions about the role of the State in the site’s conservation (see (E) below).

(C) **World Heritage sites under customary protection: The application of the management system requirements**

The Committee introduced the notion of WH ‘management’ into the *Operational Guidelines*, even though the word does not appear in the *Convention*. Among other things, this change reflected the emergence of the concept of sustainable development (see 4.3.1), which highlighted the need for holistic approaches to heritage protection under which the interactions between the site and its surroundings are managed. The *Operational Guidelines* now say that the purpose of a WH management system is the effective protection of the property, confirming that the notions of heritage management and protection are closely linked.

The *Operational Guidelines* do not prescribe how a State must manage a WH site, but do provide some guidance on what the Committee considers is an appropriate approach. They note that the form of the system will depend on the characteristics and needs of the site, and it may incorporate customary practices. However, they also state that a site’s management system should be documented and will often include a cycle of planning, implementation, monitoring, evaluation and feedback; monitoring and assessment of

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199 Republic of Palau, above n 122, 109.
200 Republic of Vanuatu, above n 121, 96.
201 *Operational Guidelines 2016*, UN Doc WHC.16/01, para 109.
202 Ibid para 110.
impacts; capacity building; and a description of how the management system functions.\textsuperscript{204} As noted by Smith and Turk, a ‘site being well managed under customary tenure may not have the need for such heritage management structures and tools’.\textsuperscript{205} As such, while the Operational Guidelines recognise that a WH site may be managed through a range of approaches, they also suggest a structure for a management system that is not necessarily appropriate for a site under customary protection.

\textbf{(D) World Heritage sites under customary protection: The application of the boundary and buffer zone requirements}

The Operational Guidelines also contain provisions concerning boundaries and buffer zones. They state that the boundaries of a WH site should be drawn to ensure all the attributes that convey the site’s OUV are within the property.\textsuperscript{206} The Guidelines also state that if necessary, a buffer zone subject to legal or customary protection should be established around the site.\textsuperscript{207}

Implementation of the boundary provisions may be problematic, particularly if the site and its surrounds are under customary ownership. Land tenure boundaries may not correspond with the heritage attributes in the area, so compliance with the Operational Guidelines may result in the site encompassing the land of several landowner groups governed under different customary legal systems. Coordinating the management of such an area could be difficult. Ruddle et al note that customary marine management systems generally work better where the landowning group is relatively small.\textsuperscript{208} It therefore follows that in some cases, it may be appropriate to advocate for the boundary requirements to be relaxed, to allow the delineation of a WH site that can be effectively protected under one customary legal system, rather than creating a large site under fragmented ownership.

\begin{itemize}
\item \textsuperscript{204} Ibid para 111.
\item \textsuperscript{205} Anita Smith and Cate Turk, ‘Customary Systems of Management and World Heritage in the Pacific Islands’ in Sue O’Connor, Denis Byrne and Sally Brockwell (eds), Transcending the Culture-Nature Divide in Cultural Heritage: Views from the Asia-Pacific Region (ANU E Press, 2012) 22, 30.
\item \textsuperscript{206} Operational Guidelines 2016, UN Doc WHC.16/01, para 99. See also paras 100-102.
\item \textsuperscript{208} Ruddle, Hviding and Johannes, above n 167, 268.
\end{itemize}
Implementing the buffer zone provisions may also be challenging. Buffer zones can be a contentious because they may intrude on property rights. The fact that the buffer zone requirements in the *Operational Guidelines* are often not enforced or unevenly enforced perhaps demonstrates a lack of consensus among States about this requirement. Compliance with the provisions can be particularly challenging if the land within the buffer zone is owned by a different customary group from the WH site, as the buffer zone owners may not accept restrictions on the use and development of their land, especially if they receive no tangible benefits from the WH listing.

As will be explored further in 5.3.2, East Rennell provides a clear example of the difficulties associated with applying these provisions to a site under customary tenure, but also the implications of non-compliance for a site’s protection. It will be argued that while the boundary and buffer zone requirements may need to be applied flexibly for sites under customary protection, those issues and their effect on WH protection should not be ignored (see also 9.2.3(B)).

**(E) World Heritage sites under customary protection: The role of the State in protecting such sites**

In 4.2.3(C), it was explained that the *Convention* gives State parties discretion to tailor their heritage protection laws to fit their circumstances. The *Operational Guidelines* do not diminish that discretion. While the *Guidelines* contain some provisions concerning the management of WH sites (see (C) above), they contain little guidance on how State parties should protect such places under law. Paragraph 98 of the *Guidelines* simply states that legislative and regulatory measures should ensure the protection of the site against pressures that might negatively impact its OUV. Thus, Pacific Island State parties have broad scope to design laws to fit their context.

From a legal point of view, the fact that a site is listed based on its customary protection does not derogate from the State party’s duty under Articles 4 and 5 to protect the site. Having ratified the *Convention*, a State party must implement the treaty in good faith.

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209 Affolder, above n 19, 356.
210 Ibid.
and it cannot justify any failure to do so on the basis of its domestic law. Consequently, a State party is still required to implement the legal measures necessary to protect its WH even if the site is listed on the basis of its customary protection. Furthermore, from a practical point of view, successful heritage protection will often require a combination of both customary and State approaches (see 2.4.2). The State party is therefore faced with the task of developing laws and other measures to comply with its Convention obligations, whilst also respecting and supporting the customary system that enabled the site to be listed in the first place.

Achieving this in practice will often be challenging. As demonstrated by this research on East Rennell, a State party may consider itself unable and/or unwilling to implement the measures that the Convention bodies consider are necessary to protect OUV because of the site’s land tenure. It is argued in this thesis that when a site is nominated pursuant to customary protection, the State’s ability and willingness to conserve the site’s OUV (including by taking steps that are not supported by all landowners) should be assessed (see 9.2.3(C)).

### 4.4 Conclusion

The Convention regime reflects the era in which the treaty was drafted. It reveals an attempt to balance respect for State sovereignty with the international community’s interest in the protection of WH. Consequently, the Convention declares that a State party has primary responsibility for heritage protection, but envisages that the international community will play a role by supporting State parties to comply with their obligations. Also reflecting the era in which it was drafted, the Convention focuses on delineating the roles of State parties and the international community in achieving heritage protection, while making no mention of the role of non-State actors operating at the local level. This reflects the traditional centralised approach to heritage protection, which was widely accepted when the Convention was adopted, but which is often inappropriate in the Pacific.

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212 Ibid art 27.
This chapter has demonstrated that over time the *Convention* regime has evolved to become a better fit for the Pacific context. Since the *Convention* was adopted, support has grown for a holistic approach to heritage protection, under which the heritage place is considered in its economic, social and environmental context, and the rights and roles of local people are respected. In response, the WH Committee has revised the *Operational Guidelines* to encourage States to approach heritage protection through the framework of sustainable development, and to involve local communities in the nomination and protection of sites. The Committee’s decision that sites under customary protection and management are eligible for WH listing was also significant for Pacific Island States.

This evolution has been possible because the *Convention* text just establishes a framework for that regime, giving the Committee and State parties significant powers and discretions to implement its provisions in accordance with contemporary views. Some challenges associated with the *Convention* text remain, including the inherent tension between national sovereignty and the international community’s interest in WH protection, and the limitations of the international assistance system. Furthermore, the provisions of the 2016 *Operational Guidelines* have their limitations. However, notwithstanding this, the dynamic nature of the *Convention* regime has allowed it to become a more useful tool for the preservation of Pacific heritage.

Ultimately however it is the Pacific Island States, not the Committee, who dictate how WH sites in the region will be protected. They must strive to develop measures that achieve an appropriate balance between heritage conservation and economic and social development. They must respect the rights of local communities whilst also ensuring the preservation of the site’s OUV, and they must identify approaches that are appropriate given their resource constraints, the nature of their heritage, their plural legal systems and the land tenure of their heritage sites. The analysis of the implementation of the *Convention* by Solomon Islands in the next part of this thesis demonstrates that these are not easy tasks.
Part 3

World Heritage Protection in Solomon Islands
Chapter 5: Solomon Islands’ World Heritage program

5.1 Introduction

Part 2 of this thesis considered World Heritage (WH) at the Pacific level. In this part, the focus narrows to Solomon Islands, with an exploration of the opportunities and challenges for WH protection in that State.

East Rennell was the first Pacific Island site to be included in the WH List, and the first natural site to be listed based on its customary protection. Its listing is therefore often described as a milestone in the development of the World Heritage Convention¹ (the Convention) regime.² Despite this, neither the site’s listing, nor Solomon Islands’ implementation of the Convention more broadly, has been comprehensively analysed. This chapter considers these issues, to determine whether they help explain any of the contemporary issues associated with the protection of East Rennell under customary and State law (which are explored in chapters 6, 7 and 8).

The chapter begins by examining the rationales behind international, national and local support for Solomon Islands’ signature of the Convention and the nomination of East Rennell (5.2). It explains that the WH Committee and the Advisory Bodies supported these events in part because of their desire to address imbalances in the WH List. However, support at the national and local level was primarily based on a belief that the listing of a WH site in Solomon Islands would enhance tourism.³ This has not eventuated, which has contributed to WH being a low priority for the Solomon Islands government (SIG) and the East Rennellese people.

The chapter then critically analyses the inscription of East Rennell on the WH List (5.3).

¹ Convention Concerning the Protection of the World Cultural and Natural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘World Heritage Convention’).
² See, eg, T Badman et al, Outstanding Universal Value: Standards for Natural World Heritage (IUCN, 2008). Badman et al state that the inscription of East Rennell set an important precedent in terms of ‘the acceptance of customary law and management as a sufficient basis for the…long term protection of natural World Heritage properties’: at 24.
It considers why East Rennell was nominated as a natural WH site, and the challenges this presents for the protection of the area. It suggests that certain aspects of the site and its protection were not sufficiently scrutinised before it was listed, and thus it is questionable whether the site met the Committee’s listing requirements. It is argued that in the future, the scope and strength of customary legal systems, and their relationship to management plans and State laws, should be assessed in more detail at the nomination stage.

The chapter ends by examining Solomon Islands’ involvement with WH since the listing of East Rennell (5.4). It explains that the outbreak of civil conflict in the country in 1998 resulted in Solomon Islands not engaging with WH for several years. Since the conflict ended, the SIG has taken some steps to implement the *Convention*, but its WH program remains limited and it has complied with few of the Committee’s resolutions concerning East Rennell. Improving the dialogue between the SIG and the Committee could help end the cycle of unfilled Committee requests.

5.2 Solomon Islands’ early involvement with the *World Heritage Convention* regime

5.2.1 Solomon Islands’ signature of the *World Heritage Convention*

Solomon Islands became involved with WH in the context of the *Global Strategy for a Representative, Balanced and Credible World Heritage List* (the ‘Global Strategy’), which was adopted by the WH Committee in 1994 (see 1.2.3). As the Pacific has always been under-represented on the WH List, the development of that strategy coincided with efforts to raise awareness about the *Convention* among Pacific Island States. For example, in 1989 the IUCN presented a paper on WH to the Fourth South Pacific Nature Conservation and Protected Areas Conference, which lead Solomon Islands to express interest in signing the *Convention*. The New Zealand government then began assisting it to become a signatory, including commissioning research to identify potential WH sites. Solomon Islands’ initial involvement with WH was therefore facilitated by international efforts to expand the *Convention’s* reach into the Pacific.

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5 McKinnon, above n 3, 1.
Studies in the early 1990s identified Marovo Lagoon and East Rennell as possible candidates for WH listing (see Figure 2). Marovo Lagoon, in the west of Solomon Islands, is one of the world’s largest coral reef lagoons, and is fringed by raised barrier reefs and high volcanic forest-covered islands. The lagoon’s impressive marine and island ecosystems lead many NGOs to run conservation projects there, some of which included advocating for WH listing. A project to prepare a WH nomination for Marovo commenced, and was initially supported by the SIG as part of its strategy to promote tourism (discussed below). However, the project was abandoned in 1994, because it was affected by ‘misinformation and political interference’, and the area had been heavily logged. In addition, the size of the resident population (approximately 8,500 people) made conducting community consultations logistically difficult. Marovo Lagoon now forms part of a site on Solomon Islands’ Tentative List, so it may be nominated in the future (see 5.4.3).

The other site identified as a potential candidate for WH listing was East Rennell. As the area had a relatively small resident population and had not been logged, key issues that plagued the Marovo Lagoon proposal did not apply there. The site’s nomination dossier was prepared by a New Zealander, following consultations with the East Rennellese people and with funding from the New Zealand government. It was submitted by the SIG to the WH Committee in 1997.

5.2.2 The nomination of East Rennell for World Heritage listing

The East Rennell WH site encompasses the southern third of the island of Rennell, including the marine area extending three nautical miles into the sea (see Figure 3). The

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6. McKinnon, above n 3; Charles d’E Darby, Rennell Island and Marovo Lagoon: A Proposal by Solomon Islands for World Heritage Site Listing as the Basis of a Sustainable Rural Development Programme (Conservation Development Services, 1989).


8. Ibid 74.


10. Wingham, above n 3, 7.

11. Ibid.


site includes Lake Tegano, which covers 18% of Rennell making it the largest lake in the Pacific Islands. The remainder of the terrestrial part of the site is predominantly dense, low stature forest that supports many unique species. The marine area includes extensive fringing coral reefs, hosting diverse invertebrate, fish and benthic marine life. The area (traditionally known as Mugaba) is owned and occupied by the people of East Rennell, whose ancestors first arrived on the island in around 1400 AD. Most live within one of the four villages on the south west side of the lake (Tebaitahe, Nuipani and Tegano and Hutuna). They live predominantly subsistence lifestyles, and continued to be governed through their customary legal system.

The IUCN and the Committee supported the inscription of East Rennell on the grounds that it had outstanding natural heritage values and it met the listing requirements in the 1997 version of the Operational Guidelines for the Implementation of the World Heritage Convention (the ‘Operational Guidelines’) which applied when the site was nominated (see 5.3). However, the site’s listing also had broader global significance. Before it was nominated, East Rennell was identified by IUCN and the United Nations Environment Program as having high conservation value. In addition, it had been identified in some IUCN studies as a site whose listing could help fill gaps in the WH List, consistent with the Global Strategy.

Indeed, when the Committee decided to inscribe the site, several State party delegates remarked on the contribution the listing would make to the implementation of that strategy.

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14 Tegano is sometimes spelled Tegano or Te Nggano.
15 See, eg, Wingham, above n 13, 10.
16 See, eg, Adoption of Retrospective Statements of Outstanding Universal Value, WHC 36th sess, UN Doc WHC-12/36.COM/8E (15 June 2012) 55 (East Rennell, Solomon Islands) (‘East Rennell Statement of OUV’). It was adopted by the WH Committee pursuant to WHC Res 36 COM 8E, WHC 36th sess, UN Doc WHC-12/36.COM/19 (June-July 2012) 225.
17 See, eg, Simon Albert et al, Survey of the Condition of the Marine Ecosystem within the East Rennell World Heritage Area, Solomon Islands (University of Queensland, Solomon Islands Marine Ecology Laboratory, Griffith University and WWF-Solomon Islands, 2013).
The rationale behind the decisions of the SIG and the East Rennellese to become involved with WH was somewhat different. In the 1980s, a Queensland-based company proposed the logging of Rennell, prompting a group of biologists from New Zealand to advocate for its conservation. Their conservation plan was prepared without consulting the Rennellese, and thus it did not initially enjoy local support. However, the plan was subsequently shared with the local people, many of whom were surprised to learn about the logging proposal and expressed an interest in conservation. When Munch-Peterson, the then head of the Tourism Council of the South Pacific, became aware of these events in 1987, he spearheaded the development of a tourism plan for Rennell. The report on this plan included a recommendation that the island be nominated for WH listing. Around this time, the SIG was increasing its efforts to establish a tourism industry in Solomon Islands, and WH was viewed as a means of achieving this. Consequently, when the Solomon Islands Parliament received the Rennell tourism report, it supported the recommendation regarding WH. The fact that the SIG chose its newly established Ministry of Tourism and Aviation to manage the nomination demonstrates a strong economic rationale behind its decision to support the listing.

The SIG’s perception of WH as a mechanism for enhancing economic development was shared by the East Rennellese people. In conjunction with the preparation of the nomination dossier, the New Zealand government supported the development of ecotourism in the area by assisting with the construction of guesthouses, supplying canoes, and establishing some small businesses including bee keeping, a bakery and a poultry farm. The nomination dossier states:

> It should be noted that the small business component of the [WH] project is the area that is of the most interest to local people. Some people are interested in looking after the environment but they all require a means to make money.

Thus, the ecotourism initiatives are likely to have contributed to the high level of local support for the nomination of East Rennell (estimated at 80% of the adult population).

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24 Ibid.
25 Ibid.
26 Ibid.
27 Ibid 173.
28 McKinnon, above n 3, 35-36.
29 Munch-Peterson, above n 23, 173.
31 Wingham, above n 3, 17.
32 Wingham, above n 13, 39.
There were therefore different rationales behind the international, national and local support for the site’s listing. This variation is not surprising. The WH Committee and the IUCN are charged with implementing aspects of the *Convention*, so were justifiably focused on the site’s global significance and the impact its listing would have on the composition and credibility of the WH List. The priorities of the SIG and the East Rennellese people are understandably more localised and, given that the country is a Least Developed Country, often centred on economic and social development. The variation is also not unique to Solomon Islands, as many States seek WH listing principally for its economic benefits. Such a variation can however manifest itself in the *Convention* bodies (i.e. the Committee and the Advisory Bodies), the State party and local people having starkly different priorities concerning the site.

The effective management and protection of WH sites does not always require the complete alignment of international, national and local perceptions of WH. For example, Trau (who has worked at and researched the Chief Roi Mata’s Domain WH site in Vanuatu) writes about the ‘glocalisation’ of the concept of WH at that site. Like the East Rennellese, the Lelema people (the customary owners of Chief Roi Mata’s Domain) consider income generation for education, health and transport as the overwhelming priority. However, unlike at East Rennell, WH is becoming increasingly understood and valued at the Vanuatu WH site. This is occurring not because the Lelema communities have ‘absorbed the global doctrine’ of WH, but because they are adapting and applying global and local principles of development and conservation to meet their own knowledge and aspirations. This local adaptation of the concept of WH has become integral to the ongoing management and protection of the site by the Vanuatu government and the Lelema people.

This ‘glocalisation’ process has not occurred in Solomon Islands, at least partly because neither the SIG nor the East Rennellese people have enjoyed economic benefits from WH.

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36 Other reasons for the relative success of the Chief Roi Mata’s Domain site include the accessibility of the site from Port Vila (which has facilitated tourism) and the level of government support. See generally Trau, *World Heritage at Chief Roi Mata’s Domain*, above n 34; Meredith Wilson, Chris Ballard, Richard Matanik and Topie Warry, ‘Community as the First C: Conservation and Development through Tourism at Chief Roi Mata’s Domain, Vanuatu’ in Anita Smith (ed), *World Heritage in a Sea of Islands: Pacific 2009 Programme*, World Heritage Papers 34 (UNESCO, 2012) 68.
Consequently, as will be discussed further in this and following chapters, WH remains a low priority for the government and a source of misunderstanding and disenchantment among the East Rennellese people. In this context, conserving the OUV of East Rennell to the standard required by the Committee is a challenge.

5.3 The inscription of East Rennell on the World Heritage List

The Committee inscribed East Rennell on the WH List at its 22nd session in 1998, in accordance with a recommendation from the IUCN.\textsuperscript{37} This section analyses IUCN’s evaluation of the nomination dossier\textsuperscript{38} and the Committee’s decision to inscribe the site, with reference to the requirements for WH listing in the 1997 version of the \textit{Operational Guidelines}.\textsuperscript{39} The analysis suggests that certain aspects of the site and its protection do not appear to have been thoroughly scrutinised before the site was listed. Links can be drawn between the identified issues and current challenges associated with protecting the site.

5.3.1 The natural and cultural values of East Rennell

Rennell is an illustration of the theory of island biogeography.\textsuperscript{40} In simple terms, this widely-accepted theory posits that the number of species on an island is linked to its size and its distance from the mainland (the source of species).\textsuperscript{41} Evidence of the theory can be seen in the western Pacific, where as one moves eastward, the islands become smaller and more isolated, and biodiversity decreases.\textsuperscript{42} With a length of 87km and an average width of 10km, Rennell is the largest outlying island in the Solomon Island group. The isolation of the island made inhabitation by new species rare, but when species did reach Rennell they often adapted to their new environment by evolving to form new species.\textsuperscript{43}

\textsuperscript{37} WHC Res CONF 203 VIII.A.1, WHC 22nd sess, UN Doc WHC-98/CONF/203/18 (29 January 1999) 25.
\textsuperscript{38} IUCN, Evaluations of Nominations of Natural and Mixed Properties to the World Heritage List, WHC 22nd sess (1998) 79 (‘IUCN Evaluation of East Rennell Nomination’).
\textsuperscript{39} UNESCO, \textit{Operational Guidelines for the Implementation of the World Heritage Convention}, UN Doc WHC 97/2 (February 1997) (‘Operational Guidelines 1997’). The requirements for WH listing are analysed in 3.3 and 4.3.3.
\textsuperscript{40} See, eg, Wingham, above n 13, 35.
\textsuperscript{41} Robert J MacArthur and Edward O Wilson, ‘An Equilibrium Theory of Insular Zoogeography’ (1963) 17 \textit{Evolution} 373. Other factors also affect the biological diversity of islands, such as the island’s age, its isolation and its environmental heterogeneity. See, eg, Kostas A Triantis et al, ‘Measurements of Area and the (Island) Species-Area Relationship: New Directions for an Old Pattern’ (2008) 117 \textit{Oikos} 1555.
\textsuperscript{43} See, eg, Wingham, above n 13, 35.
Because of this process and the fact that there are few natural predators on Rennell,\(^\text{44}\) many endemic species can now be found there, including plants, birds, bats, land snails, and a sea snake.\(^\text{45}\) Rennell is particularly renowned for its unique avifauna (bird life).\(^\text{46}\)

East Rennell was nominated on the basis that it met several of the natural criteria prescribed in the 1997 *Operational Guidelines*.\(^\text{47}\) However, IUCN and the Committee found that it met just one, namely the criterion in paragraph 44(a)(ii).\(^\text{48}\) That criterion covers sites that demonstrate:

significant on-going ecological and biological processes in the evolution and development of terrestrial, freshwater, coastal and marine ecosystems and communities of plants and animals.

East Rennell was found to meet this provision because it is a ‘stepping-stone in the migration and evolution of species in the western Pacific’\(^\text{49}\) and thus, as explained above, significant speciation processes occur there.

No documents explaining why East Rennell was nominated based on natural criteria only have been identified by the author. This decision may have been made because those involved with preparing the nomination dossier considered that the site did not meet any cultural criteria. The existence of a substantial body of research concerning the environment of Rennell may also have contributed to the decision. Anita Smith has noted that the first WH sites nominated by Marshall Islands, Papua New Guinea and Fiji were well-researched before they were considered for WH listing, which enabled nomination dossiers to be developed with few resources and within a relatively short timeframe.\(^\text{50}\)

From the 1920s, Rennell was visited by several scientific missions,\(^\text{51}\) and was the subject


\(^{45}\) See, eg, Wingham, above n 13, 14-22.


\(^{47}\) Wingham, above n 13, 34-37.

\(^{48}\) This is now para 77(ix) in the current (2016) version of the *Operational Guidelines*. See UNESCO, *Operational Guidelines for the Implementation of the World Heritage Convention*, UN Doc WHC.16/01 (26 October 2016) para 77(ix) (‘Operational Guidelines 2016’).

\(^{49}\) IUCN Evaluation of East Rennell Nomination 82; WHC Res CONF 203 VIII.A.1, WHC 22nd sess, UN Doc WHC-98/CONF/203/18 (29 January 1999) 25, 25.


of subsequent research exploring its flora and fauna. This work would have helped those preparing the nomination dossier to demonstrate that the site warranted listing as a natural WH site. The 1997 Operational Guidelines also presented a barrier to East Rennell’s nomination as a cultural site. They stated that cultural sites could only be nominated if they were first included in the State party’s Tentative List. As Solomon Islands did not have a Tentative List at that time, the nomination of East Rennell as a cultural site would have been inconsistent with that requirement. The Operational Guidelines did not however prevent the site’s nomination as a mixed site, and indeed when the Bureau of the Committee reviewed the nomination dossier it recommended that the SIG assess whether this was feasible. The government indicated it would consider this, but ultimately East Rennell was nominated as a natural site.

The international significance of East Rennell is evident from the site’s Statement of OUV, (adopted by the WH Committee in 2012), which is intended to provide the basis for the property’s protection and management. It notes that the island hosts several unique species, and describes it a ‘true natural laboratory for scientific study’. In accordance with this Statement, the Committee’s focus is on ensuring that the threats to the area’s marine and terrestrial ecosystems (such as logging, mining and over-harvesting) are addressed. While the Statement of OUV acknowledges that the East Rennellese people own and occupy the site, it does not refer to their cultural heritage, despite the cultural significance of the natural environment to local people.

In contrast to the Committee’s position, the East Rennellese are most concerned about the preservation of their cultural identity, as expressed through their land tenure system, environmental knowledge, traditional resource use, crafts, songs and dance. They are

56 *Information on Tentative Lists and Examination of Nominations of Cultural and Natural Properties to the List of World Heritage in Danger and the World Heritage List*, WHC 22nd sess, UN Doc WHC-98/CONF.203/10Rev (29 November 1998) 3.
59 *Operational Guidelines 2016*, UN Doc WHC.16/01, para 154.
60 *East Rennell Statement of OUV*, UN Doc WHC-12/36.COM/8/E, 55.
61 Smith, above n 54, 605.
confused about how their land could be inscribed on the WH List ‘without them’, which has fuelled misunderstanding of and disenchantment with WH. This is contributing to WH not being highly valued at the local level, creating challenges for its protection (see 6.3.3 for further discussion).

Some East Rennellese have expressed interest in the WH listing being expanded to encompass their cultural heritage values. This would require the preparation and submission of a new nomination dossier that establishes that the site meets one or more cultural criteria. There is precedent for this. Both Uluru-Kata Tjuta National Park in Australia and the Tongariro National Park in New Zealand were initially listed as natural WH sites and subsequently re-listed as cultural landscapes. However, East Rennell is unlikely to be re-nominated in the short term, given it would require substantial resources and WH is not a national priority in Solomon Islands. In any event, no study has been conducted to demonstrate that East Rennell would qualify for listing as a cultural landscape or mixed site. As such, for the foreseeable future, the disparity between the global and local significance of East Rennell is likely to remain. Efforts to protect the site must recognise this, and try to accommodate both global and local values and objectives (see 9.2.1).

5.3.2 The boundaries of the World Heritage Site: Linkages between East and West Rennell

The provisions in the 1997 Operational Guidelines concerning site boundaries and buffer zones were similar to those in the current (2016) version of the document (which were explained in 4.4.3(D)). In 1997, a site had to meet the ‘conditions of integrity’, which varied depending on the OUV criterion upon which the site was nominated. As East Rennell was nominated based on the criterion in paragraph 44(a)(ii), to meet the conditions of integrity it had to be of ‘sufficient size to demonstrate the key aspects of processes that are essential for the long-term conservation of the ecosystems and the biological diversity they contain.’ The 1997 Operational Guidelines also stated that a

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62 Ibid 597.
64 Operational Guidelines 2016, UN Doc WHC.16/01.
65 Operational Guidelines 1997, UN Doc WHC 97/2, para 44.
66 Ibid para 44(b)(ii).
site’s boundaries should reflect the ‘spatial requirements of habitats, species, processes or phenomena’ that provide the basis for its nomination. In addition, if necessary for the proper conservation of the property, a buffer zone around the property should be established.

The western boundary of the East Rennell WH site is the border between provincial wards two and three on Rennell island. No buffer zone around the site exists. Notwithstanding this, the nomination dossier contended that the boundaries were sufficient on the grounds that the site contained the habitats required to maintain its flora and fauna, and there were no large-scale development plans for the island. IUCN recommended that the site be listed, despite several of its reviewers noting that the area was too small to ensure the long-term survival of endemic birds. In support of its recommendation, IUCN stated that the major feature of the site (Lake Tegano) is in East Rennell, and in any event the nomination of the entire island was not feasible (because the listing of West Rennell was not supported by that area’s landowners). The record of the Committee’s decision to list the site does not detail any discussion about boundaries, so it is unclear whether the Committee considered that the requirements were met or should be waived.

Several recent reports confirm that East Rennell is too small to ensure the long-term conservation of its OUV. For example, an assessment of the state of conservation of the WH site stated that activities such as logging and mining in West Rennell could affect the site’s OUV through habitat fragmentation, the introduction of invasive species, impacts on groundwater hydrology, and a decrease in the ecological resilience of the island to tropical cyclones. In accordance with these findings, IUCN now recognises that integrated management of the entire island is required to protect the site’s WH values. Therefore, the statement in the nomination dossier that East Rennell contains all of the habitats required to maintain its biodiversity is no longer accepted.

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67 Ibid para 44(b)(vi).
68 Ibid para 17.
69 Wingham, above n 13, 38.
70 Ibid.
71 IUCN Evaluation of East Rennell Nomination 81.
72 Ibid.
As will be explained in later chapters, many of the threats to the WH site arise from activities in West Rennell, which the East Rennellese people have little control over and which the SIG only loosely regulates, in part because of its reverence for the rights of the West Rennellese landowners. The fact that the protection of East Rennell requires the regulation of activities in West Rennell can be related back to the Committee’s decision to list the site notwithstanding its non-compliance with the boundary and buffer zone provisions. As previously noted, these provisions can be difficult to comply with, particularly for a site under customary tenure (see 4.3.3(D)). Consequently, in some circumstances it may be appropriate for them to be applied flexibly, to accommodate the listing of such sites. However, those issues and their implications cannot be ignored. When a site is nominated, the proposed boundaries should be scrutinised, not only in terms of their compliance with the Operational Guidelines, but also to identify any challenges they present for the site’s long-term protection.

5.3.3 The protection and management of East Rennell under customary and State law

The Committee has amended the management and protection requirements for WH listing in the Operational Guidelines several times (see 4.3.3). In 1997, the Operational Guidelines stated that a nominated natural site should have legislative, regulatory or institutional protection. In 1998, at the same meeting at which East Rennell was inscribed on the WH List, the Committee amended the Operational Guidelines to state that natural sites under ‘traditional’ protection could qualify for WH listing. As explained below, this change facilitated the listing of East Rennell, which was nominated on the basis that it was protected under customary law (see (A)). It was anticipated that this protection would be strengthened through the development of a management plan (see (B)) and legislation (see (C)). It appears however that the site was inscribed without a clear understanding of how this regime would protect the site’s OUV.

75 Operational Guidelines 1997, UN Doc WHC 97/2, para 44(b)(vi).
76 WHC Res CONF 203 XIV.3, WHC 22nd sess, UN Doc WHC-98/CONF.203/18 (29 January 1999) 56.
77 Wingham, above n 13, 38, 45.
78 Ibid.
(A) Customary protection and management

East Rennell’s nomination dossier contains little information concerning the site’s customary protection. It states that the use and management of flora and fauna is regulated through the customary land tenure system and land use practices of the East Rennellese.\(^79\) These practices include seasonal bans on hunting and fishing, tambus (prohibitions) on the killing and eating of particular species, and the exclusion of outsiders from communal territory.\(^80\) The dossier contends that these practices were developed to ensure ‘sustainable and continued use of natural resources into the future’.\(^81\) It also notes that all major land use decisions are made by the area’s chiefs, who make up the Council of Chiefs, which is headed by a Paramount Chief.\(^82\) However, the dossier does not document the land tenure system or provide details of traditional practices, such as which species they relate to or the extent to which they are complied with. It also provides no basis for the assertion that customary practices are conducive to the conservation of natural resources. Furthermore, it does not comment on the strength of customary governance, including the chiefs’ ability to ensure compliance with traditional practices. As such, the dossier contains little information upon which the IUCN and the Committee could assess the scope and strength of the site’s customary protection.

While IUCN recommended that East Rennell be listed, it also expressed concern about the dossier’s lack of detail. It noted that customary ownership can provide effective protection, but this presumes that customary practices are favourable to conservation and that ‘traditional ownership powers and community support are not being eroded’.\(^83\) This is an assumption that should not be made in the Pacific. As explained in 2.4.2, customary practices in some places were developed to ensure the sustainable use of resources, but the motivation behind other practices included the allocation of resources, and customary and religious beliefs. Furthermore, some customary systems have been significantly influenced by outside contact with the islanders, limiting their ability to contribute to WH protection.

\(^{79}\) Ibid 45.
\(^{80}\) Ibid.
\(^{81}\) Ibid.
\(^{82}\) Ibid 5.
\(^{83}\) IUCN Evaluation of East Rennell Nomination 81.
The record of the Committee’s decision to inscribe East Rennell notes that Committee members viewed the nomination as ‘breaking new ground’, and after a ‘considerable debate’ on customary protection they agreed to support it. The document does not specify the substance of this debate. However, given the lack of detail in the nomination dossier, it is unlikely that the Committee had sufficient information to discuss the specifics of East Rennell’s customary protection. The only recorded dissent to the Committee’s decision came from the delegate from Thailand, who noted that customary tenure does not guarantee effective protection. The Thai delegate also opposed the listing on the basis that it did not comply with the requirements in the 1997 *Operational Guidelines*. This dissent was technically valid because the Committee’s decision to amend the *Operational Guidelines* to allow for the listing of natural sites under customary protection was made after its decision to list East Rennell, albeit at the same meeting.

(B) Management plan

The 1997 *Operational Guidelines* said that sites nominated for WH listing should have a management plan, but if they did not the State party should indicate when a plan would be prepared and how it would be resourced. While East Rennell had no management plan when it was nominated, the dossier stated that a plan based on customary practices would be prepared. It contended that the plan would have the status of customary law when approved by the Council of Chiefs, so it would strengthen customary protection.

In its review of the dossier, IUCN commented that in the absence of any document detailing objectives and management prescriptions for the site, it was impossible to confirm how customary practices would provide any protection. Presumably in response to that comment, a document entitled ‘Resource Management Objectives and Guidelines’ was attached as supplementary information to the dossier. While the document set out broad resource management guidelines, it did not contain any new information about customary protection, instead highlighting that further research on

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84 WHC Res CONF 203 VIII.1, WHC 22nd sess, UN Doc WHC-98/CONF/203/18 (29 January 1999) 25, 26.
85 Ibid.
86 WHC Res CONF 203 XIV.3, WHC 22nd sess, UN Doc WHC-98/CONF.203/18 (29 January 1999) 56.
87 *Operational Guidelines 1997*, UN Doc WHC 97/2, para 44(b)(v).
88 Wingham, above n 13, 38.
89 Ibid.
90 Ibid.
traditional practices was required. IUCN commented that while the document was a good beginning for a management regime, it was unclear whether the East Rennellese would support it. Despite these reservations, both IUCN and the WH Committee were satisfied that the dossier met the requirements in the 1997 Operational Guidelines. It therefore appears that the site was listed without a clear understanding of when a management plan would be prepared, how it would be resourced, and importantly how it would relate to and strengthen customary protection.

(C) Heritage protection legislation

The nomination dossier stated that the SIG would enact a World Heritage Cultural and Natural Sites Act, but it did not specify what form this legislation would take or how it would interact with customary law. A World Heritage Properties Conservation Bill was prepared. However, by the time IUCN finalised its review of the nomination dossier, it had received advice that the SIG was not pursuing this legislation. IUCN expressed concern about this, noting that protection legislation would reinforce customary rights and ensure some legal commitment to WH at the national level. It also recognised that implementing the law would be challenging, stating that the land tenure of Rennell ‘makes it difficult (but not impossible) for national government legislation to be effective in terms of management.’ This reflects the following comment made by a representative of the SIG to the WH Centre:

> It should be emphasized that the proposed East Rennell World Heritage site is in customary land ownership and the long term wise management of the site will depend on the commitment made by the local people.

The Committee accepted that East Rennell could be listed notwithstanding the lack of WH protection legislation, however it recommended that such a law be developed. As demonstrated in chapters 6 - 8, the SIG never passed the World Heritage Properties...
Conservation Bill, and East Rennell is still only weakly protected under State law. Furthermore, complex issues concerning the relationship between heritage protection legislation and customary law remain to be addressed.

The analysis in this section has shown that East Rennell was listed without a thorough understanding of the site’s protection regime. This may be because prior to its nomination, the only sites inscribed on the WH List based on customary protection were ‘cultural landscapes’, which had different heritage values and management requirements. Consequently, there were no analogous precedents against which the East Rennell nomination could be compared. In addition, the Convention bodies may have been tempted to support the site’s listing because of their desire to improve Pacific representation on the WH List, in accordance with the Global Strategy, which the Committee had then recently adopted.

Whatever the reason, it would have been beneficial for a more comprehensive assessment of the site’s protection to have been conducted at the time of nomination. In the future, such an assessment should consider the scope of customary laws, the strength of customary governance, and if and how customary protection can be supplemented by a management plan and/or legislation. Greater understanding of these issues at the nomination stage could have two key benefits. Firstly, it could temper the expectations of the Convention bodies concerning the level of protection that the site will enjoy. As demonstrated in subsequent chapters, customary tenure presents unique challenges for WH protection not experienced at sites under State ownership and control. The Convention bodies’ enthusiasm to support customary protection should not translate into an assumption that customary landowners or the relevant State parties are willing and able to protect WH to the same standard as State-owned or controlled sites. A thorough assessment of the site’s protection regime at the nomination stage may assist all stakeholders to agree upon feasible and appropriate conservation objectives. Secondly, it might help the State parties and the Convention bodies to anticipate and address challenges concerning the site’s protection.

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101 Tongariro National Park (New Zealand), Uluru-Kata Tjuta National Park (Australia) and the Rice Terraces of the Philippine Cordilleras (The Philippines).

102 Smith, above n 54, 600.
5.4 Solomon Islands’ implementation of the World Heritage Convention after the inscription of East Rennell

5.4.1 Solomon Islands’ implementation of the World Heritage Convention

Soon after East Rennell was listed, civil conflict (commonly referred to as ‘the tensions’) commenced in Solomon Islands.103 Beginning in late 1998, regular skirmishes between armed militia from Guadalcanal and Malaita occurred in and around Honiara.104 The fighting escalated in 2000, when militants from Malaita seized control of Honiara and the Prime Minister was forced to resign.105 Despite attempts by Australia and New Zealand to broker peace talks, the conflict continued, and Solomon Islands’ central and provincial governments effectively ceased to function. The tensions caused the country’s Gross Domestic Product to fall by 24%, and by 2002 the government was insolvent.106

The violence caused by the tensions mainly occurred on Guadalcanal and Malaita, allowing people on other islands (including Rennell) to continue to live subsistence lifestyles,107 pursuant to their customary legal systems.108 However, as the SIG was dysfunctional during this period, it was not involved with any WH activities and it had little communication with the Committee or the East Rennellese people.109 The outbreak of the tensions also led to the cancellation of the New Zealand’s WH program in Solomon Islands, and a Japanese funded project to assess Rennell’s cultural values.110 There was also little activity concerning East Rennell at the international level, with the Committee making no resolutions relating to the site until 2003.
By mid-2003, Australia saw the situation in Solomon Islands as a threat to Australian and regional security, and the Regional Assistance Mission to the Solomon Islands (RAMSI) was formed to restore law and order. Although RAMSI successfully quelled the fighting, State-building in the post-tensions era has been difficult, and the country continues to face significant political, economic and social issues (see 2.4.1). This helps explain why although the SIG has taken some steps to re-engage with the Convention regime, its involvement remains limited.

In 2003, the SIG established the Solomon Islands National Commission, to manage its programs associated with the United Nations Educational, Scientific and Cultural Organisation (UNESCO) including WH. The National Commission later set up a sub-committee to co-ordinate the SIG’s WH activities. However, inquiries the author made to the SIG in January 2017 suggest that the sub-committee has been inactive for several years. It is expected to begin functioning again in March 2017 when new sub-committee members are appointed.

For several years there was confusion about which Ministry within SIG was responsible for WH matters. The situation improved in 2011, when the government formally confirmed that responsibility was shared between the Ministry of Culture and Tourism, and the Ministry of Environment, Climate Change, Disaster Management and Meteorology. To date, the Ministry of Environment has assumed primary responsibility for East Rennell, because it is a natural WH site. Ministry of Environment staff have been involved with some missions to East Rennell and stakeholder workshops. However, they have had little involvement with the on-the-ground management and protection of the site. This reflects the fact that WH remains a low priority for the SIG.

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111 See, eg, Dinnen, ‘State-Building in a Post-Colonial Society’, above n 103, 63.
112 Interview with an officer in the Ministry of Education, who was formerly the focal point for World Heritage within the Solomon Islands National Commission for UNESCO (Honiara, 28 July 2013).
113 Interview with an officer in the Ministry of Education, who was formerly the focal point for World Heritage within the Solomon Islands National Commission for UNESCO (Honiara, 28 July 2013); Solomon Islands Government, State Party Report on the State of Conservation of the East Rennell World Heritage Area (Solomon Islands) (SIG, 2012) 3.
114 Tabbasum and Dingwall, above n 109, 4; Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013).
115 Letter from Aseri Yalangono, Deputy Secretary General of National Commission for UNESCO Solomon Islands to the Director of the UNESCO World Heritage Centre (31 August 2011) 1.
116 For example, staff from the Solomon Islands Ministry of Environment and the United Nations Development Programme conducted a field mission to East Rennell in 2012.
117 For example, the Ministry of Environment hosted stakeholder meetings (which the author was involved with) concerning the site in August and December 2012.
The government has not yet developed any policies or strategic documents specifically concerning its implementation of the *Convention*.\(^{119}\) The development of a national WH policy could be beneficial as it may raise the profile of the *Convention* within the government and clarify the roles of the Ministries and other stakeholders in its implementation. However, it is notable that some existing policies already contain provisions relating to WH conservation. For example, while the *Nasinol Policy Framework Blong Kalsa 2012* (the *National Cultural Policy Framework*) does not refer to WH, it includes policy goals regarding the protection of cultural and historical landscapes.\(^{120}\) Most relevantly for East Rennell, the SIG recently adopted the *National Biodiversity Strategic Action Plan 2016 – 2020*,\(^{121}\) which appears to be the first national strategy to refer to the *Convention*. While this Action Plan was adopted by the government primarily to comply with its obligations under the *Convention on Biological Diversity*,\(^{122}\) it recognises the synergies between biodiversity and heritage protection.\(^{123}\) Thus, one of the many actions specified in the Action Plan to achieve biodiversity conservation is the development of a new and effective management plan for East Rennell by 2017.\(^{124}\) The previous (2009) version of the *National Biodiversity Strategic Action Plan*\(^{125}\) did not refer to the *Convention*. The incorporation of references to WH in the 2016 Action Plan could therefore indicate that the SIG’s commitment to WH conservation is increasing. However, given that East Rennell does not yet have a new management plan (see 6.4), it remains to be seen whether the adoption of the 2016 Action Plan will lead to improved protection of the site.

The SIG has also not enacted a *World Heritage Protection Act*. It does however have some legislation that could contribute to the conservation of the site. This legislation is referred to in 6.5.1, and analysed in chapters 7 and 8.

\(^{119}\) Cf Fiji, which has developed a World Heritage Policy. See Republic of Fiji, *World Heritage Policy of Fiji: Heritage Area Conservation for Sustainable Development* (http://www.culture.gov.fj/wp-content/uploads/2013/08/21.pdf). Among other things, the policy sets out the role of the Fijian Government in implementing the WH Convention (para 4.0) and specific policy measures designed to ensure that the State party complies with its Convention obligations ( paras 6.0-11.0).

\(^{120}\) Secretariat of the Pacific Community and the Division of Culture (Solomon Islands Ministry of Culture and Tourism), *Solomon Islands Nasinol Policy Framework Blong Kalsa 2012* (2012) 15


\(^{122}\) Ibid ii; *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) (‘Conventional on Biological Diversity’).


\(^{124}\) Ibid 101.

5.4.2 Solomon Islands’ engagement with the World Heritage Convention bodies

State parties have a duty to report to the WH Committee on their implementation of the Convention. The Committee has repeatedly requested that Solomon Islands submit reports but few such requests have been complied with. The SIG’s failure to comply is understandable, given the limited funds and personnel it has to dedicate to WH matters. As a conservation officer within the Ministry for Environment stated during the consultation process, Solomon Islands is ‘flooded with international obligations’, so the Convention is but one of the many treaties that Ministry staff must administer. It is also understandable that Solomon Islands is not always represented at WH Committee annual meetings. As noted in the Pacific World Heritage Action Plan 2016, the isolation and resource constraints of Pacific Island States impede their ability to participate in global forums.

A consequence of this is that the Committee often does not have information about Solomon Islands’ perspective when making its decisions. This is likely to be contributing to the wide gap that exists between the actions that the Committee is seeking from Solomon Islands, and those that the State party is willing and able to undertake (see 6.2).

An example of how input from a State party can influence the Committee’s decision-making is the resolution made by the Committee concerning East Rennell at its 37th session in 2013. The draft decision being considered at that meeting called upon Solomon Islands to ban all logging on Rennell island. In her submission to the Committee, the delegate from Solomon Islands sought the deletion of that request because (at that time)
no study had confirmed that logging in West Rennell would affect the WH site. The delegate suggested that the Committee instead call for an assessment of the impacts of logging in West Rennell. The Committee accepted this amendment and the draft decision was amended accordingly. It may not have made this change if the delegate had not been at the Committee meeting to argue Solomon Islands’ position.

The principle of international cooperation underpins the Convention regime (see 4.2.1). However, the extent to which a State party and others work cooperatively will be influenced by whether they share a common vision for how a site is to be protected. As the analysis in the remainder of this thesis will demonstrate, at present there is significant variation between the actions that the Convention bodies consider are necessary to protect the OUV of East Rennell, and the SIG’s approach to WH conservation. It is argued that if cooperation between the State party and the Convention bodies is to improve, the chasm between their respective positions must be narrowed. Increasing the dialogue between the SIG and the Committee could assist with this. This would require Solomon Islands to make WH a greater priority, but other stakeholders could assist by encouraging and supporting the State party to submit reports, and investigating ways for it to participate in Convention meetings, even if it is not able to send a representative. The Committee could also assist by ensuring that its resolutions concerning East Rennell fully reflect the modern approach to WH protection, and are appropriate for the Solomon Islands context (see 9.2.4 and 9.3.1).

5.4.3 Future World Heritage Sites in Solomon Islands?

Solomon Islands’ Tentative List was submitted to the Committee in 2008 and includes two sites. The first is the ‘Marovo-Tetepare Complex’, a mixed site encompassing large marine areas and several islands in the west of the country. It includes Marovo Lagoon, which was considered for WH nomination shortly after Solomon Islands signed the Convention (see 5.2.1). That site is said to have OUV because of its outstanding marine and terrestrial environments, which are connected to the cultural identity and spiritual lives of the local peoples. The other site on the Tentative List is referred to as ‘Tropical

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134 WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68.
136 Ibid.
Rainforest Heritage of Solomon Islands’, and comprises rainforest areas in Makira-Ulawa, Choiseul, Western and Central provinces. It has been included in the Tentative List based on its outstanding natural environment, in particular because of the many unique bird species found there.\(^{137}\)

The difficulties SIG is experiencing in relation to East Rennell are likely to dissuade the government from nominating these sites, at least in the short term. However, even if they are not listed, this research has some relevance to those sites. Like East Rennell, they have been identified as potential candidates for WH listing on the basis of natural WH criteria only.\(^{138}\) In addition, their proposed protection regimes involve customary systems supplemented by other initiatives, including management plans and legally-recognised protected areas.\(^{139}\) Therefore, many of the issues identified in chapters 6 – 8 will apply to those sites, regardless of whether they are inscribed on the WH List.

### 5.5 Conclusion

The listing of East Rennell was a milestone in the development of the *Convention* regime, in terms of the recognition of Pacific heritage and customary protection of WH sites. However, as this chapter has demonstrated, the listing process raises issues which could serve as lessons for other places.

Firstly, there is a wide gap between the site’s WH values and its significance to the East Rennellese people. Within the *Convention* regime, East Rennell is recognised purely because of the rich biodiversity and endemic species it hosts, despite its cultural significance to the local people. The East Rennellese are confused as to how their land could be listed ‘without them’,\(^{140}\) and are disappointed that the listing has not generated substantial economic benefits. The variation between the global and local value of the site fuels the local population’s disenchantment with WH, which in turns limits the SIG’s willingness to implement conservation measures. This presents a challenge for the site’s protection under both customary and State law. Measures to protect the site’s OUV must, to the extent possible, be aligned with local priorities and aspirations.


\(^{138}\) This is potentially because no representative of ICOMOS was involved with the preparation of Solomon Islands’ Tentative List.

\(^{139}\) Ibid; UNESCO, above n 135.

\(^{140}\) Smith, above n 54, 597.
Secondly, East Rennell did not strictly meet the boundary requirements for WH listing, because of the linkages between the forests across the island. In addition, before the Committee inscribed the site there was little assessment of how customary ownership would protect the site’s OUV, or how the management plan and State legislation would interact with customary laws. While it is not suggested here that East Rennell should not have been listed, in future more attention should be paid to these issues at the nomination stage. This could help all stakeholders to agree on feasible and appropriate conservation objectives, and to anticipate and address issues that arise.

Finally, East Rennell was listed before Solomon Islands had developed the administrative structures and legal instruments required to implement the Convention. The SIG must now try to ‘catch up’ by developing measures that ideally should have been in place before the site was listed. This is difficult, in part because the government has limited resources to dedicate to the task. Consequently, as will be demonstrated in the remainder of this thesis, almost 20 years after East Rennell was listed Solomon Islands still does not have a strong legal framework for the site’s conservation. The SIG also has few resources to dedicate to State party reporting and attending WH Committee meetings, which is limiting its engagement with the Convention regime. While this is understandable, it is contributing to the wide variation between the actions that the Convention bodies are calling for and those being undertaken by the SIG. Improving the dialogue between the government and the Committee could help bridge this gap.

The next three chapters analyse the protection of East Rennell under law. That analysis begins with an examination of the threats to the site’s OUV and the scope for them to be addressed through customary and State legal systems.

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Chapter 6: The protection of East Rennell under customary and State legal systems

6.1 Introduction

It is now widely recognised that both customary and State legal systems can contribute to the protection of World Heritage (WH) in a legally plural country. However, there has been little analysis of these systems and their interactions in relation to the implementation of the World Heritage Convention¹ (the Convention) by Solomon Islands.² This chapter explores the scope for customary and State legal systems to address the threats to the WH values of East Rennell, and identifies issues that influence and restrict that potential.

The chapter begins with an examination of the state of conservation of East Rennell and the threats that led to its inclusion in the List of WH in Danger (6.2). As East Rennell is a natural WH site, and is unlikely to be re-nominated as a cultural or mixed site in the foreseeable future, this analysis is restricted to conservation of the area’s natural environment.³ It demonstrates that the source and nature of the threats vary, so a range of measures will be required to address them.

The site’s protection under customary law is then assessed (6.3), based on existing literature supplemented by the author’s observations gained through working at the site. The analysis considers the scope of customary laws relevant to WH protection (6.3.1) and the strength of customary governance (6.3.2). Broader issues influencing the operation of the customary legal system, including the priorities and aspirations of the East Rennellese people, are also explained (6.3.3). It will be shown that while the customary system regulates rights to land and resources in East Rennell, it is incapable of dealing with many threats to the site’s OUV, so additional management measures are required.

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¹ Convention Concerning the Protection of the World Cultural and Natural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘World Heritage Convention’).
² See the literature review at 1.5.
³ This scoping issue was explained in 1.3.2.
This chapter continues with a critical analysis of the current management plan for East Rennell\(^4\) (6.4). It is argued that vesting responsibility for implementation of the plan with the East Rennellese people has allowed them to retain substantial control over their land and resources. However, the lack of any legal basis for the plan under custom or State law makes implementation entirely voluntary. To date, few management measures have been executed, in part because the East Rennellese people have little interest in the plan, and have been given limited financial and technical support.

The chapter ends with an overview of State legal protection of East Rennell (6.5). It identifies several existing Acts that could be utilised to help address the threats to the site, as well as some significant gaps in Solomon Islands’ legislative framework (6.5.1). It then explores the Solomon Island government’s (SIG’s) approach to WH conservation (6.5.2). Based on empirical research, it demonstrates that people working for the SIG consider that the government’s role is to support the East Rennellese people to protect the site, rather than to restrict their use and development of the area. This perception limits the SIG’s willingness to comply with the Committee’s requests concerning the site. It is argued that future Committee resolutions that do not acknowledge that perception are unlikely to be complied with.

### 6.2 The threats to the World Heritage values of East Rennell

For several years after East Rennell was listed, the International Union for the Conservation of Nature (IUCN) and the Committee considered that the site was subject to few direct threats and its heritage values were relatively intact.\(^5\) However, over time the threats to the site increased, prompting IUCN to conduct a reactive mission to the area in 2012.\(^6\) IUCN then contended that the threats were sufficiently serious as to warrant the site’s inclusion in the List of WH in Danger,\(^7\) leading the Committee to inscribe the site on that list in 2013.\(^8\) IUCN now ranks the site’s status as ‘critical’,\(^9\) and contends that the

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\(^7\) Tabbasum and Dingwall, above n 5, 5, 30.

\(^8\) WHC Res 37 COM 7B.14, WHC 37\(^{th}\) sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68.

conditions required for East Rennell to qualify for WH listing may no longer be in place.\textsuperscript{10}

Recent studies have concluded that the heritage values of East Rennell remain relatively intact, calling into question IUCN’s dire assessment of the site’s state of conservation. In 2013, Albert et al found that the island’s marine ecosystems are in good condition by global and regional standards, and support high fish abundance and diversity.\textsuperscript{11} Similarly, in 2014, Turton found that the site was in a reasonable state, based on its forest cover, the abundance of endemic species, the water quality in Lake Tegano, and the condition of the fringing reef along the coast.\textsuperscript{12} These studies do however confirm that East Rennell’s OUV is under threat. As explained below, the key threats are logging and mining (6.2.1), the over-harvesting of certain species (6.2.2), invasive species (6.2.3), and climate change (6.2.4).

6.2.1 Logging and mining

Apart from Lake Tegano, Rennell island is mainly covered by dense forest. The forests across the island are intrinsically linked (see 5.3.2) so logging and mining in either East or West Rennell threatens the OUV of the WH site.\textsuperscript{13} Predicted impacts include a reduction in the forest cover required to maintain bird populations, changes to groundwater hydrology, a decrease in the resilience of the island to cyclones, and the introduction of invasive species.\textsuperscript{14}

Rennell island is increasingly attracting logging companies, who find the island’s ‘pencil cedar’ (\textit{Palaquium sp.}) most lucrative.\textsuperscript{15} Although logging is occurring in West Rennell, forest cover in that part of the island remains above 90\%,\textsuperscript{16} reflecting the fact that operations began relatively recently,\textsuperscript{17} and to date they have involved selective rather than

\textsuperscript{11} Simon Albert et al, \textit{Survey of the Condition of the Marine Ecosystem within the East Rennell World Heritage Area, Solomon Islands} (University of Queensland, Solomon Islands Marine Ecology Laboratory, Griffith University and WWF-Solomon Islands, 2013) 36.  
\textsuperscript{13} Dingwall, above n 6, 13-18; Turton, above n 12, 7, 11.  
\textsuperscript{14} Dingwall, above n 6, 4; IUCN, above n 10; Turton, above n 12, 7-8, 10-11, 14; Nils Finn Munch-Petersen, ‘An Island Saved, At Least for Some Time? The Advent of Tourism to Rennell, Solomon Islands’ in Godfrey Baldacchino and Daniel Niles (eds), \textit{Island Futures: Conservation and Development Across the Asia-Pacific Region} (Springer, 2011) 169, 173.  
\textsuperscript{16} The first logging license for West Rennell was granted in 2008: Dingwall, above n 6, 13. This is relatively recent compared to other parts of the Solomon Islands. See, eg, Ian Frazer, ‘The Struggle for Control of Solomon Island Forests’ (1997) 9(1)
clear felling. While logging has not yet commenced within the WH site, at least three applications for licences to log within that area has been filed in recent years.

Interest in mining on Rennell stretches back to the protectorate era. In the lead up to Solomon Islands’ independence, the British protectorate government was investigating development options that would allow the new independent nation to support itself financially. Prospecting conducted on Rennell between 1969 and 1977 revealed substantial reserves of bauxite, but mining did not proceed at that time. Prospecting in West Rennell commenced again in 2014, and since then several companies have been granted approval to mine there. Some companies have expressed interest in mining within the WH site, but no such operations have been approved yet.

The Committee has made several resolutions calling upon Solomon Islands to address the threats to East Rennell posed by logging and mining. Most recently, at its 2016 meeting, it requested that Solomon Islands mitigate the impacts of existing operations and not approve further projects until a new management plan is being implemented. It also asked the State party to provide the Committee with information on all mining activities on the island, including the projects’ Environmental Impact Assessments (EIA) and a study of their cumulative impacts. It appears that to date the SIG has done little to comply with these requests. Mining operations have been approved, despite the Committee’s requests. The SIG has provided the Committee with an EIA for only one project.

Contemporary Pacific 39. Frazer notes that large-scale logging began in the 1960s, and accelerated in the 1980s when companies started to operate on customary land: at 46.

19 These included application 101176, lodged by Joses Tahua dated 9 December 2011. This application (which was ultimately not successful) was for a licence to extract 80% of the logs from certain forests in West and East Rennell, including the forests covering the entire western half of the WH site. The author was involved with running meetings in Rennellese communities to discuss this application: see 1.3. At least two applications have been lodged since that time, both of which were unsuccessful.
21 See, eg, Larmour, above n 20, 58.
24 WHC Res 34 COM 7B.17, WHC 34th sess, UN Doc WHC-10/34.COM/20 (3 September 2010) 71, 71; WHC Res 36 COM 7B.15, WHC 36th sess, UN Doc WHC-12/36.COM/19 (June – July 2012) 63, 63; WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68; WHC Res 38 COM 7A.29, WHC 38th sess, UN Doc WHC-14/38.COM/16 (7 July 2014) 39, 40; WHC Res 39 COM 7A.16, WHC 39th sess, UN Doc WHC-15/39.COM/19 (8 July 2015) 30, 30; WHC Res 40 COM 7A.49, WHC 40th sess, UN Doc WHC-16/40.COM/19 (15 November 2016) 68, 69.
mining project,\textsuperscript{27} and no assessment of their cumulative impacts has been conducted. It appears that few (if any) measures to limit the impact of existing operations have been implemented.

The scope for the SIG and customary landowners to address these threats under legislation regulating the logging and mining industries is assessed at 7.3. The potential for the \textit{Protected Areas Act 2010} (the \textit{PA Act}) to be utilised is discussed at 8.6.

A threat that has not yet been raised by IUCN or the Committee is the clearing of forest for slash and burn agriculture. A 2016 report found that the largest cleared patches of forest on the island were caused by this practice, not by logging or mining.\textsuperscript{28} The regulation of this activity is also considered at 7.3.

\subsection*{6.2.2 The over-harvesting of certain species}

Some species are being over-harvested on Rennell, posing a threat to the WH site’s OUV. A key species of concern is coconut crab (\textit{Birgus latro}, locally known as kasusu), which is caught by the Rennellese people for consumption and sale.\textsuperscript{29} These crabs are susceptible to over-exploitation because they mature very slowly.\textsuperscript{30} A recent report suggests that at East Rennell they are harvested all year around, including when females are carrying eggs.\textsuperscript{31} Coconut crabs are no longer found in West Rennell,\textsuperscript{32} and there is a risk they will be harvested to extinction in East Rennell as well.\textsuperscript{33} It is unclear whether the crabs in East Rennell are being harvested only by the East Rennellese people, or by outsiders as well.

IUCN and the Committee have also expressed concern about the over-exploitation of marine resources.\textsuperscript{34} Albert et al found that subsistence fishing is unlikely to significantly affect marine ecosystems in the short to medium term, because the island has a low population and accessing the ocean from most villages is relatively difficult.\textsuperscript{35}

\begin{thebibliography}{99}
\bibitem{stateOfConservationOfPropertiesInscribedOnTheListOfWorldHeritageInDanger} \textit{State of Conservation of the Properties Inscribed on the List of World Heritage in Danger}, WHC 40\textsuperscript{th} sess, UN Doc WHC/16-40.COM/7A.Add.2 (27 June 2016) 11 (East Rennell, Solomon Islands) 12.
\bibitem{InternationalCentreOnSpaceTechnologiesForNaturalAndCulturalHeritage} International Centre on Space Technologies for Natural and Cultural Heritage, above n 16, 20-21.
\bibitem{Turton} Turton, above n 12, 10; Dingwall, above n 6, 21-22, 32.
\bibitem{Dingwall1} Dingwall, above n 6, 22.
\bibitem{Ibid1} Ibid.
\bibitem{Ibid2} Ibid; Turton, above n 12, 10.
\bibitem{Dingwall2} Dingwall, above n 6, 19-21; WHC Res 37 COM 7B.14, WHC 37\textsuperscript{th} sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68.
\bibitem{Albert} Albert et al, above n 11, 36.
\end{thebibliography}
Commercial and artisanal fishing pressures are also low, but could substantially increase if access to markets improves. The most significant current concern is the over-harvesting of commercially valuable invertebrate species, including beche de mer (which is processed from *holothurians*, commonly known as sea cucumbers) and trochus (*Trochus niloticus*). Again, it is unclear from the literature whether it is only the Rennellese who are carrying out this harvesting.

As Solomon Islanders increasingly seek to participate in the cash economy (see 6.3.3) the harvesting of these species is likely to increase. The Committee has called upon Solomon Islands to better regulate these activities, including through implementing harvesting regimes based on traditional practices. To date, the government has done little to ensure that harvesting levels are sustainable. The scope for over-harvesting to be dealt with under customary law is considered in 6.3. Relevant State legislation is analysed in 7.2 (laws regulating the taking of species) and 8.6 (the *PA Act*).

### 6.2.3 Invasive species

Invasive species, particularly the black ship rat (*Rattus rattus*) and the giant African snail (*Achatina spp.*) are a significant threat to the OUV of East Rennell. Ship rats have recently been observed within the WH site. Some reports say that the animal was probably introduced into West Rennell from logging vessels, but a recent study contends its introduction predates the commencement of logging. Regardless, logging and mining create habitats favoured by the rats and thus increase their spread. They could potentially affect the site’s OUV by reducing endemic bird and snail populations. The giant snail is now prevalent in Honiara, and could be introduced to Rennell on ships and aircraft. If that occurs, the snails could compete with native fauna of the island. Both ship rats and giant snails could also destroy crops, affecting the food security of the East Rennellese people.

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36 Ibid.
37 Ibid. Albert et al do however note that the low abundance they encountered could be a result of the sampling method used: at 28.
38 WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68.
39 International Centre on Space Technologies for Natural and Cultural Heritage, above n 16, 22.
40 Dingwall, above n 6, 4; Turton, above n 12, 12.
41 International Centre on Space Technologies for Natural and Cultural Heritage, above n 16, 22.
42 Ibid.
43 Dingwall, above n 6, 4; Turton, above n 12, 13.
44 Dingwall, above n 6, 4; Turton, above n 12, 13-14.
45 Dingwall, above n 6, 4; Turton, above n 12, 13.
46 Dingwall, above n 6, 4; Turton, above n 12, 13.
The extent of the threat posed by invasive species has not yet been thoroughly assessed, and there are presently no management measures in place.47 The Committee has called upon Solomon Islands to urgently halt the spread of rats, and to implement biosecurity controls to stop other invasive species from being introduced.48 Specific control methods recommended by Turton include baiting and trapping around log loading and storage sites, and vehicle washdowns.49 To date, no such measures have been implemented. The scope for the threat posed by invasive species to be dealt with through custom (see 6.3), legislation regulating the logging and mining industries (see 7.3), the \textit{Biosecurity Act 2013} (see 7.4) and the \textit{PA Act} (see 8.6) will be assessed.

### 6.2.4 Climate change

Climate change is becoming one of the most significant threats facing WH sites,50 and East Rennell has been identified as one of the nineteen such places at most risk.51 Predicted impacts include an increase in the level and salinity of Lake Tegano, which could affect aquatic and lakeside ecology.52 The East Rennellese have already observed that lakeside areas are increasingly flooding, which is impeding the growth of crops in those areas.53

The Committee has called upon Solomon Islands to revise the site’s management plan to include climate change adaptation and mitigation measures,54 but this has not yet been done. Specific measures recommended by Turton include monitoring tilapia\(^5\) populations to assess the impacts of increasing salinity in the lake, and investigating the feasibility of introducing new species of fish, taro or coconut that are tolerant to changing climatic conditions.56 IUCN has also suggested identifying new food sources that are tolerant to changing conditions, as well as replanting in lakeside areas to mitigate the

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47 Dingwall, above n 6, 4; International Centre on Space Technologies for Natural and Cultural Heritage, above n 16, 22.
48 WHC Res 40 COM 7A.49, WHC 40\textsuperscript{th} sess, UN Doc WHC-16/40.COM/19 (15 November 2016) 68, 69.
49 Turton, above n 12, 16, 18-19.
52 Dingwall, above n 6, 22-24; Turton, above n 12, 7.
53 Dingwall, above n 6, 22; Turton, above n 12, 10; Scott Alexander Stanley, \textit{REDD Feasibility Study for East Rennell World Heritage Site, Solomon Islands} (Secretariat of the Pacific Community and Deutsche Gesellschaft für Internationale Zusammenarbeit, 2013) 12.
54 WHC Res 37 COM 7B.14, WHC 37\textsuperscript{th} sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68.
55 \textit{Tilapia (Tilapia mossambica)} were introduced into Lake Tegano in the 1950s as a food source for the local people.
56 Turton, above n 12, 15.
impact of flooding.\textsuperscript{57} It appears that to date, no such measures have been implemented, and as noted in 6.5.1, Solomon Islands does not yet have any climate change legislation.

The analysis above shows that the nature and source of the threats to the OUV of East Rennell differ. Some arise from activities conducted within the WH site, but many are due to activities in West Rennell or further afield. Some arise from direct human actions, while others are caused indirectly. As explored in the reminder of this thesis, the potential for these threats to be effectively addressed through customary law, management plans and State law also differs.

\section*{6.3 The protection of East Rennell under the customary legal system}

This section examines customary law and governance at East Rennell in the context of WH protection. As demonstrated in 5.3.3, it appears that the WH Committee inscribed East Rennell on the WH List without a clear understanding of the site’s protection regime. While several reports and documents have recommended that the site’s customary protection be researched and documented,\textsuperscript{58} this has not yet been done in a comprehensive manner.\textsuperscript{59} This is a significant gap in knowledge about WH protection in Solomon Islands. As Ruddle, Hviding and Johannes have stated, questions about the possible conservation functions served by customary systems ‘can be fully answered only through intensive, localized, and multidisciplinary field research’.\textsuperscript{60} In the absence of such field research, the analysis below is necessarily based on the limited relevant literature. That literature suggests that the East Rennellese people’s ability to protect the site’s OUV is constrained by the scope of customary laws (see 6.3.1) and issues with local governance (see 6.3.2). Their disenchantment with the WH program, and the pressing livelihood

\textsuperscript{57} Dingwall, above n 6, 6.

\textsuperscript{58} In 2004, the WH Committee requested that IUCN assess the state of conservation of East Rennell, including documenting and assessing the effectiveness of the customary protection of the property: WHC Res 28 COM 15B.12, WHC 28\textsuperscript{th} sess, UN Doc WHC-04/28.COM/26 (29 October 2004) 79, 79. The 2007 East Rennell management plan identifies documenting the traditional knowledge and customary practices of the East Rennellese communities as a future management action: Wein, above n 4, 20. Dingwall refers to the need for the ‘systematic cataloguing and documentation of cultural values and traditional resource use and conservation practices’: Dingwall, above n 6, 28.

\textsuperscript{59} Some reports state that some documentation of customary protection has been undertaken. See, eg, the WH nomination dossier for East Rennell, which states that ‘surveys are underway within the four villages in the area to record the traditional use of natural resources in the forest, the lake and the sea’: Elspeth J Wingham, Nomination of East Rennell, Solomon Islands by the Government of Solomon Islands for Inclusion in the World Heritage List: Natural Sites (1997) 38. The Statement of Outstanding Universal Value for East Rennell (adopted by the WH Committee in 2012) says that the task of documenting customary values and traditional management practices has commenced: Adoption of Retrospective Statements of Outstanding Universal Value, WHC 36\textsuperscript{th} sess, UN Doc WHC-12/36.COM/8E (15 June 2012) 55-6; WHC Res 36 COM 8E, WHC 36\textsuperscript{th} sess, UN Doc WHC-12/36.COM/19 (June-July 2012) 225. However, the author’s research did not reveal any literature or reports detailing the outcomes of these surveys.

issues they face, also present challenges for the protection of the site under custom (see 6.3.3). Ideally, multidisciplinary fieldwork should be conducted to verify these findings.

6.3.1 Customary laws and World Heritage protection at East Rennell

Land and resource use at East Rennell is regulated through a system of customary land tenure and other customs and practices. The island’s land tenure system differs from most other parts of Solomon Islands. In the predominantly Melanesian Solomon Islands, customary land is commonly owned by a group such as a family, line or clan. However, on Rennell (where people are of Polynesian decent) land was traditionally held individually by male members of the lineage, and passed down from father to first born son, or if the man had no sons to his brother’s sons. Land owners (referred to as matu’a) had certain powers over their land, including deciding whether to cultivate the land, what to plant, and whether to grant rights to others over their land.

Like elsewhere in the Pacific, the customs of the Rennellese changed substantially following contact with outsiders (see 2.3.4). However, on Rennell this did not occur for many years after the island was discovered by Europeans in the 1790s. Following its discovery, Rennell was visited by whalers and recruiters seeking workers for plantations in Queensland, but the establishment of European settlements was impeded by the island’s isolation, poor soils and the lack of freshwater and safe anchorage sites. In addition, the Rennellese were not considered to be good workers so few were taken to work on plantations. Consequently, at a time when many parts of the Pacific were undergoing significant change at the hands of colonisers, Rennell remained relatively unaffected.

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63 Samuel H Elbert and Torben Monberg, From the Two Canoes: Oral Traditions of Rennell and Bellona Islands (Danish National Museum and University of Hawaii Press, 1965) 10.
64 Ibid 11.
The island’s isolation ended in 1938 when events transpired leading most Rennellese to rapidly convert to Christianity. Following their conversion, the islanders moved from their scattered settlements to larger villages, centred on a church, impacting traditional land tenure systems. Traditional culture broke down unusually quickly, as people abandoned old rituals and social structures changed. Writing in 1960, Torben Monberg (a Danish anthropologist who conducted extensive research on the island) wrote that the social structure of the Rennellese had almost completely changed from that which existed 20 years earlier. Changes to the customs of the Rennellese further accelerated after World War II, when improved shipping services made it easier for the islanders to travel to other places and be exposed to new ideas. As the population grew, the land areas owned by individuals decreased in size, and disagreements over the rules concerning land tenure increased. The customs of the East Rennellese were therefore significantly impacted by contact with outsiders. Notwithstanding this, customary land tenure on Rennell continues to be more individualised than most other places in Solomon Islands (discussed further at 7.3.2).

Early anthropological literature evidences some customs relating to the protection of the island’s natural heritage values. For example, traditionally people allowed garden areas to lay fallow for four to six years, to ensure soil integrity was maintained. Wild ducks, snakes, geckos and skinks were not traditionally eaten. In addition, East Rennellese who became Seventh Day Adventists did not partake in activities such as shark fishing, eel netting, flying-fox snaring, gathering shell fish and longicorn, and catching coconut crabs. However, the literature does not reveal the extent to which these customs are practiced today.

Recent reports and documents regarding the WH site contain little detail concerning customary laws relevant to heritage protection. The site’s WH nomination dossier states

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69 Wingham, above n 59, 26.
70 Monberg, ‘Crisis and Mass Conversion’, above n 68, 149.
72 Kuschel, above n 65, 199.
73 Torben Monberg, Bellona and Rennell Islanders’ in Melvin Ember, Carol R Ember and Jan Skogard (eds), (Macmillan, 2002) 46, 48.
74 Elbert and Monberg, above n 63, 16.
75 Birket-Smith, above n 61, 75.
76 Elbert and Monberg, above n 63, 19.
that the use of flora and fauna is regulated by the customary legal tenure system and
traditional practices, but contains little further information about customary protection.
The site’s 2007 management plan (analysed in 6.4) says that the East Rennellese people
employ many traditional practices, including customary fishing methods. However, the
plan does not detail them and indeed notes that it is unknown whether methods like
seasonal closures and other restrictions are implemented. A draft management plan for
East Rennell prepared in 2014 contains a series of rules regulating resource use, for
example bans on the hunting of birds on breeding islands, the use of gillnets, and the
taking of animals carrying eggs. However, it does not specify whether these rules reflect
custom or whether they are merely proposed management measures.

Gabrys and Heywood, Australian advisors who lived at East Rennell for 18 months
between 2008 and 2009, suggest that few customary practices supporting natural
heritage protection are widely implemented at the site today. They were engaged to
assist with implementing the 2007 management plan. Their consultations with local
communities led them to state that there is ‘little evidence of sustainable utilisation
practices or customary conservation management, especially in relation to wild food
harvesting’. Similarly, following a reactive mission in 2012, IUCN stated that there are
no community-based controls on the harvesting of coconut crabs. The absence of such
practices and controls may be because the island’s population has always been too small
to foster a strong conservation ethic. As Gabrys and Heywood noted:

Several Rennellese talked about how abundant their resources were in the past, which meant
that they did not have to worry about managing certain species for their long-term survival.

The abovementioned comments suggest that at present customary laws concerning flora
and fauna use cannot by themselves address the threat to East Rennell’s OUV posed by

77 Wingham, above n 175, 45.
78 Wein, above n 4, 16.
79 Ibid.
80 Anna Price, (Draft) Management Plan – East Rennell, Solomon Islands (2014); Live and Learn Environmental Education,
81 Live and Learn Environmental Education, above n 80, 11.
82 The advisors were volunteers through the Australian Volunteers International program: See International Heritage Section,
Department of Sustainability, Environment, Water, Population and Communities, Australian Government, ‘Australian
Capacity Building Support for East Rennell World Heritage Area 2007 – 2013’ in Anita Smith (ed), World Heritage in a Sea
of Islands: Pacific 2009 Programme, World Heritage Papers 34 (UNESCO, 2012) 66; Kasia Gabrys and Mike Heywood,
‘Community and Governance in the World Heritage Property of East Rennell’ in Anita Smith (ed), World Heritage in a Sea
83 Gabrys and Heywood, above n 82, 62.
84 Ibid 61.
85 Ibid 62.
86 Dingwall, above n 6, 5.
87 Gabrys and Heywood, above n 82, 62.
the over-harvesting of species. Furthermore, it is unclear to what extent any such laws are effective against outsiders. Insufficient research has been conducted to know whether harvesting is being done only by the East Rennellese, or also by people from West Rennell and others (see 6.2.2). If outsiders are involved, the ability of the East Rennellese chiefs to enforce their laws against outsiders should be assessed.

The role of custom in addressing the other threats to East Rennell’s OUV also needs to be considered. Under Solomon Islands’ legislation, unless an exception applies, logging and mining within the WH site cannot occur without the consent of the East Rennellese people. Therefore, their customary land tenure system and decision-making processes influence whether the site will be impacted by these activities. The ability and willingness of the East Rennellese people to protect East Rennell against these activities is explored at 7.3.

It is unclear based on existing literature whether any customs could be utilised to address the threats posed by invasive species such as ship rats and African snails. It is however evident that while the East Rennellese people could contribute by implementing biosecurity measures on their land, they cannot regulate activities elsewhere (for example, in West Rennell). Their power to protect the site from these threats is therefore limited, making the implementation of relevant State laws critical (see 7.3, 7.4 and 8.6).

A range of adaptation and mitigation measures have been suggested to deal with the impacts of climate change at East Rennell, particularly to ensure that food security is maintained (see 6.2.4). While the customary legal system cannot prevent these impacts from occurring, it could potentially help facilitate adaptation and mitigation. For example, the inundation of lakeside areas may disrupt the implementation of customary laws regulating access to land and rights to resources. The customary system may need to evolve to ensure that these laws remain workable, and everyone still has access to viable land to support their livelihoods.

There is a critical need for empirical research exploring customary protection at East Rennell. This research should not only explore existing practices, but the scope for the

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88 Forest Resources and Timber Utilisation Act (Cap. 40) s 5; Mines and Minerals Act (Cap. 42) ss 21, 36(a). These provisions are analysed at 7.3.
customary system to evolve to meet new challenges such as invasive species and climate change. This research could be undertaken in the context of the preparation of a new management plan for the site (discussed in 6.4). It is however clear that many threats cannot be dealt with through the customary system alone.

6.3.2 Customary governance and World Heritage protection at East Rennell

The effectiveness of customary protection depends both on the scope of customary laws and the extent to which they are adhered to. Customary laws derive their force from uniform practice and the peoples’ subjective belief that they must be complied with.\textsuperscript{89} Therefore, issues such as the extent of social cohesion within the community,\textsuperscript{90} and the strength of local governance bodies\textsuperscript{91} will influence compliance. In Solomon Islands, customary governance bodies do not have a formal position under State legislation\textsuperscript{92} so their strength is determined by their legitimacy within the local community.

In Rennell, authority within a line traditionally lay with all \textit{matu’a} (landowners).\textsuperscript{93} However, one \textit{matu’a} could assume a higher position because of his seniority within his generation, the seniority of his father’s generation, or his possession of special skills.\textsuperscript{94} Such a person was called \textit{hakahua} (now commonly referred to as a chief).\textsuperscript{95} In the pre-contact period, the \textit{matu’a} of the lineage were not compelled to obey the \textit{hakahua}.\textsuperscript{96} However, as a \textit{hakahua} was often a more senior member of the lineage and had more land at his disposal than other \textit{matu’a}, he generally had a higher status.\textsuperscript{97} In the pre-contact period there was also no supreme chief nor any collective body of chiefs, with the chiefs considering themselves to be autonomous.\textsuperscript{98} Today however, customary authority is


\textsuperscript{92} The only role for chiefs recognised under State legislation is in the resolution of disputes over rights to customary land: \textit{Local Courts Act} (Cap 19) s 12(1).

\textsuperscript{93} Elbert and Monberg, above n 63, 11.

\textsuperscript{94} Ibid.

\textsuperscript{95} Ibid; Monberg, above n 71, 77.

\textsuperscript{96} Elbert and Monberg, above n 63, 12.

\textsuperscript{97} Ibid.

\textsuperscript{98} Monberg, above n 71, 77; Allen et al, above n 90, 38; Elbert and Monberg, above n 63, 14.
exercised by the chiefs and a Council of Chiefs, headed by a paramount chief.99

Literature suggests that customary governance at East Rennell is currently weak. In 2008 / 2009, Gabrys and Heywood observed that the Council of Chiefs was losing its authority, in part because of ‘increasing pressures to engage with the cash economy, internal disputes over land ownership and increasing church authority’.100 Consequently, many local people viewed it as ‘ineffective or dysfunctional.’101 More recent field work by Allen et al found that there is ‘an almost complete collapse of community governance mechanisms’ in Rennell,102 and many community members do not trust the chiefs.103 These governance issues may be reducing adherence with customary laws, and thus limiting the protection of the site’s WH values under the customary system.

In an attempt to strengthen local governance, several community organisations have been established at East Rennell,104 the most recent being the Lake Tegano World Heritage Site Association (LTWHSA) which was registered under the Charitable Trusts Act (Cap. 55) in 1999.105 It aims to safeguard the OUV of East Rennell and ensure local people benefit from the WH program.106

The power to make decisions on behalf of the LTWHSA is vested in a committee of ten members, comprising two representatives from each of the four villages, and two representatives of the Rennell Bellona provincial government.107 Chiefs have no formal role in the association (unless they are elected to the committee) but can attend committee meetings in a non-voting capacity.108 Church leaders also have no formal role, despite their status within the communities. While the Constitution makes local decision-making more democratic in a Western sense, the corollary is that its structure is at odds with customary governance.109

99 Wingham, above n 175, 5.
100 Gabrys and Heywood, above n 82, 61.
101 Ibid.
102 Allen et al, above n 90, 24.
103 Allen et al, above n 90, 38.
104 The Tegano Management and Conservation Committee was established with the assistance of the New Zealand government: Elspeth J Wingham and Ben Devi, ‘The Involvement of Local People in the Management of a Proposed World Heritage Site at East Rennell, Solomon Islands’ in Hans D Thulstrup (ed), World Natural Heritage and the Local Community: Case Studies from Asia Pacific, Australia and New Zealand (UNESCO, 1999) 79, 80. In 2001, the East Rennell Environment and Conservation Trust Board was established: Tabbasum and Dingwall, above n 5, 9. It was renamed to the East Rennell World Heritage Trust Board; Wein, above n 4, 10. The Board is no longer functional.
105 S 3.
107 Ibid cl 5.1(a).
108 Ibid cl 5.1(g).
The decisions of the LTWHSA have no basis under custom or State law, so in practice the association’s authority is entirely dependent on the degree to which the local people support it. When the author was working in East Rennell in 2013, the LTWHSA was operational, and it helped facilitate the implementation of the Live and Learn Environmental Education (LLEE) protected area project (described at 1.4). However, the author observed that it had not been engaged with many other substantial activities for some time. In addition, the relationship between the committee and some chiefs was tense, which appeared to be impeding the operation of the association. Consequently, several locals commented to the author that chiefs and church leaders should be given a role on the committee. It appears that other organisations established at East Rennell have suffered from similar issues. For example, Zikuli and Clothier noted that the establishment of the East Rennell World Heritage Trust Board ‘brought new factions of power and authority into the community that many were not happy with’. Other issues observed by the author that appeared to be plaguing the LTWHSA were ambiguities and gaps in its Constitution, a lack of funds to convene meetings, and allegations of financial mismanagement. Issues with the operation of local associations are not unique to East Rennell nor to conservation efforts. For example, Naitoro has written about problems plaguing the Gold Ridge Landowners’ Association, which was established to manage the royalties from the Gold Ridge mining project on Guadalcanal. He notes:

Because most of the members of the association were chosen on the basis of educational level, cultural importance has been undermined. Elders have lost their leadership role, because they are unable to deal with external government and foreign company officials. The association has not been a self-functioning organisation and lacks the human and financial resources necessary to represent the people adequately.

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110 For example, under its Constitution, the LTWHSA is responsible for implementing the site’s management plan, running education and awareness programs in the communities to improve understanding of WH, and researching and promoting traditional resource management methods and cultural values: *Lake Tegano World Heritage Site Association Constitution and Rules* cls 2.2(a), (e) and (f). In 2013, the author saw no evidence that the LTWHSA was involved with these activities.

111 This local organisation was established following the listing of East Rennell, but has since been disbanded.


113 For example, the LTWHSA’s Constitution tries to ensure equality between the four East Rennell villages by guaranteeing equal representation on the committee for each village: *Lake Tegano World Heritage Site Association Constitution and Rules* cl 5.1(a). The chairperson of the committee is elected by the (eight) committee members: cl 5.1(d). The Constitution does not prescribe how the chairperson is to be elected if the vote of committee members results in a stalemate. This occurred in 2013 at a committee meeting attended by the author. This issue is yet to be resolved.

114 The committee is currently dependent on receiving funds from the SIG or donors to convene meetings. The government has now allocated a fixed annual amount for the LTWHSA (*Pacific World Heritage Action Plan 2016 – 2020* (2016) 16) which may improve the situation.

115 At meetings of the members and committee of the LTWHSA in 2013, the author observed several accusations of mismanagement regarding funds provided to the committee by the SIG.

As explained in 2.3.4, customary legal systems have undergone profound changes since the pre-contact period, and they continue to evolve. The establishment of a new local governance association could, in some circumstances, be an appropriate part of this process, assisting local people to meet the contemporary challenges they face. However, any such body that is established must be coherent with customary governance structures.\textsuperscript{117} Importantly, the respective mandates of the association and the customary structure must be clear.\textsuperscript{118} A failure to address these issues could lead to the overall weakening of local governance and conflict.

At present, a lack of strong local governance at East Rennell presents a challenge for WH protection. Strengthening customary protection will require exploring if and how the legitimacy of the chiefs within the communities can be improved, and clarifying the relationship between customary structures and any new local bodies that are established. It is imperative that all governance bodies have clear mandates so they can operate cooperatively together. This issue is discussed further in the context of the PA Act at 8.7.

6.3.3 The protection of East Rennell under the customary legal system in context

Many East Rennellese people are disenchanted with WH, in part because the listing of their land brought them few tangible benefits.\textsuperscript{119} A key driver behind their initial support for listing was a belief that it would generate tourism and economic development (see 5.2.2). However, none of the small-scale community projects funded by the New Zealand government in conjunction with the nomination were successful in the long-term.\textsuperscript{120} In addition, the site only appeals to a small segment of the tourism market (see Figure 14), so only ‘a handful’ of tourists go there each year.\textsuperscript{121} WH listing has therefore not resulted in the financial windfall the East Rennellesse people expected. Their disappointment is fuelled by misunderstanding of the WH system,\textsuperscript{122} and the fact that their cultural heritage

\textsuperscript{117} Anita Smith and Cate Turk, ‘Customary Systems of Management and World Heritage in the Pacific Islands’ in Sue O’Connor, Denis Byrne and Sally Brockwell (eds), Transcending the Culture-Nature Divide in Cultural Heritage: Views from the Asia-Pacific Region (ANU E Press, 2012) 22, 29.
\textsuperscript{119} Smith, above n 109, 592, 597; Tabbasum and Dingwall, above n 5, 13; Stanley, above n 53, 12; Gabrys and Heywood, above n 84, 62; Zikuli and Clothier, above n 112, 12; Maria Ana Borges et al, Sustainable Tourism and Natural World Heritage (IUCN, 2011) 10.
\textsuperscript{120} Dingwall, above n 6, 8.
\textsuperscript{121} Smith, above n 109, 598. See also Stanley, above n 53. Stanley states that less than 10 tourists visited the site in 2012; at 12.
\textsuperscript{122} Smith, above n 109, 601; Zikuli and Clothier, above n 112, 12.
was not recognised in the site’s listing (see 5.3.1). Over time, continued community
disenchantment is likely to diminish local support for WH protection.

![Figure 14: Tourist accommodation, East Rennell World Heritage site (Stephanie Price, 2013)](image)

As for many rural Solomon Islanders, livelihood issues are the primary concern for the
people of East Rennell.¹²³ Most live predominantly subsistence lifestyles, relying on
tilapia fish from the lake, food from their gardens, coconut crabs, marine resources, and
occasionally birds and bats.¹²⁴ Growing crops is challenging because the island is
extremely rocky and has limited fertile soil and few water courses. In addition, coconut
crab and tilapia numbers are decreasing due to over-harvesting, and climate change and
invasive species are threatening food security. In response, the East Rennellese are
increasingly looking to participate in the cash economy, to fund the purchase of imported

¹²³ Gabrys and Heywood, above n 84, 62; Zikuli and Clothier, above n 112, 13. See also Smith, above n 109, who notes that
livelihood issues dominated the meetings with community members that she was involved with to discuss the WH program:
at 598. Similarly, livelihood issues dominated many of the meetings the author attended in East Rennell (in her capacity as
legal advisor for Live and Learn Environmental Education) concerning the protection of the WH site. The author’s work in
Rennell is explained in 1.4.

¹²⁴ See, eg, Wingham, above n 175, 27.
food and to meet other expenses such as education and health care.

Opportunities to earn cash income on Rennell are very limited because of its isolation and geography. The island is 180km south of Guadalcanal, and is difficult to access because it has no port and in most places limestone cliffs at the coast drop straight down to the sea (see Figure 15). This impedes the development of any industry requiring the import or export of products. While West Rennell hosts an airstrip connecting the island with Honiara, flights only operate a few times a week and can be irregular. Furthermore, the 90km trip from the airstrip to East Rennell can take many hours due to the poor condition of the road and vehicles (see Figures 16 and 17). West Rennell has some phone and internet coverage, but there is none within the WH site. Due to these constraints, there is essentially no private sector on Rennell, and most local people rely on cash sent by relatives in Honiara and small-scale commercial activities to support their livelihoods.

**Figure 15**: Aerial view of the south-eastern end of Rennell, showing limestone cliffs dropping to the sea along much of the coast (Stephanie Price, 2013)

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125 See, eg, ibid 10, 27.
Figure 16: The road linking the capital of Rennell (Tigoa) and the East Rennell World Heritage site (Stephanie Price, 2013)

Figure 17: One of many flat tyres experienced on the journey from the airstrip in the capital of Rennell (Tigoa) to the East Rennell World Heritage site (Stephanie Price, 2012)
Customary management and protection of WH must be considered in the context of the pressing livelihood issues that the East Rennellese people face and the limited development options available to them. These issues are likely to influence their willingness to take steps to protect the site’s WH values (such as reducing their harvesting of natural resources, and agreeing to the establishment of a protected area over their land, issues which are discussed in the next two chapters). As explored further in 6.5.2, they also influence the role that the SIG perceives it has in the site’s conservation.

6.4 The protection of East Rennell under a management plan

If a site is well-managed through customary systems, a management plan may not be required to effectively protect the site. However, it appears that customary protection is unable to deal with all threats to the OUV of East Rennell (see 6.3). Therefore, additional management measures are required, and a management plan can potentially provide an effective framework for the implementation of such measures.

Since East Rennell was listed, the Committee has repeatedly called upon SIG to develop (and later improve) a management plan. A plan for the site was prepared in 2007 by a consultant with funding from the WH Fund. In 2014, a draft revised management plan was prepared by another consultant as part of the LLEE protected area project (described at 1.4). That project ended before the plan was finalised, and thus it remains in draft. It has not yet been approved by either the East Rennellese people or the SIG. In 2015, the SIG requested assistance from IUCN for the preparation of a new plan, but it is unclear whether that project will be funded. Thus, the 2007 management plan is the current plan for the site.

The 2007 plan sets out a vision for the site, management objectives, and a series of actions to achieve those aims. Among other things, it supports banning commercial logging and mining, limiting coconut crab harvesting, and regulating the taking of marine species.

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127 Smith and Turk, above n 117, 30.
129 Wein, above n 4, 6.
130 Price, above n 80.
through the creation of a marine protected area, all of which could assist to protect the site’s OUV. However, as the Committee has commented, the management measures lack detail, and the plan lacks a timeline and budget. It also does not include any measures to address the impacts of invasive species or climate change. In any event, the plan has been ineffective as it has barely been implemented. As explained below, three key reasons for this are likely to be (I) the East Rennellese people lack interest in it, (II) the plan lacks any basis under custom or State law, and (III) a lack of resources and capacity for implementation.

(I) The East Rennellese people lack interest in the management plan

The 2007 plan was based on a series of community meetings and workshops run in the East Rennell communities, and was informed by earlier awareness programs conducted in conjunction with the preparation of the WH nomination. Through these consultations, the East Rennellese people developed the management actions in response to what they perceived to be the problems facing the site. However, while the local people had significant input into the plan’s development, they currently have little interest in or understanding of it.

This may be because the plan is not based on their customs, but rather identifies the documentation of land tenure, traditional knowledge and cultural practices as a future management action. In this respect, the plan can be contrasted with the management plan for the Chief Roi Mata’s Domain WH site in Vanuatu. That plan describes itself as ‘an unprecedented attempt’ to document the site’s nafsan natoon (the local peoples’ expression for customary protection). This difference in part reflects the fact that East Rennell is a natural WH site, whereas Chief Roi Mata’s Domain was listed as a ‘cultural landscape in which people’s lives are still strongly defined by kastom’.

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132 Wein, above n 4, 19-20.
134 Tabbasum and Dingwall, above n 5, 9, 19. This finding is consistent with the author’s observations from working in East Rennell.
135 Wein, above n 4, 7.
136 Wein, above n 4, 19.
137 Smith and Turk, above n 117, 28.
138 Wein, above n 4, 20.
140 Ibid.
The East Rennellese people may also be somewhat apathetic towards the 2007 plan because it does not align with their priorities. Smith has found that the heritage they most want protected is linked to their cultural identity, as expressed through their land tenure system, environmental knowledge, traditional resource use, crafts, songs and dance. The management plan’s focus on the natural environment therefore reflects the site’s WH values, but not the aspirations of at least some of the local people. The fact that the plan was never translated into East Rennellese is also likely to have contributed to their lack of interest.

(II) **The management plan has no basis under customary or State law**

As noted above, the 2007 plan does not document any customary laws or practices. In addition, primary responsibility for implementing the plan is vested in a non-customary body. A local community organisation called the East Rennell World Heritage Trust Board (ERWHTB) was originally charged with implementation, but that Board is no longer operational. Responsibility now rests with the Lake Tegano World Heritage Site Association (LTWHSA). Decisions of the LTWHSA have no force under customary law and, as noted in 6.3.2, there are issues impeding the association’s effectiveness.

The 2007 management plan also has no force under State law. The plan was drafted in anticipation that some of the management actions would be strengthened through a provincial ordinance, however no such law has been enacted. The plan could gain some legal effect under the *PA Act* (see 8.6), but that has not yet occurred. As such, it has no legal basis and implementation is entirely voluntary. In the absence of strong community interest in the plan, this makes implementation unlikely.

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141 Smith, above n 109, 605.
142 Wein, above n 4, 10, 21.
143 *Lake Tegano World Heritage Site Association Constitution and Rules* cl 2.2(a).
144 Wein, above n 4, 17.
(III) The community associations charged with implementing the plan lack the resources and capacity to do so

The 2007 management plan does not make any SIG entity responsible for implementation. This is in some respects understandable. Commenting on the Kuk Early Agricultural Site in Papua New Guinea (PNG), Denham, Muke and Genorupa contend that any management plan for that site needs to be resistant to neglect by the national and provincial governments. They note that in PNG it is both "unrealistic and inappropriate to burden national or provincial governments with substantial and continuing financial commitments." Similarly in Solomon Islands, a WH management plan that requires a large long-term commitment from the government is unlikely to be successful. However, responsibility for the implementation of such a plan cannot simply be devolved to the local people if they have insufficient capacity and resources to undertake the management measures. This is especially the case when the management measures are assisting the State to comply with its international legal obligations. To date, while the ERWHTB and the LTWHSA have received some assistance, the funds and expertise available at the local level to dedicate to the implementation of the plan remain very limited.

The 2007 management plan has not been effective, and should be revised or ideally replaced. Implementing any management plan at East Rennell will be challenging, and there is no guarantee that any future document will enjoy greater success. However, some lessons can be learned from the experiences with the 2007 plan.

To the extent possible, any future plan should be more strongly rooted in custom, and better aligned with the priorities of the East Rennellese. Smith has found that they would support the documentation of their cultural values, to provide a framework within which the site’s natural heritage could be managed. Such a project could inform the development of a document that embedded the management actions required for the protection of the site’s OUV within a broader plan that recognised the customs, values.

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146 Ibid 333.
147 For example, the assistance provided by Gabrys and Heywood: see Gabrys and Heywood, above n 82.
148 Smith, above n 109, 605.
and aspirations of the East Rennellese people. This would make the plan more consistent with holistic approaches to environmental management, which are now supported under international agreements such as the *Convention on Biological Diversity*. Importantly, such a plan may also enjoy greater local support. The potential for the management plan to gain legal effect under the *PA Act* should also be considered (see 8.6). If the East Rennellese people wish to go down that path, the new management plan would have to be drafted to meet the requirements of that Act. Importantly, the measures must be designed in light of the resource and capacity constraints of the bodies charged with implementation. It is unrealistic to expect that local people will dedicate significant time and resources to WH protection activities unless the proposed management measures closely align with their priorities and/or they are supported to do so.

### 6.5 The protection of East Rennell under State legislation

#### 6.5.1 State laws and World Heritage protection at East Rennell

The Committee has repeatedly called upon Solomon Islands to develop and implement legislation to safeguard East Rennell’s WH values. Although the site’s nomination dossier stated that the SIG would enact a *World Heritage Protection Act* (see 5.3.3(C)), that never occurred. In addition, the Rennell-Bellona provincial government has no ordinance for the conservation of the site, and East Rennell has not been declared a ‘protected area’ under the *PA Act*. Consequently, the site currently does not have broad protection under State legislation.

Notwithstanding this, laws exist that could be utilised to address some of the threats to East Rennell. Given the nature and source of these threats (see 6.2) the most relevant laws are:

- laws that regulate the taking of certain species, including Regulations made under the *Fisheries Management Act 2015* and the *Forest Resources and Timber Utilisation Act* (Cap. 40) (see 7.2);

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150 WHC Res 29 COM 7B.10, WHC 29th sess, UN Doc WHC-05/29.COM/22 (9 September 2005) 45, 45; WHC Res 31 COM 7B.21, WHC 31st sess, UN Doc WHC-07/31.COM/24 (31 July 2007) 58, 58; WHC Res 33 COM 7B.19, WHC 33rd sess, UN Doc WHC-09/33.COM/20 (20 July 2009) 68, 68; WHC Res 34 COM 7B.17, WHC 34th sess, UN Doc WHC-10/34.COM/20 (3 September 2010) 71, 71; WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68; WHC Res 38 COM 7A.29, WHC 38th sess, UN Doc WHC-14/38.COM/16 (7 July 2014) 39, 40.
- laws that regulate extractive industries, including the *Forest Resources and Timber Utilisation Act* (Cap. 40), the *Mines and Minerals Act* (Cap. 42), and the *Environment Act 1998* (see 7.3);
- the *Biosecurity Act 2013* (see 7.4); and
- laws under which the site may be declared as a protected area, including the *PA Act* (see chapter 8).

This legislation is analysed in chapters 7 and 8 to assess its potential to contribute to WH protection and the key issues influencing its implementation in practice.

The laws referred to above could also contribute to the protection of the two sites on Solomon Islands’ Tentative List, both of which been affected by logging, and are promoted as being eligible for WH listing in part because of their rich biodiversity and the prevalence of endemic species.\(^{151}\) Other laws that may be relevant to future WH sites include those concerning urban development,\(^{152}\) commercial fisheries,\(^{153}\) the export of protected wildlife,\(^{154}\) pollution control,\(^{155}\) and World War II relics and wrecks.\(^{156}\) An analysis of that legislation does not fall within the scope of this research, but would be a valuable if further sites are listed.

The significant gaps in Solomon Islands’ legislative framework for WH protection must be acknowledged, including the limited scope of its threatened species legislation. As will be explained in chapter 7, the *Fisheries Management Act 2015* and the *Forest Resources and Timber Utilisation Act* (Cap. 40) allow relevant government decision-makers to declare that certain marine and tree species are protected. However, like many Pacific Island States, Solomon Islands has no broad threatened species legislation.\(^{157}\) The *Wildlife Protection and Management Act 1998* has been enacted, but that law regulates the import and export of certain plants and animals, as opposed to all activities that could harm important species.\(^{158}\) Thus, some species whose conservation may be necessary for the

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152 For example, the *Town and Country Planning Act* (Cap. 154).
153 For example, the *Fisheries Management Act 2015*.
154 The *Wildlife Protection and Management Act 1998*.
155 For example, the *Environment Act 1998*.
preservation of a site’s OUV (such as birds) are inadequately protected under Solomon Islands’ law.159

Solomon Islands also does not have any specific climate change legislation, and indeed climate change issues are not addressed in any legislative provisions.160 The country’s national climate change policy states that a law will be enacted to (among other things) give a legal mandate to the agency responsible for climate change161 and to facilitate the planning, implementation and evaluation of adaptation and mitigation actions.162 However, this has not yet happened. Furthermore, there is no express requirement under any legislation for climate change to be considered in administrative decision-making, such as the determination of development approvals. Much work remains to be done to help the East Rennellese cope with and adapt to the impacts of climate change (see 6.2.4). Existing legislation concerning issues such as protected areas (particularly the PA Act) and environmental impact assessment (the Environment Act) could be utilised to help communities with this task. However, there is a critical need for legislative reform to strengthen the legal framework for climate change mitigation and adaptation in Solomon Islands.163

Another substantial gap is the lack of any national cultural heritage law.164 Solomon Islands’ 2012 State party report submitted to the WH Committee stated that such a law would be enacted,165 however this has not yet happened. Any such legislation should be tailored to the nature of Solomon Islands’ cultural heritage. As explained in 2.2.1(B), in Solomon Islands, cultural heritage is often expressed through landscapes and seascapes evidencing the connection between people and their environment, and through associated

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159  The Wild Birds Protection Act (Cap. 45) previously provided some protection to certain birds, however that law was repealed when the Wildlife Protection and Management Act 1998 came into force in 2003.
160  Ben Boer and Pepe Clarke, Legal Frameworks for Ecosystem-Based Adaptation to Climate Change in the Pacific Islands (SPREP, 2012) 30.
161  The Climate Change Division of the Ministry of Environment, Climate Change, Disaster Management, and Meteorology.
163  For further discussion, see Boer and Clarke, above n 160.
164  Although Solomon Islands lacks any comprehensive cultural heritage legislation, some legislation does contain provisions relating to the protection of cultural heritage, including the Protection of Wrecks and War Relics Act (Cap. 150), the Town and Country Planning Act (Cap. 154), the Land and Titles Act (Cap. 133) and some provincial ordinances such as the Choiseul Province Preservation of Culture Ordinance 1999 and the Makira Preservation of Culture and Wildlife Ordinance 1985. For a summary of this legislation see Ben Boer, Solomon Islands: Review of Environmental Law (SPREP, 1993) 56-65. Boer notes that this legislation is rarely enforced (at 57).
traditions, knowledge, stories and songs. Cultural heritage legislation in many jurisdictions provides for the establishment of registers of built heritage sites, and imposes restrictions on the ownership, use and development of such places. Such a law would be of little use for the protection of many culturally significant places in Solomon Islands. Furthermore, the *PA Act* already establishes a protective regime for landscapes and seascapes of natural and cultural significance (see chapter 8). Future research should therefore consider the types of cultural sites in Solomon Islands that require protection, the threats to those sites, and the scope for them to be protected through the *PA Act* and other existing legislation. It may be that amending existing laws is a more efficient and effective approach than enacting new legislation for the protection of cultural heritage sites.

### 6.5.2 The protection of East Rennell by the State in context

Given SIG’s limited involvement in the management of East Rennell and its failure to ensure that East Rennell is strongly protected under State law, it is arguably not complying with its obligations under the *Convention*. Some possible reasons for its non-compliance have been referred to previously in this thesis. Compared with many Western nations, Solomon Islands became a party to the *Convention* relatively recently, giving it less time to implement the treaty domestically (see 1.2.3). In addition, its ability and willingness to comply is constrained by competing development priorities, governance issues, the government’s lack of relevance to people in rural areas, and the difficulties associated with enforcing legislation on remote islands (see 2.4.1). The government’s lack of resources to devote to the implementation of the *Convention* was noted as a significant challenge by several people interviewed as part of the consultation process undertaken for this research.

The consultation process identified some additional issues. Interviewees were asked to comment on what they perceived to be the government’s role in the protection of a WH site under customary ownership. A common response was that the government should

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167 The obligations of State parties under the *World Heritage Convention* are explored in chapter 4.
168 Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013); Interview with an officer in the Ministry of Education, who was formerly the focal point for World Heritage within the Solomon Islands National Commission for UNESCO (Honiara, 28 July 2013); Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013); Interview with Malchoir Mataki, Permanent Secretary of the Ministry of Environment (Honiara, 1 October 2013).
support the local communities to sustainably manage their natural resources rather than dictate how the land should be used. For example, an employee within the Ministry of Culture stated:

We [the government] cannot throw up a management plan from here or pick it from anywhere and go to East Rennell and say this is how we do it. What they [the East Rennellese people] say about their land is just as strong as us.169

Joe Horokou (Director of the Environment and Conservation Division of the Ministry of Environment) commented that East Rennell’s customary tenure affects what the government can do to protect the site, and the East Rennellese people have the right to make the final decision about their resources.170 He added that the Ministry of Environment has ‘no direct authority over the site’.171 Similarly, a conservation officer within the Ministry of Environment stated that it was difficult for the State to require good resource management at the site, because the government does not own the natural resources.172 The interviewee added that Solomon Islands’ governance systems are not a conducive environment for implementation of the *Convention*.173

View such as these echo comments made by representatives of the SIG around the time that East Rennell was inscribed on the WH List. For example, a letter from SIG to the WH Centre that was attached to the nomination dossier stated:

It should be emphasized that the proposed East Rennell World Heritage site is in customary land ownership and the long term wise management of the site will depend on the commitment made by the local people.174

That sentiment was repeated in a letter from the Solomon Islands’ National Commissioner for Culture to the WH Centre in 2004, in which the Commissioner indicated that:

[it is] not appropriate for the national government to prepare national legislation to regulate a property governed by customary ownership where land is protected by traditional laws recognized by the National Constitution.175

The interviewees also emphasised that the East Rennellese people rely on their natural resources for their livelihoods, so the State would have to compensate them in some way

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169 Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013).
170 Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013).
171 Ibid.
172 Ibid.
173 Ibid.
if it were to restrict resource use or development on the island. For example, Malchoir Mataki (Permanent Secretary of the Ministry of Environment) commented on the lack of employment opportunities on Rennell, noting that people in East Rennell ‘cannot go and work in a factory’.176 He said that if the government constrained the people from using their resources, it would need to provide them with opportunities elsewhere.177 An employee within the Ministry of Culture contended that WH protection would be easier if the East Rennellese people had access to alternative livelihood options.178 A SIG employee formerly working within the National Commission for UNESCO made a similar comment, contrasting East Rennell with Tetepare island, in the Western province of Solomon Islands. He noted that because Tetepare is uninhabited, its customary owners can access resources to support their livelihoods elsewhere, whereas East Rennell is all that the East Rennellese have.179

These comments suggest that the SIG is unlikely to implement any legislation that substantially restrains local peoples’ use and development of their land, unless the measures have widespread local support. This finding helps explain why the Committee’s calls for SIG to unilaterally ban logging and mining on Rennell continue to fall on deaf ears (see 6.2.1). It does however place the government in a difficult position. Under the Convention, it has an obligation to implement the legal measures required to protect the site’s OUV, yet it perceives that it lacks the authority (legal or otherwise) to dictate how customary landowners use their land and resources. As a conservation officer within the Ministry of Environment stated:

Communities will always say they have a need for subsistence and income. Government will always say that it has international obligations. Getting the two to match up is difficult.180

It is unhelpful to advocate for the SIG to implement conservation measures that fundamentally diverge from the views of Solomon Islanders concerning their customary rights. It is therefore argued that future Committee resolutions need to better accommodate the tension between SIG’s international obligations and its reverence for customary rights (see 9.3.1).

176 Interview with Malchoir Mataki, Permanent Secretary of the Ministry of Environment (Honiara, 1 October 2013).
177 Ibid.
178 Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013).
179 Interview with an officer in the Ministry of Education, who was formerly the focal point for World Heritage within the Solomon Islands National Commission for UNESCO (Honiara, 28 July 2013). Tetepare is discussed further at 8.2.
180 Interview with a conservation officer in the Ministry of Environment (Honiara, 2 August 2013).
6.6 Conclusion

Although East Rennell was inscribed on the WH List primarily based on its customary protection, there has been little empirical research into how the customary system can contribute to addressing the threats to the site’s OUV. The limited available literature suggests that customary practices cannot deal with many of the key threats, and customary governance is not strong. Further empirical research should not only document and assess existing customs, but also explore the potential for the customary system to evolve and adapt to meet new issues such as invasive species and climate change.

The disenchantment that many East Rennellese people have with the WH program, the fact that their cultural values are not recognised in the site’s listing, and their (understandable) economic aspirations, all pose challenges for the protection of the site under custom. If the protection of East Rennell is to be pursued through the framework of sustainable development, efforts to address the threats to the site’s OUV must be pursued in conjunction with initiatives to improve the livelihoods of the East Rennellese people. This will require improving communication and transport infrastructure, and ensuring that they have access to sustainable food sources.

The management plan for East Rennell has not been effective in protecting the site, in part because it lacks any basis under custom or State law. This feature, coupled with the fact that the SIG is not charged with executing the plan, means that implementation relies on the voluntary commitment of the East Rennellese people. The pressing livelihood issues they face, and their limited capacity and resources for heritage protection, make it unlikely that the management plan will be effective. There may be greater local impetus for the implementation of a plan that has a strong grounding in custom and State law, and which better reflects the cultural values and development aspirations of the East Rennellese people.

The natural heritage values of East Rennell are also not strongly protected under State law, as neither the SIG nor the Rennell Bellona provincial government have implemented any legislation providing broad protection to the site. One reason for this is the perception held by people working in SIG that the government’s role is to facilitate the preservation of East Rennell by its owners and occupants, rather than to unilaterally restrict the use
and development of the site. There are however a range of laws that could be used to address the threats to the site, including legislation regarding the harvesting of species, extractive industries, biosecurity and protected areas. The scope for this legislation to be used by the East Rennellese people and the SIG to protect East Rennell’s OUV is explored in the next two chapters.
Chapter 7: The protection of Solomon Islands’ World Heritage through the implementation of laws concerning resource use and biosecurity

7.1 Introduction

As explained in chapter 6, the outstanding universal value (OUV) of East Rennell is threatened by the over-harvesting of certain animals, logging and mining, invasive species and climate change. Although the World Heritage (WH) Committee has called upon Solomon Islands to take various steps to address these threats, the Solomon Islands government’s (SIG’s) ability and willingness to comply has not yet been analysed. This chapter and the next therefore explore these issues, through an analysis of relevant legislation and its implementation in practice.

This chapter focuses on legislation concerning resource use (namely the taking of particular species, and logging and mining) and biosecurity. It assesses the scope for these laws to be utilised to address the threats to East Rennell, and in so doing to contribute to the site’s protection. The next chapter considers the direct protection of the site under protected area laws. The analysis in both chapters helps explain why Solomon Islands has not complied with many of the Committee’s requests, and why East Rennell’s OUV is in danger.

This chapter is based on relevant legislation and secondary literature in a range of disciplines. It is also informed by the consultation process undertaken for this research, as well as the author’s experience working as a lawyer in Solomon Islands, which included advising landowners on matters such as extractive industries and conservation. That work revealed numerous issues associated with implementing and enforcing Solomon Islands’ legislation, which are explained in this chapter. By providing both legal analysis and insights into how the legislation operates in practice, this chapter makes an important contribution to our understanding of the protection of WH under Solomon Islands’ law.
The chapter begins with an assessment of laws that could be used to regulate the taking of particular species, principally the *Fisheries Management Act 2015* and the *Forest Resources and Timber Utilisation Act (Cap. 40)* (the *FRTU Act*) (see 7.2). These laws give relevant decision-makers the power to make Regulations or orders restricting the taking of certain animals and plants, including some that are under threat at East Rennell. However, as will be explained, using the laws to regulate harvesting is challenging, particularly in remote areas.

At 7.3, key legislation concerning logging and mining is analysed, namely the *FRTU Act*, the *Mines and Minerals Act (Cap. 42)* (the *MM Act*), the *Environment Act 1998*, and provincial business licence ordinances (referred to collectively here as ‘resource laws’). The analysis shows that resource laws give SIG officials the power to regulate and prohibit logging and mining operations to protect WH. This finding is highly significant because the Committee is calling upon Solomon Islands to ban these activities on Rennell (see 6.2.1), there appears to be confusion within SIG about its ability to comply, and substantial reform of resource laws in the short term is unlikely. The economic, social and cultural factors influencing decision-making under these laws and government policy more broadly are explored, providing insights into why developments that threaten East Rennell continue to be approved.

The scope for customary landowners\(^1\) to protect WH under resource laws is also assessed. As will be explained, under both the *FRTU Act* and the *MM Act*, landowner consent is generally required before the relevant SIG decision-maker can approve a proposed logging or mining operation. On the face of it, this requirement gives the landowners of a WH site a powerful tool to protect their land against the impacts of extractive industries. However, in practice, this power often rests with a few individuals within the landowning community, for whom the incentive to authorise development may far outweigh any concern for WH. As such, although many East Rennellese people currently oppose logging and mining within the WH site, it is unclear whether they can prevent those activities from occurring in the long term.

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\(^1\) The terms ‘customary landowners’ and ‘landowners’ are used frequently in this chapter to describe the persons who, under the *FRTU Act* or the *MM Act*, are required to provide their consent before the relevant SIG official can grant development approval for the activity. It is acknowledged that the use of those terms is problematic, as it over-simplifies the nature of customary land tenure. This issue was noted in 1.6.3, and is discussed further at 7.3.2.
The chapter then briefly assesses the *Biosecurity Act 2013*, which provides the SIG with several legal mechanisms that could be utilised to minimise the introduction and spread of invasive species on Rennell. As this legislation only recently came into force, it remains to be seen if it will be effective.

Overall, this chapter demonstrates that while legislation exists that could help address the threats to East Rennell, implementing those laws to protect the site is difficult. Some suggestions for steps that could improve the site’s protection are provided. However, given the inherent challenges that exist, the site’s future is uncertain.

### 7.2 Protecting World Heritage by regulating the harvesting of protected species

Protecting WH in Solomon Islands may require the harvesting of certain plants and animals to be restricted. Indeed, the WH Committee has called upon Solomon Islands to prevent the over-exploitation of coconut crabs and some marine species to protect East Rennell’s OUV. As noted previously, Solomon Islands does not have any broad threatened species legislation (see 6.5.1). However, as will be explained here, the *Fisheries Management Act 2015* could be used to regulate the harvesting of marine species under threat at East Rennell. The *FRTU Act* could also be used to restrict the taking of certain tree species, which could contribute to the preservation of the site’s OUV (see 7.2.1). However, for several reasons implementing and enforcing these laws is difficult (see 7.2.2).

#### 7.2.1 The scope for World Heritage protection under laws regulating the taking of protected species

The principal Act regulating the taking of marine species in Solomon Islands is the *Fisheries Management Act 2015*. Among other things, this Act empowers the Minister for Fisheries and the Director for Fisheries to make regulations, declarations and orders regulating fishing. For example, if certain requirements are met, the Minister can declare a species as protected or endangered.\(^2\) If such a declaration is made, the taking of the

\(^2\) *Fisheries Management Act 2015* s 31(1).
species is prohibited. A person who contravenes that restriction can be fined up to $SBD 500,000 (approximately $AUD 81,000) and/or jailed for 6 months. The Minister also has a broad power to make regulations, which could be exercised to restrict the harvesting of marine species. In addition, the Director is empowered to make orders regulating matters such as when fishing for a particular species can occur, the specifications and quantity of fish that can be taken, and what gear and vessels can be used. If a person breaches such an order they can be fined up to $SBD 5,000 000 (approximately $AUD 813,000) and/or imprisoned for 2 years. The Director can also introduce management measures through the development of a Fisheries Management Plan, which has legal effect when published in the Government Gazette.

The Director and the Minister therefore have ample power under the *Fisheries Management Act* to restrict the taking of marine species that are under threat at East Rennell (which include coconut crabs, trochus and beche de mer – see 6.2.2). Indeed, the harvesting of these species was until very recently regulated under the *Fisheries Regulations 1972*. Among other things, these Regulations prohibited the taking of trochus under 8cm in diameter, the catching of coconut crabs that were under 9cm long or carrying eggs, and the taking of beche de mer. Thus, controls on the harvesting of these species (which the WH Committee has been calling on Solomon Islands to introduce) have existed for many years.

The *Fisheries Regulations 1972* were repealed in January 2017. The author subsequently made inquiries with the Ministry of Fisheries and was informed that the harvesting of the abovementioned species was still restricted. However, it is unclear at this stage what legal instrument contains these provisions. Regardless, it appears that new Regulations concerning inshore fisheries will be gazetted under the *Fisheries Management Regulations 2017* reg 70(1)(a).

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3 Ibid s 31(2).
4 Ibid s 31(3).
5 Ibid s 129.
6 Ibid s 22(3).
7 Ibid 22(4).
8 Ibid s 17.
9 These Regulations were made under s 20 of the *Fisheries Ordinance 1972*. They continued to have effect (until repealed) pursuant to s 61(2) of the *Fisheries Act 1998* and then s 130(2) of the *Fisheries Management Act 2015*. For a summary of the *Fisheries Regulations 1972*, see Stephanie Price et al, *Environmental Law in Solomon Islands* (Public Solicitor’s Office, Solomon Islands Government, 2015) 176-178.
10 *Fisheries Regulations 1972* regs 6, 12, 13A. The prohibition on the taking of beche de mer has been subject to several amendments, pursuant to orders made by the Minister of Fisheries: see Price et al, above n 9, 191-192.
11 *Fisheries Management Regulations 2017* reg 70(1)(a).
In late 2017. Restrictions on the harvesting of coconut crabs, trochus and beche de mer could be included in those new Regulations.

In addition to empowering the Director and Minister to regulate fishing, the Fisheries Management Act establishes a regime for granting foreign fishing vessels access to Solomon Islands’ waters, and for licensing commercial fishing. There is currently little commercial fishing within the East Rennell WH site, due to the lack of a regular shipping service between Rennell and Honiara. Therefore, these provisions are not analysed here. However, they could become relevant to the protection of East Rennell if commercial fishing pressures increase.

Solomon Islands also has legislation regulating the taking of tree species, however it provides for a narrower range of regulatory mechanisms than the Fisheries Management Act (perhaps because it is an older law). Under the FRTU Act, before a logging operator can obtain a licence to log on customary land, it must enter into a ‘timber rights agreement’ with the relevant customary landowners. The prescribed form for this agreement specifies certain species that cannot be felled, unless this is unavoidable for the construction of roads or yards. However, unlike most clauses in the timber rights agreement, the protected species clause is negotiable, so logging operators can contract out of it. The Forest Resources and Timber Utilisation (Protected Species) Regulations 2012 further restrict tree harvesting. They state that certain tree species cannot be felled for sale or export, except for scientific research purposes as authorised under the Wildlife Protection and Management Act 1998. In addition, other prescribed species can only be exported in a milled timber form or product form.

While the Fisheries Management Act 2015 and the FRTU Act provide some scope for regulating the harvesting of important species, as noted in 6.5.1 Solomon Islands lacks broad threatened species legislation. Consequently, some species are inadequately protected under Solomon Islands’ law. For example, there is currently no mechanism for

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12 Fisheries Management Act 2015 parts 5, 6. See also the Fisheries Management Regulations 2017.
13 Simon Albert et al, Survey of the Condition of the Marine Ecosystem within the East Rennell World Heritage Area, Solomon Islands (University of Queensland, Solomon Islands Marine Ecology Laboratory, Griffith University and WWF-Solomon Islands, 2013) 36.
14 FRTU Act s 5. This requirement is explained further in 7.3.1(A).
15 Forest Resources and Timber Utilisation (Prescribed Forms) Regulations (Cap. 40) reg 5, form 4 (cl 18).
17 Forest Resources and Timber Utilisation (Protected Species) Regulations 2012 reg 3.
18 Ibid regs 4-5.
regulating the harvesting of birds. The taking of birds has not yet been identified as a specific threat to the OUV of the WH site. However, the island is renowned for its avifauna, and the site’s bird life was one of the attributes that led to it being inscribed on the WH List (see 5.3.1). Hence, the regulation of bird harvesting could be relevant to the site’s protection. The *Wild Birds Protection Act (Cap. 45)* previously made it unlawful to kill or harm certain birds or their eggs, without the approval of the Minister for Environment. The birds covered by that Act included some found on Rennell, such as osprey, white eyes, kingfishers, and ground doves. However, the Act was repealed in 2003 and has not been replaced.

In Solomon Islands, provincial governments also have the power to enact laws concerning the taking of species. For example, the *Western Province Fisheries Ordinance 2011* regulates the taking of some marine animals and prohibits some harvesting methods. However, there is no such ordinance for the province of Rennell and Bellona. As such, the only State laws regulating the taking of species at East Rennell are national laws.

7.2.2 Protecting World Heritage through laws regulating the taking of protected species: The legislation in context

As explained in 2.4.1, ensuring compliance with State laws relevant to heritage protection in Solomon Islands is difficult. Reasons for this include the government’s strong desire for economic development, governance issues, the irrelevance of the State legal system to much of the rural population, and the logistical difficulties of implementing and enforcing State laws, particularly on remote islands. These challenges clearly hamper the effectiveness of laws regulating species harvesting. Issues of particular relevance to the use of these laws at East Rennell are elaborated on below. The analysis helps explain why the harvesting of coconut crabs and certain marine species continues to threaten the site’s OUV.

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20 *Wild Birds Protection Act (Cap. 45)* ss 3, 12. The birds covered by these provisions were listed in the schedule to the Act: s 2.


(I) Many people lack awareness and understanding of harvesting laws

In Solomon Islands, the State legal system is of marginal significance to much of the population. Consequently, many Solomon Islanders would be unaware of the existence of laws regulating harvesting and the restrictions imposed under them. This is particularly the case for people living in rural areas such as Rennell, where the national government is effectively absent. The laws that have enjoyed greatest success relate to ‘high profile’ species. For example, the prohibition on the capture of dolphins for sale or export has been an important step towards reducing this practice in Solomon Islands. However, in general, State legal rules regulating harvesting are not well known among much of the population, and any steps taken by the government to address this issue have been limited. When the author was working in East Rennell, there was no evidence that the government had made any recent effort to disseminate information about harvesting laws to the local communities.

(II) The restrictions on the taking of some species have changed frequently

Since independence, Solomon Islands has experienced significant political instability, with government leaders and Ministers frequently changing. As harvesting laws are not based on well-established policy, they have been amenable to decisions of the government of the day. For example, some laws regulating the taking of commercially valuable species (including beche de mer, which is under threat at East Rennell) have been amended several times, as different people take over the relevant Ministerial position. This decreases their effectiveness.

(III) People often have little incentive to comply with the laws

Solomon Islanders have little incentive to comply with State laws regulating the
taking of species, particularly those that are inconsistent with customary harvesting rights. Any such inconsistency may also reduce the likelihood of the State enforcing the restriction. For example, when interviewed for this research a SIG employee formerly working within the National Commission for UNESCO commented:

On Rennell, if the government makes a rule that says that people can’t take coconut crab, and a person from there wants to take coconut crab, how do we [the government] tell them that they can’t?

This challenge relates to the issue of the ownership of natural resources, which is explored further in the context of extractive industries at 7.3.2.

A further disincentive for compliance is that some Solomon Islanders rely on resource harvesting for their livelihoods. As the author observed, coconut crabs taken by the East Rennellese are often sold in Honiara, or to loggers and miners in West Rennell, providing locals with a rare income opportunity. Furthermore, the penalties for non-compliance are generally insufficient to promote compliance. For example, the maximum fine for taking undersized trochus in contravention of the Fisheries Regulations 1972 was $SBD100 (approximately $AUD16). While this is a significant amount of money for some Solomon Islanders, it is unlikely to have deterred many involved with commercial harvesting, particularly given the lack of monitoring and enforcement of these laws (see below). It is notable that the fines for non-compliance with restrictions imposed under the more recent Fisheries Management Act 2015 are significantly higher (see 7.2.1).

(IV) There is little monitoring and enforcing of these laws by the relevant Ministries.

Monitoring and enforcing harvesting laws is difficult given the government’s limited human and financial resources and the country’s geography. No staff from the Ministries responsible for these laws are permanently stationed on Rennell, making it difficult for government officers to identify and investigate breaches. In the absence of an effective monitoring and enforcement system, compliance with these laws is essentially voluntary and (as noted above) there is little incentive for people to comply. Consequently, on Rennell laws such as the Fisheries

27 Fisheries Regulations 1972 reg 6.
A significant challenge for WH protection in Solomon Islands is therefore that many laws regulating species harvesting are ineffective. The compilation of consolidated and up to date versions of the relevant legislation, and the creation and distribution of copies of the rules in a format readily understandable by those involved with harvesting may be beneficial. Substantially increasing the resources available to the relevant Ministries to monitor and enforce the laws would also assist, but is unlikely without funding from donors or other States. Increasing the penalties for non-compliance, and assisting people involved with harvesting to undertake alternative and sustainable livelihood activities, could also reduce over-harvesting.

The use of such laws to protect WH will however always be difficult, given their potential inconsistency with customary rights and the reliance of local people on the resources for their livelihoods. As such, the Protected Areas Act 2010 (the PA Act - analysed in chapter 8) may be a better approach to addressing this threat. Regardless of the approach taken, information on the harvesting that is occurring at East Rennell should be collected, to inform future efforts to protect that site. As noted in 6.2.2, at present there is limited data on what species are being taken, by whom, using what methods, and for what purpose. This information could help inform appropriate management responses, and ensure that the limited resources available for addressing this threat are used efficiently.

7.3 Protecting World Heritage by regulating logging and mining

As explained in 6.2.1, logging and mining in East or West Rennell could impact the OUV of the WH site. The WH Committee has called upon Solomon Islands to mitigate the impacts of existing logging and mining operations on Rennell, and not approve further developments until a new management plan is being implemented. Under the Pacific World Heritage Action Plan 2016 – 2020, a national level action for Solomon Islands is to ensure that logging and mining does not occur within the WH site or ‘surrounding areas that support the ecological functioning’ of the property, through the completion of an appropriate ‘legal framework.’\(^\text{29}\) However, this action has not yet been implemented, and


logging and mining companies continue to operate in West Rennell. Furthermore, it is unclear what form of ‘legal framework’ the SIG is expecting to develop to complete this action.

Pursuant to Solomon Islands’ resource laws, the principal approvals required to conduct logging or mining on customary land are:

- the consent of the customary landowners;
- for logging, a felling licence granted by the Commissioner for Forests under the FRTU Act;
- for mining, a mining tenement (namely a prospecting licence or mining lease) granted by the Minister for Mines under the MM Act;
- a development consent granted by the Director of Environment under the Environment Act 1998; and
- a business licence granted by the relevant provincial assembly under its provincial ordinance.

The processes for obtaining these approvals are analysed below to determine the scope for customary landowners and the SIG to regulate logging and mining to protect WH (see 7.3.1). The implementation of resources laws in practice will then be explored, to identify key challenges associated with protecting WH against the impacts of these industries (see 7.3.2). Before commencing this analysis three preliminary points will be made.

Firstly, East Rennell is not the only WH site threatened by the impacts of extractive industries. The impact of mining on WH is of particular concern to the international
community, and the WH Committee has called upon all State parties and industry stakeholders not to permit mining within any listed sites. The international community’s concerns regarding this issue are reflected in the WH Sustainable Development Policy, which was recently adopted by the General Assembly of State parties to the Convention. That document notes that extractive industries pose considerable challenges to heritage protection, and reiterates the Committee’s calls for WH sites to be a no-go zone for such operations. It demonstrates that addressing the threat to WH posed by extractive industries is firmly on the international community’s agenda.

Secondly, Solomon Islands is not the only country facing the difficult task of trying to protect WH from the impacts of extractive industries whilst also facilitating economic development. However, regulation of logging and mining in Solomon Islands differs from many other places because of the landowner consent requirements under the FRTU Act and the MM Act (7.3.1(A)) and the belief held by some people within SIG that the government lacks the power to prohibit operations that are supported by the landowners (see 7.3.2). Consequently, protecting Solomon Islands’ WH from the impacts of these industries could require a different response to that which is effective in other States. The analysis in this chapter is critical to understanding the particular opportunities and challenges that exist in Solomon Islands.

Finally, protecting WH against the impacts of logging and mining requires a range of actions. While this chapter focuses on legal regulation, it is acknowledged that the other factors that lead companies to operate in and around heritage sites, and financial institutions to fund such operations, need to be addressed. These include the failure of some companies and institutions to undertake sufficient due diligence before becoming involved with projects that affect WH. The self-regulation of the resource sector also needs to be supported. Increasingly, some international organisations, large companies

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41 Ibid para 24.
and financial institutions\textsuperscript{46} have pledged not to operate in or fund resource extraction operations that may threaten WH sites, making an important contribution to the protection of such places. However, with one exception, the companies that have operated on Rennell have not been major enterprises with international shareholders, and thus reputations to protect.\textsuperscript{47} The island is too small and remote to attract companies of that type. Consequently, there is little self-regulation of resource industries in Rennell, and pledges such as those referred to above have little or no effect there. This heightens the importance of the legal regulation of these operations in Solomon Islands.

7.3.1 The scope for World Heritage protection under laws regulating the logging and mining industries

This part of the chapter considers the legal ability of (A) the landowners of a WH site and (B) the SIG to protect WH against the impacts of logging and mining. This involves an analysis of the relevant legislation only. The operation of the legislation in practice is then considered in 7.3.2.

(A) The protection of World Heritage by the site’s customary landowners

In general, under Solomon Islands’ law, customary landowners have the power to dictate whether their land is logged or mined, giving them significant power to protect their land against the impacts of these activities (see (I)). They also have the right to object to logging and mining on other land, if those operations would affect them (see (II)). However, they have little power to cease operations that have already been approved (see (III)).

\textsuperscript{46} See, eg, HSBC, \textit{World Heritage Sites and Ramsar Wetlands Policy} (2014). In this policy, HSBC pledges to not knowingly provide financial services directly to projects that threaten WH sites: at 1.

The landowners of a World Heritage site could refuse to grant consent to logging and mining operations on their land

Except in limited circumstances, under the *FRTU Act* and the *MM Act* a person who wishes to undertake logging and mining on customary land must first obtain the consent of the landowners.¹⁴⁸ Both laws prescribe several steps that must be completed before this consent can be given.¹⁴⁹

Under the *FRTU Act*, before the Commissioner for Forests can grant a felling licence over customary land, the applicant must complete the process prescribed in part III of the Act (often referred to as the ‘timber rights process’).¹⁵⁰ In summary, this involves the applicant applying to the Commissioner for consent to negotiate with the owners of the land.¹⁵¹ If the application is approved, the relevant provincial executive organises a meeting between the applicant and the landowners.¹⁵² At this meeting, the provincial executive makes a determination concerning several matters, including whether the landowners wish to grant the applicant ‘timber rights’, and whether the persons proposing to grant those rights are lawfully entitled to do so.¹⁵³ If the provincial executive answers those questions in the affirmative, the applicant can enter into a ‘timber rights agreement’ with the landowners’ representatives, which must be in the prescribed form.¹⁵⁴ The Commissioner may then grant the applicant a felling licence.¹⁵⁵

The *MM Act* does not prescribe a ‘mining rights process’ that is equivalent to part III of the *FRTU Act*. Under the *MM Act*, if an application for a mining tenement is deemed to be acceptable by the Minerals Board,¹⁵⁶ the Minister for Mines must issue the applicant with a ‘letter of intent’ indicating he or she intends to grant the

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¹⁴⁸ *FRTU Act* s 5; *MM Act* ss 21, 36(a). The Minister for Forests can however exempt a person from requiring a felling licence (*FRTU Act* s 4(1)(c)), in which case the applicant does not need to obtain the consent of the landowners for logging (confirmed by the High Court of Solomon Islands in *Alevangana v Kegu* [2012] SBHC 1). The Minister for Mines can compulsorily acquire land for mining (as distinct from prospecting) (*MM Act* s 33(1)), which would mean that landowner consent for that operation is not required.

¹⁴⁹ For detailed analysis of this process, see Price et al, above n 9, 76-97.

¹⁵⁰ *FRTU Act* s 5(1)(c).

¹⁵¹ *Ibid* s 7(1).

¹⁵² *Ibid* s 8(1).

¹⁵³ *Ibid*.

¹⁵⁴ *Ibid* s 8(4); *Forest Resources and Timber Utilisation (Prescribed Forms) Regulations* (Cap. 40) reg 5.

¹⁵⁵ *FRTU Act* s 5(1).

¹⁵⁶ The Minerals Board is established under the *MM Act*, and its functions include advising the Minister on the grant of mining tenements: *MM Act* ss 10-11.
approval if surface access rights are secured.\textsuperscript{57} The applicant must then negotiate with the ‘landowners or any person or groups of persons having an interest’ in the land, with a view to obtaining surface access rights.\textsuperscript{58} If an agreement is reached, the applicant and the landowners’ representatives can enter into a ‘surface access agreement’ and, subject to the requirements of the Act, the Minister for Mines can grant the mining tenement.\textsuperscript{59}

The landowner consent provisions of the \textit{FRTU Act} and the \textit{MM Act} therefore give the owners of a WH site a powerful tool to protect their land from the impacts of logging and mining. Given the reluctance of SIG decision-makers to refuse approval for projects that are supported by the landowners (see 7.3.2), the decisions that the owners of a WH site make with respect to such developments are central to the site’s protection. Even if the landowners approved a development, they could seek to include in their agreement with the operator conditions designed to minimise its impact on heritage. As will be explained in 7.3.2 however, in practice the power of landowners to protect WH is more limited.

\textit{(II) The landowners of a World Heritage site could object to the approval of operations that would affect their land}

People who may be affected by a logging or mining project on land that they do not own have no formal avenue under the \textit{FRTU Act} or the \textit{MM Act} to object to the approval of that project. They are however entitled to object to the grant of a ‘development consent’ by the Director of the Environment and Conservation Division of the Ministry of Environment, under the \textit{Environment Act}\textsuperscript{60} (see 7.3.1(B) for further discussion of the development consent process). The objection must be lodged within 30 days of the publication of the project’s environmental impact assessment (EIA) report.\textsuperscript{61} The Director must consider any such objections when deciding whether to grant a development consent for the project.\textsuperscript{62}

\begin{itemize}
\item \textsuperscript{57} \textit{MM Act ss} 21(1)-(2); 32(1).
\item \textsuperscript{58} Ibid \textit{ss} 21(4)(a)-(b); 32(4).
\item \textsuperscript{59} Ibid \textit{ss} 19, 36(a).
\item \textsuperscript{60} \textit{Environment Act 1998 ss} 22(2), 24(2).
\item \textsuperscript{61} Ibid. An application for a development consent must be accompanied by a Public Environment Report or an Environmental Impact Statement (collectively referred to here as an Environmental Impact Assessment (EIA)) unless the Director has granted the proponent an exemption from this requirement: \textit{Environment Act 1998 ss} 17(2), 17(4).
\item \textsuperscript{62} Ibid \textit{ss} 22(4), 24(3).
\end{itemize}
The landowners of a WH site could therefore object to the grant of a development consent for operations on surrounding land that would affect the OUV of the site. This is significant for the protection of East Rennell, which is threatened by logging and mining occurring in West Rennell. The amendment of the *FRTU Act* and the *MM Act* to give third parties the right to object to the grant of logging and mining approvals would strengthen the East Rennellese peoples’ power to protect the site against these activities.

**(III)** The landowners of a World Heritage site have little power to halt logging and mining operations that have already been approved

An agreement between customary landowners and a logging company (a ‘timber rights agreement’) must be in the prescribed form.63 Most of the clauses of the agreement cannot be altered by the parties, including the clause regarding termination.64 While that clause allows a logging company to terminate the agreement by giving the landowners one month’s written notice, that right is not reciprocal. Even if the logging company is in breach, the agreement only entitles the landowners to serve the company with a default notice. If the company fails to comply with the notice within a month, it must suspend its operations until it is in compliance.65 Landowners therefore have limited capacity to terminate timber rights agreements.66 Furthermore, these agreements do not come to an end merely because a felling licence has expired.67

Unlike for a timber rights agreement, there is no prescribed form for a mining ‘surface access agreement’. Landowners and mining companies are free to negotiate and agree upon a termination clause for inclusion in their agreement. In practice however, because of the large investment required for most mining operations, it is unlikely that a company would enter into an agreement that gives the landowners a broad right to terminate.

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63 *Forest Resources and Timber Utilisation (Prescribed Forms) Regulations (Cap. 40)* form 4.
64 Ibid. For discussion of the ability of landowners to negotiate the terms of a timber rights agreement see Price et al, above n 9, 90-94.
65 *Forest Resources and Timber Utilisation (Prescribed Forms) Regulations (Cap. 40)* form 4 cl 38.
66 For further discussion see Price et al, above n 9, 93-94.
Consequently, if the East Rennellese ever approved logging or mining within the WH site, it is unlikely that they could subsequently retract their authorisation.\footnote{68} Similarly, even if the landowners of West Rennell wanted the logging and mining of their land to cease, they have little capacity to achieve this. This heightens the importance of the regulation of these operations by the SIG, which is explored below.

(B) The protection of World Heritage by the Solomon Islands government

Some people working within the SIG have contended that the government lacks the power to prevent logging and mining from impacting the East Rennell WH site. This is evident from several documents submitted by the SIG to the WH Committee. For example, Solomon Islands’ 2013 State party report says that the SIG:

\begin{quote}
\textit{does not have the power to prevent and/or halt applications for commercial logging or mining activities on customary owned areas should application(s) are compatible with SICOLP [the Solomon Islands Code of Logging Practice], unless the proposal is going to be conducted on a protected area under the Environment Act 1998 [sic].}\footnote{69}
\end{quote}

A similar contention is contained in Solomon Islands’ 2014 State party report, which is the most recent one submitted by the SIG.\footnote{70} It is unclear whether the authors of these reports were contending that the SIG lacks the legislative power to halt logging or mining on Rennell, or that the practical and ethical challenges associated with that task render it impossible. The SIG’s recent request for legal advice on the Minister for Environment’s power to prohibit these operations\footnote{71} suggests that there is at least some uncertainty regarding the scope of the government’s legal powers.

The lack of clarity around this issue highlights the importance of the analysis in this part of the chapter. That analysis shows that under existing laws, SIG decision-makers could refuse to approve new logging and mining developments if they would have an unacceptable impact on WH (see (I)). Alternatively, they could grant approvals subject to conditions designed to minimise that impact (see (II)). In addition, existing approvals
for these operations could potentially be cancelled (see (III)). However, legislative amendment to clarify these powers would be beneficial.

(I) Applications for logging and mining approvals could be refused if the operations were likely to impact World Heritage

The FRTU Act

Under the FRTU Act, decisions concerning the grant and cancellation of felling licences are made by the Commissioner for Forests. The Minister for Forests does not have the power to prohibit the grant of new approvals or halt existing logging operations.

The FRTU Act does not prescribe the matters that the Commissioner must consider when determining a felling licence application, and there is no express reference to WH in the Act. Nevertheless, several provisions indicate that the likely impact of a logging proposal on natural and cultural heritage is a relevant consideration. For example, the Commissioner is not entitled to grant a felling licence unless the applicant has agreed to, inter alia, take measures to prevent soil erosion and conserve the environment, river catchment areas, tambu places and sites of historical importance. All logging is prohibited within certain environmentally and culturally sensitive areas unless the operator has the further approval of the Commissioner. In addition, the Commissioner can require the licensee to comply with the Revised Solomon Islands Code of Logging Practice 2002, which contains several clauses aimed at minimising the impact of logging operations on heritage. Based on these provisions, it is arguable that the Commissioner could refuse to grant a felling licence for a proposed operation on Rennell if it was likely to damage the WH site.

Despite this finding, the amendment of the FRTU Act to make the likely impact

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72 FRTU Act ss 5, 39.
73 Confirmed by the High Court of Solomon Islands in Pitanoe v Minister for Forestry, Environment & Conservation [1998] SBHC 56.
74 Tambu is a word in Solomon Islands' pижin meaning taboo. A tambu site is a place of historical and cultural significance to the local people.
75 FRTU Act s 5(2)(e)(iv).
76 Forest Resources and Timber Utilisation (Felling Licences) Regulations 2005 regs 13(1)(b), 13(1)(d).
77 Ibid reg 10(f); Solomon Islands Ministry of Forests, Environment and Conservation, The Revised Solomon Islands Code of Logging Practice (Solomon Islands Government, 2002).
of a logging proposal on heritage an express relevant consideration would be beneficial. Any ambiguity as to the scope of the Commissioner’s power is likely to exacerbate his or her reluctance to refuse licence applications that are supported by the landowners (see 7.3.2). It would also be beneficial if a national WH policy was developed, to raise the profile of the *Convention* within the country and further reinforce that the impact of development proposals on heritage is a relevant consideration that decision-makers must consider.

**The MM Act**

Like the *FRTU Act*, the *MM Act* does not expressly refer to WH. However, several provisions of that Act and the *Mines and Minerals Regulations 1996* (the *MM Regulations*) demonstrate that environmental and cultural impacts are relevant to the Minister for Mine’s decision as to whether to grant a mining tenement.

For example, an application for a mining lease must include, among other things, an environmental assessment that explains how the impacts of the proposed development on air, land and waters will be monitoring and minimised, and how the area will be rehabilitated.\(^{78}\) Before granting a mining lease, the Minister must be satisfied of a range of matters, including that the environment within and outside the mining area will be adequately protected.\(^{79}\) The Act also prohibits mining in certain areas, including *tambu* and other sites of traditional significance, except with the written consent of the landowners.\(^{80}\) Pursuant to the *MM Regulations*, tenement holders must conduct their operations in a way that minimises ecological damage\(^{81}\) and avoids harm to fresh water, marine and animal life.\(^{82}\) There is therefore scope for the Minister to refuse to grant a mining tenement on the grounds it would damage WH. As for logging, legislative amendment to clarify this, and the development of a national WH policy, would be beneficial.

\(^{78}\) *MM Act* s 31(1)(h).

\(^{79}\) Ibid s 36(b)(ii).

\(^{80}\) Ibid s 4(2)(a).

\(^{81}\) *MM Regulations* reg 18(b).

\(^{82}\) Ibid reg 18(f).
The Environment Act

In addition to obtaining an approval under the FRTU Act or the MM Act, a person wishing to conduct logging or mining in Solomon Islands requires a development consent granted under the Environment Act (unless they have received an exemption from this requirement). Applications for development consents are determined by the Director of the Environment and Conservation Division of the Ministry of Environment. The Minister for Environment cannot veto such an application, or cancel an existing consent, so has no direct power to protect WH against the impacts of logging and mining.

When determining a development consent application, the Director must consider a range of matters including the impacts of the proposal on ‘the environment’, as determined through an EIA. ‘Environment’ is defined broadly in the Act to include natural and social systems, including people, communities, and economic, aesthetic, cultural and social elements. The Director is also required to take into account the objects of the Environment Act, which include complying with international conventions and obligations regarding the environment. Pursuant to the Environment Regulations 2008, the Director cannot grant a development consent if it would mean that Solomon Islands would breach an obligation under an international convention.

The Director therefore clearly has the power to refuse to approve logging and mining operations that would negatively impact a WH site. Indeed, the Director may be legally bound to do so, if a project’s impacts would be sufficiently severe to cause Solomon Islands to breach its protection obligations under the Convention. This is likely to be the case for any proposal to conduct logging or mining in East Rennell, given how damaging such an activity would be to the site’s WH values.

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84 Ibid ss 22(3), 24(3).
85 Ibid s 15.
86 Ibid s 2.
87 Ibid ss 3(c)-(d).
88 Reg 14(1)(d).
Business licence ordinances

Provincial governments do not have the power to veto development proposals under the FRTU Act, the MM Act or the Environment Act. However, each province has an ordinance that requires business operators to be licenced. Whether a licence could be refused for a logging or mining proposal that threatens WH depends on the terms of the ordinance. For example, under the Choiseul Province Business Licence Ordinance 2011 a licence cannot be granted for a business that will cause undue harm to the province or its people.\(^89\) If a proposed logging or mining operation was likely to have a significant impact on an environmentally or culturally significant place such a WH site, it is arguable that a licence could be refused under that provision. The Rennell and Bellona Provincial Business Licence Ordinance 1995 does not prescribe any matters that must be taken into consideration in the determination of a licence application. It is still arguable however that a business that would damage the environment or a cultural site could be refused a licence under that ordinance.

(II) New approvals granted for logging and mining could include conditions designed to minimise the impact of the operations on World Heritage

Felling licences, mining tenements, development consents and business licences can be granted subject to conditions.\(^90\) These conditions could include requirements designed to minimise the impact of the proposed operations on WH. For example, a felling licence for logging in West Rennell could be subject to a condition that requires certain areas to be avoided, to maintain ecological corridors across the island. A condition requiring barges and log ponds to be baited, to minimise the spread of black ship rats across the island, could also be imposed. The monetary penalty for non-compliance with such a condition is relatively low (a fine of up to $SBD 3,000, which is approximately $AUD 490),\(^91\) reflecting the age of logging legislation in Solomon Islands. A more serious consequence of a breach is that it would give the Commissioner for Forests grounds to cancel the felling licence\(^92\) (discussed further below). Ensuring

\(^89\) Cl 15(1)(c).
\(^90\) FRTU Act s 5(2); MM Act ss 22(h), 38(1)(e); Environment Act 1998 ss 22(3), 24(3); Interpretation and General Provisions Act (Cap. 85) s 30(1)(c).
\(^91\) FRTU Act s 4(1).
\(^92\) Ibid s 39.
compliance with such conditions would however require substantial improvements in the monitoring and enforcement of the *FRTU Act* (see 7.3.2).

(III) **Existing government approvals for logging and mining could be cancelled, if the operators were in breach of relevant laws and conditions**

Pursuant to the *FRTU Act*, the Commissioner for Forests has the power to cancel a felling licence if the licensee is in breach of the Act or the conditions of the licence.\(^93\) The Minister for Mines has an equivalent power to cancel mining tenements under the *MM Act*.\(^94\) The *Environment Act* does not expressly state that the Director can cancel development consents, but that power is implied under the *Interpretation and General Provisions Act (Cap. 85)*.\(^95\)

There has been no investigation into whether the companies conducting logging or mining in West Rennell have complied with all relevant laws and conditions. However, given that in Solomon Islands such developments frequently occur in contravention of legal requirements (see 7.3.2), it is likely that at least some of the companies operating on Rennell have committed breaches. If so, one or more of their development approvals could be cancelled. In the unlikely event that the companies are in full compliance with all relevant laws and conditions, legislative amendment would be required to halt their operations.

7.3.2 **Protecting World Heritage through laws regulating logging and mining: The legislation in context**

The previous section demonstrated that landowners and SIG decision-makers have certain powers that could be exercised to protect a WH site from the impacts of logging and mining. However, the legislative provisions are only part of the story. This section therefore considers the implementation of this legislation in practice. It is based on key secondary literature concerning the logging and mining industries, particularly a recent report by Tony Hughes and Ali Tuhanuku prepared for the World Bank and the SIG.\(^96\)

\(^93\) *FRTU Act* s 39.
\(^94\) *MM Act* s 71(1).
\(^95\) S 30(1)(e).
\(^96\) Hughes and Tuhanuku, above n 47.
which provides invaluable insights into operations on Rennell. Knowledge about the operation of resources laws gained by the author while working in Solomon Islands is also drawn upon.

The analysis identifies six key issues, all of which influence the ability and/or willingness of landowners and SIG to protect WH:

(I) resources legislation is often implemented in a way that allows logging and mining to occur without the consent of all landowners;

(II) landowners often have little capacity to object to developments on neighbouring land;

(III) the incentives for landowners to support extractive industries may outweigh concerns for WH;

(IV) the incentives for SIG decision-makers to support extractive industries may outweigh concerns for WH;

(V) SIG decision-makers are reluctant to make decisions on development approval applications that are contrary to the wishes of the landowners; and

(VI) the lack of compliance with and enforcement of resource legislation means logging and mining in Solomon Islands is often unlawful.

Each of these issues is explored in detail below.

(I) *Resources legislation is often implemented in a way that allows logging and mining to occur without the consent of all landowners*

As will be explained, despite the requirement for landowner consent under the *FRTU Act* and the *MM Act*, in practice operations commonly occur without the approval of all relevant landowners. Key reasons for this are inadequacies in the drafting of the legislation and a lack of government oversight of the consent process, which leaves it highly vulnerable to exploitation.

Under the *FRTU Act*, landowner consent for logging proposals is given through the ‘timber rights process’ (see 7.3.1(A)). This process was inserted into the Act in 1977, when the logging industry expanded its operations from land owned or

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97 Pursuant to the *Forest and Timber Amendment Act 1977.*
leased by the government onto customary land. However, the purpose of these provisions was not to protect landowners, but to give logging companies someone with whom to make an agreement. Consequently, the legislation incorporates inadequate checks and balances to ensure that logging agreements are only made with the consent of all relevant landowners. In practice, these provisions are often manipulated by powerful individuals within landowning groups who declare themselves entitled to grant ‘timber rights’ notwithstanding the true customary position. Logging companies are frequently happy to enter into agreements with such persons to facilitate the development of the land. As a result, the FRTU Act has effectively enabled ‘people with tenuous claims, or even no claims at all, to become the principal beneficiaries’ of logging operations.

The landowner consent process under the MM Act differs to that under the FRTU Act (see 7.3.1(A)). There is no ‘mining rights process’ for the identification of the customary landowners. Rather, an applicant for a mining tenement is responsible for identifying the people with whom it must make a ‘surface access agreement’ with. The MM Act has been analysed less than the FRTU Act, because until recently relatively little mining had occurred in Solomon Islands. However, case law and literature demonstrates that many consent and approval processes have been plagued by difficulties.

Problems with the landowner consent provisions in the FRTU Act and the MM Act arise in part from how these laws refer to customary rights holders. Under the FRTU Act, the provincial executive must organise a meeting between the applicant and the ‘customary landowners’ to discuss the disposal of their ‘timber

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100 See, eg, Wairiu, above n 98; Graham Baines, Solomon Islands is Unprepared to Manage a Minerals-Based Economy, State, Society and Governance in Melanesia Discussion Paper 2015/6 (Australian National University, 2015) 1.


102 MM Act s 21(4). This section applies to the applicant for a prospecting licence. Only the holder of a prospecting licence can apply for a mining lease (MM Act s 30(2)).


104 For history of the regulation of mining in Solomon Islands, see generally Tagini, above n 103, ch 2.

105 See, eg, Baines, above n 100. The saga involving Sumitomo Metal Mining Solomons Ltd obtaining approval to conduct mining on Isabel is a key example of this. See, eg, SMM Solomon Ltd v Attorney General; Bogota Minerls Ltd v Attorney General [2014] SBHC 91.
The Act refers to ‘landowners’ and ‘persons proposing to grant timber rights’ interchangeably, without defining either term. The term ‘landowner’ does not accurately describe the nature of customary land rights (see 2.3.5). In addition, the Act’s failure to distinguish a ‘landowner’ from a ‘timber rights holder’ implies that the terms are synonymous, which is not necessarily the case. As Corrin notes, ‘[t]his has set up a serious dilemma in Solomon Islands where the legislation may permit those with a restricted interest in land to dispose of the most valuable fruit of the land’.

A similar issue arises under the MM Act. That law requires a mining tenement applicant to negotiate with the ‘landowners or any person or groups of persons having an interest’ in the land, with a view to obtaining surface access rights. However, some sections of the Act refer to the applicant making a surface access agreement with the ‘landowners’ only. The ambiguous and inconsistent use of this terminology makes it unclear whose consent is legally required under the Act.

The implementation of the landowner consent provisions in the FRTU Act and the MM Act is also problematic because of their inconsistency with some customary decision-making processes. This issue is particularly pertinent in Rennell, where the tenure system differs from many other places in Solomon Islands. In accordance with the FRTU Act and the MM Act, logging and mining agreements are often signed by a community member purporting to act on behalf of a landowning group such as a tribe. While this may reflect the customary tenure system in some areas, land ownership on Rennell is more individualised than elsewhere in Solomon Islands. As Hughes and Tuhanuku have explained:

In Rennell, these [land] rights are held at the family level, grouped geographically on a tribal basis but jealously guarded at the level of the family, even on occasion

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106 FRTU Act s 8(3).
107 See, eg, ss 8(3)(z), 8(3)(b).
110 MM Act ss 21(4)(a)-(b); 32(4).
111 For example, MM Act ss 21(6)-(8), 34(1).
112 For further discussion, see Price et al, above n 9, 144-145.
113 Tagini, above n 103, 221.
setting brother against brother. Family boundaries are well known and defended. Consequently, while the customary laws in other parts of Solomon Islands may authorise certain individuals to make decisions on behalf of their tribe, on Rennell:

…[i]ndividual families can hold out against the wishes of the tribe, including the chief or chiefs. This feature of land rights has led to inter-family rows, delays in reaching decisions about adjoining land areas, and family dissatisfaction with agreements about logging and mining entered into on a ‘tribal’ basis.

Consent for much of the logging and mining that is now occurring in West Rennell was given by only a few of the families who own land within the relevant area, creating conflict between local people regarding the approval of these projects. The prevalence of these disputes lead Hughes and Tuhanuku to contend that the Rennellese peoples’ experience with logging and mining has been ‘unhappy and divisive’.

A lack of government oversight over the landowner consent processes has enabled many of the problems referred to above to occur. In general, SIG has tended to look after the interests of investors over those of landowners. Some landowners do not learn about proposals for their land until a company representative arrives to persuade them to sign an agreement, or even until the operations begin. This was the author’s experience, when participating in community meetings in East Rennell in 2011 (as a lawyer for the Public Solicitor’s Office). The purpose of those meetings was to inform the local people about an application to log within the WH site, and to explain the approval process that would follow. The author observed that many East Rennellese were not aware that an application to log their land had been submitted.

Even if landowners are notified of an application, they often lack the information they require to properly assess the proposal and make an informed decision.

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114 Hughes and Tuhanuku, above n 47, 12.
115 Ibid.
116 Ibid 18.
119 See, eg, Baines, above n 100, 5.
121 Application 101176 lodged by Joses Tahua dated 9 December 2011. This application (which was ultimately not successful) was for a licence to extract 80% of the logs from certain forests in West and East Rennell, including the forests covering the entire western half of the World Heritage Site.
122 Price et al also note that the Public Solicitor’s Office receives frequent complaints from landowners that the provincial executive has failed to inform them that an application has been lodged: see Price et al, above n 9, 80.
123 See, eg, Tagini, above n 103, 147.
addition, landowner agreements are often signed and negotiated by a few people within a landowning community, without input from all people with customary rights in the area. These are rarely scrutinised by the government to ensure they have been signed by the people who have the right under custom to make decisions with respect to the land. This lack of government oversight makes the consent processes highly vulnerable to exploitation.

There are also inadequate processes in place for the resolution of disputes concerning landowner approval for logging and mining. The *FRTU Act* enables a person to appeal a determination by the provincial executive made at a timber rights meeting to the relevant Customary Land Appeals Court. However, these courts are ‘choked’ with appeals and fail to resolve disputes in a timely fashion. In addition, many people cannot commence proceedings because they are unaware that a determination was made, or because they lack the necessary knowledge or resources. The *MM Act* does not establish an appeal mechanism for landowners wishing to dispute the signature of a surface access agreement. Such claims can only be made in the High Court, making it extremely difficult for landowners to challenge surface access agreements. Again, these issues are reflected in the experiences of the West Rennellese to date. Hughes and Tuhanuku have stated that on West Rennell, ‘the combination of physical remoteness, lack of understanding of issues and possibilities, and capture of the regulators by the loggers and miners, has deprived the people…of orthodox avenues of complaint.’

In practice therefore, many Solomon Islanders often have little power to prevent logging and mining from occurring on their land, which reduces their ability to protect WH. Legislative reform to address the issues referred to above is long overdue. In particular, resources legislation should be amended to incorporate new mechanisms for identifying customary landowners and resolving disputes.

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124 Price et al, above n 9, 90.
125 See, eg, McDonnell, Foukana and Pollard, above n 118, 7, 62; Price et al, above n 9, 83; Baines, above n 100, 6.
126 See, eg, Baines, above n 100, 9.
127 *FRTU Act* s 10. Customary Land Appeal Courts are established by the Chief Justice of the High Court under the *Land and Titles Act (Cap. 133)* s 255(1).
129 Price et al, above n 9, 119.
130 Hughes and Tuhanuku, above n 47, 19.
131 McDonnell, Foukana and Pollard, above n 118, 11.
There is also a critical need for landowners to have greater access to information, advice and representation concerning logging and mining proposals, to enable them to make informed decisions about the development of their land, and to challenge approvals that they consider are unlawful. Unless and until these reforms occur, it is unclear whether the East Rennellese can prevent logging and mining from occurring within the WH site in the long term.

(II) Landowners often have little capacity to object to developments on neighbouring land

As noted in 7.3.1(A), under the Environment Act a person who may be affected by a proposed operation can object to the grant of a development consent. While this provision technically gives people some say in operations that may affect them, this presupposes that they are aware of the development consent application, and they have the capacity to prepare and submit an objection. The Director of Environment is legally required to give notice of such applications to people who may be affected, however in the author’s experience this does not always happen. It is also difficult for people in rural areas to prepare written objections, especially to counter lengthy and technical EIA reports. Thus, in practice, people have little control over whether activities are approved on neighbouring land. For these provisions to be effective, it is imperative that people who may be affected by a proposed development are informed of the proposal in a timely manner, and are assisted to navigate the EIA and to prepare and submit a submission to the Director.

A further challenge is that attempting to restrict development on neighbouring land may be inconsistent with custom. In most villages, decisions about the use of land are made by those directly associated with it, and neighbours do not interfere. As Allen et al have stated:

It is extremely difficult for members of one group to impose sanctions on or issue directions to members of another group.

Thus, in practice, the East Rennellese people have little capacity to influence the

133 Environment Regulations 2008 regs 11(1), 12.
134 Baines, above n 100, 8.
activities occurring in West Rennell, despite their impacts on the site’s OUV. Given the SIG’s reluctance to refuse developments supported by the landowners (see (V) below), the West Rennellese people need to be involved with efforts to protect the site. This includes providing them with the encouragement and assistance they need to oppose operations that will harm the site’s OUV.

(III) The incentives for landowners to support logging and mining may outweigh concerns for World Heritage

Many conservationists still adhere to ‘romantic notions’ of rural Solomon Islanders as people who are satisfied with their subsistence lifestyle and who have limited material and financial aspirations. In reality, many Solomon Islanders want to participate in the cash economy, and view logging and mining as a means of achieving that. The royalties and other fees that landowners receive from resource companies make an important contribution to some local economies. Landowners may also be persuaded to sign logging and mining contracts by a company’s promise to fund or construct local infrastructure, which the government is unwilling or unable to provide. For example, Rennell’s airstrip, located in the capital Tigoa, was built by a company that conducted prospecting for bauxite there in the 1970s. When prospecting began, a road was constructed between Tigoa and Lavagu (in central Rennell). It was later extended to reach Lake Tegano with funding from the European Union. More recently, a mining company built a road linking the four East Rennell villages. Landowners may also have other motivations to sign resource contracts. For example, some do so because they feel pressured by the company or they are tricked into signing.

To date, the East Rennellese people have not approved any logging or mining within the WH site. While the level of their support for these activities has not been assessed, literature suggests that they hold diverse views on this issue, which are changing over time.

137 Ibid.
138 Tagini, above n 103, 61.
139 Wingham, above n 21, 29.
140 Ibid.
141 Baines, above n 100, 9.
According to the WH nomination dossier for East Rennell, approximately 80% of the local people supported the site’s nomination for WH listing, so presumably they opposed logging and mining at that time. Since then however, the WH program has not delivered substantial economic windfalls to the local people (see 6.3.3), and support for logging has grown. In 2011, East Rennell’s paramount chief was reported as saying that logging will be the only option if assistance is not provided to help the communities meet their livelihood needs. In the same year, an application for a felling licence to log the western half of the WH site was submitted by one of the chiefs of Nuipani village. As a lawyer for the Public Solicitor’s Office, the author was involved with community meetings in East Rennell to inform local people of that application, and to explain the landowner consent process that would follow. While almost all locals who spoke at those meetings opposed the logging proposal, it is unclear how widespread this opposition was, as logging supporters may have stayed silent at the meetings or refused to attend.

The 2011 felling licence application ultimately folded when the Rennell Bellona provincial executive failed to arrange a ‘timber rights meeting’ between the applicant and the landowners, despite being obliged to do so under the Act. The reasons for this are unclear. At the time, the author was advised that it was because the applicant did not pay the requisite fee. However, in its 2013 State party report to the WH Committee, the SIG stated that the application failed due to ‘strong opposition from the landowners’. Whatever the true reason, support for logging appears to be growing again. At least two further applications for logging licences have been submitted since that time. Although both were unsuccessful, in 2015 it was reported that a recent logging proposal promoted by a former Member of Parliament for the Rennell Bellona province was positively received by some

142 Wingham, above n 21, 39.
144 Application for Approval for Negotiation to Acquire Timber Rights (Form 1) filed by Joes Saukha Tahua (A101176, 9 December 2011).
146 FRTU Act’s 8(1).
landowners.\footnote{148}

The above analysis suggests there is no clear consensus among the East Rennellese about logging, and the level of support and opposition ebbs and flows. As such, IUCN’s contention that ‘the community leaders and the people of East Rennell...are opposed to logging’\footnote{149} is an oversimplification of this issue. It is also unclear whether there is any support for mining among the East Rennellese communities and, if so, how widespread that support is.\footnote{150}

While economic development and WH protection are not necessarily incompatible, logging or mining in East Rennell would almost inevitably damage the site’s OUV (see 6.2.1). There is therefore a tension between the economic aspirations of some East Rennellese and the conservation of WH. While this tension exists at numerous sites around the world, it is perhaps most acutely felt in places such as East Rennell, where there are few alternative development opportunities (see 6.3.3). As the WH Committee and the IUCN call for logging and mining in the WH site to be banned, the desire of the East Rennellese to economic and social development cannot be ignored. It is not only unethical but also unpractical to expect that all East Rennellese people will be happy to forgo the opportunity to earn cash income from their land in order to protect WH.

Whether the East Rennellese would in practice benefit from logging or mining within the WH site is of course debatable. The history of logging in Solomon Islands shows that community members often receive little from the sale of their timber rights.\footnote{151} Logging companies commonly under-report their takings to minimise royalty payments,\footnote{152} and fail to deliver on promises to construct local

\footnotetext[148]{Hughes and Tuhanuku, above n 47, 12.}
\footnotetext[149]{Dingwall, above n 28, 31.}
\footnotetext[150]{It was recently reported in the Solomon Star that a Member of Parliament for the Rennell Bellona constituency opposes mining <http://www.solomonstarnews.com/news/national/12281-no-mining-at-lake-tegano>. However, it is unclear whether that is because of community opposition.}
\footnotetext[151]{See, eg, Frazer, above n 98, 39; Bennett, Pacific Forest, above n 98, 319-38; Pacific Horizon Consultancy Group, Solomon Islands State of Environment Report (Solomon Islands Government, 2008) 52; Debra McDougall, ‘Church, Company, Committee, Chief: Emergent Collectivities in Rural Solomon Islands’ in Mary Patterson and Martha Macintyre (eds), Managing Modernity in the Western Pacific (University of Queensland Press, 2011) 121, 139; Sue Farran, ‘Timber Extraction in Solomon Islands: Too Much, Too Fast; Too Little, Too Late’ in Emma Gilberthorpe and Gavin Hilson (eds), National Resource Extraction and Indigenous Livelihoods: Development Challenges in an Era of Globalisation (Routledge, 2014) 179, 179.}
infrastructure. Royalties are frequently horded by the individual landowners who signed the agreement with the logging company, rather than being distributed to all community members or invested. Logging can also have negative social consequences for communities. It can degrade water sources and destroy gardens that local people rely upon for their livelihoods. It also commonly causes or exacerbates land disputes and contributes to problems such as the loss of community pride and respect for leadership structures, and increased instances of alcoholism and prostitution. Mining projects can also have similarly negative consequences for local communities.

Hughes and Tuhanuku’s report suggests that extractive industries operating in West Rennell are following this sorry pattern. Despite this, some community members still support those forms of development. A West Rennellese community leader who consented to the logging of his land is reported to have said that those who support WH are ‘dreamers’ while those who support logging are ‘doers’.

The negative consequences of extractive industries in West Rennell may make some East Rennellese people question whether logging or mining will bring them the economic and social development they are seeking. However, given the difficulties landowners face when opposing resource developments, and the lack of alternative development opportunities on the island, the threat that logging or mining within the WH site will be approved remains.

WH protection initiatives in East Rennell must therefore be coupled with support for alternative livelihood development. Identifying viable development options

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153 See, eg, Price et al, above n 9, 191.
154 See, eg, Allen et al, above n 23, 21; Judith Bennett, Roots of Conflict in Solomon Islands - Though Much is Taken, Much Abides: Legacies of Tradition and Colonialism, State, Society and Governance in Melanesia Discussion Paper (Australian National University, 2002) 13; Chris Brown, Regional Study: The South Pacific, Asia-Pacific Forestry Sector Outlook Study (Food and Agriculture Organisation of the United Nations, 1997) 4.
155 See, eg, Gay (ed), above n 152, 218.
156 See, eg, Allen et al, above n 23, 21; Hughes and Tuhanuku, above n 47, 8; Solomon Islands Government, above n 147, 65; Tarcisius Tara Kabulauka, ‘Rumble in the Jungle: Land, Culture and (Un)sustainable Logging in Solomon Islands’ in Antony Hooper (ed), Culture and Sustainable Development in the Pacific (ANU E Press and Asia Pacific Press, 2005) 88, 92.
159 Hughes and Tuhanuku, above n 47, 9, 13.
160 Dingwall, above n 28, 18.
for East Rennell will be very challenging, and indeed all such projects initiated to date have had limited success. However, it is likely to be necessary if sufficient landowner opposition to logging and mining within the WH site is to be maintained in the long term. The reasons behind the failure of past livelihood projects should be analysed to ascertain whether any lessons can be learned from them for future initiatives (see 9.3.3(C)).

**IV** The incentives for SIG decision-makers to support logging and mining may outweigh concerns for World Heritage

While SIG decision-makers have the power to refuse logging or mining approvals on the grounds of their potential impact on WH (see 7.3.1(B)), many factors influence such decisions. As discussed below, extractive industries make a major contribution to Solomon Islands’ economy. The social and cultural factors influencing decision-making under resource laws also cannot be ignored.

There is clearly an economic rationale behind the decision-making of SIG officials concerning logging and mining. Logging has been a major revenue earner for Solomon Islands since the 1980s. While there has been little mineral sector development in Solomon Islands to date, the industry has accelerated rapidly over the last few years. With tenements now covering large tracts of terrestrial and marine areas in Solomon Islands, mining could become a significant contributor to the State’s economy in coming years. The contribution of logging and mining to Solomon Islands’ (albeit limited) economic growth creates a disincentive for SIG officials to reign in the industries. As a conservation officer in the Ministry of Environment commented when interviewed for this research:

> It is too big an ask of the international community to [ask SIG to] ban logging [on Rennell]. Although it is destructive it is a source of revenue for government as well as the communities.

The close connection between the SIG and these industries is also influential. It

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161 See, eg, Gay (ed), above n 152, 48; Wairiu, above n 100, 243.
163 Interview with a conservation officer in the Ministry of Environment (Honiara, 2 August 2013).
is well known that there is widespread corruption within the forestry industry. Many State officials, including politicians, have been directly involved in logging operations, or have benefited from bribes and inducements paid by foreign companies to influence government policy and evade regulatory requirements. Logging companies in Solomon Islands are renowned for utilising their connections with the government to bend the rules in their favour. Indications are that many mining companies are likely to operate in a similar manner. For example, Baines refers to the mining approval process as being characterised by ‘confusion, political interference, weak monitoring agency capacity and uncertain competence, all shadowed by a cloud of corruption’. These issues seriously undermine the regulatory system for these industries.

The practices of many SIG officials in relation to extractive industries cannot however be explained through economic logic alone. Geographer Matthew Allen has explored in detail the social and cultural factors influencing the operation of the logging industry in Solomon Islands. Among these factors is the ‘big-men’ style of politics and leadership prevalent in Melanesia, and the social norms of reciprocity and obligation that underlie Solomon Island culture. These features compel SIG officials to seek to access resources from industries like forestry, and distribute them to their supporters. They help explain why the logging industry is poorly regulated and susceptible to corruption.

The implementation of Solomon Islands’ resources legislation for the protection of WH must be considered within this context. Given the economic, social and cultural factors that influence decision-making under these laws, the impact of a proposed operation on heritage is at present unlikely to persuade the relevant decision-maker to refuse development approval. This has certainly been the experience in Rennell to date. For example, several mining developments in West

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166 See, eg, Baines, above n 100; Hughes and Tuhanuku, above n 47.
167 Baines, above n 100, 14.
168 Allen, above n 165.
169 ‘Big man’ societies are those where leaders achieve their status largely because of their ability to generate and distribute wealth; see Allen, above n 165, 280.
170 See also Bennett, above n 151.
Rennell have been approved despite the fact their EIAs identified the loss of East Rennell’s OUV as a potential impact.\textsuperscript{171} In this context, the threat that SIG decision-makers will approve developments that damage East Rennell remains.

\textbf{(V) SIG decision-makers are reluctant to limit the right of landowners to develop their land}

In Solomon Islands, State law prevails to the extent of any inconsistency with customary law.\textsuperscript{172} Therefore, the government can regulate access to land and resources notwithstanding any customary rights. However, many Solomon Islanders believe differently. Before Europeans arrived in their region, it was a foreign idea to Pacific islanders that anyone other than the landowners could have rights to the resources on or under that land.\textsuperscript{173} Despite Solomon Islands becoming a protectorate and then an independent State, landowners commonly claim ownership over minerals and trees pursuant to their customary laws.\textsuperscript{174} Many consider the State has no authority to control how customary land and resources are used.\textsuperscript{175}

This viewpoint is reflected in decisions made by some SIG officials under resources legislation. For example, in \textit{Pitanoe v Minister for Forestry, Environment & Conservation}\textsuperscript{176} Justice Kabui noted that the Commissioner for Forests rarely refuses an application by a logging company for consent to negotiate with the customary landowners (which is the first step of the timber rights process - see 7.3.1(A)). His Honour commented that the approach taken by the Commissioner reflects a belief that:

\begin{quote}
the ownership of timber rights is vested in the resource owners. They decide. The Ministry would only intervene if the provisions of the [FRTU] Act have not been complied with by the parties and authorities involved in the timber rights acquisition procedure.
\end{quote}

\textsuperscript{171} For example, the EIA for Asia Pacific Investment and Development Ltd’s mining proposal at West Rennell identified the loss of OUV of East Rennell as one of the main potential adverse impacts of the operation: Asia Pacific Investment Development Ltd, \textit{Rennell Island Bauxite Project, Renbel Province: Environment Impact Statement} (2014) 4. Similarly, the EIA for PT Mega Bintang Borneo’s proposed mining operation in central Rennell found that the WH site is likely to be affected by the development: PT Mega Bintang Borneo Ltd, \textit{Environment Impact Statement: Central Rennell Bauxite Mining Project} (2014) 68.

\textsuperscript{172} Solomon Islands Independence Order 1978, sch ('Constitution of Solomon Islands') sch 3 para 3.


\textsuperscript{174} Tagini, above n 103, 261.


\textsuperscript{176} [1998] SBHC 56.
In addition, in the author’s experience, the Commissioner rarely refuses to grant felling licences, once the timber rights process has been completed, again reflecting a reverence for customary rights.

Similarly, the *Environment Act 1998* is not universally viewed as a mechanism for regulating extractive industries, even though one of its objects is to control development to protect the environment. In a sworn statement filed in relation to a High Court case, Joe Horokou (the Director of the Environment and Conservation Division of the Ministry of Environment) stated:

> the Environment Act is there to assist developers to work alongside with any development activities that require Development Consent. It is the intention of the said Act to help developers comply with the relevant provision of the Act, it is not there to stop or use a tool to stop development. Therefore, if there is a breach it will always be rectified to allow development to take place. [sic]

This statement is particularly telling given that the Director is the person responsible for determining development consent applications under the Act. It helps explain why operations on Rennell have been approved, notwithstanding their impacts on WH.

The reluctance of SIG officials to restrict development that is supported by the landowners is also evident from the consultation process undertaken for this research. Interviewees were asked to comment on the WH Committee’s requests for SIG to ban logging on Rennell. In response, several interviewees noted that it was difficult for the SIG to comply with this request. For example, Joe Horokou stated:

> The resource is owned by the people and they make decisions about how to use it, especially the forest. While government can work with people to look after the lake [Tegano] it would be difficult to stop logging on the whole island…To me there is some contradiction between requirements of the [World Heritage] Convention and customary law.

Another interviewee stated:

> Yes, we should stop logging because as a World Heritage site, East Rennell puts us [Solomon Islands] on the map, its universal, its for the good of humanity. But the man on the ground does not see it like this.

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177  S 3(a).
178  *Kolombangara Island Biodiversity Conservation Association Trust Board v Attorney General and Others* (High Court of Solomon Islands, CC 428 of 2011).
179  Sworn Statement of Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment, filed in High Court case CC 428 of 2011 (15 November 2010) para 8.
180  Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013).
181  Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013).
Other interviewees commented on the limited livelihood opportunities on Rennell, and the need for local development. Responses included:

Protecting the site is difficult because they [the East Rennellese people] use the resources we [the government] want to conserve.\textsuperscript{182}

The government has an obligation to allow people to grow and development.\textsuperscript{183}

It is not practical to deny people from harvesting some of the things they require from the environment. It’s their livelihood.\textsuperscript{184}

If logging were banned, it would require UNESCO to go there and provide alternative livelihood options for the East Rennellese people.\textsuperscript{185}

A request to ban logging must come with a responsibility from the international community to assist with that process.\textsuperscript{186}

SIG officials are therefore reluctant to restrict logging and mining projects approved by the landowners. Of course, that does not mean that all landowners hold substantial power with respect to the development of their land. As was explained in (I) above, projects frequently occur without the consent of all relevant customary rights holders. As such, when SIG decision-makers purport to be authorising developments to give effect to the wishes of landowners, they are often facilitating developments supported by only a few within the landowning community. That point aside, the perception that landowners own their resources clearly influences decision-making under resources legislation. This may be why SIG has asserted in some of its State party reports to the WH Committee that it lacks the power to prohibit logging and mining on Rennell.

\textit{(VI)} The lack of compliance with and enforcement of resource legislation means logging and mining in Solomon Islands is often unlawful

If resource laws are to be used to protect WH, the laws must be complied with. Logging and mining must only occur with the required approvals, and in compliance with the relevant laws. Decisions to refuse or revoke approvals for developments made under those laws must be respected. The conditions of

\textsuperscript{182} Interview with an officer in the Ministry of Education, who was formerly the focal point for World Heritage within the Solomon Islands National Commission for UNESCO (Honiara, 28 July 2013).
\textsuperscript{183} Interview with Bradley Tovosia, Minister for Environment (Honiara, 24 September 2013).
\textsuperscript{184} Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013).
\textsuperscript{185} Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013).
\textsuperscript{186} Interview with a conservation officer in the Ministry of Environment (Honiara, 2 August 2013).
approvals and agreements must be complied with. In Solomon Islands, this often does not happen.

It is well recognised that logging commonly occurs outside licenced areas, in contravention of timber rights agreements, and in breach of other requirements under the FRTU Act. Literature on the implementation of the MM Act is more limited, but it too suggests that breaches are common. Furthermore, many developments occur without approval under the Environment Act.

This lack of compliance is partly a result of the government’s failure to reform the industries and strengthen regulation, as discussed above in (IV). It is also due to a lack of staff and resources within the relevant Ministries, which impedes their ability to carry out their statutory duties. A lack of coordination between the relevant Ministries further hampers the effective implementation of legislation. There is often little incentive for SIG to enforce regulatory provisions, and it is very difficult for landowners to seek enforcement through the court system because of their limited access to legal services. In this context, compliance with resources legislation has effectively been left to the whim of the logging and mining companies. This appears to be the case on Rennell. Hughes and Tuhanuku have found that regulation of the industries on Rennell is ‘weak and haphazard’, creating a situation where ‘the commercial players have been making their own rules and getting away with it’.

These issues significantly impede the ability of both the SIG and landowners to protect WH against the impacts of logging and mining. For example, the

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188 See, eg Baines, above n 100; Hughes and Tuhanuku, above n 47.

189 Price et al, above n 9, 220.

190 See, eg, Frazer, above n 98, 47-8; Allen, above n 165, 287; Tagini, above n 103, 149; Baines, above n 100, 2.

191 Tagini, above n 103, 382.

192 For example, landowners have commenced very few cases to enforce the Environment Act 1998 against resource companies, despite the prevalence of breaches by such companies. For discussion of one such case, see Hou, Johnson and Price, above n 187.

193 Ben Boer, ‘Solomon Islands’ in Ben Boer (ed), Environmental Law in the South Pacific: Consolidated Report of the Reviews of Environmental Law in the Cook Islands, Federated States of Micronesia, Kingdom of Tonga, Republic of the Marshall Islands and Solomon Islands (South Pacific Regional Environment Programme and IUCN Environmental Law Centre, 1996) 189, 224. Boer made this point in relation to logging companies, but it equally applies to mining companies.

194 Hughes and Tuhanuku, above n 47, 8.

195 Ibid 10.
Commissioner for Forests could ensure that all future felling licences granted for West Rennell are subject to biosecurity conditions, but unless monitoring and enforcement improves such conditions may not be complied with. Similarly, landowners could sign a timber rights agreement on the condition that specified particularly sensitive areas remained unlogged. However, if the company breached the condition, it is likely to be difficult for the landowners to enforce it.

Provincial ordinances also suffer from a lack of compliance. As previously noted, resource companies require a licence under the relevant provincial business licence ordinance. However, they frequently operate without licences, particularly if their development has been approved under national law and by the landowners. This effectively negates the power of provincial governments to regulate extractive industries. Often, the only impact of a provincial government’s refusal to approve an operation is that it misses out on receiving the licence fee. The importance of these fees to the provincial government’s income stream creates an incentive for them to approve developments. Therefore, although the nomination dossier for East Rennell stated that Rennell’s business licence ordinance makes it difficult for operations that could impact the site to become established, in practice the Rennell Bellona provincial government’s power to protect the site is more limited. If provincial governments are to play a significant role in the protection of WH, among other things compliance with and enforcement of their ordinances must be improved.

This analysis has shown that both landowners and the SIG have powers that could be utilised to protect WH against the impacts of extractive industries. However, several legal and practical issues impede the exercise of these powers. Steps could be taken to mitigate some of these issues, such as addressing the inadequacies in resources legislation and improving monitoring and enforcement. However, others are deeply rooted in Solomon Islander culture, such as peoples’ reverence for customary rights and the social factors influencing SIG decision-making under resources legislation. Given this, it appears unlikely that SIG will comply with the WH Committee’s request that logging and mining

196 Price et al, above n 9, 23.
197 Ibid.
on the island be banned, at least in the short term. As such, it is critical that the landowners of East and West Rennell are encouraged and supported to oppose such developments. This will require the provision of alternative livelihood options, and assistance to enable them to exercise their rights under resources legislation.

7.3.3 Protecting World Heritage against the impacts of clearing for agriculture

A potential threat to East Rennell’s OUV that the Committee and the IUCN have not yet raised is the clearing of forest for slash and burn agriculture. A 2016 report found that the largest cleared patches of forest on the island were caused by this practice, not by logging or mining\(^{199}\) (see 6.2.1). Like logging, clearing for agriculture is regulated under the \textit{FRTU Act}.

If any person (including a landowner) wishes to clear logs from customary land for agriculture, the timber rights process (summarised in 7.3.1(A)) must be completed, and the person must obtain a licence under the \textit{FRTU Act}.\(^{200}\) Thus, the SIG can regulate clearing for agriculture in order to protect WH, just as it can do so for commercial logging (see 7.3.1(B)). In the author’s experience however, the SIG rarely, if ever, restricts the clearing of land by landowners for small-scale agriculture. As such, it is unlikely that the SIG will prevent East Rennellese landowners from clearing their own land to grow crops, particularly given the contribution agriculture makes to their livelihoods.

None of the state of conservation assessments of East Rennell have considered the impacts of agriculture on the site’s OUV. Future research should assess the effect of this activity and propose measures to minimise these impacts. Measures may include, for example, encouraging landowners to avoid clearing particularly environmentally sensitive areas.


\(^{200}\) \textit{FRTU Act} ss 4-5. This was confirmed by the High Court in \textit{Forest v Ali} [1994] SBHC 54. For discussion, see Price et al, above n 9, 98.
7.4 Protecting World Heritage through biosecurity laws

Invasive species, particularly the black ship rat (*Rattus rattus*) and the giant African snail (*Achatina spp.*) are a threat to the OUV of East Rennell (see 6.2.3). The *Biosecurity Act 2013* could be used to help address these threats, and to reduce the likelihood of further invasive species being introduced to Rennell island.

The Act aims to prevent the introduction and spread of pests and diseases, and eradicate those that have already been introduced.\(^{201}\) It provides the SIG with several legal mechanisms that could help prevent the introduction of invasive species to the islands. For example, the Act requires the master of every incoming vessel to take steps to prevent any animals on board the vessel from coming to shore.\(^{202}\) Incoming vessels have to be taken to a biosecurity port holding area so that they can be searched.\(^{203}\) No crew or cargo from the vessel can be landed unless and until landing clearance is granted by a SIG biosecurity officer.\(^{204}\) Used logging vehicles and machinery will only obtain such clearance if they are free of soil, pests, seeds and other plant and animal matter.\(^{205}\) It is an offence to fail to comply with these requirements. Persons found guilty of non-compliance can be subjected to fines and/or imprisonment.\(^{206}\) If these requirements are strictly enforced, they could reduce the risk of further invasive species being introduced to Rennell.

The Act also gives the Minister for Agriculture the power to take various steps to control the spread of invasive species in an area, which could help address the threats posed to East Rennell by ship rats and giant snails. For example, the Minister could declare Rennell or part of it as a biosecurity controlled area,\(^{207}\) which would then allow the Director to require that measures be taken within that area to control the spread of pests and diseases (such as baiting).\(^{208}\) Inquiries made by the author to the Ministry of Agriculture suggest that to date no such steps have been taken to address the threats posed by invasive species to East Rennell.

\(^{201}\) *Biosecurity Act 2013* s 6.
\(^{202}\) Ibid s 21(1).
\(^{203}\) Ibid s 15(1); *Biosecurity Regulations 2015* reg 4. There are currently biosecurity port holding areas in Honiara and Noro (in Western Province).
\(^{204}\) *Biosecurity Act 2013* s 15(3).
\(^{205}\) Ibid s 15(1); *Biosecurity Regulations 2015* reg 4.
\(^{206}\) Ibid s 62.
\(^{207}\) Ibid s 63.
The Biosecurity Act is a significant addition to Solomon Islands’ legislative framework for WH protection. However, as the Act only came into force recently, it remains to be seen if and how it will be implemented. The SIG will require substantial resources to set up the administrative structures needed to implement the Act. Furthermore, enforcing the legislation, particularly in a remote place such as Rennell, will no doubt be a challenge.

7.5 Conclusion

The outstanding natural environment of East Rennell is under threat from the exploitation of natural resources, which could in time lead to the site being delisted. Despite repeated calls from the WH Committee, to date the SIG has done little to protect the site from the impacts of over-harvesting, logging and mining, and invasive species. Based on relevant legislative provisions and empirical research, this chapter provided new insights into the scope for these threats to be dealt with under existing laws, and the issues influencing the implementation of those laws in practice.

To date, laws restricting the taking of species such as beche de mer, trochus and coconut crabs have not been successful in ensuring that harvesting levels at East Rennell are sustainable. Actions that could improve compliance with laws regulating the harvesting of such species include:

- ensuring the penalties for breaches are sufficient to provide an incentive for compliance;
- creating consolidated versions of the relevant legislation. In the past, some laws have been amended numerous times, making it difficult to determine their current status;
- running education campaigns to raise peoples’ awareness of the restrictions, including translating the laws into local languages; and
- providing the relevant Ministries with more staff, equipment and financial resources to enhance their ability to monitor and enforce the laws.

However, even if those actions were implemented significant challenges would remain. The lack of relevance of State laws to many Solomon Islanders and the widespread belief in the pre-eminence of customary harvesting rights will continue to impede efforts to utilise such laws. The PA Act is an alternative approach to regulating the taking of species,
which could prove more effective at East Rennell (see chapter 8).

State law gives both landowners and SIG officials a role in regulating logging and mining on customary land. In theory, these activities cannot occur (except in limited circumstances) without the consent of the landowners. However, in practice the landowner consent provisions of resource laws are often manipulated by powerful individuals within a landowning group working in cohorts with resource companies to reap the benefits of land development. Reform of resource legislation is needed to incorporate new models for identifying customary landowners and resolving disputes, and new legal arrangements for dealings in customary land. This would assist the landowners of East Rennell who oppose logging and mining to protect the WH site.

SIG officials already have the power under existing legislation to refuse proposals for logging and mining if they are likely to have an unacceptable impact on WH. Existing operations could also be halted if the operators were found to be in breach of any relevant laws or conditions. The SIG’s failure to exercise these powers to protect East Rennell can be explained by the economic, social and other factors that influence its regulation (or lack thereof) of extractive industries, and the reluctance of SIG officials to restrict the right of landowners to develop their land. These issues are likely to be behind the contention contained in some of SIG’s State party reports that the government lacks the power to halt logging and mining on customary land.

Unless the SIG fundamentally changes its approach to the regulation of extractive industries, the WH Committee’s request for logging and mining to be banned on Rennell is likely to continue to fall upon deaf ears. The significant gulf between the Committee’s position and that of the SIG is reflected in the following statement made by Malchoir Mataki (Permanent Secretary of the Ministry of Environment) when asked to comment on the Committee’s request:

They [the Committee] are making that suggestion without any clue as to how things operate in this country.

This suggests that at present the most effective approach to protecting East Rennell is to support the site’s landowners to continue to object to these operations. This must include:

- ensuring that they are informed of any extractive industry proposals that may affect their land;
- improving their access to services to help them exercise their rights under
resources legislation;

- providing them with support for alternative livelihood developments to reduce the incentive to support logging and mining; and
- providing them with assistance to apply for East Rennell to be declared a protected area under the *PA Act*. This would make logging and mining within the WH site unlawful.

Furthermore, given that the East Rennellese have little power to regulate operations in West Rennell, the West Rennellese should also be encouraged and supported to oppose damaging extractive industry proposals.

Addressing the threat posed by invasive species is a major challenge on Rennell. Approvals for extractive industries granted under the *FRTU Act*, the *MM Act* and the *Environment Act* could be imposed subject to biosecurity conditions, but ensuring compliance will be difficult. The *Biosecurity Act* provides a range of regulatory mechanisms for controlling invasive species. However, as the Act is relatively new, it is not yet clear whether it will be implemented and enforced at Rennell.

The next chapter explores the opportunities and challenges associated with protecting WH under protected area laws.
Chapter 8: The protection of Solomon Islands’ World Heritage under protected area laws

8.1 Introduction

Natural World Heritage (WH) sites are commonly protected under legislation that allows sites to be declared ‘protected areas’. Laws of this type generally involve the delineation of a site with fixed boundaries, its formal recognition by the State, and the imposition of rules that apply within that area. The WH Committee has repeatedly called upon Solomon Islands to protect East Rennell through this type of legislation, but this has not yet happened. Despite these calls, the scope for protected area laws to contribute to WH protection in Solomon Islands has not yet been comprehensively analysed. This chapter therefore fills a critical gap in the literature, by exploring the opportunities and challenges associated with the use of this legislation to protect WH.

As there is very little secondary literature concerning Solomon Islands’ protected area laws, the chapter is principally based on the relevant legislation and empirical work undertaken by the author. This work included contributing to a project designed to facilitate the declaration of East Rennell as a protected area (explained in 1.4).

The chapter begins with an overview of the key laws that allow for the establishment of protected areas in Solomon Islands (0). These laws can be grouped into two broad categories, which reflect the paradigm shift that has occurred in international law and policy concerning conservation (explained in chapter 4):

- laws that reflect the ‘fortress’ approach to heritage protection, including the

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1 UNESCO / ICCROM / ICOMOS / IUCN, Managing Natural World Heritage, World Heritage Resource Manual (UNESCO, 2012) 36. IUCN defines a ‘protected area’ as ‘a clearly defined geographical space recognized, dedicated and managed, through legal and other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values’: Nigel Dudley (ed), Guidelines for Applying Protected Area Management Categories (IUCN, 2008) 8. It is acknowledged that the application of this definition can be problematic in the Pacific, because of the requirement that nature conservation be the primary objective: see Hugh Govan and Stacy Jupiter, ‘Can the IUCN 2008 Protected Areas Management Categories Support Pacific Island Approaches to Conservation?’ (2013) 19(1) Parks 73. However, for the purposes of the present research, all areas established under Solomon Islands law to assist with conservation are considered to be ‘protected areas’, even if they do not strictly meet the IUCN definition.

2 WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68; WHC Res 38 COM 7A.29, WHC 38th sess, UN Doc WHC-14/38.COM/16 (7 July 2014) 39, 40.

3 There have been incorrect reports about the status of the protection of the East Rennell under State law. For example, the Statement of Outstanding Universal Value for East Rennell, says that the site is protected under the Protected Areas Act 2010, but the Act requires a provincial ordinance and local regulations and by laws to make it effective: see Adoption of Retrospective Statements of Outstanding Universal Value, WHC 36th sess, UN Doc WHC-12/36.COM/8E (15 June 2012) 55-6; WHC Res 36 COM 8E, WHC 36th sess, UN Doc WHC-12/36.COM/19 (June-July 2012) 225. Both of these contentions are incorrect.
National Parks Act (Cap. 149) and the Forest Resources and Timber Utilisation Act (Cap. 40) (the FRTU Act); and

- more recent laws that reflect the modern approach to heritage protection, including the Protected Areas Act 2010 (the PA Act), the Fisheries Management Act 2015 and some provincial ordinances.

The chapter then analyses:

- the scope for the declaration of WH sites as protected areas (8.3);
- landowner involvement in the declaration of protected areas (8.4);
- the ownership of protected areas (8.5);
- the protection of WH sites through the rules of protected areas (8.6); and
- protected area governance and the enforcement of the rules of protected areas (8.7).

Sections 8.4 – 8.7 of this chapter focus on the PA Act and the Protected Area Regulations 2012 (the PA Regulations) for two reasons. Firstly, there is much greater scope for the protection of WH sites under the PA Act than Solomon Islands’ other protected area laws (see 8.3). Secondly, the WH Committee has called upon Solomon Islands to declare East Rennell as a protected area under that Act,\(^4\) and (as explained in 8.2.2(A)) some steps have been taken towards such a declaration. However, observations about other laws have been included to highlight how they differ from the PA Act, and to explain why the latter is a more appropriate avenue for the protection of WH. The chapter demonstrates that the PA Act could help address some of the threats to East Rennell, through the rules imposed under the PA Regulations and the site’s management plan. However, significant legal and practical challenges are likely to be encountered when implementing the law. These relate to issues such as obtaining landowner consent, the relationship between the management plan and customary laws, and local governance.

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\(^4\) WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 68; WHC Res 38 COM 7A.29, WHC 38th sess, UN Doc WHC-14/38.COM/16 (7 July 2014) 39, 40.
8.2 Overview of Solomon Islands’ protected area laws

Protected areas can be established independent of any State law. Indeed, Pacific Islanders have in effect been creating protected areas for thousands of years, through the implementation of their land tenure systems and traditional practices. More recently, Pacific Islanders have set up protected areas, some of which are subject to management plans and conservation agreements, but which are not recognised under any legislation. For example, a marine protected area (MPA) has been established around Tetepare island, in the Western Province of Solomon Islands (see Figure 2). Tetepare is the largest uninhabited island in the southern Pacific Ocean, and is one of the most successful examples of conservation in Solomon Islands. Although the MPA is not recognised under any State law, it has enjoyed some success because of (among other things) the dedication of the area’s landowners, the long-term involvement of conservationists, and the establishment of a modest but fruitful tourism initiative. Usually however, as was noted in 2.4.2, some form of State law will be required to protect a WH site against all the threats that it faces. Protected area legislation can potentially contribute to this. In Solomon Islands, some laws that facilitate the establishment of protected areas are consistent with the ‘fortress’ approach to conservation (see 8.2.1), while others reflect the more modern approach (see 8.2.2).

8.2.1 Protected area laws based on the fortress approach to conservation

The National Parks Act (Cap. 149) and the FRTU Act (Cap. 40) allow for the creation of various types of protected areas. Under the National Parks Act, the responsible Minister can declare any land to be a national park. The FRTU Act empowers the responsible Minister to:

- declare a State forest over any land owned or leased by the government;
- declare a forest reserve over any area of forest or other vegetation within a rainfall

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7 Ibid 173.
9 Currently the Minister of Environment, Climate Change, Disaster Management, and Meteorology.
10 National Parks Act (Cap. 149) s 3(1).
11 Currently the Minister of Forestry.
12 FRTU Act s 20(1)
catchment area, if necessary for the preservation of water resources;\textsuperscript{13} and

- make regulations that declare any State land or customary land to be a sanctuary for the purpose of conserving flora and fauna.\textsuperscript{14}

As explained further in 8.6, it is unlawful to do certain activities within protected areas established under these laws.\textsuperscript{15}

Under these Acts, the responsible Minister determines whether the land becomes a protected area, which can happen without the consent of the landowners. These Acts do not require or encourage landowners to be involved in the management of the area, nor do they establish any framework that could facilitate their involvement. They are therefore consistent with the ‘fortress’ approach to conservation, under which key decisions regarding the acquisition, establishment and management of the protected areas are made by the State.\textsuperscript{16}

To date, the laws referred to above have not substantially contributed to heritage conservation in Solomon Islands. Queen Elizabeth National Park in Honiara is the only place declared under the \textit{National Parks Act}. The author has observed that the park is highly degraded, affected by urban encroachment, and subject to little management by the SIG. Few State forests, forest reserves and conservation sanctuaries have been established under the \textit{FRTU Act}, and it is unlikely that they are being actively managed.\textsuperscript{17} The ineffectiveness of these laws is likely to be attributable to a lack of political will, a lack of awareness and understanding of the laws among relevant Ministry staff, and the limited financial and human resources available to enforce the protected area rules.

\textbf{8.2.2 Protected areas laws based on the modern approach to conservation}

This section provides an overview of the \textit{PA Act 2010}, the \textit{Fisheries Management Act 2015} and some provincial ordinances. The process for, and the implications of, establishing protected areas under these laws is analysed further in sections 8.3 - 8.7 below.

\textsuperscript{13} Ibid s 24.
\textsuperscript{14} Ibid s 44(1)(s).
\textsuperscript{15} \textit{National Parks Act (Cap. 149)} ss 5, 8-10; \textit{FRTU Act} s 22, 27, 44(1)(s).
\textsuperscript{16} Barbara Lausche, \textit{Guidelines for Protected Area Legislation} (IUCN, 2011) 75.
\textsuperscript{17} Stephanie Price et al, \textit{Environmental Law in Solomon Islands} (Public Solicitor’s Office, Solomon Islands Government, 2015) 282-283.
(A) **The Protected Areas Act 2010**

The *PA Act* is a relatively recent and progressive law that could be implemented at WH sites in Solomon Islands.\(^{18}\) The Act empowers the responsible Minister\(^ {19}\) to declare any area of land or sea to be protected, if certain requirements are met.\(^ {20}\) An area declared under the *PA Act* will be referred to in this chapter as a ‘Protected Area’. The lowercase version of the term (‘protected area’) is used in this chapter to describe all forms of protected areas that may be established under State law.

The *PA Act* and the *PA Regulations* prescribe several requirements that must be satisfied before a Protected Area can be declared. Except in limited circumstances, a Protected Area cannot be established unless an application for the declaration is made to the Director of the Environment and Conservation Division of the Ministry of Environment.\(^ {21}\) Importantly, an application can only be made by the site’s owners or a non-government organisation managing the area.\(^ {22}\) When the Director receives an application, he or she must assess it and make a recommendation to the Minister.\(^ {23}\) The Minister can only make the declaration if he or she is satisfied that the people with rights and interests in the proposed Protected Area consent to the declaration.\(^ {24}\) Therefore, unlike the laws based on the fortress approach to conservation, the *PA Act* makes the consent of local people a prerequisite to the establishment of a Protected Area (discussed further at 8.4).

A Protected Area application must include (among other things) a management plan that complies with the requirements of the *PA Regulations*.\(^ {25}\) This plan is a crucial document. It not only sets out management measures relating to matters such as research, training, public awareness and monitoring,\(^ {26}\) it also contains rules regulating the use of the site, which may be legally binding. As will be explained, subject to the requirements of the Regulations, local people can dictate the content of the plan (see 8.6).

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18 See generally Price et al, above n 17, ch 9.
19 Currently the Minister of Environment, Climate Change, Disaster Management, and Meteorology.
20 *PA Act* s 10(1).
21 *PA Act* s 10(4). An application for a declaration is however not required in two circumstances. Firstly, if the Director on his or her own initiative decides to make a recommendation to the Minister that the site be declared: ss 10(2)–(3). Secondly, if the site has already been declared a protected area under a forestry or fisheries law, and the Minister responsible for fisheries or forestry (whichever is relevant) recommends that the site be declared: *PA Act* s 11(2).
22 Ibid s 10(4).
23 Ibid s 10(1).
24 Ibid s 10(7)(c).
25 Ibid s 10(7)(d).
26 *PA Regulations* reg 23.
Once a Protected Area is declared, the national Protected Areas Advisory Committee (PAAC) will appoint a management committee for the site. The PAAC is established under the *PA Act* and comprises persons appointed by the Minister for Environment. The Minister could appoint representatives of customary landowning groups to the PAAC, but he or she is not required to do so.

The management committee for a Protected Area is responsible for overseeing the implementation and periodic review of the site’s management plan, and is given a range of powers to enable it to do this. It also has the power to regulate the activities that are carried out in the Protected Area, by authorising certain actions that would otherwise be prohibited under the *PA Regulations* (see 8.6). Membership of the committee is open to anyone, so (subject to the PAAC’s approval) it could be solely or partly comprised of local community members. If certain requirements are met, an existing local governance body such as a Council of Chiefs can be adopted as the management committee. One of the committee’s functions is to appoint rangers, who are given various powers related to monitoring and enforcing the Protected Area’s rules. Hence, unlike the laws based on the fortress approach to conservation, the *PA Act* facilitates the involvement of local people in the management of the Protected Area (discussed at 8.7).

It remains to be seen whether and how the *PA Act* will be implemented and enforced in a timely manner. No site has been declared under the Act yet. The limited financial and human resources within the Ministry of Environment are likely to have contributed to the lack of implementation to date. Indeed, the PAAC was only established by the Minister in 2015, three years after the Act commenced. Therefore, even if the East Rennellese people ultimately decide to submit an application under the Act, the government’s lack

27 *PA Act* s 12(1).
28 Ibid s 4.
29 Ibid s 12(3). The Act also says that the management committee is to develop the management plan: s 12(3)(a). However, it is unclear how this provision would operate in practice given that the management plan must accompany the application for the declaration of the site as a Protected Area, and the committee is only appointed after the Protected Area has been declared.
30 *PA Regulations* reg 29(1).
31 Ibid regs 62(1)(a), 63(1), 64(2)(c).
32 *PA Act* s 12(1)(2).
33 *PA Regulations* reg 28(1).
34 Ibid reg 65(1).
35 In October 2016, the Arnavon Community Marine Conservation Area lodged an application to declare the Arnavons Community Marine Park a Protected Area. However, as of March 2017 the declaration had not been made. Inquires made by the author to the Ministry of Environment suggest that this is became some people with rights and interests in the area (or people purporting to have such rights and interests) objected to the declaration.
of resources may impede the recognition of East Rennell as a Protected Area.

Some work has been done towards preparing a Protected Area application for East Rennell. As explained in 1.4, in 2013, the author was involved with a project being undertaken by Live and Learn Environmental Education (LLEE) designed to facilitate the declaration of the site as a Protected Area. Among other things, the author ran meetings in the East Rennell communities to discuss the application process, and the implications of a declaration (see Figure 18). As part of the same project, an Australian consultant prepared a draft management plan for the site (referred to here as the ‘2013 draft management plan’),\(^{37}\) which if finalised could have formed part of a PA Act application. However, the East Rennellese have not yet decided whether to apply, and the management plan remains in draft. Thus, it is uncertain whether East Rennell will become a Protected Area.

![Figure 18](image)

**Figure 18**: A community meeting in Hutuna village in September 2013 to discuss the potential for East Rennell to be protected under the *Protected Areas Act 2010* (Stephanie Price, 2013)

(B) **The Fisheries Management Act 2015**

The *Fisheries Management Act* provides for the declaration of Marine Protected Areas and Marine Managed Areas\(^{38}\) (referred to here collectively as ‘Fisheries MPAs’) at the

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\(^{38}\) The main difference between a Marine Protected Area and a Marine Managed Area is that the latter is managed to allow for the harvesting of marine resources: *Fisheries Management Act 2015* s 2(1).
national and community level. National Fisheries MPAs can be established by the Minister for Fisheries, following an application to the Director of Fisheries.\footnote{Fisheries Management Act 2015 s 19(1).} If any part of a proposed national Fisheries MPA includes an area where there are customary rights, the agreement of the customary rights holders is required before the area can be declared.\footnote{Ibid s 19(4).} A community Fisheries MPA can be established through a community fisheries management plan prepared for a local area.\footnote{Ibid s 18, sch 2 (cl 11).} These plans (and therefore the establishment of community Fisheries MPAs) require the approval of the Director of Fisheries, the relevant provincial executive and a management committee representing the customary rights holders.\footnote{Ibid ss 17(1)-(2), 18(5).} Therefore, the consent of customary rights holders is required to establish a Fisheries MPA.

The \textit{Fisheries Management Act} contains little detail about the establishment, management and enforcement of Fisheries MPAs, and no regulations prescribing the details of these processes have been made yet.\footnote{The Fisheries Management Regulations 2017 do not contain provisions concerning Fisheries MPAs. Inquiries with the Ministry of Fisheries suggest that Regulations prescribing matters concerning inshore fisheries will be gazetted in late 2017.} Therefore, it is not yet clear how these provisions will operate in practice. For this reason, and because the scope for the protection of WH sites under this law is limited (see 8.3), the \textit{Fisheries Management Act} is not analysed in detail in this chapter.

\section*{(C) Provincial ordinances}

Some provinces have ordinances that allow for the establishment of protected areas. For example, the \textit{Isabel Province Resource Management and Environmental Protection Ordinance 2005} authorises the Isabel provincial executive to make ‘resource management orders’ over areas of customary land.\footnote{Isabel Province Resource Management and Environmental Protection Ordinance 2005 cl 19(1)-(2). Note however that this ordinance has not yet been gazetted, and is therefore not in force.} The \textit{Choiseul Province Resource Management Ordinance 1997} and the \textit{Western Province Resource Management Ordinance 1994} give the provincial executives of these provinces the power to make similar orders, which are referred to as ‘resource orders’.\footnote{Choiseul Province Resource Management Ordinance 1997 cl 12(1)-(2); Western Province Resource Management Ordinance 1994 cl 12(1)-(2).} An application for such an order can only be made by the people who, under custom, have the right to make decisions...
over the land with respect to land and resources\textsuperscript{46} (see 8.4). The order will contain rules that regulate the activities that may be carried out in the area\textsuperscript{47} (see 8.6). In this chapter, ‘resource management orders’ and ‘resource orders’ are collectively referred to as ‘resource orders’.

No such ordinance exists for the province of Rennell and Bellona. In 2009, the draft \textit{Lake Tegano Natural Heritage Park Ordinance} was prepared, which provided for the creation of a protected area at the WH site. However, the draft ordinance was never passed by the Rennell and Bellona provincial assembly. While the WH Committee has called upon Solomon Islands to implement the ordinance,\textsuperscript{48} the reports of its deliberations contain no discussion about if and how this law would contribute to the protection of the site. Therefore, it is unclear whether the Committee has turned its mind to this issue. In any event, in the author’s view, the ordinance is unlikely to be passed, at least not in the short-term and not in its current form. One reason for this is that the enactment of the \textit{PA Act} reduced the impetus for provincial governments to develop protected area ordinances. In addition, such ordinances have rarely been implemented successfully,\textsuperscript{49} and provincial governments face significant resource constraints. Nevertheless, this chapter contains some analysis of the draft ordinance, to demonstrate its potential and limitations. As will be explained, there are several issues with the draft ordinance, which should be addressed before it is passed.

8.3 The scope for the declaration of World Heritage Sites as protected areas under Solomon Islands’ laws

There is substantial scope for the declaration of WH sites as Protected Areas under the \textit{PA Act}. Under that law, a site can only be declared as a Protected Area if it meets one or more of the significance criterion prescribed under the Act.\textsuperscript{50} However, all sites meriting protection under the \textit{World Heritage Convention}\textsuperscript{51} (the \textit{Convention}) are deemed to meet


\textsuperscript{48} WHC Res 37 COM 7B.14, WHC 37th sess, UN Doc WHC-13/37.COM/20 (5 July 2013) 68, 69.

\textsuperscript{49} Price et al, above n 17; 284–289.

\textsuperscript{50} \textit{PA Act} s 10(1).

\textsuperscript{51} \textit{Convention Concerning the Protection of the World Cultural and Natural Heritage}, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975).
this requirement. Consequently, subject to the other requirements in the Act being met, all WH sites could become Protected Areas. As a Protected Area can be declared over an area of land or sea, the WH could comprise terrestrial and/or marine areas. Furthermore, as explained below, the declared Protected Area could be a natural or cultural WH site.

The objects of the PA Act suggest that the law is primarily concerned with the protection of biodiversity, thus natural heritage sites clearly fall within its ambit. However, at least some cultural heritage sites could also be declared as Protected Areas. This is evident from the PA Regulations, under which Protected Areas must be assigned to a class. One class of Protected Areas is called ‘natural monuments’, and is defined to include ‘landscape[s] or seascape[s] created by the interaction (through traditional practices) between humans and nature over time.’ The language used to describe ‘natural monuments’ mirrors the definition of ‘cultural landscapes’ in the Operational Guidelines for the Implementation of the World Heritage Convention (the ‘Operational Guidelines’) demonstrating an intention that the Act be used to protect that form of site.

Protected areas declared under the Fisheries Management Act can only apply to ‘fisheries waters’ as defined in the Act, and are thus confined to marine sites. Under the Operational Guidelines, the boundaries of a WH site should be sufficient to encompass all elements that give the site outstanding universal value (OUV). Consequently, it is likely that any WH site that includes a marine area will also include some terrestrial areas. Indeed, East Rennell and the two sites on Solomon Islands’ Tentative List comprise both marine and terrestrial areas. The usefulness of the Fisheries Management Act for the protection of WH is therefore limited.

PA Act s 10(1)(c).
PA Regulations reg 10.
PA Act s 10(1).
PA Regulations reg 4(1).
PA Act s 7(1).
Fisheries Management Act 2015 s 2(1).
The East Rennell WH site encompasses the southern third of the island of Rennell and the area stretching 3 nm into the sea. The Marovo-Tetepare complex encompasses more than 1600sqkm of terrestrial and marine ecosystems. The site referred to as ‘Tropical Rainforest Heritage of Solomon Islands’ is a serial property comprising four rainforest ecosystems on different islands.
A protected area provincial ordinance could apply to natural and/or cultural WH sites, depending on its terms. For example, the purpose of a resource order made under the Choiseul Province Resource Management Ordinance 1997 or the Western Province Resource Management Ordinance 1994 must be the protection of marine, forest and/or wildlife resources. Therefore, these ordinances could apply to both terrestrial and marine WH sites, but are unlikely to be suitable for the protection of cultural sites. In contrast, both natural and cultural sites could be protected under the more recent Isabel Province Resource Management and Environmental Protection Ordinance 2005, which allows for the establishment of resource orders to protect ecosystems; marine, forest and/or wildlife resources; or areas for spiritual or custom purposes. As noted in 8.2.2(C), the Rennell and Bellona province does not have a protected area ordinance.

The scope for WH sites to become protected areas under the laws based on the fortress approach is limited. The protected area provisions of the FRTU Act and the National Parks Act are designed to protect the natural environment of terrestrial areas, so would not be useful for the protection of marine heritage. These laws also contain no reference to cultural heritage values, and therefore they are unlikely to effectively protect a cultural site.

8.4 Landowner involvement in the declaration of protected areas

As noted above, under protected area laws based on the fortress approach, the relevant Minister can unilaterally declare a site to be protected. In contrast, the declaration of a Protected Area under the PA Act requires the consent of the ‘people with rights and interests in the area’. For convenience, in this chapter these people are referred to collectively as ‘Landowners’. However, it is acknowledged that this term over-simplifies the multi-layered nature of customary tenure systems (see 2.3.5).

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63 Isabel Province Resource Management and Environmental Protection Ordinance 2005 cl 19(2).
64 The term ‘land’ is not defined in the National Parks Act (Cap. 149). However, pursuant to the Interpretation and General Provisions Act (Cap. 85) land includes land covered by water. Therefore, arguably a national park could be declared over a marine area. However, the rule provisions of the National Parks Act regulate activities on terrestrial land, such as the taking of vegetation and the lighting of fires: s 10. This demonstrates an intention that the Act be used to protect sites that are at least predominantly terrestrial.
65 PA Act s 10(7)(c).
If local people are not involved in the declaration and design of a protected area, they are less likely to be aware of, understand and respect its rules. This may contribute to the protected area law being ineffective (see 8.6). The establishment of a protected area in this manner could also infringe their rights, particularly if it involved the compulsory acquisition of land (see 8.5). The Landowner consent provisions of the *PA Act* are therefore a significant distinguishing feature of that law. These provisions are consistent with the recognition of Indigenous peoples’ rights,66 and international best practice.67 They also accord with the view expressed by several people consulted for this research that the SIG’s role in the protection of WH is to support local communities to conserve their heritage, rather than to unilaterally dictate any conservation measures (discussed at 6.5.2). However, the corollary is that although the WH Committee has called upon Solomon Islands to declare East Rennell as a Protected Area, this cannot happen unless and until the East Rennellese Landowners provide their consent (or the *PA Act* is amended). The Landowner consent provisions are therefore central to the use of the Act to protect WH.

Given this, it is useful to consider the implementation of these provisions in practice. As explained below, inconsistency between these provisions and customary law poses a challenge (see (I)). In addition, the diversity of views held by Landowners concerning the development and conservation of their land should not be under-estimated (see (II)). Mechanisms for ensuring that Landowners have sufficient incentive to consent to a Protected Area declaration (see (III)) and to support it in the long term (see (IV)) need to be explored.

(I) *Inconsistency between the Landowner consent provisions and customary law poses a challenge*

The *PA Regulations* prescribe a process (referred to here as the ‘prescribed consent process’) involving the ‘landowning tribe’ and ‘neighbouring tribes’, which must be implemented before a Protected Area application relating to customary land can be submitted. That process involves the landowning tribe


67 Lausche, above n 16, 46.
holding a meeting to discuss the submission of an application. If they reach a consensus or make a resolution in support of an application, the tribe’s leaders must inform the leaders of any neighbouring tribes, and village meetings must be held to get ‘wider endorsement’ of the proposed application. The leaders of the landowning tribe must then make a written agreement documenting their intention, which must attach a map of the proposed Protected Area. The agreement must be signed by the leaders of neighbouring tribes, to ensure the boundaries of the proposed Protected Area are not disputed. Minutes of the meeting at which the landowning tribe reached a consensus or resolved to make the Protected Area application must be submitted to the Director with the application. The Director must then assess the application and make a recommendation to the Minister, who decides whether the site is to become a Protected Area.

The Minister cannot declare an area to be protected unless he or she is satisfied that the people with rights and interests in the area (the Landowners) consent to the declaration. To help the Minister ascertain whether this is the case, the Act requires the Director to carry out certain tasks, including verifying who the Landowners are and discussing the application with them. However, given the resource constraints facing the Ministry of Environment and the difficulties involved with determining customary land rights, it is unlikely that the Director will strictly comply with these requirements. It is more likely that, at least in some instances, the Director (and the Minister) will rely on the documents submitted with the Protected Area application as proof that the Landowners consent to the application. These documents include those arising from the prescribed consent process (summarised in the previous paragraph) such as the minutes of the meeting at which the landowning tribe decided to make the application, and the agreement signed by the tribal leaders. Given the practical importance of these

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68 PA Regulations reg 44(1)(a).
69 Ibid reg 44(1)(b)-(c).
70 Ibid reg 44(1)(d).
71 Ibid reg 44(1)(e).
72 Ibid reg 44(2).
73 PA Act s 10(1).
74 Ibid s 10(7)(c).
75 Ibid s 10(2)(a), (d).
76 There is no regulation that specifically requires this agreement to be submitted with the application. However, the prescribed application form (PA Regulations sch 2 form A) indicates that ‘a boundary agreement’ should be included with the application, if one has been signed. Regulation 15 indicates that an agreement concluded as part of the prescribed consent process (under regulation 44) is a ‘boundary agreement’. 
documents, the implementation of the prescribed consent process is central to the issue of Landowner consent for a Protected Area application.

A potential challenge associated with implementing the prescribed consent process at East Rennell is its relationship with customary law. As explained above, under this process, the ‘landowning tribe’ decides whether a Protected Area application will be submitted, by reaching a consensus or making a resolution. While this may be compatible with customary decision-making processes in some parts of the country, in Rennell land rights are held individually (see 6.3.1 and 7.3.2). Consequently, if the prescribed process was implemented at East Rennell, an individual landowner might not consider himself bound by the tribe’s decision. Furthermore, implementing the process could cause or exacerbate disputes about land rights (as has been the experience with logging and mining agreements entered into on a tribal basis – see 7.3.2).

While it is increasingly accepted that local people should be involved in decisions concerning the conservation of their land,77 questions remain about what processes should be implemented to ensure that this occurs.78 The most appropriate process to implement at East Rennell to obtain widespread community support for a Protected Area, and satisfy the requirements of the *PA Regulations*, is yet to be determined. As part of the 2013 LLEE project, meetings were held in the four East Rennell communities, with an expectation that these community groups would decide whether to support a Protected Area application (which as explained above is the first step of the consent process prescribed under the *PA Regulations*). In addition, the author suggested that the consent of the nine East Rennellese chiefs be specifically obtained, to enhance the legitimacy of the communities’ decisions. It may be however that the consent of other landowners also needs to be individually sought, to ensure the application has the requisite level of community support. If and when the Protected Area process is recommenced at East Rennell, an appropriate consent process needs to be designed through further discussions with the local communities and their leaders.

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It is noteworthy that the landowner consent provisions in many provincial ordinances differ from those in the *PA Act*. For example, under the *Choiseul Province Resource Management Ordinance 1997*, an application for a resource order can only be made by ‘qualified requesters’.\(^{79}\) ‘Qualified requesters’ are the persons who, according to customary law, are entitled to make resource management rules that are binding on the local people and outsiders.\(^{80}\) Similar provisions are contained in the *Isabel Province Resource Management and Environmental Protection Ordinance 2005*\(^{81}\) and the *Western Province Resource Management Ordinance 1994*.\(^{82}\) Therefore, these ordinances do not prescribe precisely who is entitled to request a resource order, nor any decision-making process that the local people must follow. Those matters are determined under the applicable customary laws. A key benefit of that approach is that it allows local people to apply their own customary methods to decide whether to apply for a resource order. However, there is a risk that the process may be abused by people who declare themselves entitled to make decisions under custom, when they do not possess such power. Provisions in the ordinances that allow people to object to the declaration of a resource order on the grounds that the applicant is not a ‘qualified requester’\(^{83}\) may help guard against such abuse. If implementation of the prescribed consent process in the *PA Regulations* proves problematic, consideration should be given to amending those provisions to reflect the approach taken in the abovementioned ordinances.

The landowner consent provisions of the draft *Lake Tegano Natural Heritage Park Ordinance 2009* differ from those in the laws of other provinces. Under the draft ordinance, there is no requirement for the landowners to submit an application before East Rennell becomes a protected area. Rather, the ‘Lake Tegano Natural Heritage Park’ is established when the ordinance comes into force.\(^{84}\) The draft ordinance states that when this happens, the customary owners

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\(^{79}\) *Choiseul Province Resource Management Ordinance 1997* cls 12(3)(c), 13(1).
\(^{80}\) Ibid cl 4.
\(^{81}\) *Isabel Province Resource Management and Environmental Protection Ordinance 2005* cls 4, 19(3)(c), 20(1).
\(^{82}\) *Western Province Resource Management Ordinance 1994* cls 4, 12(3)(c), 13(1).
\(^{83}\) *Choiseul Province Resource Management Ordinance 1997* cl 13(5)-(10); *Isabel Province Resource Management and Environmental Protection Ordinance 2005* cl 20(6)-(11); *Western Province Resource Management Ordinance 1994* cl 13(5)-(10).
\(^{84}\) Draft *Lake Tegano Natural Heritage Park Ordinance 2009* cl 5(1).
of the park ‘shall’ sign a consent form.\textsuperscript{85} The form is to be signed by at least two members representing a customary landowner group in the presence of a chief or village elder.\textsuperscript{86} According to the ordinance, this process gives the Lake Tegano Natural Heritage Park Authority (which is established under the ordinance) the power to conserve, manage and protect the site.\textsuperscript{87} The ordinance is silent as to the consequences of any customary owners refusing to sign the consent form. In any event, as provincial ordinances prevail over customary laws,\textsuperscript{88} these consent provisions have no legal effect and merely create confusion. They should therefore be revised if the draft ordinance is ever finalised.

\textbf{(II)} \textit{Landowners may hold different views about the conservation and development of their land}

Land and marine tenure in Solomon Islands is highly fragmented\textsuperscript{89} so a proposed Protected Area may include land owned by several groups with different opinions about development and conservation. Even if the site is under one system of customary land tenure, it cannot be assumed that all landowners will agree on its future.\textsuperscript{90} Long-standing rivalries and tensions between and within such groups may contribute to them holding diverse views.\textsuperscript{91}

The fact that a site is owned by several groups is not necessarily fatal to the establishment of a protected area. For example, a large MPA has been established at Tetepare, which is owned by multiple groups.\textsuperscript{92} However, Moseby et al (who were involved with the MPA’s establishment) note that this outcome was unlikely

\textsuperscript{85} Ibid cl 18(1).
\textsuperscript{86} Ibid cl 18(2).
\textsuperscript{87} Ibid cl 18(4).
\textsuperscript{88} Solomon Islands Independence Order 1978, sch (‘Constitution of Solomon Islands’) sch 3 para 3.
\textsuperscript{91} Veitayaki et al, above n 90, 45.
given the area’s fragmented ownership. Elsewhere, this characteristic may impede conservation efforts. In recognition of this, Foale warns of the formulation of conservation projects based upon ‘fuzzy romantic notions of ‘communities’ as happy cohesive social units that are capable of and willing to work together to manage their resources’.

The potential for the landowners of a WH site to hold diverse views must be considered in the development of conservation strategies. This has been recognised elsewhere in Melanesia. For example, Denham has noted that the Kawelka (the customary owners of the Kuk Early Agricultural Site in Papua New Guinea) are not a homogenous unit with a single perspective on the site’s significance, and are not represented by one leader. As such, strategies for the area’s protection must try to accommodate their diverse opinions. Trau, Ballard and Wilson have made a similar observation concerning the Chief Roi Mata’s Domain site in Vanuatu, arguing that any meaningful understanding of local involvement in WH protection must take into account the ‘nuances, ambiguities and fluidities’ of intra- and inter-community relations and interactions.

The East Rennellese belong to different tribes, and practice different religions. These and other cultural and historical differences may mean some Landowners support the establishment of the Protected Area while others object to it. Any such objections would prevent the Minister from being able to declare East Rennell as a Protected Area, and so would prevent the PA Act from being effectively utilised to protect WH. The Minister could also not declare the area to be protected if there was a dispute over land ownership.

These issues could also plague the two sites on Solomon Islands’ Tentative List. For example, the Marovo-Tetepare Complex’ site supports a population of nearly 11,000 people living in more than 50 villages. Obtaining widespread Landowner support for the declaration of that site as a Protected Area is likely to be difficult.

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93 Ibid.
94 Foale, above n 90, 63.
96 Trau, Ballard and Wilson, above n 90, 98.
97 PA Act s 10(7)(c).
98 PA Regulations reg 14(3).
The creation of smaller Protected Areas at key locations within the site may however be feasible.

(III) Landowners may need incentives before they consent to the declaration of their land as a Protected Area

If East Rennell was declared to be a Protected Area, the local people would be subject to the restrictions imposed by the *PA Regulations* and the management plan (which are discussed at 8.6). Consequently, activities they currently rely on for their livelihoods (such as harvesting coconut crabs and fish) could be restricted. A declaration would also prevent them from receiving royalties for logging and mining, as those activities are prohibited in a Protected Area.

It has been said that Solomon Islanders are rarely interested in participating in conservation programs if they are not accompanied by a real promise of alternative development. In this context, establishing protected areas can be challenging because local people need to be convinced that the process will benefit them. While the East Rennellese may receive some benefits from the declaration of their land as a Protected Area, they are largely intangible and long term. Consequently, it is unclear whether they will perceive they have sufficient incentive to consent to a declaration.

The provision of financial and technical support for alternative livelihood projects may encourage some East Rennellese to support the establishment of a Protected Area. However, as noted previously, implementing such projects on the island is difficult given the significant constraints to development that exist there. These constraints thus present a challenge to using the *PA Act* to protect the site’s OUV. This may also impede the protection of the two sites on Solomon Islands’ Tentative List under the Act. Like at East Rennell, local communities living within those sites depend on marine and forest ecosystems for their livelihoods.

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101 See, eg, Veitayaki et al, above n 90, 41.
102 They may include improved food security, increased tourism, greater resilience to climate change, improved access to funding sources: see Price et al, above n 17, 255-6.
Mechanisms for ensuring the long-term support of the Landowners need to be explored

Under the *PA Act*, Landowner consent is a prerequisite to the declaration of a Protected Area, but there is no legal requirement for Landowner support at any later stage. Once the Protected Area is established, only the Minister can revoke the declaration, and this can only be done in a narrow range of circumstances. The withdrawal of Landowner support for a Protected Area does not in itself give the Minister grounds to cancel the declaration. However, in practice if Landowners do not support a Protected Area they are unlikely to comply with its rules nor actively participate in its management. Consequently, the Act is not likely to effectively protect a WH site without the long-term support of the relevant Landowners.

Under legislation in some other jurisdictions, long-term landowner support for conservation is secured when the protected area is established, through binding agreements and instruments such as easements and covenants registered against the title of the land. Indeed, according to the International Union for the Conservation of Nature’s (IUCN) *Guidelines for Protected Area Legislation*, a site should not be recognised as a protected area until such an agreement is in place. However, that approach is unlikely to be appropriate in Solomon Islands for the reasons set out below.

Written agreements often carry little weight among Solomon Islanders, particularly agreements that impact on issues traditionally governed through customary law, such as land tenure and rights. This was acknowledged by Elizabeth Wingham and Ben Devi, who were both involved with the preparation of the East Rennell WH nomination dossier. In a reflection piece on the nomination process, they noted:

> For the people of the Solomon Islands, written agreements or contracts are not part of the culture. For long term commitment to a programme, it would be more...
effective to arrange an annual meeting for the stakeholder groups to reaffirm their support.\textsuperscript{107}

Trau, Ballard and Wilson made a similar comment in relation to the Chief Roi Mata’s Domain (CRMD) WH site in Vanuatu. They wrote:

Within the [CRMD landowning] community, written and signed formal agreements are accorded little value, weight or respect…The protection of the CRMD buffer zone and the World Heritage property is reliant on the verbal commitments and social practices and principles (in other words, the kastom) of the customary landowners, both individually and collectively as the various community groups and forces ebb and flow in terms of majority opinion.\textsuperscript{108}

Before East Rennell could be declared as a Protected Area, the area’s tribal leaders would have to make a written agreement documenting their consent to the protection of their land.\textsuperscript{109} However, as future generations may not feel bound by that agreement, it cannot always be taken as conclusive evidence that the Protected Area enjoys local support. Furthermore, future generations cannot be bound by the agreement through an easement or covenant as there is no legal mechanism for such instruments to apply to customary land.

For the \textit{PA Act} regime to effectively protect the East Rennell WH site, it is therefore necessary to consider how the support of the local people will be maintained in the long term. This is likely to require ongoing consultations and negotiations, as well as the provision of support to enable the East Rennell people to maintain their livelihoods and effectively manage the Protected Area in accordance with the Act.

\section*{8.5 The ownership of protected areas}

The declaration of a WH site as a protected area could be accompanied by the acquisition of the site by the State. Indeed, land acquisition is required for some protected areas created under the fortress style protected area laws.\textsuperscript{110} The \textit{PA Act} does not prohibit the

\begin{flushleft}
\textsuperscript{108} Trau, Ballard and Wilson, above n 90, 97.
\textsuperscript{109} \textit{PA Regulations} reg 44(1)(d).
\textsuperscript{110} An area must be compulsorily acquired before it can be declared a sanctuary for the purpose of conserving flora and fauna: \textit{FRTU Act} ss 44(1)(s). Land acquisition may be required for the declaration of a national park, because it is an offence to reside in a park without a permit, which can only be granted for a narrow range of purposes (such as scientific research): \textit{National Parks Act (Cap. 149)} ss 5-6.
\end{flushleft}
acquisition of Protected Areas, however the transfer of such a site requires the consent of the Minister. If Ministerial consent is not obtained, the Minister can in some circumstances revoke the Protected Area declaration.\textsuperscript{111}

The SIG has the power to acquire an interest in any customary or registered land (including protected areas) under the \textit{Land and Titles Act (Cap. 133)}. If the protected area is customary land, it could be sold or leased to the Commissioner of Lands or the relevant provincial assembly, through the processes prescribed in that Act.\textsuperscript{112} If any part of the site was registered land, the holder of the perpetual estate or fixed term estate in that part\textsuperscript{113} could transfer its interest to any government entity.\textsuperscript{114} In addition, regardless of the land tenure, the protected area could be compulsorily acquired by the Commissioner of Lands.\textsuperscript{115} The compulsory acquisition would only be lawful if done for a ‘public purpose’,\textsuperscript{116} a term that is not defined in the \textit{Land and Titles Act}. Recent case law suggests that this would require the acquisition to be of ‘direct general benefit to the community’.\textsuperscript{117} If the site was acquired for the purpose of protecting WH, the acquisition could potentially meet that test.

While it is unclear whether there is any precedent for the lawful compulsory acquisition of land for heritage conservation purposes in Solomon Islands,\textsuperscript{118} it has happened elsewhere in the world.\textsuperscript{119} The acquisition of a protected area by the SIG could enable the government to implement conservation measures that would not be practicable or lawful if the land was under customary or private ownership. However, as explained below, this approach may: (I) fail to protect the site’s heritage values; (II) infringe the rights of the landowners; (III) contribute to land disputes; and (IV) place an unreasonable burden on the SIG. Therefore, it is unlikely to be appropriate for the protection of WH sites.

\begin{footnotes}
\textsuperscript{111} PA Regulations reg 19.
\textsuperscript{112} \textit{Land and Titles Act (Cap. 133)} part V, division I.
\textsuperscript{113} In Solomon Islands, registered land is either held in perpetual estate or fixed term estate: \textit{Land and Titles Act (Cap. 133)} ss 112-113.
\textsuperscript{114} \textit{Land and Titles Act (Cap. 133)} s 172.
\textsuperscript{115} Ibid s 60. The compulsory acquisition process is explained in Price et al, above n 17, 40-45.
\textsuperscript{116} Ibid s 71(1).
\textsuperscript{117} \textit{Korean Enterprises Limited v Attorney General} [2014] SBCA 4. See also \textit{Talasasa v Attorney General} [2012] SBHC 85; Price et al, above n 17. 41-44.
\textsuperscript{118} Some land in Western Province was purportedly acquired by the Minister for Lands for the purpose of conservation. However, the High Court found that the true purpose of that acquisition was to build a tourist resort, and thus the acquisition was declared to be unlawful: \textit{Talasasa v Attorney General} [2012] SBHC 85. See, eg, Tom Blomley et al, ‘“Land Grabbing”: Is Conservation Part of the Problem or Solution?’ \textit{Briefing} (International Institute for Environment and Development, September 2013); Andrew Hall, ‘Powers and Obligations in Heritage Legislation’ in Webber Ndoro, Albert Munma and George Abungu (eds), \textit{Cultural Heritage and the Law: Protecting Immoveable Heritage in English-Speaking Countries of Sub-Saharan Africa}, ICCROM Conservation Studies 8 (ICCROM, 2008) 65; Christopher Kidd and Justin Kemrick, ‘The Forest Peoples of Africa: Land Rights in Context’ in \textit{Land Rights and the Forest Peoples of Africa Historical, Legal and Anthropological Perspectives - Overview: Analysis & Context} (Forest Peoples Programme, 2009) 4, 11.
\end{footnotes}
(I) The acquisition of a protected area may not effectively protect the site’s heritage values.

For example, if a site’s heritage values were linked to the system of customary land tenure practiced by the area’s owners or the continuing cultural traditions associated with the place, the acquisition of the site would destroy rather than protect those values. Some sites in Solomon Islands that could potentially qualify for WH listing are likely to have such values.

(II) The acquisition of a protected area may infringe the rights of the owners and occupiers of the land.

This is particularly the case if the acquisition was compulsory and involved the relocation of people from their land. Rights that may be infringed include those recognised under the United Nations Declaration on the Rights of Indigenous People, such as the right of Indigenous people to the land and resources that they have traditionally occupied, and their right to practice their cultural traditions. Constitutional protections relating to compulsory acquisition, which require that there be a reasonable justification for the acquisition and that adequate compensation be paid, would help guard against the infringement of these rights. Nevertheless, given the strong cultural, economic and social significance of land to Solomon Islanders, any heritage protection measure that involved separating people from their land is likely to raise questions about its appropriateness and legality. The SIG itself has indicated that the compulsory acquisition of land is ‘politically unpopular’ and thus to date it has exercised this power only occasionally.

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121 Ibid art 11.
122 Constitution of Solomon Islands s 8.
123 Solomon Islands Government, above n 36, 9.
If the land to be acquired was under customary tenure, the acquisition process is likely to be lengthy and may cause or exacerbate land disputes. Regardless of whether the acquisition was voluntary or compulsory, the process would involve a government officer identifying the people who, under custom, are entitled to dispose of the land. This would require substantial consultations, as laws regarding customary land tenure are not codified, and are usually unwritten (see 2.3.5). The identified people would be entitled to receive consideration for the sale or lease of their land, or compensation for its acquisition. Allen et al have found that natural resource development projects involving financial payments to land owners are a common cause of disputes among community members in Solomon Islands. It therefore follows that land acquisition for conservation could also lead to disputes, which may hinder the government’s efforts to protect the heritage values of the place.

The acquisition of a protected area would place a significant burden on the SIG. For the acquisition of land to be an effective approach to the protection of a WH site, the SIG would require the financial and human resources to administer the acquisition process and pay the necessary consideration or compensation. It would also require the resources to develop and implement the ongoing management and protection measures required to protect the site. Given the current economic climate in Solomon Islands and competing development priorities, the government may not be willing and able to commit these resources to the protection of a heritage site.

For these reasons, the acquisition of a protected area by the State is unlikely to be a viable option for WH protection in Solomon Islands.

124 Land and Titles Act (Cap. 133) ss 63, 71-77.
125 Ibid ss 79, 81, 83-84.
127 Denham, Muke and Genorupa make this point in relation to the protection of the Kuk Early Agricultural Site in Papua New Guinea. They state it would be both unrealistic and inappropriate to burden the government with substantial and continuing financial commitments associated with the site’s conservation: Tim Denham, John Muke and Vagi Genorupa, ‘Nominating and Managing a World Heritage Site in the Highlands of Papua New Guinea’ (2007) 39(3) World Archaeology 324, 333.
8.6 The protection of World Heritage Sites through the rules of protected areas

The *PA Act* facilitates the conservation of Protected Areas through a range of mechanisms. For example, it requires that each Protected Area have a management plan, which must address issues such as public awareness, staff training and research. It also provides for the appointment of a management committee for each Protected Area, which is responsible for governing the site (see 8.7). Importantly, from a legal perspective, the Act also imposes rules regulating the use and development of Protected Areas. As will be explained, these rules can be:

(I) tailored to address the threats to the site’s OUV;

(II) consistent with the sustainable use of the site; and

(III) based on customary laws.

These features of the *PA Act* regulatory regime facilitate the protection of WH in a manner consistent with the modern approach to heritage conservation. However, a key limitation of the Act is it provides little protection against threats arising from outside the site’s boundaries (see (IV)).

(I) The rules of Protected Areas can be tailored to address threats to the site’s outstanding universal value

Under some protected area laws in Solomon Islands, the rules that apply within the declared area are prescribed in the legislation, which makes no provision for the development of site-specific rules.\(^{128}\) This limits the usefulness of these laws. Legislation that enables rules to be tailored to the particular threats facing a WH site is likely to provide greater protection to the site’s OUV.

The development of site-specific rules is possible under some provincial ordinances. For example, under the *Isabel Province Resource Management and Environmental Protection Ordinance 2005*, the resource order made by the provincial executive establishing the protected area also contains the rules that apply in that site.\(^{129}\) The rules can therefore be designed to address the issues

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\(^{128}\) For example, the rules that apply in a state forest established under the *FRTU Act* are specified at s 22 of that Act.

required to conserve the area. The draft *Lake Tegano Natural Heritage Park Ordinance 2009* is different in that it purports to give the Lake Tegano Natural Heritage Park Authority (a committee established under the ordinance) the power to make by-laws regulating the use of the site. However, these by-laws would not be binding under State law, so this provision could cause confusion regarding the status of the by-laws. It should therefore be amended if the draft ordinance is ever finalised. As explained below, the development of site-specific rules is also possible under the *PA Act* regime.

The *PA Regulations* contain some rules that apply to all Protected Areas. For example, the industrial and commercial extraction of timber, round logs and minerals from Protected Areas is prohibited. A person who contravenes this prohibition is liable to pay a fine of up to SSBD 100,000 (approximately $AUD 16,200). This provision is important for the protection of WH, as those industries are a threat to East Rennell (see 6.2.1) and are likely to threaten other places of heritage significance in Solomon Islands. If East Rennell was declared a Protected Area, logging and mining in the site would be banned, which is an outcome that the WH Committee is seeking. The *PA Regulations* also restrict certain activities in Marine Protected Areas (MPAs) such as fishing within spawning aggregations or during spawning seasons, and the use of drag nets. These provisions could help address the over exploitation of marine species, which may threaten a WH site.

The *PA Regulations* also facilitate the development of site-specific rules for a Protected Area by enabling some rules in the Regulations to be modified by a management plan and/or a decision of the management committee. For example, in a Protected Area it is an offence to take any organism, kill any living creature, dump any waste, or damage or remove any object of cultural
significance, \(^\text{139}\) without authorisation under the management plan or by the management committee. Failure to comply can lead to a person being fined up to \$SSBD 100,000 (approximately \$AUD 16,200).\(^\text{140}\) Rules such as these are extremely broad, as they cover a range of activities that could potentially damage a Protected Area. Consequently, most activities that will be carried out in the site must be expressly authorised to be lawful (including those undertaken by local communities). Through this authorisation process, site-specific rules for the Protected Area can be developed which are tailored to address the threats to the site’s OUV.

There is no provision in the \textit{PA Act} or the \textit{PA Regulations} that requires compliance with a management plan or a decision of the management committee. Therefore, these rules and decisions are not in themselves legally binding. However, by permitting activities that are prohibited under the Regulations, these rules and decisions gain legal effect. For example, the 2013 draft management plan for East Rennell states that no person may take a coconut crab from the area if the crab is carrying eggs or is less than 90mm long.\(^\text{141}\) If a person breached that rule by, for example, taking a coconut crab that was carrying eggs, the person would have breached the prohibition under the \textit{PA Regulations} against the taking of any organism without authorisation.\(^\text{142}\) Consequently, the breach of the management plan rule could be enforced as a breach of the \textit{PA Regulations}, and the person could be fined.

A potential benefit of the \textit{PA Act} approach is that site-specific rules developed through a management plan or management committee decision may be amended more easily than rules prescribed in a declaration instrument. The management committee could amend a site-specific rule simply by making a new decision regarding the issue, or by revising the management plan.\(^\text{143}\) Neither approach would require the approval of the Director or the Minister for Environment. Consequently, this feature of the \textit{PA Act} regime allows the management

\footnotesize{\(^{139}\) Ibid reg 63(1)(i), (d), (j), (k).  
\(^{140}\) Ibid reg 63(2).  
\(^{141}\) Live and Learn Environmental Education, above n 37, 15.  
\(^{142}\) PA Regulations reg 62(1).  
\(^{143}\) One of the management committee’s functions is to review the management plan for the Protected Area: PA Act s 12(3); PA Regulations reg 24. It is implicit from this that the management committee has the power to amend the management plan.
committee to quickly alter the rules in response to emerging threats to the site. In addition, if the rules were based on customary laws, it reduces the risk of the customs being rendered static by their incorporation into the management plan (discussed at (III)). However, this feature could also prove to be a disadvantage. Without government oversight, the management committee could amend the rules to suit its interests, to the detriment of the protection of the site.

(II) The rules of Protected Areas can be consistent with the sustainable use of the site

The modern approach to WH conservation views heritage protection as a component of sustainable development, and recognises the relationship between humans and heritage places (see 4.3.1). Due to their age, Solomon Islands’ protected area laws based on the fortress approach do not refer to sustainable development. For example, the National Parks Act (Cap. 149) regulates activities that may affect a national park, such as hunting, causing fires and taking vegetation.\(^\text{144}\) However, it makes no reference to the rights of local people, or any social or economic issues associated with the regulated activities. In contrast, the objectives of the PA Act include promoting environmentally sound and sustainable development.\(^\text{145}\) This objective is supported by the PA Regulations, which state that every decision made to give effect to the Act and the Regulations must consider the need for the sustainable use of natural resources.\(^\text{146}\)

This aspect of the modern approach to WH conservation is reflected in the provisions of the PA Regulations regarding the classification of Protected Areas and their management objectives. Pursuant to the Regulations, a site’s management plan should be consistent with the objectives for the class to which the Protected Area is assigned.\(^\text{147}\) The objectives of some classes are akin to the traditional approach to heritage protection, in that their primary aim is to protect the area from the impacts of human activities.\(^\text{148}\) However, other classes are consistent with the modern approach. For example, sites classified as ‘natural

\(^{144}\) National Parks Act (Cap. 149) ss 8, 10.
\(^{145}\) PA Act s 3(e).
\(^{146}\) PA Regulations reg 31(1).
\(^{147}\) Ibid regs 4(1), 11(2).
\(^{148}\) For example, a Protected Area designated as a ‘closed area’ must be managed to ensure biodiversity rehabilitation. All human activities that may be detrimental to the environment are prohibited in such an area. Human occupation of a Protected Area designated as a ‘nature reserve’ is also prohibited: ibid regs 5, 9, sch 1 (cls 1, 5).
monuments’ must be managed so that the traditional or spiritual association of the customary landowners is not restricted or impaired.\textsuperscript{149} Similarly, in ‘resource management areas’, the sustainable use of natural resources to meet the basic livelihood needs of local communities should be permitted, but managed to ensure that the needs of future generations are not compromised.\textsuperscript{150}

Ensuring food security and supporting livelihood development through sustainable resource management are priorities of the East Rennellese people.\textsuperscript{151} Therefore, if they were to support the declaration of their land as a Protected Area, it is likely that they would seek to have it classified as a ‘resource management area’. If that happened, the site’s Protected Area management plan could aim to ensure the conservation of the site’s OUV as well as supporting the local peoples’ sustainable development goals.

\textit{(III) The rules of Protected Areas can be based on customary laws}

The incorporation of customary law into a State law is often cited as an appropriate approach to heritage protection in a legally plural society.\textsuperscript{152} As will be explained, the \textit{PA Act} enables this because the rules in a Protected Area management plan can be based on customary laws. This feature of the law is particularly important for WH sites such as East Rennell, that have been listed on the basis of their customary protection. If the rules in a Protected Area management plan for East Rennell were based on custom, it could potentially strengthen adherence with customary practices,\textsuperscript{153} while also making the plan more relevant and acceptable to the local people. However, the incorporation of custom into the management plan raises several questions, including the impact of this process on the customary system.

\textsuperscript{149} Ibid sch 1 (cl 3).
\textsuperscript{150} Ibid reg 8, sch 1 (cl 4).
The existing 2007 management plan for East Rennell has been barely implemented, in part because local people have little awareness and understanding of it (see 6.4). The identification and documentation of the customary laws of the East Rennellese in a Protected Area management plan may lead the local people to have greater knowledge and respect for the plan. It could also help ensure that the plan is consistent with custom, and that it acknowledged and allowed for the continuation of relevant customary practices. Substantial inconsistency between customary laws and the rules is likely to weaken compliance with both, and may lead to conflicts between community members.

The incorporation of customary laws into the management plan could also improve compliance with the customs by making them enforceable through the State legal system. As explained in (I) above, a rule in the management plan will be legally binding if it authorises an activity that would otherwise be prohibited under the *PA Regulations*. Consequently, if such a rule was based on a customary law, that custom would in effect become enforceable under the *PA Act*. There are significant challenges associated with enforcing the *PA Act* through the State legal system (see 8.7). However, in some circumstances, it could be more effective than the customary system, for example if the offender was an outsider or if customary governance was weak (as appears to be the case in East Rennell – see 6.3.2).

The incorporation of customary laws into a Protected Area management plan is not without its difficulties. Firstly, customary laws addressing the threats to a WH site may not exist. In addition, customs being practised may be inconsistent with WH protection. Therefore, it will not always be possible for the rules of a Protected Area to be based on customary laws whilst also achieving the protection of the site’s OUV.

Secondly, it could render the customary law static. An often-cited challenge associated with the incorporation of customs into State law is that many customs are inherently flexible and ‘capable of being used in different ways at different
times’, 154 and they may lose this characteristic through codification in State law. 155 The significance of this concern largely depends on how the State law may be amended to respond to changes in custom. 156 A Protected Area management plan can be amended by the area’s management committee, which could be partly or solely comprised of members of the local communities. 157 While the committee must consult with local people before amending the plan, 158 it does not require the approval of the Director or Minister for Environment. This reduces the risk that the incorporation of a customary law into a management plan would render the law static. This risk is more significant for protected areas declared under provincial ordinances, because the rules that apply to an area subject to a resource order can only be amended by order of the provincial executive. 159 This is likely to be a slower and more difficult process than the amendment of a Protected Area management plan.

Thirdly, customary laws are often broad principles, rather than unambiguous rules, 160 which raises the question of how they can be appropriately accommodated in a management plan. A custom may need to be altered to gain the certainty required to become an enforceable management plan rule. If that happened, there is a risk that the plan would misrepresent the true nature of the customary law. In addition, over time, the codification process could lead to the original (unwritten) customary law being in effect replaced by the modified version contained in the management plan. Zorn and Corrin Care have noted this concern in the context of the proof and pleading of customary law, writing:

\[\text{[t]he ultimate irony of customary law is that although state law must recognise and apply custom in order to make itself a part of the culture, state law cannot use custom without turning it into something else.}\] 161

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156 See, eg, Graham, above n 153, 3-4; Kuemlangan, above n 155, 36-37; Ruddle, above n 155, 117.
157 PA Act s 12(1).
158 PA Regulations regs 22(2), 24.
159 Isabel Province Resource Management and Environmental Protection Ordinance 2005 cl 23(1); Choiseul Province Resource Management Ordinance 1997 cl 14(1); Western Province Resource Management Ordinance 1994 cl 14(1).
161 Zorn and Corrin Care, above n 155, 635.
Finally, the incorporation of customary laws into a management plan could undermine the customary system, because it may lead community members to have less respect for laws not codified in the plan.\textsuperscript{162} In addition, by allowing the customary law to be enforced through the State legal system, respect for customary governance may be diminished\textsuperscript{163} (discussed further at 8.7). For these reasons, if and when a \textit{PA Act} application for East Rennell is prepared, the extent to which the site’s management plan can and should incorporate customary laws needs to be carefully considered.

\textit{(IV) The Protected Areas Act provides little protection against threats arising outside the site’s borders}

The \textit{PA Regulations} principally regulate the activities that may be carried out within a Protected Area. Only two provisions expressly restrict activities occurring outside the site’s boundaries. Firstly, activities on land that may be harmful or destructive to a MPA are prohibited unless Ministerial approval has been obtained.\textsuperscript{164} This provision aims to protect MPAs from developments such as logging and mining, which can affect marine areas through erosion and sedimentation. Secondly, logging and mining in a buffer zone around every Protected Area is unlawful, with the width of that zone being determined by the Director,\textsuperscript{165} presumably when the Protected Area is established. While this provision provides the site with some additional protection, it is limited because the width of the buffer must be less than 1km.\textsuperscript{166} Furthermore, the provision may be difficult to implement if the land in the buffer zone is under different ownership to the Protected Area.

The \textit{PA Act} therefore provides little protection against activities occurring outside the site’s boundaries. This limitation is significant for the protection of East Rennell, which is threatened by activities occurring in West Rennell (see 6.2).


\textsuperscript{164} \textit{PA Regulations} reg 54(1).

\textsuperscript{165} Ibid reg 61(1).

\textsuperscript{166} Ibid.
While the declaration of East Rennell as a Protected Area would make logging and mining within the site unlawful, it would not prevent further operations in West Rennell being approved. The regulation of those operations would still be dependent on the *Forest Resources and Timber Utilisation Act (Cap. 40)*, the *Mines and Minerals Act (Cap. 42)* and the *Environment Act 1998* (which were analysed in 7.3). Furthermore, the *PA Act* could not be used to establish rules regulating the harvesting of species or requiring the implementation of biosecurity measures outside the site. As such, notwithstanding the declaration of East Rennell as a Protected Area, legislation such as the *Fisheries Management Act 2015* and the *Biosecurity Act 2013* would still be relevant (see 7.2 and 7.4).

### 8.7 Protected Area governance and the enforcement of the rules of Protected Areas

Like other State laws, the enforcement of the *PA Act* by the State is likely to be challenging (see (I)). The Act may enjoy greater compliance than some other laws because it enables local people to play a central role in the governance of Protected Areas and the enforcement of their rules. However, when implementing the governance and enforcement provisions of the *PA Act* and the *PA Regulations*, their interaction with relevant customary legal systems must be carefully considered (see (II)). Furthermore, local people will likely require training and financial resources to enable them to fulfil statutory governance and enforcement roles (see (III)).

#### (I) Enforcement of the rules of a Protected Area by the State will be challenging

The *PA Act* and the *PA Regulations* provide for the appointment of inspectors, prosecutors and rangers, who have various powers associated with monitoring compliance with the laws and enforcing breaches. Inspectors are appointed by the Minister of Environment.\(^\text{167}\) Their powers include inspecting Protected Areas, stopping and searching persons and vehicles, and issuing infringement notices.\(^\text{168}\)

\(^{167}\) *PA Act* s 19(1).

\(^{168}\) Ibid s 20(1) and 22(1)
Prosecutions for offences can be commenced by people appointed by the Minister,\textsuperscript{169} by the Director of Public Prosecutions, or by a public prosecutor.\textsuperscript{170}

As no Protected Areas have been declared yet, it remains to be seen if and how these enforcement provisions will work in practice. The \textit{PA Act} is not immune from the challenges associated with the enforcement of State heritage protection laws (explained at 2.4.1). In particular, as inspectors and prosecutors are likely to be based in Honiara, or at best in a provincial capital, they will be physically distant from most Protected Areas. Consequently, they will require substantial resources to travel to Protected Areas to identify and investigate breaches, which may be beyond the Ministry of Environment’s budget. If the \textit{PA Act} is to be effective, SIG and donors must ensure that inspectors and prosecutors have sufficient resources and knowledge of the law to carry out their statutory duties.

As explained previously, a management committee will be appointed for each Protected Area by the national Protected Areas Advisory Committee.\textsuperscript{171} One of the management committee’s roles is to appoint rangers for the Protected Area.\textsuperscript{172} A ranger must either be a member of the local community or a person employed by an organisation managing the area.\textsuperscript{173} Rangers are given broad powers, including the power to search persons and vehicles, to seize objects (including plants, animals and equipment), and to require a person to stop an activity that contravenes the Act or the Regulations.\textsuperscript{174}

Given it will be difficult for inspectors to monitor and enforce the rules of Protected Areas, giving local people a role in these processes may enhance compliance. This is because the rangers will likely be stationed closer to the Protected Area than inspectors. In addition, it may lead local community members to feel part of the Protected Area management process, which in turn may make them more likely to comply with its rules and actively contribute to its conservation.\textsuperscript{175} Like inspectors and prosecutors however, rangers will require

\begin{itemize}
\item \textsuperscript{169} Ibid s 20(2).
\item \textsuperscript{170} Constitution of Solomon Islands s 91(4); Criminal Procedure Code (Cap. 7) s 72. In some circumstances, police and private persons can also commence prosecutions: Criminal Procedure Code ss 73, 75-76.
\item \textsuperscript{171} PA Act s 12(1).
\item \textsuperscript{172} PA Regulations reg 65(1).
\item \textsuperscript{173} Ibid 65(2).
\item \textsuperscript{174} Ibid 66(1).
\item \textsuperscript{175} This feature of the law is consistent with international best practice: see, eg, Lausche, above n 16, 137.
\end{itemize}
substantial resources and potentially training to carry out these roles (see (III)). In addition, as explained in the next section, the interaction between the work of rangers and customary governance must be carefully considered if local community members are to be appointed to this role.

(II) The interaction between the customary legal system and the governance and enforcement provisions of the PA Act and Regulations must be considered

As explained in 8.2.2(A), a Protected Area management committee could be a new organisation, established specifically to manage the site. Alternatively, in some circumstances an existing organisation (including a customary governance body, such as a Council of Chiefs) could be appointed as the management committee. This might be appropriate if the customary body is functioning well and is respected by the local community. Whatever approach is taken, the relationship between the management committee and existing customary governance bodies needs to be carefully considered before a decision on the composition of the committee is made.

The PA Act regulates rights to lands and resources, which are issues traditionally governed under customary law. Therefore, in exercising its functions under the Act, the management committee is likely to be regulating some issues within the jurisdiction of the customary governance body. Legally, decisions made by the management committee under the PA Act prevail over customary law. However, in practice the relationship between such decisions and custom is more complex. This can be demonstrated by considering the governance of a Protected Area at East Rennell.

If East Rennell was declared to be a Protected Area, its Council of Chiefs could be appointed as the site’s management committee. The Council would then effectively wear ‘two hats’: customary governance body and management committee under the PA Act. This would allow the Council to retain its status as the key decision-making body within the East Rennell communities. However, it also raises several questions. For example, if the Council was empowered to make

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176 Constitution of Solomon Islands sch 3 para 3.
decisions under the *PA Act*, would this erode the local peoples’ respect for the Council’s decisions on issues of custom? In other words, would people be more inclined to ignore or dispute such decisions on the grounds that they are ‘just custom’? In addition, would the Council be able to manage its affairs so that people could distinguish between decisions made by the Council in its different capacities? It would sometimes be necessary to make this distinction, because decisions regarding Protected Area matters could have legal implications under the *PA Act*, while decisions on matters of custom would not.

Implementation of the provisions of the *PA Regulations* concerning the decision-making procedures of Protected Area management committees could also prove problematic. These provisions cover matters such as the frequency of management committee meetings, quorums, and how decisions are made.\(^{177}\) These procedures are unlikely to be consistent with the Council of Chiefs’ customary procedures. Therefore, to comply with the *PA Regulations*, when dealing with Protected Area matters the Council would have to adopt procedures that differ from its customary procedures. This may pose significant logistical difficulties. In addition, by requiring the Council to adopt the prescribed procedures when it is carrying out its statutory role, this process could result in the creation of a hybrid body that has little legitimacy among the local people.\(^{178}\)

If the East Rennell Council of Chiefs was not adopted as the management committee, a non-customary body would take that role. That body could be the existing LTWHSA (discussed at 6.3.2) or another group established for the purposes of the *PA Act*. Again, this approach raises several questions. For example, would the appointment of a non-customary management committee with statutory powers erode the status of the Council of Chiefs among the local people? How would the overlap between the jurisdiction of the Council and the management committee be managed to ensure that both bodies have the respect of the local people and can carry out their functions?\(^{179}\) Johannes and Hickey have raised similar issues in relation to the *Environmental Management and*

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\(^{177}\) *PA Regulations* reg 27(6), sch 3.

\(^{178}\) Lindsay, above n 90, 7; Lausche, above n 16, 161.

Conservation Act 2002 of Vanuatu, which allows for the establishment of community conservation areas (CCA) through a process similar to that prescribed under the PA Act. They note that the establishment of a CCA:

could initiate confusion as to who is in charge within the village, and trigger a downward spiral in compliance with community-based resource management due to a lack of effective enforcement.

In Solomon Islands, this issue is evident in relation to the establishment of the Gold Ridge Landowners’ Association (GRLA), which was set up to manage the royalties from the Gold Ridge mining project on Guadalcanal. Most members of the GRLA were appointed because of their educational level, rather than because of their status within the communities. Naitoro has found that because of the substantial powers granted to the GRLA and the association’s composition, community elders have to some extent lost their leadership roles. A further potential issue is whether the power dynamic among chiefs would be affected if some but not all chiefs were appointed to the management committee.

The relationship between custom and the PA Act regime is also relevant to the work of rangers. Rangers for a Protected Area are appointed by the management committee, and could be people with customary authority (such as chiefs) or people without such authority. The appointment of rangers raises several questions concerning the relationship between their statutory roles and local governance. For example, if a ranger is a person without customary authority, in practice would local people respect his or her decisions, particularly if they are inconsistent with customary law? In practice, would people turn to a chief to in effect appeal a decision of a ranger? How would a conflict between a decision of a ranger and a decision of a chief be managed?

The provisions of the PA Act and PA Regulations that enable local people to participate in Protected Area governance and enforcement enable communities to maintain significant control over their land, and provide avenues for monitoring and enforcement which may enhance compliance. However, as the analysis above demonstrated, because of the legally plural nature of Solomon Islands,
implementation of these provisions raises complex questions regarding their interactions with customary law and governance. These issues warrant careful consideration before a management committee or rangers are appointed.

The governance provisions of the draft *Lake Tegano Natural Heritage Park Ordinance 2009* differ from those in the *PA Act*. The draft ordinance provides for the establishment of a new Lake Tegano Natural Heritage Park Authority to manage the area, which is to be governed by a Board of Directors. It is unclear from the report on the preparation of the draft ordinance why this is required, given the existence of the LTWHSA. The draft ordinance was prepared in 2009, the same year that the LTWHSA was established. It may simply be that the ordinance was prepared before the association was formed. In any event, while the LTWHSA remains operational, the establishment of a new local organisation to manage the WH site would be inefficient and would lead to confusion over their respective jurisdictions. As such, this feature of the draft Ordinance should be revised before the law is passed.

(III) *Local people will likely need training and resources to enable them to fulfil local governance and enforcement functions under the PA Act*

Although the *PA Act* facilitates local people to carry out local governance and enforcement roles, with one exception it makes no provision for such people to be paid. The exception is that a member of a management committee is entitled to SBD60 (approximately $AUD10) for attending a meeting. However, the Regulations state that this payment is ‘subject primarily to the availability of sufficient funds’, and thus the SIG may have grounds for refusing payment.

A common complaint of chiefs involved with local community governance is that they should be paid by the State for their services, as it diverts them from livelihood activities. On the same grounds, local people may be unwilling to take part in Protected Area governance and enforcement without financial

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184 Draft *Lake Tegano Natural Heritage Park Ordinance 2009* cl 8.
186 *PA Act* s 12(5); *PA Regulations* reg 27(5).
187 *PA Regulations* reg 27(5).
188 Allen et al, above n 126, 69.
support. This was an observation made by Heywood and Gabrys during their time in East Rennell. At present, it appears unlikely that the SIG will provide such funding. When interviewed for this research, Joe Horokou (the Director of Environment and Conservation Division of the Ministry of Environment) commented:

There is a perception from the [East Rennellese] people that we should be funding the site. They are asking the Ministry to employ locals as rangers and managers. The Government is faced with financial difficulties and human resource constraint. The best we can do is facilitate.

The PA Act also does not specifically provide for management committees and rangers to be provided with any resources to enable them to carry out their functions, even though substantial funds may be required. For example, at East Rennell a significant expense will be the cost of fuel, required for boat and truck transport to allow people to attend meetings and carry out other management tasks such as monitoring. The PA Act provides for the establishment of a Protected Areas Fund, which can be used to assist with the establishment and management of Protected Areas. However, the Fund has not yet been set up. Furthermore, given the economic climate in Solomon Islands, it remains to be seen whether communities will receive any money through this Fund. It is therefore likely that local people will need to seek financial assistance from additional sources to enable them to fulfil their Protected Area governance and enforcement roles. They may also require technical assistance and training to assist them to understand and perform the tasks associated with these roles. As only State parties can request assistance through the WH Fund (see 4.2.4(C)), the East Rennellese can only get assistance through the Convention regime to help them manage the site if the SIG agrees to submit an application. The WH Committee and the IUCN should continue to encourage and support the SIG to do so.

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189 See, eg, Mike Heywood and Kasia Gabrys, Evaluation Report on Training in Community-Based Natural Resources Management (2009). Heywood and Gabrys trained East Rennellese people in bird and tilapia monitoring, to collect base line data against which future changes could be assessed. They concluded that while the East Rennellese people are interested in natural resources management, they are ‘generally not willing to contribute voluntarily and expect monitory remuneration for their services’: at 4.

190 Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013).

191 In this respect, the PA Act and the PA Regulations are not consistent with best practice. IUCN’s guidelines for protected area legislation state that such laws should elaborate on the kinds of assistance the protected areas authority should provide to support communities and individuals in managing their conserved lands: Lausche, above n 16, 138.

192 PA Act s 13.

193 Ibid s 15.
8.8 Conclusion

Solomon Islands has a duty under the Convention to take the legal measures required to protect the East Rennell WH site. While the SIG’s enactment of the PA Act was a step towards meeting this obligation, the site has not yet been declared a Protected Area. This chapter contains the first comprehensive analysis of the opportunities and challenges presented by the Act, and thus makes a novel contribution to our understanding of WH protection in Solomon Islands. The fact that the Committee is calling upon Solomon Islands to implement the Act at East Rennell heightens the significance of this work.

This chapter highlighted several features of the PA Act that make it a more appropriate law for the protection of WH than protected area laws based on the ‘fortress’ approach to conservation. It also identified legal and practical issues that may impede the Act’s implementation. Key opportunities and challenges presented by the PA Act for WH protection include:

1. It offers broad scope for the protection of WH values.

The PA Act could apply to both terrestrial and marine WH sites that are listed based on their natural values and, in some cases, their cultural values. The rules that apply to the use and development of Protected Areas provide some protection against activities that could threaten these values. Importantly, logging and mining is prohibited in all Protected Areas, which is significant given the destructive effect of these industries on heritage places. Other rules of a Protected Area can be tailored to address the particular threats facing a site, through the site’s management plan and the decisions of the site’s management committee. Importantly however, the Act’s strength lies in its regulation of activities within the declared site, not in its regulation of operations on surrounding land. It provides little protection against threats arising from outside the site’s borders.
2. It facilitates protection of World Heritage sites through the framework of sustainable development

The objectives and rules of a Protected Areas established under the PA Act can be designed to not only protect the site’s WH values, but also to support the sustainable use of natural resources by the local people and the continuation of their cultural practices. Thus, the PA Act regime demonstrates an acknowledgement of the strong cultural connection that many Solomon Islanders have with their land, and the fact that many people rely on their land and its resources for their livelihoods. Of course, designing a management regime for a Protected Area that will ensure the protection of the site’s WH values, whilst also allowing local people to continue to utilise the site’s resources and carry out their cultural practices may prove challenging.

3. It reflects recognition of the rights and roles of local people in the protection of World Heritage sites

The PA Act gives local people a role in the establishment, design and governance of Protected Areas, and the enforcement of the area’s rules. This feature of the regime represents a recognition of the rights of local people in relation to their land and resources, and the contribution they can make to the protection of heritage. It enables local people to retain significant control over their land notwithstanding its declaration as a Protected Area. This makes the PA Act regime more consistent with the recognition of the rights of Solomon Islanders than earlier protected area laws. It also potentially makes the PA Act regime more relevant and understandable to Solomon Islanders, which may encourage them to participate in Protected Area management and comply with the site’s rules.

The corollary of this feature is that the Act cannot be used to protect a WH site unless the people with rights and interests in that area (the Landowners) agree. Ensuring that they have sufficient incentive to support the establishment of a Protected Area may be challenging, given the restrictions that the law will place on their activities and the limited development opportunities that exist on many islands. Implementing the Landowner consent provisions prescribed in the PA
Regulations may also prove difficult, particularly if they are inconsistent with customary land tenure system and decision-making processes that apply in the area. Local people may also need to be provided with training and resources before they can effectively fulfil the governance and enforcement roles available to them under the PA Act.

4. It is an appropriate response to the legally plural nature of Solomon Islands

The PA Act regime reflects the legally plural nature of Solomon Islands, and the overlap between Protected Area regulation and customary laws. Importantly, customary laws can form the basis of the rules in the Protected Area’s management plan, and a customary governance body can be appointed as the site’s management committee. This feature of the regime may encourage the continuation of customary practices, as well as enabling the development of a management plan and governance structure that is understood and respected by the local people. However, the impact of the incorporation of customary laws into a management plan needs to be considered, to ensure that the PA Act does not weaken customary heritage protection. In addition, when appointing the management committee and rangers, the relationship between the governance and enforcement provisions of the PA Act regime and the customary system must be taken into account.

This chapter has shown that the declaration of East Rennell as a Protected Area could contribute to the site’s conservation. However, it raises several legal and practical issues that could impede the PA Act’s effectiveness. The SIG, the East Rennellese and any other organisations involved with implementing the Act at East Rennell should investigate these issues further, if and when a Protected Area application is prepared for that site. It also must be recognised that even if East Rennell is declared a Protected Area, the PA Act will not provide protection against all the threats to the site’s OUV. The Act is therefore only one of the legal measures required to ensure the long-term conservation of the site. Importantly, legislation concerning resource harvesting, extractive industries and biosecurity (analysed in chapter 7) will remain relevant notwithstanding the site’s declaration as a Protected Area.
Part 4

Conclusions and Recommendations
Chapter 9: Strengthening the protection of World Heritage in Solomon Islands and other Pacific Island States

9.1 Introduction

This research explored the opportunities and challenges for the protection of World Heritage (WH) in Solomon Islands by analysing the implementation of the World Heritage Convention\(^1\) (the Convention) at two scales.

Firstly, these issues were considered at the Pacific level (Part 2). Chapter 2 set the scene for this analysis by exploring the types of heritage sites prevalent in the Pacific, and the key characteristics of Pacific Island States and their legal systems. Two key aspects of the Convention regime were then critically analysed, namely the origins and interpretation of the concept of WH (chapter 3), and obligations imposed by the treaty concerning the protection of such places (chapter 4). The research demonstrated that many opportunities and challenges stem from the nature of the region’s heritage, land tenure and legal systems, while others are attributable to characteristics of the Convention and the Committee’s approach to WH and its protection.

Secondly, the research critically analysed the implementation of the Convention in Solomon Islands (Part 3), beginning with an assessment of the origins of the country’s WH program and the inscription of East Rennell on the WH List (chapter 5). It found that the circumstances surrounding these events help explain many of the current issues associated with WH protection in Solomon Islands. The research then critically analysed the legal protection of East Rennell under customary and State legal systems, finding that the involvement of the East Rennellese people in the implementation of the Convention is critical, but State intervention is also necessary to deal with the threats to the site’s outstanding universal value (OUV) (chapter 6). State laws of particular relevance to these threats were analysed, highlighting their potential to contribute to WH protection, but also significant challenges impeding their effectiveness (chapters 7 and 8).

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\(^1\) Convention Concerning the Protection of the World Cultural and Natural Heritage, opened for signature 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975) (‘World Heritage Convention’).
The implementation of the *Convention* in Solomon Islands is influenced by a range of economic, social, political and cultural issues. The country’s low economic growth, political instability, governance issues, and the close connection between many politicians and the extractive industries, all reduce the ability and willingness of the Solomon Islands government (SIG) to protect WH. In addition, forces such as globalisation, urbanisation and migration are degrading some customary legal systems, and impeding the ability of community leaders to effectively manage their land and resources. Addressing or mitigating these issues would require efforts at a much broader scale than is possible or appropriate through the implementation of the *Convention*. This research therefore did not set out to find ‘the solution’ to WH in the Solomon Islands, which would not only be inappropriate for a single, foreign scholar, but also impossible, given the nature and complexity of the challenges that exist. It did however aim to identify the challenges and opportunities presented by the *Convention* regime for the protection of Solomon Islands’ WH, as well as the features of that State which influence its ability and willingness to conserve such places. From that analysis, the research sought to ascertain if and how the protection of WH in Solomon Islands and other Pacific Island States could be strengthened.

This chapter therefore identifies some options for addressing the key challenges associated with protecting WH in the region. In accordance with the structure of the thesis, these options are explored at two scales: at the Pacific scale (see 9.2) and in Solomon Islands (see 9.3). It is acknowledged that these measures may only lead to incremental improvements, and may require a substantial length of time to have effect. Furthermore, identifying sources of funding and assistance to enable their implementation will always be challenging. However, in time they could assist Pacific Island States and others to implement the *Convention*, and therefore contribute to the conservation of the region’s significant heritage places.
9.2 Strengthening the protection of World Heritage in the Pacific Island States

9.2.1 Bridging the disconnect between the global and local significance of Pacific World Heritage sites

Chapter 3 explored the extent to which Pacific heritage may be considered WH. It found that the scope of the Convention, encompassing both cultural and natural heritage, creates substantial opportunities for the protection of Pacific places, where the distinction between culture and nature is often not easily made. While for many years the Committee interpreted the term ‘cultural heritage’ relatively narrowly, over time its interpretation has broadened to allow a greater range of places to be recognised as WH. Given the substantial challenges associated with nominating Pacific sites for WH listing, it may be some time before this change leads to better Pacific representation on the WH List. However, as demonstrated by Anita Smith, the criteria for WH listing, and the processes for demonstrating that a site meets the WH threshold, are able to accommodate many Pacific places.\(^2\) Importantly, there is scope for the listing of sites of significance because of their association within the living traditions of Pacific Islanders, as evidenced by the inclusion of Chief Roi Mata’s Domain and Nan Madol on the List. The inscription of these sites (as well as the other listed WH sites in the region) was a significant achievement particularly given that Pacific States have limited resources to dedicate to heritage conservation.

An issue that must be considered when assessing the scope for Pacific heritage to be recognised as WH is the potential for a disconnect to exist between the global and local significance of the place, and its implications for the site’s protection. All places exist within a hierarchy of spatial scales, and the value of a place may vary considerably at different levels within that hierarchy.\(^3\) By defining WH to be heritage of ‘outstanding universal value’ (OUV), the Convention ‘manufactures history and heritage at a global scale’.\(^4\) However, the OUV of a WH site may not coincide with the local population’s

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view of why the place is significant.\textsuperscript{5} While the potential for such a disconnect exists at WH sites around the world, its implications may be more significant in regions such as the Pacific, where the involvement of local people in heritage protection is particularly critical.

This issue is relevant to both cultural and natural WH sites. Many of the listed cultural WH sites in the Pacific have been recognised as having OUV as ‘expressions of a global narrative’\textsuperscript{6} rather than because of the values attributed to them by Pacific islanders. Similarly, the two listed natural WH sites in the region\textsuperscript{7} were listed because of their outstanding environmental features as opposed to their local significance. Indeed, as few natural environments in the Pacific do not also have cultural significance, a variation between the global and local value of natural WH sites in the region will be common. UNESCO’s management manuals state that a WH site should be managed to conserve all its heritage values, not just those that give the site OUV.\textsuperscript{8} However, in practice the Committee is most concerned about the preservation of a WH site’s OUV. Consequently, at East Rennell for example, the Committee’s focus is on the preservation of the site’s forest and marine ecosystems, while the East Rennellese people are more concerned about conserving their cultural identity. This situation is not conducive to the creation of a cooperative approach to WH protection.

This thesis does not argue against the listing of natural WH sites in the Pacific region. Many such places would not qualify as cultural or mixed sites, so to preclude their listing as natural sites would significantly reduce the potential for the Convention to be utilised in the region. It does however advocate for this issue to be explored when sites are being considered for nomination, including investigating whether it will present challenges for the site’s protection and, if so, how those challenges can be minimised.


\textsuperscript{6} Smith, above n 2.

\textsuperscript{7} East Rennell in Solomon Islands and the Phoenix Islands Protected Area in Kiribati.

Successful WH management often requires that conflicting interests at different levels be reconciled. Deegan refers to this as finding the local-global nexus, ‘where forces from diverging dimensions of scale…interconnect and interpenetrate’. The disconnect between the global and local significance of East Rennell has manifested itself in significant disenchantment among the local population concerning WH, impeding its protection under both customary and State law. In this context, mechanisms for strengthening WH protection must involve finding and capitalising the local-global nexus. At East Rennell this will likely require broadening heritage conservation efforts to encompass the preservation of the values of significance to the East Rennellese, and supporting them to improve their livelihoods (see 9.3.3 for further discussion).

9.2.2 Achieving sustainable development and respecting the rights and roles of local communities in the protection of Pacific World Heritage

While the Convention gives State parties discretion to adopt legal measures appropriate to their circumstances, as explored in chapter 4, for many years the Committee favoured a ‘fortress’ style approach to WH protection, which is often inappropriate in the Pacific. In recent years however, the Committee’s views on the conservation of WH have evolved. An important milestone in this evolution was the Committee’s resolution that rights recognised under the United Nations Declaration on the Rights of Indigenous Peoples (UNDROP) must be respected in the implementation of the Convention. The recent adoption of the WH Sustainable Development Policy by the General Assembly of State parties (which followed the endorsement of a similar document by the Committee) was also significant, as it demonstrated broad acknowledgement of the need to pursue WH protection through the framework of sustainable development. While these and other developments evidence the acceptance of an approach to heritage protection that may be appropriate in the Pacific, further work is required to translate them into practice.

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10 Deegan, above n 5, 81.
The Committee could assist with this by amending the *Operational Guidelines for the Implementation of the World Heritage Convention* (the ‘Operational Guidelines’)\(^\text{14}\) to fully reflect the modern approach to heritage protection. For example, while the *Operational Guidelines* note that WH sites may be subject to sustainable use, several provisions refer to the goal of WH protection being solely the preservation of the site’s OUV. They therefore fall short of the call in the *Sustainable Development Policy* for State parties to find an appropriate balance between conservation, sustainability and development, so that WH protection activities can contribute to the development and quality of life of communities.\(^\text{15}\) The *Operational Guidelines* also do not guarantee compliance with *UNDRIP*, as States are merely encouraged, not required, to involve local communities in the preparation of site nominations and the protection of WH sites.

In 2011, the Committee adopted a four-year cycle for the amendment of the *Operational Guidelines*,\(^\text{16}\) with the next revision due in 2019.\(^\text{17}\) Prior to that time, an analysis of the *Operational Guidelines* should be undertaken to ascertain the amendments required to align them with the modern principles of heritage protection. Achieving this will likely require a continuous process of review and revision, so that emerging issues can be addressed as they arise. The Committee must then ensure that its resolutions concerning specific WH sites actually reflect these principles (discussed further at 9.3.1).

While the Committee’s approach to WH protection is important, ultimately however it is the State parties and others involved with designing and implementing heritage protection measures that determine how WH is protected. Strategic documents regarding WH in the Pacific indicate that States in that region clearly recognise the links between heritage protection and development, and the need for local communities to play a central role in the implementation of the *Convention*.\(^\text{18}\) The challenge lies in identify mechanisms that enable this to be achieved in practice. As this research into East Rennell demonstrated, this can be very difficult. There is a continuing need to explore methods of conserving


\(^{16}\) WHC Res 35 COM 12B, WHC 35\(^{\text{th}}\) sess, UN Doc WHC-11/35.COM/20 (7 July 2011) 266.

\(^{17}\) The last review of the *Operational Guidelines* was done in 2015. However, amendments were made in 2016 after the review of certain provisions of the Guidelines on an exceptional basis.

heritage that respect the rights, needs and aspirations of local communities (discussed further at 9.3.3).

9.2.3 Improving our understanding of customary protection in the context of the World Heritage Convention

The Committee’s decision that sites protected through customary mechanisms could qualify for WH listing (discussed in chapter 4) was an important milestone in the evolution of the Convention regime for Pacific States, where much land is under customary tenure, and land and resources have been governed and managed by Indigenous people for millennia. Indeed, that decision enabled the listing of East Rennell, which at the time had little protection under State law. As explained in chapter 5 however, perhaps reflecting the Committee’s strong desire to list a Pacific site, it appears that East Rennell was included in the WH List despite little scrutiny of the site’s customary protection, and without a clear understanding of the relationship between customary law, the proposed management plan and State legislation. This finding helps explain some of the current challenges being encountered in the protection of the site.

This thesis does not contend that East Rennell should not have been listed. Such an argument would be difficult to justify, given the site’s heritage significance. Furthermore, the long-term implications of the site’s listing for the preservation of the island and the development of the Convention regime in the Pacific are unknown. Additionally, a debate over whether the site should have been listed will not assist with its conservation. This thesis does however argue that when a place is nominated pursuant to customary protection, the scope and strength of that protection, and its relationship to any proposed management plan and State legislation should be thoroughly examined. Key issues that should be considered are identified below.
(A) The scope of customary laws, and the structure and strength of customary governance systems

If a site is to be nominated for WH listing based on customary protection, the nomination should be preceded by research into the applicable customary legal system/s.\textsuperscript{19} The scope of customary laws must be assessed with reference to the WH values of the site, as it cannot be assumed that custom is consistent with heritage conservation. For example, as noted in chapter 2, in some parts of the Pacific the motivation behind the development of customary laws was the sustainable use of resources, however in other places population densities were too low for a conservation ethic to develop. Customary laws also need to be examined in light of the current and foreseeable threats to the site, to consider whether additional protection measures will be required and, if so, how they will work alongside customary protection.

Customary governance must also be researched, to understand who has authority to make decisions and how those decisions are made. Most customary governance bodies in the Pacific have changed substantially since pre-colonial times, and many are weakening under modern pressures such as the introduction of the cash economy, migration and globalisation. Therefore, their contemporary role needs to be assessed, including their legitimacy among the landowning communities and the extent to which they can ensure compliance with custom. Such a study may reveal that the WH values of the area are being well managed, and there is little need for intervention. Alternatively, it may reveal that customary governance needs to be strengthened and/or supplemented (for example, by the establishment of another local governance structure) in order to achieve WH protection. If a new structure is to be established, its relationship to any customary governance bodies needs to be well understood so that all have clear mandates and can work cooperatively together (discussed further at 9.3.3(E)).

\textsuperscript{19} The need to research and document customary legal systems before assuming they will form part of an effective heritage or resource management regime has been recognised elsewhere: see, eg, Joseph E boreime, ‘Nigeria’s Customary Laws and Practices in the Protection of Cultural Heritage with Special Reference to the Benin Kingdom’ in Webber Ndoro and Gilbert Pwiti (eds), Legal Frameworks for the Protection of Immovable Cultural Heritage in Africa, ICCROM Conservation Studies 5 (ICCROM, 2005) 9, 11; Shankar Aswani, ‘Customary Sea Tenure in Oceania as a Case of Rights-Based Fishery Management: Does it Work?’ (2005) 15 Reviews in Fish Biology and Fisheries 285, 304-305.
(B) Boundaries and buffer zones

The implications of the boundary provisions of the Operational Guidelines for customary protection must be assessed. These provisions require the boundaries of a WH site to be drawn so that all attributes necessary to convey the site’s OUV are within the site.20 As customary land tenure in some parts of the Pacific (particularly Melanesia) is highly fragmented, compliance with this requirement may result in the WH site encompassing land owned by more than one group. This may create issues concerning coordination of the different customary legal systems. In some cases, it may be appropriate to advocate for the boundary requirements to be relaxed, to allow the delineation of a WH site that can be effectively protected under one customary legal system, rather than creating a large site under fragmented ownership.

The Operational Guidelines also state that a buffer zone around a WH site should be established where necessary to protect the site.21 The feasibility of creating such a buffer zone needs to be assessed, particularly if the land surrounding the site is owned by a different customary group. For example, the owners of the buffer zone may not accept restrictions on the use and development of their land, particularly if they receive no tangible benefits from the WH listing.

A degree of flexibility is required in the application of the boundary and buffer zone provisions to sites under customary protection. However, the consequences of any non-compliance also have to be considered. As this research showed, East Rennell did not strictly comply with the boundary requirements for listing because the forests across the island are intrinsically linked. In addition, no buffer zone has been established, possibly because of land tenure issues. Today, many of the threats to the WH values of the site arise from activities in West Rennell, which the East Rennellese have little power to control, and which the SIG has been unwilling to strongly regulate. As such, while the boundary and buffer zone requirements must be applied flexibly for sites under customary protection, those issues and their implications for WH protection should not be ignored.

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20 Operational Guidelines 2016, UN Doc WHC.16/01, paras 100-102.
21 Ibid paras 104-107.
Management and protection of World Heritage sites under customary tenure

Customary protection will rarely, in itself, be sufficient to protect a WH site against all modern threats. Consequently, when a site under customary protection is nominated for WH listing, the extent to which that protection needs to be strengthened and supplemented through other mechanisms, such as a management plan and/or State legislation, must be determined. The relationship between such mechanisms and custom also has to be clearly understood. Numerous issues concerning such relationships were revealed through the analysis in chapters 6 – 8. For example, how will any inconsistencies between the management plan provisions and customary law be resolved? Will State legislation incorporate aspects of custom, and if so will that affect (positively or negatively) compliance with those customs? If a new governance body will be established, what will be the composition of that body? And how will its jurisdiction relate to that of customary governance bodies? Understanding issues such as these is crucial if the additional management measures are to be effective.

The role that the State is likely to play in the protection of the site also needs to be examined. For example, this research demonstrated a reluctance among people working within SIG to implement any measures that were not widely supported by the East Rennellese people, reflecting their reverence for the rights of customary owners, and recognition of the peoples’ reliance on the land and its resources for their livelihoods. It therefore cannot be assumed that a State party will be willing to do all it takes to strictly protect the OUV of a site under customary tenure, despite its Convention obligations.

Greater scrutiny of the issues referred to in (A) – (C) above at the nomination stage could have two key benefits. Firstly, it could temper the expectations of the Advisory Bodies and the Committee (collectively referred to here as the Convention bodies) concerning the level of protection that the site will enjoy. Their enthusiasm to support customary protection should not translate into an assumption that customary landowners or State parties are willing and able to protect sites under customary tenure to the same standard as those under State ownership and control. A thorough assessment of customary protection would provide a more realistic picture of the strength of the site’s protection regime, allowing all stakeholders to agree upon feasible conservation objectives.
Secondly, it might help the Pacific State parties and the *Convention* bodies to anticipate and address issues concerning the site’s protection.

The inclusion of provisions in the *Operational Guidelines* concerning customary protection might also be beneficial. The *Operational Guidelines* already detail common elements of an effective WH site management plan, which are used by State parties when designing management regimes, and by the *Convention* bodies when assessing site nominations. Equivalent provisions setting out key issues relevant to an assessment of the customary protection of a nominated site could also be included in the *Operational Guidelines*. Clearly, the provisions would have to be sufficiently broad and flexible to encompass the huge variety of customary legal systems and WH sites that exist around the world. However, appropriately drafted they could serve as a useful starting point for assessing customary protection in the context of the *Convention*.

### 9.2.4 Ensuring the Pacific voice continues to be heard

Over the past three decades, the Committee has responded to changes in the international community’s views concerning aspects of the *Convention*, which has led to the regime evolving (chapters 3 and 4). This evolutionary process will no doubt continue and as it does the *Convention* bodies must ensure that the needs and aspirations of Pacific Island states continue to be taken account. Pacific representation on the Committee would be beneficial, but it is uncertain whether any Pacific Island State has the capacity, resources and willingness to effectively serve in that role. These States should however be encouraged and supported to engage with the *Convention* regime in other ways.

It is often difficult for Pacific Island States to participate in WH Committee meetings, particularly those held in the northern hemisphere, because of the financial and human resources that attendance requires. Regional WH meetings are therefore critical as they provide Pacific Islanders with an opportunity to discuss common issues, develop strategic plans, and formulate shared visions which can be articulated to the *Convention* bodies.

Mechanisms to allow Pacific Island States to participate in Committee meetings without

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22 Ibid paras 108-118.

23 For example, the *Pacific World Heritage Action Plan 2016 – 2020* (2016).

24 For example, the Pacific Appeal: *Presentation of the World Heritage Programme for the Pacific*, WHC 31st sess, UN Doc WHC-07/31.COM/11C (10 May 2007) annex I (Appeal to the World Heritage Committee from the Pacific Island State Parties).
having to physically attend could also be explored. For example, there might be potential for a regional meeting to be held simultaneously with the Committee meeting, with a video link between the two venues.

The preparation of State party reports can also be difficult for Pacific Island States, which is understandable but regrettable. These reports are not only a way for State parties to report on their compliance with the Convention and the Committee’s resolutions, they can also be used to inform the Convention bodies of the State party’s broader views concerning WH. If a State party has no input into the Committee’s decision-making, there is a risk that a wide gulf between the respective positions of the Committee and the State will develop (as exists in relation to East Rennell – see 9.3.1). Supporting Pacific Island States to actively engage with the Convention regime may help ensure that as it evolves it becomes a more useful mechanism for the protection of the region’s heritage.

More broadly, the development of a consortium of Pacific Island States should be considered. This approach has proved successful in other contexts. A notable example is the Alliance of Small Island States (AOSIS), an intergovernmental organisation of low-lying coastal and island countries that functions as an ‘ad hoc lobby and negotiating voice’. AOSIS has been relatively successful in articulating the views of member nations to the international community, particularly on the issue of global warming. A formal consortium of Pacific Island States, (or a larger organisation encompassing other nations facing similar challenges, such as the Small Island Developing States), could allow these countries to have more input into the implementation and evolution of the Convention regime.

9.2.5 Supporting the protection of World Heritage in the Pacific

The Global Strategy for a Representative, Balanced and Credible World Heritage List was adopted by the Committee in 1994 on the basis that maintaining the credibility of the List was dependent on it better reflecting the diversity of heritage places around the world. It therefore supported activities designed to rectify imbalances in the List, including encouraging States from under-represented regions to nominate sites, and broadening the interpretation of the notion of cultural WH. However, to date less attention has been paid

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25 Alliance of Small Island States, About AOSIS <http://aosis.org/about/>.
to improving WH conservation, including addressing the issue of non-compliance with WH Committee decisions. Consequently, Anderson has recently argued that:

To maintain credibility, a shift in focus from quantity to quality must take place. This means that sites put forward for nomination should be clearly identified as gaps in the World Heritage List and receive advice from the earliest stages on how to meet the standards of the Convention. It also means that the management of existing World Heritage sites should be central to the Convention’s focus.

The increased focus on WH protection advocated for by Anderson must occur in the Pacific region. Unless the challenges associated with the conservation of Pacific WH sites are addressed, not only will such places remain at risk of being damaged or destroyed, but the representation of the region on the WH List is unlikely to substantially increase. Further work is required to help Pacific Island States address the many challenges associated with protecting WH, some of which were identified through this research.

The Pacific World Heritage Action Plan 2016-2020 aims to ensure that Pacific heritage places are effectively protected and managed, and specifies regional- and national-level actions designed to help meet that goal. Regional actions include capacity building programs, establishing a cultural heritage database and a register of cultural heritage legal experts, and preparing model management plans. National activities vary from State to State, but include increasing cooperation between relevant Ministries, capacity building, information sharing, and increasing the effectiveness and coordination of heritage policy and legislation. If and how these proposed actions will be implemented in practice remains to be seen. Drawing upon the Action Plan and the findings of this research, some observations about supporting the protection of Pacific WH are made below.

(A) Creating a regional database for Pacific World Heritage and a register of heritage law experts

Academic scholarship and practical experience concerning the protection of Pacific WH is amassing (albeit slowly), so the creation of a comprehensive repository for such
information would be beneficial. The logical host of the database would be the Pacific Heritage Hub, a WH facility for Pacific Island States established in 2013 at the University of the South Pacific. The scope of the proposal in the Action Plan should be expanded from cultural heritage sites to include all WH places. Similarly, the proposal to create a register of cultural heritage legal experts could be expanded to include people with expertise in natural WH sites.

Importantly, the database should be sufficiently broad to encompass information concerning laws relevant to WH protection. Currently, there is no central location where such information can be found. While UNESCO hosts a database of cultural heritage laws, it is incomplete. Some Pacific legislation can be obtained through Paclii, but that site is also not always up to date. Furthermore, the Paclii site is a database of legislation on all topics, potentially making it difficult to find heritage protection laws.

The database proposed in the Action Plan will be more valuable if it encompasses all key legislation relevant to WH protection, not simply laws specifically aimed at heritage conservation. Compiling the database may necessitate detailed assessments of the relevant laws in the Pacific nations (such as that undertaken for Solomon Islands as part of this research). Including links to information about the implementation of the relevant laws (such as the relationship of the laws to custom, and enforcement issues) would also enhance the usefulness of the database.

(B) Strengthening heritage policy and legislation

The Action Plan notes the need to improve the effectiveness and coordination of heritage policy and legislation, but does not specify how this will be achieved. Three key issues relevant to the design of programs to strengthen heritage policy and legislation are outlined below:

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33 Pacific Heritage Hub, Who We Are <http://www.pacificheritagehub.org/about-us/who-we-are/>.
35 Of the Pacific Island States, only Fiji, Niue, Palau, Samoa and Tonga are covered.
37 For example, the Phoenix Islands Protected Area Regulations 2008 (Palau) are not on the Paclii website.
(B.I) Supporting the development of laws to protect World Heritage versus heritage sites more broadly

The extent to which the protection of WH should be prioritised over other sites is a relevant issue in all countries, but is more pertinent in a developing country where resources are so limited. The importance of this issue in Africa, for example, has been well recognised. Breen has stated:

World Heritage inscription lays undue emphasis on single sites in a national context, diverts resources and expertise from the broader context of state services and national heritage provision.38

Similarly, Mumma has said:

There is a danger that, by prioritizing action in support of those places at the highest level, elements of the wider resources may not be properly considered and this may result in detriment to the heritage.39

As in Africa, WH protection stretches the very limited resources of Pacific Island States. While WH sites have been internationally recognised as having OUV, unlisted sites may be just as significant and thus warrant the same level of protection. Thus, whether States should develop legislation that applies solely to WH sites or to heritage places more broadly needs to be considered.

This question needs to be answered on a case by case basis. Some WH sites may be sufficiently unique to justify specific legislation. For example, Kiribati’s listed WH site, the Phoenix Islands Protected Area, was established and is protected under the Phoenix Islands Protected Area Regulations 2008 (Kiribati).40 That WH site is the largest marine protected area in the Pacific, and hosts a range of marine environments and incredible biodiversity. Its unique characteristics arguably warrant site-specific legislation.41 In contrast, it is argued here that East Rennell is not so dissimilar from other places in Solomon Islands as to justify site-specific legislation, at least not at the national level. It was therefore reasonable for SIG to enact the Protected Areas Act 2010 (the PA Act) rather than a World Heritage Protection Act as envisaged in East Rennell’s nomination dossier.42

40 Made under the Environment Act 1999 (Kiribati).
41 This is also the approach taken into relation to several WH sites in Australia, such as the Great Barrier Reef Marine Park.
42 One reason why the World Heritage Protection Act was not pursued in Solomon Islands is because it would only apply to WH sites, as opposed to important heritage places more broadly: Interview with an officer in the Ministry of Education, who was
The corollary is that the *PA Act* is not specifically designed for East Rennell, and as explained in chapter 8 there are many issues that require careful consideration if and when the Act is implemented there (see 9.3.2(D) and 9.3.3(E) below). Furthermore, while the *PA Act* could be used to help conserve the OUV of East Rennell, that Act does not address all aspects of the implementation of the WH Convention. Specific WH legislation could provide a broader framework for decision-making concerning potential and existing WH sites than exists under other laws. For example, it could address the nomination of sites for WH listing (including landowner consultation and/or consent requirements), site management plans (including the process for their development, review and approval), administrative decision-making concerning WH matters, the financing of WH protection, and income sharing (for example from tourism). Importantly, such legislation could be drafted to apply to sites with both cultural and natural heritage values, which may not fit well under existing protected area or cultural heritage legislation. These benefits may make specific WH legislation the appropriate choice for some Pacific Island States, if they are willing to commit the human and financial resources needed to implement and administer such a law.

(B.II) *The development of model World Heritage protection legislation for the Pacific*

The *Action Plan* supports the development of model management plans for WH sites and places on Tentative Lists,\(^43\) but makes no reference to model laws. The merits of developing model laws for the protection of Pacific WH should however be investigated.

A *Model for a National Act on the Protection of Cultural Heritage* already exists,\(^44\) but it is principally concerned with underwater and moveable heritage, and is global in scope. A regional model would be preferable, as it could be better tailored to the Pacific context. A model law for the protection of cultural heritage has already been developed for the Caribbean, and lessons could potentially be learned from that process for the Pacific. Furthermore, the Pacific region already has a *Model Law for the Protection of Traditional...*
Ecological Knowledge, Innovations and Practices. The experiences of Pacific Island States in utilising that document could be drawn upon in the development of any model for the protection of WH.

Model laws have many benefits, including allowing for the pooling of expertise in legislative drafting. This is particularly pertinent in the Pacific where the number of people with the requisite skills is somewhat limited. There is however a risk that model laws can fail to accommodate the diverse characteristics of the relevant States. This risk is exacerbated in the WH context by the diversity of Pacific heritage, which means that no one piece of legislation will be appropriate for all sites. Notwithstanding this, the development of a series of options for WH protection legislation may still be useful. The drafting process would have to be led by regional Pacific organisations, representatives of the Pacific Island States and others who would be involved with its implementation, to ensure that the model enjoys wide support and is appropriate for the Pacific context. In particular, the model would need to reflect the fact that customary legal systems vary significantly across the region and, in some cases, within States.

(B.III) Lessons from other jurisdictions

This research focused inwards on Solomon Islands, to explore the full range of issues influencing WH conservation in that State. There is however potential for Solomon Islands to benefit from lessons learned from other jurisdictions. As there are few listed WH sites in the Pacific and they vary significantly, the scope of any such investigation should encompass other places of heritage significance within the region. Comparisons with WH sites outside the regions could also be beneficial (particularly sites under customary tenure, and those in legally plural Small Island Developing States such as in the Caribbean States). Lessons might also be learned from the implementation of other treaties such as the Convention on Biological Diversity in both the Pacific and other regions. Careful analysis would however be required before it could be assumed that experiences in other regions are relevant to the Pacific.

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(C) **Strengthening customary protection of Pacific World Heritage sites**

The *Action Plan* aims to ensure that Pacific communities are actively engaged in conserving their heritage, and promotes activities such as awareness raising among communities, and capacity building for local heritage management. Interestingly however, the *Action Plan* makes little reference to measures specifically designed to strengthen customary protection of WH. The only reference is in a national-level activity proposed by Solomon Islands and Papua New Guinea, which is ‘promoting respect for customary practices and decision making in heritage protection and management’. The *Action Plan* does not specify how this will be achieved.

The *Action Plan* reinforces that the protection of Pacific heritage ‘must be based on respect for and understanding and maintenance of the traditional cultural practices, indigenous knowledge and systems of land and sea tenure’ in the region. Yet, in many parts of the region, such practices and systems are weakening. Therefore, the absence of specific activities in the *Action Plan* for strengthening customary protection appears to be a significant omission. As noted in 9.2.3, there is still a need for greater understanding about customary protection in the context of WH. Further work to assess if and how Pacific islanders can be supported to strengthen customary protection of WH is also warranted (discussed further in 9.3.3).

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48 Ibid 7.  
49 Ibid 5.  
50 The Pacific World Heritage Action Plan 2016-2020 does refer to the need for awareness raising and capacity building in communities (at 5), which is arguably broad enough to encompass strengthening customary protection. However, it contains no specific references to strategies to strengthen customary protection.  
51 Ibid 7.  
52 Ibid 1.
9.3 Strengthening the protection of World Heritage in Solomon Islands

9.3.1 Improving cooperation between Solomon Islands and the *Convention* bodies in the protection of World Heritage

The principle of international cooperation underpins the *Convention* regime. However, the extent to which a State party and others work cooperatively will be influenced by whether they share a common vision for how a site is to be protected. This research demonstrated there is significant variation between the actions that the *Convention* bodies consider are necessary to protect the OUV of East Rennell, and the SIG’s approach to WH conservation. It is argued here that if cooperation between the State party and the *Convention* bodies is to improve, the chasm between their respective approaches to WH protection must be narrowed. In part this will require the Committee to ensure its decisions concerning East Rennell reflect its policies (see (A)). It will also require SIG to play a greater role in WH protection, which of course will be challenging given the social, political and economic issues influencing the implementation of the *Convention* in that country (see (B)).

(A) The *Convention* bodies’ approach to World Heritage protection in Solomon Islands

While the Committee now accepts that heritage protection should be pursued through the framework of sustainable development, to date that has not been strongly reflected in its resolutions concerning East Rennell. As noted in chapter 6, it has repeatedly requested that Solomon Islands address the threats to the site by banning logging and mining on the island, regulating the taking of species, developing a new management plan and implementing heritage protection legislation. There has been little acknowledgement in its decisions of the critical role of local people in decision-making concerning WH protection or their right to economic development. This may be contributing to the SIG making little effort to comply with the Committee’s resolutions.

For example, in 2013 the Committee called upon Solomon Islands to apply the *PA Act* to East Rennell ‘to ensure full and strict legal protection of the property’. This request fails
to recognise an important feature of the Act, namely that a site cannot be declared as a
protected area under this law without landowner consent. That feature is arguably
consistent with the modern approach to conservation as it allows landowners to maintain
a high degree of control over the use and development of their land. The corollary is that
SIG cannot comply with the Committee’s request unless and until the East Rennellese
landowners agree (or it amends the PA Act). It is argued here that it would be more
appropriate, and more consistent with the WH Sustainable Development Policy, for the
Committee to request that Solomon Islands encourage and support the landowners to
apply for a protected area declaration. Such a request may engender more support among
SIG, because it accurately reflects the scope of its legal authority under the PA Act.

To date the Committee’s decisions have also not expressly recognised the intrinsic link
between local economic development and conservation at East Rennell. An exception to
this is the Committee’s 2016 decision, which was made shortly after the adoption of the
Sustainable Development Policy. Among other things, that decision encourages Solomon
Islands to ‘develop an Action Plan which would prioritise local communities and
alternative income generating mechanisms that derive benefits from the conservation of
the property’s Outstanding Universal Value (OUV)’. It is perhaps evidence that the
Committee is shifting towards an approach to the protection of East Rennell that more
strongly reflects the principles of sustainable development. If the gap between the
approaches of the Committee and the SIG to WH protection is to be narrowed, that shift
must continue.

(B) The Solomon Island government’s approach to World Heritage protection

The SIG’s lack of compliance with the Committee’s resolutions reflects the fact that WH
is a low priority in Solomon Islands. SIG initially became involved with WH at least
partly because of its desire to boost the country’s tourism industry (see chapter 5).
However, WH has not resulted in a substantial economic windfall for the government,
and in the face of political instability, governance issues, slow economic growth, and
considerable social challenges, SIG has dedicated few financial and human resources to
the implementation of the Convention.

53 Consent for the declaration of a Protected Area is actually required from the people with ‘rights and interests in the area’. The
term ‘landowner’ is used here to refer to this group of people. It is however acknowledged that that term over-simplifies the
multi-layered nature of customary tenure systems. See 8.4 for analysis of this issue.
The reverence that Solomon Islanders have for customary rights also influences the SIG’s approach to WH protection. State parties to the *Convention* have an obligation to enact the legal measures required to protect WH. The SIG has the power under its Constitution to comply with this obligation, and its laws prevail over custom to the extent of any inconsistency. However, in practice it is a fallacy to consider State law at the top of the legal hierarchy. Many Solomon Islanders believe that customary landowners have complete rights to their land, so the State has no authority to dictate how such land and the resources on it are used. This perception helps explain why all people consulted for this research indicated that the SIG’s role in the protection of East Rennell was to support the landowners, rather than to dictate the conservation measures that should be undertaken.

The SIG’s failure to prioritise WH may also reflect the nature of Solomon Islanders. In other parts of the world, sites nominated for WH listing have often already been ‘reterritorialized from a local scale to the national and been interpreted as representations of the nation and nationalism’.\(^{54}\) In such places, the inscription of a site on the WH List may engender a sense of national pride, which translates into the site’s protection being prioritised. In contrast, in many Pacific Island States (including Solomon Islands) people’s main affiliation rests with their clan or tribe, as opposed to their nation. In the absence of a strong sense of national unity, it is less likely that a place will gain national significance, even if it is inscribed on the WH List. Consequently, the idea that East Rennell warrants protection more than other places in Solomon Islands is not necessarily one that resonates widely among Solomon Islanders.

It is unhelpful to advocate for the SIG to undertake conservation measures that are well beyond its resource capacity, or those that fundamentally diverge from the views of Solomon Islanders concerning their customary rights. That said, given the nature of the OUV of East Rennell and the threats to it, SIG will have to play a greater role in the site’s protection if the OUV is to be preserved, including through the application of State laws. Herein lies the challenge, as any restrictions that SIG imposes on the use of the WH site or surrounding land may infringe on customary rights. Identifying approaches that achieve an appropriate balance between heritage conservation and all aspects of

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\(^{54}\) Deegan, above n 5, 80.
sustainable development, including respecting the rights of the East Rennellese people and facilitating their economic development, will be an ongoing challenge.

9.3.2 Strengthening the protection of East Rennell under State law

Although the nomination dossier for East Rennell stated that a *World Heritage Protection Act* would be enacted, that never occurred. However, as demonstrated in chapters 7 and 8, legislation exists that could be used to address some of the threats to the site, including the over-harvesting of species, extractive industries and invasive species. This finding is significant, because substantial legislative reform in the short term is unlikely. Key findings of this research are summarised below, along with options for strengthening the protection of the site.

(A) Laws regulating the over-harvesting of species

The taking of marine species under threat at the WH site (including coconut crabs, beche de mer and trochus) was until very recently regulated under the *Fisheries Regulations 1972*. The Minister for Fisheries and the Director for Fisheries have ample powers under the *Fisheries Management Act 2015* to re-introduce these restrictions. Ensuring compliance with laws such as these is however very difficult, in part due to the geography of the country.

Substantially increasing the resources available to the relevant Ministries to monitor and enforce the laws would be beneficial, but is unlikely in the near future. A feasible initiative that could be helpful is an assessment of the harvesting that is occurring at East Rennell, to ascertain what species are being taken, by whom, using what methods, and for what purpose. That information could help inform the appropriate management response, and ensure that the limited resources available for monitoring and enforcement are utilised efficiently. The compilation of consolidated and up to date versions of all relevant laws, and the creation and distribution of copies of the rules in a format readily understandable by the East Rennellese people may also have some impact. The use of such laws to protect East Rennell will however always be challenging, particularly given their potential inconsistency with customary rights and the reliance of local people on the
resources for their livelihoods. As such, the *PA Act* may be a more effective approach (see (D) below).

**(B) Laws regulating logging and mining**

Neither the *Forest Resources and Timber Utilisation Act (Cap. 40)* (the *FRTU Act*) nor the *Mines and Minerals Act (Cap. 42)* (the *MM Act*) refer to WH. However, the analysis in chapter 7 demonstrated that the impact of a proposed operation on WH is a relevant consideration in the determination of logging and mining approvals under these laws. Therefore, the Commissioner for Forests and the Minister for Mines could refuse to approve operations that would have an unacceptable impact on the OUV of East Rennell. The Director of Environment could also refuse to grant a development consent under the *Environment Act 1998* on that basis. Alternatively, approvals for logging and mining developments could be granted subject to conditions designed to mitigate their impacts on heritage, although monitoring and enforcement would have to significantly improve for such conditions to be effective. These decision-makers also have the power to halt existing logging and mining operations if the operators are in breach of relevant laws or conditions. Given the history of extractive industries in Solomon Islands, it is likely that most if not all operators are in breach, so logging and mining occurring in West Rennell could probably be lawfully halted.

These findings are significant because the Committee has repeatedly called upon Solomon Islands to prevent logging and mining from impacting the OUV of East Rennell, but SIG has contended on several occasions that it lacks the power to do so. They are also important because the East Rennellese people have no power to stop these activities from occurring in West Rennell, despite the impacts that they may have on their land. Consequently, SIG must play a greater role in regulating extractive industries if the OUV of East Rennell is to be protected against these threats.

The need for substantial reform of the regulation of extractive industries has been well recognised elsewhere.\(^{55}\) Fundamental changes are required to stamp out corruption,
minimise the environmental and social impacts of the industries, protect landowners’ rights, and ensure that the industries are sustainable (to the extent that that is possible). While it is beyond the scope of this research to detail the full suite of reforms necessary to ensure the strict regulation of these industries, this research did reveal some specific changes that could contribute to WH protection.

Firstly, the amendment of the FRTU Act and the MM Act to make the impact of a logging or mining proposal on heritage an express relevant consideration would be beneficial. This change would reduce any ambiguity that exists concerning the scope of the powers of the Commissioner for Forests and the Minister for Mines, which may make them more likely to exercise those powers. The development of a national WH policy could also assist, as it would raise the profile of WH among politicians and SIG officials, and further reinforce that decision-makers must consider this issue when determining approval applications. Secondly, the FRTU Act and the MM Act should be amended to confirm that approvals cannot be granted over protected areas established under the PA Act, to ensure consistency between the laws. Finally, the landowner consent provisions require amendment (see 9.3.3(D) for discussion of this latter point).

It should also be recognised that while the IUCN and the Committee are clearly focused on trying to ensure that East Rennell is protected against the impacts of logging and mining, a recent report has suggested that the largest cleared patches of forest on the island were caused by landowners clearing the land for agriculture. This practice warrants further assessment. Future research could consider for example, the impacts of the activity on WH values and measures to minimise impacts, such as encouraging the avoidance of particularly environmentally sensitive areas. Developing feasible measures would require a comprehensive understanding of the land tenure system, and the livelihood activities undertaken by the East Rennellese people.

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56 For recommendations concerning legislative amendment of forestry laws, see Ben Boer, Solomon Islands: Review of Environmental Law (SPREP, 1993), in particular 96-8.
(C) **Laws concerning invasive species**

The *Biosecurity Act 2013* provides the SIG with legal mechanisms to help control the spread of invasive species in Solomon Islands. Among other things, it requires incoming ships to obtain biosecurity clearance, and imposes an obligation on ship captains to attempt to prevent animals from reaching the islands. If enforced, these requirements could minimise the chance of further invasive species being introduced to Rennell. The Act also empowers the Minister for Agriculture to declare Rennell or part of it as a biosecurity controlled area, which would then allow the Director to require that measures be taken within that area to control the spread of pests and diseases (such as baiting). As the Act only recently came into force, it remains to be seen if and how it will be implemented. Enforcing the legislation, particularly in remote places, will be a significant challenge.

(D) **Laws concerning protected areas**

The *PA Act* is an example of modern protected area legislation that is well suited to Solomon Islands’ plural legal system. Amendments to the *Protected Area Regulations 2012* (the *PA Regulations*) to address ambiguities and inconsistencies in the legislation have previously been identified by the author and others, and communicated to the Ministry of Environment.\(^58\) Even in the absence of such amendments, the *PA Act* could contribute to addressing some of the threats to the OUV of East Rennell, but there are significant limits to the protection that the Act provides. The implementation of the Act at East Rennell would make logging and mining within the site unlawful, so would provide long-term protection against these significant threats. However, it would not prevent the continuation of operations in West Rennell, nor the approval of future developments there. The protection of East Rennell against those activities would therefore remain dependent on decision-making under the *FRTU Act*, the *MM Act* and the *Environment Act*.

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Rules addressing issues such as the harvesting of species could be included in East Rennell’s management plan, which would have legal effect pursuant to the *PA Act*. These rules could reflect existing customs, reducing the likelihood of conflict between the plan and customary rights, and making the plan more relevant and understandable to the East Rennellese people. The plan could also provide the framework for climate change adaptation and mitigation measures, as well as including provisions concerning invasive species. It could not however be used to require that biosecurity measures be taken outside the boundaries of the site, so the *Biosecurity Act* would remain critical for addressing the threats posed by invasive species.

Local community members could be appointed to the management committee and as rangers, to help implement the management plan and enforce its rules. While this would allow the East Rennellese to maintain significant control over their land, implementing and enforcing the law will still be challenging, in part because they will not necessarily possess the will and resources required for the relevant tasks.

If the *PA Act* is to be implemented at East Rennell, the application process needs to be navigated carefully, with due regard to the numerous issues raised in chapter 8 of this research. Importantly, it will require extensive consultations with local people. The consultation process that was undertaken by the author (working with Live and Learn Environmental Education (LLEE)) in 2013 was only the very beginning of this work. Many more meetings and discussions must occur to ensure that the local communities fully understand the application process, and the implications of their land becoming a protected area. As explained further in 9.3.3(E), consultations will also have to address the scope and content of the management plan (including its relationship with custom) and the composition of the management committee (including its relationship with customary governance). Further research into these issues should be undertaken as part of any attempt to implement the Act at East Rennell.
(E) Gaps in the legislative framework for World Heritage protection

This research identified three further key gaps in Solomon Islands’ legislative framework for WH protection (see chapter 6). Firstly, Solomon Islands has no broad threatened species legislation. The *Fisheries Management Act 2015* and the *FRTU Act* give relevant government decision-makers the power to protect certain marine and tree species. However, not all plants and animals whose conservation may be necessary for the preservation of a site’s OUV fall within the scope of these laws. For example, there is no national law that allows for the protection of important bird species.

Secondly, Solomon Islands’ lacks climate change legislation, and there is no express requirement under any law for that issue to be taken into account in administrative decision-making (including decisions concerning logging and mining proposals). As East Rennell’s management plan does not include any climate change mitigation or adaptation measures, there is currently no framework for dealing with the threats it poses to the OUV of the site or the food security and livelihoods of the East Rennellese people.

Finally, Solomon Islands does not have any legislation specifically designed for the protection of culturally significant places, although cultural landscapes can be declared as protected areas under the *PA Act*. Any cultural heritage legislation that is developed for Solomon Islands would need to be tailored to the nature of the country’s heritage places. Future research should therefore consider the types of culturally significant sites that require protection, the threats to those sites, and the scope for them to be protected through the *PA Act* and other existing legislation. Such an assessment could reveal that amending existing laws is a more efficient and effective approach than enacting new legislation for the protection of culturally significant sites.

(F) Other issues warranting further research

This research made an important contribution to the body of knowledge concerning WH protection by providing the first comprehensive analysis of legislation that could be utilised to protect East Rennell. Specific issues concerning that legislation warranting further research have been noted in (A) – (E) above. There also remains scope for research into the challenges and opportunities presented by other laws that are potentially relevant
to future WH sites, such as those dealing with urban development, commercial fisheries, the export of protected wildlife, pollution control, and World War II relics and wrecks. Furthermore, the present research did not involve any comparative analysis. Comparisons with other Pacific Island States, or nations outside the region that share similar characteristics with Solomon Islands, could reveal new opportunities for WH protection. Clearly, detailed analysis would have to be undertaken before it could be assumed that approaches utilised in other countries, and in particular other regions, could be successfully applied in Solomon Islands.

9.3.3 Supporting the protection of the East Rennell World Heritage Site by the East Rennellese people

This research explored the involvement of local communities in WH protection through a legal lens, finding that the East Rennellese people can contribute to WH protection through their customary legal system and their decision-making under State legislation, particularly laws concerning extractive industries and protected areas. However, there are limits to the extent to which they can ensure the conservation of the site. Customary laws do not deal with many of the threats to the site’s OUV, and there are issues with customary governance on the island. Furthermore, the East Rennellese face significant legal and practical challenges when utilising State legislation to protect their land. Their contribution to the conservation of the area’s OUV must also be considered in its broader context. Many local community members are disenchanted with the WH program, which is not conducive to them participating in efforts to protect the site’s OUV. Furthermore, they are generally more concerned with the protection of their livelihoods than the protection of WH, which is understandable given their lack of food security, and the limited social services and infrastructure available on the island. Given these findings, key issues that should be considered in the design of initiatives to support the East Rennellese people to conserve WH are set out below.

(A) Recognising the diversity of views held by the East Rennellese people

Land and marine tenure in Solomon Islands is highly fragmented, so a WH site will rarely be owned by one landowner group. Opinions concerning issues such as conservation and development are likely to vary both between and within such groups. Written agreements
that community leaders make concerning WH will not necessarily hold significant weight, as there is no guarantee that future (or even present) generations will feel bound by them.

While there was broad support among the East Rennellese people for WH listing when the site was nominated, available information suggests that this support has waned, and some people now support the logging of the area. The level of community support for WH is likely to continue to ebb and flow, so it is both inaccurate and unhelpful to assume that they possess a unified or constant opinion about the conservation or development of their land. Rather, the diversity and fluidity of the views of the East Rennellese people must be acknowledged in the design of any WH initiatives involving them. Peoples’ opinions will inevitably change, and ongoing discussions and negotiations will be required to maintain the requisite level of community support for conservation. Efforts should be made to support and strengthen the decision-making processes of the East Rennellese people, to help them deal with diverse and changing community attitudes towards WH conservation.

(B) Strengthening customary protection of the World Heritage values of East Rennell

While no comprehensive empirical research concerning the customary protection of East Rennell has been conducted, recent literature (analysed in chapter 6) suggests there is little evidence of contemporary sustainable resource management practices and there are substantial problems with customary governance on the island. Further multi-disciplinary empirical research to explore the scope and strength of customary protection at East Rennell is warranted, including documenting relevant customs, land tenure laws, dispute-resolution procedures and traditional practices. This work should also assess if and how the East Rennellese people could be supported to utilise their customary system to protect the site’s OUV, including the extent to which the customary system can evolve and adapt to meet new challenges, such as invasive species and climate change. Further work is also required to explore if and how the legitimacy of the chiefs within the communities can be improved, and to clarify the relationship between customary structures and any new local governance structures that are established.
The *PA Act* could potentially provide a framework for this work, however as the Act has not yet been broadly utilised, it is too early to know whether it will be the most appropriate approach (see (D) below). Consultations with the East Rennellese communities may reveal other options. For example, Allen et al reported that during their field work in Solomon Islands they repeatedly heard calls from local community members for the provision of external assistance to strengthen customary systems, including more training and awareness work among chiefs, the establishment of a code of conduct for chiefs, support from the police and State courts to back the resolutions of customary governance bodies, and the payment of chiefs for their services.59 Whether these or other initiatives would assist the East Rennellese to strengthen their customary protection warrants further investigation.

(C) **Supporting livelihood development at East Rennell**

Food security and other livelihood issues are the dominant concern for most East Rennellese, who increasingly want to participate in the cash economy to support their subsistence lifestyles. It therefore cannot be assumed that they will be willing to restrict their income-generating activities (such as resource harvesting) purely for the sake of protecting WH. It also cannot be assumed that they will be willing to dedicate time and energy towards WH conservation activities such as monitoring and enforcement, in the absence of receipt of tangible benefits.

While WH is not the answer to all social and economic problems, efforts to implement the *Convention* must aim to assist local communities to obtain and maintain an adequate standard of living.60 Furthermore, as Solomon Islanders are rarely interested in participating in conservation programs that are not accompanied by promises of development,61 pursuing WH protection through the framework of sustainable development is necessary for practical reasons.

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A national priority for Solomon Islands under the *Pacific World Heritage Action Plan 2016–2020* is the development of sustainable income generating mechanisms for the East Rennellese communities. Similarly, one of the proposed actions under the *National Biodiversity Strategic Action Plan 2016–2020* is the development of a new management plan for East Rennell, which accommodates the development of sustainable livelihood options and infrastructure investment on the island. While this should be supported, it must be preceded by a study of local development options, including an assessment of past projects. History has shown that the establishment of income generating projects in the area is very challenging. None of the small business enterprises that were established in conjunction with the WH nomination or LLEE’s 2013 protected area project were successful in the long term. Indeed, Allen et al have found that in Rennell almost all small-scale projects have failed, which is a common cause of community grievance. The reasons behind the failure of past projects should be analysed to ascertain whether any lessons can be learned from them for future initiatives. Opportunities for local development must also be assessed in light of detailed knowledge of land tenure and customary governance, both of which will influence the success of projects. In addition, lessons that may be learned from other jurisdictions should be investigated. One option that should be explored is the potential for the United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (UN-REDD) to be implemented on Rennell.

Identifying feasible options for local economic development at East Rennell will be difficult, given the isolation and geography of the island. Nevertheless, it must be a prioritised, as it is highly unlikely that the East Rennellese people will undertake any WH protection measures that would threaten their livelihoods, and which they do not perceive to be in their interests. Furthermore, the SIG is unlikely to proactively act to protect the site unless its actions are strongly supported by the East Rennellese people. As such, in the absence of local development, it is debateable whether the OUV of East Rennell can be protected in the long term.

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64 Allen et al, above n 59, 24.
65 The potential for a REDD project to be implemented at East Rennell has been subject to some analysis: see Scott Alexander Stanley, *REDD Feasibility Study for East Rennell World Heritage Site, Solomon Islands* (Secretariat of the Pacific Community and Deutsche Gesellschaft für Internationale Zusammenarbeit, 2013). For a discussion of the implementation of REDD in Solomon Islands more generally, see Jennifer Corrin, *Background Analysis of REDD+ and Forest Carbon Rights in Solomon Islands* (Secretariat of the Pacific Community and Deutsche Gesellschaft für Internationale Zusammenarbeit, 2012).
(D) Supporting the East Rennellese people to enforce their rights under extractive industry legislation

Except in limited circumstances, logging and mining cannot occur on customary land without the consent of the landowners. While this would suggest that Solomon Islanders have significant power to protect their heritage against the impacts of these activities, in practice this is not the case. Ambiguities in the drafting of the landowner consent provisions of relevant legislation, and their inconsistency with some customary laws, creates uncertainty concerning whose consent is legally required. This situation is often manipulated by powerful people within landowning groups working in cohorts with resource companies to reap the benefits of land development. In the absence of significant government oversight and effective dispute resolution processes, in practice logging and mining often occurs without the consent of all people who under custom have the right to make decisions concerning the relevant land. It is also very difficult for landowners to enforce their rights, given their limited access to legal services and the Honiara-centric nature of the State legal system.

To date, there has been insufficient support for logging or mining among the East Rennellese people for any proposal to be successful. However, support for these developments may increase as livelihood pressures mount. In any event, given the issues referred to above, logging or mining could occur despite a high level of opposition among community members.

There is a dire need for substantial reform of laws regulating extractive industries. In addition to the issues referred to in 9.3.2(B), the legislation should be amended to incorporate new approaches to identifying the local people who are entitled to authorise developments. The legislation must be sufficiently flexible to accommodate the variety of land tenure systems that exist around Solomon Islands, including in Polynesian outlying islands like Rennell where land ownership is more individualised than elsewhere in the country. There also needs to be greater government oversight over the agreement making process, to ensure that agreements with resource companies are only signed with the free, prior and informed consent of the relevant landowners. The dispute resolution processes under the laws also need to be strengthened, to enable the resolution of disputes
in a timely and fair manner. In addition, amendment of resource legislation to give any person who may be affected by a logging or mining operation the right to object to the approval of that operation would give the East Rennellese greater power to protect the WH site against these activities.

In lieu of such reforms, it is essential that the East Rennellese people are supported to reduce the chance of logging or mining occurring without full landowner approval. The SIG could assist by increasing its oversight of the approvals process, including by scrutinising agreements between landowners and resources companies more carefully to ensure that they meet the legislative requirements. Other groups could provide support by ensuring that the East Rennellese people are informed about any extractive industry proposals for their land in a timely manner, and improving their access to legal services to help them exercise their rights under resources legislation. In addition, given that the East Rennellese people have little capacity to influence activities occurring in West Rennell, and the SIG’s reluctance to refuse developments supported by the landowners, the West Rennellese people need to be involved with efforts to protect the WH site. This might include encouraging and assisting them to oppose operations that will harm the site’s OUV.

(E) Supporting the East Rennellese people to utilise the Protected Areas Act

If the East Rennellese people wish to utilise the PA Act to protect their land, they must prepare and submit an application to the Minister for Environment. An application must demonstrate compliance with the landowner consent process prescribed under the PA Regulations, and must include a management plan and details of the proposed management committee. The East Rennellese people are likely to require assistance to navigate this application process.

The prescribed landowner consent process requires that a meeting be held in each ‘landowning community’ so that consensus for making a protected area application can be reached. In practice, numerous meetings will be required to ensure that all relevant people are adequately informed about and involved in the decision-making process. When designing the community consultations, the requirements under the PA Regulations and customary decision-making processes must be considered, as they are not necessarily
consistent. This will help ensure that any decision that is reached not only satisfies the legislative requirements but is also considered to be legitimate by community members.

An application for a protected area declaration must be accompanied by a management plan that meets the requirements of the PA Regulations. The experiences of implementing the existing 2007 management plan\(^{66}\) should be drawn upon in the preparation of any new plan for East Rennell. For example, one of the reasons that the 2007 plan has been barely implemented is that it lacks any basis under custom or State law. A protected area management plan would have status under the PA Act, but its relationship to customary law must still be carefully assessed. Relevant questions to ask include to what extent can and should the plan’s provisions reflect custom? What impact, if any, will incorporation of customary laws into the plan have on those customs? How will any inconsistency between the plan and custom be resolved?

The scope and objectives of the management plan must also be carefully considered. The 2007 plan’s focus on the conservation of the natural values of East Rennell is likely to contribute to the East Rennellese people’s lack of interest in it. The plan’s focus is understandable, given that it was drafted in the context of the implementation of the Convention. However, as a result it does not address the preservation of cultural heritage or livelihood issues, which are of most concern to the local communities. The potential for any new management plan to better reflect the needs and aspirations of the local people, whilst also supporting the protection of the site’s OUV, should be investigated. A management plan is unlikely to be successful unless measures to protect the site’s WH values are incorporated into a broader strategy that addresses the East Rennellese peoples’ desire to improve their livelihoods and preserve their cultural identity. Other mechanisms for making the plan more understandable and relevant to the local communities should also be investigated, such as translating it into their local language.

A protected area application for East Rennell would also have to contain details of the proposed management committee. The committee could comprise an existing governance body (such as the Council of Chiefs or the Lake Tegano World Heritage Site Association (the LTWHSA)) or a new entity. Whatever its composition, the relationship of the

committee to customary governance, and its willingness and capacity to serve, must be considered. For example, if the LTWHSA was appointed as the management committee, would this influence the jurisdiction and legitimacy of the Council of Chiefs? How would disputes between the LTWHSA and the Council be resolved? If the Council of Chiefs became the management committee, would that influence its ability to enforce matters of custom? Would it have the capacity to undertake the statutory duties of a management committee? How would it manage its affairs to maintain its customary decision-making processes but also comply with the procedural requirements prescribed in the PA Regulations? The East Rennellese people are likely to need assistance to work through these issues, and to formalise the establishment of the committee. For example, if the LTWHSA was appointed as the committee its Constitution would require amendment.67

Finally, the East Rennellese people will need support with the ongoing management of the protected area, at least in the short term. The 2007 management plan has not been effective in part because the local communities were principally charged with implementation, but they lack the capacity and resources to undertake this task. A protected area will not be successful unless long-term funding sources are identified to support the implementation of the management plan and to enable the management committee to carry out its duties.

9.4 Conclusion

By exploring the implementation of the Convention through a legal lens, this research provided new insights into WH protection in Solomon Islands and the Pacific more broadly. It has identified substantial opportunities for utilising the Convention to conserve the region’s impressive cultural and natural places, stemming from the scope of the treaty, the Committee’s broadening approach to heritage and its protection, and the legally plural nature of Pacific Island States. However, it recognised even more challenges, demonstrating that protecting Pacific Island heritage will rarely be easy.

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67 Suggested amendments to the Constitution were drafted by the author in 2013 and provided to the LTWHSA committee, as part of her work for Live and Learn Environmental Education.
East Rennell cannot be described as a success story, at least not yet. While its inscription on the WH List was a milestone in the development of the *Convention* regime, it has not been protected to the level expected by the Committee. In addition, its listing has not generated the benefits anticipated by the SIG and the East Rennellese people, leaving them somewhat disenchanted with the WH process and rendering WH protection a low priority. In this context, it is unclear whether the island’s incredible ecosystems and unique species can be conserved for future generations, in accordance with the goals of the *Convention*.

What is clear is that the East Rennellese people are integral to the island’s future. It is their home, the basis of their livelihoods and the foundation of their cultural identity. They are the key decision-makers concerning their land, so efforts to protect the site’s OUV will always be intimately entwined with their needs and aspirations. Any resolutions or projects designed to strengthen the protection of the site that fail to recognise that are unlikely to succeed. Successful outcomes are only likely to be achieved if the *Convention* bodies, the SIG and the communities are able to agree upon and pursue common goals for the conservation of the area’s heritage.
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**Interviews**

Interview with an officer in the Ministry of Culture (Honiara, 26 July 2013)

Interview with an officer in the Ministry of Education, who was formerly the focal point for World Heritage within the Solomon Islands National Commission for UNESCO (Honiara, 28 July 2013)

Interview with a conservation officer in the Ministry of Environment (Honiara, 2 August 2013)

Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013)

Interview with Bradley Tovosia, the then Minister for Environment (Honiara, 24 September 2013)

Interview with Malchoir Mataki, Permanent Secretary of the Ministry of Environment (Honiara, 1 October 2013)

**Other**

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Appendix: Schedule of interviews

Interview with a conservation officer in the Ministry of Environment (Honiara, 2 August 2013)

Interview with Joe Horokou, Director of the Environment and Conservation Division of the Ministry of Environment (Honiara, 15 August 2013)

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