I am the author of the thesis entitled

World Heritage and Human Rights in Bagan, Myanmar

submitted for the degree of

Doctor of Philosophy

This thesis may be made available for consultation, loan and limited copying in accordance with the Copyright Act 1968.

'I certify that I am the student named below and that the information provided in the form is correct'

Full Name: Anne Laura Kraak

Signed: [Signature Redacted by Library]

Date: 20 June 2017
I certify the following about the thesis entitled (10 word maximum)

World Heritage and Human Rights in Bagan, Myanmar

submitted for the degree of Doctor of Philosophy

a. I am the creator of all or part of the whole work(s) (including content and layout) and that where reference is made to the work of others, due acknowledgment is given.

b. The work(s) are not in any way a violation or infringement of any copyright, trademark, patent, or other rights whatsoever of any person.

c. That if the work(s) have been commissioned, sponsored or supported by any organisation, I have fulfilled all of the obligations required by such contract or agreement.

d. That any material in the thesis which has been accepted for a degree or diploma by any university or institution is identified in the text.

e. All research integrity requirements have been complied with.

'I certify that I am the student named below and that the information provided in the form is correct'

Full Name: Anne Laura Kraak

Signed: [Signature Redacted by Library]

Date: 20 June 2017
Acknowledgements

This research project would not have been possible without the help and support of many different people, a few of whom I would like to mention in particular.

Firstly, I would like to thank my principal supervisor Professor Tim Winter for his guidance and support as well as for continuously motivating and inspiring me. Tim is one of the key contributors to the significant intellectual growth I underwent over the last four years and the change in my way of looking at the world.

Secondly, I would like to thank my associate supervisor Dr Anthony Ware and fellow PhD candidate Luke James for their helpful feedback on earlier drafts of this thesis.

This research project would not have been possible without the scholarship offered to me by the Institute of Culture and Society of Western Sydney University, which made me move to Australia. When my principal supervisor transferred to Deakin University, I was able to join him thanks to the financial, technical and administrative support of the Alfred Deakin Research Institute (now Alfred Deakin Institute for Citizenship and Globalisation) and the School of Social Science and Humanities in the Faculty of Arts and Education. I am grateful that Deakin University also offered me the network and expertise of the Cultural Heritage Centre for Asia and the Pacific.
Many thanks are due to all the people in Myanmar who shared their insights and expertise with me. In particular, I would like to mention my interpreter and guide in Bagan, who, by shedding light on a particular side of Bagan, fundamentally influenced the way I look at heritage and informed the argument of this thesis.

I would like to use this opportunity to thank Kristal Buckley for facilitating my involvement with ICOMOS Norway’s Our Common Dignity project as well as for many good discussions and helpful advice.

Sharing experiences with and receiving moral support from fellow PhD candidates is an invaluable part of the process, and I am indebted to a range of people who provided several moments of practical advice, opportunities to express frustration, engaging and inspirational discussions, as well as motivation to keep going.

The maps that are used in this thesis have been created by my father, Menno-Jan Kraak, who I need to thank not only for the maps, but – together with my mother – for always providing encouragement and comfort during the PhD process.

Finally, I would like to thank my husband Shadi, who has been a major support for me in more ways than I can ever express.
Abstract

There is an increasing concern with the ethics of cultural heritage practice at a time when globally human rights language is growing in popularity. The link between cultural heritage and human rights is becoming established as scholars and policy makers have suggested that human rights-based policies could present a means to address issues of social justice in cultural heritage practice. This interdisciplinary and multi-scalar research is one of the first studies that investigates the implications, challenges and opportunities of implementing human rights-based approaches to heritage conservation on the ground. In particular, it is concerned with the extent to which engagement with human rights can help to reconcile the often different agendas of conservation, living heritage, and development at the historic and religious site Bagan in Myanmar, for which currently a World Heritage nomination is being prepared and where many rights are at stake. Social justice in the context of Bagan’s World Heritage nomination is a complex problem and several forces are identified that influence the dynamics between cultural heritage and human rights in Bagan. These forces are conceptual, political and practical and can be found on local, national and global levels. In the light of this complexity, it is argued that although a human rights framework can provide certain valuable insights, it faces several serious limitations and should be used in juxtaposition with alternative frameworks.
Maps

There are over 2000 pagodas in Bagan. The pagodas identified on these maps are a selection of monuments that are explicitly discussed in this thesis.
Figure 2 Map of Bagan 2 (courtesy of Menno-Jan Kraak)
Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AICHR</td>
<td>ASEAN Intergovernmental Commission on Human Rights</td>
</tr>
<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>GIS</td>
<td>Geographic Information Systems</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICCROM</td>
<td>International Centre for the Study of the Preservation and Restoration of Cultural Property</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>ICOMOS</td>
<td>International Council of Monuments and Sites</td>
</tr>
<tr>
<td>IUCN</td>
<td>International Union for the Conservation of Nature</td>
</tr>
<tr>
<td>NGO</td>
<td>Nongovernmental Organisation</td>
</tr>
<tr>
<td>NHRI</td>
<td>National Human Rights Institution</td>
</tr>
<tr>
<td>NLD</td>
<td>National League for Democracy</td>
</tr>
<tr>
<td>SEAMEO</td>
<td>Southeast Asian Regional Centre for Archaeology and the Fine Arts</td>
</tr>
<tr>
<td>SPAFA</td>
<td>State Law and Order Restoration Council</td>
</tr>
<tr>
<td>SPDC</td>
<td>State Peace and Development Council</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Educational Scientific and Cultural Organization</td>
</tr>
<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organisation</td>
</tr>
<tr>
<td>WH-SDP</td>
<td>World Heritage Sustainable Development Policy</td>
</tr>
</tbody>
</table>
List of Figures

Figure 1 Map of Bagan 1 ii
Figure 2 Map of Bagan 2 iii
Figure 3 Bagan 2
Figure 4 Statue of white elephant 3
Figure 5 Gawdawpalin temple 34
Figure 6 Shwezigon stupa 35
Figure 7 Dhammayazika is both a temple and a stupa 36
Figure 8 Villagers at Laymyethna pagoda festival 51
Figure 9 Nanmyint Viewing Tower 130
Figure 10 Bagan Golden Palace 131
Figure 11 Freshly painted pagoda 142
Figure 12 Statue of King Pyusawthi 148
Figure 13 Statue of mythical bird 149
Figure 14 Alodawpyi 153
Figure 15 Air-conditioning in Alodawpyi 154
Figure 16 Htilominlo 155
Figure 17 Dhammayangyi 156
Figure 18 Buddha image at Myazedi 157
Figure 19 Buddha image at Dhammayangyi 158
Figure 20 Devotees at Shwezigon 160
Figure 21 Devotees at Manuha 161
Figure 22 A devotee applies gold leaf to a Buddha image 162
Figure 23 Hpetleik East 163
Figure 24 Donations for monks at Ananda pagoda festival 164
Figure 25 Monks waiting to receive donations at pagoda festival 165
Figure 26 People set up shopping stalls in the shade of a pagoda 166
Figure 27 Pilgrims camp against a pagoda 167
Figure 28 Nat worship 168
Figure 29 Statue of white horse with healing powers at Shwezigon 169
Figure 30 Tail of naga dragon at Shwezigon 170
Figure 31 Head of naga dragon at Tangyi Taung 171
Figure 32 Image of naga dragon caught on a photograph 172
Figure 33 Pagoda incorporated in village 208
Figure 34 Possible zoning 223
Figure 34 Agricultural land among the pagodas 224
Figure 36 Zoning of the Department of Archaeology 225
Figure 35 Tourists and stupa 227
Figure 36 Tourists climbing Shwesandaw 230
Table of Contents

Acknowledgements iii
Abstract i
Maps ii
Abbreviations iv
List of Figures vi
Table of Contents viii
Preface xi

1 Introduction 1
  1.1 Merit making, conservation and precarity 1
  1.2 World Heritage and human rights 5
    1.2.1 World Heritage 9
    1.2.2 Human rights 15
  1.3 Myanmar and Bagan 29
    1.3.1 Myanmar 29
    1.3.2 Bagan 33
    1.3.3 World Heritage and human rights in Bagan 38
  1.4 Research questions and key concepts 41
  1.5 Methodology 42
    1.5.1 Reflexivity and ‘cultures of dealing’ 50
    1.5.2 Methods and data 54
  1.6 Outline of thesis 63

2 Cultural heritage and human rights 68
  2.1 Introduction 68
  2.2 Convergence of cultural heritage and human rights 70
    2.2.1 From ruins to rituals, places to people 70
    2.2.2 Consolidating the link between heritage and rights 76
  2.3 Legal and discursive approaches 79
2.4 Cultural heritage rights 81
  2.4.1 Conflicting interpretations of cultural rights 81
  2.4.2 Cultural rights as antagonistic rights 88
  2.4.3 The right to cultural heritage 92
2.5 Human rights-based approaches 98
2.6 Concluding remarks 106

3 Bagan as archaeological and national heritage 109
  3.1 Introduction 109
  3.2 Bagan in British Burma 112
  3.3 Bagan in independent Burma 120
  3.4 Bagan under SLORC and SPDC 124
  3.5 Post-reform Myanmar 133
  3.6 Concluding remarks 136

4 Living heritage and hierarchies of knowledge 139
  4.1 Introduction 139
  4.2 Living heritage in Bagan 141
    4.2.1 Reconstructions and renovations 141
    4.2.2 Myths and merit making 149
    4.2.3 Theravada Buddhism and conservation 158
    4.2.4 Beyond Buddhism 164
  4.3 Living heritage and international conservation standards 174
  4.4 Hierarchies of knowledge 182
  4.5 Concluding analysis 185

5 Participation, eviction and development 192
  5.1 Introduction 192
  5.2 Community participation 194
    5.2.1 Degrees of participation 195
    5.2.2 Defining the community 198
    5.2.3 Bagan Heritage Trust and Bagan Lovers Association 202
  5.3 Eviction and land rights 208
    5.3.1 From Old Bagan to New Bagan 208
    5.3.2 Rights and eviction 215
    5.3.3 Relocations and restrictions for World Heritage 219
### 5.4 Development and tourism  
228

### 5.5 Concluding remarks  
237

### 6 Implementation and enforcement  
242

#### 6.1 Introduction  
242

#### 6.2 Human rights in Myanmar  
244

- **6.2.1 The global human rights regime and sanctions**  
244
- **6.2.2 Post-reform Myanmar**  
249
- **6.2.3 Capacity**  
253
- **6.2.4 Vernacularisation**  
256

#### 6.3 Regional reservations  
260

#### 6.4 Multilateral policy-making  
265

#### 6.5 Concluding remarks  
272

### 7 Conclusion  
277

### 8 References  
293

### 9 Appendix  
321
Preface

My interest in the topic of heritage and rights was ignited during a summer course in museum studies that I took during the first year of my undergraduate degree at University College Utrecht in the Netherlands in 2009. I was taking an interdisciplinary undergraduate degree (liberal arts) and I followed courses in history, art history and anthropology. My advisor recommended I take the museum studies course because it would bring these three areas of interest together. This course became my first exposure to elements of what is called ‘heritage studies’ today. The course was a very general introduction to museum studies and covered a wide range of topics, but one interested me in particular and would later form the topic of my bachelor thesis: the repatriation of human remains. Should human remains in museum collections be repatriated to source communities (who might rebury them) or should they be kept in museum collections for future research (which could be of benefit to mankind)? Two aspects of those repatriation debates that intrigued me are central to the topic of this thesis too.

The first aspect was the dilemma it presented to me at the time. Until that moment, most topics we covered in this course had been on – what seemed to me at that time – more neutral ground: the history of collecting, exhibition styles and conservation techniques. Eight years later I learnt to understand the politics and dilemmas behind these topics as well (and some are discussed in this thesis), but in this first-year undergraduate course, it
was repatriation debates that opened my eyes to ethical questions related to cultural heritage. I went on to do internships at the Department of Africa, Oceania and the Americas of the British Museum in London and with the Karanga Aotearoa Repatriation Programme at the National Museum of New Zealand Te Papa Tongarewa in Wellington and wrote my bachelor thesis about the repatriation of Maori human remains. I handed in my thesis thinking that the question of repatriation was not such a dilemma after all and formed the opinion that human remains should be repatriated. However, a key lesson I learnt was that there were widely different views about this. In this thesis, a similar ‘dilemma’ with regard to the appropriate means of conserving Buddhist monuments in Myanmar is central. Should the monuments be subject to renovations as part of Theravada Buddhist merit making practice (which could alter the fabric irreversibly), or should they be conserved following international standards (for the benefit of mankind)?

The second, and related, aspect of repatriation debates that intrigued me was that it challenged my own worldview by exposing me to other ways of looking at the world: in this case, other ways of looking at museum collections and in particular human remains. Growing up in a completely secular environment, the idea that to some people human remains are ancestors that need to be put to rest was alien, but also fascinating to me. Similarly, in this thesis, alternative approaches to the conservation of old buildings is an important theme. For me, learning about these approaches fundamentally challenged the way I look at cultural heritage. I went from being what Christoph Brumann calls a ‘heritage believer’ – someone who is
‘tacitly or explicitly committed to cultural heritage in general or to specific heritage items of whose intrinsic value they are convinced and whose conservation they endorse’ (2014, p. 173–174) – to a ‘heritage atheist’, having a ‘fundamental doubt about the value of specific heritage items or heritage as such’ (2014, p. 174). Yet, eventually finishing this thesis leaves me with more questions than when I started and exactly this doubt leaves me to sympathise with Brumann’s proposal of ‘heritage agnosticism as a third path’ (2014, p. 179).

Learning about these different worldviews raises questions about the possibility and desirability of ‘universal’ standards to be imposed in a culturally diverse world. These questions are not just relevant for heritage conservation, but also in the case of human rights. I started to explore the link between cultural heritage and human rights during my M.Phil degree in Archaeological Heritage and Museums at the University of Cambridge in 2011–2012. During this degree, the concept of intangible cultural heritage was discussed at some length. What interested me in particular about this concept was how certain forms of intangible cultural heritage can be offensive and even violate human rights standards. In my M.Phil dissertation, I considered this problematic link between intangible cultural heritage and human rights in the context of a tradition close to my home and heart. Around this time, debates in the Netherlands about the annual St Nicholas (Sinterklaas) celebration were starting to increase in intensity. The subject of contention was the practice of dressing up blackface to play Black Pete (Zwarte Piet), a sidekick or helper of St Nicholas. I grew up with this
tradition, enjoyed it and was oblivious to its racist aspects. However, studying cultural heritage, and in this case in particular contemplating the fact that only forms of intangible cultural heritage that are in accordance with human rights standards will be recognised under UNESCO’s intangible cultural heritage convention (UNESCO 2003), made me see the tradition I grew up with in a different light. The Netherlands just ratified the intangible cultural heritage convention in 2012 and was taking steps to create a national inventory. As the most popular tradition of the Netherlands, the St Nicholas celebration, was one of the first items to be added to the inventory. However, I doubted whether it would receive international recognition, considering its racist aspects. Dilemmas with regard to cultural heritage, different worldviews, and the tension between universal standards and local practices were returning themes in my M.Phil dissertation.

My interest in the relationship between cultural heritage and human rights was established and I knew I wanted to do more research on this topic for my PhD. What brought me to World Heritage, human rights-based approaches and Bagan in Myanmar was a series of serendipitous factors when I started my PhD in February 2013. Importantly, Myanmar had been

1 Up until today, no Dutch items have been put forward for UNESCO’s Representative List of Intangible Cultural Heritage. However, in 2014, the United Nations Working Group of Experts on African Descent – which reports to the United Nations Human Rights Council – visited the Netherlands and published a statement in which concern was expressed about the practice of dressing up blackface as Black Pete. In September 2016, the Dutch children’s ombudsman issued a report stating that the tradition contravenes the UN’s principles on children’s rights. These developments suggest that international recognition of the St Nicholas tradition may indeed run into resistance because of human rights-related controversies.
‘on my radar’ for a few years. In 2010, I did an exchange programme at Mahidol University in Bangkok, where I studied Southeast Asian art and history. As a result, I was aware of Bagan, which is both historically and art historically very significant in Southeast Asia. When I started my PhD, Myanmar had been receiving much international attention because of the political transition it had been undergoing since 2011. The far-reaching reforms that were implemented in the country following decades of isolation made Myanmar a particularly interesting place to watch. Re-engagement with UNESCO’s World Heritage system was part of these reforms. Around the same time, the link between World Heritage conservation and human rights was starting to become the topic of a series of academic publications (such as the special issue in the *International Journal of Heritage Studies* (2012, volume 18, issue 3)) and reports by ICOMOS Norway. This triggered my interest in how the links between universalistic ideals of World Heritage conservation and human rights would play out at a cultural heritage site in a country that has been isolated from and even antagonistic to such universalistic ideas for decades.

In one of the first few weeks of my PhD, when I had made up my mind that I wanted to research cultural heritage and human rights in Myanmar, a colleague introduced me to a fellow PhD student from Myanmar. When I told him my research plans, I received a cynical laugh in reply: Human rights in Myanmar? Good luck with that. I would remember this encounter several times over the next four years. I was to receive similar cynical reactions from informants in Myanmar, which has a particularly bad human rights
reputation. Moreover, certain developments in my private life, which are quite separate from cultural heritage in Myanmar, were equally influential on my way of thinking about human rights. I met my current husband, who just moved to Australia from Egypt. Visits to Egypt and long discussions with him, his friends and family about politics and human rights in Egypt made me realise that there too, there is a degree of cynicism and apathy towards human rights. In places like Myanmar or Egypt, the promises on paper and daily reality can be worlds apart.

While I was trying to get a better understanding of what human rights are, how they relate to cultural heritage, and how they can be enforced and implemented, I found myself moving along a similar path of believer, atheist, agnostic that Brumann proposes about cultural heritage. From a believer that human rights were inherently a good thing, I moved to seriously questioning whether human rights may not do more harm than good. Eventually, as with my attitude to cultural heritage, I am settling with a type of agnosticism. Both cultural heritage and human rights hold the potential to empower and oppress and this may happen simultaneously.
1 Introduction

1.1 Merit making, conservation and precarity

One morning, I met Suu\(^2\) at her house. Suu lived in what can be called an informal dwelling. Several years ago, she moved to Bagan (see Figure 3) with her mother to set up a pottery shop next to one of the major pagodas to profit from the increase in tourists and pilgrims. Her father was ill and had to stay in their hometown, a day’s travel from Bagan. Suu’s house was an extension of their shop and made from bamboo and thatch. There was no electricity or running water. When I arrived this morning, Suu was just preparing food on an open fire for an elderly nun in a bright pink robe, who was sitting in their house. Once a week, the nun passed their house, begging for alms, and Suu explained to me that they know her well and offer her some food every week. She also told me that earlier this morning, she and her mother visited one of the famous pagodas on the other side of Bagan to make some extra donations and pray for the improvement of her father’s health. For Suu, offering food to the nun and making donations to the pagoda is an act of merit making. In Theravada Buddhism, the collection of merit increases one’s chance on a good reincarnation. Merit can be collected in several ways, including through good deeds, meditation, and making donations to Buddhist monks, nuns, or pagodas. Contributions to

\(^2\)To protect their anonymity, I have changed the names of my informants.
the construction or renovation of Buddhist pagodas or monasteries is considered one of the most meritorious acts.

Suu has been my guide and interpreter over the last few weeks, taking me to pagoda festivals and introducing me to pagoda trustees. The Bagan she showed me was quite different from the Bagan I was shown a few days earlier when I met a foreign consultant involved in the preparation of Bagan’s World Heritage nomination. When I visited pagodas with the foreign consultant, he mainly commented on the – in his eyes – inappropriate renovation work. He expressed concern about the safety of certain constructions and regret about the ‘damage’ that was done at others. When we visited one pagoda that is particularly actively worshipped, he stopped to look at a statue of a white elephant (see Figure 4). From the looks of it, the statue was either quite new or very recently received a fresh layer of paint. White elephants are sacred in Myanmar and happen to play an important role in the foundation myth of this particular pagoda. The
consultant wondered out loud whether the people really ‘needed’ such a statue.

Sitting with Suu and the elderly nun in her bamboo and thatch home that morning, I was particularly aware of my surroundings. The day before, I had visited the Department of Land Administration and looked at the cadastre maps of the area. In Myanmar, all land is owned by the government and divided into agricultural, urban and religious zones. I had noticed that the area where Suu and her mother lived was located on a blank area on the map. Suu and her mother had an informal agreement with the pagoda trustees that they could have their shop and dwelling on this location, but eventually it would be up to the government to decide what to do with this undesignated land. Bagan’s World Heritage nomination remains a work in progress and it is unsure what this will mean for Suu when it will
be finalised. However, it made me aware of the precarious conditions she is living in.

These poor and precarious living conditions and the contrast between the Bagan of Suu and the Bagan of the foreign consultant represent some of the challenges facing Bagan’s World Heritage nomination and reflect questions related to poverty and development as well as appropriate conservation methods. As a result of recent political and economic reforms and a rapid increase in tourism, people’s aspirations to improve their standards of living increase. Yet, unchecked developments – including telecommunications infrastructure, sealed roads, running water, the construction of hotels and residential buildings – could adversely impact the conservation of the buildings and landscape of Bagan, while development restrictions or clearance of land will make the lives of people such as Suu and her mother – who already struggle to make ends meet – more difficult.

Besides serving as a potential source of income, Bagan is important for Suu – and millions of Buddhists – because of its spiritual significance. The area consists of thousands of Buddhist pagodas, which are important places for merit making and other popular religious practices. Most of these pagodas were built between the 11th and the 13th centuries, which also makes them historic monuments, and for some people their conservation should take priority. Certain religious practices, however, involve the reconstruction and renovation of the buildings in ways that are difficult to align with international conservation standards. The foreign consultant expressed his concern about this.
The World Heritage nomination of Bagan faces these tensions between conservation, development, and living heritage; tensions that represent key issues in global heritage governance more generally. Analysing these challenges through a human rights lens, makes it clear that cultural and religious as well as land, development and economic rights are at stake in Bagan. Yet, the meaning of these rights can be ambiguous and they can be in direct conflict with each other. Moreover, the implementation and enforcement of human rights poses a formidable challenge.

1.2 World Heritage and human rights

In 2007, the United Nations Human Rights Council adopted Resolution 6/11 on the Protection of cultural heritage as an important component of the promotion and protection of cultural rights, in which the protection of cultural heritage is considered ‘an important component of the promotion and protection of all human rights’ (UN Human Rights Council 2007b, n.p.). In 2011, the UN independent expert in the field of cultural rights further elaborated on this link and argued that ‘the need to preserve/safeguard cultural heritage is a human rights issue’ (UN Human Rights Council 2011, p. 19). On 21 March 2016, Cyprus delivered a joint statement – with the support of 145 countries – on cultural rights and the protection of cultural heritage to the Human Rights Council. The statement draws attention to the important role of the Human Rights Council ‘in global efforts to protect cultural heritage, with a view to promoting universal respect for cultural
rights by all’. Concern is expressed about the intentional destruction of cultural heritage and organised ‘looting, smuggling and illicit trafficking in cultural objects’. The statement draws attention to the need to identify means to prevent violations of cultural rights and damage to cultural heritage as well as ‘raising awareness on the mutually reinforcing relation between the protection of cultural heritage and human rights’.

The first edited volume about cultural heritage and human rights also appeared in 2007 (Silverman & Ruggles 2007) and it was followed by several more volumes (e.g. Borelli & Lenzerini 2012; Kapchan 2014; Langfield, Logan & Nic Craith 2010) and journal articles (e.g. Baird 2014; Blake 2011; Ekern et al 2012; Francioni 2011; Hodder 2010; Logan 2014; Meskell 2010), reflecting an academic interest in the link between heritage and rights.

Moreover, it was in 2007 that the Norwegian chapter of the International Council of Monuments and Sites (ICOMOS Norway) started the ongoing project Our Common Dignity: Towards Rights-Based World Heritage Management. Several more interdisciplinary research projects focusing on human rights and cultural heritage have since been initiated. For example, in 2014, the Swiss Network for International Studies provided funding for a project titled Understanding Rights Practices in the World

*Heritage System: Lessons from the Asia Pacific*, in which ‘the major factors shaping, preventing or enhancing human rights-based approaches in the world heritage system’\(^4\) are investigated at World Heritage sites in Australia, Nepal, the Philippines and Vietnam. In 2015, a project titled *The Right to Cultural Heritage: Its Protection and Enforcement through Cooperation in the European Union*, was launched with the aim to investigate ‘how human rights guarantees in relation to cultural heritage are being understood and implemented in the EU and in its neighbouring countries’\(^5\). This project focuses on Poland, the United Kingdom and Italy and is funded under the European Union’s Joint Programming Initiative on Cultural Heritage and Global Change.

Besides being the object of statements and research, the link between heritage and rights had a practical implication in 2015, when the World Heritage nomination of the Kaeng Krachan National Park in Thailand was referred to the State Party ‘in order to allow it to more fully address the concerns that have been raised by the Office of the United Nations High Commissioner for Human Rights concerning Karen communities within the Kaeng Krachan National Park’ (UNESCO 2016, p. 193). This represents the first time human rights concerns are used as a reason to postpone the World Heritage listing of a property.

---

\(^4\) See http://www.snis.ch/project_understanding-right-practice-world-heritage-system-lessons-asia-pacific Accessed 24/10/16

\(^5\) See http://heuright.eu/ Accessed 24/10/16
These examples reflect the recent interest in the link between cultural heritage and human rights by a wide range of actors, from academics to governments, and from the United Nations to the European Union. In Chapter Two, I will further elaborate on how this convergence between cultural heritage and human rights came about and what different forms it takes. Broadly, it is the result of the increased visibility of events and processes such as the destruction of cultural heritage in armed conflict, tensions between development and conservation, concerns related to illicit trade in cultural property, and the interests of Indigenous and minority groups. Moreover, there has been an increasing concern with the ethics and politics of cultural heritage conservation, which is reflected in the 2012 Manifesto of the Association of Critical Heritage Studies, where ‘[n]ationalism, imperialism, colonialism, cultural elitism, Western triumphalism, social exclusion based on class and ethnicity, and the fetishising of expert knowledge’ are identified as forces that influence ‘how heritage is used, defined and managed’⁶. Questions have been raised regarding who benefits from conservation, the types of cultural heritage that do and do not receive resources, and how cultural heritage is implicated in wider global developments and crises such as climate change, (forced) migration, and poverty⁷.

⁶ See http://www.criticalheritagestudies.org/history/ Accessed 24/10/16  
⁷ There are various different definitions of poverty, which have different implications for policy (Laderchi, Saith & Stewart 2003). However, it is beyond the scope of this research to engage with these definitions in detail. The understanding of poverty underlying this thesis is based on Goal 1 of the Sustainable Development Goals
This dissertation is specifically concerned with the role of human rights in the context of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention) of the United Nations Educational Scientific and Cultural Organization (UNESCO). This focus narrows down the topic of inquiry to one of the most popular and influential global heritage policies – in 2016, the World Heritage Convention has been ratified by 192 out of 193 UN member states, making it one of the most ratified UN Conventions – which has recently increasingly been engaging with human rights on several levels. In what follows, the World Heritage system will be further introduced and subsequently the concept of human rights will be elaborated on.

1.2.1 World Heritage

The aim of the World Heritage Convention is to protect natural and cultural sites of Outstanding Universal Value for Humanity. These sites are ‘so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity’ and their permanent protection ‘is of the highest importance to the international (end poverty in all its forms everywhere), where poverty is characterised as ‘the lack of income and resources to ensure a sustainable livelihood. Its manifestations include hunger and malnutrition, limited access to education and other basic services, social discrimination and exclusion as well as the lack of participation in decision-making’ (See http://www.un.org/sustainabledevelopment/poverty/ Accessed 1/11/16)
States Parties who ratified the Convention are required to create a Tentative List of properties they consider suitable for the World Heritage List and intend to nominate over the next five to ten years. A property can be considered of Outstanding Universal Value if it meets one or more of 10 criteria. Moreover, the property needs to meet the conditions of authenticity and integrity and have an adequate protection and management system in place to ensure its safeguarding.

Following the submission of a nomination, the Advisory Bodies to the World Heritage Convention – ICOMOS, IUCN (International Union for the Conservation of Nature) and ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property) – evaluate the nomination. They either recommend inscription, no inscription, referral or deferral. If a nomination is referred back to the State Party, additional information is required, which may be submitted to the following Committee meeting. The deferral of a nomination means a substantial revision is necessary. Taking into account the recommendations of the Advisory Bodies, the World Heritage Committee eventually decides whether a property should or should not be listed. The World Heritage Committee consists of 21 nominated states who serve a term of office of four to six years and meet annually to inscribe properties on the World Heritage List.

---

8 Formally, a Committee’s term of office is six years. However, recently, most States Parties have voluntarily decided to reduce their term to four years.
examine state of conservation reports, declare threatened properties as World Heritage in Danger or delist properties when the Outstanding Universal Value has been lost. The Secretariat to the World Heritage Committee, the World Heritage Centre, was established in 1992 to assist the Committee and organise, implement, and coordinate a range of activities. Importantly, once a property is listed, it is the State Party’s responsibility to guarantee its protection and a precondition for listing is that the State Party is capable of doing this. In 2016, The World Heritage List contained 1052 properties from 165 different States Parties.

Since its creation in 1972, the World Heritage Convention has been subject to extensive critique. Some of the issues that have been raised include the prioritisation of sites in the Western hemisphere, the privileging of the tangible and monumental forms of heritage, and the enforcement of a nature/culture binary. Moreover, the questions have been raised whether there should be a maximum number of sites on the list and how the universal ambition of the World Heritage Convention relates to the cultural diversity it tries to represent (e.g. Logan 2001; Musitelli 2002; Turtinen 2000). Funding is a key problem. UNESCO is chronically underfunded and the World Heritage Fund – 4 million US dollars annually – is very limited. William Logan argues that ‘often, good management cannot even be expected, given the inability of some States Parties to invest sufficient funds into conservation works and professional capacity building’ (2012b, p. 126).
In the 1990s, the World Heritage system underwent a series of reforms to address some of these issues. In 1992, the category of Cultural Landscapes was introduced to recognise the ‘combined works of nature and man’ and in 1994, the Global Strategy for a Representative, Balanced and Credible World Heritage List was launched to address the geographical and typological imbalances of the list. Moreover, the relativity of the concept of authenticity was acknowledged through the Nara Document on Authenticity (ICOMOS 1994), which is very important for Bagan as I will elaborate on in Chapter Four. Rodney Harrison argues that the World Heritage Convention’s self-definition as a universal principle made these developments necessary, many of which revolve around the adoption of a broader and more inclusive definition of heritage:

If the Convention had not been expressed as a set of universal values, there would have been no need for those who work with the Convention to consider any counter-claims or appeals to representation. But because of its claims to universality, the World Heritage Convention (and the model of official heritage it perpetuates) has consistently found itself subject to questioning and appeal, and the World Heritage Committee has constantly sought to redefine its definition of heritage since it was adopted in 1972. (Harrison 2013, p. 116)

Although such developments are important, it is questionable whether they are sufficient (Labadi 2005). For example, it appeared to be impossible to incorporate intangible forms of heritage in the World Heritage Convention and a different instrument – the Convention for the Safeguarding of Intangible Cultural Heritage – was created in 2003 to recognise and protect a category of heritage that is essentially impossible to distinguish from
tangible forms (Kearney 2009, p. 211). Bagan is an excellent example of how this artificial distinction does not hold in some places as I will explain in Chapter Four. Similarly, the Cartesian dualism of nature and culture remains ingrained in the convention, but is not representative of how many people conceive of the world (Brockwell, O’Conner & Byrne 2013; Byrne & Ween 2015). Moreover, the Nara Document on Authenticity did not take away controversy around reconstructions and renovations in Bagan. In terms of geographical imbalances, Lynn Meskell and Christoph Brumann point out that only recently China is ‘beginning to challenge the numerical pole position of Italy and Spain’ while ‘the balanced representation of natural and cultural sites that was initially envisaged has not materialized either: today some 75 percent of the List is cultural’ (2015, p. 26).

Other concerns regarding World Heritage include the role of tourism. Being inscribed on the World Heritage list ‘produces a commodification effect, with World Heritage being seen by many as a brand and inscription little more than a branding exercise’ (Logan 2012b, p. 120; see also Ryan and Silvanto 2009, 2010). Accordingly, ‘the conservation of monuments and sites will cease to be goal in itself and become the basis of activities designed to attract the growing stream of tourists’ (Musitelli 2002, p. 331). This is a particularly pertinent and challenging issue in developing countries, such as Myanmar, where the exploitation of monumental and natural resources is an important source of revenue and conservation needs to be balanced with the needs of living communities. In Chapter Five, I will
elaborate on the challenges the tension between tourism, development and conservation present in Bagan.

Logan asserts that ‘criticisms of decisions taken by UNESCO, the World Heritage Committee and the World Heritage Centre need to be balanced by a clearer recognition of the governance arrangements and limitations not only within these three entities but also within the various States Parties themselves’ (2012b, p. 113). In fact, States Parties are the most powerful decision-makers and they operate according to their own national needs (Askew 2010). Moreover, Meskell et al have shown how recently there has been ‘more divergence between those technical recommendations by the Advisory Bodies and the final decisions adopted by the World Heritage Committee’ (2014, p. 13) as the World Heritage arena becomes increasingly and more explicitly a playing field in which economic and political interests of nation states are being negotiated. Regardless of the ideals it may strive for, the World Heritage Convention is subject to diplomatic games, a striking example being the withdrawal of the United States when UNESCO decided to recognise Palestine as a member in 2011 (Kersel & Luke 2012).

Human rights are not explicitly mentioned in the World Heritage Convention. However, in 2003, the General Conference of UNESCO adopted its Strategy on Human Rights, which calls for the integration of human rights in all of UNESCO programmes. Moreover, following the 39th session of the
World Heritage Committee in Bonn in June 2015, a reference to the United Nations Declaration to the Rights of Indigenous Peoples (2007) was added to the Operational Guidelines for the Implementation of the World Heritage Convention (UNESCO 2015a). In addition, in October 2015, the World Heritage Committee adopted the Policy Document for the integration of a sustainable development perspective into the processes of the World Heritage Convention (UNESCO 2015b), which refers to human rights widely. Thus, following the footsteps of the UN Human Rights Council, the UN independent expert in the field of cultural rights, scholars, and the Advisory Bodies, the World Heritage Committee is now explicitly starting to engage with human rights. Nevertheless, the exact meaning of human rights remains far from clear, as we will see in the next section.

1.2.2 Human rights

Globally, the use of human rights language is on the rise (Wilson & Mitchell 2003). The use of this language to analyse and interpret conflicts and injustice related to heritage conservation is just one expression of this. Following the end of the Cold War, there was a significant increase in human rights-related activities, such as the establishment of the international war criminal tribunals of Yugoslavia and Rwanda, an increase in UN humanitarian missions, the establishment of the International Criminal
Court in 2002, and the adoption of human rights-based approaches\(^9\) by several UN bodies (Wilson & Mitchell 2003, p. 2–3). Moreover, from the 1990s, disciplines such as anthropology, sociology, international relations and political theory started to take an active interest in human rights (e.g. Dine & Fagan 2006; Forsythe 2012; Risse, Ropp & Sikkink 1999; Wilson 1997; Woodiwiss 2005).

Despite the popularity of this term, in practice there is a lack of agreement about what human rights are or should be. In their editorial to a special issue on World Heritage and human rights in the *International Journal of Heritage Studies*, Ekern *et al* identify three different ways human rights can be interpreted. They can be considered,

(i) moral philosophy and notions of rightful or wrongful social action;

(ii) political philosophy and ideas about good and bad government; or

(iii) articles of national or international positive law and court rulings according to which state action is legal or illegal. (2012, p. 215)

Mark Goodale suggests ‘different orientations to the problem of human rights as normative category can be usefully placed on a spectrum of degrees of expansiveness’ (2007, p. 6). On the restricted end of the

---

\(^9\) Throughout this thesis, I employ the term human rights-based approaches to refer to the use of human rights – in its broadest sense – to guide policies, programmes and projects. The term is based on the UN Common Understanding on Human Rights-Based Approaches (see UN Development Group 2003), on which I elaborate in the next chapter. Human rights-based approaches are used in plural form to indicate that policies, programmes and projects guided by human rights can take different forms.
spectrum are variations of the view that human rights refer to the *Universal Declaration of Human Rights* of 1948 and subsequent legal instruments. At the other end of the spectrum are discursive approaches to human rights that centre international human rights law and focus on how actors embrace the idea of human rights. In order to clarify what we talk about, Richard Ashby Wilson argues the way to proceed is to distinguish between “human rights law” and “human rights talk”, where the former refers to positivized rules in national and international law and the latter refers to how people speak about those norms, or aspire to expand or interpret them in new ways’ (2007, p. 350).

Marie-Bénédicte Dembour (2010) identified four schools of thought about human rights that cut across academic disciplines, which are helpful to understand different orientations to human rights. According to the natural school, human rights are rights one possesses simply because one is a human being. These rights are universal and ‘based on “nature”, a short-cut which can stand for God, the Universe, reason, or another transcendental source’ (2010, p. 3). The embodiment of these rights in law is celebrated and considered something to strive for. The deliberative school of thought does not believe rights can be derived from nature, but contends that ‘human rights come into existence through societal agreement’ (ibid). Human rights have the potential to become universal if the right laws and policies are adopted, but they have no philosophical foundations. According to the protest school of thought, ‘human rights articulate rightful claims made by or on behalf of the poor, the unprivileged,
and the oppressed’ (ibid). The source of human rights lies in a transcendental plane, but since social struggles are ongoing and changing, the substantive expression of rights may change. Protest scholars are suspicious of human rights law, which they see as too bureaucratic and favouring the elite. Finally, the discourse school holds that ‘human rights only exist because people talk about them’ (2010, p. 4). They are not a given and may not always ‘constitute the right answer to the ills of the world’ (ibid). Scholars following this final school of thought reject the universality of human rights, which they consider ‘intellectually untenable in view of the diversity of moral forms in human society over time and space’ (2010, p. 9). Human rights law is considered neither bad nor good: it depends on the situation. Dembour stresses that although she presents this model in a clear-cut manner, ‘both multiple and ambiguous affiliations are possible’ (2010, p. 20). Like Dembour, I waver in my orientation to human rights, although I lean most towards the discourse school.

Different understandings of human rights mean that scholars have traced the history of the concept to different times and places. Some argue that the concept of human rights can be found in various religions and philosophies of the world. For example, it has been argued that components of contemporary human rights discourse\(^\text{10}\) can be found in philosophies of the

---

\(^{10}\) I use the term ‘discourse’ (i.e. human rights discourse) in the Foucauldian sense to refer to ‘a group of statements which provide a language for talking about – a way of
Stoics, Confucius, Ashoka, Kautilya and Islamic tolerance (e.g. Bauer & Bell 1999; de Bary 1998; Ishay 2008; Sen 1997; 1999). However, an important difference with the contemporary notion of human rights is that rights are extended to all human beings, whereas in the past, certain groups (often based on gender, ethnicity or class) were excluded (Donnelly 2013, p. 91). According to Samuel Moyn, these histories of human rights establish ‘the precursors after the fact’ (2010, p. 12). He argues for an alternative history of human rights, which began in the 1970s as a result of the ‘collapse of prior universalistic schemes’ (2010, p. 7). In his view, not even the Universal Declaration of Human Rights of 1948 marks the beginning of a global human rights movement, because ‘it was less the annunciation of a new age than a funeral wreath laid on the grave of wartime hopes’ (2010, p. 2).

Indeed, the drafting of the Universal Declaration needs to be considered in the context of the aftermath of World War II and according to Johannes Morsink it was ‘adopted to avoid another Holocaust or similar abomination’ (1999, p. 37). It was drafted between 1946 and 1948 by the United Nations Commission on Human Rights and adopted by the United Nations General Assembly on 10 December 1948 with a vote of 48 in favour, representing knowledge about – a particular topic at a particular historical moment’ (Hall 1992, p. 291; see Foucault 1972). The term does not exclusively refer to linguistics, but includes social practices. Stuart Hall explains how discourse ‘defines and produces the objects of our knowledge. It governs the way that a topic can be meaningfully talked about and reasoned about. It also influences how ideas are put into practice and used to regulate the conduct of others’ (2001, p. 72).
8 abstentions and none against. Nevertheless, human rights remained a marginal area of international law until the 1990s (Wilson & Mitchell 2003, p. 2). It took until 1976 before the necessary 35 ratifications had been received for the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, which gave the force of treaty law to the Universal Declaration.

The politics of the Cold War delayed the implementation of the UN’s human rights principles. In particular, the relation between civil and political rights on the one hand and economic, social and cultural rights on the other hand was a matter of controversy: civil and political rights were prioritised by the West; economic, social and cultural rights were prioritised by the Soviet Union (Freeman 2011, p. 10). The difference has often been explained by identifying civil and political rights as ‘negative’ rights, which require the duty-bearer to refrain from action – ‘do nothing to violate the rights’ (Shue 1996, p. 36), and social and economic rights as ‘positive’ rights, which require the duty-bearer ‘to act positively – to “do something”’ (ibid). However, Henry Shue (1996) has refuted this argument by demonstrating that the categorical distinction is arbitrary and sometimes civil and political rights require action and sometimes social and economic rights require inaction.

The question of whether rights should be positive or negative and require action or inaction is related to controversies about who should have what kind of obligations. A common understanding is that obligations can
be categorised as respect, protect and fulfil: Respecting human rights requires the duty-bearer to refrain from violating rights; Protecting human rights requires the duty-bearer to prevent third parties from violating rights; Fulfilling human rights requires the duty-bearer to take action to establish institutions that enable the respect for human rights (Dankwa, Flinterman & Leckie 1998, p. 20). According to the orthodox view of human rights law, only states have obligations towards their citizens. However, because ‘[e]ffective and legitimate power is no longer solely attributed to states, but is ascribed also to the variety of non-state actors, such as non-governmental organisations…, corporations, and intergovernmental institutions’ (Kuper 2005, p. x) this notion is increasingly challenged. Andrew Kuper argues for a ‘responsibilities approach to human rights – where we demand, in every context, to know “who must do what for whom”’ (2005, p. xxii). The question of who has responsibility to guarantee rights to which extent – respect, protect or fulfil – also presents a challenge to human rights-based approaches to World Heritage conservation, as I will elaborate on in Chapter Five.

The Universal Declaration model of human rights has faced several more philosophical, practical, and political challenges. Importantly, it represents a consensus on a list of rights, but it lacks any philosophical justification. Any foundational arguments for human rights, such as that they derive from human dignity or God are subject to external or ontological critique. As Jack Donnelly points out, even the ‘category of “human being” or “human person” … is contentious’ (2013, p. 20). Not everyone draws ‘a
sharp categorical distinction between *Homo sapiens* and other creatures’, while some do ‘draw categorical moral distinctions between groups of human beings’ (2013, p. 20–21). Although the list of human rights represents an ‘overlapping consensus’ (Rawls 1996; see also Donnelly 2013, p. 57) on morality, there is ongoing controversy about which rights should and should not be considered human rights, and what their relative weight is.

According to the *Vienna Declaration and Programme of Action*, adopted at the World Conference on Human Rights in Vienna in 1993, all human rights are indivisible, interdependent, and interrelated, meaning that they are all equal in weight. However, in reality many human rights are in conflict with each other and the implementation of one human right may require the violation of another. For example, the Universal Declaration includes the right to equality (Article 1) and the right to freedom of religion (Article 18). What does this mean for religions according to which people are not equal (Freeman 2011, p. 5)? Michael Ignatieff pointed out that the promotion of the right to self-determination (Article 1 of the ICCPR and the ICESCR) can ‘endanger the stability [of states] that is a precondition for protecting human rights’ (2001, p. 29). The category of cultural rights is particularly prone to conflict with other human rights, as will become apparent throughout this thesis. Moreover, ‘rights inflation’ or ‘the extension of the concept of human rights to an ill-defined number of causes’ (Freeman 2011, p. 6) has aggravated conflicting rights. Since the Universal Declaration, several more instruments have been created that aim at the
protection of specific rights of children, women, migrants, sexual minorities, people with disabilities, and Indigenous people. Other instruments are targeted at specific issues, ranging from development, urbanisation, to the environment\textsuperscript{11}.

It is also unclear whether human rights present a ‘mandatory moral minimum to be secured universally’, or whether they should be a ‘more open-ended aspirational ideal to be secured by each and all in their own way and on their own schedule, albeit in conversation with others’ (Holder & Reidy 2013, p. 2). Morten Pedersen has argued that the former military regime in Myanmar supported the latter interpretation. They perceived democracy and human rights as threat to stability and security and prioritised the establishment of ‘a stable political order that safeguards national security’ (2008, p. 114). Similar to Pedersen, Anthony Ware argues that Myanmar’s official response to accusations of human rights violations ‘suggests an alternative perspective and priority on human rights’ (2010, p. 14). He identified four common responses: the denial of allegations, the argument that accusations of human rights abuse are used by certain countries to further their own political agendas, reference to the rights of self-determination and sovereignty, and invoking the Right to Development. The UN adopted the Declaration on the Right to Development in 1986 and Myanmar was a member of the UN Open-Ended Working Group on the

\textsuperscript{11} For an overview, see http://www.ohchr.org/EN/Issues/Pages/ListOfIssues.aspx. Accessed 24/10/16
Right to Development, which was formed in 1998. Myanmar interpreted this right ‘as a claim against the developed world, calling for fairer trade, differential access to technology, debt relief, and the international community to fulfil its obligations to create better conditions for development’ (Ware 2010, p. 5) and argued that sanctions present a breach of the right to development and that currently the right to development needs to be prioritised over other rights.

Even during the drafting process of the Universal Declaration there was an awareness that there were going to be different interpretations and prioritisatiations of human rights. In 1947, the Commission on Human Rights requested several institutions to deliver feedback on a draft version of the Declaration. On behalf of the American Anthropological Association, Melville Herskovits published a Statement on Human Rights, which rejected the proposal for the Universal Declaration on the basis that the diversity of human cultures made it impossible to measure them against a universal set of moral standards (Anthropological Association 1947). The statement was meant as ‘an intellectual buffer against colonialism, racism, and all other systems that had the effect of oppressing some human populations while elevating others’ (Goodale 2009, p. 26). However, such cultural relativism has often been considered dangerous, since it may be invoked by political leaders to justify oppression (Donnelly 2007). The unresolved tension between universality and cultural relativism remains one of the most contentious issues for the concept human rights (see for example, Brems 2001; Goodhart 2003; Renteln 1990; Wilson 1997).
Despite these various critiques of and debates about human rights, the international human rights regime – a system of rules and implementation procedures centred on the UN – has been expanding. Today, there are three principal actors: The Human Rights Council, the treaty bodies, and the UN High Commissioner for Human Rights. The Human Rights Council was established in 2006 to replace the Commission of Human Rights, which had lost its credibility (Alston 2006; Lauren 2007). It reports to the UN General Assembly; of which it is a subsidiary body. Its main tasks are the development of new international human rights norms, the promotion of the implementation of human rights, multilateral monitoring and the review of states over a four-year cycle in a Universal Periodic Review process. The Council is supported by a range of independent experts. These are individuals who are not state representatives and monitor compliance with human rights in different states with official visits. They either consider a specific theme or a specific state. As of 30 June 2016, there are 42 thematic and 14 country mandates. Since 1992, there has been a mandate for a Special Rapporteur on Myanmar and since 2010 there has been an independent expert/Special Rapporteur on Cultural Rights. Human rights scholar Jack Donnelly points out that the impact of these independent experts is also questioned (Freeman 2011, 58). Most recently, Amnesty International and Human Rights Watch called for the suspension of Saudi Arabia if the Council is to retain its credibility. See https://www.hrw.org/news/2016/06/29/suspend-saudi-arabia-un-human-rights-council Accessed 21/10/2016
experts and Special Rapporteurs ‘is ultimately a matter of the willingness of
governments to engage in conversation with them, allow them to visit their
countries, and listen to their concerns and advice’ (Donnelly 2013, p. 164).
The Special Rapporteurs on Myanmar can testify to the limitations this
poses. They have regularly been denied access to certain areas or people
(Genser 2014).

The treaty bodies provide a mechanism to review in periodic reports
the compliance of signatory parties to a specific treaty\textsuperscript{13}. Ratification or
signature is not an indicator of the actual rights conditions in the country
(Hathaway 2002; Neumayer 2005). Moreover, these treaties are not signed
and ratified by all countries. For example, Myanmar only ratified four and
signed two of the treaties. Some treaties are more popular than others: The
\textit{Convention on the Rights of the Child} has 197 ratifications and the
\textit{Convention on the Protection of the Rights of all Migrant Workers and
Members of their Families} has only 48 ratifications. The treaty body
reporting process is essentially an exchange of information and there is no
coercive monitoring (Donnelly 2013, p. 166).

\textsuperscript{13} Currently there are ten core international human rights treaty bodies: the Committee
against Torture, the Subcommittee on the Prevention of Torture, the Committee on
the Elimination of Discrimination against Women, the Committee on the Elimination
of Racial Discrimination, the Committee on the Rights of the Child, the Committee
on Economic, Social and Cultural Rights, the Committee on the Protection of the
Rights of all Migrant Workers and Members of Their Families, the Human Rights
Committee, the Committee on the Rights of Persons with Disabilities, and the
Committee on Enforced Disappearances.
The Office of the High Commissioner for Human Rights was created in 1993 and provides fundamental administrative and research support for the treaty bodies and the Human Rights Council. The commissioner also plays an important role as both a prominent global advocate for human rights and in the dissemination of information about human rights activities of the UN.

Although there has been a strengthening of the global human rights regime over the last thirty years, Donnelly points out that most of this growth has been ‘easy’ promotional growth: ‘Promotional regimes require a relatively low level of commitment. The move to an implementation or enforcement regime requires a major qualitative increase in the commitment of states that is rarely forthcoming’ (Donnelly 2013, p. 194). Importantly, the principles of sovereignty and non-interference remain central in international law and international relations and limit the extent to which human rights can be enforced. Such weak enforcement mechanisms also impact what is possible in terms of human rights-based approaches to World Heritage conservation, a topic I elaborate on in Chapter Six.

In sum, and as Freeman notes, the international human rights regime ‘is part of international politics. This means it is characterised by a considerable amount of self-interest, pragmatism and short-term crisis management, rather than systematic implementation of principles’ (2011, p. 59) and although the Universal Declaration is sometimes considered a ‘quasi-
sacred text’, it can equally be regarded a ‘clumsy piece of philosophy’ (ibid, p. 37). The central role of international politics and philosophical contestation result in serious limitations in and contentions about what human rights can and should achieve.

Similar to human rights, in the World Heritage system the central role of politics and conceptual contestation about what can be regarded heritage of Outstanding Universal Value create challenges for heritage conservation. Throughout this thesis, it will become clear that limitations related to the politics and philosophy of human rights and World Heritage underlie several key conceptual and practical impediments to human rights-based approaches to World Heritage conservation in Bagan.

Despite conceptual and practical impediments, the link between World Heritage and human rights is increasingly becoming solidified in policy documents, including those related to Myanmar. Yet, strong empirical research on how human rights-based approaches to heritage conservation work in practice is lacking. The purpose of this research project is to contribute to this emerging field of scholarship by investigating the opportunities, challenges and implications of the use of human rights-based approaches in the context of the World Heritage nomination of one particular cultural heritage site: Bagan in Myanmar.
1.3 Myanmar and Bagan

1.3.1 Myanmar

Myanmar – since 2011 formally the Republic of the Union of Myanmar – did not always go by this name in English. In 1989, the military regime changed the name of country from the Union of Burma to the Union of Myanmar, in order to make the English spelling closer to the actual pronunciation. The names of several cities were changed as well. For example, Rangoon became Yangon and Pagan became Bagan. The Irrawaddy river was called the Ayeryarwaddy river. According to the military, the name ‘Burma’ was chosen by the colonial authorities and only represents the majority ethnic group (the Bamar), while ‘Myanmar’ is a more inclusive term that people traditionally use for their nation. However, the etymology of the terms is contested (Houtman 1999, p. 352). Moreover, the opposition did not accept the legitimacy of the military and rejected the new formulation. In solidarity with the opposition, several Western countries, most notably the United States, did not accept the name changes, although the United Nations and several other states did (Dittmer 2010, p. 1–2; Steinberg 2013, p. xxi). Following the political reforms that started in 2011, the term Myanmar is increasingly used by those who refused to before. Significantly, during a visit in 2012, President Obama for the first time referred to the country as Myanmar14. Moreover, since late 2015, the opposition has been in power

and – despite their earlier rejection – they have not sought to change the names back.

In this dissertation, I follow Steinberg (2013) and use both Burma and Myanmar. I use Burma, Rangoon and Irrawaddy for the period prior to the name change in 1989, and Myanmar, Yangon and Ayeryawaddy for the period after. I use the word Burmese as an adjective, as the official language of the state, and to refer to all citizens of the country. I use Bagan throughout the thesis to refer to the heritage site, but in some direct quotes the term Pagan is used.

Myanmar is the largest country on mainland Southeast Asia. It borders Thailand, Laos and China in the east and India and Bangladesh in the west. The southern part of Myanmar forms a coastline along the Bay of Bengal and the Andaman Sea. The border areas are mountainous and home to at least 100 different ethnic groups\(^\text{15}\), while the majority Bamar population lives in the central lowlands of the Ayeryawaddy river valley. According to the 2014 census, Myanmar has a population of 51.5 million people of whom the vast majority (89.8%) is Buddhist (Department of Population 2016, p. 3).

---

15 According to official government figures there are 135 different ethnic groups in Myanmar, but this number is disputed (Gravers 2007, p. 4-5).
Since 2005, the capital city is Nay Pyi Taw. Yangon is the former capital, largest city and most important commercial centre.

Bagan is associated with the establishment of the first Burmese state and with the introduction of Theravada Buddhism as a state religion in the 11th century (Seekins 2006, p. 349; Topich & Leitich 2013, p. 26; Myint-U 2006, p. 57). The Bagan Dynasty was succeeded by several other kingdoms with centres in other areas of what is today known as Myanmar. The most notable were the Toungoo (1531 – 1752) and Konbaung Dynasties (1752 – 1885). Following what are known as the Anglo-Burmese Wars of 1824–26, 1852, and 1885, the latter kingdom was invaded and occupied by the British (Myint-U 2006).

Burma gained its independence in 1948 and most of its independent decades have been characterised by civil war, ethnic conflict, isolation, and – between 1962 and 2011 – military rule under which political opposition was prohibited. The multiple ethnic groups did not feel represented by the Burmese political system and have been involved in several forms of armed resistance (Smith 2007; South 2008). It was not just ethnic minority groups who suffered under the junta. Popular uprisings in 1974, 1988 and 2007 demonstrate a wider discontent with the policies of the military government, which led to a lack of basic necessities and freedoms for a large part of the population (Arumugam 1975; Burma Watcher 1989; Selth 2008). Myanmar became known as a pariah state (Horsey 2011; Kinley & Wilson 2007) and reports of severe human rights abuses by the junta came out of the country.
This changed dramatically in 2011. Following elections in November 2010, the military government dissolved itself. In March 2011, a new semi-democratic government was formed under President Thein Sein, a former general. Members of the military-backed Union and Solidarity Development Party still controlled all administrative and legislative positions and not more than superficial changes were expected under the new government (Aung 2014; Hlaing 2012; Taylor 2012). However, a series of significant political and economic reforms followed that took many by surprise. These include the release of 1,100 prisoners of conscience, relaxation of media censorship, ceasefire agreements in conflict areas, and the opening of space for freedom of expression. In economic terms, reforms include the floating of the currency, operational independence for the Central Bank, anti-corruption laws, and the liberalisation of the telecommunications sector. The reforms led to the easing of international sanctions and an increase in international investment and engagement. The international community has been eager to re-engage with Myanmar because the country is endowed with rich natural resources (such as arable land, forestry, natural gas and minerals) and its location is geographically strategic at the intersection of the rising powers China and India (Myint-U 2011). Most recently, elections in October 2015 were won by the National League for Democracy, led by Nobel Peace prize winner Aung San Suu Kyi. Nevertheless, twenty-five per cent of the seats in the Parliament remain reserved for the military, which controls several key positions and effectively holds veto power over changes to the constitution (Egreteau 2016).
Myanmar has undergone significant changes, yet remains one of the poorest countries in the world. In 2016, it was ranked number 150 out of 187 countries on the Human Development Index. According to statistics of the World Bank and the United Nations Development Program (UNDP), over a quarter of the population lives in poverty. This number is twice as high in rural areas, such as Bagan, where seventy per cent of the population lives. Over a third of children under the age of five suffer from malnutrition. The state of and access to infrastructure, education and health care are insufficient and three quarters of the country lacks access to electricity. The labour force is largely unskilled and Myanmar still suffers from endemic corruption, an opaque revenue collecting system and struggles with sectarian violence and armed conflict in certain states. Nevertheless, the change of government has created hope for a better future – both inside and outside of Myanmar.

At this time of social, economic and political turbulence, Myanmar is re-engaging with the World Heritage system. In 2014, the Pyu Ancient Cities became Myanmar’s first site on the World Heritage List and preparation for the nomination of Bagan officially started.

### 1.3.2 Bagan

Bagan is an outstanding site of national and spiritual significance and can be found on the inside of a bend of the Ayeryawaddy river in the heart of the dry zone of Myanmar where the monsoon rains are intercepted by the
Rakhine mountains. This area has the least annual rainfall of Myanmar and this absence of tropical rain explains the survival of over 3,000 Buddhist brick pagodas that were built between the 11th and the 13th centuries when this area was the centre of the Bagan Dynasty (Pichard 2013, p. 236).

The kings of Bagan consolidated an area roughly the size of Myanmar today and constructed over 4,000 Buddhist pagodas. The incentive behind this patronage of religious buildings lies in the concept of merit making and hundreds of stone inscriptions and votive tablets testify to this motivation (Aung Thwin 1985, p. 176; Spiro 1982, p. 103; Stadtner 2013, p. 18). The collection of merit improves one’s karma. Good karma can increase one’s
chance to reach nirvana, a fortunate rebirth, or even good luck in the present life. In Theravada Buddhism, the construction or renovation of Buddhist buildings is one of the most effective ways to make merit (Spiro 1982, p. 109). The rich and powerful often prefer to construct new pagodas over renovating old ones, since this presents a way to maintain positions of prestige in society. As a result, thousands of pagodas are scattered on Bagan’s ‘plains of merit’ (Stadtner 2013).

The Burmese use the word *hpaya* and the English use the word *pagoda* for both temples and stupas. A temple is a building one can enter and the purpose is the veneration of Buddha images inside (see Figure 5), while a stupa (*zedi* in Burmese) is a solid bell-shaped structure that can be circled (see Figure 6). In Bagan, some buildings are both temple and stupa (see Figure 7). All are believed to contain relics of the Buddha, his disciples
or venerated monks. Other less common forms of architecture in Bagan are monasteries, ordination halls, libraries and single-room image houses.

After the capital of the kingdom shifted from Bagan to Ava (near Mandalay) in the 14th century, the majority of the pagodas in Bagan fell into decay. It remains unresolved whether the move to Ava was a result of Mongol invasions under Kublai Khan or whether Bagan could not sustain itself anymore because too much tax-free land had been donated to the pagodas (Aung-Thwin 1998), but the result was a decline of patronage for the pagodas. Nevertheless, in the centuries to come, Bagan remained an important village and according to historian Thant Myint-U, ‘into the 1800s the intricate local aristocracy enjoyed a symbolic importance well beyond
any remaining political or economic clout. Hereditary rulers carried the title of *mintha*, or prince' (2006, p. 61). Even though many buildings deteriorated as a result of earthquakes and general weathering, the religious significance of Bagan never ceased. Certain pagodas have continuously been refurbished. In particular, during the Konbaung period (1752 – 1885), there is evidence of various restorations, including new murals and new constructions, such as Ananda Kyaung and Upali Thein (Stadtner 2011, p. 217; Strachan 1989, p. 2). Art historian Donald Stadtner provides more details about this in his book, *Ancient Pagan: Buddhist Plain of Merit*:

As recently as 1806 a king organized a special flotilla to Pagan from Upper Burma in order to raise a new metal finial atop the centuries-old Shwezigon stupa. Over the same few days the monarch took possession of a white elephant conveyed in a special barge from Lower Burma. Such a state ceremony, coupled with the capping of Shwezigon, highlights the religious and cultural symbolism attached to Pagan, even centuries following its eclipse as the capital of Burma. (2013, p. 18)

Europeans brought a very different way of understanding Bagan: they saw the ‘Buddhist Plain of Merit’ primarily as a site of architectural and archaeological interest\(^\text{16}\). I will further elaborate on this in Chapter Three. Today, what is officially called the ‘Bagan Archaeological Area and Monuments’ is an area of around 100 square kilometres in the Nyaung U Township, which has around 198,000 inhabitants according to the 2014

---

\(^{16}\) The introduction of alternative understandings of places by Europeans happened elsewhere in Southeast Asia too. For example, Anna Källén described how with the arrival of European archaeologists, the area around the Hintang stones in Laos ‘transformed into archaeological sites’ (2015a, p. 240).
census (Department of Population 2014, p. 58). The zone consists of thousands of pagodas, as well as villages and farmland. Remnants of an ancient city wall surround a smaller area in the northwest corner of the zone, which is known as Old Bagan. This part is understood to have been the centre of the ancient city of Bagan and the site of one of the king’s palaces.

The monuments of Bagan are located in a poor rural area characterised by unsealed roads and daily electricity cuts. This is likely to change dramatically in the coming years as the region continues to develop and a significant increase in tourism needs to be accommodated. Military dictatorships and a poor international reputation meant tourism numbers had remained low until the change of governments in 2011. In 2010, Myanmar received 792,000 international tourist arrivals, but by 2015 the tourism numbers had risen to 4.7 million (UNWTO 2016, p. 9). By 2020, 7.5 million visitors are expected (Ministry of Hotels and Tourism 2013). Bagan will be a major tourist destination in Southeast Asia but currently resources are grossly inadequate for the challenges that will accompany this increase in tourism pressure.

1.3.3 World Heritage and human rights in Bagan

World Heritage listing will raise difficult questions concerning conservation, living heritage, development and the rights of the local population. The spiritual significance and active use of several pagodas creates tensions with international conservation standards. Rapid tourism development will
lead to an increase in hotels, restaurants and other tourist infrastructure, meaning gateway cities such as Nyaung U and New Bagan will likely encroach on the archaeological remains. While money flows into the region, local aspirations will increase, but the extent to which this money trickles down to local communities remains to be seen. Development, land and economic rights are at stake when a new regime of spatial governance restricts where and what people can build and where and how they can run their businesses. Religious and cultural rights are at stake when the conservation and protection of monuments excludes people from their cultural heritage and spiritual practices.

Since 2014, UNESCO has been delivering support for the preparation of the World Heritage nomination of Bagan, submission of which is aimed for 2018 according to UNESCO Bangkok\(^\text{17}\). The *UNESCO Country Programming Document for Myanmar* (UNESCO Bangkok 2013) outlines UNESCO’s strategy in Myanmar from 2013 to 2015. Besides a situational analysis, an outline of past and present cooperation, and an overview of partnerships, the document consists of a proposed cooperation framework. The very first section under this framework (3.1.1) is concerned with human rights: ‘All UNESCO programmes, activities and projects in Myanmar are planned, implemented, monitored and evaluated in accordance with human

rights-based principles’ (UNESCO Bangkok 2013, p. 12). A later section (3.1.4) is concerned with culturally appropriate programming and includes the following,

As the UN agency with a specific mandate for culture, and in keeping with the Universal Declaration on Cultural Diversity, UNESCO strives to strengthen the recognition of cultural rights as one of the five fundamental human rights. ... UNESCO will continue to use culturally appropriate programming principles in designing all of its programmes in Myanmar. ... These steps will help ensure respect for and promotion of cultural diversity and cultural rights as critical dimensions of sustainable development. (ibid)

Thus, human rights-based approaches and respect for cultural rights are official policy of UNESCO in Myanmar. However, the ambiguity and contestation of human rights make the implementation of such policies on the ground far from straightforward.

This research project is concerned with the implications, challenges, and opportunities of the increasing convergence of two popular but highly contested global frameworks – World Heritage and human rights. The analysis of this convergence demonstrates the interlocking complexities of several key themes that are part of the global heritage discourse, most notably the enduring tensions between conservation, development and living heritage. The specific context and history of Myanmar and Bagan make it an analytically productive space to investigate the synergies of heritage conservation and human rights. For decades, the rulers of Myanmar defied universalistic ideas of heritage conservation and human rights. In the 1990s and 2000s, Myanmar had one of the worst human rights
records in the world and its approach to the conservation of the monuments of Bagan was controversial. From 2011, this changed. A National Human Rights Commission has been established and in 2014 Myanmar’s first World Heritage site – the Pyu Ancient Cities – was listed. This engagement with international standards of conservation and rights comes at a time when the link between human rights and heritage conservation is increasingly becoming established in policies, statements and declarations. Given the likely directions and challenges, Bagan is a helpful example of the problems facing many World Heritage sites today and the thesis thus addresses wider international debates about cultural heritage and human rights.

1.4 Research questions and key concepts

The overarching research questions guiding this thesis are:

- What are the opportunities, challenges and implications of using the international human rights framework in cultural heritage contexts?
- What can human rights-based approaches offer to tensions between living heritage, conservation and development in Bagan, Myanmar?

In the following section I will outline the methodology that has been used to address these questions.
1.5 Methodology

Montage and pentimento, like jazz, which is improvisation, create the sense that images, sounds, and understandings are blending together, overlapping, and forming a composite, a new creation. The images seem to shape and define one another; an emotional gestalt effect is produced. Often, these images are combined in a swiftly run sequence. When done, this produces a dizzily revolving collection of several images around a central of focused picture or sequence; such effects signify the passage of time. (Denzin & Lincoln 2011, p. 4)

Norman Denzin and Yvonna Lincoln use the above description to indicate how qualitative research can be understood as a sequence of blending and overlapping images. They argue that the qualitative researcher ‘may be seen as a bricoleur, as a maker of quilts, or in filmmaking, a person who assembles images into montages’ (ibid). These metaphors apply to my research as well. To approach an answer to the research questions, I assembled a series of blending and overlapping ‘images’ related to heritage conservation and human rights in Bagan, Myanmar and analysed and interpreted them as a ‘gendered, multiculturally situated researcher’ (Denzin & Lincoln 2011, p. 11).

My approach to answering the research questions reflects several other key characteristics of qualitative research. Firstly, the research process was emergent. As Denzin and Lincoln point out, ‘in interpretive research, a priori design commitments may block the introduction of new understandings’ (2011, p. 245). Therefore, although I had a loose methodology in mind, it was desirable to be flexible and allow for the adjustment of the research design based on unexpected empirical materials.
Moreover, an inductive-deductive logic shaped the process. An inductive process of building ‘patterns, categories, and themes from the “bottom-up”’ and ‘organizing the data in increasingly more abstract units of information’ (Creswell 2013, p. 45) was supplemented by deductive thinking by constantly checking emergent themes against the data.

This research project is interdisciplinary and multi-scalar. The implications of the relationship between cultural heritage and human rights cannot be adequately understood through the lens of one discipline. This is not in the least because both the phenomena of cultural heritage and human rights have been approached from different disciplines, including history, architecture, archaeology, anthropology, sociology, geography, political science, and international law. Depending on the discipline, cultural heritage and human rights may be understood differently. Heritage, for example, may be approached purely as an object of study, or it may be seen as a means of generating income, or as part of political action or sustainable development to engender community spirit and involvement. The concern may be with its regulation or with deciphering its multifaceted characteristics and many roles. Some may see heritage as their inalienable right, while for others it is a construct; yet others see it as timeless and belonging to all. (Carman & Sørensen 2009, p. 3)

Similarly, there are widely different understandings of human rights – ranging from legal to discursive – as outlined above.

Human rights studies have long been dominated by legal scholars (Freeman 2011). However, a strictly legal understanding of human rights is
very limiting. The human rights that are solidified in international conventions are the product of intense political negotiations and bargaining (Morsink 1999). Elsa Stamatopoulou (2007) has demonstrated this regarding Article 27 of the Universal Declaration, the right to participate in the cultural life of the community. Moreover, once signed and ratified, the (lack of) implementation and enforcement of human rights principles can best be understood through a historical, anthropological, sociological or political economy lens. Similarly, to understand cultural heritage, researching its archaeological and architectural significance provides only partial knowledge. Anthropology and sociology can shed light on the social and religious role it plays in people’s daily lives. Political theory, economics and international law may aid in understanding why a cultural heritage site is managed in a certain way. Architecture, spiritual significance and management structures influence each other. Therefore, one single discipline will only ever be able to offer partial knowledge.

The meaning of interdisciplinarity is contested and there are several different ‘taxonomies’ of interdisciplinarity (Klein 2010). Broadly, it can be defined as

a process of answering a question, solving a problem, or addressing a topic that is too broad or complex to be dealt with adequately by a single discipline, and draws on the disciplines with the goals of integrating their insights to construct a more comprehensive understanding. (Repko 2012, p. 16)

Interdisciplinarity differs from multidisciplinarity. The latter juxtaposes different disciplinary perspectives on a problem, but the ‘disciplines remain
separate, disciplinary elements retain their original identity, and the existing structure of knowledge is not questioned’ (Klein 2010, p. 17). Interdisciplinarity focuses on the integration of disciplinary insights, where ‘integration is a process by which ideas, data and information, methods, tools and concepts, and/or theories from two or more disciplines are synthesized, connected or blended’ (Repko 2012, p. 4).

The organisation of knowledge in different disciplines is a relatively recent phenomenon, barely more than 200 years old. According to Peter Weingart, ‘disciplines were a new organizational mode for the production and ordering of knowledge that responded to the limitations of the classificatory systems of knowledge at the end of the eighteenth century’ (2010, p. 10). Exponential growth in knowledge led to its organisation into smaller and smaller units, increasing specialisation. By the end of the nineteenth century, competition for resources and demands from industry motivated universities to organise themselves according to disciplines.

However, disciplinary knowledge and research has been challenged almost as soon as disciplines started forming. For example, in 1930, the Social Science Research Council in the United States declared that its ‘thinking thus far has been largely in terms of social problems which cannot be adequately analysed through the contributions of any single discipline’ (cited in Calhoun & Rhoten 2010, p. 106). Following the end of the Second World War, the emergence of area studies exemplifies an interdisciplinary field of research and this was soon to be followed by interdisciplinary research focusing on certain phenomena or problems, such as urban
studies and environmental studies. Heritage studies is a more recent example and this thesis is situated in and informed by this emerging interdisciplinary area of research.

The objectives of interdisciplinary research are to explore broad issues and complex problems that go beyond the scope of any one discipline. This is important because ‘the real-world research problems that scientists address rarely arise within orderly disciplinary categories, and neither do their solutions’ (Palmer 2001, p. vii). Yet, disciplinary perspectives on problems continue to dominate policy as well as university structuring. This dominance also influences the World Heritage nomination process. It will become clear in this thesis that perspectives from the disciplines of archaeology and architecture are central to how Bagan's nomination is approached. Anthropology, political science or economics provide different insights in Bagan, however these disciplinary perspectives take second place or are disregarded.

In this research project, interdisciplinarity is complemented by a multi-scalar approach, taking into account processes on local, regional and global levels. Bagan does not exist in isolation. The way in which the dynamics between heritage conservation and human rights play out is influenced by law-makers in Nay Pyi Taw, NGOs in Yangon, tourist agencies in Bangkok, politicians in ASEAN, experts related to ICOMOS and ICCROM, as well as bureaucrats and diplomats in UNESCO and the UN. The extent to which human rights-based approaches can address tensions between living heritage, conservation and development in Bagan is not only contingent on
what happens on the ground at this heritage site, but is influenced by several cultural, historical, legal and political factors on national, regional as well as global levels. I refer to such factors throughout this thesis, and in Chapter Six I specifically elaborate on the influence of national capacity, political sensitivity, bureaucratic inertia and diplomatic relations in Myanmar, Southeast Asia, UNESCO, and the UN on the synergies of cultural heritage and human rights in Bagan.

Allen Repko and Rick Szostak argue that

[a] critical part of interdisciplinarity … is its adherence to epistemological pluralism. This refers to the diverse approaches that disciplines use to know and describe reality. Epistemological pluralism rejects notions of absolute truth and embraces the ambiguity that arises out of conflict and difference. (2016, p. 22)

My research similarly adheres to epistemological pluralism and is based on the ontological position that there is no objective reality. Rather, there are multiple realities that are socially constructed between people and their environments. I contend that knowledge is ‘co-constructed between the researcher and the researched and shaped by individual experiences’ (Creswell 2013, p. 36). Moreover, this research project is antifoundational and denies the existence of an absolute truth or universalism in social research: ‘what science “takes” to be a universally enframing account of knowledge of the world is always, in fact, located within an institutional and socio-culturally determined community’ (Willis 2007, p. 50). This position influences how I interpret and analyse World Heritage and human rights,
which both make claims to universalism, yet are situated in a particular time and space. I argue that these claims to universalism are partly what makes the relationship between these two phenomena uneasy.

Attempts to implement or impose such universalistic discourses in different locales and decades often lead to tensions. In Myanmar, both the World Heritage and human rights discourses are confronted with local understandings of the past and morality. However, these tensions are not simply binary oppositions between a universalist (Western) framework and a local Burmese one. Homi Bhabha’s (1994) concept of hybridity is useful to understand the complex, nuanced, and ambiguous relationship between the coloniser and the colonised. He argues that cultures and ethnicities should not be understood as permanently polarised. Hybridity ‘refers to the new, transcultural forms produced through colonization that cannot be neatly classified into a single cultural or ethnic category’ (Liebmann 2008, p. 5). Gayatri Chakravorty Spivak (2008) has employed a similar anti-essentialist approach as she argued for the understanding of Asia in its plurality and complexity: there is not one unified Asia (or Myanmar) that can be understood in contrast to the West.

Most books on qualitative inquiry identify three or four dominant theoretical paradigms, worldviews, or philosophical assumptions that underlie this type of research: postpositivist, constructivist-interpretive, critical, and sometimes postmodern/poststructural (see for example, Creswell 2013; Crotty 1998; Lincoln, Lynham & Guba 2011; Merriam 2009; Willis 2007). However, as Denzin and Lincoln point out, ‘the boundaries
between them have begun to blur’ (2011, p. 91). This is the case for my research, which is influenced by both the constructivist-interpretive and the critical paradigm.

The terms (social) constructionism and interpretivism tend to be used interchangeably (Merriam 2009, p. 9). In this worldview, the purpose of research is to understand – or interpret – how people make sense of the world and what subjective meanings they attach to their experiences: ‘These meanings are varied and multiple, leading the researcher to look for the complexity of views rather than narrow down the meaning into a few categories or ideas’ (Creswell 2013, p. 24). The variation and multiplicity of meanings is reflected in the finding that although for some people Bagan is primarily a site of archaeological and architectural interest and for others it is predominantly a sacred site, in many cases both value sets are acknowledged and the prioritisation of one or the other depends on the context. This, in turn, influences the different meanings people attach to heritage conservation and human rights and how the dynamics between these two phenomena play out. Accordingly, an important part of my research has been the understanding and interpretation of the meanings people attach to Bagan, conservation, human rights, and the connections between them.

Michael Crotty distinguishes critical inquiry from interpretive research by the contrast between a research that seeks to merely understand and a research that challenges … between a research that reads the situation
in terms of interaction and community and a research that reads it in terms of conflict and oppression... between a research that accepts the status quo and a research that seeks to bring about change. (1998, p. 113)

The critical paradigm aims to contribute to abolishment of repression and injustice by exposing unequal social relationships and distributions of power. Besides the interpretation and understanding of different meanings attached to heritage conservation and human rights in Bagan, this research project attempts to identify and critique the underlying hierarchies of knowledge and power relations between those who hold different worldviews.

1.5.1 Reflexivity and ‘cultures of dealing’

When it comes to discussing Burmese perspectives on the past and morality, I am informed by Spivak’s famous essay, ‘Can the Subaltern Speak?’ (1988). Here, she is concerned with ‘whether the subaltern can speak for themselves, or whether they are condemned only to be known, represented, and spoken for in a distorted fashion by others’ (Moore-Gilbert 2000, p. 452; Spivak 1988). How can scholars write about the subaltern without presenting themselves as authoritative representatives of a group? For this research, this means that I do not claim to present a voice for the people of Bagan or Myanmar. I can only provide situated, embodied and partial knowledge (see Haraway 1988) about the research topic.
Individual experiences shape reality and understandings of the world and are always filtered through language, gender, social class, race and ethnicity. Accordingly, this research project is very much the unique product of the engagement of me – as a ‘gendered, multiculturally situated researcher’ (Denzin & Lincoln 2011, p. 11) – with a particular environment and certain people. As a white, middle-class, secular, Western-educated, young Dutch woman I created new ‘cultures of dealing’ with the people I encountered during my research (Holliday 2007, p. 140). Cultures of dealing are constructed when ‘both the researcher and the people in the research setting enter into a relationship of culture making’ (Holliday 2007, p. 140). Accordingly, ‘what the researcher observes while interacting with the people
in research setting may be more to do with the specific nature of the culture of dealing than with the culture of the research setting’ (Holliday 2007, p. 141). I will illustrate this with an example of my fieldwork.

One day my local guide Suu, a Burmese Buddhist woman in her mid-twenties, took me to a small pagoda festival at rather remote temple named Laymyethna, next to Minnanthu village (see Figure 8). Before the offering ceremony started, most villagers came together in the adjoined monastery compound where they shared a meal of mohingya – a traditional Burmese noodle soup. While Suu would usually join the villagers, my presence gave her the excuse to seek access to the village elders who organised the festival. They were enjoying tea, fresh fruits and cakes – more luxury products than the noodle soup – on the second floor of one of the monastic buildings where the monks also resided. The village elders were hospitable and appeared pleased with the interest a foreigner showed in their festival and welcomed us to join them for tea and snacks. We talked about how the festival was organised and the elders particularly elaborated on how certain specific snacks were prepared days in advance and shared among the villagers on this festival day.

The situation was very unusual for several reasons. First of all, Suu and I were both women whereas the village elders and monks around us were all men. Secondly, Suu and I were in our mid-twenties while the village elders and monks were all at least in their forties and often older. Thirdly, I was a stranger. I am neither Burmese nor Buddhist. I knew little about the pagoda festival and nor did I speak the language. This situation needs to be
considered in the context of gender and age relations in Myanmar. Age difference is important and children are taught ‘to have respect for elders even if he or she is only a minute older’ (Nwe 2005, p. 6). According to the UNDP’s Gender Inequality Index, the position of women vis-à-vis men is relatively good compared to other countries categorised under ‘Low Human Development’\textsuperscript{18}. However, a wide gap remains between men and women in the higher ranks of paid employment with women usually occupying lower ranks and lower-skilled jobs. Few women hold positions of power (Than 2014). Following the elections of 2015, women hold 9.7% of the seats in Parliament, which is up from 4.4%, but remains very low. Moreover, spiritual authority is traditionally attributed to men and the role of Burmese Buddhist nuns remains ambiguous (Kawanami 1990; 2013). Only monks belong to the monastic institution, although ‘the distinction between nuns and lay people is generally accepted’ (Carbonnel 2009, p. 266). As a result of these unequal gender and age relations, it is unusual for young women to have tea and snacks with the village elders and monks during a pagoda festival.

Nevertheless, because I am a stranger and a visitor, a new culture of dealing is created where this is not only acceptable, but also desired by standards of hospitality. In this context, what the village elders tell me about the festival is specific to this culture of dealing. For example, with a young female stranger, the preparation and sharing of food is a topic that all parties can relate to. Perhaps with an older male visitor, different elements of the

\textsuperscript{18} See \url{http://hdr.undp.org/en/composite/GII} Accessed 30/1/17
festival would be discussed. At the same the time, researcher culture and discourse as well as my personal background and experiences in life inevitably influence how I listen, filter and interpret what the elders tell me about the festival. This example illustrates how observations, conversations and interviews – or what we know about the world – will always be subjective, negotiated through interactions between people and influenced by personal characteristics.

1.5.2 Methods and data

Between June 2014 and February 2015, I spent six months in Bagan and Myanmar, where I ‘collected’ a large part of my data. Data collection is a misleading term. As Sharan Merriam points out, data is not something that is lying around, waiting to be collected by a researcher (2009, p. 86). Researchers construct data by very act of identifying something as data and it needs to be seen as a co-construction by researcher and participant. The data I identified for this research project could be categorised as observations, interviews and documentation. However, in reality these categories are interwoven and the boundaries are blurred.

In a classic typology of participation and observation, Raymond Gold (1958) identified four roles in sociological field observation. ‘Complete participation’ means the researcher is a full member of the group that is being observed and his or her status as observer is concealed. As a ‘participant as observer’
the researcher’s observation activities are subordinate to his or her role as participant, while as an ‘observer as participant’ participation is secondary to observation and the researcher is an outsider of the group. Finally, a ‘complete observer’ is not seen or noticed by the group. Traditionally, the ideal was for observation to be as unobtrusive as possible. However, in practice, it is neither possible nor desirable to be a complete observer or a complete participant. Recently, it is understood that the observer is inevitably tied to what is observed and ‘[t]here are no objective observations, only observations socially situated in the world of – and between the observer and the observed’ (Denzin & Lincoln 2011, p. 12). Moreover, many researchers change their roles and shift along the continuum of ‘participant as observer’ and ‘observer as participant’ during their research (Creswell 2013, p. 167). This has been the case for this research project. Depending on the context, my role changed: When attending a pagoda festival in Bagan, I would be an ‘observer as participant’, while in a workshop of Australia ICOMOS my role would lean more towards ‘participant as observer’.

My observational data includes field notes taken in and around the pagodas of Bagan, on a day-to-day basis as well as during special events such as pagoda festivals and a workshop organised by UNESCO. The maps in Figures 1 and 2 show the locations of prominent sites of observation. These observations gave me an insight in the different ways people engage with the monuments. In particular, I observed the ubiquity of popular religious practices, such as praying, meditation, making donations, and applying gold leaves to Buddha images. It also provided an insight in
which pagodas are visited, which ones are popular with Buddhists and which attract more foreign tourists. In contrast, observation during one of the UNESCO workshops in August 2014, provided insight in the technical approach of UNESCO and Burmese government to the World Heritage nomination, where living heritage or popular religion were hardly discussed.\textsuperscript{19} Visits to governmental departments, including the Department of Archaeology, the Department of Land Administration and the Nyaung U Township office enabled the observation of the low capacity of the Burmese government: Little or no computers, internet, air-conditioning and regular electricity cuts characterise the situation in which civil servants work who are tasked with upholding ‘universal’ standards of World Heritage conservation and human rights. The observation of the wide-spread construction of hotels and guesthouses next to villages with unsealed roads, dwellings of bamboo and thatch, and a lack of running water or electricity provides insight in the contrasts, opportunities and challenges of the rapidly growing tourism industry.

\textsuperscript{19} Negotiating access to these preparatory workshops was an issue. With the exception of meetings that are open to the media or targeted at community engagement (none of which were taking place during my fieldwork), the Burmese government and UNESCO have a select list of invitees to their (capacity building) workshops and outsiders are not welcome. Arguably, this is a pragmatic approach. If every workshop and meeting were public, the process would be less efficient. Moreover, it provides a more private space to negotiate politically sensitive topics (such as relocations). On the other hand, it demonstrates that the World Heritage nomination process is not completely transparent. Some may argue it does not have to be, but from the perspective of human rights-based approaches, increased transparency may be something to strive for.
Beyond Bagan, observations in places such as Yangon and Angkor in Cambodia contribute to my understanding of several critical issues relevant to this thesis. While the latter provides an impression of the potential future of Bagan, visits to offices of governmental institutions in Yangon, including the Department of Archaeology, the Yangon City Development Committee, and the National Human Rights Committee, showed that a low capacity is not limited to rural Bagan.

Anssi Peräkylä and Johanna Ruusuvuori explain the distinction between interviews and ‘naturally occurring’ empirical materials: ‘Interviews consist of accounts given to the researcher about the issues in which he or she is interested’ (2011, p. 529), while ‘naturally occurring’ empirical material includes written texts and tape recordings of casual conversations. However, the difference between the two should be seen as a continuum rather than as dichotomy. Several types of research materials, including informal conversations and interviews that are part of ethnographic fieldwork, are somewhere in between these two types. Moreover, there are different types of interviews of which ‘the range of structures varies from highly structured, questionnaire driven interviews to unstructured, open-ended, conversational formats’ (Merriam 2009, p. 90). I conducted semi-structured interviews – guided by a series of bullet points of themes I sought people’s views on – with 37 individuals who are (indirectly) involved in or affected by the World Heritage nomination of Bagan (see Appendix for an overview). In some cases, these interviews were recorded and transcribed, but in several
situations recording was inappropriate or impractical. In those cases, I took as many notes as possible and immediately transferred them to my field diary following the interview.

My informants can be roughly divided into three categories: (1) foreign experts who were asked to advise on aspects of Bagan’s World Heritage nomination, (2) Burmese experts who were asked to advise on the nomination, and (3) residents of Bagan (including pagoda trustees, tourist guides and representatives of local advocacy groups). It is important to point out that the majority of them were relatively well educated and had the opportunity to travel through Myanmar or even internationally. This influences people’s views on heritage conservation and human rights and accordingly my interpretation and analysis of the dynamics between these topics. A different selection of informants, such as farmers from Minnanthu village, would lead to a different set of ‘images’ (see Denzin & Lincoln 2011, p. 4). However, interviewing people from these three categories provides insights in a range of perspectives on the challenges facing Bagan and reflects the multi-scalar approach to this research project.

Interviews with informants from the first two categories were conducted in English. Foreign heritage experts came from a wide range of places, including Nepal, Thailand, the United States, Australia, Belgium, and Germany. For many of them English was not their first language, but they did use English in a professional capacity in their work related to Bagan’s World Heritage nomination (this is similar to my own situation: English is not my first language, but I use it professionally in the context of
my research). The Burmese experts I interviewed had sufficient English-language capability to converse with. However, it is worth noting that limitations in vocabulary or a lack of knowledge of certain expressions inevitably influence the word choices of my informants. Although this was directly noticeable for some my Burmese informants, it may have played a role for some of the foreign experts I interviewed too.

I interviewed informants in the third category with the help of a lay interpreter. Working with an interpreter has several implications. In any interview, the characteristics and behaviour of the interviewer and respondent influence each other and the presence of a third party, the interpreter, adds to these dynamics. Birgit Jentsch (1998) reflected on the relative advantages and disadvantages of her experiences of working with a lay interpreter, a young female student, and a professional interpreter, a male specialist in her research area. The lay interpreter did not always provide accurate translations, developed her own interest in the topic and made up her own questions. However, Jentsch started to conceive of herself and the lay interpreter as ‘a team’ and together they would reflect on the interviews and discuss solutions for obstacles they came across. The professional interpreter, on the other hand, was discreet, distant and highly adept at almost simultaneous translations. Yet, Jentsch felt uncomfortable and self-conscious around him. He made her feel stressed and she states that that ‘due to his background characteristics and behaviour, it would have been very difficult for me to discuss with him issues which emerged in interviews in ways similar to the conversations with the female student
The choice of interpreter not only influences the interviewer, but also the respondents. The age, gender, ethnic background, and socio-economic class of the interpreter all affect how a respondent will react to the interview questions. Besides the issue of accuracy of translation, Jentsch reflects on a range of other challenges of working with an interpreter, including who to keep eye contact with and the difficulty of linking body language to what is being said.

My interpreter was a local tourist guide: a young woman of my own age. Advantages of working with her were that I felt comfortable with her and because of our gender and age I felt we could relate to each other. Moreover, she was a local of the area and therefore able to introduce me to several people and take me to events such as pagoda festivals. She understood what my research is about and made suggestions of places I could visit and people I could talk to. A clear disadvantage was that she was not a professional interpreter. As a result, her translations were probably not always accurate and she would sometimes engage in conversations of her own interest with the people I interviewed. We were both aware of this and my interpreter indicated to me when she was unsure what the most appropriate translation would be, something I take into account in my analysis. A professional interpreter was financially inaccessible to me. However, even if funding would have been available, the interpreter would probably not have been local to Bagan and, as Jentsch point out, I would have had less choice with regard to age and gender and may or may not have felt personally comfortable around this person. Accordingly, working
with a professional interpreter is not necessarily preferable to working with a lay interpreter. Each will bring their own advantages and disadvantages; the important thing is for the researcher to be reflexive about this.

Ideally, the researcher and informants are familiar with the culture and have fluent proficiency of the language in which they communicate, which would allow both parties to react to subtleties and nuances. However, this ideal is not completely realistic\(^\text{20}\) and as Jentsch points out,

in few cases will we be able to acquire the standard of language and the cultural insight and understanding which a native person can provide. The value of having both the 'skilled observer from outside' as well as the 'interpreter-in-sider' perspective at the crucial research stage of interviewing can hardly be overestimated. (1998, p. 288)

Thus, although working with an interpreter has implications and certain limitations, it is still worthwhile. However, it is crucial to be reflexive about how knowledge is constructed in the space between the researcher, interpreter and informant.

The themes that were discussed during the interviews varied depending on the informants. Generally, I inquired after opinions on the World Heritage nomination and key issues such as the renovations of Buddhist monuments, relocations of villages, and the increase in tourism. I asked the first two categories of informants to explain their role in the

\[^{20}\] Depending on how 'familiarity' and 'fluency' are understood, in my case this could mean my research options would be limited to people from a particular socio-economic class in the Netherlands.
preparation of the World Heritage nomination and what they considered the key challenges facing the nomination. Moreover, I sought their view on human rights-based approaches. Interviews with the third category of informants covered topics as widely varied as pagoda festivals, popular religion (in one case a pagoda trustee spent a significant time telling me the myth of the naga dragon protecting the monuments), and lacquerware workshops.

Throughout the last four years I collected a wide range of documentation on heritage conservation, human rights and Bagan. These include newspaper articles, reports by human rights NGOs and the UN Human Rights Council, the Operational Guidelines for the Implementation of the World Heritage Convention (2015a) and reports of the World Heritage Committee meetings, government reports of Myanmar, and various charters, declarations and conventions (see Appendix for a selection that I have directly used in this dissertation).

Furthermore, academic conferences and seminars on the topic of human rights and cultural heritage as well as my involvement in Australia ICOMOS\(^2\) and ICOMOS Norway\(^2\) and informal conversations with friends

\(^2\) I co-organised a Round Table with Australia ICOMOS, the Australian Commission of IUCN, and Deakin University to explore practitioner perspectives on barriers and enabling factors of rights-based approaches to heritage management.

\(^2\) In contribution to the Our Common Dignity initiative – a joint international programme between ICOMOS, IUCN and ICCROM with a focus on rights-based practices in the World Heritage system (funded by the Norwegian government) – I conducted a
I made in Yangon, including journalists, real estate agents and human rights lawyers, or colleagues in Melbourne were often equally informative to this dissertation.

The data – field notes based on observations, interview notes and transcripts, documentation – has been analysed using NVivo, a qualitative data analysis computer software. This software enabled an efficient way of ‘reducing the data into themes through a process of coding and condensing the codes’ (Creswell 2013, p. 180). Thus, I read and re-read through all of my data and identified broad themes and subsequently subdivided these again into smaller categories or codes. These formed the basis for the interpretation of each theme and informed the key sections of this thesis, which will be introduced in the following section.

1.6 Outline of thesis

In Chapter Two, Cultural heritage and human rights, I elaborate on the convergence of the notions of cultural heritage and human rights. I do this by outlining how the concept of cultural heritage developed throughout the last century into a form that made it receptive for links with human rights. Moreover, I distinguish between cultural heritage rights and human rights-based approaches as two different areas of inquiry and policy. Cultural policy analysis to identify and map out existing ICOMOS policy and documentation related to rights.
heritage rights are concerned with the right to cultural heritage, whereas the purpose of human rights-based approaches is to respect, protect and promote all categories of human rights in a heritage conservation context.

In this research project, I consider how the link between cultural heritage and human rights plays out in Bagan in Myanmar. Chapter Three, *Bagan as archaeological and national heritage*, provides the necessary historical context, paying particular attention to how Bagan came to be constituted as an archaeological and national heritage site. European ideas about archaeology and architectural conservation arrived when Bagan was part of the British Empire and came under the influence of the Archaeological Survey of India. As we will see, these ideas remained influential, even after independence. However, interest in Bagan remained relatively modest until the 1990s, when the military leaders started an active nation-building campaign around a Bamar and Buddhist identity. Hundreds of pagodas were renovated and reconstructed as Buddhist merit making projects and to legitimise the unpopular regime. International conservation standards were not taken into account, leading to international critique. Following the political and economic reforms of 2011, the approach to Bagan changed again. Active efforts are undertaken to prepare a World Heritage nomination and international standards are prioritised.

However, for many Buddhists, the pagodas have continuous or even revived spiritual significance. In Chapter Four, *Living heritage and hierarchies of knowledge*, I elaborate on what makes Bagan a living heritage site. For many people, Buddhist merit making activities, spirit worship,
myths and legends are important in their engagement with Bagan. However, this way of valuing and knowing Bagan is largely marginalised during the preparations of the World Heritage nomination. Hierarchies of knowledge prioritise the archaeological and architectural values of Bagan. One result of this way of framing the site is that many of my informants were unsure what human rights have to do with Bagan’s nomination. Employed for their expertise on technical aspects of heritage conservation, often in the realms of architecture and archaeology, the extent to which people involved in the nomination are familiar with or even care about the spiritual significance of Bagan varies. Yet, as will be argued in this chapter, prioritising archaeology and architectural conservation risks excluding people from their cultural and religious heritage, and could arguably violate their cultural and religious rights.

In the context of this nomination, further rights are at stake when development restrictions or relocation measures are imposed with the aim to protect the heritage site and when local communities are not offered a fair chance to participate in decision-making processes. In Chapter Five, Participation, eviction and development, I shift from questions related to cultural heritage rights to explore other categories of rights that are at stake in Bagan’s World Heritage nomination. I explore three interrelated themes that emerged in this study: the challenges related to organising community participation in heterogeneous and hierarchical communities, whether forced relocations aimed at the protection of a World Heritage property can be considered a human rights violation, and how development restrictions
and the unequal distribution of the profits of the rapidly growing tourism industry risks limiting people’s ability to increase their standards of living and overcome poverty. These themes raise questions about the scope of human rights-based approaches to World Heritage conservation: which issues or violations should and should not be considered part of this realm?

In Chapter Six, *Implementation and enforcement*, I move away from conceptual questions about which rights at stake to consider how human rights-based approaches to World Heritage conservation can be implemented and enforced. I demonstrate that practical impediments can be found on different geographical scales. Myanmar’s recent history of human rights violations, sanctions, and boycotts has raised questions about how compliance with human rights norms can be enforced. Within Myanmar, holding violators to account will be challenging due to dysfunctional courts, a low capacity, and different understandings about justice. Regionally, an effective human rights regime remains absent. Many Asian states prioritise sovereignty and non-interference and have expressed reservations towards human rights. Globally, intergovernmental organisations, such as UNESCO, struggle to move beyond statements of intent because they face internal resistance as well as a lack of support from member states. The increased politicisation of the annual World Heritage Committee sessions exemplifies how further development towards human rights-based approaches to World Heritage conservation is contingent on its political and diplomatic use to Committee members and their coalitions.
In the Conclusion, I return to the research questions guiding this thesis and discuss the key conceptual, political and practical forces that I have identified that influence the implications, challenges and opportunities of engaging with human rights in cultural heritage contexts. A key finding of this research project is that there is much ambiguity about the meaning as well as implementation of human rights in the World Heritage framework. This is partly because social justice in the context of World Heritage nominations is a complex problem that defies clear, ‘one-size-fits-all’ solutions. In the light of this complexity, it is argued that although a human rights framework can provide certain valuable insights, it faces several serious limitations and should be used in juxtaposition with alternative frameworks.
2 Cultural heritage and human rights

2.1 Introduction

‘Can a slum built on a World Heritage Site in Mexico City have rights?’ was the title of an article in the Guardian on 13 November 2015. The article details the precarious situation of the slum dwellers living in Xochimilco, an area of Mexico City that was designated a World Heritage site in 1987 for its network of canals and artificial islands which present a testimony to the efforts of the Aztec people to build a habitat in an unfavourable environment. Because Xochimilco is a protected area, the slum dwellers can be evicted any time. However, the article explains, in a context of the ‘absence of urban planning or affordable housing’ and ‘extreme, generational poverty and rampant inequality’, they are left with few alternative locations to live. According to the 2010 Mexico City Charter for the Right to the City (based on the 2004 World Charter of the Right to the City) people have the right to ‘a safe place in which to live in peace and with dignity through the generation of instruments to reduce and participative spaces to control speculation, urban segregation, exclusion, and forced evictions and displacements’ (Mexico City Charter 2010, p. 11). However, what rights do people have

---

who illegally settled and are (involuntarily) damaging a site of Outstanding Universal Value for Humanity?

The publication of such an article in a popular news outlet like the Guardian shows how the problematic link between World Heritage conservation and rights is being recognised beyond a small group of scholars and reflects the urgency of the issue. Xochimilco is far from the only World Heritage site where issues of social justice have been raised: from forced evictions and violence in the Valley of the Kings in Egypt (Mitchell 2001) to development restrictions that entrench poverty at Angkor in Cambodia (Winter 2007). What is relatively new is the use of rights language to address these situations.

World Heritage and human rights were long seen as completely separate issues. However, the increased visibility of cases such as Xochimilco, as well as a range of conceptual and legal developments, made it clear that it can be very challenging to protect sites of Outstanding Universal Value for Humanity without compromising ‘universal’ human rights. In this chapter, I will examine why and how the connection between World Heritage and human rights has developed. I will show that there are

24 The complex concept of social justice has been debated for centuries. It crudely refers to the distribution of benefits and burdens, which is what I denote when using this term. However, the following questions – answered differently depending on the time, place, and actors involved – are subject to continuous contestation: What are these benefits and burdens? Who should distribute them and how? Among whom should they be distributed? (see for example, Harvey 2009; Miller 1999; Rawls 2003; Sen 2009). Human rights – as tools of addressing and discussing social justice – inevitably become subject to related contestation, as becomes clear throughout this thesis.
different orientations to and understandings of this connection. Although there is considerable overlap, a distinction can be made between legal and discursive understandings of human rights. Moreover, there is a difference between those who focus on whether there is – or should be – a human right to World Heritage (or cultural heritage rights) and those who are concerned with other human rights at stake in World Heritage conservation contexts. From the latter perspective, cultural heritage rights are just one among many rights that need to be taken into consideration. Human rights-based approaches have been suggested as a means to prevent and address such human rights violations. Although there is no consensus about the definition of human rights-based approaches, they generally refer to the integration of human rights standards within policy and programming to ensure that human rights are respected during both the process and the outcome of a project.

2.2 Convergence of cultural heritage and human rights

2.2.1 From ruins to rituals, places to people

The roots of what we understand as heritage conservation today have been traced to different times and places. Some scholars have pointed out that a concern with the past can be found as far back as ancient Egyptian and Greek societies, and medieval China and Europe (Gillman 2010; Harvey 2001; Jokilehto 1999). Others have argued that the concept of heritage is specifically related to the social, economic and cultural dynamics in the
West in the late twentieth century (Harrison 2013; Lowenthal 1998). However, most scholars agree that the birth of the heritage conservation movement can be traced back to Europe in the eighteenth or nineteenth centuries, when social, economic and political upheaval in the context of the Enlightenment created a desire for stabilisation (Glendinning 2013; Jokilehto 1999; Muñoz Viñas 2005; Stubbs 2009). The forces of modernity, industrialisation, and urbanisation created ‘an interesting and dynamic tension … between the optimism and future-oriented attitudes articulated in the wake of the industrial revolution and the growing feelings of nostalgia and regret about the world that was disappearing’ (Carman & Sørensen 2009, p. 15). For John Carman and Marie Louise Stig Sørensen (2009), a key difference with earlier approaches to the past is the idea that heritage needs to be protected for the general public rather than for private interests. This public needed to be educated about the value and meaning of monuments and historic buildings. Moreover, the development of the nation state led to a greater interest in the remains of the past, which served as evidence for the nation’s glory and pedigree (Díaz-Andreu 2007; Kohl & Fawcett 1995; Meskell 1998; Trigger 1984). During this time, vigorous debates about appropriate conservation methods took place between people like John Ruskin, Eugène Viollet-le-Duc and William Morris, and
some of the first legal instruments concerned with heritage protection were created\textsuperscript{25}.

In 1931, during the First International Congress of Architects and Technicians of Historic Monuments in Athens, the idea of international collaboration for the conservation of heritage was discussed for the first time. The Congress resulted in the adoption of the \textit{Athens Charter for the Restoration of Historic Monuments}, which outlines specific recommendations for conservation and presents one of the first global heritage instruments. UNESCO was founded in 1945 and returned to this idea of international cooperation for the protection of heritage. When in the 1960s the construction of the Aswan Dam in Egypt threatened to flood several ancient Egyptian monuments, including the temples of Abu Simbel, an international safeguarding campaign was organised. Although the significance of this campaign for the promotion of the idea that heritage is of universal concern is undeniable, Harrison has pointed out that the political context of the campaign is often ignored (2012, p. 61). While the Egyptian campaign was underway, the Second International Congress of Architects and Technicians of Historic Monuments met in Venice in 1964 and adopted the \textit{International Charter on the Conservation and Restoration of Monuments and Sites} (the Venice Charter), which continues to be the main point of reference for conservation standards today. A year later ICOMOS

\textsuperscript{25} The first cultural heritage ordinance was enacted in the seventeenth century in Sweden (Glendinning 2013, p. 38).
was established to implement this Charter and on 16 November 1972, the General Conference of UNESCO adopted the World Heritage Convention. To the background of these international collaborative campaigns, UNESCO produced the Declaration on the Principles of International Cultural Cooperation (1966), according to which ‘every people has the right and the duty to develop its culture’ (Article I.2) and the principles of this declaration ‘shall be applied with due regard for human rights and fundamental freedoms’ (Article XI.2). This signifies an early international awareness of the link between culture and human rights. During the 1970 UNESCO Conference Cultural Rights as Human Rights, this link was further explored. However, subsequently engagement with these ideas came to a halt until the late 1990s.

The development of these cultural heritage conservation standards needs to be considered in the context of what Winter calls the ‘consolidation of a scientistic materialism of heritage conservation’ (2013, p. 537). Influenced by the Enlightenment ideals of secularisation and rationalisation, the scientific paradigm – with its focus on gathering evidence, deducing verifiable truths and classification – became the dominant way of knowing the world and informed ideas about heritage conservation. In this context, heritage practice was increasingly professionalised. Experts, often civil servants, were tasked with advising on the protection of monuments and the disciplines of archaeology and architecture took an important role in the identification of appropriate buildings and sites to be protected. Heritage conservation had developed into ‘a field that was largely technical in its
practice, and perceived to be something that was inherently natural or “correct” (Harrison 2013, p. 98). It was understood that expert knowledge was required to determine the significance, or Outstanding Universal Value, of heritage as well as the best techniques and practices of its management and conservation. Laurajane Smith has famously argued that this way of understanding the past should be understood as a ‘hegemonic “authorized heritage discourse”, which is reliant on the power/knowledge claims of technical and aesthetic experts, and institutionalized in state cultural agencies and amenity societies’ (2006, p. 11).

Critical awareness of the social implications of cultural heritage conservation emerged in the late 1980s when ‘a shift in the heritage paradigm’ (Silverman 2011, p. 5) took place. Carman and Sørensen identify two main trends that contributed to this shift. First, the emergence of post-structuralism and post-modernity challenged knowledge claims and authority, ‘the result [of which] was that not only established practices, but also their epistemological basis, were questioned and challenged’ (2009, p. 17). The works of the historians Eric Hobsbawm and Terence Ranger (1983), David Lowenthal (1985), Patrick Wright (1985) and Robert Hewison (1987) are often cited as some of first critiques of the ways in which heritage is preserved and presented. In particular, these authors draw attention to the political, nationalistic and commercial uses of the past.
Secondly, Carman and Sørensen argue that changing politics, including postcolonialism, ‘made it possible to recognise new voices and increased appreciation of alternative claims about the past, including challenging controls over access and representations’ (2009, p. 17). In the United States, activism from Indigenous peoples for the return or ‘repatriation’ of human remains and cultural materials culminated in the *Native American Graves Protection and Repatriation Act* (NAGPRA) in 1990. Debates about repatriation are about who owns and controls the past, but also importantly, ‘about the cultural politics of identity – who has the legitimacy and power to define who a particular group or community are and who they are not’ (Smith 2006, p. 35). These are some of the first struggles that are formulated using ‘rights’ language.

Under the influence of alternative claims about the past (see for example Byrne 1991; Layton 1989; Simpson 1996), the category of cultural landscapes was added to the World Heritage Convention (Cleere 1995), the relativity of authenticity started to be recognised (Larsen 1992; Wei & Aas 1989), the concept of heritage expanded from objects and buildings to include intangible forms of heritage (Ahmad 2006; Kirshenblatt-Gimblett 2004; Prott 2001; Smith & Akagawa 2009) and the importance of community involvement started to be recognised (Moser *et al* 2002; Start 1999; Waterton & Watson 2010). Increasingly, scholars acknowledge that cultural heritage is about power and politics, legitimacy and identity, property and ownership, dissonance and contestation, and economics and development. This reconceptualisation puts people, rather than materials, at the centre of
cultural heritage practice and makes efforts to protect heritage ‘more likely to run up against what many people consider to be infringements of human rights’ (Logan 2012a, p. 241). This connection between cultural heritage and human rights was further developed from the late 1990s.

2.2.2 Consolidating the link between heritage and rights

The 50th anniversary of the *Universal Declaration of Human Rights* in 1998 created a moment of reflection, which prompted further consideration of the link between cultural heritage and human rights. UNESCO’s Culture Sector published a collection of essays on cultural rights (Niec 1998) and ICOMOS published a declaration in which it ‘affirms that the right to cultural heritage is an integral part of human rights considering the irreplaceable nature of the tangible and intangible legacy it constitutes’ (ICOMOS 1998). The recognition of the link between cultural heritage and human rights started to gain momentum in the 2000s. References to human rights were incorporated in several key international heritage-related instruments. In these references, the relationship between rights and heritage is framed in a number of different ways. Most commonly, respect for cultural diversity and cultural heritage is framed as a human right. For example, according to the *UNESCO Universal Declaration on Cultural Diversity* (2001), ‘the defense of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms’ (Article 4). The *UNESCO Declaration concerning*
the Intentional Destruction of Cultural Heritage (2003) is ‘[m]indful that cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights’. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005) celebrates ‘the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments’. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005) recognises,

that every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966).

Most recently, cultural heritage rights of Indigenous peoples are outlined in the UN Declaration on the Rights of Indigenous Peoples (2007):

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural
heritage, traditional knowledge, and traditional cultural expressions.

(Article 31)

However, several of these instruments also recognise that cultural practices can infringe on human rights. For example, in the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (2003), ‘consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments’ (Article 2).

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), states that ‘[n]o one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof’ (Article 2). The Faro Convention includes the following article:

No provision of this Convention shall be interpreted so as to: (a) limit or undermine the human rights and fundamental freedoms which may be safeguarded by international instruments, in particular, the Universal Declaration of Human Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms. (Article 6)

In this context of international instruments, which emphasise both the existence of cultural heritage rights as well as the potential of cultural heritage to violate rights, a wider set of debates on the role of human rights in cultural heritage practice started to take place. In the next sections, these debates will be explored in more detail.
2.3 Legal and discursive approaches

It is important to note that there is inconsistency and ambiguity in the use of the terms ‘rights’ and ‘human rights’. For example, the Guardian article about Xochimilco does not mention ‘human rights’ directly, but it is tagged under the keyword ‘human rights’. The *Mexico City Charter* (2010) and the *World Charter for the Right to the City* (2004) – to which the article refers – explicitly state the right to the city is a human right. However, these charters are not part of international human rights legislation\(^\text{26}\). From a legal perspective, ‘rights’ and ‘human rights’ are not the same: ‘human rights’ refer to a specific set of international legal instruments, whereas ‘rights’ include domestic legislation. However, in popular usage and understanding the difference between rights and human rights is not that clear cut. The way the terms are used in the Guardian exemplifies this.

Similarly, in the scholarly literature on cultural heritage and human rights there are different orientations to human rights, which range from strictly legal to more discursive. For example, legal scholars such as Prott (2002), Francioni (2008; 2011), Blake (2011; 2015), Borelli and Lenzerini (2012), Stamatopoulou (2007; 2012) and Lenzerini and Vrdoljak (2014) have reflected on the development of the link between cultural heritage and human rights in international law. A more discursive approach – which may

\(^{26}\) The *World Charter for the Right to the City* was developed by a group of civil society organisations in collaboration with UNESCO and UN-Habitat and adopted at the World Urban Forum of 2004.
take the legal side into account to a greater or lesser extent – is taken by an interdisciplinary group of geographers, anthropologists, archaeologists, sociologists and philosophers. Many of these debates present a reconceptualisation of ethical challenges and issues of social justice around cultural heritage that are now analysed through a human rights lens. For instance, the chapters in the volumes *Cultural Heritage and Human Rights* (Silverman & Ruggles 2007) and *Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice* (Langfield, Logan, & Nic Craith 2010) are concerned with topics such as Indigenous rights and traditional lands, heritage in times of war, access and exclusion, memory, intellectual property rights, development, and tensions between national and local, or majority and minority heritage. Yet, similar issues have been and continue to be discussed using different language, such as politics (Meskell 1998; Smith 2004), ethics (Hamilakis 2010; Ireland & Schofield 2015; Sandis; 2014; Stone 2011) and contestation (Silverman 2011). This raises one of the underlying questions of this research project: what difference does the use of human rights language make to understand issues of social justice in cultural heritage practice?

Besides the distinction between legal and discursive approaches to cultural heritage and human rights, there are two different aspects of the link that scholars and policymakers have focused on. Some are specifically concerned with whether there is, or should be, a right to cultural heritage (see ICOMOS 1998). Others are more concerned with other categories of human rights that are at stake when heritage conservation aims are pursued.
I will return to this in the next section and first take a closer look at cultural heritage rights.

2.4 Cultural heritage rights

There is no right to cultural heritage enshrined in international human rights law. However, there are several cultural rights instruments that can be interpreted as covering the right to cultural heritage (Vrdoljak 2014, p. 140). The UN independent expert and Special Rapporteurs on Cultural Rights have singled out cultural heritage as a key category of interest (see UN Human Rights Council 2011; UN Human Rights Council 2016a; UN General Assembly 2016). Most of the challenges related to cultural rights are relevant when considering the right to cultural heritage too. In the following sections, I explain the various interpretations of and challenges related to the wider category of cultural rights, and subsequently elaborate in more detail on some specific implications of a right to cultural heritage.

2.4.1 Conflicting interpretations of cultural rights

Theoretical debates about the meaning of cultural rights have featured in the areas of anthropology, political theory and more recently international law. These disciplines approach the topic differently. According to anthropologist Jane Cowan, a key divergence between anthropologists and political theorists is that the former are concerned with ‘what is’ and the latter
with ‘what ought to be’. For cultural rights this means that ‘anthropologists investigate how rights and cultural claims actually operate in the real world’ while political theorists consider ‘how they should operate’ (2006, p. 11). Scholars of international law consider cultural rights in the context of a specific set of international legal instruments. It is useful to frame debates of anthropologists and political theorists in the context of these legal instruments.

Two key international legal instruments containing cultural rights are Article 27 of the *Universal Declaration of Human Rights* (1948) and Article 15 of the *International Covenant of Economic, Social and Cultural Rights* (1966). The former recognises ‘the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits’ and the latter contains ‘the right of everyone to take part in cultural life’. Moreover, Article 13(c) of the *Convention on the Elimination of all Forms of Discrimination against Women* (1979) includes the ‘right to participate in recreational activities, sports and all aspects of cultural life’ and Article 31 of the *Convention on the Rights of the Child* (1989) states that ‘States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity’. The ‘right to equal participation in cultural activities’ (Article 5(e)(vi)) is part of the *Convention on the Elimination of All Forms of Racial Discrimination* (1966) and the *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (1990) refers to the
need to respect the cultural identity of migrant workers and member of their families (Article 31) and their right to ‘access to and participation in cultural life’ (Article 43(g); Article 45(d)).

Particular attention is paid to the cultural rights of minorities and Indigenous peoples in international legislation. According to Article 27 of the *International Covenant on Civil and Political Rights* (1966) ‘minorities shall not be denied the right … to enjoy their culture’. This right was reiterated in the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992). Cultural rights of Indigenous peoples were recognised in the International Labour Organisation’s *Indigenous and Tribal Peoples Convention* (No. 169) of 1989, and more recently in the UN *Declaration of the Rights of Indigenous Peoples* (2007). Moreover, there are a number of human rights categories that do not explicitly refer to culture, but are nevertheless important for the realisation of cultural rights, such as the rights to freedom of expression, religion, association, and education.

None of the legislation, however, provides a definition of culture or cultural rights. Stamatopoulou (2007, p. 15) suggests that the prescriptive word *the* in the phrase ‘the right to freely participate in the cultural life of the community’ in the *Universal Declaration of Human Rights* signals the assumption of a homogeneous and static culture and community. More specifically, *the* community presumably referred to the national community of the nation state. Reflecting on the lifestyle of the Canadian law professor John Humphrey, who was the principle drafter of the Universal Declaration,
Goodale has even suggested that the codification of ‘culture’ in this article was ‘tantamount to what would have been known in Canadian polite society in circa 1948 as “the arts”: those activities that are sometimes described … as “high culture”’ (2009, p. 77). A conception of culture ‘as the canon of the greatest arts’ (Nielsen 2011, p. 276) also informed the inception of UNESCO and the World Heritage Convention.

The understanding of the term culture has developed since 1948 and 1972, but can still be interpreted in multiple ways. There continue to be differences between high and low culture, dominant and subcultures, and tradition and innovation (Eide 2001, p. 290). Rodolfo Stavenhagen (1998) identified three different conceptions of culture that have each different implication for the meaning of cultural rights. Firstly, culture can be seen as capital: material heritage, monuments, artefacts, art. This understanding suggests ‘the right to culture would mean the equal right of access by individuals to this accumulated cultural capital’ (Stavenhagen 1998, p. 4). For Bagan, this material-focused understanding of culture as capital brings focus to the monuments themselves. It suggests cultural rights refer to the right to access the monuments as forms of material heritage and they should be conserved and protected accordingly. If religious or cultural practices harm the fabric or prevent the conservation of the monuments, arguably this has implications for such cultural rights.

Stavenhagen’s second conception of culture expands the first one. According to this view, culture is creativity: ‘the process of artistic and scientific creation’ (ibid). The right to culture refers to ‘the right of individuals
to freely create their cultural oeuvres with no restriction, and the right of all persons to enjoy free access to these creations in museums, concerts, theatre, libraries and so on’ (ibid). Culture is no longer a product but a process, but the types of processes that count are still suggestive of high culture, particularly if they are to be accessed in museums, concerts, theatres or libraries. For Bagan, this suggests there is more space for the appreciation of the religious process of merit making – such as the renovation and reconstruction of Buddhist buildings that alter the fabric of the monuments – if the product can be considered a ‘cultural oeuvre’. However, such reconstructions and renovations have been criticised as destructive (e.g. Houtman 1999, p. 91; Messeri 2007) by people who presumably would not regard the result as ‘cultural oeuvres’.

In the 1970s and 1980s, UNESCO adopted a more expansive view of culture which reflects Stavenhagen’s third conception of culture: culture as a way of life. Cultural rights under this conception refer to ‘the right to maintain and develop its own specific culture, no matter how it is inserted or how it relates to other cultures in the wider context’ (Stavenhagen 1998, p. 7). Bjarke Nielsen (2011) and Neil Silberman (2012) suggest this understanding represents a second stage in UNESCO’s definition of culture and is reflected in the Universal Declaration on Cultural Diversity (UNESCO 2001) and the Intangible Heritage Convention (UNESCO 2003). If merit making is part of the Buddhist way of life and includes the reconstruction and renovation of the monuments of Bagan, this more recent understanding of cultural rights suggests people have the right to engage with the site in
this manner, regardless of any harm to the fabric of the monuments. However, the question can be raised whether the practice of architectural and archaeological conservation can also be considered a way of life, to which people have cultural rights. Different ways of life can involve conflicting ideas about what is appropriate practice and behaviour. In other words, cultural rights can conflict with each other.

In the context of globalisation and cultural conflicts around the world it became increasingly pertinent to develop a better, formal understanding of cultural rights. In 2009, the UN Human Rights Council established a mandate for an ‘independent expert in the field of cultural rights’, which was later conferred to status of Special Rapporteur. The first independent expert, Farida Shaheed, did not offer a definition of culture herself, but referred to existing definitions, such as the one that can be found in General Comment No. 21 on the right of everyone to take part in cultural life, adopted by the UN Committee on Economic, Social and Cultural Rights in 2009. It states that culture encompasses,

ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives. (UN Economic and Social Council 2009, p. 3–4)
This extensive definition encompasses culture as a product, process, and way of life, arguably emphasising the latter.

It is also stressed that '[t]he concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity' (ibid). Characterising culture as an ‘interactive process’ reflects critiques of essentialist understandings of culture. Once used to describe different systems ‘within which human beings sought collective meaning and identity’ (Goodale 2009, p. 70), in a globalised world of transnational, continuously changing, and fluid cultures, many anthropologists thought it ‘better to let the idea of culture fade away than to try and bend and stretch it to the point where it no longer had any explanatory value whatsoever’ (Goodale 2009, p. 71). Yet, while ‘rootless cosmopolitan human rights scholars’ (Goodale 2009, p. 73) and anthropologists may agree about this, for many people around the world culture and cultural differences are a very real part of their everyday reality. Despite defying definition, culture is a source of identity, well-being and self-respect (Eide 2001, p. 291; Stamatopoulou 2007, p. 108). However, this does not mean all cultural features are unproblematic and intrinsically worthy of recognition and protection.
2.4.2 Cultural rights as antagonistic rights

One reason cultural rights were neglected for decades is that they are antagonistic to other human rights in several ways. Cultural rights can be directly in conflict with other human rights, such as the right to free speech and the right to property. In Bagan, cultural rights to the conservation of monuments can conflict with religious rights to merit making practices, but also with land, economic and development rights – as I will elaborate on in Chapters Four and Five. There is the potential for conflict with other ‘generally accepted policy objectives and legal doctrines’ (Francioni 2008, p. 5), such as the World Heritage Convention. The protection of what is considered of Outstanding Universal Value to Humanity may require restrictions on cultural rights to popular religious practices, such as the reconstruction and renovation of Buddhist buildings.

When cultural rights conflict with other human rights, do cultural rights override other human rights or the other way around? Such a question is central to debates about cultural relativism and universalism, which revolve around the question whether it is possible to establish universal standards considering the cultural differences among human beings. These debates have been approached from philosophical and political points of views. Philosophers have discussed and identified different degrees and categories of relativism. For example, Donnelly (2007; 2013) suggests universalism and relativism should not be seen as opposites, but as placed on a continuum, where both extreme universality and extreme relativity are dangerous. A political approach draws attention to how cultural relativism
has been used to justify political oppression. Goodale, however, suggests we will not be able to solve these debates because they are a question of intuition. Universalists support the idea of human sameness and relativists sense that people are essentially different from each other. In both cases, ‘a leap of faith is needed to go from what is apparent but trivial to what is intuited and profound’ (Goodale 2009, p. 58). Others have argued these debates are misguided because they are based on reified conceptions of culture as ‘internally uniform and hermetically bounded’ (Wilson 1997, p. 9). When culture is considered ‘a field of creative interchange and contestation’ (Cowan, Dembour & Wilson 2001, p. 5), the tension between relativism and universalism can be seen as a ‘continuous process of negotiating ever-changing and interrelated global and local norms’ (Cowan, Dembour & Wilson 2001, 6).

A second way in which cultural rights are antagonistic to other human rights is in their strong collective dimension. Human rights scholar Francesco Francioni pointed out that other categories of human rights are ‘premised on the fundamental notion of shared humanity and dignity among all members of the family’, while ‘cultural rights hinge on the perceived uniqueness of the legacy that binds a group or community to a shared memory upon which the powerful sentiment of belonging and identity is built’ (2008, p. 3). Historically, this exclusivity has been a justification for oppression and a source of conflict between groups. On a smaller scale, it can ‘nourish a sense of separation and thus hinder cultural exchange and development for fear of “contamination” of a jealously guarded tradition’
(ibid). Yet, many cultural practices or processes become meaningless unless they are enjoyed as a group (language being an example). Unresolved questions with regard to such rights revolve around who is part of which group, who speaks on behalf of the group, and who decides. An important concern is what happens if a group member’s individual rights are violated in the process of protecting collective cultural rights.

One approach to this dilemma is to emphasise the need for people to have a choice. For example, in General Comment No. 21 (UN Economic and Social Council 2009) on the right to participate in cultural life the Committee on Economic, Social and Cultural Rights asserts,

> The decision by a person whether or not to exercise the right to take part in cultural life individually, or in association with others, is a cultural choice and, as such, should be recognized, respected and protected on the basis of equality. (2009, p. 2)

The independent expert on cultural rights argued that ‘individuals always enjoy their right, inter alia, to participate or not to participate in one or several communities’ (UN Human Rights Council 2010, p. 6) and that ‘the choices of individuals and communities to feel associated (or not) with specific elements of cultural heritages should be respected and protected’ (UN Human Rights Council 2011, p. 20). Cowan criticises this approach in which ‘culture is presented as a “take it or leave it” proposition’ (2006, p. 14). She points to the heavy social costs of ‘ridicule, loss of social support, exposure to psychological or physical pressure, and very likely, exclusion or worse’ (ibid) if some individuals contest their culture, such as when a poor Hindu woman decides to marry a Muslim. Moreover, the ‘right to exit’
argument is flawed because ‘the individual is not ontologically prior to but, rather, constituted by her society, community, or culture; consequently, the right to exit is deemed either ontologically destabilizing, socially devastating, or cognitively unimaginable’ (Cowan 2006, p. 15) and it rests on the assumption that cultures are static and unchanging.

Acknowledging the various dilemmas and tensions associated with cultural rights, Bruce Robbins and Stamatopoulou draw attention to the need to move beyond cultural rights as a philosophical question and consider cultural claims as ‘a reasoned, situated political choice’ (2004, p. 422). Cultural rights ‘are a means of attaining economic and political objectives that cannot be attained more directly’ (2004, p. 426). For example, the right to self-determination can pose a threat to nation states, but by using the rhetoric of cultural rights, Indigenous peoples or minorities can make claims for autonomy, land, environmental protection, employment and education. In these situations, ‘too much is at stake’ to dismiss claims ‘on the grounds of some sort of theoretical incorrectness’ (2004, p. 422). Yet, it is important to keep in mind that it is not just marginalised groups who use cultural rights to make claims, ‘so do extractive industries, corporations, and state agents’ (Baird 2014, p. 147).
2.4.3 The right to cultural heritage

Thus, the challenge of the category of cultural rights is that it can be interpreted in multiple, sometimes conflicting, ways and it can be antagonistic to other categories of rights and policy objectives. Perhaps more than any other category, cultural rights demonstrate the philosophical contestation around human rights. This has implications when cultural rights are linked to cultural heritage, as it has been done most explicitly by the UN independent expert the field of cultural rights, Farida Shaheed. In her 2011 report, Shaheed defined the right of access to and enjoyment of cultural heritage as including,

the right of individuals and communities to, inter alia, know, understand, enter, visit, make use of, maintain, exchange and develop cultural heritage, as well as to benefit from the cultural heritage and the creation of others. It also includes the right to participate in the identification, interpretation and development of cultural heritage, as well as in the design and implementation of preservation/safeguard policies and programmes. However, varying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and communities depending on their relationship to specific cultural heritage. (UN Human Rights Council 2011, p. 20)

Such a right to cultural heritage raises thorny questions with regard to forms of cultural heritage that can be considered offensive. Shaheed’s response was that ‘cultural rights may be limited in certain circumstances, following the principles enshrined in international human rights law’ (UN Human Rights Council 2011, p. 19). However, this does not always lead to straightforward answers. Although there is largely consensus about the unacceptability of certain forms of cultural heritage, such as female genital...
mutilation or slavery, there are several other practices in a greyer area. For example, the Dutch annual St Nicholas celebration involves dressing up blackface. This practice has led to polarised and passionate debates between those who consider this a racist practice and those who defend its innocence (Hilhorst & Hermes 2016; Rodenberg & Wagenaar 2016). It is unclear whether this practice can be considered a human rights violation. Do the Dutch have cultural heritage rights to continue their tradition, despite its offensiveness to certain groups of people?

The right of access to, and enjoyment of cultural heritage does not lead to straightforward answers in the context of repatriation debates either. In a series of weblogs, Dr. Kwame-Opoku argues, ‘the human rights of the African peoples... are being violated by this persistent and defiant refusal to return cultural objects [that] were not produced by the Europeans and Americans and were not meant for their use’27. He argues the right to self-determination is denied and the right to freedom of religion is violated when objects that are necessary for religious practices are not returned. However, a different interpretation is that that these cultural objects constitute a shared heritage, to which Europeans and Americans have equal rights. Federico Lenzerini explains the conflicting rights in the context of the reburial of Indigenous human remains:

________________________

on the one hand, the right of the community specifically concerned to secure their return in order to use them according to its own tradition and cultural identity … the realization of which may eventually result in the disappearance of the relevant objects forever; second, and on the other hand, the right of the international community as a whole to retain the cultural heritage concerned for the benefit of the public in the general interest, so as to avoid that items representing an heritage of extraordinary value, which witness a stage of human history and represent a unique manifestation of cultural diversity, disappear forever. (2012, p. 186)

This tension between the interests of global and local communities is also particularly relevant in Bagan in Myanmar. Here, the buildings can be seen as unique architectural and archaeological testimonies to a former dynasty, but also as sacred Buddhist pagodas. These different values and meanings require different means of engagement: the latter understanding of the buildings in Bagan may result in practices that are considered destructive for the archaeological and architectural value. Anna Karlström has argued that ‘conservation can be a destructive force, and destruction might be needed for the conservation of certain heritage values’ (2013a, p. 142). She details a case in which one of the oldest temples of Vientiane in Laos, Vat Ou Mong, was completely demolished as an act of merit making. This demolition was considered necessary to allow the spiritual values that were stuck inside the old temple to enter the new temple that was being constructed. Do people have cultural heritage rights to ‘destroy’ ancient monuments for religious or spiritual purposes? A more provocative question on the topic of the destruction of ancient monuments for religious purposes is whether the Taliban had cultural heritage rights to destroy the Bamiyan
Buddhas? After all, the monuments were considered offensive to their religion and situated on their territory (Ashworth & van der Aa 2002; Elias 2007). This question is particularly relevant in the context of the current destruction of cultural property by the Islamic State in Iraq and Syria (Bauer 2015).

In February 2016, the current Special Rapporteur in the field of cultural rights, Karima Bennoune, submitted a report to the UN Human Rights Council in which she states that the intentional destruction of cultural heritage is a violation of human rights (UN Human Rights Council 2016a). The cases she discusses in her report – the destruction of mausoleums and ancient Islamic manuscripts in Mali, museum pieces of the National Museum of Afghanistan, Sufi historic and religious sites in Libya, several sites and objects in Iraq and Syria – have led to international outrage. However, certain popular religious practices around ancient Buddhist pagodas or the reburial of Indigenous human remains can equally be considered ‘intentional destruction of cultural heritage’. Should these be considered human rights violations?

These kinds of dilemmas have led some to question the usefulness of the human rights discourse to address ethical challenges in cultural heritage practice. Lynn Meskell (2010) and Ian Hodder (2010) have pointed out some critical weaknesses of this link. Meskell (2010) questions whether universalist human rights approaches are appropriate in the case of cultural
heritage. She questions whether heritage conflicts ‘occupy the same register as rights to life, liberty, and security of person’ (2010, p. 841), and if they do, whether the international legislative framework is the most pragmatic way to address them. She argues that deferring to human rights discourse simply means passing responsibilities ‘up the chain to an ever increasing transnational bureaucracy and governance’ (2010, p. 848), whereas negotiating conflicts on the ground with local communities is more effective. Moreover, referring to international legislation could escalate tensions and create expectations that cannot be fulfilled. There is in fact a lack of success in the prosecution of human rights violations and it seems even more unlikely that prosecution of violators of cultural heritage rights will be successful. Furthermore, the legal structure of the UN operates among nation states and not minorities within nation states, while the latter are most likely to suffer cultural rights violations.

Taking a different perspective, Hodder points out that the discussion about cultural heritage rights often focuses on ownership and descent: ‘it has been assumed that descent from cultural groups in the past endows groups and persons in the present with the ownership and thus care of cultural heritage’ (2010, p. 866). Anthropologists and archaeologists have rejected the idea of direct descent and fixed boundaries between peoples and cultures. Therefore, Hodder argues, cultural heritage rights based on descent cannot be supported. He suggests a different way to define the right to cultural heritage: ‘Everyone has a right to participate in and benefit from cultural heritage that is of consequence to their well-being, and everyone
has a duty towards others with respect to that right’ (2010, p. 876). However, the Taliban could argue that the Bamiyan Buddhas are of consequence to their well-being, and that for them the most appropriate engagement with this heritage is its destruction. Does everyone have a duty to respect this right?

Despite their critique, Meskell and Hodder have acknowledged the potential usefulness of a lingua franca of justice and democratic argument and the potential power of human rights rhetoric. Hodder suggests the discussion of rights in relation to cultural heritage can be useful, ‘not because I expect legally binding cultural heritage rights to be enforced any time soon, but because rights talk may promote a broader, people-based dialogue about values that are important in the evaluation of claims about the past’ (2010, p. 866). Similarly, Rosemary Coombe and Lindsay Weiss argue that heritage scholars can only recognise the struggles of rights-based discourse and practice in heritage politics if they take an anthropological rather than a formalist and institutional understanding of rights: ‘heritage scholars might explore the ways in which human rights vocabularies provide rhetorical resources with which to protest injustice, insist upon new forms of social justice, and assert distinctive understandings of human dignity in diverse social fields’ (2015, p. 53).

The way in which the Guardian used (human) rights language to discuss the situation of the slum-dwellers in Xochimilco in Mexico can be seen as form of protest against injustice. In Xochimilco, the issue is less related to cultural heritage rights, but more to a range of other rights (to
livelihood, property, health, water, development) that are at stake in the context of heritage conservation. This brings us to the second aspect of the link between cultural heritage and human rights, which has recently received increased attention: whether human rights-based approaches to heritage conservation can provide a means to address and prevent such violations.

2.5 Human rights-based approaches

In Xochimilco, heritage conservation may not be the direct cause of rights violations, but it does enhance the precariousness of the slum dwellers’ lives and raises questions of to what extent heritage conservation is complicit or justifiable, considering their situation. In other cases, heritage conservation has directly led to rights violations. This may be the case when heritage protection led to evictions, development restrictions or exclusion from religious and spiritual practices. For example, Reiner Buergin (2002) has drawn attention to the plight of the Karen ethnic minority group who live in the Thung Yai Naresuan Wildlife Sanctuary in Thailand. The Karen have been considered a disruptive factor in this World Heritage site and their lives have been characterised by violence, forced eviction, denial of access to land and agricultural activities, and exclusion from decision-making. Amund Sinding-Larsen (2012) has shown how World Heritage listing of Lhasa in Tibet came with governance structures and modernisation processes that denied Tibetans access to their cultural and religious sites, as well as to
participation. Confiscation of property and restrictions on movement are common human rights violations in the World Heritage listed Old City of Jerusalem (Assi 2012).

Such collateral damage is increasingly considered unacceptable and there have been suggestions that the adoption of human rights-based approaches could be a means to prevent rights violations in heritage conservation contexts. For example, Janet Blake looked at the evolution of international cultural heritage law and identified the increasing ‘participatory approach’ as ‘one of the key means for democratizing heritage practice, which, given the foundational role of democracy in modern human rights regimes, is also one that is a sine qua non of a human rights-based approach to heritage management and safeguarding’ (2011, p. 201). In her official capacity as the UN independent expert on cultural rights, Farida Shaheed recommends states to ‘take measures to encourage professionals working in the field of cultural heritage to adopt a human rights-based approach and to develop rules and guidelines in this respect’ (UN Human Rights Council 2011, p. 21) and in a recent report of August 2016, her successor Karima Bennoune set out a human rights approach to the intentional destruction of cultural heritage (UN General Assembly 2016).

Stefan Disko argues that the 2007 United Nations Declaration on the Rights of Indigenous Peoples ‘should provide the basic normative framework’ for an adoption of human rights-based approaches to the World Heritage Convention (2012, p. 16) and Josephine Gillespie suggests that human rights-based approaches could present a means to address tensions
between development and conservation at the World Heritage site Angkor in Cambodia (Gillespie 2013, p. 3159).

The idea of human rights-based approaches emerged in the development sector in the 1990s, when various aid agencies published statements, guidelines and documents on the incorporation of human rights in their mandates (Uvin 2010, p. 165). In this sector, human rights-based approaches reframe the nature of a development problem and focuses on rights instead of needs. This has different implications because ‘needs can be met out of charitable intentions, but rights are based on legal obligations’ (Cornwall & Nyamu-Musembi 2004, p. 1417). Human rights-based approaches involve the identification of rights-holders and corresponding duty-bearers and ‘works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations’ (UN OHCHR 2006, p. 15). Furthermore, they call to attention the processes by which development aims are pursued. At every step of the process human rights need to be respected and fulfilled (Uvin 2010, p. 170).

The Nobel Prize laureate and economist Amartya Sen is often identified as a key intellectual influence behind this approach. In his seminal work *Development as Freedom* (1999), Sen argues development is about more than economic growth and emphasises the importance of capabilities

---

28 With development, I refer to ‘an ensemble of institutions, policies, disciplinary formations and, most importantly, practices of intervention in the alleviation of poverty’ (Gregory et al 2009, p. 155).
and freedoms. His ideas were incorporated by the United Nations Development Programme (UNDP) in its Human Development Report of 2000, which deals with relations between human rights and human development. Following a call from the UN Secretary-General Kofi Annan in 2003, all entities of the UN Development Group adopted the *Statement of Common Understanding on Human-Rights Based Approaches to Development Cooperation and Programming*. This Common Understanding underlines the following:

(1) All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declarations of Human Rights and other international human rights instruments.

(2) Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

(3) Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights. (UN Development Group 2003)

UNESCO also adopted this *Common Understanding* and its Strategy on Human Rights prioritises the integration of human rights-based approaches in all of its programmes. This suggests implicitly that the integration of this approach also applies to the World Heritage Convention. In October 2015 the link between World Heritage and human rights became more explicit as the World Heritage Committee endorsed the *Policy Document for the integration of a sustainable development perspective into*
the processes of the World Heritage Convention, or the World Heritage Sustainable Development Policy (WH-SDP) (UNESCO 2015b), which refers to human rights widely. The aim of the policy is to align the World Heritage Convention with the sustainable development policy frameworks of UNESCO and with the wider UN environment, and particularly with the 2030 Sustainable Development Agenda. This Agenda identifies three dimensions of sustainable development: environmental sustainability, inclusive social development and inclusive economic development. The WH-SDP calls on States Parties to recognise and promote the potential of World Heritage properties to contribute to these three dimensions, without compromising their Outstanding Universal Value. Respecting, protecting and promoting human rights is considered a key part of inclusive social development. The WH-SDP states,

To ensure policy coherence in conserving and managing World Heritage properties, States Parties should commit to uphold, respect and contribute to the implementation of the full range of international human rights standards as a pre-requisite for effectively achieving sustainable development. (UNESCO 2015b, p. 7)

It is further detailed that to this end ‘the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights’ (ibid), World Heritage properties should exemplify ‘the highest standard for the respect and realization of human rights’ (ibid), and technical cooperation and capacity building need to be promoted to ensure effective rights-based approaches. Follow up activities include the development of indicators, dissemination and mainstreaming,

The Advisory Bodies to the World Heritage Convention have long engaged with and campaigned for the adoption of human rights-based approaches to World Heritage conservation. IUCN has been particularly active in its use of human rights-based approaches (Oviedo & Puschkarsky 2012). The idea of natural World Heritage sites as pristine areas of wilderness means that people living in protected areas are often viewed as a disruptive and potentially destructive factor. This has led to ‘forced displacement, restrictions of access to culturally meaningful places or to resources critical for survival and oppressive enforcement measures including cases of cruel, inhuman or degrading treatment or punishment and arbitrary detention’ (Oviedo & Puschkarsky 2012, p. 287). Isolated communities in protected areas have often struggled with a lack of health care, education, infrastructure, and tenure security and a limited participation in the processes that affect their lives. Moreover, ‘the benefits resulting from World Heritage status are often not shared equitably’ (ibid). There are examples of such problems at natural World Heritage sites across the world, from the Thung Yai Naresuan Wildlife Sanctuary in Thailand (Buergin 2002) that I mentioned earlier to the Royal Chitwan National Park in Nepal (McLean &
Straede 2003) and the Kenya Lake System in the Great Rift Valley (Oviedo & Puschkarsky 2012).

As early as 1996, IUCN adopted policy resolutions with regard to the recognition of the rights of Indigenous peoples in protected areas (IUCN 1997), but increasing recognition of the social impact of protected areas led to an extension of the use of rights language in the 2000s. At the Third IUCN World Conservation Congress in 2004, Resolution 3.015, ‘Conserving Nature and Reducing Poverty by Linking Human Rights and the Environment’ was adopted (IUCN 2004). Following this resolution, the IUCN Environmental Law Centre prepared a publication about the potential of rights-based approaches, which was picked up at the Fourth World Conservation Congress in 2008, were Resolution 4.056 ‘Rights-based Approaches to Conservation’ was adopted (IUCN 2008, see also Greiber et al 2009). In 2009, IUCN joined seven other international conservation groups to create a Conservation Initiative on Human Rights (CIHR) to promote the integration of human rights in practice and policy (IUCN 2010) and in 2012 IUCN adopted its Policy on Conservation and Human Rights for Sustainable Development (IUCN 2012).

Compared to these developments in the realm of natural World Heritage conservation, initiatives on the cultural side of World Heritage lag behind. Yet, here too recently a splurge of activity can be seen. In 2007 ICOMOS Norway started the project Our Common Dignity: Towards Rights-Based World Heritage Management, with the aim ‘to increase understanding and identify effective approaches to clarifying the rights
dimension in World Heritage work’ (ICOMOS Norway 2014, p. 1). This continuing work, funded by the Ministry of Climate and Environment in Norway, was expanded in 2011 into an international collaboration between ICCROM, ICOMOS and IUCN and led to recommendations on policy and operational guidance, and an investigation of enabling factors. Side-events were organised at the World Heritage Committee sessions in Doha (2014), Bonn (2015) and Istanbul (2016), to raise awareness and provide updates of the work. As part of this project, ICOMOS Norway developed a pilot training course on heritage and rights for mid-career heritage management practitioners, which was held for the first time in March 2016. Moreover, ICOMOS India and ICOMOS South Africa have established a collaboration on a pilot project (2015–2017) in which the role of rights in a selection of World Heritage sites in India and South Africa will be investigated (ICOMOS India 2015; Taruvinga and November 2015). Meanwhile, Australia ICOMOS, in collaboration with the Australian Committee for IUCN and Deakin University, also picked up the topic of human rights-based policies and organised a Round Table in October 2015 that brought together heritage practitioners working across Australia to discuss barriers and enabling factors for the implementation of this approach. Some of the barriers identified during this Round Table include the political sensitivity of rights, conflicting rights, and legal limitations.

Concerns about such barriers have been expressed elsewhere. For example, Alexandra Denes and Tiamsoon Sirisrisak (2013) question how rights-based approaches to heritage management – with their emphasis on
participatory processes – can be implemented in highly hierarchical societies such as Thailand. Here, there is little rights consciousness among local communities, who do not mobilise to demand their cultural rights.

Based on his analysis of the *Forest Rights Act* of 2006 in India, Prakash Kashwan (2013) points out how realities on the ground contrast with the celebration of rights by these organisations and employs a political economic perspective to draw attention to ‘the differences of interests, endowments, and authority among key actors, and how such differences shape the distribution of decision making powers in the policies and programs related to nature conservation’ (2013, p. 614). He argues that the adoption of an expansive set of rights leads to conflicts between the goals of social justice and those of conservation and suggests that a minimalist set of inalienable rights would be more effective. Moreover, he suggests that more dialogue should take place with rights movements and more attention should be paid to local solutions for specific regional settings (Kashwan 2013). This echoes Meskell (2010), who – in the context of archaeology – argued that local solutions to conflicts are more appropriate than a universalist rights language.

**2.6 Concluding remarks**

As we have seen, despite several concerns, the link between World Heritage and human rights is slowly becoming more established and institutionalised. The activities of ICOMOS and IUCN, the work of the
independent expert and Special Rapporteurs on cultural rights, and of course the Guardian picking up on the topic are indicators of this. Moreover, the last 15 years witnessed the remarkable mentioning of human rights in all of UNESCO’s Culture Sector’s conventions and declarations and there has been a surge of academic interest in the link between human rights and cultural heritage. Human rights language is used to make claims to ownership and control of the past as well as to draw attention to unjust side-effects of heritage conservation.

However, a closer and more critical look at these connections between cultural heritage and human rights raises several conceptual and practical questions. Cultural rights can be interpreted in contradictory ways and they can conflict with other rights and policy objectives. Claiming the right to cultural heritage as a human right suggests cultural heritage is ultimately and inherently a good thing. In reality, there are countless examples of forms of cultural heritage that are regarded offensive or unacceptable to certain groups. Some forms of cultural heritage even directly violate human rights; for others, the verdict is less clear. Claiming that the destruction of cultural heritage is a violation of human rights can be problematic, considering that there are several cultural heritage practices that entail destruction – or what can be conceived of as such. The types of ‘destruction’ that are acceptable is not evident. Moreover, addressing the unjust side-effects of heritage conservation could result in compromising the very aims of conservation, as well as lead to a range of conflicts of interests and rights.
Nevertheless, using human rights language to make claims to and around cultural heritage can be a powerful and important way to reframe conflicts and to talk about justice. It could be argued that this is useful in itself. However, to go beyond changing language and enforce respect for human rights and hold violators to account can prove to be very difficult, as is the topic of Chapter Six. This raises the question whether engagement with human rights is the most effective and appropriate way forward for World Heritage conservation.

My research interrogates this link between World Heritage and human rights at one specific site, Bagan in Myanmar, where such conceptual and practical questions are pertinent. In the next two chapters, I will further introduce Bagan. In Chapter Three, I will consider how Bagan was constituted as archaeological and national heritage and in Chapter Four, I will explain what makes Bagan a living heritage site. In the context of the World Heritage nomination, different understandings of Bagan are subject to hierarchies that prioritise archaeological and architectural values. I argue that this has several implications for cultural heritage rights.
3 Bagan as archaeological and national heritage

3.1 Introduction

In order to understand the dynamics of human rights and World Heritage conservation in Bagan, it is necessary to provide a historical overview of Bagan to show how it came to be framed as an archaeological and national heritage site. The first period I discuss is the period between 1886 and 1948, when Burma was a British colony. With the establishment of British Burma, European ideas about architecture, archaeology and art history were imported and they continue to be influential today, both in Myanmar and internationally through instruments such as the World Heritage Convention.

Secondly, I discuss the post-independence period until the 1988 uprising. Following around a decade of democracy, Burma came under control of the military regime of General Ne Win in 1962, who led a socialist and isolationist policy. The ideas about heritage conservation that were introduced in British Burma continued to be applied, although compared to other monumental sites around the world, archaeological and conservation work in Bagan remained modest. During the period between 1988 and 2011, a new military regime actively used heritage for nation-building around a Bamar and Buddhist identity and Bagan played a central role. However, the approaches taken by the junta were contrary to international standards. They led to much controversy and a World Heritage nomination of Bagan in
1997 was referred. The last period that I will shortly discuss is the period post-2011. In this context of social, economic and political reforms, the new government of Myanmar formally aims to follow international standards in the areas of heritage conservation and human rights, and a new attempt is being made to nominate Bagan for the World Heritage List. Since the first attempt, the situation of Bagan has changed and ideas about heritage conservation have developed. This has implications for the current nomination. Most notably, international interest in intangible and living heritage and the influence of a rapidly growing tourist industry create new challenges.

In discussing these four periods, I pay particular attention to how Bagan is approached by three key actors: The Burmese Buddhists or local communities, the state, and international heritage-related institutions. Importantly, none of these key actors are homogenous units. There is much internal variation and contestation. Nevertheless, there is continuity in the spiritual significance of Bagan for many Burmese Buddhists, for whom the buildings are primarily pagodas. There is also continuity in the archaeological and architectural significance for international heritage-related institutions, from the Archaeological Survey of India in British Burma, to UNESCO and ICOMOS post-independence, for whom the buildings are primarily monumental.

Monument has a different meaning from the word pagoda. Pagoda is a term used for a type of religious building, while monument refers to a building or structure that commemorates a person or an event and is of
historical significance (see also Choay 2001). As Penny Edwards summarised:

Where colonial archaeology came to perceive sites such as Pagan as a means of accumulating knowledge, and their preservation as a means of both marking historical time and enhancing a global, imperial ‘heritage’ to rival that of competing empires, both Buddhism and the popular religion of nat-worship valued temples and shrines for their dynamic properties as conduits of spirituality, gateways to change in individual circumstance, and – through their construction and embellishment – as generators of merit. (2004, p. 292)

These meanings are not mutually exclusive: Surviving Buddhist temples or sacred buildings can commemorate events of the past. Indeed, arguably Bagan’s pagodas commemorate the kingdom of Bagan. However, as I will show throughout this thesis, different actors have prioritised different definitions, reflecting different worldviews.

The state takes different forms throughout these periods: from the British colonisers to independent democratic Burma under President U Nu. From the socialist military regime of General Ne Win to the State Law and Order Restoration Council (SLORC) and the State Peace and Development Council (SPDC). In March 2016, President Thein Sein handed over his power to U Htin Kyaw of the National League for Democracy (NLD), the first civilian president of Myanmar since 1962. The approach of the state to Bagan varied depending on the government in charge, but interest in Bagan as a heritage site remained relatively modest until the SPDC started a major reconstruction and renovation campaign in the 1990s.
3.2 Bagan in British Burma

When the British colonised Burma, the Irrawaddy Valley was under the rule of the Court of Ava which had been leading several expansionist campaigns. In 1767, the Burmese sacked the Siamese capital Ayutthaya in the Chao Praya Valley and in 1785 they occupied the kingdom of Arakan, on the Bay of Bengal. Further expansion to the east was made impossible by the new Siamese regime in Bangkok, and the kings of the Court of Ava focused on the west instead. In the early nineteenth century, several military campaigns led to consolidation of power in Manipur and Assam, which bordered on British administered territory. The Burmese had an appetite for further expansion into India, which led to the First Anglo-Burmese War between 1824 and 1825. This war was bloody and expensive and eventually resulted in the Treaty of Yandabo. The Court of Ava was defeated, had to cede several provinces to the British and pay indemnities (Myint-U 2001). The Second Anglo-Burmese War in 1852 was ignited by a dispute over customs payments in Rangoon and led to further ceding of Burmese territory to the British. The subsequent period saw several reforms under king Mindon, which can be seen as an attempt to adapt to the rapidly changing global conditions. However, the British were concerned with further economic expansion and the need to curb the influence of the French in the region. The area of Bagan was incorporated in the British Empire following the Third Anglo-Burmese War (1885–1886), which led to the overthrow of the Burmese monarchy and the dismantling of existing institutions of political
authority. Burma would be ruled as a province of British India until 1937, when the British constituted a policy a limited self-rule (Myint-U 2001).

During this time, Bagan came under the influence of the Archaeological Survey of India (ASI) and this ‘was Burma’s first formal introduction to Western ideas of scholarship and conservation’ (Chapman 2013, p. 175). Europeans took their way of knowing the world – influenced by the Enlightenment and modernity – to their colonies outside of Europe (Cohn 1996), including India and Southeast Asia, where ancient architectural remains were spread through both coastal and inland areas. Interest in these remains was fuelled by the aesthetic ideals of the Picturesque movement of the early 1800s, which celebrated vernacular architecture, abandonment, loss and decay (Guha-Thakurta 2004; Weiler 2013). Initially, knowledge generation about the past was left to individuals and scholarly societies, such as the Batavia Society of Arts and Sciences in Indonesia, established in 1778 (Boomgaard 2006), and the Asiatic Society of Bengal, established in 1784 (Kejariwal 1988). However, from the mid-19th century, this research became institutionalised within state structures. In British India, the retired British military engineer Alexander Cunningham successfully lobbied to establish the Archaeological Survey of India (ASI) in 1861. As its first director, Cunningham ‘led the foundation for archaeology coupling architectural remains with epigraphic and other written data’ (Moore 2013, p. 247). The ASI was concerned with the recording and examination of major archaeological sites in British India and published regularly on its findings. Moreover, following the adoption of the Ancient
Monuments Act in 1904, the ASI became responsible for the conservation of historic sites, the development of site museums, and the collection of archaeological specimen (Menon 2015; Sengupta 2013).

Through the ASI, the disciplines of archaeology and architectural conservation deployed new techniques of excavation, anastylosis and photography to interpret cultures and histories and to advance the infrastructure of imperial rule (Winter 2013, p. 537). These disciplines became means of surveillance and control, which ‘gave the imperial powers a perspective on the dominated’ (Díaz-Andreu 2007, p. 210). Moreover, archaeology and architectural conservation were used to legitimise colonial rule by confirming the superiority of the coloniser. Colonisers were presented as ‘the saviours and guardians’ (Lahiri 2001, p. 274) of the remnants of the past and colonial natives were presented as disconnected from the monuments and inferior to their builders. Benedict Anderson suggests that,

In Burma, what was imagined was a secular decadence, such that contemporary natives were no longer capable of their putative ancestor’s achievements. Seen in this light, the reconstructed monuments, juxtaposed with the surrounding poverty, said to the natives: Our very presence shows that you have always been, or have long become, incapable of either greatness or self-rule. (2006, p. 181)

Remarkably, the first Europeans who visited Bagan and who left a record of their impressions did not find the site particularly interesting. Paul Strachan points out that western mercenaries had been servicing various kings and
dynasties in the region for at least two centuries, but ‘such men of action were rarely men of letters and left no record of their impressions of the former capital’ (1989, p. 2). Accordingly, one of the first comments about Bagan by a European was from diplomat Michael Symes, who visited Bagan in 1795 and observed that ‘scarcely anything remains of ancient Pagaham, except its numerous moulding temples, and vestiges of an old brick fort’ (cited in Strachan 1989, p. 2). Colonel Henry Havelock visited Bagan around the time of the first Anglo-Burmese War of 1826 and was even less impressed. He noted that ‘there is little to admire, nothing to venerate, nothing to exalt the notion of the taste and invention of the people that the traveller might have already formed in Rangoon or Prome’ (cited in Strachan 1989, p. 2). Civilian envoy John Crawford, who visited Bagan in 1827, showed more appreciation: ‘the vast extent of the ruins of Pagan, and the extent and splendour of its religious edifices, may be considered by some as proofs of considerable civilization among the Burmans’ (cited in Strachan 1989, p. 3). The first Europeans to survey some of the principal monuments of Bagan were the Scotsman Henry Yule, who published his findings in his book Narrative of a Mission to the Court of Ava (1855), and the Swiss Pali specialist Emanuel Forchhammer, who published his two-volume Notes on the Early History and Geography of British Burma in 1884.

In Bagan, active conservation efforts did not seriously commence until the Viceroy of British India, Lord Curzon, visited Burma in 1901 – he recommended the establishment of a museum in Bagan and instructed the conservation of the Mandalay Palace – and the Ancient Monuments Act was
passed in 1904 (Edwards 2004, p. 323; Keck 2015). The director of the Burmese chapter of the ASI from 1902 to 1915 was the Burma-born Chinese Taw Sein Ko. In 1915, he presented a list of sites that needed protection. The list, however, provoked objections from the Buddhist population: protection meant that that Buddhist tradition of refurbishing the buildings would be limited or controlled. The backlash was so strong that ‘after repeated attempts to “explain” the policy, the 1915 list of protected monuments was withdrawn’ (Edwards 2004, p. 328). Edwards quoted Taw Sein Ko’s successor, the French amateur archaeologist Charles Duroiselle predicting,

“calmer times . . . when it will be possible to persuade the people that the Act is not against but, on the contrary, in favour of their own religion ... I have no doubt that the time is not far off when the people, grasping thoroughly the meaning of the Act, will have no more objections, in the very interest of their religious buildings, to their being placed under protection”. (cited in Edwards 2004, p. 328)

This is an early indication of the tension between different ways of valuing the buildings of Bagan, which continues to play an important role today.

Support for the Burmese chapter of the ASI remained modest. Lord Curzon was of the opinion that ‘monuments that are likely to be visited by large numbers of people have a prior claim to those in out of the way parts’ (cited in Lahiri 2001, p. 270). He did not explain what he meant with visitors, but presumably not worshippers at religious shrines and possibly only European travellers, administrators and scholars (ibid). Burma was an
appendage to the larger entity of British India, which was the centre of political and economic interests (Chapman 2013, p. 193), and Bagan ostensibly did not receive a large number of ‘visitors’. William Chapman argues that ‘the British had two clear priorities in Burma: to create a counterbalance to French expansion in Indochina and to promote trade and development’ (2013, p. 163). Heritage conservation was considered less important. In contrast, the locations of Taj Mahal, Angkor, and Borobudur in the geopolitical centres of British India, French Indochina (Cambodia), and Java of the Dutch East Indies made those monuments more susceptible to European attention. This had various implications. For example, the French moved monasteries from Angkor in 1909 because they were considered an eyesore and in the mid-1920s the region officially opened as an ‘Archaeological Park’ (Winter 2007). In Bagan, the forced resettlement of a community and the development of tourism infrastructure did not take place until the 1990s.

Nevertheless, the type of research that was done in Bagan was embedded in certain disciplines and hierarchies of knowledge that had developed in Europe. Studies of ancient monuments, like elsewhere in India and Southeast Asia, strongly focused on architecture, sculpture, epigraphy, and the establishment of lineages of kings. In Bagan, the most important primary sources take the form of about 400 stone epigraphs, the majority of which are associated with specific monuments and list the circumstances of their construction. The most important secondary sources regarding Bagan’s history are a series of chronicles with the Glass Palace Chronicle
being the most influential. Court officials compiled this chronicle in 1829 and much of it was drawn from earlier chronicles. The *Glass Palace Chronicle* identifies two important foundation dates of Bagan – 107 AD and 849 AD – with associated myths (Tin & Luce 2008 [1923], p. 28–31; 55). However, there is a long gap between the legendary founding of Bagan mentioned in the *Glass Palace Chronicle* and the first historical records (Stadtner 2013, p. 22). The earliest date attested by an engraved stone found at the Kubyaukgyi temple in Myinkaba is 1113 AD and the earliest ruler of Bagan for which there is concrete evidence is king Anawratha (r. 1044–1077). Small Buddhist terracotta votive plaques bearing his name can be found throughout much of the country and he is credited with unifying and creating a kingdom roughly the size of contemporary Myanmar.

The discrepancy between the empirical evidence offered by inscriptions and votive plaques and that of the chronicle tradition is one of the reasons historians treat the chronicles as an untrustworthy source. Historian Michael Aung-Thwin (1985, p. 12) contends that the information in the chronicles should only be used in a supplemental form because the compilers would have been concerned with legitimising the dynasty under which they lived. Moreover, Stadtner warns that the chroniclers naturally focused on ‘temples that were under worship at the time and overlooked the thousands that had fallen into disuse’ (2013, p. 20). However, as I elaborate on in next chapter, the marginalisation of the chronicles and the focus on architecture, sculpture and epigraphy and creates a particular history of
Bagan, which disregards indigenous understandings of the pagodas.

Edwards argued,

The colonial ‘restoration’ of monuments, and their relocation to anterior time, often involved the levelling of indigenous forms of expression and belief that had, until the formalization of the colonial conservation programme, remained one of the major arenas of action outside of direct British intervention and control. The Archaeological Survey’s investment in imperial knowledge thus constituted a direct divestment of localized, spiritual power. Conversely, colonial authorities considered local practices of ‘investment’ in the present and future of the donor by ‘adding on’ to existing monuments through new glass mosaics, coats of paint and electric lighting as a defacement of the ‘original’ and a divestment of historical value. (2004, p. 292)

This ‘subordination of an indigenous interpretation of the world to European perceptions’ (Ray 2008, p. 422) was by no means limited to Bagan. Nayanjot Lahiri has examined statements of British colonial officials that indicate their ‘impatience or inability … to confront and grapple with the alien world of Indian religious complexes’ (2001, p. 270). She uses the example of the Bijapur mosque, which was ‘whitewashed, … prayer matting had been spread, lamps suspended, and prints pasted on the back wall’ (cited in Lahiri 2001, p. 270) after it was handed over to Muslims. This incited the Director-General of the ASI at the time, John Marshall, to suggest that no mosques or other buildings should be returned, unless there are strict regulations with regard to their use. The Viceroy Lord Curzon agreed: ‘having saved them from the destructive carelessness or the uncultured neglect of white men, we were not going to hand them back to the dirt and defilement of Asiatic practices’ (cited in Lahiri 2001, p. 271).
According to Denis Byrne (2009; 2014), this impatience or inability to deal with religious interpretation can be explained by the ‘disenchantment of the European mind’ (2014, p. 12), which followed the Protestant Revolution and the Enlightenment. Although the magic, supernatural, and immanence had been integral to medieval Christianity, following the Reformation, the notion of supernatural agency in the world was repudiated and instead faith was put ‘in a mechanistic and rational way of knowing and in neat dichotomies such as the secular and the sacred, culture and nature, biology and society’ (Byrne 2014, p. 40). This way of knowing the world, in which the idea and practice of heritage conservation is firmly embedded, continued to be the official approach to Bagan, even after Burma gained independence in 1948. However, because the interest in Burma and Bagan had been relatively modest, popular religious practices were not seriously disrupted. People continued to make merit at the pagodas and attend pagoda festivals.

### 3.3 Bagan in independent Burma

Following independence, a civilian government ruled Burma under the Anti-Fascist People’s Freedom League of President U Nu. Almost immediately the new country faced ethnic and communist insurgencies and fell into a civil war. In 1958, after a decade, the military felt it was necessary to intervene and staged a coup. The military Caretaker Government significantly stabilised the country and organised elections in 1960. U Nu
was re-elected but the situation of Burma did not improve. The economy suffered and rebellions increased. The military staged a second coup in 1962, which marked the beginning of decades of military-led rule in Burma. General Ne Win and his Burma Socialist Programme Party aimed to strengthen the socialist base of the country by eliminating foreign dominance and nationalising many businesses and industries. Opposition parties were banned and Burma was isolated from the outside world. This had disastrous consequences for the economy and ethnic rebellions remained unresolved (Charney 2009; Myint-U 2006; Steinberg 2013; Topich & Leitich 2013).

During this period, the Archaeological Survey in Burma underwent several reorganisations and was eventually renamed the Department of Archaeology\textsuperscript{29}. In 1957, the \textit{Antiquities Preservation Act} was passed, which set out the duties of Department of Archaeology and called for an inventory of historic sites. Archaeology and heritage conservation in Burma retained the ‘focus on texts and strongly empirical recording’ (Moore 2013, p. 249) that was introduced by the Europeans. The continuation of colonial heritage management practice in postcolonial states can be seen across Asia and Africa, where ‘fundamental legislation and the way sites are conserved and managed still closely resemble the patterns and principles established during the colonial era, which focus primarily on monumental heritage’

\textsuperscript{29} In 2007, the department was renamed Department of Archaeology, National Museum and Library. I will keep on referring to it as Department of Archaeology in this thesis.
(Ndoro & Wijesuriya 2015, p. 139). This can partly be explained by the fact that these colonial heritage management systems acquired strong allies in international and global institutions, such as UNESCO, ICCROM, ICOMOS and IUCN, which reinforce ‘the heritage definitions, practice, and systems emanating from the colonial period’ (Ndoro & Wijesuriya 2015, p. 131). Moreover, Byrne suggests alternative worldviews were suppressed in Asia by modernising reformers who considered Western-style rationalism as key to shake off colonial masters and popular religion ‘as an obstacle to science and economic-technological progress’ (2012, p. 297).

The coups of 1958 and 1962 dramatically changed the situation in Burma, but the work of the Department of Archaeology remained uninterrupted, if modest. Burmese historians and archaeologists continued to be employed by the Department of Archaeology, although foreigners had to leave. This included the scholar Gordon Luce (1889 – 1979), who is known for his ‘lifelong contribution to the preservation of ancient sites in Burma and his study of the early period of Pagan’ (Chapman 2013, p. 178). Married to a Burmese woman and distancing himself from colonial society, Luce worked closely together with his Burmese friend Ba Shin and brother-in-law Pe Maung Tin and published a five-volume compilation of inscriptions in 1956. Even as he was forced to leave Burma in 1964, he continued publishing on Burmese history and in 1969 he completed his final volume, *Old Burma-Early Pagan*.

The isolation imposed on Burma by the military government was ‘selective and (over time) modified’ (Steinberg 2013, p. 68). Foreigners like
Luce had to leave the country, tourism was discouraged, media was censored and foreign investment was forbidden, but foreign aid was accepted in certain circumstances. This included the situation in Bagan following an earthquake on the 8th of July 1975, which caused significant damage to at least one hundred monuments. The earthquake measured 6.0 on the Richter scale and its epicentre was 38 kilometres from Bagan’s city walls. The damage included the collapse of towers, cracks in arches, terraces and domes, and mural paintings and stucco flaking off. UNESCO and the UNDP offered to help the Burmese government, which appointed an Advisory Committee for the Restoration of Bagan and started a campaign of repairs. The UNDP contributed almost one million US dollars. This amount was matched by Burmese commitments, cash and in-kind, by the government, pagoda trustee committees, and voluntary contributions from people all over Burma. The work included seismological investigations, training, equipment purchase, documentation and continued repairs and conservation. École francaise d’Extrême Orient architect Pierre Pichard was a principal contributor. He went to Bagan in 1978 and began an inventory of the monuments. The inventory ended up consisting of 2,157 monuments and was published in a nine-volume collection (Pichard 1992–2001). It included information about geography, architecture, photographs, and references to epigraphic and historical sources. It is still the most complete inventory in existence today (Chapman 2013, p. 181–182; Hudson 2008, p. 555; Messeri 2007; Pichard 2013, p. 238), but it does not elaborate on the spiritual significance of the pagodas.
In the context of civil war, military coups and the deterioration of the economy, heritage conservation activities were not a priority. The new Department of Archaeology continued the work initiated by the Archaeological Survey of India, but under the military rule of General Ne Win foreign involvement was kept at bay. International aid in conservation was only accepted after the 1975 earthquake. International institutions, in this case UNESCO, UNDP and ICCROM, promoting universalist approaches to heritage, were ready to help to ensure the conservation and protection of Bagan. Their involvement continued into the 1990s, when a UNESCO-Japan Trust Fund project worked on a master plan to guide future work in Bagan. The plan was concerned with the designation of protective zones, conservation and inventorying, preparation of legislation, support for training, tourist impacts, infrastructure needs, and landscaping and forestry plans (Chapman 2013, 182; Ishizawa & Kono 1989). However, following civil unrest and a military coup in 1988, the Myanmar government became increasingly distrustful of foreign involvement and worked outside of UNESCO’s recommendations.

3.4 Bagan under SLORC and SPDC

The 1988 uprising was the result of economic and political frustration that had built up over time. The spark was an argument in a tea shop that turned violent and the disproportionate reaction of the police led to further demonstrations and calls for regime change and democracy. The nation-
wide uprising was violently suppressed and an estimated 3,000 people died. On 18 September, a military faction launched a coup to shore up military control and to prevent the disintegration of public order. This put the State Law and Order Restoration Council (SLORC) in control. SLORC organised elections in May 1990, which were won by the National League for Democracy (NLD). However, the military refused to hand over power, arguing that a constitution needs to be drafted first, which took till 2008 to be completed (Seekins 2009). In 1997, SLORC changed its name to State Peace and Development Council (SPDC).

Under the SLORC/SPDC, political and economic policies changed. Socialist policies were abandoned and the private sector and international trade started to be encouraged. Regional relations were cemented, particularly with China. In order to attract more tourists, 1996 was declared Visit Myanmar Year and in 1997 Myanmar joined the Association of South East Asian Nations (ASEAN) (Charney 2009; Ricklefs et al 2010; Steinberg 2013). Further re-engagement with the international community is reflected by the ratification of the World Heritage Convention in 1994 and the submission of a World Heritage nomination of Bagan 1997, a theme I will return to shortly.

Despite these attempts to become more internationally connected and develop the economy, the brutal oppression of the 1988 uprising and the disregard for the results of the 1990 election had given Myanmar a negative reputation, particularly in the eyes of West. This reputation was enhanced by Aung San Suu Kyi, one of leaders of the NLD, who won the Nobel Peace Prize.
Prize for her fight for democracy in 1991. Suu Kyi spent the largest part of the 1990s and 2000s under house arrest and called for the application of economic pressure through sanctions to delegitimise the regime. The West considered her the only legitimate ruler of Myanmar. She became an icon of democracy and human rights and her situation drew more attention to Myanmar than it might otherwise have had. Certainly, the human rights situation in Myanmar was deplorable, but several scholars have pointed out that states with an equally bad or worse record did not receive the same scrutiny (Steinberg 2013, p. 185). Myanmar, however, was framed as a pariah state and the country became subject to several international sanctions.

Meanwhile, the SLORC/SPDC attempted to create ‘unity’ in a country that was disintegrating as a result of ethnic rebellions and popular uprisings. An active nation-building campaign around a Bamar and Buddhist identity was initiated. Gustaaf Houtman (1999) calls this the Myanmarification project: ‘At the heart of the Myanmarification project is the search for a single dominant Myanmar national culture that could be respected both internally and externally’ (1999, p. 91) and this included enforcing a singular view of the past. The government sought legitimacy through Buddhist merit making projects and association with Burmese kingship (Philp 2010). This had contradictory results for heritage conservation in Bagan. The prestige of a World Heritage status was sought, but at the same time the standards required for such as status were not sufficiently taken into consideration.
Myanmar’s nomination of Bagan in 1997 was referred back by the World Heritage Committee, which meant additional information was required. The universal significance of Bagan was not questioned, but the World Heritage Committee ‘stressed the need for the State Party to define the core protected area and a meaningful buffer zone and adopt measures to ensure their effective enforcement’ (UNESCO 1997, p. 7). Moreover, concern was expressed over ‘the impact of the golf course located in the vicinity of the archaeological site and of the recently upgraded road which cuts across the site’ (ibid). Myanmar was urged to apply for preparatory assistance,

> to enable an international expert team to carry out a mission to assist the authorities in defining the boundaries of the protection area and buffer zone, as well as to review the master plan and the national legal and management framework to ensure the site’s protection, authenticity and integrity. (ibid)

However, Myanmar never requested this assistance.

Referrals of nominations are common. Six other cultural properties were referred back during the 1997 session. All but Myanmar provided the necessary information and were inscribed on the World Heritage List in the same year. However, for Myanmar the referral is a sensitive issue and surrounded by much misunderstanding. Phyo, a Burmese expert working for an international organisation, told me the referral was a loss of face for the Myanmar government and it is often understood as a rejection rather than a request for more information (Phyo, Burmese expert, July 2014; see also Weise 2016, p. 8). During one of UNESCO’s capacity building
workshops in Bagan in August 2014, both Burmese participants and a number of foreign experts used the language of rejection to discuss the 1997 nomination, prompting the UNESCO representative to correct them and point out it was a referral. The language of rejection can also be found in popular media. For example, in a recent article in the popular news magazine *The Irrawaddy* it was mentioned that ‘the 1996 [sic] push for World Heritage recognition was rejected’\(^{30}\) and in *Time Magazine* it was stated that ‘UNESCO … declined Burma’s 1996 [sic] application for Bagan to join the World Heritage list’\(^{31}\).

Around the time of the referral, Myanmar ceased to engage with UNESCO. Linda, a foreign heritage professional working for a large international organisation, argued that although the referral is sometimes perceived as a direct cause of this disengagement, it was not the referral that led to the halt in activities for the next 15 years. Rather, the broader political context in Myanmar and its strained international relations at the time need to be taken into account (Linda, foreign expert, December 2014). Since the violent crackdown on the 1988 protests and the denial of the outcome of the 1990 elections, Myanmar had become subject to a range of sanctions and boycotts by Western governments. In 1996 and 1997, around


the time of the submission of Bagan’s World Heritage nomination, the United States and the European Union imposed a new series of sanctions (Pedersen 2008, p. 24–34).

Moreover, in the 1990s, a series of controversial developments took place in Bagan. This included the forced relocation of a community living in Old Bagan. After their eviction, several tourist resorts and a new Archaeological Museum opened to replace them. The museum is a large, two-story building under a three-tiered roof that consists of badly lit rooms with poorly organised artefacts and the exhibitions have not been changed since the museum opened in 1998. Moreover, the junta started a large merit making project which involved the reconstruction and renovation of thousands of pagodas without any archaeological or architectural evidence. Accordingly, Pichard argues that Myanmar no longer wished to continue with the World Heritage nomination, ‘probably in order to avoid external inspections and subsequent criticism by the international community’ (2013, p. 247).

Myanmar continued to defy international advice and opinion and a second controversial structure opened in 2005: The Nanmyint Viewing Tower (see Figure 9). The 60-meter high viewing platform has been criticised for being an eyesore in the landscape, but the government justified
it for creating an opportunity for tourists to enjoy the view without having to climb the monuments. However, the tower is too high for good views over the monuments, which just appear as tiny dots and the restaurants, offices and luxury hotel at the foot of the tower suggest ‘there are other types of economic interest involved’ (Messeri 2007, n.p.). A third controversial structure opened in 2008: the reconstruction of what was supposedly the royal palace of king Anawratha (see Figure 10). However, the original location and appearance of this palace are unknown and this building has been inspired by the nineteenth-century royal palace in Mandalay (Chapman 2013, p. 185; Pichard 2013, p. 245).
Thus, at the same time that international recognition was sought through the submission of a World Heritage nomination of Bagan, international standards for heritage conservation were not taken into account. This may seem contradictory. However, presumably Buddhist merit making practices, nation-building projects, and heritage conservation were not considered mutually exclusive to the generals who had been ‘largely insulated from the outside world. All had been trained in Burma’ (Steinberg 2013, p. 94). They would have had little exposure to the international heritage conservation standards. The government just applied their own interpretation of heritage conservation, which blended Buddhist practices with what little knowledge about archaeology and architectural conservation they had into a new hybrid form (see Bhabha 1994). Importantly, the reconstruction and renovation of pagodas was supported
and contributed to by many Buddhist locals, who were (and are) equally largely unfamiliar with the international discourses of conservation.

International institutions strongly disapproved of these developments for reasons I explore in the next chapter. It is important to note that international critique of countries that do not comply with international heritage conservation standards is as selective as international critique on human rights violations. With the Western icon for democracy and human rights, Aung San Suu Kyi, under house arrest and ample attention to human rights violations elsewhere in the country, what happened in places like Bagan attracted more scrutiny than it may have otherwise. Yet, when the political stakes are different, countries get away with human rights violations and ‘inappropriate’ heritage practices alike. Meskell gives the example of the demolition of an Ottoman fort by Saudi Arabia, an incident ‘that received little coverage and, since Saudi Arabia is an important American ally and oil provider, it is unlikely to cause many ripples.’ (2002, p. 565). It is thus necessary to ‘acknowledge the hypocrisy of specific organizations and institutions, especially the media, in their outcries to implement certain global policies’ (Meskell 2002, p. 564). Nevertheless, such international scrutiny does have an influence. Following a change of government in 2011, policies changed and international expert advice with regard to heritage conservation in Bagan is actively sought.
3.5 Post-reform Myanmar

In May 2008, a referendum was held on the constitution that had been drafted since 1993. It was followed by elections in 2010. Neither the referendum nor the elections were considered free and fair and predictably the government’s Union Solidarity and Development Party won. General Thein Sein was appointed as President. The NLD had refused to participate in the election because it was scheduled one week before Aung San Suu Kyi’s house arrest expired. There were few expectations from this change of government in which the military remained in charge. The wave of reforms that followed took many by surprise: Unions and public demonstrations were allowed; censorship laws were eased; a human rights commission was established; a new foreign investment law passed and hundreds of political prisoners were released. In April 2012, by-elections were held for 45 seats and they were regarded free and fair. This time, the NLD and Aung San Suu Kyi participated and won 43 of the seats. Although this gave the party only about 8 percent of the seats in the national parliament, it was an important symbolic victory. International sanctions started to be lifted. The elections of November 2015 were also considered credible and the NLD won them by a landslide. In March 2016, U Htin Kyaw was inaugurated as the first civilian president of Myanmar in 50 years. Despite these developments, the military remains largely in control. The 2008 constitution contains clauses that ensure that the military holds a quarter of the seats in the parliament, certain key positions are taken by the military, and the constitution can only be changed when more than three-
quarters of the parliament votes in favour, effectively giving the military veto right over such changes. The constitution also prevents Aung San Suu Kyi from becoming president herself (McCarthy 2016).

From 2012 – in the context of Myanmar’s reforms – UNESCO and Myanmar started to cooperate again. Two projects, funded by Italy and Norway, have been carried out in relation to the World Heritage Convention. One project focused on natural and the other on cultural heritage. As a result of the Norwegian funded project, *Safeguarding Natural Heritage in Myanmar within the World Heritage Framework* (February 2013 – February 2015), seven natural sites were added to the Tentative List (UNESCO Bangkok 2015). The Italian funded project, *Capacity Building for Safeguarding Cultural Heritage in Myanmar* (February 2012 – March 2013), was concerned with three main components: technical capacity building for the conservation and management of cultural heritage sites, training in the use of Geographic Information Systems (GIS), and the support of World Heritage nominations of the Pyu Ancient Cities and Bagan (Unakul & Rellensmann 2013; UNESCO Bangkok 2016). The Pyu Ancient Cities became a serial nomination consisting of the archaeological remains and monumental brick Buddhist stupas of the walled and moated cities of Halin, Beikthano and Sri Ksetra. These cities are the remains of the Pyu Kingdoms that flourished between 200 BC and 900 AD, prior to the Kingdom of Bagan (Meskell 2015; Stargardt 2016)

In June 2014, the Pyu Ancient Cities were successfully nominated for the World Heritage List, becoming Myanmar’s first World Heritage site. My
informants gave several explanations about why the Pyu Ancient Cities were nominated before Bagan. Importantly, the World Heritage nomination of the Pyu Ancient Cities was considered easier than that of Bagan. Unlike Bagan, the sites are not major tourist destinations and have not been subject to controversial restorations and reconstructions and international critique. Moreover, the Pyu Ancient Cities are older than Bagan. Several informants suggested that the government wanted to nominate its heritage sites in a chronological order. For others, it was unclear whether Myanmar wanted Bagan to become a World Heritage site at all. Initially, the government was not particularly enthusiastic about nominating Bagan because they have many business interests in the site that could be compromised by the restrictions that come with World Heritage listing.

The government may have wanted to test the waters in its reengagement with the World Heritage system, and the successful nomination of the Pyu Ancient Cities has motivated the government to proceed with the re-nomination of Bagan. From 2014, activities for this purpose officially started and have been funded by a combination of international donors, including Italy and Switzerland. Currently, the National Federation of UNESCO Associations of Japan (NFUAJ) is funding the
ongoing project _Safeguarding Bagan within the World Heritage Framework_.

Meanwhile, for many Burmese Buddhists, if anything, the spiritual significance of Bagan has been enhanced. As a result of the reconstruction and renovation campaigns of the junta, many pagodas have been revived and are suitable for worship again, new pagoda trustee committees have been installed and new pagoda festivals are organised. Moreover, as living standards slowly increase, more Buddhists from across Myanmar and the wider region are able to visit Bagan as a pilgrimage site. This enhancement of popular religion at Bagan contrasts with formal state policy, which is now directed at following international conservation standards. Reconstruction and renovation as merit making projects are no longer permitted. The framing of Bagan as global heritage has become the priority and as I will demonstrate in the rest of this thesis, this can have several implications for human rights.

### 3.6 Concluding remarks

At the beginning of this chapter, I demonstrated how Bagan was constituted as an archaeological and architectural heritage site with the arrival of European interpretations of the monuments. Many ideas that developed

---

during this time are still central to heritage conservation today, certainly the
focus on ‘scientistic materialism’ (Winter 2013) that leaves little room for the
numinous (Byrne 2014). The buildings of Bagan officially remained
archaeological monuments even after independence, although heritage
conservation was not a priority and the spiritual significance of the pagodas
to Buddhists was hardly affected. As part of a nation-building campaign in
the 1990s and 2000s, the military government attempted to emphasise both
the national heritage and the Buddhist significance of Bagan. The item
added to UNESCO’s Tentative World Heritage List in 1996 was ‘Bagan
Archaeological Area and Monuments’, not ‘Bagan’s Temples and Stupas’,
but the reconstruction and renovation activities were merit making projects
and followed Buddhist ideas about conservation. In the eyes of the
international heritage community this was conflicting and controversial.

Since 2014, formal preparations for the new World Heritage
nomination of Bagan have started. Myanmar’s new government aims to
complete this nomination with aid from UNESCO and foreign experts, in
accordance with international standards. Significantly, these international
standards have developed since the last nomination. There has been an
increasing recognition of the diversity of ways in which people understand,
value and practice cultural heritage as well as of the role heritage
conservation plays in (economic) development. In other words, there has
been a growing appreciation of the roles people play in cultural heritage
practice and in what ways it affects their lives. Policies, programmes and
projects reflect this in the use of the language of community participation, living heritage, and increasingly, rights.

In the next chapter, I explain what makes Bagan a living heritage site and elaborate on new developments in international heritage policy that recognised the significance of such heritage. However, as result of underlying hierarchies of knowledge, the degree to which these developments have an influence on Bagan’s nomination is limited. Arguably, such hierarchies influence which cultural and religious rights are at stake.
4 Living heritage and hierarchies of knowledge

4.1 Introduction

The Buddha travelled to the hill overlooking Bagan on the opposite bank of the Ayeryarwaddy River. He saw a white heron, a black crow, a lizard and a frog in a tree and prophesised that at this site the city of Bagan would arise 651 years after his death (Tin & Luce 2008 [1923], p. 29). This prophecy is an important foundation myth of the kingdom of Bagan. It is popularly known and can also be found in the *Glass Palace Chronicle*. Countless other myths and legends play important roles in contemporary Bagan. Besides myths and legends, several popular religious practices – from Buddhist merit making activities to spirit worship – are central to the way many people engage with the site. Yet, they are often disregarded by historians and archaeologists. The focus of most English-language publications about Bagan is history, architecture, archaeology and art history. Consultation of the literature prior to fieldwork made me familiar with lineages of kings and typologies of architecture, but not with the contemporary spiritual significance of the pagodas. The history of Bagan can be found in the works of Luce (1969) and Aung-Thwin (1985), whose work is primarily based on inscriptions. Several architects and art historians, such as Strachan (1989), Sujata Soni (1991), Pichard (1992–2001), Charlotte Galloway (2013), and Stadtner (2013) have researched the evolution of and influences on architectural styles and mural paintings in Bagan. Archaeologists (e.g. Gutman & Hudson 2004; Hudson, Nyein &
Maung 2001) provided further details about the past of this ancient site. The focus on architecture and archaeology has led to a concern with the conservation of the monuments (e.g. Ishikawa & Kōno 1989; Schwartzbaum et al 1988; and more recently Messeri 2007; Mezzino et al 2016; Weise 2016). However, it presents only one part of Bagan’s story.

In this chapter, I explain what makes Bagan a living heritage site. Most of the material I discuss in the first section is based on observations at the pagodas and interviews and informal conversations with pagoda trustees, monks, and pilgrims (including, Zaw, Thiha, Nyan, Thura, Zarni, Min, Maung, Naing, Myat, Win, Myint, Hein, Soe, and Pyay. See Appendix). Rather than discussing archaeological findings or typologies of architecture, pagoda trustees told me about myths, ghosts, spirits, and festivals.

Understanding the spiritual significance of Bagan sheds a different light on the controversial reconstructions and renovations of the 1990s and 2000s. When architectural and archaeological values are prioritised, this work is problematic and, alongside urban expansion, pagoda renovation has been identified as a threat to the future of Bagan (Moore & Maung 2016, p. 149). Yet, when merit making is considered the ultimate goal, the reconstructions and renovations can be encouraged. Myths, legends, spirits, ghosts and other supernatural phenomena determine which sites are visited and which pagodas are appropriate for worshipping and renovation. Conventional conservation standards are at best irrelevant, and at worst contrary to what is considered appropriate engagement with the site from this point of view.
There have been recent developments in the realm of cultural heritage that acknowledge or even celebrate living and intangible aspects of heritage. However, I argue that despite the increasing use of the terminology of living heritage and cultural rights, there is much ambiguity around their meaning and an underlying hierarchy of knowledge privileges a material-focused understanding of heritage. As a result, these recent developments have only limited influence in the current World Heritage nomination of Bagan, which is dominated by architects and archaeologists.

4.2 Living heritage in Bagan

4.2.1 Reconstructions and renovations

On Wednesday 24 August 2016, an earthquake of a 6.8 magnitude caused damage to almost 300 pagodas in Bagan, making its severity comparable to the 1975 earthquake. State Counsellor Aung San Suu Kyi warned not to rush the restoration of the damaged temples and to seek advice from UNESCO. A Burmese UNESCO representative was cited in The Irrawaddy magazine saying ‘[w]e very much hope there will be no pressure to “glitter up” or overly renovate these damaged temples, as happened under previous governments, which would ruin their cultural value’\textsuperscript{33}. These

comments are made in the light of renovations and reconstructions of the 1990s and 2000s.

In 1995, ‘Secretary One’ of the military regime, Khin Nyunt, approved a public media campaign to raise funds for restoration work in Bagan. The funds raised allowed the complete ‘reconstruction of marginally identifiable ruins’ and ‘the excavation and speculative reconstruction of structures beneath brick mounds’ (Hudson 2008, p. 558). A list of individual structures had been compiled by the Department of Archaeology from which donors could select one to direct their funds to. Between 1995 and 2008, 1,299 monuments were completely rebuilt and 688 were partially rebuilt (Hudson 2008, p. 553). Donors came from all walks of life: private companies, military and police officers, government departments, international religious groups (particularly Buddhist associations in Korea, Japan, Taiwan, China, and Singapore), service organisations, Burmese expatriates, but also local

Figure 11 Freshly painted pagoda (by Anne Laura Kraak)
individuals and families. Donations could be substantial or very modest and the main motivation was merit making. Stupas were regilded, new bricks replaced old ones, and the pagodas received new finials and fresh coats of paints, sometimes obscuring ancient murals (see Figure 11).

The reconstructions and renovations were heavily criticised internationally as well as by Burmese archaeologists and historians because the archaeological evidence had been very poor and the methods and materials used, such as concrete and steel, were inappropriate (Weise 2016, p. 6). Burmese historian U Than Thun described the work as ‘blitzkrieg archaeology’ and declared that ‘by any standard of archaeological excavation and restoration, the work done was ignoble’ (cited in Pichard 2013, p. 239). The potential of archaeological research was compromised by the reconstruction of monuments on earth mounds and the reconstructions and renovations have been disapproved as ‘a Disney style set on a historic-religious site’ (Messeri 2007). According to Kai Weise, ‘[t]he main problem is that these interventions are not documented anywhere which makes it difficult to monitor the deterioration of the concrete and steel’ (2016, p. 6). Houtman argued that the regime was ‘destroying the very culture it proclaims to preserve for by all accounts Pagan has been systematically archaeologically ruined’ (1999, p. 92). He is not alone in characterising the reconstructions and renovations as destructions. Take for example the titles of these articles published in Western media: ‘From
Ruins to Ruined\(^{34}\) and ‘Bagan: Beautified or Sacrificed?’\(^{35}\). Moreover, there have been accusations of the use of forced labour in the name of Buddhist merit making practice (Houtman 1999, p. 123) and there are concerns about the safety of the new constructions. The recent collapse of a monument after heavy rainfall is a sign that at least the latter concern may be justified\(^{36}\).

Beatrice Messeri (2007) has specifically pointed out how the work was contrary to certain sections of the Venice Charter of 1964, which is the international code of professional standards for the conservation and restoration of monuments and sites. This Charter remains influential, even though several more recent documents exist that reflect updated views on conservation. Messeri points to Article 6: ‘No new construction, demolition or modification which would alter the relations of mass and colour must be allowed’, Article 9: ‘Its aim is to preserve and reveal the aesthetic and historic value of the monument and is based on respect for original material and authentic documents’, and Article 12: ‘Replacements of missing parts must integrate harmoniously with the whole, but at the same time must be distinguishable from the original so that restoration does not falsify the artistic or historic evidence’. By extension, the question has been raised


whether Bagan would still meet the requirements for World Heritage listing. Despite the more expansive definition of authenticity proposed in the *Nara Document on Authenticity* (ICOMOS 1994), to which I will return to shortly, Janette Philp suggests that ‘reconstruction and renovation work … would fail to meet the “test of authenticity in design, material of workmanship” as defined in the Operational Guidelines for the Implementation of the World Heritage Convention’ (2010, p. 92).

Those involved in the preparation of Bagan’s World Heritage nomination that I interviewed were not that pessimistic, although they had varying opinions on the extent to which future renovations and reconstructions should be allowed. For example, Alex, a foreign heritage expert trained in architecture and engineering, suggested that if Myanmar wants a World Heritage status, it should be willing to adjust certain things. This does not have to mean that renovations should be prohibited; rather the monuments could be divided in different categories. There could be a specific category of ‘living monuments’ that is subject to different rules. Certain renovations may be permitted at these pagodas, whereas a strictly architectural conservation approach may be applied to monuments in a different category. When I asked his opinion, Alex stressed that he found the discussion about reconstructions and renovations is sometimes too superficial and he was mostly concerned about the safety implications of the reconstructions, particularly in this earthquake-prone area (Alex, foreign heritage expert, December 2014).
According to Thant, a Burmese urban planner based in Yangon, there is no problem with using private funds for the reparation of monuments:

… Because in our Buddhist society it is a big merit if they donate to a pagoda. The government adopted this policy. Which is to me very acceptable. They can both be combined. The restoration activities were started by the important people of our country and sometimes they made … well, not mistakes, but they did not understand the rules of renovating such old structures. They could not understand. It was just that the Buddhist concept and the modern concept of renovation were a bit different. (Thant, Burmese expert, January 2015).

Chit, a Burmese heritage expert trained in architecture, told me she believes the reconstructions and renovations are not that sensitive anymore because it is now generally recognised that the value of Bagan lies in the whole landscape rather than in the individual buildings. Nevertheless, she too is of the opinion that further renovations should be controlled (Chit, Burmese expert, December 2014). In a recent interview with The Irrawaddy magazine, the director of Myanmar’s World Heritage Site Committee, Than Zaw Oo, alludes to the negotiations about such renovation work by referring to an exchange of information, where the Burmese explain their traditional technology to ‘conservation organizations’, but also request guidance:

Our country has a Buddhist majority. The community is very generous and has over-repaired Bagan’s ancient temples. We explained this to conservation organizations and they understood. We showed them evidence of the renovations that were done after the 10th century. But in recent years, we have let them know our methods for restoring
temples with regard to tradition and ancient technology. We let them check our restoration work and request their guidance as well.\(^{37}\)

Importantly, the reconstructions and renovations are of less concern to many local people. During a community engagement workshop in Bagan, many issues were raised, but the reconstructions and renovations were not one of them (Linda, foreign expert, December 2014). This is reflected in the reactions of Bagan locals I spoke with, who had diverging and ambivalent views on the issue. When asked, the leader of a local civil society group told me he disapproves of the reconstructions and reconstructions and would rather have ‘professionals’ maintain the pagodas (Kyaw, Bagan local, January 2015), while one of the pagoda trustees told me that if it were up to him, he would give the crumbling walls inside the temple a completely new layer of paint (Min, Bagan local, August 2014).

Supposedly ‘professionals’ could apply a layer of paint, but that does not mean the standards of the Venice Charter are followed. It remains slightly ambiguous what some of my informants mean when they say they disapprove of the reconstructions and reconstructions. It does not always automatically follow that international architectural conservation standards are preferred – if there is even awareness about them. Rather, the reconstructions and reconstructions are sometimes disapproved as a symbol

of the previous unpopular military regime, the associated displacement, forced labour and other hardships.

I suggest that international conservation standards, such as those outlined in the Venice Charter and in the *Operational Guidelines for the Implementation of the World Heritage Convention* (UNESCO 2015a), do not represent local values or interests any more than the questionable work of the former military regime. If anything, they represent them less. A closer inspection of myths, merit making, Buddhist philosophy and popular
religious practices in Bagan reveals a very different way of understanding and valuing the buildings.

4.2.2 Myths and merit making

The stone inscription of Dhammayazika stupa mentions a king who was searching for auspicious marks that could indicate a site to make merit and build a stupa. He saw a column of white vapour the size of a tree rising out of the ground and Dhammayazika stupa was built on this spot. Art historian Stadtner points out that this myth is not recorded in later chronicles and ‘is one more indication that later chronicles had little access to myths original
to the classic Pagan period’ (2011, p. 222). He notes that Bagan ‘has really two histories, one built on information gleaned from contemporaneous inscriptions and the monuments themselves and the other fashioned around myths developed in the centuries following the city’s eclipse in the 14th century, preserved in chronicles’ (2011, p. 214).

The myths of the chronicles are often dismissed or ignored by historians and archaeologists (as they are in Pichard’s inventory). They cannot be found in reports by ‘foreign experts’, such as the those of the Japan Consortium for International Cooperation in Cultural Heritage (2011) and UNESCO (Unakul & Rellensmann 2013; UNESCO Bangkok 2016), and the experts I interviewed often had limited or no knowledge of them. However, I argue that the power of such myths should not be underestimated. They are key to understanding the contemporary significance of the heritage site to locals, pilgrims and tourists. Myths not only guide which monuments are visited, but also influence which monuments receive attention and resources from Buddhist donors and are considered appealing places for merit making or other spiritual activity. In several cases, myths were partly what drove donors to choose to renovate one pagoda but leave others alone.

Examples of monuments associated with myths are Hnet Pyit Taung, Alodawpyi, Htilominlo, and Dhammayangyi. Hnet Pyit Taung in Nyaung U is associated with the legendary king Pyusawthi who fought four mythical creatures that threatened Bagan. The mythical creatures were a great boar, a great bird, a great tiger and a flying squirrel. The Hnet Pyit Taung pagoda
marks the place where king Pyusawthi defeated the great bird. This is
commemorated today at the pagoda by a combination of painted panels, a
statue of the bird, a diorama of king Pyusawthi shooting the bird, and a well
of which it is said that it marks the site where the bird fell to earth after being
shot (see Figures 12 and 13). Although a system of meditation caves
connected to the pagoda is believed to be from the Bagan period, the
current Hnet Pyit Taung pagoda is actually not more than about one
hundred years old. This does not bother locals and pilgrims in the least.
Pilgrims visit the pagoda daily (the surrounding shops and restaurants
testifying to this) and a board of fifteen pagoda trustees ensures the upkeep
of the pagoda and organises an annual pagoda festival. On the other hand,
the Department of Archaeology has not listed this pagoda as one of its 422
protected monuments38 and foreign tourists hardly visit it. The pagoda is not
mentioned in tourist guide books and it is away from main roads. While this
temple may not be valued for its archaeology or architecture, its connection
to Myanmar’s mythological history, however recently recognised,
nevertheless makes it an important heritage site for many Burmese people.

38 The Department of Archaeology had a list of 422 monuments that were considered
important. The list was prepared in 1997 with Japanese support and the
monuments were divided into three ‘Grades’. The 34 most significant monuments
were listed under Grade One. Grade Two and Grade Three consisted of 100 and
288 monuments respectively. Their significance was determined based on ‘the
quality and state of the mural paintings, the architecture as well as the stucco
ornamentation’ (Weise 2016, p. 7). This list was being re-evaluated during my
fieldwork and a different inventory is being created for the World Heritage
nomination.
There are other monuments in Bagan where connections to mythological history have been made very recently. Alodawpyi (see Figure 14) is known as the wish-fulfilling pagoda because according to the legend, king Kyanzittha used to pray at this temple before going to war and his wishes were always fulfilled. The pagoda was neglected for centuries, but in the 1990s a charismatic monk and General Khin Nyunt started to actively promote the temple. Rumours circled that army staff obtained promotions after praying at this pagoda and soon it became a key pilgrimage site with various associated rituals. These rituals include the offering of nine different types of fruits and counting a certain amount of beads before visiting the pagoda (Stadtner 2011, p. 22; Thanegi 2004, p. 12). Moreover, the pagoda now has a board of eight trustees who organise one of the largest pagoda festivals in Bagan, which lasts five days and involves donations to over 500 monks, all night sermons, offerings of 5,000 pieces of fruit, a procession through Nyaung U, and zat pwe performances. Zat pwe is a traditional form of entertainment, involving music, dance, song, comedy and theatre – usually based on Jataka tales (stories of Buddha’s previous lives) and nat (local spirits) stories – combined in an all-night variety show (Diamond 2000; Geok Yian 2011). People from everywhere in Myanmar attend the festival and its popularity is partly due to the connection with the famous and charismatic monk who is involved in its organisation. Alodawpyi became the only monument in Bagan that is air-conditioned and the bright lighting inside the temple will probably have an adverse effect on its murals (see Figure 15). An employee of the Department of Archaeology, Htet Aung, told me in
an interview that his department had and has little authority and capacity to prevent these revivals of pagodas when powerful generals and monks set their minds to it (Htet Aung, Burmese expert, August 2014).

Htilominlo (Figure 16) underwent a similar revival as Alodawpyi. The legend associated with Htilominlo can be found in the Glass Palace Chronicle. King Narapatisithu preferred his youngest son to succeed him as king, but the custom was for the elder son to become the successor. The king solved this by setting up a white umbrella in between his five sons, making a vow and saying: ‘May the white umbrella bend toward him who is worthy to be king’ (Tin & Luce 2008 [1923], p. 151). The umbrella bent toward his youngest son, who became the next king and was henceforth known as Htilominlo (meaning ‘chosen by umbrella and king’). He built the Htilominlo temple at the place where the umbrella chose him. According to
Min, the trustee I spoke with, Htilominlo’s recent renovation and revival was the initiative of a rich donor who found the associated myth appealing. In 2000, the donor wanted to organise a hti-hoisting ceremony (replacing the umbrella on top of the pagoda) and realised there were no trustees. He appointed eight trustees to the pagoda, who have been organising a pagoda festival since 2007. Min proudly told me how he helped to clear out the temple from the bushes, built the new asphalt road that leads towards its entrance, and organised access to water coolers and an electricity connection (Min, Bagan local, August 2014).

Not all myths associated with Bagan’s pagodas are considered appealing. The story associated with the largest temple in Bagan, Dhammayangyi, is dark and mysterious and no donor has been willing to renovate it (see Figure 17). The story goes that the cruel king Narathu had murdered his wife, son and uncle and built Dhammayangyi because he was
concerned about his karma. He wanted the bricks of the pagoda to be built so tightly together that it would be impossible to fit a nail between two bricks. Workers who failed at this task had their arms chopped off. The inner corridor of the temple has been bricked up and the reason for this remains a mystery. One explanation is that the superstructure of the pagoda is so heavy that bricking up the inner corridor was necessary to carry its weight. However, various more sensational theories are in circulation: Sri Lankan invading troops would have bricked up the corridor to humble the king or an alchemist-magician monk walled himself in (Lat 2010, p. 135; Stadtner 2013, p. 248). Contrary to pagodas like Hnet Pyit Taung, Alodawpyi, Htilominlo or other actively venerated and recently renovated monuments, there are no golden Buddha statues (Figure 18) adorned with colourful electrical lights and umbrellas in Dhammayangyi. While some pagodas contain shrines full
of fresh flowers and incense, the Buddha statues in Dhammayangyi are covered in bat droppings, the temple being home to dozens of bats (Figure 19).

The difference between the current states of Dhammayangyi and Htilominlo has not much to do with how old the monuments are or what the typology of their architecture is. Neither is it related to any proven historical events. Myths have influenced their relative contemporary spiritual significance and state of renovation. Although there are hundreds of pagodas in Bagan that have no associated stories, simply dismissing or ignoring the myths and legends that do exist, as historians and archaeologists often have tended to do, misses a significant part of Myanmar's living heritage.

The recent revivals of pagodas such as Hnet Pyit Taung, Alodawpyi and Htilominlo and the associated rituals and festivals were supported or initiated by the previous military regime as part of a larger nation-building exercise and can be seen as examples of invented traditions (Hobsbawm & Ranger 1983). These revivals are considered inappropriate or even
destructive in the eyes of those supporting conventional conservation standards. However, because the subjects of such refurbishments are Buddhist pagodas with spiritual significance rather than historic monuments of a past with which continuity has been broken, the rules of international regulations such as the Venice Charter are not of much concern (there are more recent, arguably less influential, heritage standards that are more appropriate for this situation, something I will elaborate on shortly). The controversial reconstructions and renovations of the 1990s and 2000s – often driven by myths – can be considered part of the living heritage of Myanmar. For a better understanding of this, it is necessary to take a closer look at the relationship between the Theravada Buddhist philosophy and conservation.
4.2.3 Theravada Buddhism and conservation

Scholars such as Byrne (1995; 2009; 2012; 2014), Gamini Wijesuriya (2001), Anna Karlström (2005), Maurizio Peleggi (2012) and Neel Kamal Chapagain (2013) have examined the relationship between Buddhism, popular religious practice and heritage conservation. While Wijesuriya points to specific chapters in the sixth century Buddhist treatise *Mayamatha* that are devoted to monument conservation in Sri Lanka (2001, p. 258), other scholars elaborate on the incompatibility of Buddhist philosophy and conservation. In normative or canonical Theravada Buddhism there are three main characteristics of existence: suffering, impermanence and insubstantiality. The concept of impermanence has a particularly significant effect on conservation, since it constitutes its opposite. Impermanence holds that everything is in constant flux and all that arises must decay.

*Figure 19* Buddha image at Dhammayangyi (by Anne Laura Kraak)
Therefore, materiality is of low concern. Buddhists accept material change and buildings are often left to ruin. The concept of insubstantiality, or the absence of a Self, holds that there is no inherent essence, soul or value in anything. Authenticity is irrelevant in material that is impermanent and insubstantial. The idea that life is suffering is partly a result of the other two precepts: even happiness is impermanent. Desire is what makes people suffer and the cessation of all desire is the only way to end the suffering, and thus escape from the cycle of rebirths and reach nirvana. Karlström explains how this Buddhist philosophy is contrary to the idea of heritage conservation:

Inherent in the heritage idea is a desire for eternal existence, an insatiable search, a craving for pleasures or challenges fuelling the life flame. In Western societies this desire is encouraged, whereas in a strictly Buddhist worldview such desire is one of the main reasons for unsatisfactoriness. The ongoing thirst for possession and satisfaction of desires, the search for pleasure without realizing that there are no objects or ideas that will ever satisfy the senses or the mind, has to be eliminated. ... The three characteristics of existence therefore make heritage preservation irrelevant or even impossible. (2005, p. 348)

Furthermore, a circular perception of time dominates in the Buddhist context, while heritage conservation theory is based on a linear conception. In this linear notion of time, ‘aging and deterioration are threats to material objects and indicate their loss, thus making conservation an effort to reduce the rate of deterioration, if not stop it’ (Chapagain 2013, p. 50). On the other hand, in a Buddhist cyclical notion of time, ‘aging and deterioration of material form are accepted as natural unavoidable phenomena, requiring rebirth – renewal or replacement – or even complete removal (accepting the
death)’ (ibid). Moreover, the progression from pagoda to ruin is non-linear: ‘Even as a ruin there is always the possibility of a stupa or temple being reactivated’ (Byrne 1995, p. 274). Reactivation of pagodas in Bagan has happened throughout the ages to greater or lesser extent through royal or elite patronage of various monuments.

Despite these conflicting philosophies, it is important to note that there is a substantial distinction between canonical Buddhism and popular Buddhism. In popular Buddhism, materiality becomes very significant: in terms of pagoda architecture and Buddha images as well as in the context of material acts of merit making and the tangible benefits people believe they can gain through it. Nevertheless, this importance of materiality does not solve, but presents different tensions with conventional heritage conservation.
From a strictly canonical point of view, all pagodas in Bagan are believed to contain relics of the Buddha, his disciples or venerated monks, which serve as memorial objects to remind devotees of Buddha’s life and teaching. However, anthropologist Melford Spiro points out that in social usage it is believed that Buddha ‘is present there in more than a symbolic sense. This is why the Buddhist does not worship at the pagoda; rather, he worships the pagoda. It is not only a memorial to the Buddha but in some important sense an embodiment of Him’ (1982, p. 204). Spiro also explains the various symbolic interpretations of stupa architecture:

According to one, the base of the pagoda represents Mt. Meru; the plinth and the two parts of bell-shaped body represent the three worlds of sense, form, and shapelessness; and the spire represents the Buddha. According to another interpretation the bell-shape represents an inverted monk’s bowl. In still another sense, the base represents the heavens of the four World Guardians; the plinth represents the Tusita
heaven (where Buddhas reside before they descend to the earth), and the spire represents nirvana. (1982, p. 203)

When stupas are repaired or reconstructed, it is fundamental to repair these symbols of Buddha’s teaching (*dhamma*) and the essence behind the structures. The stupas need to be a ‘perfect representation of the metaphysical norm to embody the holistic meaning’ (Chapagain 2013, p. 55). Similarly, incomplete restoration of a Buddha image would not make sense because ‘amputated’ images of Buddha cannot be worshipped. This can be seen in Bagan: ruined or broken Buddha images can be found in certain temples, and these are not actively worshipped. It is not a historic, artistic, archaeological, or aesthetic value that Buddhists attempt to restore, but their aim is the preservation and continuation of the *dhamma*. 

Figure 22 A devotee applies gold leaf to a Buddha image (by Anne Laura Kraak)
Thus, it is important to emphasise that when pagodas are restored as acts of merit making, this is not the type of restoration that follows scientific principles of conservation. What is restored is ‘an idea of the prestige of the original, rather than ... the physical form of the original’ (Karlström 2005, p. 351). What matters is the symbolism and the *dhamma*, not some material authenticity. Thus, despite the central canonical concept of impermanence, popular Buddhism does not discard materiality completely. It does, however, conceive of materiality differently: ‘what is important in the conservation activity is safeguarding this “spiritual materiality” of heritage forms, and not necessarily their “physical materiality”’ (Chapagain 2013, p. 59; Karlström 2005).
4.2.4 Beyond Buddhism

Living heritage in Bagan goes beyond Buddhist philosophy and symbolism of stupas, although those may have the most direct implications for conservation. As a pilgrimage site, Bagan is thriving with popular religious practices. Merit making activities can be observed everywhere. The devotees visiting the pagodas are locals and Buddhists from elsewhere in the country, but also pilgrims from other Buddhist countries, such as Thailand. I had informal conversations with several Burmese pilgrims and many told me they travelled with a group from their village and had put their money together to rent a light truck or bus. They would spend a day or two driving around the monuments. At most pagodas, devotees offer flowers, incense, food or money (Figures 20 and 21). Sometimes they stick gold leaf to a Buddha image, pray, meditate, but also take ‘selfies’ with their mobile

Figure 24 Donations for monks at Ananda pagoda festival (by Anne Laura Kraak)
phones (Figure 22). From observation, I noticed that pilgrims generally visit the pagodas that are accessible by the means of transport (a bus or truck) they use. Moreover, there is a preference for the larger and more renovated monuments. I rarely saw pilgrims at small pagodas or ruins that are only accessible by (motor)bike. There are monuments that are considered very important by the Department of Archaeology (such as Hpetleik East and West, Abeyadana, and Nanphaya, which were inventoried as Grade 1) that attract relatively little interest of pilgrims (see Figure 23). On the other hand, several monuments that are very popular with pilgrims are not recognised as significant by the Department of Archaeology (such as Myazedi, Tuyin Taung, and Hnet Pyit Taung).

The pagoda festivals are a particular point of attraction for pilgrims. There are fifteen pagodas with boards of trustees who organise annual
festivals and several smaller village pagodas where village elders organise smaller scale festivals. Pagoda festivals are held everywhere in Myanmar and vary in size. At the festivals in Bagan, between 40 and 2,000 monks are invited who receive donations from villagers and visitors (see Figures 24 and 25). The larger festivals (Ananda, Shwezigon and Alodawpyi) receive visitors from the whole country, who stay at monasteries or camp somewhere in between the pagodas, using the monuments themselves to pitch a tent against (see Figures 26 and 27). These festivals include a temporary bazaar and zat pwe performances. Furthermore, there may be sport competitions, sermons by famous monks and sometimes other particular local traditions. During the festivals in Myinkaba village, at the Manuha and Myazedi pagodas, locals dance in self-made animal costumes. Some festivals are only one morning, but others go on for weeks and have

Figure 26 People set up shopping stalls in the shade of a pagoda (by Anne Laura Kraak)
all-night sermons and zat pwe. The festivals are usually funded by pagoda donations (some pagodas have a specific box in which people can make donations for this purpose), but the larger ones are funded with the fees that shop-owners pay to set up their business in the bazaar. Business owners and zat pwe performers are often part of families who travel the country from one event to the other and have been doing so for generations.

Visiting Bagan’s monuments is not strictly for Buddhist merit making purposes. Burmese Buddhism is tightly intertwined with nat worship (Figure 28). Nats are Indigenous ‘spirits’ that are worshipped all over Myanmar. Bagan has a special significance for this popular religious practice. It is believed that when king Anawratha of the Bagan Dynasty introduced
Theravada Buddhism, he was unable to prevent people from worshipping the *nats*. Therefore, he decided to bring the *nats* over into Buddhism. According to Htin Aung (1978), the *nats*, 36 at the time, ‘were taken from their shrines and placed in the king’s great pagoda in an attitude of worship; he declared that the number was now thirty-seven, because Sakra, the king of the gods and guardian of Buddhism, was at the head of the pantheon’ (Htin Aung 1978, p. 4). There is a large shrine dedicated to all 37 *nats* at Shwezigon pagoda. Other pagodas in Bagan, such as Buphaya, Manuha, and Lokananda, also include *nat* shrines, although these are dedicated to only one or two *nats*. Pilgrims who visit Bagan often combine their trip with a visit to Mount Popa. This extinct volcano, about 50 kilometres from Bagan, is believed to be the abode of the *nats*. Despite the ubiquity of *nat* worship
in Bagan and elsewhere in Myanmar, the practice has an uneasy relationship with Theravada Buddhism. According to canonical Theravada Buddhism, nat worship is in- or counter effective for the pursuance of nirvana, since it is based on desire. As a result, many monks or pious Buddhists look down upon this popular religious practice.

Several other spiritual practices that are neither related to Buddhism nor to nat worship can be observed in Bagan. A statue of a white horse at Shwezigon is believed to have healing powers when it is touched (see Figure 29). The image of a tail of a naga dragon is worshipped at Shwezigon and its head on the other side of the river at Tangyi Taung (see Figures 30 and 31). It is believed that this naga guards the pagodas and prefers to be kept wet. Devotees cover the images with cups of water and offer food.
Several years ago, someone took a photograph of Shwezigon at night on which a narrow white blurry line can be seen (see Figure 32). This is believed to be the *naga* and considered proof of its existence. It is not the only photograph taken in Bagan on which ghosts have been detected. Similarly, a face appeared on a photograph taken at Dhammayazika that is believed to belong to the pagoda guardian from the Bagan period. This guardian cared so much for the pagoda that he was unable to let go of his desire to take care of it, which prevents him from moving on to his next life and now he is lingering as a ghost around Dhammayazika. Sympathetic or scared donors built a shrine for him where people make offers in the hope to help him move on to his next life.

Bagan is not just visited for religious or spiritual reasons. As mentioned before with the example of Hnet Pyit Taung and the big bird, some
monuments are visited because of their association with legends, myths and historical events. Another example is Myazedi. Myazedi is a very popular pagoda in Myinkaba and well known among archaeologists, epigraphers and historians for its association with the Myazedi stones, which were added to UNESCO’s Memory of the World Register in October 2015. The Myazedi stones date 1113 AD. They were found somewhere in between the Myazedi and the Kubyaukgyi temples and there is an ongoing dispute between scholars and pagoda trustees with regard to which pagoda the stones belong. They are key objects for Myanmar’s history because they contain inscriptions in the Mon, Pali, Pyu and Burmese languages, allowing the deciphering of the ancient Pyu language. The stone is sometimes called the Burmese Rosetta Stone. However, pilgrims and pagoda trustees care less about the deciphering of the Pyu language and more about the content of the inscription. The inscription, like most others in Bagan, details the
reasons and circumstances of the building of the pagoda. In this case, the inscription tells the story of the son of king Kyanzittha, Yazakumar, who dedicated this pagoda to his father. As a result, the pagoda became a symbol for the love for one’s parents.

Finally, it is important to mention the active monasteries dotting the landscape in Bagan. Some of them are relatively new but others are centuries old. Monasteries have a key social function in Myanmar, beyond being the residence of monks. It is common for boys to spend some time as a novitiate in a monastery. Several monasteries in Bagan host novitiates from other ethnic groups (particularly Shan) who do not speak Burmese. Their parents have sent them to these monasteries to learn the Burmese language, which is believed to provide them with improved future possibilities. There are also monasteries that double as orphanages or are places to study meditation or tutor school students. Crucial for Bagan are the monasteries where pilgrims spend the night. Most pilgrims visiting
Bagan cannot afford to stay in hotels or guesthouses and sleep in monasteries instead.

Thus, as the previous sections demonstrate, myths, merit making, Buddhist philosophy and other popular religious practices are important aspects of the living heritage of Bagan. Although some of these practices may be considered benign, others can form a risk to or have an impact on the material of the ancient monuments. As a result, those who prioritise the archaeological and architectural values of Bagan’s buildings sometimes take issue with these ways of engaging with the site.

Standards of heritage conservation are developing and several recent policies, declarations and guidelines include considerable recognition of the types of living heritage described above. Yet, living or intangible heritage is still often not considered of equal importance to material heritage. This is certainly the case in the context of Bagan’s World Heritage nomination, as became clear from my interviews. In the following section, I will elaborate on these recent developments in international heritage standards and explain how the underlying hierarchy of knowledge influences Bagan’s nomination.
4.3 Living heritage and international conservation standards

In the context of her study of the archaeological site Lao Pako in Laos, Källén pointed out that her archaeological interpretation is only one of several ways to relate to Lao Pako as a place from the past. The managers of a local tourist resort, the national authorities for cultural heritage management, and inhabitants of the neighbour villages, are other groups of people who claim knowledge about the past of Lao Pako. Enquiries into contemporary structures of power and desire that are at work in the construction of Lao Pako, put international academic archaeology in relation to a complex localised politics of power, prestige, identity and emotion, reaching from the individual to the global scale, all creating different and sometimes contesting images of the same place. (2004, p. 237)

International heritage conservation standards are increasingly starting to acknowledge alternative values and approaches. One approach that aims to incorporate different values and understandings of heritage is known as the values-based approach. This approach is based on the Burra Charter (Australia ICOMOS 2013, first issued in 1979) and has been further developed by a series of initiatives from the Getty Conservation Institute (Avrami, Mason & de la Torre 2000; de la Torre 2002). It aims to protect the significance of a heritage site by determining the totality of values that are attributed to the site. Such values are often subject to various categories, such as artistic, aesthetic, historical, economic and social and could reflect the various ways of relating to the past of Lao Pako that Källén mentions. However, Källén also mentions the ‘contemporary structures of power and desire that are at work in the construction of Lao Pako’ (2004, p. 237).
Although a values-based approach suggests that in the case of Bagan both the archaeological and spiritual values can be recognised, structures of power influence the degree to which this is possible.

Ionnias Poulios further elaborates on this by pointing out several weaknesses of the values-based approach. Firstly, he argues ‘the promoted equity of stakeholder groups and values is theoretically debased and impractical’ (Poulios 2010, p. 173). He points out that conflicting interests are inevitable and a values-based approach does not provide clear criteria on how to prioritise between them. Secondly, this approach implies the existence of a managing authority who ‘identifies the stakeholder groups, records, measures and prioritizes their values, decides what stakeholders and values to protect and how to involve the stakeholders in the implementation phase’ (2010, p. 173). It is impossible for such a managing authority to be neutral and to work outside of power structures. They will inevitably carry certain preconceptions about what should be prioritised and often heritage conservation professionals or government representatives take such roles. For example, in the case of the World Heritage nomination of Bagan, UNESCO works together with the Burmese government on deciding whom to invite to capacity building workshops (and therefore who are considered legitimate stakeholders). In my interviews, it became clear that there are several people with relevant knowledge and expertise who were not invited, most likely because they were too explicitly critical of the government.
Nevertheless, over the last decades there has been an increase in critiques of Eurocentric notions of archaeology and heritage conservation by both practitioners and scholars and there has been an increasing interest in and concern about living heritage (e.g. Baillie 2006; Bwasiri 2011; Miura 2005; Poulfos 2011). Under the influence of the idea of cultural diversity supported by UNESCO and the increasing popularisation of heritage conservation, the universal applicability of the principles of the Venice Charter started to be questioned. It has become apparent that the diversity of building techniques, materials, climatic conditions, religious beliefs and social values across the world has implications for what can be considered appropriate conservation practice. The *Nara Document on Authenticity* (ICOMOS 1994) was a landmark document that recognises conception of authenticity as culturally relative and paved the way for a proliferation of forums, symposia, charters, declarations and conventions addressing particularly themes such as ‘community, spirituality, intangibility and authenticity’ (Fong *et al.* 2012, p. 40).

In the 2000s, these themes were highlighted in various international initiatives. For example, in 2003, ICCROM organised a Forum titled *Living Religious Heritage: Conserving the Sacred*, where professionals, scholars and managers with experience in heritage management and conservation of different faiths in different regions in the world were brought together to exchange their experiences (Stovel, Stanley-Price & Killick 2005). Herb Stovel collated several key conclusions of this Forum, which included the recognition that tangible and intangible heritage cannot be separated and
that the continuity of living religious heritage needs to be respected in decision-making (Stovel 2005, p. 9–10).

In 2004, the Okinawa International Forum, *Utaki in Okinawa and Sacred Spaces in Asia: Community Development and Cultural Heritage*, resulted in the Okinawa Declaration, which included the recognition that ‘[t]he built and/or natural environment (including cultural landscapes) often plays an irreplaceable role for the manifestation of intangible cultural heritage’ (Article 3). In the same year, the *Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage* was adopted following an international conference organised by the Japanese Agency for Cultural Affairs and UNESCO. This Declaration refers to the realisation ‘that the elements of the tangible and intangible heritage of communities and groups are often interdependent’ (Article 9).

Moreover, the Indian National Trust for Art and Cultural Heritage (INTACH) adopted the *Charter for the Conservation of Unprotected Architectural Heritage and Sites in India* (INTACH 2004), which recognises ‘the unique resource of the “living” heritage of Master Builders / Sthapatis / Sompuras / Raj Mistris who continue to build and care for buildings following traditions of their ancestors’ and ‘the concept of jeernodharanam, the symbiotic relationship binding the tangible and intangible architectural heritage of India as one of the traditional philosophies underpinning conservation practice’ (see also Menon 2015). The first article of the *Xi’an Declaration on the Conservation of the Setting of Heritage Structures, Sites*
and Areas, adopted by the General Assembly of ICOMOS in 2005, states the following:

The setting of a heritage structure, site or area is defined as the immediate and extended environment that is part of, or contributes to, its significance and distinctive character.

Beyond the physical and visual aspects, the setting includes interaction with the natural environment; past or present social or spiritual practices, customs, traditional knowledge, use or activities and other forms of intangible cultural heritage aspects that created and form the space as well as the current and dynamic cultural, social and economic context.

During this General Assembly, ICOMOS also adopted The Hoi An Protocols for Best Conservation Practice in Asia: Professional Guidelines for Assuring and Preserving the Authenticity of Heritage Sites in the Context of the Cultures of Asia, according to which ‘[t]he religious activity and/or sacred elements associated with many monuments, buildings and structures contribute to their authenticity’ (UNESCO Bangkok 2005, Article 4.3 (3)). Recently, the Nara +20 Document (Japan ICOMOS 2014) expanded the understanding of authenticity as not only geographically and culturally, but also temporally relative, requiring periodic reviews to accommodate changes in perception over time.

All these documents, protocols, declarations, and charters (adopted against the background of the emergence of key UNESCO documents such as the Intangible Cultural Heritage and Cultural Diversity Conventions (UNESCO 2003; UNESCO 2005) present an understanding of cultural heritage which accommodates or even celebrates spirituality and intangibility. Read in the context of Bagan, Buddhist approaches to
conservation, including renovations and reconstructions, and popular religious practices should not present a problem. However, in practice, the influence of these documents appears to be limited.

The World Heritage framework is traditionally concerned with material and natural heritage, but does accommodate the recognition of living heritage to a degree. There are ten criteria for the assessment of the Outstanding Universal Value of a property, six of which are considered relevant for cultural properties and are being considered for Bagan:

Nominated properties shall

(i) represent a masterpiece of human creative genius;

(ii) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town-planning or landscape design;

(iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;

(iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

(v) be an outstanding example of a traditional human settlement, land-use, or sea-use which is representative of a culture (or cultures), or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;
be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (The Committee considers that this criterion should preferably be used in conjunction with other criteria). (UNESCO 2015a, p. 16)

In the 1997 nomination, all six criteria were used to argue for the Outstanding Universal Value of Bagan. With regard to the current nomination, my informants were divided about whether the use of all – or even many – criteria is the best strategy. Some argued that if a criterion is relevant it should be used. After all, the purpose of the convention is the protection of outstanding heritage sites and leaving out relevant criteria may compromise that aim. However, Karl, a foreign architect involved in the World Heritage nomination, took a more pragmatic approach: he argued the use of fewer criteria would make the protection and management of Bagan more effective. In August 2014, he suggested Bagan should definitely be nominated for criteria (iii) and (iv): the site bears testimony to the Bagan Dynasty and the stepwise development of the Bagan period architecture is an outstanding illustration of a significant stage in human history. Criteria (ii) and (v) were considered less relevant: it is unclear what the influence of Bagan is on the interchange of values or how the existing landscape is an example of outstanding land-use. Criteria (i) and (vi) should probably be used, but will need further research and discussion. According to the consultant, criterion (i) suggests a selection of monuments should be chosen that present masterpieces, but it is up for debate which ones merit such a selection.
Criterion (vi) would allow for the recognition of Bagan’s living heritage: the festivals, rituals, and local Buddhism. As I have demonstrated, there is little question about the existence of this living heritage, but the foreign consultant questioned how many of these practices are newly introduced. Apparently, he believes the Outstanding Universal Value would be diminished if living heritage is of a more recent nature and only living traditions that have a continuation with the time of the Bagan Dynasty are worthy of protection. This prioritisation of age and continuation presents a specific understanding of heritage that does not necessarily resonate with local ways of valuing the site. On a more pragmatic level, the foreign consultant argued that the use of criteria (vi) would make the management and protection much more challenging. It would raise some difficult questions. Which living traditions should be included? Is agriculture a living tradition? A prominent form of living heritage in Bagan are pagoda festivals. The form and content of these festivals changes over time and recently new forms of entertainment have been replacing traditional performances (see Geok Yian 2011). If the festivals are included under criteria (vi) of the World Heritage nomination, how can they be protected and to what extent can change be allowed?

Thus, the decisions that will eventually be made about the criteria – and whether Bagan’s value lies in a selection of monuments or the whole site – are subject to pragmatic considerations and influenced by particular understandings of cultural heritage. During my fieldwork in 2014 and early 2015, it was not clear whether Bagan’s living heritage was going to be
recognised as part of its Outstanding Universal Value. There was no doubt, however, that architecture and archaeology were going to be central to the nomination. This distinction reflects the hierarchy of knowledge and values underlying the nomination.

4.4 Hierarchies of knowledge

The tension between conventional conservation practice and living heritage is not unique to Bagan. Similar concerns have been expressed elsewhere in the region. Wijesuriya discusses the repairs to religious places by ‘pious vandals’ in Sri Lanka (2001). Keiko Miura (2005; 2008) explains the continuing religious practices of local inhabitants at Angkor in Cambodia and expresses concern with the increasing restrictions placed on their activities: ‘Angkor is becoming increasingly more for other people than for local villagers’ (2008, p. 388). Källén (2004; 2015a; 2015b) and Karlström (2005; 2013a; 2013b) have investigated Laotian ways of relating to archaeological heritage and found that villagers and archaeologists often had conflicting interests and understandings. Källén has argued that ‘spirits are an absolute key to understand heritage in Laos’ (2015b, p. 161) and suggests that they offer ‘an alternative – and often far more efficient – protection of heritage sites that national legislation’ (ibid, p. 165). Karlström sees modern preservation ideology as one extreme and the Buddhist ideology of impermanence as another and has argued for ‘[a] radical approach that gives equal value to a living and popular religious discourse
and an institutionalized heritage discourse’ (2013b, p. 396). Byrne published widely on tensions between popular religious practice and conventional heritage conservation. His work is based on research in Thailand, the Philippines, Taiwan and China, and much of it is relevant in Bagan and Myanmar as well. He points out how popular religious practices often run counter to conservation ethic. The latter is based on a modern, Cartesian understanding of matter as inert and passive. Conversely, believers in popular religion often conceive of material as efficacious and numinous. With the term numinous, Byrne refers to ‘an inner (immanent) divinity or supernatural force’ (2014, p. 3). According to this ‘emic perspective of pious believers, sacred objects (or the spirits or deities they embody) certainly do have intentionality, and this emic perspective is fundamental to their actions in repairing, elaborating, and restoring religious objects and built structures’ (Byrne 2014, p. 80). In Bagan, such understandings are reflected by the role of myths and legends, the belief in ghosts, nats (local spirits) and healing qualities of certain statues.

Recent developments in heritage studies and international policy that are starting to challenge the Western paradigm and hierarchies of knowledge have not (yet) reached Bagan and it is unclear how much influence they have elsewhere. For example, it took until 2005 till the understanding of authenticity as culturally relative – as proposed by the Nara Document of 1994 – was elaborated on in the Operational Guidelines for the Implementation of the World Heritage Convention (2015a) and Sophia Labadi (2010) has shown that it has not been widely used in
nominations to date. Arguably the Western paradigm still dominates. In her discussion of the role of spirits at the archaeological site Hintang in Laos, Källén has argued that in modern Western discourse, the magical and spiritual have been defined as ‘the antithesis of modernity’ and remain ‘a sign of primitive culture’ (2015b, p. 161). Karlström has warned that even if ‘intangible heritage is taken into consideration and conservation strategies are formulated in consultation with indigenous groups, the fundamental aim and necessity of preservation is still unquestioned’ (2005, p. 352). Diversity and alternative approaches are only accepted if they fit into the existing paradigm. For example, during a recent research project in Phnom Rung Historical Park in Thailand, Alexandra Denes found that the Historical Park staff would state that local communities have the right to ‘use and access the site according to their beliefs and traditions’ (2012, p. 202), but when those beliefs and traditions (for instance, touching artefacts and using paraphernalia such as candles, incense and other offerings) could harm the physical fabric, they could not be allowed (Denes 2012, p. 202). Winter and Daly (2012) have also pointed out that in the global management of architectural sites locally specific and non-scientific forms of knowledge are still excluded. They draw on Santiago Castro-Gómez’ argument that ‘the categorical distinction between “traditional knowledge” and “science” … is still in force. The former continues to be seen as anecdotal knowledge, not quantitative and lacking methodology, while the later continues … to be taken as the only epistemically valid knowledge’ (Castro-Gómez 2007, p.
441). This hierarchical distinction also underlay the preparation of Bagan’s World Heritage nomination in 2014 and early 2015.

4.5 Concluding analysis

An earthquake last month destroyed many of those botched restorations. That will allow fresh work more in keeping with the original design, UNESCO said, boosting Bagan’s chances of taking a coveted place on the list of the world’s most prized cultural artifacts.

On Wednesday, scores of the monuments — of which only about 2,200 remain — were damaged in a powerful 6.8 magnitude earthquake. Yet much of what fell was modern material.

Following the earthquake of 24 August 2016, several English-language media drew attention to the fact that a substantial part of the damage to almost 300 pagodas was actually to the renovated and reconstructed parts. The BBC even suggested this can be considered a ‘silver lining’ of the earthquake, which also took the lives of three people.

These reactions reflect the continuing strong disapproval of the restoration work of the 1990s and 2000s. From the perspective of international


conservation standards such a judgement is understandable. However, it represents an etic judgement, made by outsiders. Little effort is made to understand and respect the emic perspective, according to which many things are important in Bagan, including myths, merit making, spirit worship, pagoda festivals, and development. Some people are also concerned about material authenticity; others are not. At any case, this research project suggests it is not the only, or main aspect of Bagan that people care about.

Yet, with the aim of getting Bagan included in the World Heritage List, Myanmar became concerned with following international standards. These standards are situated in a heritage discourse that emerged in Europe in the nineteenth-century and has achieved dominance as a ‘universalising’ discourse through its adoption by international heritage conservation bodies, such as UNESCO, ICOMOS and ICCROM (Menon 2015; Ndoro & Wijesuriya 2015). In the last few decades, this understanding has increasingly been challenged and a glance at recent declarations, conventions and policy documents would suggest that cultural diversity, intangible and living heritage and community values are now the norm. However, statements on paper are easier and quicker made than minds and worldviews can be changed and power relations can be challenged. There are several indications that a material-focused paradigm of conservation dominates. The majority of Burmese and foreign experts who advised on Bagan’s World Heritage nomination in 2014 and early 2015 were architects and archaeologists, who through their mandates and expertise reinforced a hierarchy of knowledge in which architecture and archaeology are valued.
over popular religious practice. Recent reports by the Japan Consortium for International Cooperation in Cultural Heritage (2011) and UNESCO (Unakul & Rellensmann 2013; UNESCO Bangkok 2016) reflect and reinforce this emphasis on technical matters. The living aspects of the site, such as the spiritual meaning of the monuments to locals and pilgrims, associated rituals, the importance of pagoda festivals, or the myths and legends connected to the site are of less concern.

The domination of this material approach to heritage conservation can partly be explained by the fact that living heritage and popular religious practices are more difficult to control and manage. Living heritage is elusive and subjective; constantly changing and hard to grasp. It is not something for which experts or consultants can be employed for a few weeks and asked to deliver an objective report with recommendations. There is no single ‘best practice’ of living heritage management. Governments or other organisations tasked with managing and protecting heritage often require concrete results to show constituencies, funding bodies and developers. Ideally, these results are ‘evidence-based’ or objectively measurable and are often required to be delivered quickly (for example, before the next election). Getting an in-depth understanding of the living heritage of a place such as Bagan takes months of even years of ethnographic fieldwork, the results of which will be subjective and demonstrate a messy reality rather than evidence-based recommendations. Some of my informants preferred a more pragmatic approach to Bagan’s World Heritage nomination, and seriously considered not including criterion (vi), although a recent report
suggests this criterion will probably be used (UNESCO Bangkok 2016, p. 16).

The increase in the use of terms such as cultural rights, cultural diversity, culturally appropriate programming principles, and intangible or living heritage in several policy documents, such as *UNESCO’s Country Programming Document for Myanmar* (UNESCO Bangkok 2013) and World Heritage Sustainable Development Policy (UNESCO 2015b), could be regarded as an opportunity to pay greater attention to emic perspectives on heritage conservation. However, hierarchies of knowledge bear upon how such terms are interpreted and how much priority they are given. As I have demonstrated in Chapter Two, the meaning of cultural rights is ambiguous and contested. Culture can be regarded as a product, a process, or a way of life. In Bagan, this creates the possibility for a variety of actors to employ the rhetoric of cultural rights to defend their interests. It remains unclear whether people have cultural rights to the conservation of Bagan as a site of Outstanding Universal Value, or whether people have cultural rights to engage with pagodas as sites of merit making and popular religious practices.

A second important implication of the same hierarchy of knowledge is that for most of my informants, whether they work for UNESCO or not, it was unclear what human rights have to do with Bagan’s World Heritage nomination. When I mentioned to my informants that my research is about World Heritage conservation and human rights in Bagan, I received several confused reactions. Some people just remained silent. Several people
acknowledged that there are problems in Bagan, but were of the view that these were not human rights issues.

Rob, Linda, Thant, and Neil noted that their organisations do not explicitly use human rights language. However, they believe that their organisations are nevertheless concerned with the idea behind human rights (Rob, foreign expert, January 2015), or that human rights concerns are implicitly addressed through their policy on community participation (Linda, foreign expert, December 2014; Thant, Burmese expert, January 2015), or through their move away from focusing exclusively on monuments to take into account living heritage (Neil, foreign expert, January 2015).

A few expressed doubts about the usefulness of human rights to interpret these problems. I interviewed Paula, an anthropologist based in Bangkok, around the time several journalists working for the Charlie Hebdo magazine in Paris were killed in a terrorist attack because their portrayal of the Prophet Mohammed was considered insulting by Islamists. When I asked her opinion about human rights-based approaches, she started talking about this incident to draw attention to conflicting rights: Should the right to freedom of speech include the freedom to disrespect? Should the right to freedom of religion include the right to kill? She was not convinced human rights are a useful discourse (Paula, foreign expert, January 2015).

Several people mentioned the forced relocation of the village in Old Bagan to New Bagan in 1990 as a human rights violation, an issue I will return to in the next chapter. In general, however, people had very little to
say about the link between Bagan and human rights. There can be several explanations for this. On the one hand, this can be related to the sensitivity of human rights language in Myanmar. It is conceivable that people felt uncomfortable talking about it. Neil, an archaeologist by training whose work is based in Southeast Asia, noted that human rights do not have a good connotation in this region and are strongly associated with Western meddling (Neil, foreign expert, January 2015). May, an experienced tourist guide in Bagan, sighed: ‘Human rights…. It’s just a word’. She explained:

In the old days, when we had the monarch, the king owned even the lives of the citizens. It’s like this now too. Somebody is taken in the middle of the night and never heard from again. So, where are the human rights? If you ask other people… they would laugh, you know. (May, Bagan local, January 2015).

On the other hand, several informants may have been unfamiliar with human rights and particularly when Bagan is understood as a site of monuments – inert material – the link may not have been immediately apparent. Chit’s first reaction was stating that there is not much to talk about. Human rights are not relevant in Bagan. She has been involved with ICOMOS and the World Heritage system, but never heard about human rights-based approaches before. She lamented that there are already too many approaches, rules, and regulations. A human rights approach is just another one (Chit, Burmese expert, December 2014).

From the people I conducted interviews with, it became apparent that even if human rights-based approaches in principle is acknowledged as an important strategy, many consider it beyond the scope of their technical
work and expertise (which may be to advise on the conservation of mural paintings or the use of GIS software) to engage with or advice on this approach. For example, Alex told me human rights are not really used in his work, which is more technically oriented. However, he was shocked seeing many children working in Bagan and expressed his hope that a human rights-approach may be able to do something about this (Alex, foreign expert, December 2014).

Human rights become relevant when Bagan is situated in the larger picture of spirituality, living heritage, ritual and tradition as well as development pressures and poverty. It would become clear that restrictions on how people engage with the pagodas could be considered violative of cultural and religious rights. However, this would require framing Bagan in a different way and overcoming established hierarchies of knowledge that prioritise material-focused understandings of heritage. In the following chapter, I continue framing Bagan in a broader context by exploring the impact of forced relocations and tourism development as well as the challenges of community participation. In doing so, I shift my focus from cultural heritage rights in Bagan to the impact of heritage conservation on other categories of rights.
5 Participation, eviction and development

5.1 Introduction

This chapter explores three interrelated but quite distinct themes that emerged in my exploration of the intersection of cultural heritage and human rights in Bagan. In the first section, I consider the role of community participation in Bagan’s World Heritage nomination. Community participation is considered a critical aspect of human rights-based approaches (see UN OHCHR 2006, p. 26, 36) because communities are key rights-holders. However, the example of Bagan demonstrates how difficult it is to guarantee equitable participation of heterogeneous community members that are subject to unequal power relations and different views about what is important. Two themes about which views are divided include forced relocations and tourism development, on which I elaborate in the last two sections.

A forced eviction took place in Bagan in 1990 and today, in the context of the preparation of the World Heritage nomination, further relocations are being considered. Although the official justification for the eviction in 1990 was the protection of the monuments, the subsequent construction of tourist facilities – including luxury resorts and a museum – indicate that the recognition of the potential of Bagan as an economic resource was at least as important. The relocation of a community to protect a cultural heritage site or to exploit an economic resource is as common as it is controversial.
I demonstrate that in terms of human rights and justice, such evictions are not easily classified. My informants had mixed views about the merit of the 1990 relocation and international statements and guidelines regarding evictions present contradictory messages. Arguably, this ambiguity can be explained by the conflicting rights and interests underlying such relocations. While they can be devastating for some people, they may enhance the lives of others.

Often referred to as a double-edged sword, tourism at cultural heritage sites poses similar dilemmas. It has the potential to raise standards of living and generate revenue for conservation as well as to exploit the powerless and damage both built and living cultural heritage (e.g. Aas, Ladkin & Fletcher 2005; Bushell & Staiff 2012; Nuryanti 1996; Salazar & Zhu 2015). Tourism may enhance the respect and promotion of cultural, religious, economic and development rights, while at the same time it could be one of the forces behind the worst violations (Cole & Eriksson 2010). In Myanmar, corruption, a lack of transparency and the forces of a global neoliberal market risk the unequal distribution of the profits from tourism, signs of which can already be observed in Bagan. Several rights are at stake, many of which are related to global structural inequities and complex processes far from this plain of Buddhist temples, raising the question to which extent human rights-based approaches to World Heritage conservation can be expected to solve or address these issues. In other words, should such a policy aim to respect, protect or fulfil rights?
5.2 Community participation

In the last decade, the importance of community participation has been formally recognised in the realm of World Heritage. In 2007, a fifth objective was added to the key Strategic Objectives (credibility, conservation, capacity-building, communication) to support World Heritage. This objective is ‘to enhance the role of communities in the implementation of the World Heritage Convention’ (UNESCO 2007, p. 7). More recently, the policy on sustainable development, adopted by the 20th General Assembly of the World Heritage Convention in November 2015, extensively emphasises the importance of community participation. In the category of Inclusive Social Development, the policy includes a section on ‘[r]especting, consulting and involving indigenous peoples and local communities’ which states that ‘[t]he World Heritage Committee specifically encourages the effective and equitable involvement and participation of indigenous peoples and local communities in decision-making, monitoring and evaluation of World Heritage properties’ (UNESCO 2015b, p. 7).

Despite this push for community engagement, Brumann has pointed out that ‘one hears surprisingly little in the Committee sessions about the communities living at or near World Heritage sites’ (2015, p. 276) and he suggests this is ‘partly due to time pressure, the work load of the convention secretariat and Advisory Bodies, and the fact that the convention aims to protect the cultural and natural wonders of the sites, but not the communities
living there’ (2015, p. 286). Similarly, Sophia Labadi and Peter Gould (2015) have pointed out that the World Heritage system continues to have an ambivalent attitude towards local populations. Various threats associated with communities have been cited in nomination dossiers, including population growth, encroachment of private properties, pollution and vehicle circulation. According to Labadi and Gould, there are three possible reasons for this attitude: Viewing communities as threats may reflect a traditional view that communities do not sufficiently appreciate the heritage, experts may be unwilling to share their power with communities, or the Outstanding Universal Value of the site may be ‘considered to be unrelated to and to supersede the concern and legitimate interests of local communities’ (2015, p. 210).

5.2.1 Degrees of participation

The view that communities insufficiently appreciate the heritage can lead to a tokenistic approach to participation that focuses on education and awareness-raising. When asked about the role of community participation in Bagan’s World Heritage nomination, several of my informants indicated the necessity of informing people about the importance of conservation, management and planning. For example, Htet Aung mentioned that pagoda trustees only know about Buddhism and not about archaeology and conservation. In order to raise awareness, the Department created a slide show that is used to explain the archaeological and architectural values to
the trustees (Htet Aung, Burmese expert, July 2014). A Burmese heritage expert stressed that everyone ‘loves’ Bagan and nobody would want to damage the site. However, most people are only familiar with the value of the monuments, but not with urban planning. They may not realise how the wider landscape impacts the monuments and inadvertently cause damage through poor planning (December 2014). The discrepancy between loving Bagan and lacking knowledge about how to safeguard it was expressed by Thida, a Burmese heritage professional trained in architecture who worked at a heritage organisation in Yangon:

Sometimes you know you love… but you don’t know how to keep… or that your action is damaging. .... That’s why we should have the guidelines or laws or principles. This is one way to control. From top to bottom. But of course if you make them understand then they realise and they will control their action. Then you have more participation from the locals. So the thing is to communicate. Awareness. … I think sometimes it is easier to get people involved… a little bit patience [sic] and let them involve since the beginning. But if you say one way do this or do that then you get a negative reaction (Thida, Burmese expert, February 2015).

Thida advocated for a top-down approach to participation that focuses on communication and awareness raising. She suggested that when people understand why certain rules of policies are preferable, they will agree and comply. Kyaw expressed a similar idea.

42 Several Burmese informants stressed how much everyone ‘loves’ Bagan. For most of them, English was not their first language and it is possible that different wording would have been used if people had access to a broader vocabulary.
Our people are still Buddhist. We still want to pray to Buddha. We still want to do gold gilding, lime applying. ... But UNESCO doesn’t like this. Most of the people are not educated and don’t understand why they can’t do these things. Not only UNESCO, also the government should prepare education and take time to change the vision of the people (Kyaw, Burmese expert, January 2015).

He suggests that rather than just prohibiting the gilding of temples and the application of lime, it is important to explain why these practices are harmful for the conservation of the pagodas.

Most of my informants regarded the tension between conservation and popular religious practices or living heritage as a question of awareness raising and education of the local community. Yet, this does not reflect genuine community participation. This approach would sit at the bottom of Sherry Arnstein’s ‘Ladder of Citizen Participation’, where the ‘objective is not to enable people to participate in planning or conducting programs, but to enable powerholders to “educate” or “cure” the participants’ (1969, p. 217). As such, it cannot be regarded a human rights-based approach either, since cultural and religious rights of participants could be violated in the process.

Arnstein’s ‘Ladder of Citizen Participation’ is one of several typologies of participation that reflect how the term is ‘[a]n infinitely malleable concept, “participation” can be used to evoke – and to signify – almost anything that involves people. As such, it can easily be reframed to meet almost any demand made of it’ (Cornwall 2008, p. 269). Most of these typologies introduce forms of participation along an axis of ‘bad’ to ‘good’ participation,
shifting from control by authorities to control by people. In reality, various different typologies can often be found in a single project.

There are indications that community participation in the preparation of the World Heritage nomination of Bagan goes beyond education and awareness raising. A selection of community representatives has been given the opportunity to express their views in specific community consultation workshops. In these situations, participation moves a few steps up Arnstein’s ladder to a place where ‘citizens may indeed hear and be heard. But under these conditions they lack the power to insure that their views will be heeded by the powerful’ (1969, p. 217). Being able to express one’s view is not the same as being able to ‘negotiate and engage in trade-offs with traditional powerholders’ or even to have ‘the majority of decision-making seats of full managerial power’ (ibid). Arguably, human rights-based approaches imply the latter, but this is difficult to implement in a traditionally hierarchical society with a low capacity. However, even in hypothetical situation where participation is approached following Arnstein’s highest rung on the ladder, this still leaves the question of who the community is.

5.2.2 Defining the community

Several scholars (Pyburn 2011; Waterton & Smith 2010; Waterton & Watson 2010) have drawn attention to the uncritical way in which the rhetoric of community has been adopted in heritage practice more generally. Community has the tendency ‘to speak of something convivial, gentle and
idealised’ (Waterton 2015, p. 54). Emma Waterton and Laurajane Smith have pointed out that a more realistic account of communities would demonstrate that they ‘are run through with divergent interests, anger, boredom, fear, happiness, loneliness, frustration, envy, wonder and a range of either motivating or disruptive energies. Added to this are thick seams of power that structure any given collection of people’ (2010, p. 16). They argue that Nancy Fraser’s work on the politics of recognition, and specifically the concept of ‘parity of participation’ is helpful to understand the role communities in heritage practice. Parity of participation ‘requires social arrangements that permit all (adult) members of society to interact with one another as peers’ (Fraser 2003, p. 36). Maldistribution, misrecognition and injustices of representation present economic, cultural and political obstacles to such equal interaction. For heritage practice, this means that some people or communities are,

subordinated and impeded because they do not hold the title ‘heritage expert’, as well as lacking the resources assumed necessary to participate in heritage projects (Western schooling, economic means, etc.), and also potentially ‘lacking’ a particular vision or understanding of heritage and the accepted values that underpin this vision (universality, national and aesthetic values, etc.). (Waterton & Smith 2010, p. 18)

Waterton and Smith’s account reflects the ‘community’ I encountered in Bagan. First, there is the question of who counts as a member of Bagan’s community. Many people – rich and poor, Burmese and foreigners – have recently been moving to Bagan to profit from the increase in tourism. Are all of them part of the ‘community’? Age, gender, religious background, class,
and level of education are all factors that influence a person’s interests and opinions. Accordingly, my informants had divided views on the challenges facing Bagan and they told me stories of their own conflicts of interest with other members of Bagan’s ‘community’. There are widely different opinions about the reconstruction and renovation of pagodas, as I discussed in the previous chapter, but here are countless more examples. Kyaw told me about an argument he had with a pagoda trustee about the construction of a parking lot next to a pagoda. In his opinion, this was an inappropriate development (Kyaw, Bagan local, February 2015). However, the pagoda trustee – who is also a member of Bagan’s ‘community’ – apparently had a different view. For the pagoda trustee, the parking lot would accommodate access to his pagoda for visitors arriving by car. My informant was not opposed to cars in Bagan, but of the opinion that this parking lot was too close to the pagoda. Differing ideas about the role of cars in Bagan are reflected by hotel owner and tourist guide Myo, who suggested a gate should be constructed around Bagan and only horse carts, pedestrians and (motor)cyclists should be allowed to enter:

... what I would like to do is, I would like to make a fence. …. Cars are not allowed inside. Maybe you can go on foot, bicycle, ebike, horse carriage, bullock carts, or... electric cars. Yes. I would really like to do this. Everybody [needs to] stop here. No. You are not allowed to go. We make doors in maybe three or four places. This is what I want to do. (Myo, Bagan local, June 2014)

The future of Bagan faces many more questions about which I have heard opposing views – from whether tourists should be allowed to climb the pagodas to whether nat shrines are appropriate in Buddhist temples.
Because of these different and sometimes competing interests, the UN independent expert on cultural rights has argued with regard to the right of access to, and enjoyment of cultural heritage that ‘[v]arying degrees of access and enjoyment may be recognized, taking into consideration the diverse interests of individuals and groups according to their relationship with specific cultural heritages’ (UN Human Rights Council 2011, p. 16). She makes a distinction between four different groups:

(a) originators or “source communities”, communities which consider themselves as the custodians/owners of a specific cultural heritage, people who are keeping cultural heritage alive and/or have taken responsibility for it;

(b) individuals and communities, including local communities, who consider the cultural heritage in question an integral part of the life of the community, but may not be actively involved in its maintenance;

(c) scientists and artists; and

(d) the general public accessing the cultural heritage of others. (ibid)

Moreover, she stresses that ‘power differentials must be taken into consideration, as they impact the ability of individuals and groups to effectively contribute to the identification, development and interpretation’ (UN Human Rights Council 2011, p. 5). This is a very important part of ensuring ‘parity of participation’ (Fraser 2003) and cultural rights, but it can be very challenging in practice. Particularly when the government or organisation tasked with organising equitable community participation has its own interests to protect. Thant suggested this was the case in Bagan. He thought the government had business interests in certain hotels in
Bagan and suggested this was the reason they did little to organise community participation or negotiate tensions:

In Pyu Cities we find a very pleasant participation and involvement. In Bagan it’s a bit difficult. There has been animosity between the local population and those companies that operate hotels. This is a very sensitive issue. [I think] that the Ministry of Culture and the Ministry of Tourism … should be negotiators of this problem. I don’t see this happening.

Why not?

Why did these new hotels get a permit? And why can they go ahead even though there’s a freezing period? (Thant, Burmese expert, January 2015).

5.2.3 Bagan Heritage Trust and Bagan Lovers Association

Two different organisations in Bagan that aim to contribute to the protection of the site in their own ways illustrate this. One of these organisations was just in process of establishing itself during my fieldwork. Inspired by the Yangon Heritage Trust, they call themselves the Bagan Heritage Trust. The Bagan Heritage Trust consist of sixteen people with a certain prestige and/or expertise in Bagan, several of whom received education abroad. This contrasts with the Bagan Lovers Association, which is a loosely organised group of 90 to 120 volunteers who have been monitoring the site since 2011 and have organised various demonstrations against

43 I met members of this organization in January 2015. At the time, they were still waiting to be formally registered and had not started any advocacy work.
what they consider in inappropriate developments in Bagan. In particular, they have protested corruption and the construction of hotels that incorporate monuments. Although sympathetic with the aims of the Bagan Lovers Organisation, Aung, a local archaeologist, found their methods (of confrontation and demonstration) problematic and conceived of the Bagan Heritage Trust as a more professional organisation to protect the interests of Bagan (Aung, Bagan local, January 2015). The Bagan Heritage Trust has an English-language website in which they describe their aim:

When international experts come for field work they need to discuss and exchange knowledge. In order to be able to confer and give answers to their questions, when establishing our organization we have gathered retirees from Department of Archaeology, independent scholars, tourism and hospitality, lacquer ware industry, and restaurant personas. Significantly, this organization has been formed so that it will be of help in striving to work on Bagan historical and cultural site in becoming one of world heritage sites. In order to work efficiently without any setback it will be carried out in collaboration with archaeological department44.

The members of the Bagan Heritage Trust are familiar with the World Heritage nomination process and collaborate with the archaeological department and international experts. The Bagan Lovers Association, on the other hand, is less familiar with the formal processes of World Heritage nomination.

44 See http://www.baganheritagetrust.org/index.php/about/board Accessed 9/9/16
A member of the Bagan Lovers Association, Kyaw, had been invited to community participation workshops organised by UNESCO and the Department of Archaeology as a representative of the ‘community’, but he did not have good experiences. He felt he was invited to the meetings only to listen to what others said, but unable to contribute much himself. In particular, he was worried about the discussion of possible relocations of villages. When Kyaw did get an opportunity to speak, he said that his organisation welcomed UNESCO’s help with the conservation of the pagodas, but would not accept any forced relocations. He received the reply that they would think about this and get back to him during the next meeting. However, when during the next workshop – a few months later – nobody had done anything with his request, he felt UNESCO and the Department of Archaeology did not keep their promises and decided not to attend any future workshops.

Preparations for the nomination of a World Heritage site can take years and decisions about the relocation of villages are not made in a few months. Unlike the members of the Bagan Heritage Trust, Kyaw was presumably insufficiently informed on how such processes work and he felt ignored. By deciding not to attend future workshops, he – and the community he is supposed to represent – is unlikely to learn more through this channel. Even though Kyaw is invited – following UNESCO protocol on community participation – there are power and status differences between him and the government officials, foreign experts, and possibly other community representatives (such as those of the Bagan Heritage Trust)
present during the meeting. Importantly, such community participation workshops take place in locations, such as meeting rooms in government buildings, where Kyaw did not feel completely comfortable. Expressing his disconcert with this situation, Kyaw said,

UNESCO and the government need to show how they are planning the UNESCO site to the people. If they cannot do for the whole people, they need to inform and show to the associations. They need to take some agreement of the people. … Also listening to the opinions of the people. For example, if you sit in the tea shop some people are talking about UNESCO. They cannot know how the people want (February 2015).

UNESCO and the government may feel they are showing the people what they are doing by inviting Kyaw to (some of) their meetings. However, Kyaw suggests they cannot know people’s opinions unless they visit a tea shop. A tea shop is an environment where Kyaw – and presumably other members of his organisation – may feel comfortable enough to express their views. The formality of community participation workshops, creates a barrier. As a result, the only methods the Bagan Lovers Association has to get their views heard are demonstrations.

This example serves to demonstrate the heterogeneity of and division with the ‘community’ of Bagan, including internal power differentials. The members of the Bagan Heritage Trust are more articulate in having their voices heard in a context and language understood by UNESCO and the government. By interacting with the Bagan Heritage Trust, UNESCO follows its policy of community involvement. But there is no ‘parity of participation’ (Fraser 2003). The Bagan Lovers Organisation lacks resources, particularly
in the form of language, status, and access to information, to equally interact with UNESCO, the government, and the Bagan Heritage Trust as peers.

Importantly and despite subsequent misunderstandings, Kyaw was identified and invited as a legitimate representative of what the Burmese government and UNESCO identified as the community. However, it is necessary to note the potential for contestation about who is and should be qualified as legitimate representative in the first place. Chances are not everyone agrees with Kyaw’s identification and chances are that ‘representation’ who are considered too threatening or confronting in the eyes of the government or UNESCO will not be invited.

Challenges of ensuring community participation in heritage conservation contexts are not limited to Bagan. For example, Esther Yung and Edwin Chan (2011) evaluated the process and outcome of public participation in heritage conservation of two historic sites in Hong Kong: the Queen’s Pier and Chinese Tenement Buildings. They identified several similar issues, including the conflicts of interest between different stakeholders (in this case, the government, general public and tenants), the lack of information and effective participation mechanisms, and power disparities. Shadreck Chirikure et al (2010) investigated community participation at three sites in Africa (Khami in Zimbabwe, Mapungubwe in South Africa and the Kasubi Tombs in Uganda) and demonstrate the difficulty of identifying the relevant communities. As a result of a history of forced evictions, the people who live
around Khami and Mapungubwe have no historical or ancestral ties with the sites, raising the question whether community participation should be ‘based on historical links or proximity to a heritage resource’ (2010, p. 34). Moreover, they found that the ‘community’ is not necessarily interested in the conservation, ownership or presentation of the site, but it may be important to them for different reasons, as a resource for agriculture or tourism, for example. In the case of the Kasubi Tombs, the problem is not the identification of the relevant ‘community’, but the sectional fights within the community.

These difficulties of ensuring equitable community participation elsewhere are illustrative of the discrepancy between what the language of community participation promises on paper and how it can be implemented in practice, which is not only relevant at cultural heritage sites around the world, but also in various other sectors (see for example Cornwall 2008). Chirikure et al argue that ‘community participation at best involves mutual dialogue and cooperation among the many stakeholders at heritage places and some sharing of the results from such cooperation’ (2010, p. 40). However, I would add, it is impossible to guarantee that everyone’s interests and even rights will always be respected. The individualistic nature of the human rights framework makes it sit uneasily with groups of people, which makes collective and cultural rights such contested categories as explained in Chapter Two. This tension becomes clear when considering forced relocations and tourism development in Bagan, on which I will elaborate in
the next sections. Such processes affect people in widely different ways, making it unclear how to evaluate them in terms of human rights.

5.3 Eviction and land rights

5.3.1 From Old Bagan to New Bagan

Historically, Bagan consisted of temples intermingling with housing, work places and farms. Throughout the 100 square kilometres that are known as the Archaeological Zone of Bagan, there are still several villages scattered around the monuments, such as Taungbi, Weitky-in, Myinkaba, Pwa-saw East and West, and Minnanthu. They are built around and incorporate several old pagodas (see Figure 33). However, in 1990 the government ordered the population living in Old Bagan – over 5,000 people – to move to New Bagan, four kilometres to the south (see maps on Figures 1–2). International experts and the government’s own tourism authorities did not recommend this move but had ‘proposed integration of the “Old Bagan”
villagers, some of whom were traditional caretakers of religious buildings, into the heritage site’ (Hudson 2008, p. 557). Yet, the government deemed the eviction necessary to prevent the damaging consequences of treasure hunting. According to archaeologist Bob Hudson, this traditional occupation expanded as a side-effect of the unrest of 1988 when government officials had left the site unpoliced and villagers were able to ‘pan for residual gold that had fallen off decaying buildings’ (Hudson 2008, p. 556). Weise suggests a new settlement was necessary because ‘[t]he inhabitants of Nyaung-U did not want the squatters to live near their respectable and ancient community. Not even the villagers of neighbouring Myinkabar … wanted to accept these refugees’ (2016, p. 6).

Putting aside the question of whether the prevention of treasure hunting justifies the eviction, the authorities in charge at the time were poorly informed about the archaeological significance of the wider area. There are five archaeological sites identified in Bagan that are believed to be locations of former palaces. While supposedly the village of Old Bagan was relocated to prevent people from treasure hunting at one such site, New Bagan has been built right above a different archaeological palace site (Weise 2016). This provides plenty of new treasure hunting opportunities for the villagers in their new location, but as a result of the previous displacement, they are less inclined to report any archaeological finding they may come upon out of fear for further evictions.

Although the relocation from Old Bagan to New Bagan took place 26 years ago, it remains controversial. This is partly because in the context of
the preparation of the World Heritage nomination, further relocations are being considered. Kyaw, of the Bagan Lovers Organisation, explained why the members of his organisation disapprove of the eviction of 1990:

… in 1990, the people had to move to New Bagan, [for] the reason that Bagan became in the list of World Heritage. That’s why the people had to move. But they also had to face many trouble. In only 3 days they had to move from Old Bagan to New Bagan. This is a really, really short time. People face many suffering … temperature of Bagan is very hot. Aged persons, they even died because of the heat. People face this kind of suffering. But later, did Bagan become UNESCO? No. Just hotels and restaurants appeared in the area of Bagan. (Kyaw, Bagan local, February 2015)

The manner in which the relocation took place was problematic. Villagers had only three days to move. They had to dismantle their own homes, received insufficient compensation and suffered in the heat. Moreover, a point of contention is the justification for the relocation. Villagers were told their move was necessary to protect the monuments and for Bagan to become a World Heritage site. However, the World Heritage recognition did not come and shortly after the relocation several large luxury hotels as well as the museum and palace were built among the monuments of Old Bagan, raising questions about the government’s real motivation.

This came up in several interviews. Recently, The Irrawaddy, reported that UNESCO prefers to see no residential buildings and guesthouses within a five to seven kilometre radius of the pagodas. Engagement with this question by popular media also demonstrates the sensitivity of this topic. See Htet Naing Zaw, “Govt Green Lights Hotels in Bagan Archaeological Zone”, The Irrawaddy, 15 September 2016. http://www.irrawaddy.com/news/govt-green-lights-hotels-in-bagan-archaeological-zone.html Accessed 27/10/16
Kyaw said he supports the World Heritage nomination as long as there will be no further relocations. He also suggested that if relocations of villages are necessary, the new hotels, restaurants and museum in Old Bagan should move as well (Kyaw, Bagan local, February 2015). May told me she believes the main reason for the relocation had nothing to do with the conservation of the monuments. According to her, the village was relocated because 93% of the population had voted for the NLD, the opposition party. She indicated more details about the days of the relocation:

First, they cut off the water, next day the electricity. Third day, people had to dismantle their houses. The soldiers that came to help, came back from the front on leave. They did not get leave at all. Trucks and lorries to help moving were taken by force along the way. Everybody had to dismantle their own houses. Soldiers were angry at the authorities and at the villages and would just throw things that would break. Where are the human rights? We were treated like dogs. Compensation money? To one house they only gave 3 corrugated iron sheet. Not enough for a bathroom. (May, Bagan local, February 2015)

The relocation also had a significant impact on the living or intangible side of the heritage of Old Bagan. Gawdawpalin, Thatbyinnyu and Buphaya are pagodas located in Old Bagan that have been holding annual pagoda festivals. After 1990, the pagoda trustees were only allowed to organise a donation ceremony, but no longer the bazaar, *zat pwe* and sports events. This change particularly affected the Gawdawpalin festival, which used to be a festival of considerable size. Moreover, Moore and Maung pointed out that several monasteries in Old Bagan stopped celebrating communal initiating ceremonies because of ‘the scant local population and economic support after communities were moved to New Bagan’ (2016, p. 188).
Nevertheless, from interviews it became clear that there are also several people who perceive the relocation as an appropriate measure. Myo moved from Old to New Bagan and thinks people only look at the negative side. He believes the compensation was sufficient and points out that people have more land in New Bagan:

They gave us compensation for this land. They paid more. If we have for example 100 hectares of the land, they give us at least 300 hectares. … Good compensation. But most people obviously don’t like the government. They never see about the compensation and they never see that the government is paying the favour – they don’t see about these things, only the negative ones. Most local people, even all of the tour guides. But from my point of view, we shouldn’t see only one side, you have to see both sides. To move the village is 100% correct. We should do it. Because how Bagan should be in that small area… if tourism is booming, what will happen? It’s good to move. But only government cannot make properly is, they don’t supply roads, access. They could not do it. They only pay for the land and they helped with transportation. The government helped to dismantle and transport he old buildings from there over here. Many cars and trucks… and the government sold the construction material for a very cheap price, the roof, iron sheets, nails, cement – extremely cheap. (Myo, Bagan local, June 2014)

Similarly, Aung told me that while people may have disliked the relocation at first, now most people are satisfied because they have more space:

There are 70 monuments inside the walls. [It is an] important zone. That’s why we were transferred. New Bagan is also close to the monuments, but better. First people didn’t like it, but nowadays they became happy. They own compounds. Nowadays they could not buy it, more expensive now. (Aung, Bagan local, January 2015)
Thant explained that relocation for the protection of the monuments was a good plan, but a change of decision-makers in the Burmese government meant that the plan was not executed properly and later the construction of hotels was allowed in Old Bagan:

It seems that the original intention of emptying the old city area and relocating the people there was not the wrong idea. Renovation had probably also a good intention. But what happened was, in our country there were changes of decision-makers. Starting from 1990 until even today. And the whole idea was not followed up. And they allowed hotels in the place were the people lived before, in that old city area. So now that created a great resentment of those people who lived in Bagan for centuries throughout the generations. (Thant, Burmese expert, January 2015).

Chit told me she is of the opinion that the relocations were the right thing to do, but expressed her concern about the location of New Bagan, the speed at which it is growing and its possible encroachment on the monuments (Chit, Burmese expert, December 2014).

Karl believed that relocation is neither a good nor a bad thing, but it depends how it is dealt with. He pointed to the example of New Gurna in Egypt. This village was built between 1945 and 1948 ‘as a potentially cost-effective solution to the problem of relocating an entire entrenched community of entrepreneurial excavators that had established itself over the royal necropolis in Luxor’ (Steele 1989, p. 17). The village was designed by the famous architect Hassan Fathy and was based on principles of sustainability and social cohesion (see Fathy 1976). It was never completely finished, partly because of sabotage by the villagers. Over time, New Gurna
deteriorated and by 2009 UNESCO and the World Monuments Fund initiated a project for the safeguarding of the site. Thus, a village that was initially built to protect one cultural heritage site becomes a cultural heritage site itself decades later. However, Timothy Mitchell (2001) has questioned the ethics of the case of Gurna and argues that the forced eviction can be seen as a form of violence. Karl may have seen New Gurna as a good example, but the use of a renowned architect like Fathy to design the place of relocation does not make it more just. To the contrary, it only emphasises how in the new location too, materials and design are more important than people. At any case, no architect like Fathy was involved in the building of New Bagan.

The case of New Gurna is only one of many examples of the displacement of communities for the protection of an area. There are countless examples where evictions took place in order to protect cultural heritage. Sukhothai in Thailand (Peleggi 1996), Hampi in India (LeDuc 2012), Wutai Shan in China (Shepherd 2013) and Angkor in Cambodia (Miura 2005) are just some examples from the region. Meskell argues that ‘the legacies of enclosure, eviction and salvage that developed around sites of natural value have indelibly informed our understanding and management of cultural places’ (2011, p. 14). She traces the enclosure of land back to the fifteenth century and shows how this practice was exported with colonialism. People were rendered uncivilised and without property, which justified state or colonial appropriation. Cultural sites become recast as endangered places and ‘people are viewed as encroaching and
threatening the integrity of heritage sites’ (Meskell 2011, p. 21). They are accused of being ignorant of its value and cast as ‘interlopers rather than the “original” people who built or traditionally used such sites’ (ibid).

The case of Bagan differs in that there was no intention to protect any integrity or to present a pristine or abandoned site. Following the relocation of the villagers, Old Bagan became the site of the active construction of a museum and tourist facilities, including several luxury resorts, the reconstruction of a Bagan-era palace and the renovation and reconstruction of several pagodas as merit making projects. Janette Philp and David Mercer have suggested that ‘[t]he relocation of these inhabitants, whose poverty is so clearly apparent, serves to remove such places from the gaze of tourists’ (1999, p. 33). Thus, displacement was necessary in order to allow tourism development and state-sponsored religious activities. Eviction of the villagers in Old Bagan was less for the protection of an archaeological site (although this is what the villagers were told) and more for the exploitation of an economic resource.

5.3.2 Rights and eviction

The eviction from Old Bagan is the only incident some of my informants referred to when discussing human rights in the context of Bagan’s World Heritage nomination (other challenges were generally not considered human rights issues). Apparently, forced relocation was perceived as a human rights violation. Interestingly, evictions are not explicitly mentioned
in international human rights legislation, although in Resolution 1993/77 the Commission on Human Rights states that ‘the practice of forced eviction constitutes a gross violation of human rights’ (UN OHCHR 1993, Article 1). Subsequent reports on evictions and their negative impact on human rights led to the adoption of General Comment 7 by the Committee on Social Economic and Cultural Rights in 1997, in which forced evictions in the context of the right to adequate housing (Article 7, ICESCR) are further discussed and largely condemned. In 2007, the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living presented the Basic Principles and Guidelines on Development-Based Evictions and Displacement to the UN Human Rights Council. In this document, forced evictions are defined as

acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection. (UN Human Rights Council 2007a, p. 3)

This definition applies to the 1990 relocation in Bagan. However, the Special Rapporteur also outlines certain ‘exceptional circumstances’ under which forced evictions may be permitted:

Any eviction must be (a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation
and rehabilitation; and (f) carried out in accordance with the present guidelines. (UN Human Rights Council 2007a, p. 6)

In Bagan, past and potential future relocations are (a) in accordance with national law and (c) arguably undertaken to promote general welfare, specifically the conservation and protection of a cultural heritage site of Outstanding Universal Value for Humanity. The incident of 1990 may not have fulfilled the other criteria, but theoretically future relocations could.

Legally, the relocation of 1990 was possible under the constitution and main land laws at the time. Under the colonial-era Land Acquisition Act of 1894, which remains in place, the government is allowed to take land for public purposes and for transfer to business. Governmental control over land was further solidified after independence, with the particular objective to reclaim land that had ended up in the hands of foreigners during the colonial period. Under British rule, many people from the Indian subcontinent had migrated to Burma. This included a community of money lenders from Chettinad in Tamil Nadu, known as the Chettiars. In Burma, Chettiar money lending was secured against a collateral, which was mostly title to land. The global Depression of the 1930s led to the near total collapse of paddy prices in Burma, which made it impossible for many cultivators to pay off their debts. As a result, much of the cultivatable land of Burma was alienated from the farmers (Turnell 2008). Upon independence, most Chettiars left Burma and in order to prevent such land alienation in the future, the ‘1947 constitution restricted landholdings to 50 acres and gave the state the right to nationalize
land’ (Fink 2015, p. 244). Soon after, the Land Nationalisation Act of 1953, ‘effectively vested ownership of all land in the country with the government’ and ‘gave legal authority to the state to claim all land in line with socialist principles and the president the legal right to confiscate all agricultural land unless otherwise exempted under it’ (Linn 2015, p. 71).

Although the relocation of Old Bagan had nothing to do with the abolition of foreign land ownership, it became possible under the laws that had been created with this purpose in mind. Christina Fink points out that ‘after 1988, when the military government began encouraging private enterprise in order to stimulate the economy, land seizures for private development became increasingly common’, while ‘little or no compensation [was] provided to those who were dispossessed (2015, p. 249). The forced relocation of Old Bagan took place in this context where old laws were used by the former junta to encourage economic development with little regard to social justice or the equal distribution of profits.

In the 2008 constitution, the idea of state ownership of land was reaffirmed and the government continues to have absolute power to reclassify or change the status of land, which has facilitated land grabbing across the country (Carter 2015; Linn 2015). In 2012, two significant new land laws were passed: The Vacant, Fallow and Virgin Land Management Law, and the Farmland Law. Under the former law, the president mandates a central committee to decide whether land is vacant, fallow or virgin and under the latter private land ownership is enabled under certain criteria. According to Connie Carter (2015), traditional and customary land use is
not taken into account and people have to provide evidence of their land use rights. The lack of transparency in the process encourages corruption and abuse of power and most farmers do not possess the documented proof of ownership that they need in order to receive compensation when their land is taken (Linn 2015, p. 72). Soe Nandar Linn argues that these laws increase the power of the government over small farmers by ‘strengthening the role of bureaucracy in farmland registration and management’ (2015, p. 72). According to Carter, the legal situation with regard to land rights in Myanmar ‘directly and indirectly contributes to insecure land tenure and through that facilitates and legitimizes land grabs’ (2015, p. 101). The recent forced relocations of villagers for the Myitsone hydropower dam, the Letpadaung copper mining project and the Dawei Special Economic Zone indicate that such practices are not limited to the former military regime. Contemporary tensions between villagers and the developers of tourist infrastructure in Bagan are not dissimilar to those at these resource extraction projects.

5.3.3 Relocations and restrictions for World Heritage

However, in October 2014, in the context of the preparation for the World Heritage nomination of Bagan, the government implemented a temporary suspension on all new developments to prevent the encroachment of hotels on the monuments and started to retroactively enforce the Protection and Preservation of Cultural Heritage Law of 1998. According the Article 18 of
this law, ‘[n]o person shall, without prior permission granted under this law, construct, extend, renovate a building or extend the boundary of its enclosure in the ancient monumental zone or ancient site zone’. In Bagan, several hotels were built in such zones before 1998 and the law was never strictly enforced after 1998. Businessmen with links to the former military regime were able to construct several more hotels and it is understood that around 40 hotels were built illegally. Some of these hotels and resorts incorporate pagodas in their compounds, effectively excluding local people from visiting and worshipping them. This is a point of contention among locals and the Bagan Lovers Association has demonstrated against these types of developments.

In May 2015, the Myanmar Times reported that a team of Burmese and foreign experts started an inspection of the hotels to see which ones are in breach of the 1998 law. A follow-up article in August 2015 reported that the government named 11 buildings in Bagan that will face charges for breaching the law, while many well-known luxury hotels that violate the same regulations were left off the list. Meanwhile, at least forty other guesthouses – mostly modest establishments of around ten rooms – were

---


left ‘in limbo’, some still under construction. Many of them received permission to build a few years earlier, but with the retroactive enforcement of the 1998 law, licenses have been suspended⁴⁹. In March 2016, it was announced that some of them were allowed to finish up construction, but would only be permitted to function as private residences.

Unfortunately, the impact of these regulations is greater on already vulnerable people than on big businesses, which are more resilient. This is illustrated by the story of one family in New Bagan that was told to me by Linda (foreign expert, December 2014). After the eviction from Old Bagan, the family lost their livelihoods. But over the following 20 years they managed to save enough money to build a small guesthouse and with the anticipation of increased tourism after 2011, the family got an expensive loan to build a small extension to their guesthouse. As a result of the construction ban, they were no longer allowed to continue this extension and consequently may struggle paying off the loan.

Besides these development restrictions, several properties that are currently considered in too close proximity to the monuments will have to move to a special hotel zone within 15 years, which presents the first formal relocation measure that is related to the World Heritage nomination. The forced relocation of these properties is of a different nature than the 1990

eviction, particularly because mainly hotels, rather than villages, are targeted and a 15-year notice has been given, which is the time that is supposedly needed by the hotel owners to break even\textsuperscript{50} (see also Weise 2016). However, employees in these businesses are likely to be villagers, for whom the relocation of their workplaces may mean they will have to make a longer and more expensive commute, the impact of which should not be underestimated for people living on subsistence levels.

Whether there will be further relocations and under what conditions will partly depend on the details of the nomination. In order to be nominated under the World Heritage Convention, a property needs to have good protection and management systems in place. Such systems include the delineation of boundaries and buffers zones, appropriate legislative, regulatory and contractual measures, and a management plan. During my fieldwork, the location of boundaries and buffer zones remained an unresolved and contested issue. Several different approaches were being considered to decide the location of the boundaries of the World Heritage

site. One approach is to take the four relic stupas (Lokananda, Tangyi Taung, Shwezigon, Tuyin Taung) as outer corners of the site\textsuperscript{51}. However, this would mean certain key monuments would be excluded, such as Kyauk-U Umin (see Figure 34). Kyauk-U Umin is an archaeologically and architecturally significant cave temple and an outlier to the rest of Bagan. Karl identified this as a key challenge for the boundaries of Bagan. If the boundaries would be extended to include the temple, the town of Nyaung U

\textsuperscript{51} Interestingly, the choice of these particular pagodas to determine the boundaries of the site is based on a popular myth in which a Bagan Dynasty king decided to build stupas to enshrine relics of the Buddha at the places where a white elephant knelt. Visiting these four relic stupas before noon remains a popular pilgrimage route.
and a potential hotel development zone in the area between Nyaung U and Kyauk-U Umin would be included in the protective zone and become subject to certain regulations and restrictions. However, arguably, urban areas require a different approach, particularly in terms of development rights. Similar questions can be asked about the town of New Bagan. Although technically boundaries of World Heritage properties do not need to be continuous and Kyauk-U Umin could be identified under separate boundaries, there are several other pagodas located in or around Nyaung U and New Bagan posing similar challenges.

A second difficulty for the delineation of boundaries and buffer zones is the agricultural use of the land in Bagan. Farmers hold goats and cows and grow sesame and ground nuts (Figure 35). They work on the land with ox carts. If the farmers start using different tools and equipment (like tractors) or decide to grow different crops that are more profitable, the effects on the landscape of Bagan are uncertain. However, if restrictions make farming
unprofitable, farmers are likely to leave their land idle and seek their fortune elsewhere, which could equally affect Bagan’s landscape.

The difficulty of determining appropriate boundaries and buffer zones for the World Heritage nomination is enhanced by the ambiguity of the current protective zoning. The official land records in Bagan – which are hand drawn by pencil and decades old – divide the land in urban, agricultural and religious zones. However, the zones on these official records do not correspond with those of the Department of Archaeology, which divide Bagan into an ancient monument zone, an archaeological zone and a protection zone (see Figure 36). Moreover, both records only loosely

![Figure 36 Zoning of the Department of Archaeology (courtesy of Menno-Kan Kraak)](image-url)
reflect the situation on the ground. Many people have informal agreements with pagoda trustees or local government officials to have their dwellings and businesses on religious land. These people are usually poor and live in precarious and uncertain situations, particularly in this time of transformation.

Although there are a series of international documents from which it can be concluded that forced evictions constitute a human rights violation, these same documents outline the conditions under which evictions are nevertheless justified. It is too early to say whether future evictions in Bagan will reasonable and proportional, whether there will be fair compensation, and whether they will be carried out in accordance with international human rights law. However, at the very least they would be authorised by national law. Moreover, they could be justified for promoting general welfare, because arguably they contribute to the protection of a World Heritage site.

Evictions are controversial, but whether or not they are ‘justified’ – legally or morally – depends on various factors. Such factors are subject to different interpretations and are weighed differently by different parties. The purpose of the eviction, the subjects to be evicted, and the means of evictions (in terms of compensation and notice) are such factors. The purpose of the 1990 eviction was the exploitation of an economic resource, the subjects were poor and powerless villagers, and anecdotal evidence suggests that the means of eviction left room for improvement. Accordingly,
many of my informants understand it as a human rights violation. In the context of the new World Heritage nomination, so far the only policies with regard to relocation target hotels. However, it is possible that further relocations will be announced later. If not, residents in what will be the protective zone will inevitably become subject to certain regulations and development restrictions. These can range from limits on the height of buildings to the types of crops that can be grown and the types of events – such as pagoda festivals – that can be organised. Such regulations and restrictions may be necessary to protect the archaeological, architectural and spiritual heritage of Bagan. Uncontrolled development – whether on a small or a large scale – can adversely impact the archaeology of the region, the fabric of the monuments, the integrity of the landscape, as well as the spiritual values of the pagodas: access the temples and means of worship can be affected. However, in an area where most people live in poverty, such development restrictions need to be well thought through in order not to violate economic and development rights.
5.4 Development and tourism

The UN considers poverty ‘an urgent human rights concern’ and in 1998 appointed a Special Rapporteur on Extreme Poverty and Human Rights. In 1986, the UN adopted the Declaration on the Right to Development, which declares that ‘every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized’. If poverty is a human rights violation and there is a right to development, there are serious human rights issues in Bagan to be resolved.

It has been argued that heritage, turned into an economic resource by tourism, could potentially become a means to alleviate poverty, a resource for development as well as a generator of funds to support conservation, which is particularly pertinent in developing countries (e.g. Ebbe, Licciardi & Baeumler 2011; Samuels 2010; Starr 2012; Throsby 2012; Timothy & Nyaupane 2009). From this perspective, tourism could potentially be an effective part of human rights-based approaches. However, this section will show that it is not only questionable to what extent tourism contributes to poverty alleviation and development in practice, tourism may also be a key force behind rights violations itself.

Neil Silberman argues that the narrative of cultural heritage as an economic resource ‘represents a particular vision of development in which

52 See http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx Accessed 27/10/16
the remains of the past and the products and services derived from it can be commodified while the culture of commodification remains unquestioned and unseen’ (2013, p. 219). He argues that the revenue raised through this redefinition is often not as high as expected and not equally distributed. He identifies several factors that contribute to this. One is the mismanagement of revenue by governments. In Bagan, only 2 percent of the entrance fee of 20 US$ or 25,000 kyats goes toward the upkeep of the site, which is a source of indignation among residents. In a country with rampant corruption and a lack of transparency (In 2015, Transparency International ranks Myanmar 147 out of 168 countries on its Corruption Perceptions Index), several of my informants have raised concerns about how the rest of this money is spent. A second factor is related to leakage. International tourism firms take up much of the tourist spending. But leakage can also be national or regional when ‘outsiders arrive from nearby towns, often with more capital than the early local entrants. New arrivals use their capital to build more substantial stalls, small shops, or restaurants of more permanent construction’ (Hampton 2005, p. 751). Moreover, Winter (2007) has shown


54 See http://www.transparency.org/country#MMR Accessed 27/10/16
– in the context of Angkor in Cambodia – that tourism cannot be ‘conceived in static and geographically bounded terms’ (2007, p. 23). Rather, tourist flows are tied up to social and physical infrastructure and facilities in the region. Destinations like Cambodia and Myanmar are ‘often only visited as a short “extension” to an itinerary built around one or two neighbouring countries’ (2007, p. 85). As a result, tourism is influenced by decisions made in offices located in regional hubs like Bangkok.

Tourism may create jobs, but it also brings new challenges. Myo was worried about some of these:

Yes, big challenges. Especially we have to act with awareness for the negative impacts. Like sex abuse or the natural and cultural heritage protection. I worry so much. The increase, progress creates a lot of jobs
for a lot of people, but on the other hand, negative things are coming, becoming slowly visible. I worry. (Myo, Bagan local, June 2014).

In Bagan, many children hang around the pagodas selling souvenirs to tourists. May observed how on the one hand there are more jobs, but on the other hand more children drop out of school:

A lot of young children don’t go to school anymore, because, well, the education system here sucks. Low-income families, if they have about four children, they cannot put all their children to high school because it’s expensive. So, the elder two children, they finish primary school. And then have to go out and help, earn money. So, what is their future?

In one way, … a lot of people in this area have jobs. Also, a lot of people can now speak English. They sell things to the tourists. They get a little bit of extra money for the house. There is always good and bad together. You have to see from both sides. (May, Bagan local, January 2015)

Mismanagement, leakage and the influence of an imbalanced topography all contribute to the lack of control local communities in emerging economies have over the ways in which the tourism industry develops. Martin Mowforth and Ian Munt point to the vast body of work that demonstrates that ‘local communities in Third World countries reap few benefits from tourism because they have little control … they cannot match the financial resources available to external investors and their views are rarely heard’ (2003, p. 211). An example of a category of locals in Bagan that struggles with the arrival of new actors and developments is the horse cart drivers. For decades, the main way to see the temples was by horse cart. However, in the last few years, electric bicycles, buses and cars have become the preferred means of transport and horse cart drivers have to find different ways to make a living.
The majority of the locals lack the skills, education and capital to compete with outside investors and business owners. Lacking such skills, several people find alternative ways to profit from tourism. This may involve commodifying themselves or their religious practices. A group of women outside of Minnanthu village called out to independent tourists passing by on (electric) bicycles, offering them a tour through their village for a tip. At the back of Shwezigon pagoda, several women invited tourists to come and see the ‘lucky Buddha’. The ‘lucky Buddha’ is not really a Buddha but the statue of the tail of the *naga* dragon. As mentioned in Chapter Four, this *naga* is actively worshipped as the protector of the pagodas (see Figure 30).

Tourists who come to this end of the pagoda were treated to a performance of worshipping. Subsequently, they were handed a plate of food to offer to the *naga* themselves and a donation was expected in return. The potential to make a living from tourism in Bagan attracts people from all over the country. Particularly remarkable are the women of the Padaung tribe. The Padaung are an ethnic minority in Myanmar who originally reside in Kayah State near the Thai border. They are famous for their long necks, elongated by golden rings. A group of women moved to Bagan to profit from tourism by exhibiting themselves. They had a weaving shop in Myinkaba village that was promoted on the side of the road with a sign saying ‘Long-neck women’ and they spent sunsets at the popular Shwesandaw pagoda with their weaving tools, where tourists could photograph them in return for tips. If
such informal economies would be restricted, many of these people have few alternative means of making a living\textsuperscript{55}.

Similar to the relocations, the uneasy relationship between tourism, development, and heritage conservation is not unique to Bagan. For example, Källén has written about ecotourism in the context of the archaeological heritage site Hintang in Laos. She argues local communities are caught in a “double bind”, where in order ‘to reap the benefits and incomes of ecotourism … [they] must be seen as underdeveloped and incapable of developing on their own’ (2015a, p. 246–7). Writing about his experience in Borobudur in Indonesia, Mark Hampton (2005) makes several suggestions about how the situation of local communities could improve. Firstly, it will be necessary for authorities to engage with and listen to the local communities. In the previous section, I have shown that internal unequal power relations do not make this a straightforward exercise. Secondly, ‘planners and decision-makers need to recognize the legitimate existence of small-scale businesses and the informal sector in plans for the development of regions, new resorts, or in the upgrading of existing attractions, including their roles in an integrated tourism system’ (2005, p.

\textsuperscript{55} In September 2014, the Japan International Cooperation Agency started a Project for Establishment of the Pilot Model for Regional Tourism Development in Bagan. They launched a tourism information website in December 2015 and in 2016 several ‘community based tourism’ projects started, including a cooking tour in West Pwa-Saw Village, a cleaning campaign, and handicraft projects. At the time of writing, it is too early to evaluate these projects. See \url{https://www.wonderbagan.com/} Accessed 27/10/16
This is pertinent at a site such as Bagan, where the informal sector is the main means of living for many people, such as those described above. Moreover, microloans and free or highly subsidized basic training could assist people with their small-scale businesses.

In 2013, the Ministry of Hotels and Tourism addressed some of these concerns in its Tourism Master Plan. The aim of the plan is to ‘maximize tourism’s contribution to national employment and income generation, and ensure that the social and economic benefits of tourism are distributed equitably’ (Ministry of Hotels and Tourism 2013, p. i). The document has many good intentions but the degree to which it is possible to implement them remains to be seen. In order to address the risks and constraints of tourism development that were identified, it is ensured that the Government of Myanmar will constantly improve ‘good governance through transparency, open access to information, public participation and consultation, controlling corruption and upholding the rule of law’ (Ministry of Hotels and Tourism 2013, p. 20). However, it is exactly in these areas where Myanmar has a long way to go and which present some of the most serious impediments to a socially just tourism development.

56 Lack of trained resources, insufficient public services, infrastructure and financial systems, weak regulatory environment, insufficient coordination among and between the public and private sectors, lack of accurate tourism information, visitor’s perception of poor value for money, negative economic, social and environmental impacts, speed of economic reform and liberalization, inappropriate metrics used to measure tourism performance, global economic instability and climate change, natural disasters (Ministry of Hotels and Tourism 2013).
The potential negative implications of tourism and their effect on social justice are also reflected in a report on the *Tourism Sector-Wide Impact Assessment* by Myanmar Centre for Responsible Business and its co-founders, the Danish Institute of Human Rights and the Institute of Human Rights and Business (2015). In addition to existing methodologies of social and environment impact assessments, the report applies a human rights lens. This 234-page report covers the impacts of tourism in a wide range of areas: from the role of local communities to the issue of land grabbing, from child labour to fair working hours and wages. Although the report identifies a few good practices, in many of these areas Myanmar faces significant challenges. As one of the main tourist destinations in Myanmar, these challenges are particularly relevant in Bagan. They show the impact the recognition of the economic value of Bagan can have on human rights.

The acknowledgement that tourism can have implications for human rights has emerged relatively recently. Stroma Cole and Jenny Eriksson suggest this topic has been neglected because tourism is primarily considered a type of business driven by profit (2010, p. 110). If host communities are able to develop and overcome poverty as a result of tourism, this is a welcome side effect, but it is not the main purpose. In fact, ‘the rights of local people take second place to the needs and expectations of foreign tourists and the profits of TNCs [transnational corporations]’ (Mowforth, Charlton and Munt 2008, p. 90). In Bagan, this is reflected by the fact that all hotels have running water and electricity while the majority of villagers depend on firewood and wells to collect water. Freya Higgins-
Desboilles and Kyle Powys White argue that ‘understanding the impact of tourism on human rights in communities receiving tourists is not possible without contextualization in the dynamics of an economy driven by neoliberal principles’ (2015, p. 111). In their view, violations of human rights are not unfortunate side-effects but a direct result of a neoliberal ideology.

Robyn Bushell and Russell Staiff have similarly argued that,

[b]y separating tourism off as a distinct ontological entity without reference to anything else, such as neo-liberal economic systems, modernity, mobility and the flows of people (such as translocation into towns and cities from rural areas), tourism appears to be a problem that could or should be dealt with in isolation. Viewed in the wider context, tourism is seen rather as a vehicle and manifestation of these broader changes. (2012, p. 253)

The potential of human rights violations associated with tourism cannot be ignored if human rights-based approaches to World Heritage conservation are adopted. Tourism and heritage conservation are tightly intertwined. After all, it is the ancient monuments that make people visit Bagan in the first place. Yet, the (potential) rights violations discussed in this section are related to poverty, inequality, and the influence of a neoliberal market system. These are deeply-rooted, complex and structural global problems. They go beyond Bagan, UNESCO’s World Heritage system, or even Myanmar. Although this no reason to ignore or accept them, human rights-based approaches to World Heritage conservation in Bagan cannot be expected to rectify such issues. When Bagan’s World Heritage nomination is submitted to the World Heritage Committee in 2018, it is not realistic that
poverty will have been eliminated and everyone enjoys ‘a standard of well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services’ (UDHR Article 25(1)).

This raises questions about the scope of human rights-based approaches to World Heritage conservation. Which rights violations need to be prevented or addressed in a World Heritage nomination dossier or in evaluations of Advisory Bodies, and which should be considered outside of the realm of World Heritage? In the Introduction, I mentioned the tripartite typology of respect, protect, and fulfil. Several other, more detailed, typologies have been proposed (e.g. van Hoof 1984; Steiner & Alston 2000), which ‘move along a continuum from “negative” to more “positive” obligations, inserting an obligation to protect from interferences from third parties in between’ (Koch 2005, p. 86). In this context, should UNESCO and the Burmese government (or any other agent that can be considered a duty-bearer) merely refrain from violating human rights themselves, or do their obligations extend to the prevention of third parties from violating human rights? This question is even more complex considering that it can be hard to identify third party violators if the human rights issue is a global structural problem like poverty.

5.5 Concluding remarks

At the start of this research project, I anticipated that improved mechanisms for participation, no further relocations, and ensuring that Bagan’s poorer
residents can directly reap the benefits of tourism would be the way forward if human rights are to be respected in the context of Bagan’s World Heritage nomination. However, on closer inspection, it became clear that the various paradoxes and complexities that are part of in community participation, relocations and tourism development mean that it is far from clear which type of policies ensure respect of human rights. When Bagan is put in the broader context of living heritage, tourism, and development, it becomes clear that several conflicting interests are at play and respect for land, economic and development rights could compromise heritage conservation aims and arguably cultural rights.

Importantly, the dominant understanding of cultural heritage influences how community participation is approached. In the context of the World Heritage nomination, Bagan is primarily approached as an architectural and archaeological site. Arguably, the conservation of an archaeological or architectural site requires the insights of experts in these fields. Many residents of the area or pilgrims visiting Bagan do not have such expertise. Accordingly, ‘community participation’ takes a tokenistic form of education and awareness-raising. However, when the objective is the safeguarding of a Buddhist and spiritual living heritage, a different set of experts would have to be identified and participation may take a different form.

Still, it remains opaque what is meant with ‘participation’ as well as who is part of a ‘community’. Participation can take different forms and serve different purposes. The degree and type of participation that is appropriate
and how participation can be realised in hierarchical governance contexts is not clarified when arguments are made that community participation is a key part of human rights-based approaches and the World Heritage Sustainable Development Policy. Moreover, engagement with communities requires consideration of who is included and excluded. Heterogeneity, divisiveness, and power imbalances between and within communities mean that even with a stronger commitment to participation, conflicts of interest are inevitable and it is impossible in some situations to protect every individual’s interests or rights without compromising another’s.

Questions about the relative harm or benefit of forced relocations exemplify the tension between human rights, conservation and development and the challenges of ensuring equitable community participation. Several factors, which are interpreted and weighed differently by different actors, influence whether a forced eviction is considered a human rights violation. People involved in and affected by Bagan’s World Heritage nomination are divided about the merit of the 1990 relocation from Old Bagan to New Bagan, as well as potential future relocations. This is understandable, since some people will benefit or suffer from such measurements more than others. The question of eviction for a World Heritage nomination is caught up in conflicting rights. The eviction of, as well as development restrictions on, certain villages could be considered violative of land, economic and development rights of individuals negatively affected. As experiences at World Heritage sites such as Angkor show (Miura 2005), there is a real risk people become trapped in poverty, having
few opportunities to enhance their livelihoods in the restricted conditions that would be imposed in order to protect the heritage. However, simultaneously such measures may serve to protect cultural and religious rights, of these individuals as well as those of others.

Similarly, the increase in tourism brings opportunities for economic development and possibly a means to overcome poverty as well as risks of rights violations. However, as Bushell and Staiff argue, ‘[t]o describe the problem as “tourism impact” or poor tourism planning is far too simplistic, masking considerable complexity’ (2012, p. 255). Tourism – and its positive and negative effects on human rights – is a manifestation of several global forces, including neoliberal market principles. As a result, tourism-related human rights violations that take place in the context of Bagan’s World Heritage nomination – such as child labour, exploitation, entrenched poverty – cannot be understood or solved in isolation.

The question is which human rights violations fall in the realm of World Heritage conservation and should therefore be addressed in and after the nomination process by whom. Is the aim of human rights-based policies to World Heritage conservation that not a single human rights violation is acceptable, regardless of who the violator is, or should only human rights violations that are directly traceable to policies related to World Heritage conservation be prevented? In other words, are human rights-based approaches about respecting, protecting or fulfilling human rights? The large grey area with regard to what can and what cannot be considered a
direct effect of World Heritage conservation policies means that the situation remains ambiguous even if this question is answered.

Factors outside of the Archaeological Zone of Bagan not only influence whether and which human rights get respected and violated, but also the extent to which human rights-based policies can be enforced and implemented. Therefore, it is crucial to take a multi-scalar approach to the question of what human rights can offer to the tension between living heritage, conservation and development in Bagan. In the next chapter, I explore how the politics and capacity of the Burmese state, attitudes towards human rights and governance in (Southeast) Asia, and global bureaucracy and diplomacy influence the potential of human rights to lead to greater justice in the context of Bagan’s World Heritage nomination. In doing so, I move away from questions around substantive rights that are at stake in Bagan and focus on the more practical issue of accountability.
6 Implementation and enforcement

6.1 Introduction

In 2012, the armed Islamist group Ansar Dine seized Timbuktu in Mali, a major trading hub and an intellectual and spiritual centre of Islam in the 15th and 16th centuries. They destroyed 14 of the 16 World Heritage listed mausoleums and burned thousands of holy manuscripts. Three years later, in September 2015, the Niger authorities surrendered suspect Ahmad Al Faqi Al Mahdi to the International Criminal Court (ICC). He is accused of committing the war crime of intentionally attacking historic monuments and he has been the first suspect ever to face a trial for the destruction of cultural heritage. The Prosecutor of the ICC, Fatou Bansouda, clarified in a statement: ‘to intentionally direct an attack against historic monuments and buildings dedicated to religion constitutes a war crime, duly punishable under the Rome Statute [the founding treaty of the ICC]. These are serious crimes which must be dealt with at the hands of justice’. It is one of the cases that motivated the UN Special Rapporteur on Cultural Rights to call the destruction of heritage a human rights violation (UN Human Rights Council 2016a). In this light, the ICC could be seen as a mechanism to hold violators of human rights to account.

57 Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the opening of Trial in the case against Mr Ahmad Al-Faqi Al Mahdi, 22 August 2016 https://www.icc-cpi.int/Pages/item.aspx?name=otp-stat-al-mahdi-160822 Accessed 27/10/16
During his trial in August 2016, Ahmad Al Faqi Al Mahdi pleaded guilty and the case has been celebrated in the media as an advancement in the enforcement of international legislation\(^58\). However, the fact that this is the first time someone has been tried for war crimes related to cultural heritage also reflects the significant challenges facing the implementation of international law concerned with common goods, such as heritage, human rights, and the environment (Lenzerini and Vrdoljak 2014). This difficulty has implications for the implementation of human rights-based approaches to World Heritage conservation.

It has been argued that the key aspect that distinguishes a human rights-based approach from other approaches is accountability (Cornwall and Nyamu-Musembi 2004; Uvin 2004). The very move from charity to claims brings about a focus on mechanisms of accountability: ‘If claims exist, methods for holding to account those who violate claims must exist as well. If not, the claims lose meaning’ (Uvin 2010, p. 170). Holding duty-bearers to account, however, can present one of the biggest challenges for human rights-based approaches to World Heritage conservation. If they exist at all, mechanisms for accountability, whether within Myanmar, Southeast Asia or

globally, tend be problematic or ineffective, as will become clear in the following pages.

In this chapter, I take an explicitly multi-scalar approach and reflect on national, regional and global factors that influence the potential of human rights-based approaches to lead to greater justice in heritage practice. Even if conceptual questions around cultural rights and community participation, living heritage and hierarchies of knowledge, and evictions and tourism development – that have been discussed in the previous chapters – were resolved, practical questions around how to implement and enforce human rights-based policies remain. The purpose of this chapter is to shed light on these questions.

6.2 Human rights in Myanmar

6.2.1 The global human rights regime and sanctions

In 1948, Burma was among the 48 State Parties that voted in favour of the *Universal Declaration of Human Rights*. At the time, Burma was a newly independent democratic country. However, following the military coup of 1962, Burma experienced decades of systemic human rights abuses and political repression. Jared Genser (2014) investigated the role of the global human rights regime in Myanmar in the last 20 years and his findings illustrate the weakness of the regime in terms of implementation. Until the
government initiated reforms in 2011\textsuperscript{59}, Myanmar’s human rights record was among the worst in the world and included forced labour, the recruitment of child soldiers, human trafficking, sexual violence, extrajudicial killings, torture and arbitrary detentions (Genser 2014, p. 350). Between 1994 and 2009, the primary means with which the UN engaged with the Burmese government with regard to its human rights situation was through the appointment of a UN Special Rapporteur. The Rapporteurs published 36 reports to the UN Human Rights Council, the Commission on Human Rights (the predecessor of the UN Human Rights Council), and the UN General Assembly, which make for ‘depressing reading’ (Genser 2014, p. 351). Since 1991, the UN General Assembly has adopted 20 annual resolutions on Myanmar’s situation. There have also been advocates to place Myanmar on the permanent agenda of the UN Security Council, but China and the Russian Federation vetoed against. Only after the bloodshed of the Saffron Revolution\textsuperscript{60} of 2007 did the Burmese government enter into dialogue with the UN High Commissioner for Human Rights and shortly thereafter the UN Security Council adopted a presidential statement in which the violence was condemned (Genser 2014, p. 355).

\textsuperscript{59} Before 2011, Myanmar only ratified two of the nine core human rights instruments that were developed since 1948: The \textit{Convention on the Rights of the Child} in 1991 and the \textit{Convention on the Elimination of all Forms of Discrimination against Women} in 1997.

\textsuperscript{60} The term ‘Saffron Revolution’ is used to refer to an uprising led by Buddhist monks against the economic and political policies of the former military regime in 2007. The protests were violently repressed.
Genser identified several major challenges the High Commissioner faces when attempting to engage with Myanmar, the biggest obstacle being ‘not having a serious governmental partner that is concerned about human rights’ (2014, p. 359). The Myanmar government did not hold perpetrators accountable, orchestrated most of the human rights abuses itself, and denied that abuses ever existed. Furthermore, Special Rapporteurs in Myanmar were denied access for extended periods and they struggled with a lack of financial and administrative support. Genser argues that these challenges made it impossible for the UN High Commissioner for Human Rights and the Special Rapporteurs to have any meaningful impact on Myanmar’s human rights situation (2014, p. 362).

Outside of the global UN-based human rights regime, some states choose to pursue human rights in their foreign policy, usually because it is considered important for their national identity (Donnelly 2013, p. 199). Mobilising shame is the most common strategy that is used. However, this has a limited effect: privately expressed views will rarely improve human rights practices. Moreover, diplomatic discretion leads states to rely on other national or transnational actors to provide vocal public criticism (Donnelly 2013, p. 203). Sanctions, such as cutting development assistance, are a more material strategy. Since the repression of the uprising of 1988, Myanmar has been subject to such foreign policies. In an attempt to weaken and isolate the military regime and deny its legitimacy, the United States and the European Union ‘suspended nonhumanitarian bilateral aid, imposed an arms embargo, and denied tariff preferences to imports from
Burma as well as preferential financing for trade and investments’ (Pedersen 2008, p. 3). In particular, these Western countries demanded the release of Aung San Suu Kyi from house arrest and a transition to democracy. This policy was supported by Aung San Suu Kyi and pro-democracy coalitions, which consisted mainly of exiled advocacy groups around the world (McGregor 2011, p. 149).

However, the use of sanctions to pursue human rights is controversial. Morten Pedersen has been one of the most vocal critiques of this strategy. In this book, Promoting Human Rights in Burma: A Critique of Western Sanctions Policy (2008), he evaluates the Western human rights policy on Myanmar since 1988 and argues it failed ‘to promote political reform or substantially improve human rights’ (2008, p. 12). He contends the sanctions have been harmful for the country’s long-term development prospects and increased the suffering of ordinary Burmese (Pedersen 2008, p. 13). Critics of the sanctions policy argue that they did not hurt Myanmar’s military rulers, who ‘are unfazed by international opprobrium and isolations, and may even prefer it’ (ibid). Moreover, when any interaction with the regime is portrayed as morally indefensible, ‘the range of actions available for international or domestic actors is limited’ (McGregor 2011, p. 151).

Thant argued that the controversial reconstructions and renovations in Bagan are the result of the sanctions policy. According to him, the refusal of Western countries to engage with the leaders of the military regime resulted in a lack of skills and knowledge with regard to international conservation standards (Thant, Burmese expert, January 2015).
Despite his critique, Pedersen also disapproves of continuing ‘business as usual’, as was the policy of several of Myanmar’s neighbours, most notably China. He suggests ‘principled engagement’ is the most appropriate strategy for promoting human rights in repressive states. Such an approach involves ‘direct engagement with those responsible for human rights violations, as well as broader groups in society, to address concrete problems and improve the practical framework for human rights protection’ (Pedersen 2013, p. 195). Pedersen argues that, on balance, humanitarian agencies who adopted such an approach in Myanmar did more to address priority human rights problems than those supporting sanctions or continuing business as usual. Yet, he also acknowledges that this approach is hard, slow and not always fruitful.

The limited power of the global human rights regime and foreign policies to enforce respect for human rights demonstrates the difficulty of moving beyond ‘human rights talk’. If human rights abuses take place at a World Heritage site, and the international community disengages or imposes sanctions by way of disapproval, the consequences for conservation, living heritage as well as development could be serious. This presents a dilemma for human rights conditionality on aid and international cooperation. Moreover, if enforcement is difficult for serious (and – based on the number of signatures – relatively uncontroversial) human rights violations, such as the use of child soldiers and torture, this raises the question how respect for more contested categories of human rights, such as cultural rights or the right to development, can be enforced. As I have
shown in the previous chapters, these categories are central to Bagan and many other World Heritage sites.

6.2.2 Post-reform Myanmar

Today, most sanctions have been lifted. In the last few years, several developments have indicated a change in attitude towards human rights in Myanmar. Since 2011, political prisoners have been released and laws on the freedom of assembly and media have been amended. Important signs of the change in (discursive) attitude toward human rights by the government in Myanmar include the establishment of a National Human Rights Institution (NHRI) – the Myanmar Human Rights Commission61 – and the adoption of the Myanmar Human Rights Commission Law in 2011 and 2014 respectively. Moreover, Myanmar ratified the Convention of the Rights of Persons with Disabilities in 2011 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and pornography in 2012. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in

61 Although a Myanmar Human Rights Committee had been established in 2000 in the context of an Australian human rights training programme, it had not been active since 2004 when its principal governmental sponsors, General Khin Nyunt and Colonel Tin Hlaing were removed from office. The Australian programme was already suspended in 2003, following the government-coordinated attack on Aung San Suu Kyi in Depayin (Kinley & Wilson 2007).
armed conflict and the *International Covenant on Economic, Social and Cultural Rights* were signed, but not yet ratified, in 2015.

However, since its founding, the new Myanmar Human Rights Commission has been subject to critique by civil society organisations (e.g. Burma Partnership and Equality Myanmar 2014). In November 2015, this critique received an added formality when the *Sub-Committee on Accreditation of the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights* (ICC Sub-Committee) recommended the Myanmar National Human Rights Commission to be accredited with a ‘B’ status. A ‘B’ status means the commission is not fully compliant with the Paris Principles, which are the formal guidelines for NHRIs (as adopted by the UN General Assembly in 1993). According to the Paris Principles, NHRIs are required to meet six main criteria in the categories of mandate and competence, autonomy from government, independence guaranteed by statute or Constitution, pluralism, adequate resources, and adequate powers of investigation. In Myanmar, the ICC Sub-Committee Report expressed concern about the lack of transparency of the selection procedures of committee members, the lack of civil society and women representatives, the silence on human rights violations of Rohingya and other minority groups, the financial dependence on the President’s Office, and the need for more extensive monitoring in places of deprivation (ICC Sub-Committee 2015, p. 11–14).

Another sign that human rights remain a sensitive and underdeveloped area in Myanmar is the continuing denial of accusations of
human rights violations. In March 2015, Myanmar argued that the report to the UN Human Rights Council by Special Rapporteur Yanghee Lee is ‘not free from bias, unfounded allegations, speculations and prejudgments’ (UN Human Rights Council 2015b). In March 2016, following the election of NLD government, Myanmar’s reaction to the latest report was similar and includes denials as well as statements that the accusations are misunderstandings, irrational, or based on incomplete information. Several times Myanmar argued that accusations ‘constitute interference in domestic jurisdiction of a sovereign state’ (UN Human Rights Council 2016b).

The case of Myanmar shows the importance of being aware of the political sensitivity of the human rights discourse and the kind of implications this can have. In the past decades, a confrontational engagement with government of Myanmar about its human rights situation did not lead to the desired effect of an improvement of the human rights situation. Rather, it isolated the country further (Pedersen 2008). Throughout interviews conducted with informants working for the Yangon Heritage Trust and SEAMEO SPAFA\(^{62}\), it was indicated that the use of the term human rights is avoided in their work with governments because of its sensitivity. This sensitivity is not limited to Myanmar. The research of Joel Oestreich suggests that ‘all development agencies, to some extent, worry that too much talk of human rights will annoy their host state, and this has been a

\(^{62}\) Southeast Asian Regional Centre for Archaeology and the Fine Arts by the Southeast Asian Ministers of Education Organisation based in Bangkok.
long-standing impediment to implementation of rights-based policies by UN agencies’ (2014, p. 80). While the intent is rights, several development officials would use different language (such as community engagement or inclusiveness) because this is less confrontational and more effective in getting things done (Oestreich 2014). The decision to use a different language may also be taken on local levels. For example, affiliates of the grassroots network Shack/Slum Dwellers International distance themselves from the rights-based approach because ‘the more confrontational their position, the more they risk violence and other forms of oppression’ (Patel & Mitlin 2009, p. 116). Objections are structural and pragmatic rather than conceptual or ideological: ‘Their experience suggests that … they have to avoid antagonizing the state in ways that would increase their vulnerability to adverse state action, and must instead encourage the state to view their idea positively’ (Patel & Mitlin 2009, p. 108). Whether to use rights or other language was also a topic of discussion during a Round Table on rights-based approaches to heritage management organised by Australia ICOMOS in October 2015, which brought together heritage practitioners working across Australia to discuss barriers and enabling factors for the implementation of this approach. It became clear that the majority of the attending practitioners did not explicitly use human rights-based approaches, but indicated that they were pursuing similar aims using different language – such as inclusiveness, participation, social values, social impact assessment and good governance – which was considered more effective to persuade decision-makers.
6.2.3 Capacity

Even with a good will to respect human rights, Myanmar may currently lack an appropriate governance system as well as the capacity for the implementation of human rights-based approaches. A government requires a coherent administrative structure to be able to execute policies. Part of such a structure needs to be ‘a skilled and honest civil service that can support policy makers and effectively implement their decisions’ (Pedersen 2008, p. 186). Following the military coup in 1962, thousands of civilian officials were dismissed and replaced by military officers with little relevant experience. The advancement of a career in the civil service did not depend on merit or seniority, but on loyalty to and patronage of more powerful military officers. This reduced the overall technical competence and educational levels of the bureaucracy. Moreover, the inability of the government to generate sufficient revenue led to ‘cripplingly low wages in a highly inflationary environment’ (Englehart 2005, p. 635), which fuelled corruption. Civil servants were forced to supplement their income by taking bribes. In 2005, Neil Englehart argued that the problems of a crippled civil service were ‘so severe that the bureaucracy has difficulty accomplishing even basic tasks necessary to maintain the regime, such as collecting revenue and supplying the army’ (2005, p. 623).

The employees of the Department of Archaeology, who work with UNESCO on the preparation of the World Heritage nomination, are civil
servants too. In 2014, the office of the Department of Archaeology in Bagan did not have an internet connection. Neither was there a computer in the office of the deputy director. The maps of the Department of Land Administration in Bagan were hand drawn by pencil and some were more than one hundred years old. An up-to-date inventory of the monuments of Bagan or the objects in the Archaeological Museum was non-existent – not to speak of digitisation. The most recent inventory is the one Pierre Pichard created in the 1970s and 1980s (Pichard 1992–2001). A number of foreign consultants involved with the nomination mentioned that the lack of the capacity of the Department and the low salaries of the employees formed a challenge for the World Heritage nomination of Bagan. Htet Aung confirmed this concern. He regretted that there were too few staff to be able to monitor almost 3,000 monuments and admitted his Department struggles to enforce protective rules and laws, such those that prohibit the climbing of monuments or require permission for renovations (Htet Aung, Burmese expert, August 2014). This low capacity is also reflected by the poor communication and coordination between various governmental departments. In the previous chapter, I mentioned that the zoning of the Department of Archaeology does not correspond with that of the Department of Land Administration. Added to this is the lack of coordination between the regulations of the Ministry of Religious Affairs with regard to pagoda repair and those of the Department of Archaeology with regard to ancient structures (Moore & Maung 2016).
Although my informants were specifically referring to how this low
capacity influences conservation, arguably it equally influences the extent
to which human rights policies can be implemented and enforced. Low
capacity in Myanmar is also the case for institutions that are tasked with
upholding the rule of law (Harding 2014). Universities closed regularly in the
last decades (between 1988 and 2000 universities were only open for the
equivalent of three years) and the quality of education is ‘highly
questionable’ (Crouch 2014, p. 46). Moreover, besides a brief period of ten
years following independence in 1948, courts in Myanmar have not been
independent. Since 1962, the lack of separation between the judiciary and
the executive resulted in the use of law ‘to justify violence, exploitation and
military rule’ (Crouch 2014, p. 34). The 1990 eviction of Old Bagan
exemplifies this. This did not change with the current constitution, which
ensures ‘strong executive oversight over judicial affairs, to the detriment of
judicial independence’ (Crouch 2014, p. 49). Elliott Prasse-Freeman called
Myanmar’s legal system ‘an exploitative institution’, which ‘Burmese
subjects take pains to avoid’ (2015, p. 89). As a result, in the context of
Myanmar’s political transition, much emphasis is put on strengthening the
rule of law. However, Prasse-Freeman argues that reforming the formal
legal system will have limited effect if existing informal justice systems are
not taken into account. Besides market logics within the legal process –
where one’s conviction depends on the payment of bribes – Prasse-Elliot
points to the importance of ‘quasi-formal gatekeepers that act as sieves,
preventing or facilitating access to courts’ (2015, p. 94). These gatekeepers
are often local ward administrators. They have little legal knowledge, but try to solve problems socially. Only when one party is dissatisfied, when a bribe is not paid, or in the case of particular offences, such as those related to drugs, will a case go to court. Without addressing this system as well as ingrained corruption, legal reform will have limited impact (Prasse-Freeman 2015).

6.2.4 Vernacularisation

Sally Engle Merry introduced the notion of the vernacularisation of human rights to refer to the way in which, ‘[h]uman rights language is … extracted from the universal and adapted to national and local communities’ (2006, p. 39). Vernacularisation is necessary to make a universalist concept relevant in local realities and worldviews. Importantly, adapted or alternative understandings of the concepts of human rights and justice influence how policies, including human rights-based approaches to World Heritage conservation, can be implemented and whether they can be considered effective.

There has not been much research on Burmese vernacularisation of human rights and this presents an important area of future inquiry. However, the preliminary research of Prasse-Freeman on Burmese conceptions of

justice and the rule of law is insightful. He found very significant difficulties in the translation of the concept of rights:

Many Burmese subjects do not have such a conception of a transcendent right, a right that could exist outside of the context of realizing it. Rather, ... the respective Western concepts of rights and opportunities blur together, and tend to index an appeal to power rather than a demand for a restoration of what one already “has”. (2015, p. 96)

He believes this may say something about the realities of power and legitimation, which can be traced back to the divine authority of Burmese kings and Buddhist cosmology. Following colonialism, ideas of ‘rights’ may have internalised in certain elites, but Prasse-Freeman doubts that they diffused into general society. In the context of dynastic kings, colonial rulers or military regimes, ‘law delineated actions that were forbidden without creating any reciprocal “rights” allowing subjects to make claims against the state’ (2015, p. 98). He explains how this led to the blurring of rights and opportunities:

Even when the state’s law articulated privileges or opportunities that citizens may have enjoyed, these were not absolutes designated by any compact (either de jure or de facto), and hence could be violated any time. Everyone was aware of this and as a result a “right” literally only existed as an opportunity, with all the contingency that the latter word implies. (ibid)

Prasse-Freeman argues that negotiation strategies, for example protests against land grabbing, are often mischaracterised as rights claims by external observers, even if the word ‘right’ is not used. Different understanding of justice and rights in Myanmar are also illustrated by the examples in which the abused do not believe injustice has occurred. He
gives the example of the use of forced labour, which can be justified for attaining collective goods or individual karmic benefits (2014, p. 102). Prasse-Freeman’s research is preliminary, and he argues that more research is needed on Burmese conceptions of rights and justice as well as informal systems of redress. Currently, much resources and efforts are put into legal reform and the establishment of the rule of law in Myanmar, however, he warns that this work risks being ‘irrelevant’ for many Burmese and potentially even oppressive.

Different understandings of the meaning of rights may explain reactions of some of my informants. For example, when I asked Thant about the role human rights play in his work, I received the following reply:

A lot of people ask me what I think about motorcycles in Yangon ... when they ask me I say yes, based on the human rights they should be allowed, but ... there will be a lot of deaths, fatal accidents in Yangon ... That why my opinion is, better keep it this way. (Thanth, Burmese expert, January 2015)

A human right to ride a motorcycle in Yangon – where motorcycles are prohibited – is hardly justifiable by international human rights standards and may not even be considered an issue of social justice. However, when

64 Cases in which the ‘abused’ do not believe injustice has occurred are not limited to Myanmar. For example, Marilyn Strathern (2004) has written about a Papua New Guinean woman who was married off to another clan as part of a compensation payment. A human rights NGO mobilised to protect her rights, ignoring that the woman did not perceive the incident as injustice and wished to to fulfil her obligation to her kin. Strathern argues different conceptions of personhood in Papua New Guinea underlie the different understandings of justice. Similarly Sarah Holcombe (2015) argues that there are no vernacular parallels between the concepts of ‘morality’ and ‘personhood’ among the Indigenous Australian Anangu.
having a right is understood as an opportunity for the lifting of a prohibition, my informant’s reaction seems less strange. He seems to consider whether people should have the opportunity to ride their motorcycle in Yangon (and concludes it would be too dangerous).

According to Chit, the prioritisation of the views of foreign experts over those of local experts in the World Heritage nomination process should be considered a human rights issue. Moreover, she contended that her right to sleep was often breached by the long hours she works (Chit, Burmese expert, December 2014). Both statements – a human right of local experts to be involved in the World Heritage nomination and a human right to get sufficient sleep – may make more sense to a Western or Anglophone audience when understood as opportunities. However, they can be seen as vernacularised understandings of human rights.

The vernacularisation of human rights, local understandings of justice, and informal mechanisms of redress are crucial when considering the extent to which and how human rights-based approaches will be able to improve social justice. However, as Prasse-Freeman indicates, understanding of such conceptions in Myanmar is limited and much more research is needed.

The case of Myanmar draws attention to global questions with regard to the enforcement of respect for human rights. Its recent history demonstrates the weakness of the global human rights regime and the controversies
surrounding the use of sanctions. It also raises questions with regard to what can realistically be expected from a state with an overall low bureaucratic and administrative capacity, and no functioning legal system. Moreover, a closer look at local understandings of human rights – a rich area of future research – raises questions about the implications of the vernacularisation of the universalist human rights discourse. When considering the adoption of human rights-based approaches to any type of programming, it is important to take into account this historical, political, administrative and social context. Moreover, it is worth extending this consideration to the wider region.

6.3 Regional reservations

Questions with regard to the international enforcement of human rights standards, political sensitivity and alternative understandings of justice resonate in the wider (Southeast) Asian region. Although Myanmar’s recent human rights record is worse than that of its neighbours, most (Southeast) Asian nations have their reservations about the international human rights regime. These reservations were particularly foregrounded in the ‘Asian values’ debates of the 1990s.

In 1993, forty Asian states, including Myanmar, adopted the Bangkok Declaration at the United Nations Asia Regional Meeting on Human Rights. This declaration holds that human rights should take into consideration national and regional particularities, cultural, historical and religious
backgrounds and changing norms and values. Moreover, the significance of state sovereignty is noted and an engagement of cooperation and consensus rather than of confrontation and conditionality is encouraged. Although the declaration never mentions ‘Asian values’, subsequent international debates are framed around whether universal human rights are compatible with Asian values⁶⁵ (see for example, Bauer & Bell 1999; Avonius & Kingsbury 2008).

These values include moderation, equilibrium, communitarianism, a preference for consultation and consensus and must be seen in opposition to the ‘Western values’ of individualism and resistance to authority (Mauzy 1997, p. 218). In these debates, ‘the idea of Asian values is systematically used to challenge what are perceived by Asian state elites to be the prevailing Western views on matters such as human rights, democracy and economic development’ (Langlois 2001, p. 3) and several Asian governments criticised the Universal Declaration of Human Rights ‘on the grounds that many states were not yet independent and had not taken part in its formulation’ (Eldridge 2002, p. 60). The West did not favour the Bangkok Declaration and nongovernmental transnational human rights organisation Amnesty International called it a ‘step backwards’ (Mauzy 1997, p. 221). The idea of Asian values was also challenged by scholars and

---

⁶⁵ Interestingly, these discussions reflect somewhat later debates about whether there are Asian approaches to heritage conservation (Winter & Daly 2012; Silva & Chapagain 2013; Winter 2014).
grass-roots human rights activists in Asian countries who argue that political elites use this relativism to legitimate their own positions of power and insincerity. Moreover, a problem with the idea of Asian values is that it does not take into account the diversity of Asia or that cultures are not static or monolithic (Sen 1997).

Following the financial crisis of 1997, justifications of Asian values lost their potency. However, many Asian states still hold reservations about the international human rights system (Hsien-Li 2011, p. 24). The global human rights regime is based on a Western liberal construct in which ‘the state seeks to impinge on citizens’ liberties and thus must be restrained’, a precept, which ‘may sit uncomfortably with some Asian perceptions of the state as one which seeks the good of its people’ (Hsien-Li 2011, p. 25). Many Asian states resent impingements on their sovereignty and warily conceive of human rights as tools of Western imperialism. Moreover, human rights are sometimes seen as potentially threatening unity and stability (Eldridge 2002, p. 1).

These reservations are apparent in ASEAN’s engagement with human rights. Since its establishment in 1967 by Singapore, Malaysia, Indonesia, the Philippines and Thailand, ASEAN has primarily focused on economic cooperation and regional stability. Sovereignty, territorial integrity and non-interference in domestic affairs have been core principles in the code of conduct among member states of this organisation. As a result, ‘domestic
governance issues, including member states’ human rights records, traditionally have been “off the table” in official ASEAN dialogue' (Poole 2015, p. 356). ASEAN's emphasis on non-interference enabled Myanmar to join the organisation in 1997, despite being internationally condemned and sanctioned for its human rights violations. Some commentators argued that the ‘decision to admit Burma into ASEAN was a blow to the organization’s credibility as Burma proved to be much more of a hindrance and embarrassment than an asset’ (Bunyanunda 2002, p. 133; see also McCarthy 2009), but ASEAN argued its policy of constructive engagement would be more efficient.

Despite these reservations, there has been a recent trend in ASEAN towards developing a regional human rights regime. In 2007, the ASEAN Charter was adopted to ‘serve as a legal and institutional framework for ASEAN’ (ASEAN 2005). The Charter provides for the establishment of a regional human rights body and in 2009, the ASEAN Intergovernmental Commission on Human Rights (AICHR) was established and followed by the adoption of the ASEAN Human Rights Declaration in 2012. This declaration is significant because it presents the first time a detailed discussion of rights took place in ASEAN. Interestingly, for Myanmar and some other countries not signatory of the International Covenant on Civil and Political Rights, this declaration presents their strongest commitment to political rights. However, the declaration was not received enthusiastically. The UN High Commissioner for Human Rights, Navi Pillay, warned that the
document was inconsistent with international standards and it has been publicly rejected by dozens of Southeast Asian civil society groups as ‘a declaration of government powers disguised as a declaration of human rights’. Of particular concern are certain articles that note that people have (unspecified) duties and responsibilities and that rights can be limited in a range of circumstances, including public order and health and safety, but also more dubiously ‘public morality’.

The declaration is not binding and no further tasks for the AICHR have been specified (Davies 2013). Moreover, the repeated emphasis on state sovereignty in the ASEAN Charter and the Terms of Reference of the AICHR weaken their resolve. The Terms of Reference lack ‘enforcement power or ability to address country-specific human rights crises. In fact, one of the AICHR’s guiding principles is a continuation of ASEAN’s long-standing respect for non-interference in the internal affairs of ASEAN member states.’ (Arendshorst 2009, p. 113). The AICHR can only obtain information from ASEAN states about the promotion and protection of human rights, but it cannot accept communications or petitions alleging violations from individuals, NGOs or states and neither can it make

recommendations to states (Pisanò 2014, p. 402). Compared to other regional human rights bodies, such as the European Court of Human Rights and the Inter-American Commission on Human Rights, the AICHR ‘lacks any substantial means of penalizing human rights violations’ (Arendshorst 2009, p. 114).

In sum, besides limitations with regard to human rights enforcement in Myanmar – such as those related to political sensitivity, capacity and vernacularisation – the regional context reinforces the values of sovereignty and non-interference and currently lacks effective mechanisms of accountability. This creates a context in which human rights-based policies are not well accommodated or encouraged. On global level, several more impediments need to be taken into account.

### 6.4 Multilateral policy-making

Although human rights-based approaches are an official policy of UNESCO, there has not yet been any confirmation what this means in practice. Oestreich (2007)’s research on human rights programming in three other intergovernmental organisations, UNICEF, the World Bank and the World Health Organisation (WHO) is informative. Oestreich investigated the extent to which human rights principles were adopted and implemented by these intergovernmental organisations and tried to find explanations for the variable outcomes. He found that in each organisation a small group of individuals picked up on human rights ideas – often influenced by NGOs –
and pressured the upper management to change policy and programming. Three key factors influenced the relative success of these ‘true believers’ (2007, p. 8). The first factor is the degree to which the moral argument that adopting human rights notions is simply ‘the right thing to do’ (ibid) resonated with the management of the organisation. Oestreich suggests that this ‘ethical argument would have been ineffective had there not also been a practical one to back it up’ (ibid). This practical argument is concerned with how the adoption of human rights-based principles could increase the effectiveness of the institution. For example, in the case of UNICEF, the ‘true believers’ convinced the management that a campaign for universal ratification of the Convention on the Rights of the Child would increase the effectiveness, reach, and power of the organisation and improve the outcomes of its programmes. The third and most influential factor with regard to the degree to which human rights-based principles have been adopted in policy and programming is ‘strong leadership from the top of the organisation’ (ibid). Using examples from UNICEF, the World Bank and the WHO, Oestreich demonstrates that changes of leadership throughout the years influence the organisations’ relative engagement with human rights.

Applied to UNESCO and the World Heritage Convention, Oestreich’s insights suggest it is necessary to clarify how human rights principles will contribute to the overall objective of heritage conservation and protection. This can be challenging: the case of Bagan shows that the aims of conservation can be contrary to those of certain human rights. The tension
between conservation and development, or conservation and popular religious practices demonstrate that trade-offs between rights and conservation are often necessary.

Importantly, Oestreich found that although there was limited support for human rights-related change from member states, there was also limited resistance. All three organisations received most resistance from the inside. It turned out to be particularly difficult to convince ‘staff with technical training to consider more social factors in their work’ (2007, p. 164). They would ‘complain that their training is “scientific” or “evidence-based” and therefore that they are uninterested in what they see as a “moral” or “ethical” set of policies’ (ibid). Organisations such as the UNDP and the World Bank gain their legitimacy from their supposed expertise and technical neutrality (McNeill and StClair 2009). However, human rights-based approaches deal with power and policy and are explicitly political. Peter Uvin, writing in the context of development, argued,

The development community lacks familiarity as well as tools for analysing politics. Issues of exclusion, racism, insecurity, discrimination, and representation have historically not belonged to its agenda, and the kind of personnel it employs—from economists to engineers, from agronomists to demographers—are primarily technical in outlook. (2004, p. 135)

The situation is similar for the heritage conservation community, whose members are mostly archaeologists, architects and conservators who see ‘cultural heritage protection as either a technical or management matter’ (Logan 2012a, p. 241). In Chapters Three and Four, I have
suggested that the absence of active use of human rights language during the preparation of Bagan’s World Heritage nomination can partly be explained by the central role of technical experts in areas such as mural painting conservation and GIS technology who are unfamiliar or even uncomfortable with human rights policies.

Nielsen (2011)’s research in the ‘day-to-day routines of UNESCO’s bureaucratic policy machine’ and the ‘censorship and hierarchy mechanisms that surround the production and approval of documents in UNESCO's internal bureaucracy’ (2011, p. 275) provides further insights in potential policy development in this intergovernmental organisation. Based on interviews and ethnographic fieldwork, he argues for the necessity to analyse the bureaucratic conditions under which certain ideologies are produced and sustained (2011, p. 288). In the particular conditions of UNESCO, there are certain approved keywords (such as cultural diversity) that employees use strategically because ‘resources are flowing in its direction’ (2011, p. 284), while opposing these ‘keywords in public would be “professional suicide”’ (ibid). Similar to Oestreich, Nielsen was confronted with resistance to change and new ideas, which could be one explanation why the move towards formally adopting human rights-based approaches to World Heritage conservation is taking place slowly: Although UNESCO adopted human rights-based approaches in 2003, it took 12 years before the first World Heritage-related document mentioned human rights (UNESCO 2015b).
The use of ethnographic research to understand intergovernmental organisations is a relatively new and developing area. Recently, Birgit Müller (2013) edited a volume in which she ‘brings together the insights anthropologists have gained in different international organisations of the UN system’ (2013, p. 2). A common thread running through the volume is the tension between the normative idealistic aspect of the organisation (do good, bring peace, be just), the mechanistic technical one (order, control, audit), and the political and economic interests that are played out there as well as the frustrations and the impetus for change that the actors in these organisations experience. (ibid)

This tension can also be found in the World Heritage system, as became apparent from recent ethnographic research during the annual sessions of the World Heritage Committee (Brumann 2012; 2015; Meskell 2014; 2015; Meskell et al 2015; Bertacchini, Liuzza & Meskell 2017; James & Winter 2017). The World Heritage Committee makes decisions about the convention and the lists during annual sessions, which last ten days and take place at different locations around the world. Each year, a variety of issues pertaining to World Heritage are addressed: from those related to finance and budget, to the inscription of new sites and reviews of existing properties. Meskell et al argue that ethnographic fieldwork at these sessions is important, because ‘if researchers rely solely on the documents, substantive political issues are often masked as technical ones’ (2015, p. 3).

Research at these Committee meetings has enabled the identification of several important trends that are relevant when considering the potential
of human rights-based approaches. Importantly, local site communities – whose rights and participation are increasingly stressed in documentation – get little opportunities to have their voices heard during these sessions (Brumann 2015). Another trend is that delegates on the World Heritage Committee are increasingly state-appointed ambassadors and politicians rather than archaeological and environmental experts. Membership of the Committee is used to argue for and ensure inscription of the State Party’s own properties, but it is also an effective mechanism to garner support for certain positions in other UN organisations, such as the UN Security Council (Meskell 2015, p. 7). Moreover, States Parties form alliances based on ‘continental, regional, religious, economic and even former colonial relationships’ (Meskell 2014, p. 224). One such bloc includes the emerging powers of Brazil, Russia, India, China and South Africa (BRICS) (Bertacchi, Liuzza & Meskell 2015). The pacts that are made serve to ensure inscription of the national sites of Committee members and prevent transfer to the List of World Heritage in Danger. World Heritage Committee sessions are increasingly filled with political negotiation, diplomacy and lobbying and observers have argued that ‘state agendas now eclipse substantive discussions of the merits of site nominations in tandem with issues raised over community benefits, the participation of indigenous stakeholders, or threats from mining, exploitation or infrastructural development’ (Meskell 2015, p. 9). This is reflected by the increasing divergence between the recommendations of the Advisory Bodies and final decisions of the World Heritage Committee (Meskell et al 2015).
These trends were apparent when the Pyu Ancient Cities became Myanmar's first World Heritage inscription in 2014. ICOMOS advised deferral of the inscription and requested clarification of the Outstanding Universal Value of the site as well improved maps and management and conservation plans (UNESCO 2014, p. 29). In spite of this advice, the property was inscribed. The overturning of ICOMOS’ advice immediately received regional support from Vietnam, Malaysia, the Philippines, India and Japan. Most delegates did not speak about the merits of site itself, but about the importance of the fact that this would be Myanmar's first World Heritage inscription. Meskell argues that ‘the Committee’s decision to inscribe Pyu had little to do with its ancient or archaeological components and more about Myanmar's participation in world government, its nascent democracy and development’ (2015, p. 12) and can be seen as a reward for its transition out of isolation.

These developments are critical for the potential of human rights-based approaches to World Heritage conservation. They point to a significant discrepancy between policy and practice in international governance. Even when bureaucratic and political resistance is overcome and human rights-based approaches to World Heritage conservation are formally adopted in the Operational Guidelines for the Implementation of the World Heritage Convention (2015a) and the Advisory Bodies develop skills and procedures to monitor respect for human rights at properties, policies and advice may be completely disregarded of they are not serving particular political and diplomatic interests.
6.5 Concluding remarks

There have been suggestions that verbal changes – talking about human rights – could present the first steps to a change of vision and redefine the margins of acceptable action (Uvin 2010, p. 165). However, a common critique of human rights-based approaches is that this change of rhetoric, identifying people as rights-holders, does not essentially change anything. As Uvin puts it:

> taking up a rights-based approach amounts to little more than making nice statements of intent regarding things that would be nice to achieve, or duties we would like the world to assume one day, without setting out either the concrete procedures for actually achieving those rights or methods of avoiding the slow and dirty enterprise of politics. (2010, p. 171)

Concern has been expressed that human rights language is appropriated without changing beliefs or actions. It has been variously classified as ‘rhetoric without responsibility’ (Chandler 2006, 69), ‘old wine in new bottles’ (Uvin 2010, p. 165) or ‘the latest designer item’ (Cornwall & Nyamu-Musembi 2004, p. 1417). It is argued that human rights-based approaches do not challenge the traditional discourse but rather elevate it to a higher moral ground. Thus, it is necessary to go beyond changing the wording of policy documents and establish the procedures that could guarantee rights.

In this chapter, I have explored the national, regional and global context in which such procedures for the implementation and enforcement
of human rights-based approaches to World Heritage conservation need to be established. It is necessary to take into account such multi-scalar factors. As Tan Hsien-Li argued,

> With contextual understanding of the issues concerning human rights in the past and present, and a healthy respect of political and cultural limitations, one is better placed to assess what further steps and modes of implementation can be taken to better institute human rights. (2011, p. 23)

Myanmar’s recent historical context provides an example of the difficulty of internationally enforcing respect for human rights and the weakness of the global human rights regime. Human rights abuses were widespread for decades, resulting in heated debates about whether and how the international community should react and what measures would be most appropriate. Some states decided to take matters into their own hands and attempted to delegitimise the junta through a series of sanctions and boycotts. However, this is a controversial method, of which the effects are uncertain.

Although the situation in Myanmar marginally improved following the political transition in 2011, human rights remain a politically sensitive topic that is sometimes strategically avoided. Moreover, it is important to take into account that decades of isolation and mismanagement left Myanmar categorised as a Least Developed Country by the United Nations. It lacks

---

68 See UN Committee for Development Policy, Development Policy and Analysis Division, Department of Economic and Social Affairs
basic administrative and bureaucratic capacities. People avoid formal judicial systems, which are not independent from the executive, and the use of informal mechanisms of redress is common. Moreover, the extent to which the concept of ‘universal’ human rights translates in Burmese is unclear: there are several indications of alternative understandings of justice. Jessica Campese and Grazia Borrini-Feyerabend have argued that rights-based approaches are ‘most effective and sustainable when carried out within appropriate governance systems’ (2011, p. 48). Arguably, Myanmar does not currently have an ‘appropriate governance system’. The combination of low capacity, political sensitivity and vernacularisation of human rights makes holding duty-bearers to account in Myanmar challenging.

Regionally, several (Southeast) Asian states have expressed reservations with regard to human rights. Historically, countries in this region have displayed limited engagement with this discourse. When they did, appeals to cultural relativism, emphasis on the importance of duties, and the prioritisation of development and national security have dominated the dialogue. Although ASEAN has recently been developing a regional human rights regime, its continuing emphasis on sovereignty and non-interference makes it lack teeth. This context makes it unlikely that in the

event of human rights violations at a World Heritage site, the (Southeast) Asian region will contribute much to holding violators to account.

Globally, research on human rights-based programming in intergovernmental organisations has shown that perceived technical neutrality and bureaucratic inertia are factors that inhibit and slow down the further development and implementation of human rights-based policies. Meanwhile, the increasing politicisation of the World Heritage Committee sessions indicates that even if Advisory Bodies or States Parties would draw attention to human rights issues at certain World Heritage properties or nominations, the extent to which this will have consequences depends on the diplomatic relations of the State Party in question with Committee members.

For the World Heritage nomination of Bagan this means that if human rights concerns are raised – for example cultural and religious rights are violated when Buddhists are not permitted to renovate the pagodas (see Chapter Four) or the relocation of a village is planned, which would deprive the community of their livelihood (see Chapter Five) – there are several levels at which such concerns may not be adequately addressed: Corrupt local courts; a lack of governmental capacity in Myanmar; the dominance of the principle of non-interference in ASEAN; bureaucrats in UNESCO who do not see what such human rights concerns have to do with their technical expertise, or who fear for their careers if such sensitive issues are emphasised too much; and diplomacy in World Heritage Committee sessions, where States (do not) vote for each other’s nomination in order to
protect different types of interests. Accordingly, even if local advocacy groups, global human rights NGOs, ICOMOS or even UNESCO representatives argue that certain issues need to be addressed, several multi-scalar practical and political obstacles need to be overcome before change may be observed on the ground.

In sum, the national, regional, and global factors examined here shed light on various political and practical implications for human rights-based approaches to World Heritage conservation. The political sensitivity of human rights in Myanmar and Southeast Asia, the dominance of the principle of sovereignty, and diplomatic negotiating in intergovernmental arenas like UNESCO’s World Heritage Committee sessions influence the extent so which engagement with – let alone enforcement of – human rights principles is taking place, regardless of what policy documents claim. On a practical level, currently Myanmar’s capacity to hold violators to account is limited, regional mechanisms of redress are lacking, and although the global human rights regime is more elaborate, experiences with the military regime of Myanmar over the last few decades demonstrate the limited power of the international community to enforce change in an unwilling state.
Cultural heritage and human rights were long considered two separate issues. However, in the context of a global increase in the use of human rights language to address injustices, and a reconceptualisation of cultural heritage in which the focus is broadening from the monumental and material to include intangible and living heritage, a space has emerged in which these two notions meet. Policies, research projects, and statements in which cultural heritage and human rights are linked have been rapidly increasing in the last decade. This is evidenced by the work of the UN independent expert and Special Rapporteurs on Cultural Rights, statements to and by the UN Human Rights Council, UNESCO conventions and declarations, policies and projects of IUCN and ICOMOS, and scholarly literature.

This thesis presents one of the first studies that investigates the implications, challenges and opportunities of implementing human rights-based policies on the ground in the context of the World Heritage nomination of one particular site: Bagan in Myanmar. Looking at the conservation of this cultural heritage site through a human rights lens draws attention to two key areas of tension: living cultural heritage and development. Both could comprise conservation efforts and thus may be restricted for the World Heritage nomination. However, human rights approaches raise difficult questions about the extent to which such restrictions are acceptable. The conflicting aims of conservation, living
heritage and development represent enduring tensions in global heritage governance, making the insights of this research project relevant beyond Bagan.

I have demonstrated that the majority of the literature presents the link between cultural heritage and human rights as a positive one, in which the protection of cultural heritage and human rights is considered to be ‘mutually reinforcing’. However, a closer and more critical analysis of the dynamics between these two notions indicates considerable complexity in which linking cultural heritage and human rights has the potential to oppress as well as empower. In Chapter Two, I introduced two different approaches to this link: cultural heritage rights and human rights-based approaches. The former approach considers whether there is – or should be – a right to cultural heritage. The critique of such a right is that there are several forms of cultural heritage that are considered offensive or in conflict with other human rights, interests and policy objectives. The aim of latter approach – human rights-based approaches – is to respect all categories of human rights in the context of cultural heritage practice. The weakness of this approach is that this will likely lead to conflicting rights – heritage protection or conservation itself may be conflicting with other categories of rights – and it raises questions with regard to the scope of such an approach: several

69 Joint Statement on cultural rights and the protection of cultural heritage 
rights violations are tied up in complex global processes and cannot be understood or solved in the isolation of one cultural heritage site or practice.

The contested meaning of cultural heritage rights, challenges of conflicting rights, and questions of scope are all relevant in the context of the World Heritage nomination of Bagan. In Chapters Three and Four, I have elaborated on the different ways in which Bagan is valued. For some, Bagan is primarily a sacred site of Buddhist pagodas, whereas others prioritise the archaeological and architectural values of the monuments. These different ways of valuing and understanding Bagan can lead to conflicts of interests, as exemplified by the controversy around the reconstructions and renovations of the pagodas in the 1990s and 2000s. Importantly, a hierarchy of knowledge underlies these different understandings, where a material-focused understanding of Bagan is prioritised by more powerful actors in the context Bagan’s World Heritage nomination.

In terms of human rights, there are two important implications of such a material-focused understanding of Bagan. Firstly, many people involved in the World Heritage nomination are unfamiliar with human rights, unsure how it relates to Bagan, or consider it beyond their largely technical mandates to engage with this language. Secondly, the prioritisation of the conservation of (inert) material over living heritage risks excluding people from their cultural and religious practices, and possibly violate cultural and religious rights.
Whether the exclusion and control of popular religious practices constitutes a cultural rights violation, depends on how culture and cultural rights are understood. In Chapter Two, I have argued that these are unstable categories that could be employed by different actors for different, possibly conflicting, purposes. Respect for cultural rights is promoted in UNESCO documentation (e.g. UNESCO 2015b, UNESCO Bangkok 2013), however the category is subject to debates and contestation around whether culture should be understood as a product, a process, or a way of life. Arguably, cultural rights are necessarily collective, but as such, they risk violating individual rights. In general, cultural rights can be antagonistic to other categories of rights and often lead to unresolved debates about cultural relativism and universalism. Furthermore, claims to culture risk essentialising practices that are always porous, dynamic and continuously changing.

The notion of community participation is shrouded in similar ambiguity. It is considered part of human rights-based approaches and promoted in various UNESCO documents. However, there are different degrees of participation, roughly ranging from tokenistic education and awareness-raising to full empowerment to make decisions, as exemplified by Arnstein (1969). Moreover, communities are heterogeneous and subject to unequal power relations. I have illustrated the difficulty of guaranteeing a just involvement of different community members by discussing the different positions of the Bagan Lovers Association and the Bagan Heritage Trust.
Conflicts of interests make it challenging to respect everyone’s rights and interests.

When analysing forced evictions and tourism development in Bagan through a human rights lens, the result is once again ambiguous. Whether forced relocations are a rights violation is contingent upon several contextual factors that are not valued equally by everyone affected. According to domestic and international legal structures, eviction can be justified under certain conditions. However, morally it remains a controversial topic. The increase in tourism in Bagan creates opportunities for economic development and possibly a means to overcome poverty, while a lack of education and skills, the leakage of profits, mismanagement and corruption simultaneously limit these opportunities and enhance threats of rights violations such as land grabs, child labour and exploitation. Tourism in Bagan is tightly intertwined with global forces of modernity, mobility, and neoliberalism and its effects cannot be understood or addressed in isolation. It remains unclear what is and what is not incorporated in World Heritage processes, and whether supporting human rights means refraining from violations or also protecting people from the violations by third parties. Moreover, it is important consider what can realistically be expected.

The question of what can be realistically be expected from human rights-based approaches to World Heritage conservation is not just relevant regarding substantive rights but also regarding implementation and enforcement. In Chapter Six, I have argued that to move beyond intentions on paper, mechanisms of accountability need to be put in place. Yet, in the
case of Bagan, these are weak or non-existent on several geographical levels. In Myanmar, corruption, a lack of separation between the judiciary and the executive, a low administrative capacity, dysfunctional courts, alternative justice systems and the vernacularisation of human rights need to be addressed if human rights-based policies are to be implemented effectively. Moreover, it is necessary to be cognizant of the international politics in which World Heritage and human rights are embedded. Depending on the dynamics at any given time, international politics may encourage or discourage engagement with human rights. Myanmar's recent history shows, however, that even when human rights abuses are publicly condemned, the international community has little power to enforce change in sovereign states.

I started this project thinking that I would find an answer to the research questions underlying this thesis:

- What are the opportunities, challenges and implications of using the international human rights framework in cultural heritage contexts?

- What can human rights-based approaches offer to tensions between living heritage, conservation and development in Bagan, Myanmar?

As a heritage and human rights ‘believer’ (see Brumann 2014), I anticipated to find that human rights-based approaches to World Heritage conservation would indeed be an appropriate and desirable way forward, even if certain obstacles would need to be overcome. Four years later, I can no longer call
myself a ‘believer’, but remain torn between seeing valuable aspects of the human rights discourse as well as ways in which the link between cultural heritage and human rights is unproductive or even harmful. The reason for this is that both cultural heritage and human rights are full of paradoxes, ambiguities and multiple interpretations.

Social justice in the context of Bagan’s World Heritage nomination is a messy problem – as distinct from a difficult problem. Jake Chapman explains this distinction as follows:

A difficulty is characterised by the broad agreement on the nature of the problem and by some understanding of what a solution would look like, and it is bounded in terms of the time and resources required for its resolution. In contrast, messes are characterised by no clear agreement about exactly what the problem is and by uncertainty and ambiguity as to how improvements might be made, and they are unbounded in terms of the time and resources they could absorb, the scope of enquiry needed to understand and resolve them and the number of people that may been to be involved. (Chapman 2004, p. 26–27)

For such messy problems, there are no clear solutions. As Ien Ang points out, ‘in a complex world problem-solving can only be a partial, provisional and indefinite affair, with uncertain and indeterminate outcomes’ (2011, p. 780). Yet, recognising the complexity of a problem is required for the ‘development of sophisticated and sustainable responses … because simplistic solutions are unsustainable or counter-productive’ (Ang 2011, p. 797).
Therefore, rather than finding answers or solutions, my research became about illuminating the complexities of the dynamics between cultural heritage and human rights in Bagan. There are several interrelated forces that affect these dynamics that can roughly be categorised as conceptual, political and practical. Initially, I conceived of these forces as challenges or impediments (see Kraak 2017). However, soon it became apparent that the situation is more complex; these conceptual, political and practical forces have ambiguous, paradoxical and continuously changing effects on how human rights-based approaches to World Heritage conservation are understood and can be implemented.

Conceptually, human rights-based approaches to World Heritage conservation raise the questions of what human rights are, and who has which type of rights and duties? Many human rights-related terms that are central to cultural heritage – cultural rights, culture, community, participation – can be interpreted in multiple ways. Moreover, different categories of rights – such as cultural, religious, land, economic and development rights – can be in direct conflict with each other. Such conflicts become more or less manageable depending on the interpretation of each of these contested and ambiguous rights. Lack of clarity about duty-bearers adds to this complexity. Is the duty-bearer the Burmese government, UNESCO, or any (nongovernmental) organisation or individual that has an impact on the World Heritage property Bagan? Is it their duty to refrain from rights violations themselves or does their duty include protection from violations by third parties?
Related is the question of scope. Bagan does not exist in isolation and some human rights issues derive from structural global inequities that cannot be resolved in a World Heritage nomination dossier. For example, in Bagan, many children work as vendors of souvenirs around the pagodas, even though child labour is often considered a human rights violation\(^70\). If human rights-based approaches to World Heritage conservation mean ‘the full cycle of World Heritage processes from nomination to management is compatible with and supportive of human rights’ (UNESCO 2015b, p. 7), does this mean child labour is unacceptable on the World Heritage property, or is this beyond the scope of the World Heritage process? Some may argue the scope should be larger than the World Heritage site and include nation-wide issues. Recently, international media have been reporting on the severe human rights violations that are taking place in the violent conflict in Rakhine state between the persecuted ethnic minority group the Rohingya, the majority Rakhine population, and the Burmese state. Relatively speaking, this ongoing conflict takes place in no geographical proximity to Bamar-Buddhist dominated Bagan. Yet, the question can be raised whether human rights violations elsewhere in a country should or could influence a World Heritage recognition. In practice, this depends for a considerable

degree on international geopolitical relations and which States Parties are in the World Heritage Committee or the UN Human Rights Council.

World Heritage and human rights are both part of international politics, which has a significant influence on the dynamics of heritage conservation and human rights. Continuously changing international relations influence the extent to and context in which engagement with human rights is considered desirable. International politics has the potential to create obstacles as well as opportunities for human rights-based approaches to World Heritage conservation. The contemporary global human rights framework is a product of international politics, but so is its weak enforcement. The link between cultural heritage and human rights is increasingly being solidified in documents and policies in the international political arena; but it is this same arena in which an increasing politicisation of the World Heritage Committee sessions is being observed, in which expert advice is ignored and the (lack of) support for World Heritage listing becomes a pawn in wider diplomatic negotiations. In this context, human rights issues at or around World Heritage sites may be highlighted or ignored, depending on the relations between the relevant States Parties.

It is important to take into consideration shifting geopolitical power balances. At the time of writing, there is much anticipation of the further rise of China, much uncertainty about what Donald Trump’s presidency will mean for the United States and global geopolitics, and much speculation about the potential disintegration of the European Union. What such potentially dramatic global changes would mean for the international human
rights and World Heritage projects remains to be seen. Much energy, resources, and advocacy on human rights originates in Europe and the North America. As these ‘original’ promotors of human rights become less influential, will we see a decline of the human rights project? Already we can see international aid (in heritage conservation as well as other sectors) increasingly being driven by emerging economies, such as China and India (Winter 2014a). Unlike their Western counterparts, they are not (as) interested in human rights, good governance or environmental conditionality (McCormick 2008; Woods 2008). For the rulers of recipient countries, such as Myanmar, in some cases it may be more interesting to work with China than with the demanding ‘West’ or the UN.

If a political consensus is reached that respect for human rights should be pursued in World Heritage contexts and philosophical questions regarding the meaning of human rights are clarified, the question remains how to implement such a policy in practice. Effective mechanisms of accountability are lacking in Bagan, Myanmar, the wider (Southeast) Asian region as well as globally. Developing such mechanisms takes time, resources and above all, continuing commitment.

These conceptual, political and practical forces are intertwined and reinforce each other: The lack of effective mechanisms of accountability is the result of the absence of political consensus. Political resistance to further developing human rights institutions is partly due to concern over unresolved conceptual questions. These challenges raise the question of whether the international human rights framework is the most strategic way
to address issues of justice in cultural heritage contexts, and – as Meskell has suggested – ‘whether a local and grounded engagement poses a more pragmatic, achievable way forward’ (2010, p. 855).

An optimistic assessment of the dynamics between cultural heritage and human rights in the context the World Heritage nomination of Bagan is that human rights-based approaches could be tools that persuades heritage practitioners to take a step back and reflect on the wider consequences of the conservation of Bagan’s monuments. It could be a vehicle to overcome ‘scientistic materialism’ (Winter 2013, p. 537) and motivate historians, conservators, architects and archaeologists to look beyond the material of the site and the events of the past to the lives and livelihoods that are implicated in conservation today. A human rights lens may draw attention to religious practices and struggles to overcome poverty that a material-focused approach to heritage conservation overlooks. The adoption of human rights-language in the right policy or legal documents may enable local people who are negatively affected by the World Heritage nomination to articulate their grievances, seek recompense or prevent (further) harm.

Ambiguity leaves the human rights and cultural heritage discourses open to change. It enables reflection, dialogue and debate on if, where and how the link between heritage and rights is appropriate. Ambiguity enables the development of the meaning of heritage and rights over time in a continuously changing world. It counters essentialist interpretations of heritage and rights. Politically, the ambiguity of heritage and rights can mean these notions are not too confrontational and more governments may
be willing to engage with them. As Andrea Cornwall argues, ‘[p]olicies depend on a measure of ambiguity to secure the endorsement of diverse potential actors and audiences. Buzzwords aid this process, by providing concepts that can float free of concrete referents, to be filled with meaning by their users’ (2010, p. 5).

It can even be argued that when it comes to global justice, the human rights discourse is not ambiguous enough. David Kennedy has warned that the institutional and political hegemony of human rights ‘makes other valuable, often more valuable, emancipatory strategies less available’, since ‘[t]o the extent emancipatory projects must be expressed in the vocabulary of “rights” to be heard, good policies that are not framed that way go unattended’ (2002, p. 108).

However, according to a more pessimistic assessment, the ambiguity of human rights will result in the interpretation of rights in favour of those who are more powerful, while the World Heritage system is taking the moral high ground and legitimising its own existence. Even when an overall consensus is reached that certain rights are violated; this may have no consequences whatsoever because mechanisms of accountability are ineffective. Moreover, local understandings of justice may become marginalised or discredited because of the hegemonic human rights discourse that only supports one way of formulating righteousness.

The reality may well lay somewhere in between these optimistic and pessimistic assessments and aspects of both assessments can take place
simultaneously. Importantly, the situation of Bagan – or any other World Heritage site – changes with time, as will the national, regional and global political context.

The preparation of Bagan’s World Heritage nomination was in its early stages during my fieldwork. Following the nomination and listing of Bagan over a longer period will enable the observation of developments in the dynamics between cultural heritage and human rights over time and enhance the understanding the complexity of social justice in Bagan. For example, during my fieldwork in 2014 and early 2015, many of my informants were unfamiliar with human rights. The World Heritage Sustainable Development Policy (UNESCO 2015b), which refers to human rights widely, was adopted in late 2015. It would be interesting to see what influence this policy – and other more recent developments in the realm of rights and heritage, such as the work of the Special Rapporteur on Cultural Rights – will have on the ground in the coming years. The future role of community organisations such as the Bagan Heritage Trust – which was only just being established during my fieldwork – and the Bagan Lovers Association in making claims and working with the government and UNESCO will be interesting to observe.

The breadth of the investigation of the potential of human rights-based approaches to World Heritage conservation could be enhanced comparing Bagan with other World Heritage sites in the region or globally. Furthermore, research at institutional sites where policies and guidelines are prepared will
be useful to deepen understanding of the multi-scalar factors that influence the role of rights in World Heritage practice.

The complexity of this situation can only be understood through an interdisciplinary and multi-scalar approach. Ang (2011) argues that cultural researchers need to go beyond ‘deconstructive cultural critique’ and aspire for ‘cultural intelligence’ to navigate the complexity of problems:

cultural intelligence involves the recognition that navigating complexity can never be a question of definitive or one-size-fits-all ‘solutions’; a complex problem can only be addressed partially, through an ongoing and painstaking negotiation with its multiple aspects, the different ways in which it is perceived, and the divergent interests and perspectives involved. Moreover, … cultural intelligence favours a more process-oriented approach to ‘problem-solving’, based on emergent, creative strategies of simplification which keep room for contingency and variability along the way, rather than predetermined, linear goals and formulas. (Ang 2011, p. 790).

Based on the findings of this research project, I would constructively suggest that UNESCO and ICOMOS could do more to further human rights-based approaches by moving beyond a material-focused understanding of heritage and employing people from a wider range of disciplinary backgrounds. Yet, the application of cultural intelligence to the analysis of the complex problem of social justice in the context of World Heritage properties suggests that here too, no ‘one-size-fits-all’ solutions exist, and thus neither will the universalistic human rights framework present such a solution. I agree with Campese and Borrini-Feyerabend, who have argued that human rights-based approaches ‘are not a panacea, should not exclude other equitable approaches, and should be pursued with creativity,
openness, and respect for the complex realities in which conservation is often situated’ (2011, p. 57). Analysing a problem through a human rights lens can provide valuable insights, yet these will always be partial and subject to certain limitations. Juxtaposing human rights with alternative frameworks and approaches – such as sustainability, conflict resolution, or equality – will be necessary to engage with the multiple aspects of complex problems, such as social justice at World Heritages sites.
8 References


Bhabha, HK 1994, *The Location of Culture*, Routledge, Abingdon, Oxon.


Harvey, D 2009, *Social Justice and the City*, Athens, Georgia, University of Georgia Press.


Houtman, G 1999, Mental Culture in Burmese Crisis Politics: Aung San Suu Kyi and the National League for Democracy, Tokyo University of Foreign Studies, Institute for the Study of Languages and Cultures of Asia and Africa, Tokyo.


----- 2015b, *Stones Standing: Archaeology, Colonialism, and Ecotourism in Northern Laos*, Left Coast Press, Walnut Creek, CA.


Lat, K 2010, Art and Architecture of Bagan and Historical Background with Data of Important Monuments, Daw Nandi Lin, Yangon.


Menon, AGK 2015, ‘Between the colonial, the global, and the local: civilizing India’s past under different regimes’, in M Falser (ed), Cultural Heritage as Civilizing Mission: From Decay to Recovery, Springer International Publishing Switzerland, Cham, pp. 67–82.


Messeri, B 2007, ‘Myanmar: a comparison between past and present’, presented to the XII International CIPA Symposium, 01-06 October, Athens, Greece.


Shepherd, RJ 2013, Faith in Heritage: Displacement, Development, and Religious Tourism in Contemporary China, Left Coast Press, Walnut Creek, CA.


Silva, KD & Chapagain, NK (eds) 2013, Asian Heritage Management: Contexts, Concerns, and Prospects, Routledge, Abingdon, Oxon.


Stargardt, J 2016, ‘From the Iron Age to early cities at Sri Ksetra and Beikthano, Myanmar’, *Journal of Southeast Asian Studies*, vol. 47, no. 3.


Development Series; Knowledge Papers No. 16, World Bank, Washington DC.


Tin, PM & Luce, GH 2008 [1923], The Glass Palace Chronicle of the kings of Myanmar, Unity Publishing House, Yangon.

Topich, WJ & Leitich, KA 2013, The History of Myanmar, Greenwood, Santa Barbara, CA.


Unakul, M & Rellensmann, C 2013, Capacity Building for Safeguarding Cultural Heritage in Myanmar, UNESCO Bangkok, Bangkok.

Uvin, P 2004, Human Rights and Development, Kumarian, Bloomfield, CT.


Ware, A 2010, ‘Human rights and the right to development: insights into the Myanmar government’s response to rights allegations’, in MD Barr & E Morrell, ASAA 2010, Proceedings of the 18th Asian Studies Association of Australia Biennial Conference of the ASAA: Crises and


### 9 Appendix

**Overview interviews**

<table>
<thead>
<tr>
<th>Name</th>
<th>Category of informant</th>
<th>Location of interview</th>
<th>Date(s) of interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Myo</td>
<td>Bagan local</td>
<td>New Bagan</td>
<td>26/6/2014</td>
</tr>
<tr>
<td>Aung</td>
<td>Bagan local</td>
<td>Multiple locations</td>
<td>27/6/2014; 20/7/2014; 18/8/2014; 15/1/2015</td>
</tr>
<tr>
<td>Htet</td>
<td>Burmese heritage expert</td>
<td>Old Bagan</td>
<td>27/6/14; 28/8/14</td>
</tr>
<tr>
<td>Rob</td>
<td>Foreign heritage expert</td>
<td>Yangon</td>
<td>16/7/14; 2/9/14; 6/1/15</td>
</tr>
<tr>
<td>Phyo</td>
<td>Burmese heritage expert</td>
<td>Yangon, multiple locations around Bagan</td>
<td>21/7/14; 12/8/14; 13/8/14; 15/8/14</td>
</tr>
<tr>
<td>Chit</td>
<td>Burmese heritage expert</td>
<td>Yangon, multiple locations around Bagan</td>
<td>21/7/14; 13/8/14; 15/8/14; 26/12/14</td>
</tr>
<tr>
<td>Soe</td>
<td>Burmese heritage expert</td>
<td>Yangon</td>
<td>4/8/14</td>
</tr>
<tr>
<td>Linda</td>
<td>Foreign heritage expert</td>
<td>Bangkok, Yangon</td>
<td>7/8/14; 5/9/14; 13/12/14; 6/1/15</td>
</tr>
<tr>
<td>Karl</td>
<td>Foreign heritage expert</td>
<td>Multiple locations around Bagan</td>
<td>12/8/14; 13/8/14; 15/8/14; 17/1/15</td>
</tr>
<tr>
<td>Alex</td>
<td>Foreign heritage expert</td>
<td>Old Bagan</td>
<td>15/8/14; 15/12/14</td>
</tr>
<tr>
<td>Zaw</td>
<td>Bagan local</td>
<td>Taungbi</td>
<td>16/8/14</td>
</tr>
<tr>
<td>Thiha</td>
<td>Bagan local</td>
<td>Old Bagan</td>
<td>16/8/14</td>
</tr>
<tr>
<td>Nyan</td>
<td>Bagan local</td>
<td>Myinkaba</td>
<td>16/8/14</td>
</tr>
<tr>
<td>Thura</td>
<td>Bagan local</td>
<td>Nyaung-U</td>
<td>17/8/14</td>
</tr>
<tr>
<td>Paula</td>
<td>Foreign heritage expert</td>
<td>Old Bagan, Bangkok</td>
<td>18/8/14; 14/1/15</td>
</tr>
<tr>
<td>Zarni</td>
<td>Bagan local</td>
<td>Nyaung-U</td>
<td>23/8/14</td>
</tr>
<tr>
<td>Min</td>
<td>Bagan local</td>
<td>Weitky-in</td>
<td>23/8/14</td>
</tr>
<tr>
<td>Name</td>
<td>Type</td>
<td>Location</td>
<td>Date</td>
</tr>
<tr>
<td>---------</td>
<td>-----------------------</td>
<td>--------------</td>
<td>---------</td>
</tr>
<tr>
<td>Maung</td>
<td>Bagan local</td>
<td>Old Bagan</td>
<td>24/8/14</td>
</tr>
<tr>
<td>Naing</td>
<td>Bagan local</td>
<td>Old Bagan</td>
<td>24/8/14</td>
</tr>
<tr>
<td>Myat</td>
<td>Bagan local</td>
<td>Myinkaba</td>
<td>23/8/14</td>
</tr>
<tr>
<td>Win</td>
<td>Bagan local</td>
<td>Weitky-in</td>
<td>23/8/14</td>
</tr>
<tr>
<td>Myint</td>
<td>Bagan local</td>
<td>New Bagan</td>
<td>23/8/14</td>
</tr>
<tr>
<td>Hein</td>
<td>Bagan local</td>
<td>New Bagan</td>
<td>23/8/14</td>
</tr>
<tr>
<td>Soe</td>
<td>Bagan local</td>
<td>Old Bagan</td>
<td>25/8/14</td>
</tr>
<tr>
<td>Pyay</td>
<td>Bagan local</td>
<td>Nyaung-U</td>
<td>26/8/14</td>
</tr>
<tr>
<td>Htay</td>
<td>Bagan local</td>
<td>Nyaung-U</td>
<td>29/8/14</td>
</tr>
<tr>
<td>Toby</td>
<td>Foreign heritage expert</td>
<td>Bangkok</td>
<td>5/9/14</td>
</tr>
<tr>
<td>Emma</td>
<td>Foreign heritage expert</td>
<td>Yangon</td>
<td>27/12/14</td>
</tr>
<tr>
<td>Thiri</td>
<td>Burmese heritage expert</td>
<td>Yangon</td>
<td>1/1/15</td>
</tr>
<tr>
<td>Bella</td>
<td>Foreign heritage expert</td>
<td>Yangon</td>
<td>7/1/15</td>
</tr>
<tr>
<td>Neil</td>
<td>Foreign heritage expert</td>
<td>Bangkok</td>
<td>9/1/15</td>
</tr>
<tr>
<td>Anna</td>
<td>Other</td>
<td>Bangkok</td>
<td>13/1/15</td>
</tr>
<tr>
<td>Wai</td>
<td>Other</td>
<td>Yangon</td>
<td>20/1/15</td>
</tr>
<tr>
<td>Thant</td>
<td>Burmese heritage expert</td>
<td>Yangon</td>
<td>22/1/15</td>
</tr>
<tr>
<td>May</td>
<td>Bagan local</td>
<td>Nyaung-U</td>
<td>27/1/15</td>
</tr>
<tr>
<td>Kyaw</td>
<td>Bagan local</td>
<td>Weitky-in</td>
<td>27/1/15</td>
</tr>
<tr>
<td>Thida</td>
<td>Burmese heritage expert</td>
<td>Yangon</td>
<td>4/2/15</td>
</tr>
</tbody>
</table>
Charters, Conventions, Covenants, Declarations, Guidelines, Plans, Policies, Programmes, Reports, Resolutions, Statements


ICOMOS Norway (2014). World Heritage and Rights-Based Approaches.  

Accessed 26/20/16

Accessed 27/10/16


https://portals.iucn.org/library/node/7207 Accessed 25/10/16


IUCN (2008). Resolution 4.056 ‘Rights-based Approaches to Conservation’  

IUCN (2010). Conservation Initiative on Human Rights  
Accessed 25/10/16


Mexico City Charter for the Right to the City (2010). http://www.hic-gs.org/content/Mexico_Charter_R2C_2010.pdf Accessed 25/10/16


http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx
Accessed 27/10/16

Accessed 26/10/16

Accessed 24/10/16

UN Committee on Economic, Social and Cultural Rights (1997). General Comment No.7: The right to adequate housing (Art.11.1): forced evictions.
http://www.refworld.org/docid/47a70799d.html
Accessed 27/10/16

Accessed 25/10/16

Accessed 26/10/16

Accessed 25/10/16

Accessed 27/10/16

UN Human Rights Council (2007b). Resolution (6/11). Protection of cultural heritage as an important component of the promotion and


328


Yamato Declaration on Integrated Approaches for Safeguarding Tangible and Intangible Cultural Heritage (2004).
News items


