

MONUMENTAL CHALLENGES:
LOCAL PERSPECTIVES ON WORLD HERITAGE
LANDSCAPE REGULATION
AT ANGKOR ARCHAEOLOGICAL PARK, CAMBODIA.

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Statement of Authorship

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This work has not previously been submitted for a degree or diploma in any other university. To the best of my knowledge and belief, this thesis contains no material previously published or written by another person except where due reference is made in the thesis itself. All sources have been appropriately acknowledged.

The material in this thesis has not been formally published elsewhere by me, with the exception of the following material:

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ABSTRACT

Protection and conservation lie at the heart of the World Heritage system, yet the designation of World Heritage status can create problems for both the pre-existing population and management that potentially threaten the success and sustainability of conservation efforts. Using the Angkor Archaeological Park, Cambodia, as a case study, this thesis identifies and analyses the way in which international heritage obligations translate to local land-use rules, and investigates the responses and perspectives of resident populations to the resultant spatially regulated landscape. This research finds that a profound dissonance exists between the traditional normative landscape and the rigid zone-and-buffer approach imposed upon it; a scenario with negative outcomes for both management and local people.

The sub-discipline of legal geography provides the context for this investigation of the ways in which laws impact on space. Epistemologically, studies in legal geography explain the ways that regulatory frameworks shape and form landscapes by restricting and manipulating how people interact in their lived environs (Blomley, 2001; 2003; Delaney, 2001; Ford, 1999). The process of territorialisation (Sack, 1986) through which influence or control occurs over a defined geographical area, also plays a role in the creation of the World Heritage landscape at Angkor. Spatially-defining a landscape means that boundaries and complementary obligations/restrictions are created. Discrete areas become spatially bounded, yet the legitimacy of these boundaries can be challenged (or are meaningless) under conditions of legal pluralism where different conceptions of the same space co-exist or, at times, compete (Griffiths *et al.*, 2009). This thesis explores the challenge of heritage conservation in the legally plural, post-conflict, post-colonial landscape at Angkor.

The Angkor Archaeological Park in Cambodia incorporates hundreds of medieval monuments and thousands of other cultural features scattered across more than 1000km², less than half of which falls within the World Heritage Park (Evans, 2007; 2007b). In this context, a major challenge lies in creating an effective land administrative regime to accommodate the conservation and protection of such a vast site. Access to land; restrictions on land use; ownership and usufruct entitlements are controversial in a post-conflict society such as Cambodia. While UNESCO policy states that World Heritage status does not preclude land rights

for the inhabitants of the site, and the *World Heritage Convention* 1972 explicitly provides (Article 6.1) that existing property rights should be respected, all land within the Heritage Park has been declared property of the State. After enormous upheaval in the recent past, the land administration system throughout the country remains uncertain and land management problems are endemic, ranging from 'land grabs' to inappropriate development. Left unchecked or un-regulated these issues have the potential to compromise the integrity of the World Heritage site.

In this research qualitative methods are used to explore local perspectives on the land use regulations through a combination of in-depth interviews and questionnaires in two villages within the core group of monuments at Angkor. Findings reveal that there are significant concerns with the regulations arising from the World Heritage listing. Most notable among these relate to issues surrounding security of tenure and the right to develop. Each issue has clear human rights implications. Results also suggest that the existing regulatory system is piecemeal and dispute resolution is confused. There is a lack of effective enforcement and penalty provisions and this reflects weakness in the regulatory framework. For local residents this creates a confusing and often undesirable end-result. For the international community, this creates the appearance of a weakened international heritage protective regime, and for the Cambodian management authority it creates a massive administrative burden. This research suggests that reconciling these issues is a constant challenge for management, but greater efficiency and equity can be achieved through a more nuanced, tailored regulatory response which blends elements of both the informal and formal systems into a coherent spatially-relevant whole. Lessons from this thesis make a direct contribution to World Heritage management policy and practice, especially in a developing country context and the Asia-Pacific region.

សង្ខេប

ការការពារ និង ការអភិរក្សគឺ មិនទាន់ជាបេះដូងរបស់ប្រព័ន្ធលេតិកភ័ណ្ឌពិភពលោកនៅឡើយទេ ការរៀបចំលក្ខខណ្ឌគិររបស់លេតិកភ័ណ្ឌពិភពលោក ទៅលើទេសភាពវប្បធម៌បុរាណ អាចបង្កើត ជាបញ្ហាសំរាប់ការគ្រប់គ្រង និងការរស់នៅរបស់ប្រជាជនក្នុងតំបន់ ដែលចុងក្រោយវាមាន ភាព តំរាមកំហែងទៅលើភាពជោគជ័យ និង និរន្តរភាពនៃការខំប្រឹងប្រែងក្នុងការអភិរក្ស។ ការប្រើប្រាស់ ឧទ្យានបុរាណអង្គនៅប្រទេសកម្ពុជា ដែលជាគណៈយសិក្សា និក្ខេបបទនេះ បានរកឃើញ និង វិភាគពីរបៀប ដែលលេតិកភ័ណ្ឌអន្តរជាតិមានកាតព្វកិច្ច បកស្រាយទៅកាន់ច្បាប់ នៃការប្រើប្រាស់ ដីធ្លីក្នុងតំបន់ ហើយនឹងស៊ើបអង្កេតការធ្វើយតប និង ទស្សនវិស័យរបស់ប្រជាជន ដែលរស់នៅក្នុង តំបន់នេះ ដែលជាលទ្ធផលនៃការរៀបចំទេសភាពលំហរ។ ការស្រាវជ្រាវនេះគឺជា ការដៃគូប្រកែក ទៅនឹងការលិចលឺមិនសមរម្យ ដែលកើតមានឡើង រវាងការប្រើប្រាស់ទេសភាពបុរាណ ហើយនឹង តំបន់ទ្រទាបហាមឃាត់ និង តំបន់ទ្រទាប ដែលនៅជុំវិញបរិវេណនោះ ហើយដែលភាពលិចលឺមិន សមរម្យនេះ មានភាពអវិជ្ជមានលើលទ្ធផលទាំងពីរ ទាំងការគ្រប់គ្រង ទាំងប្រជាជនក្នុងតំបន់។

បរិបទវិន័យតូចៗ របស់ភូមិសាស្ត្រស្របច្បាប់ បានផ្តល់នូវទីតាំងសំរាប់ការស៊ើបអង្កេតលើមធ្យោ បាយក្នុងច្បាប់ ដែលប្រឆាំងនឹងដីទំនេរ។ ការសិក្សាភូមិសាស្ត្រស្របច្បាប់ ជួយក្នុងការពន្យល់ពី របៀប ដែលធ្វើអោយសណ្ឋានក្រុមការងារ មានភាពទៀតទាត់ និង បង្កើតទេសភាព ដោយការ កំណត់ព្រំដែន និង ការរៀបចំពីរបៀប ដែលប្រជាជនធ្វើអន្តរកម្ម ក្នុងបរិស្ថានរស់នៅរបស់ពួកគេ។ ដំណើរការនៃការបន្ថែមដែនដី តាមរយៈអ្វីដែលមានឥទ្ធិពល ឬ គ្រប់គ្រងអ្វីដែល នឹងកើតឡើងទៅ លើភាពកំណត់ច្បាស់លាស់ របស់តំបន់ភូមិសាស្ត្រ ហើយដើរតួនាទី ក្នុងការបង្កើតទេសភាពលេតិក- ភ័ណ្ឌពិភពលោកនៅអង្គរផងដែរ។ ភាពច្បាស់លាស់នៃលំហរទេសភាពមានន័យថា ព្រំដែន និង កាតព្វកិច្ច ហើយនិងដែនកំណត់ត្រូវបានបង្កើតឡើង។ តំបន់ដាច់ៗពីគ្នា ក្លាយជាព្រំដែនលំហរ ព្រំដែនទាំងនោះ មិនទាន់ស្របច្បាប់នៅឡើយ ដែលអាចក្លាយជាជម្លោះ (ឬមិនមានខ្លឹមសារ) នៅ ក្រោមលក្ខខណ្ឌរបស់ច្បាប់ពហុនិយម ដែលមានគំនិតខុសៗគ្នា លើដីទំនេរតែមួយរួមគ្នា ឬ ជូន

កាលមានភាពប្រដែងគ្នា។ ការស្រាវជ្រាវនេះគឺ ត្រួតពិនិត្យបញ្ហានៃការអភិរក្សទេសភាព បេតិកភ័ណ្ឌ នៅអង្គរក្នុងពហុឈ្លាប់បន្ទាប់ពីជំលោះក្នុងសម័យប៉ុលពត និងបន្ទាប់ពីអាណានិគមបារាំង។

ឧទ្យានបុរាណអង្គរក្នុងប្រទេសកម្ពុជា រាប់បញ្ចូលទាំងប្រាសាទក្នុងសម័យយុគកណ្តាលរាប់រយ និង ទ្រង់ទ្រាយវប្បធម៌ជា ច្រើនរាប់ពាន់ ដែលនៅរាយពាសពេញផ្ទៃដីជាង១០០០គម^២។ ប្រាសាទ និង ទ្រង់ទ្រាយវប្បធម៌ជិតពាក់កណ្តាល ដែលបានដាក់បញ្ចូលក្នុងឧទ្យានបេតិកភ័ណ្ឌពិភពលោក។ ក្នុងបរិបទនេះ ជម្លោះនូវភាពមិនពិតប្រាកដជាច្រើន ក្នុងការបង្កើតរបបរដ្ឋបាលដីធ្លីអោយមាន ប្រសិទ្ធភាព ដើម្បីជួយសំរេបសំរួលការអភិរក្ស និង ការការពារស្ថានីយ៍ប្រវត្តិសាស្ត្រដ៏ដំបូងហិមារនេះ។ ផ្លូវទៅកាន់ទីតាំងដី ការកំណត់ព្រំប្រទល់ប្រើប្រាស់ដី ម្ចាស់កម្មសិទ្ធិ និងសិទ្ធិអាស្រ័យផល ទាំងអស់ នេះគឺ មានការវិវាទគ្នាបន្ទាប់ពីសង្គ្រាមស៊ីវិល ដូចប្រទេសកម្ពុជាជាដើម។ ក្នុងអំឡុងពេលដែល គោលការណ៍យូនីស្កូ(UNESCO) បានថ្លែងថា លក្ខខណ្ឌតិករបស់បេតិកភ័ណ្ឌពិភពលោក មិនបាន រារាំងសិទ្ធិរស់នៅលើដីធ្លី របស់អ្នកភូមិស្រុក ដែលមានលំនៅដ្ឋាន ក្នុងស្ថានីយ៍ប្រវត្តិសាស្ត្រឡើយ ហើយក្នុងអនុសញ្ញាបេតិកភ័ណ្ឌពិភពលោកឆ្នាំ១៩៧២ (មាត្រា៦.១) បានបញ្ជាក់យ៉ាង ច្បាស់លាស់ ថា សិទ្ធិកម្មសិទ្ធិអនុវត្តទ្រព្យ ដែលមានស្រាប់ត្រូវតែគោរព ហើយរាល់ដីធ្លីទាំងអស់ក្នុងឧទ្យានបេតិ កភ័ណ្ឌត្រូវបានប្រកាសជាសម្បត្តិទ្រព្យរបស់រដ្ឋ។ បន្ទាប់ពីមានចលាចលយ៉ាងខ្លាំងក្លា ក្នុងពេល កន្លងមកថ្មីៗ ប្រព័ន្ធរដ្ឋបាលដីធ្លីទូទាំងប្រទេស នៅសល់ភាពមិនច្បាស់លាស់ ហើយបញ្ហាការគ្រប់ គ្រងដីធ្លីក៏កើតមានឡើងតាមតំបន់ ចាប់ពីការជណ្តើមយកដីធ្លី ទៅដល់ការអភិវឌ្ឍន៍ដីមិនសម ស្រប។ ខ្លះការត្រួតពិនិត្យ ឬ មិនមានក្បួនខ្នាតត្រឹមត្រូវ វាមានសក្តានុពល ដើម្បីសម្រុះសម្រួលភាព សុចរិតរបស់ស្ថានីយ៍ប្រវត្តិសាស្ត្របេតិកភ័ណ្ឌពិភពលោក។

ការប្រើប្រាស់វិធីសាស្ត្រដ៏មានគុណភាព ការស្រាវជ្រាវនេះ បានពិនិត្យអំពីទស្សនៈវិស័យក្នុងតំបន់ លើរបៀបប្រើប្រាស់ ដីធ្លី តាមរយៈការដាក់បញ្ចូលទិន្នន័យ ដែលបានពីការសំភាសន៍យ៉ាងល្អិតល្អន់ និង ការសាកសួរទៅលើភូមិភិរ ក្នុងគ្រុម ស្នូលនៃប្រាសាទនៅអង្គរ។ ការរកឃើញពីការស្រាវជ្រាវ នេះបង្ហាញថា មានការពាក់ព័ន្ធយ៉ាងសំខាន់ ជាមួយនឹងការរៀបរយសណ្តាប់ធ្នាប់ដែល មាននៅ

ក្នុងបញ្ជីរបេតិកភ័ណ្ឌពិភពលោក។ ការកត់សំគាល់ជាច្រើន ក្នុងចំណោមបញ្ហាទាំងនោះ ដែល
ទាក់ទងទៅនឹងសុវត្ថិភាពមុខតំណែងនិង សិទ្ធិដើម្បីអភិវឌ្ឍន៍។ ការរកឃើញពីការស្រាវជ្រាវបាន
បង្ហាញផងដែរថា ប្រព័ន្ធនិយតករដែលមានស្រាប់ គឺជាចំណែកមួយនៃប្រព័ន្ធនិយតករ និង
ដំណោះស្រាយជំលោះដីធ្លី គឺមានភាពកាន់ត្រឡប់ មានភាពកង្វះខាតនូវសិទ្ធិបង្ខំ និង ការដាក់
ទោសទាំងនេះ វាមានការឆ្លុះបញ្ចាំងត្រឡប់ មកវិញពីភាពទន់ ខ្សោយ ក្នុងរបៀបរៀបរយក្នុងប្រព័ន្ធ
ការងារ។ សំរាប់ការរស់នៅក្នុងតំបន់ នេះបង្កើតអោយមានការកាន់ត្រឡប់ និង ជាញឹកញាប់លទ្ធផល
ពុំជោគជ័យ ដែលទទួលបានមិនសមតាមបំណងប្រាថ្នា។ សំរាប់សហគមន៍អន្តរជាតិ នេះបង្កើត
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គឺជាបញ្ហា ដែលមានជាបន្តបន្ទាប់សំរាប់ការគ្របគ្រង ប៉ុន្តែលទ្ធផល ដែលទទួលបានដ៏អស្ចារ្យ
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តបទៅអ្វីដែលវត្តមានលាយបញ្ចូលគ្នា របស់ប្រព័ន្ធទាំងពីរទាំងផ្លូវការ និង មិនផ្លូវការ ទៅក្នុង
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ទៅកាន់គោល ការណ៍គ្រប់គ្រងបេតិកភ័ណ្ឌពិភពលោក និង ការអនុវត្តន៍ ជាពិសេសក្នុងបរិបទ
ប្រទេសដែលកំពុងអភិវឌ្ឍន៍ និង ក្នុងតំបន់អាស៊ីប៉ាស៊ីហ្វិក។

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LIST OF CAMBODIAN LAWS¹

Royal Government of Cambodia, *Constitution of the Kingdom of Cambodia*, 1993

Royal Government of Cambodia, *Land Law*, Kram NS/RKM/0801/14 dated August 30 2001

Royal Government of Cambodia, *Law Establishing Protected Cultural Zones in the Siem Reap / Angkor Region and Guidelines for their Management*, Kret 001, NS dated May 28, 1994

Royal Government of Cambodia, *Law on the Protection of Cultural Heritage*, Kram NS/RKM/0196/26 dated January 25 1996

Royal Government of Cambodia, *Kret NS/RKT/0199/18 dated January 22 1999 amending some provisions of the Kret NS/RKT/0295/12 dated February 19 1995 establishing the APSARA Authority*

Royal Government of Cambodia, *Circular of the Royal Government of Cambodia No.01/SR dated May 6 2003 on the anarchical activities cessation in the Angkor Archaeological Park*

Royal Government of Cambodia, *Order of the Royal Government of Cambodia No.02/BB dated June 23 2004 on cessation and eradication of anarchical activities in the Angkor Archaeological Park of Siem Reap Province*

¹ Cambodian laws are hierarchical as follows (Oberndorf, 2004):

1. Constitution (Constitution of the Kingdom of Cambodia, 1993)
2. Laws (chhab)
3. Royal Decrees (reachkret)
4. Sub-decrees (anukret)
5. Ministerial decisions (prakas)
6. Circulars (sarachar)
7. Local regulations (deika)

Royal Government of Cambodia, *Decision of the Royal Government of Cambodia No.70/SSR dated September 16 2004 on determination of standards for utilization of land in zones 1 and 2 of Siem Reap / Angkor sites*

The People's Republic of Kampuchea, *Sub-Decree No.6, Control and utilization of agricultural land of 1985*

Royal Government of Cambodia, *Sub Decree/Anukret No.50 ANK/BK dated 9 May 2008*

Royal Government of Cambodia, *Law on Administration and Management of Communes, LAMC, 2001*

Royal Government of Cambodia, *Organic Law on Administrative Management, 2008*

Royal Government of Cambodia, *Draft Protected Areas Law of February 2008*

ABBREVIATIONS AND ACRONYMS

ADB	Asia Development Bank
APSARA	Authority for the Protection and Management of Angkor and the Region of Siem Reap / Autorite pour la Protection du Site et l'Amenagement de la Region D'Angkor
CDRI	Cambodia Development Research Institute
<i>Convention</i>	Officially, the <i>World Heritage Convention</i> is the <i>Convention concerning the Protection of the World Cultural and Natural Heritage</i> (1972). The full text is available at http://whc.unesco.org/en/conventiontext/ .
EFEO	École Française d'Extrême-Orient
<i>Operational Guidelines</i>	<i>World Heritage Convention Operational Guidelines</i> . The current version is available at http://whc.unesco.org/en/guidelines/ .
ICC	International Co-ordinating Committee for the Safeguarding and Development of the Historic site of Angkor
ICOMOS	International Council on Monuments and Sites
ICCROM	International Centre for the Study of the Preservation and Restoration of Cultural Property
IUCN	International Union for Conservation of Nature
NGO	Non-government organisation
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNDP	United Nations Development Programme
UNTAC	United Nations Transitional Authority
WB	World Bank
ZEMP	Zoning and Environmental Management Plan

FOREWARD

This research forms part of an Australian Research Council (ARC) Linkage Project known as the “Living with Heritage” project. The “Living with Heritage” project is a multi-disciplinary, multi-national collaborative research project interested in contemporary management issues for the World Heritage site at Angkor Archaeological Park, Cambodia. As both a geographer and a lawyer I was drawn to the implications of the World Heritage listing on the hundreds of thousands of people who live amongst the monuments of Angkor as I find the spatial implications of legal regulation a fascinating phenomenon. Anecdotal stories about the relocation of entire villages within the Park and of the adverse impact of restrictions on traditional farming practices aroused my professional curiosity. Having the benefit of a supportive family, with a partner experienced working both in Southeast Asia and Cambodia, I made a decision to resign my employment in law and embrace life as full-time post-graduate research student to investigate how the World Heritage designation affects residential communities.

Not long after making this decision I find myself in Cambodia, and describe here two scenes I witnessed during the course of my fieldwork:

On a hot and humid December day I find myself sitting in the comfortable shade of the house of an interviewee, a 45 mother of two boys, sipping juice from a freshly cut coconut and discussing the frustrations associated with trying to renovate an old, timber house in the tropics. If I walk to the front of her property I can see, just down the road, the famous Khmer Bakong temple, one of the oldest monuments in the region. Despite the language barriers each of us nod knowingly as we talk about how the rules designed to protect the famous temples hamper small change; and the picture becomes clear about the extent to which resident concerns such as these go unheard.

A few days later, on another hot and humid December day I find myself sitting in the air-conditioned conference room of a five-star hotel in the middle of bustling Siem Reap, the gateway town to the World Heritage site of Angkor Archeological Park. Before me sit dignitaries from around the world all converged here at a bi-annual International Co-

ordinating Committee meeting. Translated simultaneously in three languages, English, French and Khmer, participants discuss a wide-ranging agenda; from lighting Angkor Wat for special functions to the technical details of monument restoration. Little is said about the expectations and needs of residents living amongst these monuments.

Each narrative provides an insight into the dilemmas facing heritage managers at Angkor Archaeological Park, Cambodia. Rather than start with the traditional observations about the famous French explorer, Henri Mouhot's "discovery" of the ruins of Angkor, these narratives deliberately articulate the immediate, pressing conflict that arises when different value-laden perspectives collide. These narratives, however, are not isolated from their historical or spatial setting and the weight of history, in particular, bears directly upon them. The antecedents of the stories of Angkor go a long way back in time and through both epigraphic and modern scientific research each can take us to the beginnings of the Khmer Empire. This research is not concerned to provide an exclusively historical account of the evolution of human/environment interactions in and around Angkor, but it is concerned to re-prioritise how we conceptualize the role of law in shaping landscapes. It is the everyday concerns of those who live in the shadows of the monuments; their values, priorities and expectations that provide the *raison d'être* for this research about how heritage-led policies control places and the people who occupy them.

Chapter One

INTRODUCTION

1.1 INTRODUCTION

The 1972 *World Heritage Convention*² is heralded as one of the most successful international documents of international law, with over one hundred and eighty-six countries having ratified the *Convention* and a total of nine hundred and eleven properties having been successfully nominated as a cultural/natural site of “outstanding universal value” and placed on the World Heritage List. The obligations of heritage protection are enunciated and embodied in the *Convention* and its attendant *Operational Guidelines*. However, due to the exigencies of international law, neither have any effect until implemented by the nominating country through national and/or local rules. In these circumstances the measure of success does not lie simply in the number of ratifications; arguably this yardstick provides only a partial indicator. In evaluating success it is necessary to establish whether the main aim of the *Convention* is met: are World Heritage sites being preserved and conserved for future generations as the *Convention* envisages? To this end consideration must be given to the practical issues that flow from World Heritage site inscription.

It is argued that effective World Heritage site management requires that the needs of people living within or adjacent to these properties be considered in policy and practice. To ensure local interest in custodianship it becomes important for local residents to become stakeholders in the management process, to be engaged and work in partnership with management rather than being alienated from it. This approach improves prospects for sustainable, long-term preservation in accordance with the aims of the *Convention*.³ In this context, land ownership/tenure arrangements, access and use can become flashpoints for conflict between local residents and management. For sites spread over a large area with sizeable resident

² Officially, the World Heritage *Convention* is the *Convention concerning the Protection of the World Cultural and Natural Heritage*, the full text is available at <http://whc.unesco.org/en/Conventiontext/>.

³ For a nuanced analysis of this local-involvement-meets-sustainability argument see Brockington, (2003), who considers the unchallenged prevalence of current policy preference to incorporate local people into protected area management. Cultural World Heritage sites provide a slightly different perspective on this issue, for people often remain living in these sites and the preservation of heritage practices are often viewed as integral to these sites.

populations the potential for conflict is amplified. This is the situation at Angkor Archaeological Park, Cambodia (Figure 1.1). Angkor⁴ is a World Heritage site with an extent in excess of 400 square kilometres and a resident population of more than 100,000 people (APSARA, 2005b). In this setting this research considers the World Heritage designation at Angkor by assessing how the ideals of protection are translated from the international arena to apply, with varying degrees of success, to localised land use and tenure conditions.



Cartography: Kevin Davies

Figure 1.1 Location of Angkor Archaeological Park World Heritage Site, Cambodia.

⁴ Throughout this thesis the World Heritage site is referred to as Angkor Archaeological Park or Angkor.

1.2 WORLD HERITAGE POLICY AND PRACTICE

A traditional and often overriding concern in heritage management is that of preservation and safeguarding. The monuments, temples, landscapes and buildings of World Heritage sites are protected and conserved for future generations on behalf of the global community. However, in the process the practicalities of site/land management can be overlooked. Issues such as tenure arrangements tend to be overshadowed by conservation efforts, for tenure is a sovereign concern and beyond the purview of the international realm in which the heritage obligations take shape. The proposition of this thesis is that World Heritage management, and in particular the regulatory dimensions of land-use management, need to be integrated into a holistic approach to overall site planning and management. Rhetorically at least, priority is now placed on understanding local views and considerable weight is attached to prioritizing local values in heritage management. The assumption of this research is that the failings of current protective regimes are reflected in the views of those who live and work in the shadows of the protected monuments and landscapes of Angkor. The imposition of heritage controls, without adequate reference to the views of the local population raises the spectre of a conflict cloaked in a discourse of human rights as tensions between competing stakeholders emerge. Sustainable development and poverty alleviation are earmarked aims for World Heritage site management; but poverty is not restricted to a lack of funds, it extends, ultimately, to the possible deprivation of human rights. The question of rights and human rights is fundamental to this thesis. The human rights discourse and literature is vast. Since the introduction of the concept into international law, and particularly since the consensus-building 1948 Universal Declaration of Human Rights the list of rights has expanded exponentially (Smith, 2010). This research touches on a number of these rights. The most prominent example relates to the "right to property", articulated by Article 17 of the Universal Declaration of Human Rights (1948). This right provides that: "(1) everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property." (United Nations, 1948). In many World Heritage sites people assert various forms of tenure that would be recognised as a form of ownership entitlement; it is potentially the case that these entitlements may be in jeopardy with onset of some form of heritage control that alters the proprietary status quo. Another way in which human rights arise in this research is in relation to issues of cultural heritage. Again, the literature is burgeoning (for example see the edited volume on this subject by,

Francioni and Scheinin (eds), 2008).⁵ In this context human rights arise when cultural integrity comes under threat. Despite the prevalence of instruments such as the *International Covenant on Economic, Social and Cultural Rights*⁶ (United Nations, 1966) and entitlements to take part in cultural life (through, for instance, Article 15 of this *Covenant*), it appears that cultural heritage human rights have yet to fully develop. For residents living within declared cultural heritage sites these issues come to the fore. In this context this thesis argues that if inadequate attention is paid to pre-existing regulatory norms and existing human/landscape interactions, the efficacy of a World Heritage listing is threatened. Moreover, regulatory arrangements governing heritage management can be undermined by a lack of consideration about the complexities of a site located within a legally plural landscape. This is particularly the case in Cambodia, a post-conflict, post-Colonial, developing nation. Angkor provides an excellent case study in which to explore this issue.

Cambodia ratified the *World Heritage Convention* in 1991. The monuments and temples of Angkor Archaeological Park were placed on the World Heritage List-in-Danger in 1992 and the site was removed from the list-in-danger in 2004. Angkor and its surrounds represent one of the most significant archaeological sites in the world (Higham, 2002). The national pride in Angkor, replete with the symbolism of a once great Khmer empire, strikes a chord in the national psyche. This is not unusual; as Cleere (1984) points out, archaeological monuments are tangible expressions of post-Colonial independence. One issue in this thesis is not to assess the designation of the site on the basis of the criteria of outstanding universal value but, rather, to assess whether management obligations created by the listing take place at the expense of local residents. In this sense, the success of protection is measured against whether management can reconcile international heritage obligations with local land use expectations. The designation of a World Heritage classification exists to protect and conserve the monuments of Angkor and regulations are promulgated to achieve this end, yet there is a pre-existing residential community spread across the World Heritage landscape with pre-existing rights to the land. Moreover, regulatory breaches of heritage-inspired land use laws, which may be incompatible with existing uses, can compromise World Heritage site integrity. This is of particular concern at Angkor. The international heritage community and the management

⁵ For a thorough account of the connections between cultural heritage and human rights see Lloyd, 2009 (Chapter 2) who provides an explanation of the various instruments that give rise to such rights.

⁶ Known as the ICESCR, this was adopted by the General Assembly Resolution 2200A (XXI) 16 December 1966, available at <http://www2.ohchr.org/english/law/cescr.htm>.

authority have voiced disquiet and, in July 2008, the Periodic Reporting documentation for Angkor identified the lack of an appropriate integrated management system, largely based on land use uncertainties, as a real threat to the site, and the World Heritage Committee called for these concerns to be addressed (UNESCO, 2008c). The response of management is to impose restrictions on land use activities and to embark on education campaigns. However, such regulatory responses are ineffective without an adequate enforcement regime that considers pre-existing legal and societal norms. This is particularly challenging in the legally plural landscape of Cambodia.

In Cambodia laws are derived from several sources and influenced by formal laws from both civil and common-law systems. As a former French colony the French Civil Code remains very influential. More recently lawyers from a variety of jurisdictions and especially those trained in the common law tradition have played a role in drafting legislation for the Kingdom of Cambodia. There is also a strong informal and normative system of governance and administration. Co-existent legal orders are common, with many people around the world living under plural legal conditions. This can give rise to contradictory notions of how space is classified. These conditions do not, necessarily, lead to conflict and multiple systems can sit alongside one another without problem. However, if the systems collide conflicts and confusion may arise. In the context of a post-colonial settlement and post-conflict society such as Cambodia, the complexities of the legally plural landscape are immense. At Angkor there are at least four systems of regulation in place: (1) that of the international community (represented in the World Heritage designation) and the existing regime; (2) that of former (recent) regimes; (3) that remaining from post-Colonial rule and, (4) a more traditional or customary administrative system. Notwithstanding the dilemma of multiple legal systems, the neo-patrimonial system of governance in Cambodia has a tendency to hinder the official rule of law (Adler *et al.*, 2008; Nee and McCallum, 2009), which should be considered in any analysis of the legally plural landscape. Adler *et al.* (2008) provide a definition of neo-patrimonialism, where norms of patronage and protection exist within a modern governance framework. They suggest the system undermines the formal legal process established in newly created democracies by frustrating the transparency of the rule of law. The consequence for Cambodia is that the modern democratic governance structure is compromised by the prevalence of this normative system. In this context it becomes very important to recognise the unwritten norms and customs that govern village relationships that sit outside or alongside the modern formal legal framework. Written

laws simply do not have the impact or expected meaning in a *added: developing* modern liberal democracy such as Cambodia. In Cambodia international heritage obligations have been formally met with the passage of formal laws but the extent to which these rules are relevant in local circumstances is questionable. A question that arises here is whether the current legislation is really adequate to implement Cambodia's World Heritage obligations as a whole, let alone in terms of addressing the needs of the local communities, which are the focus of this research.

The dualism of regulatory governance in Cambodia has important implications, especially for land administration. During the Khmer Rouge years (1975 – 1979) all formal private property entitlements were abolished and records of land ownership were destroyed (Williams, 1999; 1999b). Land entitlements have gradually returned in a piecemeal way, though formal land titles have not been recreated throughout the entire country but this process of land titling continues. Nonetheless, throughout the country access to land remains problematic and land conflict is rife (World Bank, 2009). However, the World Heritage designation has confused this nation-wide cadastre process for land surrounding the monuments. Legislation brought in to protect the monuments of Angkor re-classifies this land as State-owned and, technically, land classified as "State-owned" is excluded from the private titling programme. However, in the core Zones of the World Heritage site⁷ there is a resident population of over 100,000 people in over 100 villages (APSARA, 2005b) with pre-existing 'ownership' entitlements. The restrictions enacted in the name of conservation create new obligations and, unfortunately, these are often characterised as burdens on local residents within protected sites. In protected area⁸ management there has been, and continues to be, research into the social impacts associated with this designation (for example, see West, *et al.*, 2006; Brockington *et al.*, 2006) yet there has not been the same degree of attention paid to the impact of a World Heritage designation. Voices of residents living within World Heritage sites have been lost while other studies on impacts of designation (tourism, physical changes, conservation/preservation of monuments) have taken priority. In the developing-country context of Cambodia heritage conservation may be, at least rhetorically, a top priority, but the reality of effective heritage landscape

⁷ For working purposes the cores zones (1 and 2) are considered to comprise the World Heritage site known as Angkor Archaeological Park.

⁸ Often, reference to a protected area often refers to sites classified according to the six-category IUCN Protected Area Management Categories, see http://www.unep-wcmc.org/protected_areas/categories/index.html. Yet, in the context of research about a World Heritage site the generalised notion of a protected area, or a spatially defined area subject to development control in the name of heritage protection, applies. Footnote 5 added per KT

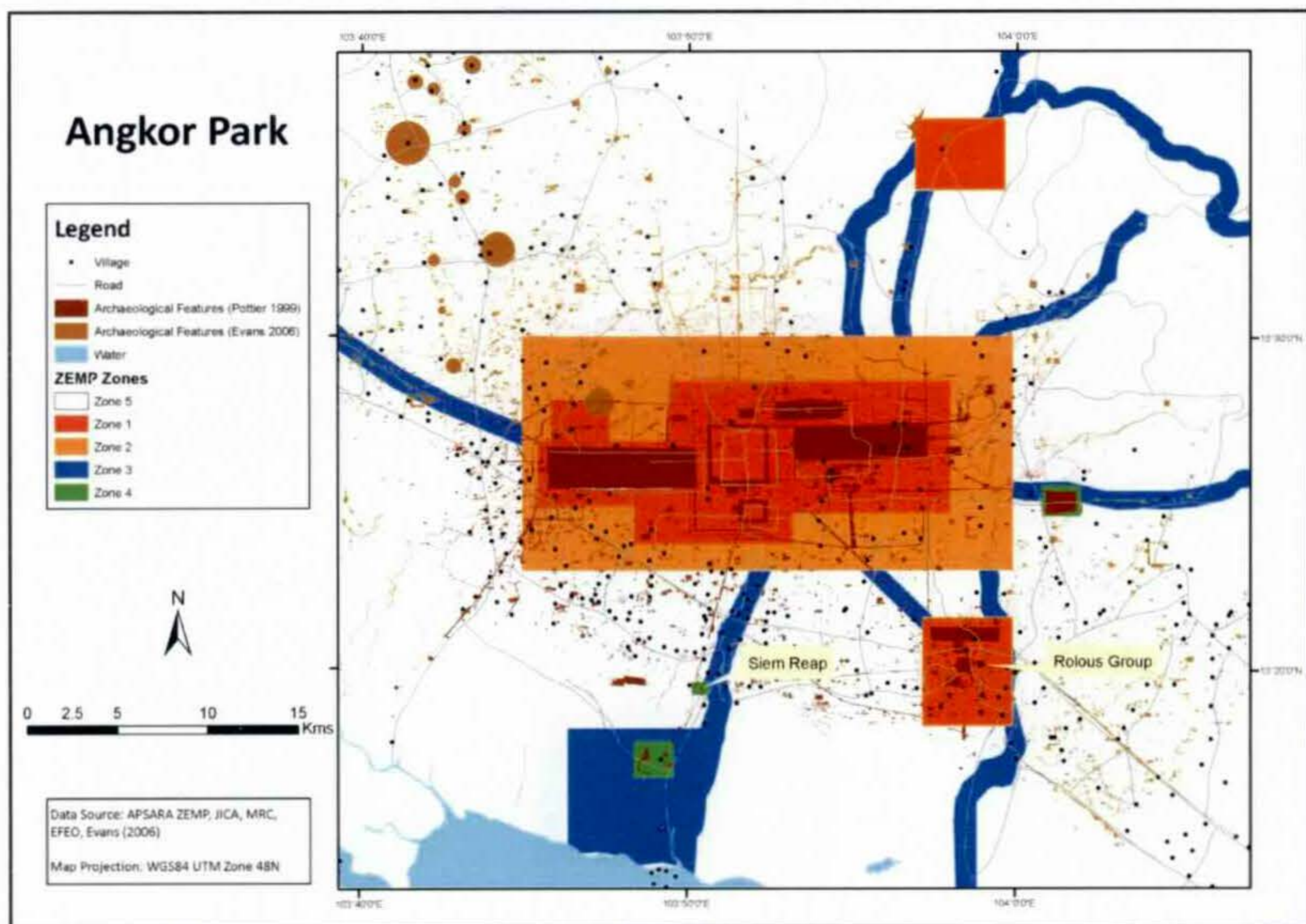
management through a complementary and tailored land administration programme has no such priority claim.

The *Convention* does not dictate the way in which heritage should be protected. As a soft-law⁹ international obligation the *Convention* provides that appropriate regulatory systems are in place in order that the site is protected, but there are no mandates about how this should be achieved. Different countries deal with these obligations in different ways. In Australia, for example, the obligations merge, to an extent, with national and state environmental/heritage and planning laws.¹⁰ Many other developed democratic nations adopt a similar approach; the obligations fit into the pre-existing legislative framework (often with some declaration of the new designation). However, in countries without a well-established environmental/heritage and planning law structure the effective implementation of World Heritage obligations can be fraught with difficulty. The World Heritage site at Angkor provides an excellent illustration of the problems that can arise. World Heritage obligations at Angkor are manifest in a zoned planning approach which spatially defines regulations for site management and is represented in the “Zoning and Environmental Management Plan” (ZEMP) for Angkor (Figure 1.2). The site is divided into five planning zones which vary in the level of applied restrictions; from Zone 1 which is the most highly protected category through a Zone 2 “buffer zone”, to Zone 5 which represents the entire Siem Reap administrative unit (the Province). These zoning regulations have the force of law, having been brought into effect by national legislation, the 1994 Royal Decree Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management.¹¹

⁹ In international law “soft law” refers to instruments that are non-binding, non-enforceable and marked by normative principles, as compared with “hard law”, see Boyle, 1999.

¹⁰ The *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) includes very specific provisions for the implementation of the *Convention*, including World Heritage Management Principles which are found in the Regulations to this Act (Boer and Wiffen, 2006). Footnote 9 and 10 added per BB

¹¹ Kret No.001/NS Dated May 28 1994 Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management.



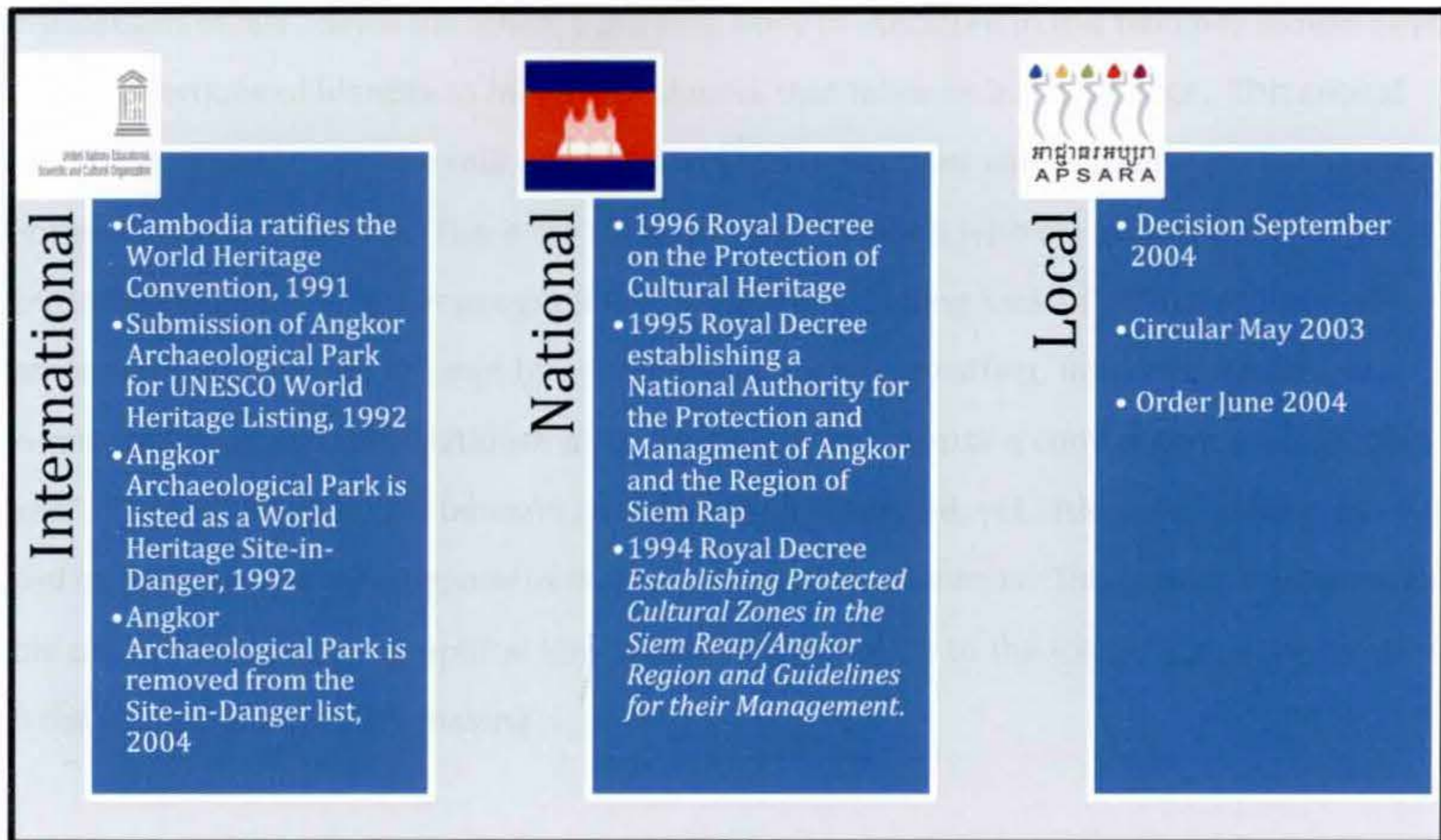
Cartography: E.Bruce

Figure 1.2: Map of Angkor Archaeological Park World Heritage Site showing Zones 1 – 5, modern villages and archaeological features

Angkor is clearly managed according to zone planning processes. However, the extent to which this policy is successful is contentious. There is no mandated requirement to manage World Heritage sites through spatially-defined zones; in fact the use of buffer zones is not compulsory and is the subject of current debate in World Heritage policy (UNESCO, 2009). Many problems arise in spatially prescribing restrictions on land use, as is the case through the ZEMP strategy. They include problems with defining the boundaries of zones (boundary uncertainty), the lack of education on permitted activities in specific areas, and the adequacy or inadequacy of the planning mechanisms (including enforcement provisions).

It becomes clear that, in the heritage management context of Angkor, a significant challenge lies in creating an effective land management system through appropriate landscape regulation. The problem can be viewed as scalar: international obligations warrant national and local policy responses for effective protection. Box 1.1 outlines sections of the World Heritage legal

framework, articulated at different discourse scales, which arise with the World Heritage listing at Angkor.



Box 1.1: Legal and Geographic Scales of Heritage Protection at Angkor Archaeological Park

Scalar perspective is critical, for needs vary according to scale. The World Heritage site at Angkor provides a clear illustration of the way in which competing scalar demands inform policy and practice but these problems also apply to other World Heritage sites. Critical reflection and questioning of the impact of scales on policy decisions in World Heritage management remains largely unanswered and in need of scholarly attention (for an example of such research see Butland, 2009). While the reconciliation of global and local needs has received some consideration in World Heritage management, local perspectives have not been sought in a systematic way. There are calls for the renomination of Angkor from a cultural site to a World Heritage cultural landscape (Taylor and Altenburg, 2006) but in the process of planning and implementation there is a need to carefully consider the land administrative regime and the views of local residents. The feasibility of a cultural heritage renomination requires that a more nuanced, tailored regulatory approach is adopted for, in the absence of such a system, there is the potential to create prodigious land management problems at Angkor.

This research is an undertaking in legal geographical analysis. The value of law and geography scholarship lies in the refreshing and often underrated perspective that comes with

acknowledging the reciprocal, dependent relationship between geographical concepts of place and space, and legal concepts of regulation, fairness and justice. "Legal geography" is a sub-discipline of human geography with a core concern to encourage thinking about the spatial implications of law. Since the 1990s a growing body of literature in this field has moved beyond simple assertions of identity to more recent work that takes on a critical edge. This critical dimension explores how the role of law/s and legal institutions can legitimise spatial hierarchy (Forman and Kedar, 2003). There are clear links and parallels with the concept of territorialisation in the wider geographical literature, including Sack's (1986) definition of territorialisation as "the attempt by an individual or group to affect, influence, or control people, phenomena, and relationships by delimiting and asserting control over a geographic area". Through laws spaces become controlled and regulated, yet little consideration has been paid to the way that legal apparatus work to create these controls. This research explores the role of law through a geographical lens by drawing attention to the role of scales (international to the local) and boundary making.

The juxtaposition between the text of international heritage regimes and the needs of those local residents who live and work in World Heritage classified sites can be stark. Visitors to the World Heritage site at Angkor can see the temples set amongst living and working communities. However, few visitors understand that those living closest to the monuments are subject to a range of restrictions relating to the way they interact with their land. Any interaction with local residents results in the revelation of a tirade of complaints about how residents are frustrated with the rules about what they can and cannot do. Occasionally, these frustrations become obvious (Figure 1.3). This photograph was taken at the entrance to Zone One of the main group of monuments (Central Park) at Angkor.



Figure 1.3: Vandalized APSARA Public Note about Land-use restrictions, located at the Zone 1 & 2 border, Angkor Central Park, taken December 2005

The sign depicted in Figure 1.3 was erected by the Angkor management authority (APSARA) to comply with regulatory requirements that the public are notified about the location and rules applying to the World Heritage site. It says that, inter alia, the monuments are to be protected and that there must be no selling of land in the Park and if land is sold the government may take the land away (see Chapter 6). The sign is intended as an educational device to inform local people of their responsibilities. However, during the course of fieldwork an employee of the management authority drew attention to this sign as an indicator that the local population is frustrated with the restrictions that have been imposed upon them. An examination of the relationship between the World Heritage designation and local residents is a largely unexamined issue in academia and is the central concern of this research. This thesis should improve our understanding of local perspectives on a World Heritage designation. Ultimately an analysis of these issues should lead to improved World Heritage site management. It is anticipated that this project shall, inter alia:

- (a) improve the relevance of World Heritage site management planning and plans for local residents and contribute to the better management of World Heritage sites, especially in non-Western settings;
- (b) critique land use obligations in Angkor and characterize the role of local stakeholders;
- (c) identify paths – both formal and informal – for better land administration practices in World Heritage locations;
- (d) assist the relevant Cambodian authorities in discharging their heritage management responsibilities; and
- (e) lead to the creation of a more equitable landscape management process.

The expected outcomes of this research are, therefore, multi-faceted. This research questions whether the current regulations and boundaries are appropriate to meet the needs and expectations of managers and residents alike. An evaluation of World Heritage properties in light of local perspectives and the spatial/regulatory nexus is critical to the practice of World Heritage site management.

1.3 RESEARCH PROJECT

1.3.1 Research Questions

The aim of this thesis is to identify and analyse how the landscape of the World Heritage site at Angkor is regulated and how local residents react to and perceive the imposition of heritage-imposed restrictions. This will be addressed through the following question: are local expectations regarding land use met by the regulatory framework? This can be answered by considering three sub-questions: (1) What are World Heritage obligations and how are these obligations translated to local rules?; (2) What have been and are now the landscape laws which apply to the site?; and (3) How have the residents' responded to or what do they think about, these regulations?

1.3.2 Research Design

One central proposition of this research is that it is the way in which World Heritage obligations (articulated in the international arena) are translated into regulatory regimes at the national and

then the local level that is critical to the efficacy of World Heritage protection. It is contended that if heritage managers cannot ensure that the regulatory framework takes adequate account of the local community's (varied and often disparate) needs, then their ability to effectively manage the World Heritage site may be called into question, compromised, or made more difficult or less effective. The proposition that local rights are important to effective management is a well-accepted one, and is incorporated into many policy documents. In order to evaluate the efficacy of the regulatory framework at Angkor this research investigates the local population's access to land; in particular, their ability to alienate and use it. This is particularly crucial in Cambodia where "land is the most valuable asset for the majority of people" (Sik, 2000, p.X). In terms of research design this project aims to be both "credible (capable of providing convincing conclusions)" and "directed (targeted at the question at hand)" (Hoggart *et al.*, 2002, p.50). The research design is also directly (and undoubtedly indirectly) influenced by the methodological, theoretical and philosophical position that motivates the research questions.

The research was also designed to minimise the effect of time and resource restraints (to ensure it is 'feasible', Hoggart *et al.*, 2002). Thus, in the process of designing the fieldwork component of this research there was an a priori recognition of these limitations. In order to attempt to minimise the impact of these limitations the design was formulated after consulting with a number of researchers and professionals familiar with conducting fieldwork at Angkor and who have worked throughout Cambodia (following Hoggart *et al.*, 2002, p.49). Importantly, one of the first priorities in this research design was to undertake reconnaissance at the World Heritage site. The key objectives of this first work were to identify key stakeholders; appropriate case studies locations; the availability and efficacy of translators; the availability of accommodation and to test the relevance (to the local communities) of the research questions. These preliminary steps provided a wealth of information on issues associated with land use and conflict within the Park. On the basis of these preliminary steps the research design and subsequent fieldwork methods was formulated.

For the purposes of this research, a number of opinions on the effect of the regulatory regime on the local residents within the Park were sought, in order to articulate the impact of the World Heritage listing on use of, and access to, land. The data collection techniques adopted in this study are comprised of in-depth semi-structured interviews of residents, land owners and

managers, in addition to questionnaires conducted in two selected villages within the highly protected Zone 1 of the Archaeological Park. Again, the rationale for this approach was to gain insights into perspectives, opinions, beliefs and attitudes towards the effect of the World Heritage classification on land ownership and land use. Other perspectives were also sought, and of particular interest are the views of World Heritage managers working at the 'international' level, in particular those associated with UNESCO's World Heritage Centre, Paris. Formal interviews were conducted with World Heritage Centre managers while observations were made of those involved in the International Coordinating Committee (ICC) bi-annual meetings on the safeguarding of the site at Angkor. Additionally, the documents generated by the ICC were also scrutinised. Throughout the course of the research, a number of informal interviews also took place with Cambodians and members of the Cambodia expatriate community who were not directly involved with the management of Angkor but who were able to comment on administrative arrangements within the country at large. Chapter Five provides a thorough account of the methods and methodology adopted in this thesis.

1.4 THESIS STRUCTURE

This thesis is divided into seven chapters. The chapters are structured to flow from academic context (legal geography) through scaled concerns of the international arena (World Heritage) to national issues (landscape regulation) and, ultimately, to local concerns (local perspectives). There are clear interconnections between legal/jurisdictional scales and geographical scales. Figure 1.4 provides a schematic overview of these connections.

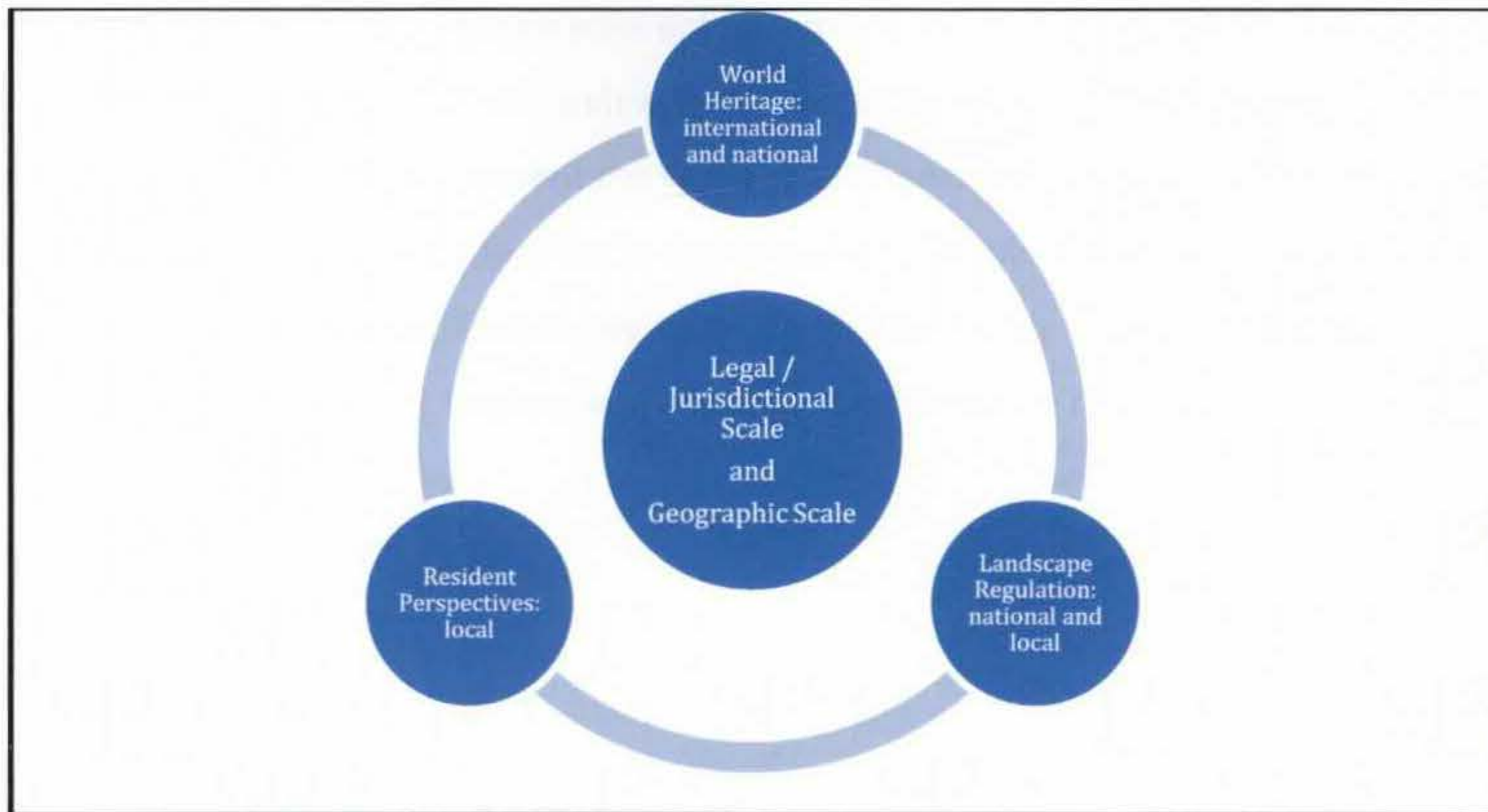


Figure 1.4: Interconnection between Legal/Jurisdiction and Geographical Scales

The structure is designed to provide a clear understanding of the two major background issues; (1) the World Heritage designation and (2) local land use regulations for Angkor. The current chapter (One) provides the introductory context, outlines the scope of the study and reflects on the research design. Chapters Two, Three and Four provide both the background and a substantial analysis of the laws/regulations and, accordingly, these chapters provide a necessary analytical component of the thesis. Chapter Two presents the intellectual setting for the research by exploring the sub-disciplinary field of “legal geography”. Angkor’s heritage overlay, framed both legally and spatially, over a complicated pre-existing tenure regime provides the backdrop for this discussion. Chapter Three considers the World Heritage process in detail by providing an explanation of the World Heritage nomination and inscription process. The obligations of listing are explored while the World Heritage listing of Angkor is explained. Chapter Four contemplates how World Heritage obligations to protect the landscape have been dealt with in regulations promulgated at the national and local levels regarding land use activities. Without an explanation of the historical and spatial setting of local land use rules we may fail to appreciate the significant impact of the World Heritage listing on residents within the Park. Chapter Five is dedicated to a consideration of the methodological underpinnings of this research and explains the methods adopted. A thorough consideration of the applications of these methods and their shortcomings is considered in this chapter. The methods and methodology chapter is placed within this thesis as Chapter Five for the content relates to fieldwork data presented in Chapter Six. Chapter Six communicates the results of the qualitative

fieldwork undertaken in two villages adjacent to some of the main monuments of Angkor. Due to the qualitative aspect of this research with its inherently reflective and reflexive dimensions no attempt has been made to present the views of local perspectives in a strict “results and discussion” format that may be familiar to some readers. Rather, the nature of the data lends itself to findings and their implications being intermingled. Finally Chapter Seven draws conclusions and presents key findings and opportunities for future research.

Chapter Two

LEGAL GEOGRAPHY

2.1 INTRODUCTION

This research is concerned with the regulatory and spatial implications associated with the imposition of a World Heritage designation upon a landscape. It is set in a human geography context and draws also upon the discipline of law. Specifically, it is part of, and contributes to, a burgeoning literature within the geographical sub-discipline of "Legal Geography". Legal geography is a generic term (Blomley, 2005b) used to describe a range of research activities across a number of disciplines. In essence it is concerned with the interactions and relationships between the academic disciplines of geography and law. The topics and themes of work described as legal geography vary significantly, though all remain concerned with the relationships between law, space and society. Legal geography is also variously labelled – "law in geography"; "legal geographies"; "the geography of law" (Jones, 2006, p.4). Each has its own nuanced meaning and some consideration is given herein to the various connotations associated with these labels. Simply, legal geography explores the way in which legal meaning is given to place and how place influences legal frameworks. Law has many guises: informal; formal; customary or normative; civil or common. Regardless of the form of law, it acts to classify, sort, describe and prescribe and, ultimately, it penalises human behaviour. Law also asserts (and limits) its jurisdiction spatially. This thesis is concerned with the practicalities of the law/landscape interaction and these concerns are reflected in the writings of legal geographers. There is a compelling need to explore the interconnections between law and geography because, as Greenberg points out, "(g)eography is about place, territory, land; law is about governance, regulation, and who is going to control this land" (2007, p.515) It is in an analysis of the way in which both disciplines interact that useful insights can be gleaned which better inform both academic and policy debates. Thus, legal geography has a unique ability to offer new insights into the particular issues explored in this thesis.

Although considered highly theorised (Forman, 2006) there is no coherent theoretical framework for scholars working within legal geography, and writers reflect a variety of

philosophical positions. Thus the epistemological and ontological position of this research is not prescribed a priori by the discipline. Legal geographers draw on a variety of philosophical traditions to inform their work (Holder and Harrison, 2003), as is the case within many of the sub-fields of human geography. Many works tend toward an exploration of spatial inequality. Such approaches reflect an 'equity, fairness and justice' approach (Hay, 1995) and these are key themes in this thesis. Location affects rights and duties (Jackson and Wightman, 2003; Blomley and Pratt, 2001) and policy rhetoric in heritage conservation embrace terms like intergenerational equity and sustainability and reinforce the promotion of locally-based values (UNESCO, 2003). The geographical expression of rights in a World Heritage setting is underexplored both in academia and the wider heritage community. Yet, rights have distinctly geographical components, particularly access rights to property (Blomley and Pratt, 2001). Thinking geographically about rights can provide new ways of exploring human rights concepts. Spatial policies and strategies are influenced by, and in turn influence, the way in which law becomes practiced and this symbiotic relationship shapes the world (Delaney, 2003). One purpose of this research is to consider the nexus between spatial/legal and human dimensions of a World Heritage listing using Angkor as the case study.

Accordingly, this research adopts a legal geographical perspective as it traces the (legal) obligations of cultural heritage protection governing World Heritage site management. Like other works in the genre it investigates specific laws and their impacts on space (Mitchell, 1997; Braverman, 2009) and forms part of a general corpus of work which explores the ways that regulatory frameworks shape and form the landscape by restricting and manipulating how people interact in their lived environs (Blomley, 1994).

This chapter is divided into four sections. The first defines the concept of legal geography and takes the discipline beyond an assertion of identity to a critical legal geography. The next section deals with concerns that are central to the practice of legal geography; issues of property and tenure. In this part issues surrounding security of tenure and private property, *inter alia*, are explored. Moving on from this exploration of the notion of property the concept of a legally plural landscape is discussed and notions of scale are reviewed. Finally, the processes of territorialisation and mapping are examined.

2.2 DEFINING LEGAL GEOGRAPHY

2.2.1 The Emergence of the sub-discipline

Although it is possible to trace a concern with “law” in geography to early twentieth century writings (such as John Wigmore’s *A Map of the World’s Law* (1929) cited in Economides *et al.*, 1986, p.64; Bakan and Blomley, 1992, p.664; Kedar, 2003, p.405), scholarly work in this field clearly emerges clearly in the 1980s (Forman, 2006). Amongst the earliest works of this period are those of Clark (1989), Blomley (1989, 1992, 1994), Economides *et al.* (1986) or Platt (1991; updated 2004). Since this time, a number of other scholars have emerged under the genre, with a number of influential works having been published since the turn of the century.

Economides *et al.* (1986) trace the emergence of legal geography to the work of John Wigmore (1929) and the post-War work of French sociologists in law. Economides *et al.* (1986) make a pertinent observation when they suggest that law and geography have interacted much in practice but little in theory. Their plea that “we must begin to understand how and in what ways our legal culture is influenced by the environment, both natural and social”, (p.167) stands at the heart of this thesis. Moreover, Economides *et al.* (1986) argued that human geography contributes to law by mapping institutional and normative systems of law in order to find ‘gaps’ in coverage, by turning attention to “underlying processes” which constitute the mapped legal landscape, and by informing policy-makers in planning for legal services. They point out that there is a potential problem with simple empirical analysis based on mapping, in that the process may fail to capture the intricacies of social relations, and this remains a valid criticism explored in the participatory GIS literature (Pickles, 1995). From many writings in legal geography, as illustrated by Economides *et al.* (1986), the need to adopt a spatial perspective is posited. This reflects much of the burgeoning literature in other disciplines, and has clear Foucauldian (Foucault, 1980) and Lefebvrian (Lefebvre, 1991) tendencies. Such inclinations have also come to the fore in the writings of Soja (1989) which are discussed later in this part.

The reassertion of the importance of space in socio-legal analysis is described well by Butler (2004, 2009). Butler’s works give a good account of the way in which the intellectual concern with space (*vis-à-vis* history) emerges. He notes the influence of French philosophers (in

particular Foucault and Lefebvre) and grapples with the movement in intellectual curiosity from an emphasis on historical concerns to the spatial, "(m)uch of the social theory that has been written in this vein deliberately uses spatial, rather than temporal metaphors, in an attempt to evade the triumphal utopianism and linear progressivist tendencies of post-enlightenment thought." (2004, p.24) Butler, like others, including Soja (1989) cites Berger's famous phrase:

"(p)rophesy now involves a geographical rather than historical projection; it is space not time that hides consequences from us." (Berger, 1972, p.40)

Clearly, some of the work of those writing under the broad rubric of legal geography is influenced by this – in his and other's call for geography, a distinctly spatial discipline, to interact and better inform law (which has a decidedly social dimension). Valuably, he writes of the importance of not distorting lived experiences vis-à-vis concepts, that is, it is important or essential not to divorce one from the other. Although Butler (2007) is writing about philosophy and is generally seen to be espousing a neo-Marxist position, this work has been, and remains, hugely influential in human geography. Notably, Soja's work is derivative, especially his work updating Lefebvre's position with spaces as both "real" and "imagined" (Soja, 1989). The influence of Soja (1989) is further explored later in this chapter in the context of territorialisation and mapping.

In 1994 Blomley published a landmark book for the sub-discipline and he begins with these quotes; "(l)aw... is too important to be left to the lawyers." (Friedman, 1986) and "(g)eography is too important to be left to geographers." (Harvey, 1984)". Blomley argues that legal geographies bear directly and powerfully upon social and political life yet have apparently little in common and lack a shared vocabulary, and calls for the emergence of a strong sub-discipline in the field of legal geography (see, for example, pp. vii, 4, 27 and 28). For many writing after this publication the justifications and reasoning for a new sub-discipline within human geography dedicated to the influence of law resonate most strongly. Nicholas Blomley remains one of the most influential and oft-quoted scholars within legal geography.

By the early 2000s three branches of the field had emerged. The first was described variously as "spatializing law"; "space in law" (Delaney, 2003, p.69) or "geography in law" (Kedar, 2003, p.406) and focussed upon how geography and social spaces impact on law. The second was

described as “legalizing space”; “law in space” (Delaney, 2003, p.68) and “law in geography” and was concerned with the role that law/regulation (in practice and theory) has on the production and creation of spaces. A third descriptor of the nexus emerged which blended the notions of space and law. This has been awkwardly referred to as “splicing” (Blomley, 2003, p.29) or “jurispacedence” (Kedar, 2003, p.407). Although these labels may be useful for specific research contexts, the implied polarity is artificial (Holder and Harrison, 2003). This research is part of the emergent trend towards acknowledging the complexity of the connection between geography and law for it is simultaneously concerned with the effects of transplanting a legal regime onto a pre-existing landscape (giving rise to concerns of “legal localization”, Holder and Harrison, 2003, p.4; Blomley, pers. comm.) and with the effect of legal rules on the creation of the very same landscape. There is a mutual dependency in the relationship between law and geography – each influences the other (Blomley, 2003, p.29). Arguably, the legal dimensions of geographical problems have been largely overlooked. The role of law, and in the case of this research, of international legal regimes and the domestic and local manifestations arising from these international obligations, has not been given due attention in geographical studies (unlike, for example, research on economic or political geographies). Law is an aspect of social life with real and significant spatial implications. It is contended that this way of examining how the world works is critical because the richness of spatial and social life cannot be captured through legal analysis alone. Geography is an excellent accompaniment. The value of this sub-disciplinary approach is that it provides a lens through which to explore the spatial implications of a regulatory framework.

Forest (2000) provides a detailed account of the evolution of legal geography. He argues, citing Platt (1991), that the writings in legal geography over the past 30 years have focussed on the legal regulation of environmental hazards, in particular the importance of land-use and zoning in this process. It is true that the importance of environmental regulation lies at the heart of concerns within geography, yet as Forest (2000) also points out, this is often done as a means to an end rather than as a distinct and separate subject. In its own right, therefore, legal geography has struggled to form a strong identity. Nevertheless, a discrete ‘legal geography’ has emerged alongside a growing perception and concern that the institution of law – the legal system itself – has been consistently undervalued in the way we account for a geographically based analysis of social and spatial change.

2.2.2 Critical Legal Geography

From the initial writings in this genre the sub-discipline has gradually moved beyond simply asserting an identity and more recent literature has developed a critical dimension. Critical legal geography is concerned with the role of the legal system in “ordering and legitimizing spatial hierarchies.” That is not to say that earlier works were devoid of a critical dimension (for example, Blomley and Clark, 1990; Bakan and Blomley, 1992). In their 1992 work Blomley and Bakan introduce the concept of critical legal geography (at p.661) and suggest that legal scholarship is informed through an historical perspective – without adequate reference to the spatial. Indeed, the temporal/spatial contest and the apparent favouring of the temporal is highlighted in the work of Soja (1989). The trend in legal geography literature shows an attempt to place the law/geography dialogue centre stage through an acknowledgement that the power-play between our physical environment and the rules which govern us deserve critical academic consideration (Blomley, 2003).

Delaney (2001) called for critical legal geography to be extended into new domains. Noting the interpretative focus of scholarship in the area he also sought greater theoretical sophistication in the field (Delaney, 2003). Delaney’s (2001) work is concerned with the relationship between humans, nature and the environment, and the limits placed upon these interactions through regulatory regimes. Though he does not seek to privilege law he maintains it is a good lens through which to view aspects of human/nature relations (and he makes use of case law to this end in his own works). In his call for the discipline to tackle the theoretical dimensions of the law/geography nexus (Delaney, 2003) he proposes a new concept that he labels the “nomosphere” as a way to examine the way in which social processes circulate legal meaning in spatial forms. This is an attempt to “provide a vocabulary with which the legal and the spatial are grasped...” (Delaney, 2004, p.851). In a forthcoming publication Delaney (2010) takes this idea further and he re-introduces the concept of the “nomosphere” as a framework for remedying a perceived inadequacy in the legal geography literature. Similarly, Blomley (2003) continues to call for theoretical sophistication to promote and entrench the sub-discipline and his own work reflects the power relationships that lie behind legally created spaces. Themes of oppression, resistance and alternatives permeate writing in legal geography. Indeed, much socio-legal scholarship (particularly in legal anthropology), has long been concerned with the

political aspects of the regulatory system (see, for example, essays in the volume edited by Darian-Smith, 2007).

Complementary to the political and social dynamics at work in legal geography scholarship is an inherent assumption that permeates this thesis; that everyone is entitled to have their “rights” (however defined), recognised and upheld. Oh (2007) points out that identifying rights by virtue of their spatial distribution ensures that “we come to better understand how issues of location and placement affect the meaningfulness of the right to certain classes of people” (2007, p.511). Moreover, the enforcement of rights is made more effective through geographical analysis. In other words, geography can complement substantive human rights claims (*ibid*). In this research those rights relate specifically to land – residential, commercial or agricultural – all in the context of landscapes, including World Heritage sites, being socially constructed places. This thesis argues that the social construction of place is built on social processes together with the regulations that govern the landscape, rather than in isolation. Thus the resultant landscape can be seen as a site of contest between competing forces, with regulations and social norms often pitted against but ultimately reflecting or amounting to the landscapes in which we all live.

There is a clearly an emerging critical legal geography literature which is specifically concerned with international law and geography (see, for example, Osofsky, 2007; Ford, 1999; Mahmud, 2007). In 2007 Osofsky moderated a roundtable on “law, society and geography” and observed that, despite the important role of geography in the analysis of international law, connections between law and geography have been neglected in academic circles, particularly in the United States where, by the turn of the last century, all but one of the Ivy League schools had purged themselves of geography departments. Yet, for international lawyers, the innate value of a geography-and-law approach lies in its capacity to assess social and legal issues in unexplored ways (Oh, 2007). Moreover, it is in the emerging area of international human rights law that the dynamics between space and law are highlighted. For example Collis (2009) provides an account of the emerging geo-political landscape of Antarctica, reasserting the importance of the spatial dimension. Collis (*ibid*) points out that it is in the emerging field of legal geography that we witness how laws create and shape landscapes and do not simply govern them. This theme is further explored in a following section on mapping and territorialisation.

2.2.3 Summary

Legal geography has emerged from geographical literature of the early 20th century and has matured rapidly over the past 30 years, with a call for greater theoretical depth and the emergence of a critical dimension. Literature in the legal geography genre highlights the importance of the spatial lens through which to assess the legal dimensions of life. Seen in this way, law and space, rather than existing passively or even parsimoniously alongside one another, are shown to be deeply intertwined in a dynamic and mutually dependent relationship. This dynamic relationship becomes more crucial and complex under legally plural conditions (Griffiths *et al.*, 2009) where spaces are inherently subject to a variety of regulatory regimes.

2.3 CORE CONCERNS: Concepts of Property & Property Rights

2.3.1 Introduction

Property and tenure have been, and continue to be, of particular interest to legal geographers (see, for example, Holder and Harrison, 2003; Blomley, 2004) as it is one of the most dramatic intersections between law and space. Property may have many meanings, but in this context “property” relates specifically to land – the physical places and landscapes we occupy. The connections people have with land vary according to an array of proprietary arrangements – in this research these are collectively referred to as tenure.¹²

Through land and property laws, cadastre processes, defining tenure and even in registering alienable interests we give meaning to, define, or bound physical spaces. Thus, legal regulation creates and perpetuates the lived landscape. Connections to land are profound in many cultures – Poindexter’s (2003) “idolatry of land” – that have relevance to both theory and praxis. Indeed, pragmatic, policy-oriented work in this field is of particular and immediate value. In work conducted jointly by Cambodian and French nationals on land transactions in rural Cambodia (Sokha *et al.*, 2008) it is observed that:

¹² Tenure is used in an overarching sense to include all sorts of property relationships. Tenure is used unless the literature refers to the relationship another way – in which case the author’s term is used.

“... when speaking of the ethnography of land rights, we stress the empirical orientation underlying our approach of land tenure. It is about contextualising data about land rights, how rights are defined, enacted, contested, negotiated, transformed.

Furthermore, we use the (old, tracing back to Maine’s Ancient Society, 1861) notion of ‘bundle of rights’ to take account of, and describe the plurality of rights and right-holders involved in the appropriation and use of an area or a plot of land. Understanding how the bundle of rights over a plot or the bundle of rights held by an individual or group is put into practice requires analysing the norms and principles backing the rights.” (*ibid*, p.23)

Arguably these norms and principles reflect both the formal and informal legal systems that govern at any particular point in time. Sokha *et al.* (2008) write that it is possible to gain an understanding of how rights become legitimised through socio-legal-political practices and they contextualise their empirical work in an ethnography of land rights approach. This thesis is part of a growing literature dedicated to providing empirical evidence to support the development of public policy. In a country such as Cambodia, which is constantly formulating new land and property laws and policies in an effort to rebuild after enormous civil conflict, these policy-oriented studies are an invaluable source of information.

The following section is divided into discussion on the concepts of property wherein subjects (encompassing the “norms and principles” referred to above) such as title, exclusion, and private/public property are considered. The final part of this section reflects on property rights as part of a broader human rights dialogue.

2.3.2 Exploring Concepts of Property

Legal geographers such as Blomley (2005; 2005b) have pondered the demise of scholarly interest in property, suggesting that it “reflects... the dominance within liberal societies of a particularly restricted model of property.” This model of property is given different labels (for example, “Blackstonian”, “classical”, “ownership”), and it clearly permeates the way many Western scholars think about the way humans relate to the land they occupy (Blomley, 2005; Blomley, 2005b). Blomley summarises the model in five points:

- It assumes a single owner identifiable by formal title rather than informal or moral claims.
- This owner enjoys all the rights associated with ownership – including the right to exclude others, to transfer or sell the property, and to use the property as he or she sees fits.
- The owner is metaphorically set against other interests, notably the state. While state intervention can occur, this is always presumptively suspect and must be justified in relation to the prior and superior rights of the owner.
- The owner is motivated by self-interested and self-regarding behaviour.
- Property is regarded as essentially private property. The two become synonymous, so to talk of property is to talk of private property” (2005, p.126).

The analysis which follows in this section, while it does not slavishly follow Blomley’s classification, adapts his ownership model¹³ as an organising principle because it continues to dominate human/land interactions even when it is not rooted in cultural traditions. Blomley (2005, p.127) argues that: “it is imperative that geographers take property seriously, exploring the effects of the dominant model within the world, as well as uncovering the much more interesting and complicated realities of property”.

2.3.2.1 Security of Tenure: “Title”

Blomley’s ownership model emphasises security of tenure through the acquisition of formal land ‘titles’. A connection to the land is formalised through registration which guarantees the holder particular privileges above non-owners. Advocates insist that security of tenure is best achieved through a formal title because it provides the holder with an alienable right to land which provides certainty and can be used to their advantage for a variety of purposes – including raising credit; facilitating land sales/purchases; increasing the revenue base (through land taxes) and so on. These perspectives are often associated with the Western, liberal legal framework that facilitate titling programmes, rooted in the writings of Locke, Bentham, Kant, Hegel and Posner (Neave, *et al.*, 1994). Following the Evolutionary Theory of Land Rights model (see Platteau, 1996), economic development and growth rely on the stability such a system guarantees. The work of de Soto (2000) is oft cited in this context, and this particular way of

¹³ Blomley’s model itself is derivative of Singer, J., (2000), as he acknowledges, see for example, Blomley, N., 2002, “Mud for the land” at p.558; Blomley, N., (2005), Remember property? at p.125.

thinking has been, and arguably continues to be, highly influential (Stephens, 2008). Yet, this appealingly simple framework for land management practice can be fraught with difficulty.

The promotion of tenure as a means to alleviate poverty permeates development literature (Deininger, 2003; de Soto, 2000) and dominates ways of approaching poverty problems in many South-east Asian nations.¹⁴ Yet, as Blomley (2004) points out, a very real consequence of the perpetuation of the 'ownership model' is that "it determines which property relations are assigned a value as rights." This attitude prevails, with very little restraint, within World Heritage management circles at Angkor (Chapter 6). This is an increasingly problematic situation in a non-Western context – the intangible value associated with cultural norms tends to be underestimated (Gibson-Graham, 2004). In recent scholarship the formalization of tenure argument tends to be associated with Hernando de Soto (2000). In essence, de Soto argues that the creation of formal property entitlements is conducive to economic growth, and if extended to a developing country situation land titling will help to combat the persistent problem of widespread poverty. Although de Soto (*op cit*) writes with the credibility of one situated in a developing country, his views may not take adequate account of cultural differences, and underplay the value of adopting/adapting customary norms in dealing with land allocation and resource management. Stephens (2008) argues that neither formal nor informal systems of land management offer a panacea to meet the needs of communities in Papua New Guinea and, accordingly, he calls for a hybrid system. Scholars such as Varley (2002) write that her assumptions about the (positive) consequences of formalising property entitlements were tested during fieldwork when respondents showed no signs of wanting to move – they had little interest in taking advantage of a new-found freedom "to realize the financial value of their property" (*ibid*, p.456). In her Mexican-based study respondents preferred to remain in their newly legalized homes for a variety of reasons – one of which was a pride in the sacrifices they had made to achieve legitimate home ownership. The shortcomings of transiting from customary land regulatory systems to formal titles have proven to be particularly vexing in some developing country landscapes (Unruh, 2006). Rose (1985) also calls into question whether the desire to manage land through financial transactions - trade, in other words - lies at the heart of the way in which everyone interacts with the land they occupy. Speaking of North American indigenous communities she writes that the concept of owning land was alien to some indigenous communities, many of whom are proud to leave little or no traces on the land.

¹⁴ Again, for example, see the World Bank position articulated by Deininger, 2003.

Mercantile predispositions are essential for private property relations to succeed. Dalrymple *et al.*, (2004) make this point. They suggest that significant incongruities exist between the way formal land administration systems are developed and work in developed countries and the way they are exported to social-practice based land administration structures, particularly in Southeast Asia. Moreover, their analysis illustrates that, although there have been creeping policy changes in land management practice in the past 20 to 30 years which are more sensitive to existing land management practices (see also Williamson, 2002; UN-FIG, 1999), “few solutions have materialised that can be adapted for the poor in informal rural Southeast Asian areas.” (Dalrymple *et al.*, 2004, p.2). Of the Cambodian experience they observe that community titles and indigenous land claims are particularly challenging (*ibid*, pp.6 – 7; see also Van Acker, 1999).

Returning to the economic imperative driving the privatisation of property rights, Platteau’s (1996) work evaluating the evolutionary theory of land rights¹⁵ in Sub-Saharan Africa is illuminating. Effectively, the system can backfire and lead to greater insecurity of tenure, for the transition phase creates greater uncertainty (for example, through an inadequate administrative system, or through advantage/disadvantage brought about by differing levels of education). In another way, Sjaastad and Blomley’s (1997) work on the value of indigenous land rights vis-à-vis other forms of tenure for investment highlights other shortcomings in this dominant model. Their work suggests that there is an inadequate link between security of tenure and the prevailing demand for titled, freehold lands (in a sub-Saharan African context). Studies such as these make us question the value of pursuing a land management agenda fixed exclusively on private, titled land rights. There are many other examples that call this into question, but, as Stephens (2008) warns, it is equally important not to “romanticise” informal land rights. Rather, he suggests that neither the neo-liberal push for formalisation of proprietary rights nor the pre-existing customary tenure arrangements are enough, on their own, to effect change in transitional societies.

As suggested above, the security associated with formalised tenure arrangements is supposed to be one of its benefits (for examples, see also the work of Davies- Rodriguez, 2003, relating

¹⁵ Platteau succinctly describes ETLR as as “...under the joint impact of increasing population pressure and market integration, land rights spontaneously evolve towards rising individualization and that this evolution eventually leads rightsholders to press for the creation of duly formalized private property rights.” (1996, p.29, and further pp.31 - 38).

to illegal settlements in the favelas of Rio de Janeiro).¹⁶ But what if the system has been, or becomes “muddied” (Rose, 1998)? Rose (1998) writes:

“In establishing recording systems, legislatures have lent support to private parties’ efforts to sharpen the definition of their entitlements. The *raison d’être* of such systems is to clarify and perfectly specify landed property rights for the sake of easy and smooth transfers of land. But the Anglo-American recording system in fact has been a saga of frustrated efforts to make clear who has what in land transfers...” (*ibid*, pp.585 – 586).

Others record similar findings (see Platteau, 1996). In a Southeast Asian context, Vandergeest and Peluso (1995) write about how territorial models have failed in Thailand. They write about a contested landscape where the state fails to fully recognise the complexities of local property entitlements (comprised of “bundles of overlapping, hierarchical rights”). Thus, the incongruities that have resisted reconciliation in land management practice come about because of a failure to sufficiently account for local conditions. Blacksell’s (2003) observations about the pivotal role of the State in re-establishing private property rights are worth considering in this context. He claims that: “to deliver on the promise of protecting and reinstating private property rights has become a crucial test of its general legitimacy and credibility” (*ibid*, p.234). Although he writes of restitution in post-communist Germany the observations remain relevant to Cambodia’s post-communist phase. As is explained and discussed in later chapters, the current Cambodian constitution provides for compensation for loss of land to be fair and just,¹⁷ although claims for actual restitution are not addressed in a Cambodian context. Nonetheless, Cambodia remains, despite the end of a devastating civil war almost 30 years ago, a nation beset by land management turmoil. Under the Khmer Rouge regime thousands were displaced and entire urban populations were evacuated to rural areas in concert with the complete collectivisation of land. All records of land ownership were destroyed. The adverse effects of this legacy continue to this day and many Cambodians do not have officially sanctioned land titles. Indeed, attempts to cadastre land parcels are yet to be completed and are unlikely to be complete for another decade.¹⁸ This leaves a complicated land management system in which some pre-existing tenure arrangements are recognised

¹⁶ Or also the work of Glenn and Belanger, (2003), pp. 281 – 304, which provides similar insights, see especially p.303.

¹⁷ Article 44 provides for an entitlement or right to own land, while dispossession is subject to fair and just compensation in advance, see Jennar, 1995, p.15.

¹⁸ See Royal Government of Cambodia, Ministry of Land Management, Urban Planning and Construction, <http://www.mlmupc.gov.kh>, accessed 4 January 2009.

whilst others are not. Moreover, the phenomenon of land speculation, land grabbing and foreign buy-ups continue to plague a nation that is still considered to be a post-conflict society characterised by poor governance and donor-dependency. In some quarters, the Cambodian government's ability to transition into formal land titling is considered a measure of its success (World Bank, 2009).¹⁹ Clearly, the role of the State and the Southeast Asian context of land titling through a formal cadastre process is complicated. Many of these issues are discussed further in Chapter 4, which deals with landscape regulation in Cambodia and at Angkor specifically.

2.3.2.2 Right to Exclude

The "right to exclude" forms part of the bundle of rights attaching to property interests (Singer, 2000 and Blomley, 2004; 2002; 2005). This exclusion is fundamental and not always, despite the usual connotations, negative (Hall, *et al.*, 2010). Again, exclusion can be linked back to Blomley's ownership model (above) and remains a core concern of legal geographers. Hall (*op cit*, pp.1 – 2) suggests that exclusion takes four forms – "regulation", "force", "market" and "legitimation" - each related to power structures within societies. In a study such as this, which emphasises the importance of the regulatory framework in the way spaces take shape, the significance of the regulatory power of exclusion is fundamental for, as Hall *et al.* (2010) point out, it is regulation which most often determines access to and use of land. Where do we derive this right to exclude and how do we learn to comply with it? For a Western perspective, Blomley (2004) invites us to consider the Beatrix Potter children's story about Peter Rabbit as an illustration of the very effective way in which private property and boundaries are supposed to work. Drawing on the analogy of Peter Rabbit's adventures in Mr Macgregor's vegetable patch Blomley outlines how the traditional notions of property are passed on from generation to generation. Blomley (2004) makes the point that the notion of boundaries becomes entrenched through this story and he identifies four ways in which boundaries act to exclude. The first is the setting of physical markers that give the exact location of the boundary. This physicality also implies a meaning of exclusion. The second is classified as "(s)patially defined rights". The boundary carries with it the exclusive right to use. Blomley links this with concepts such as state

¹⁹ In September 2009 the Cambodian Government discontinued the donor-funded Land Management and Administration Project (LMAP). The decision was marked by controversy in Cambodia with media reports suggesting that the World Bank's social and environmental safeguards within the project were consistently unmet, see <http://www.tv9.com.kh>, accessed 15 September 2009.

sovereignty. The related concept of territorialisation, discussed later in this chapter, arises in this context. The third way Blomley suggests that boundaries exclude is through the “boundary as separator”. In a similar vein to the second characteristic, this notion has links to exclusion; an owner is entitled to protect his or her property. Conversely, this also requires an owner to “look after” his or her property. As Blomley notes, this links into the Anglo legal concept of adverse possession extremely well. Very simply, if one does not take care of one’s property – leaves it to fall into neglect and another uses the land – then after a certain time that same land may fall into the hands of the person who has bettered the property by virtue of the application of adverse possession. Although this concept is well-settled in Western common law, the idea of abandoned property becoming the property of a person in possession is incredibly complicated in a country such as Cambodia – where all land titles were destroyed and post-conflict resettlement creates a fragmented, complicated occupation. The resulting assumption that all possession is therefore adverse is untrue – for it remains the case that some Cambodians remained on their own plots throughout the Khmer Rouge period and during the subsequent Vietnamese regime. The final element is called “separative self”, which is described as celebrating the primacy of the entitlements of ownership. Blomley (2004, p.94) observes that “(l)aw... offers us a powerful and pervasive boundary model” but he concludes that these categories do not always reflect the real-world, lived experiences of most people. Property relationships are not clear-cut.

The importance of social context is reiterated by Widgren (2006) who suggests that, “(a)ccess to land can... be regulated by abstract rules, which may or may not be associated with marked boundaries...” (p.60). Boundaries as a means of exclusion must be read within the particular social context in which they are placed. The concept of exclusion is also related to territorialisation (see below) because “(t)erritorialization is about excluding or including people within particular geographic boundaries, and about controlling what people do and their access to natural resources within those boundaries” (Vandergeest and Peluso, 1995, p.388). The differences between Western and non-Western perspective and social context vis-à-vis boundaries cannot be underestimated. This can be highlighted with problems experienced by indigenous communities when attempting to legitimise their claims to land. Mawani (2003) provides an example when she describes a Canadian Supreme Court ruling in which indigenous families were required to show connections with property through Western yardsticks, recalling

“fences and gardens that illustrated Euro-centric and individualist notions of private property” (*ibid*, p.118).

Alternatives to the dominant “liberal ownership” model, defined as the absolute right to exclude others, are considered by Jackson and Wightman (2003). They suggest that “(t)his model facilitates the transferability (and hence commodification) of rights: it allows for rights to be formulated with clarity, for the process of transfer to be simple and secure, and for object of property to be acquired unencumbered by adverse claims” (*ibid*, p.54). They argue that it is the very nature of land – its “stuckness” (that is, spatially fixed) - that poses problems for this liberal ownership model of land. They suggest that regulations adjust to the concept of “stuckness” (using the example of allowing incursions into airspace, but another example could be a heritage overlay in a planning scheme).²⁰ That is to say that we accommodate contesting property rights through legal regulation. This, they argue, is a contextual model, an alternative way of looking at land/society connections. Moreover, they say this viewpoint is not merely practical but it has distinct normative content. This point of view might be useful in non-Western contexts for it relies on the validity of the exclusion concept, but modifies it. Thus, while the right to exclude is of central importance to the practice of legal geography, it is heavily contextual and problematic outside of the Western socio-legal milieu from which it arises.

2.3.2.3 Private Property

The ownership model relies on the assumption of private property entitlements. Exclusionary land management systems cannot work without this assumption – and the supremacy of individual, private interests permeates this literature. It is argued that private entitlements in property are meaningful by virtue of their privileged position over public spaces. If establishing private rights in the form of titles are the key to poverty alleviation (through access to land using alienability and ownership/control, as discussed above), is this undermined by all the various ways in which private law/space is not unfettered? There is no doubt that private spaces are tempered by other legal obligations (following Rodgers, 2003). Indeed, at the heart of this thesis is this question - to what extent do, and should, legal obligations to protect heritage

²⁰ Similar issues arise in marine waters, for instance in Samoa villagers ‘hold tenure’ over coastal lands and waters (lagoons etc.), see Kay, R. and Alder, J., (1999), Cornforth, R., (1992), Crocome, R., (ed), (1995).

impinge on private property? Where do we draw the line in what we will accept in terms of curtailing or infringing private rights?

Private property implies that the terms and conditions of use are set by owners – they regulate their space – and not the public (or State) sector. In a World Heritage setting, which by definition attempts to protect heritage for all of humanity, are we breaking down the public / private divide? There appear to be inherent tensions between public and private interests in the context of heritage conservation; if the State regulates a site or landscape for conservation it must simultaneously restrict in some way the uses of property within the World Heritage setting. This creates a curious problem in a Cambodian context, for while the process of privatisation is often described as central to poverty alleviation, one is prompted to ask: to what extent are people willing to have their newly created or recognised private property rights curtailed by the heavy public obligations of heritage protection? This problematic issue is raised in Chapter 6 in the context of villagers' tenure with their land within Angkor Park.

There is often a clear conflict between protected area management and private property interests, especially in a Southeast Asian context. Vandergeest (1996) notes that in Thailand laws for protected areas have been predicated on the fundamental incompatibility of human and natural uses, and human use has been restricted to buffer zones located adjacent to the protected area. Vandergeest has been criticised (for example, Dearden *et al.*, 1998) for his argument that land be taken out of protected areas for rural households. In the protected area literature more generally Locke and Dearden (2005) debate the value of categories V (protected landscape/seascape) and VI (managed resource protected area) of the IUCN Protected Area scheme. In their opinion the value of these categories is questionable and they suggest such areas should be subject to a complimentary management approach (outside the official Protected Area categories). Nonetheless these categories remain in place today following extensive work and consultation carried out through the World Commission on Protected Areas (see Dudley, 2008). Regardless of the precise characterisation of a site, the claim that, in order to promote the aims of conservation, land management must deal effectively with local claims to property is a fundamental one.

Both individual property entitlements and conservation claims are increasingly set in the rhetoric and dialogue of a human rights agenda. For example, it is possible to simultaneously

claim that conservation may act as a catalyst for substantive human rights (such as rights to culture, health and food) yet threatens those same rights (and others) through physical displacement of local communities (Campese *et al.*, 2009). Similarly, private property entitlements that encourage notions of stewardship may be seen as a vehicle for effective conservation policy (Rodgers, 2003), recognising that “the discourse of property rights in English law is focused on rights, not responsibilities and obligations” (Rodgers, 2003, p.250). However, the ‘efficiency in the allocation of resources’ argument prioritises private rights as a mean by which property is valued, and gains value. From this perspective private property (read “enterprise”) may be unduly burdened by public obligations (such as the protection of heritage). Perspective is critical. This is confirmed and given added meaning by Johns (2005) in her work examining perspective in private/public law. She writes:

“(a) perspectival mode of representation asks that the outlook and interests of the private property holder be taken as the outlook and interests of all by virtue of the former’s inherent ‘reasonableness’. ... Private property gains, through the operation of perspective, an encompassing, public dimension ...” (*ibid*, p.81)

Yet, the shortcomings of the dominant private narrative, even when adjusted through this perspectival model to accommodate public interests, are highlighted in a heritage conservation context. Indeed, there are intrinsic limits in viewing property in absolutist terms:

“...the whole of environmental law, at both national and international levels, can be seen as a response to the inadequacies of absolute rights of property in the face of local and global interdependence”²¹ (Jackson and Wightman, 2003, p.58).

The expansion of environmental regulation acts to fetter the notion of private property because it introduces collective obligation that curtail private concerns.

What happens when you own your house but not the land upon which it sits? What does it mean to “own” property? These are two issues pondered by Milner (1993) when he considers the meaning of and relationship between property “rights” and property “rites”. Do ownership “rites” give rise to ownership “rights”? Milner (1993) describes ownership rites according to

²¹ It is important to remember here that heritage law is nominally viewed as a component of environmental law.

three socially based categories: 1. Rites of Identity; 2. Rites of Settlement; and 3. Rights of Struggle. All three classifications are useful but Milner (1993) also characterises property rights as being concerned with entitlement and predictability. Regulation is important in this context for it provides stability and predictability. Milner (*ibid*) draws on Rose (1988) and her characterisation of predictability in property law being akin to “crystals” for clear and distinct regulation or “mud” for a blurring of the rules. Our present era of “muddiness” could be exacerbated, arguably, through the impact of environmental/heritage regulation.

In this context Rodgers (2003) provides some useful insights in work which reconceptualises the environmental (arguably also heritage) regulation / property nexus. Rodgers (2003) articulates the problem in common law jurisdictions that property rights are viewed by lawyers through the concept of ownership, yet environmental law stems from public policy considerations and these conceptions of the law make the task of environmental (and, arguably heritage) regulation even more difficult. Rodgers (*ibid*) calls for a rethink of these conceptualisations and calls for “environmental property rights” which would shift the way we think about the ownership paradigm in land-use regulation to provide for some notion of environmental (and, again, arguably, heritage) responsibility. Widgren (2006) also suggests that rights and duties (public obligations) pervade past and present property regimes in complex ways, and that it has not been the case that a model of either collective or private ownership neglected these obligations (see also Blomley, 2005). It has also been observed that not all property relationships become translated into legal rights and duties (Blomley, 2001b). Nonetheless, these relationships remain material with the collective claim to land through sharing, for example. Land, which has been subject to pre-existing cultural connections, may be also subject to collective ownership claims. Even if these claims are not legally recognised there may be a moral imperative in recognising them. Blomley (2001b) writes about communities in which history becomes “displaced by heritage”. In this sense heritage has broader implications than a community based narrative about connections to the land, and this phenomenon may represent a scalar shift in how we come to conceive of community/property relationships. World Heritage obligations are part of this shift. Public expectations about the protection of sites of ‘outstanding universal value’ can bring about changes in the way the private property narrative is viewed. Policy shifts that reflect this concern have the capacity to shape and influence land use practice, as is evidenced in the case of Angkor (see Chapter 6).

2.3.2.4 Role of "Law"

This sub-section reflects the dominant ownership's model concern with how interests are set against other interests – particularly State interests. Although often greeted with suspicion, State intervention does occur to fetter the apparently superior private rights of owners. This section explores the role of law as a function of State intervention. How do legal structures, processes and practice influence the way in which we view, create and reinforce dominant modes of property relations? This perspective on the perseverance of the dominant ownership model may be reflected in how it becomes entrenched through the law as an institutional tool, and illustrates the challenges facing heritage managers who are often pitted against the prevailing force of private property interests.

The re-categorization of land/property relations over space and time through legal process has been a central concern for scholars of both law and geography. Delaney's account (2001b) of the transformation of rural upstate New York during the anti-rent struggles of the mid-nineteenth century is a well-known example of this. His intriguing account of the way in which the institution of law – and in particular formal court proceedings – recreated the landscape reflects what have been considered the core concerns of legal geographers. The divergent and contesting claims made through counsel's arguments to the Bench represent a "strategic reinterpretation of legal meaning (which) ultimately brought about the reorganization of space." (*ibid*, p.502) The value of this approach for academic scholarship lies in the fusion of spatial/historical and legal concerns which takes place "when what had appeared to be the unquestionable spatialization of power in a particular time and place is called into question; when explicit justifications of given socio-spatial arrangements are required. In such situations, the social practice of legal reasoning may be decisive in the revision or reproduction of social space." (*ibid*, pp.503 – 504). Likewise, as is the case when a World Heritage classification is imposed upon a site, new socio-spatial relationships are created by virtue of these legal obligations and "the operative concept of property" (Delaney, 2001b, p.495; 504) changes. The land law/property dynamic evident in Cambodian history has also been subject to modification through time and space, and with the abolition of all entitlements to property during the Khmer Rouge regime (1975 – 1979) one could argue the modification was abrupt (following Delaney, 2001b). Although house construction and bounded agricultural activity – all of which are indicative of "ownership" as we recognise it from a Western, liberal, capitalist perspective

(Blomley, 2004) can be observed throughout Cambodia, these physical indicia are not always present (or obvious). This could lead to a perception that there may be no claim to such unmarked land which "...not only constitutes a profound injustice, it also overlooks the value of alternative legal imaginaries and orderings" (2004, p.10). Blomley (2005) takes this further when he questions the rigidity of the way land and property tend to be defined: land belongs to someone and comes with specific entitlements and obligations attached by virtue of regulation (law). He draws from a distinctive legal geographical perspective when he reaffirms the importance of territorially defined spaces and their associated boundaries in communication, "(t)he spatialization of law, ... is said to be important to the extent that it communicates legal meaning" (*ibid*, p.282; see also Rose, 1985) or that the physical spatialisation of law plays "an important role in shaping a particular sensibility toward spatial use, access, rights and privileges" (Blomley, 2005, p.283). These views act as a reminder that studies in geography ought to be cognisant of the role of law and conceptions of property regimes play a significant role in shaping the landscapes that geographers describe and explain.

The influence of the legal profession in creating and forming landscapes has been observed by Martin and Scherr (2005). They suggest that it is the discourses and narratives of zoning and property rights favoured by legal professionals that help to shape landscapes. From the one-on-one client/practitioner conversation about what can and cannot be done in a particular location through to formal planning court decisions it is in the 'activities of lawyering' that our landscapes are formed. Pue (1990) makes a similar point: that the practitioners of legal knowledge – the creators and disseminators – need to be studied in their own right, as well as judgements and legislation. He argues that the pursuit of geo-jurisprudence is the interests of scholars in law (in particular) and that geographers can bring the study of 'citizens', 'locality' and 'place' to bear fruitfully for the emerging critical legal scholarship (as it stood at the time of his writing in 1990).

One of the best examples of the way in which legal professionals and the legal system play a pivotal role in shaping landscapes in the Israeli/Palestinian land conflicts is described by Kedar (2001; 2003; Forman and Kedar, 2003). These works provide salient insights into the way in which property and land rights become legitimised through the use of legal systems. Kedar (2003) is interested in the way that the legal system shapes settler society land regimes. Of particular interest is his observation that "(p)arallel to cases of natives and aliens in other settler

societies, the inability to obtain formal recognition from the State of their landholdings transformed many Arabs into trespassers on their own land" (*ibid*, pp.924 – 925). Using the evolution of the Israeli legal system, and some analysis of the land management framework that governed the region during the Ottoman and British Mandate periods, Kedar (2003) illustrates how the tools of the legal trade were used to dispossess Arab interests and create Israeli interests over the course of successive legislative and courtroom decisions. He identifies the mechanisms that work to forestall pre-existing rights and promote new rights. In summary these include:

- Settler legal system denies (outright) any existing claims because the basis upon which the claim is made clashes with the prevailing (Western) legal concepts; and
- Settler legal systems "impose insurmountable procedural obstacles" (*ibid*, p.929);

The work of Kedar highlights the shortcomings of the (dominant) ownership model and this position is supported by Blomley (2004; 2005).

Occasionally heritage conservation can override private property interests through the role or operation of law. A recent South African case (or series of cases) described by Beukes (2009) provides an example of the inevitable tug-of-war between a conservation agenda and property rights. After analysing three court decisions relating to contested land at the edge of Cape Town, which had been protected due to the presence of burial grounds, Beukes (2009) points out that the Oudekraal decisions "represent recognition of the importance of sites of cultural significance and that a strict adherence to an absolutist property regime is no longer viable" (p.82). This idea is important to any work based in legal geography for many still argue that the privatisation of land is the key to reducing conflict and harmonising land management (revisiting Vandergeest (1996), for example, who suggests that privatising some land in Thai protected areas could be the key to reducing land conflict). This is also a point put forward by organisations such as the World Bank (see Deininger, 2003) for poverty alleviation policy aims. Moreover, this policy of formalising land occupancy is seen as a way forward in land management practice and has been adopted management at Angkor (Chapter 4). In other words, this dominant view plays out in policy positions in World Heritage management. This

position, therefore, needs explanation and cannot be ignored in any account of land management practice in World Heritage locations.

2.3.3 Rights

There are strong links between legal geography writings, which assess how the law reinforces inequity in a given place (for example, see Blomley, 1998; Kedar, 2000-2001), and associated notions of “rights”. This is especially so for the debates surrounding property rights and entitlements. Indeed, there is often an assumption that everyone has an entitlement to property and, moreover, that everyone is also entitled to have these rights recognised. This is reflected in international instruments, an example being Article 17 of the Universal Declaration of Human Rights of 1948 which says:

- “1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of this right.”

In a country-specific setting within Cambodia there is formal recognition of “human rights” per se (Constitution, Preamble in Jennar, 1995), while the *Land Law* 2001 also guarantees the “rights of ownership” (Article 1). There is a plethora of (grey) literature and a legion of NGOs dedicated to monitoring human rights in Cambodia.²² The use of popular human rights rhetoric - for instance, catch-phrases about pro-poor rationales - has also begun to permeate the language and literature of the heritage professional. But how are rights made to work in a legally plural landscape? This is likely to be especially challenging in an Asian context – where the compatibility of Eurocentric human rights notions may be questioned. Land issues and human rights are inextricably linked and raise the ire of many international organisations.²³ These issues are also a favourite for the popular media in Cambodia (Chapter 4).

²² See Deininger (2003) for a view of the World Bank policy platform. See also the work of Danida, see Supporting Access to Justice Working Paper, Cambodian Office for the High Commission of Human Rights available at <http://cambodia.ohchr.org/>.

²³ Adler, et al. (2006a; 2006b) suggest that many local and international human rights and media organizations have focused on and documented major land disputes in Cambodia and examples of land disputes from a human rights perspective have been well documented by the NGO Forum see <http://www.ngoforum.org.kh>.

The concern to address, or perhaps redress, a human rights agenda has now arisen in the context of World Heritage. From an ICOMOS Norway discussion paper the following observation is pertinent,

“(t)he work of UNESCO to strengthen protection of the world’s cultural and natural heritage is an important contribution to safeguarding cultural human rights, as defined in the Universal Declaration of Human Rights and subsequent United Nations human rights instruments. As regards the 1972 *World Heritage Convention*, however, questions remain whether sufficient safeguards are in place to ensure respect for the human rights of individuals and groups affected by protection schemes.” (ICOMOS, 2008, p.1)

The apparently vexed question of compatibility between the *World Heritage Convention* and international human right instruments has been explored by some heritage professionals. James (2007), for example, asserts that while there is a perception of conflict, particularly by those with a principal interest in human rights, there is no conflict between the provisions of the *World Heritage Convention* and an instrument such as the Universal Declaration of Human Rights. He points out that as an instrument of the UN General Assembly the Declaration is a ‘superior document’ to the Convention (as an instrument of UNESCO, an organ of the UN). Although he finds little by way of conflict in the paperwork, he notes that a breach of rights may occur if “the nominating party was submitting the place with a view to – for example – dispossessing peoples living in and owning land in such an area so that the Government could take over the land...” (*ibid*, p.8). Connolly Carmalt (2007) is less equivocal, stating;

“... it is, in fact, contrary to human rights law to go about the world implementing universal norms without first making sure that local populations are able to identify for themselves how those needs should be met” (*ibid*, p.7).

One way of conceptualising the relationship between these various legal instruments is through the notion that (property) rights are tiered (Blomley, 2004). Within such a hierarchy “rights of private owners seem to legitimately trump the collective” (*ibid*, p.4). This raises the question of how to balance the protection of heritage – in the case of Angkor the monuments and the settings deemed to have ‘outstanding universal value’ – with the claims of resident communities who live in the landscape. Using a Dworkin-inspired framework (Leiboff and Thomas, 2004),

does heritage trump the rights-based claims of the residents? Arguably the effect of the localisation of World Heritage laws is to deflect rights-based arguments made on behalf of the resident community. Yet this sits at odds with the meteoric rise of the sanctity of private property, and particularly the perceived importance of private property as a vehicle for development. Is it possible to reconcile these apparently competing concerns? Can we simultaneously protect property on behalf of all humankind and respect the private property rights of those who happen to live adjacent to these outstanding sites?

Recent literature on protected area management and the use of rights-based approaches (RBA) may be helpful in this context, although both the formulation and application of a RBA remains in its infancy (Campese *et al*, 2009).²⁴ A RBA is one in which human rights norms and standards are integrated into conservation policy and practice (*ibid*). In protected area management it is suggested that policy informed through a rights-based approach may be one way of ensuring the reality of protecting sites whilst maintaining rights. Despite the fact that conservation and human rights can be fraught, the two objectives may not prove to be mutually exclusive as there are complex interdependencies between the two concepts (Campese, 2009). Writing about Indonesian protected area management Moeliono and Yuliani (2009) explain that a policy of decentralization initiated by the central government has had the effect of bringing the state and local people into conflict because, prior to the implementation of this policy, local people were largely ignored by a centralised administration. Moreover, despite a more conciliatory approach toward participatory approaches in recent years, the Indonesian government has been slow to transfer rights to local people, particularly in protected areas. Yet Kothari (2008) suggests that a pronounced shift has occurred in protected area management over the past decade, marked by three broad characteristics:

- “ ■ expanding the governance of protected areas to include communities, either as partners in government/NGO-run areas, or in their own right as custodians and managers;
- moving out of the ‘island’ mentality and looking at landscapes and seascapes as a whole, with the attendant need to focus as much on their political, economic, and cultural aspects as on their crucial biological values; and

²⁴ For another policy-oriented view, see, Greiber, T., *et al*, (2009), Conservation with Justice. A Rights Based Approach, IUCN, Gland, Switzerland available at <http://data.iucn.org/dbtw-wpd/edocs/EPLP-071.pdf>. This publication was produced in association with the IUCN Environmental Law Centre and IUCN Environmental Law Programme.

- linking protected areas to the goals of addressing poverty and livelihood security, and significantly enhancing the generation of conservation-related benefits to local people.”
(*ibid*, p.23)

Reflecting this, international organisations, such as the IUCN, have become increasingly active in attempts to align protected area management with human rights demands. There is a growing body of work related to this issue in both policy and emerging academic works.²⁵ For protected area management per se there is a lack of information regarding the social impact of designation (Brockington, *et al.*, 2006). The same may be argued for World Heritage sites and this is further explored in Chapter 3. As Brockington *et al.* (*ibid*) argue, a better understanding of the costs and benefits of conservation on resident populations could produce a situation in which advocates are far better placed to argue in favour of designations. As in protected area management, social impact assessments clearly also have a role to play in measuring how well World Heritage site are managed.

Is there hope that a rights-based approach to management may serve dual aims in accommodating local rights while addressing the conservation agenda?²⁶ The publication in 2003 of UNESCO proceedings entitled “Linking Universal and Local Values: Managing a Sustainable Future for World Heritage” (UNESCO, 2003) may go some way towards this objective for it draws attention to the need for heritage professionals to address, and redress, these links. This report is based on selected examples from around the globe that highlight the need to integrate local values into management frameworks. Mumma’s (2003) insights into the role of community-based legal systems are intriguing. Just as Kedar (2001) argues that the settler society legal system encroaches upon, destabilises and eventually replaces the pre-existing land management arrangements, Mumma’s essay highlights the fact that state-based legal systems have replaced community-based legal systems – often to the detriment of World Heritage site management. He writes:

²⁵ See, for example, IUCN Policy Matters 15 (July 2007); Wani, M., and Kothari, A., (2007).

²⁶ Conservation agenda should be contrasted with the case for development. It appears to be a mistake easily made to merge these two ideas, but is it a case of inevitable conflict between conservation and development? In (heritage) conservation circles, these tensions resulted in international texts such as the *Charter of Athens* (1931) or the *Venice Charter*, 1964. In 2006 the issue of conservation in a developing country context, specifically in the regional setting of Southeast Asia was addressed in a conference convened by jointly by the Asian Academy for Heritage Management, UNESCO, ICCROM held at Chulalongkorn University in Thailand, see Silapacharanan and Campbell, (2006).

“(d)espite the decline in community-based legal systems, it is now widely recognized that state-based legal systems, on their own, are incapable of ensuring the holistic and sustainable management of local immovable heritage, which includes sites on the World Heritage List.” (2003, p.43)

Mumma (2003) calls upon heritage practitioners to re-integrate customary norms into management practice. This is achieved through:

1. Reinstating (historic) local land use rights;
2. With the reinstatement of these rights, frameworks for managing through reinstatement of community leaders and authority structures;
3. These traditional systems must adapt in order to resonate for younger generations; and
4. All these steps require “a conscious effort to integrate a conservation ethic into the community’s point of view” (Mumma, 2003, pp.43 – 44).

In many ways the recognition of human rights in the context of conservation is to make meaningful commitments to both the substantive and procedural aspects of entitlements of resident communities. Arguably, substantive rights are set through broad human rights agenda set by NGOs and international human rights instruments – general commitments to improving quality of life and protecting people’s entitlements. But what of addressing the procedural dimensions? To do so requires an analysis of the regulatory framework that applies in a particular location or setting. Again, there is a clear point to be made about the value of looking to legal structures in any assessment of human rights vis-à-vis conservation in particular geographical areas. Blomley (2001a) argues that analysis of the way in which space may control the application of rights is excluded from traditional debates about “rights”. It is important to reiterate the simple point that spatial arrangements are important to people. This research shows that spaces that are saturated with multiple meanings can affect rights – a situation which is sustained or legitimized through the application of legal principles in a spatially defined area. Importantly, the potential negative dimension of a rights-based dialogue should not go unnoticed. Rights, as they pertain to (real) property, are spoken of in terms of security of tenure associated with defining land through boundaries and call to legal notions of exclusion as a way of asserting a right to land. The sanctity of private property arises (again, and not for the last time) and rights become particularized and individualised. But oftentimes this can come into direct conflict with the notion of a community-wide right to heritage. If there exists a general

right to heritage, expressed through an instrument like the *World Heritage Convention*, then this line of argument raises a critique that a rights-based (individualist) approach may have limited benefits. It is argued that couching obligations in terms of 'rights' is an expression of liberal legalism. In this context, Comaroff and Comaroff (2004) make the point that there is a limit to the use of a rights-based discourse in accommodating difference.

2.3.4 Summary

A core argument in this thesis is that, in improving regulation of the World Heritage site at Angkor, the results ought to produce better outcomes for residents and management alike. Underlying this premise is a concern that, without appropriate regulation, resident communities can become disenfranchised with little (real or perceived) influence on the operation and development of their own communities. Regardless of which type of legal system is used, and the extent to which property rights become formalised, the call for clearer and tailored rules remains. The literature set in legal geography identifies these issues. But how do you clarify rights and entitlements, and implement solutions or create appropriate conflict resolution mechanisms if the regulatory landscape itself is unclear?

2.4 LEGALLY PLURAL LANDSCAPES

2.4.1 Introduction

There is growing literature concerned with the consequences of legally plural conditions on landscape management. Osofsky's (2007b) provides the following definition:

"(l)egal pluralism, like space, is a term that has been used to convey a variety of interrelated concepts...(it) recognizes that multiple normative communities occupy the same social spaces and asks how that phenomenon should influence the way in which we conceive of legal spaces... pluralism questions whether we have drawn the boundaries of what constitutes lawmaking inclusively enough and why law and the state are at the center of our inquiries" (*ibid*, pp. 194 – 195).

In practice, legal pluralism means that there is more than one legal system in place over a specific area. Another way of describing this phenomenon is to say that there are multiple jurisdictions operational in a particular place (de Sousa Santos, 1987). Griffiths *et al.* (2009) argue that the analysis of legal pluralism should be a core concern of legal geography. This is based on the premise that in legally plural contexts, which have often arisen as a consequence of settler-societies and colonial rule, alternative (and often conflicting²⁷) perceptions of the legal or normative significance of space and boundaries are most strikingly apparent.

The phenomenon of multiple legal systems within a defined space is hardly new, yet in the context of a post-colonial settlement and post-conflict society such as Cambodia, the complexities of the legally plural landscape are immense and poorly understood. In Cambodia, the existence of multiple rules and regulations pertaining to landscape and land-use is, of course, complicated further when a World Heritage site is established. As a result, the Angkor World Heritage site is a superb case study of an intricately complicated legally plural landscape where the need for effective management and protection is acute and immediate. As will be discussed in the following chapters, there are at least four systems of regulation in place at Angkor: (1) that of the international community and the existing regime; (2) that of former (recent) Khmer regimes; (3) that remaining from post-Colonial rule and, (4) a more traditional or customary administrative system. Recognition of this complexity is exemplified by virtue of the reference to plurality in Article 1 of the country's Constitution:

“Cambodia is a Kingdom with a King who shall rule according to the Constitution and the principles of liberal democracy and pluralism.”

The overt recognition of this plurality in the Cambodian Constitution is fundamental to understanding the way in which bureaucracy and administration is structured and operates. However, a view of legal pluralism that prioritises historical (a-spatial) change in laws de-emphasises the impact of and consequence for space and place (Jones, 2003). The paradox which Jones (2003) identifies between viewing land rights as spatial whilst maintaining a strict

²⁷ In this context, non-conflicting systems are often considered models of hybridity (*ibid*, p.7). Although I think that this is interesting to compare with Comaroff and Comaroff (2004) assessment which describes “tired notions of hybridity” in their work on the post-colonial limits of liberalism critique (p.189; also in Darian-Smith, (ed), 2007, p.398). Yet, where conflict arises between colonial and post-colonial conceptions of bounded space, links may be drawn with Blomley's assessment about the social process through which many Western/Anglo children learn about notions of trespass and exclusion through books such as Beatrix Potter's “The Tales of Peter Rabbit”, see Blomley, 2004.

historical framework for land regulation highlights the value in recognising legally plural conditions, for neither purely spatial nor temporal accounts adequately describe the way we create and re-shape our lived landscapes. As de Sousa Santos (1987) notes, "(l)egal pluralism is the key concept in a postmodern view of law... the conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions..." (pp.297 – 298). Recognition of this complexity is critical for land management practitioners – it provides the key to understanding the varied and complicated landscape which requires active management.

2.4.2 Legal geography and legally plural landscapes

From a disciplinary perspective, there are a number of geographical commentaries linking "landscape" and law. For instance, Mitchell (2003) calls upon geography to promote the interests of social justice through a reinterpretation of landscapes. Commenting on the implications emerging from those concerned with landscape/law links, he points out the political nature of landscapes and observes that landscapes represent changing relationships between people and the physical environments they inhabit. Moreover he reiterates that it remains very important to understand how law shapes and is shaped by the landscape (Mitchell, 2003).

This research uses the term "landscape" when referring to legally plural spaces. Setten (2006) provides a useful summary on the evolution of the terms "landscape" and "place". In short, landscape is associated with the visual – with ways of seeing the world, whereas place is related to specific locations; a sense of place and the setting in which people interact – with ways of being in the world. Setten (2006) argues that the two terms need not be mutually exclusive – and that reliance on one rather than the other reflects trends in academic literature (see also Norton, 2000). Endorsing these observations, use of the word "landscape" over "place" is not intended to favour one above another, but rather to align this research with works which focus on the way in which landscapes are produced (for example, see Mitchell, 2003 & 2005). The analysis in this thesis is based on empirical data that are site specific (in other words, very definitely "placed"), yet the analysis is multi-scalar – part of a wider legal and geographical setting –which lends itself to a landscape categorisation. Again, as Mitchell (2005) suggests,

“(t)he landscape (in all its senses) is both an outcome and the medium of social relations, both a result of and an input to specific relations of production and reproduction” (p.49).

Olwig’s (2006) observations about legal rights becoming established “through the pedestrian process of movement and use” (p.28) are useful in a legally plural setting where customary normative regulations are active. The result may lead to frustration – if pre-existing rights struggle for recognition as a formal titling system moves in.²⁸ Linked to Olwig’s observations are Mitchell’s (2003) reflections on the way in which landscapes become transformed under the encroaching sweep of imperialism.²⁹ The post-colonial and post-imperial setting has featured in other works that consider the way in which laws create landscapes. For example, Forman and Kedar (2003) write about the history of land conflict and administration in Palestine/Israel from 1917 to 1948. They point out that while the colonial Israeli legal system extinguished indigenous Arab rights in most cases, in practice this had very little impact, and in some cases intensified indigenous connections to land. This reflects the ways in which competition for land is manifest in the use of law, and illustrates this complicated and multi-dimensional aspect of landscape evolution.

Blomley (2001b) identifies that landscapes are both material and representative spaces, and that generational or regime change effectively effaces the legacy of previous inhabitants. Blomley (2001b) is referring to his research based in Vancouver’s Downtown Eastside neighbourhood but his point is valid in a variety of contexts – people “read” the landscape according to their own motivations, and often to promote a particular agenda. In tracing the use of rhetoric regarding the use of space Blomley (*ibid*) shows how antagonists, in the struggle to assert control over space, use different conceptions of property. One of the most interesting aspects of Blomley’s account relates to conceptions about “community” and “outsiders”. Activists against increasing gentrification use a claim to community rights to bolster their case. It is asserted that years of use and habitation together with collective action and struggle produce a distinctive local landscape. This is the “insider” perspective. It contrasts with that of the “outsider”, who is seen to view the area as a *tabula rasa*. Clearly there are links to the extensive literature on indigenous people’s struggles with claims to land. In an Australian

²⁸ This relates also to the sections on the role of law (p.32) in creating landscapes and also to the following section about mapping and the process of territorialisation, (p. 48 – 56) herein.

²⁹ Mitchell is referring to Olwig’s empirical work on early modern Northern Europe.

context the High Court decision in *Mabo*³⁰ made infamous the legal concept of terra nullius, the assertion that Australia was un-owned and thus available for ownership and settlement by Europeans. It was an argument used against claims by indigenous communities to a pre-existing entitlement to land. The *Mabo* decision was important because it rejected the application of concept of terra nullius in Australia. From a legal geographical perspective the Australian High Court's judgment in the *Mabo* case recognised the plurality of land ownership and "cast 'native' title claims within the same universe of particular and provisional land rights as a host of 'settler' titles" (Whatmore, 2003, p.216).

The creation of World Heritage areas often brings into sharp focus the contrasting "insider" and "outsider" values conferred on a place by different stakeholders. Berge's (2006) account of the creation of the Geiranger-Herdal World Heritage protected area in Norway describes the values according to different stakeholder perspectives. The tensions between the value attributed to the site as a result of the World Heritage nomination, as "perceived by the urban academic communities of the world", (*ibid*, p.66) and the local population's value of the same place are clear in this work. While the local population values the area for resources and, with the listing, for tourism, "(t)hey also recognize that the rules made for protecting the landscape put severe restrictions on any new activities." (*ibid*, p.66). Berge makes a number of pertinent points on the creation of the protected area:

- Rules of protection "increase transaction costs of those that have land within the area;
- Designation "imbues areas with values that were not seen to be there before";
- Designation "will transfer power from local to central stakeholders..."; and
- "The link between social and economic institutions and the way people think about what they do is probably a dimension in need of attention in institutional design" (*ibid*, p.67).

Moreover, after a discussion in which the sanctity of private proprietary rights is confirmed Berge (2006) suggests that this sanctity is threatened by environmental regulation, particularly in the case of protected area classifications on private lands. In particular, the inability of landowners to undertake activities that are not a direct continuation of previous activities (implying that land use itself has some heritage value) greatly restricts their ability to utilise their

³⁰ *Mabo and Others v The State of Queensland* [No.2], (1991) 175 CLR 1, judgment 3 June 1992.

'own' land. Moreover, the centralisation of management has disempowered both land-owners and local authorities, the consequences of which, Berge writes, may play out over the longer term.

It is simplistic to assert that competing and successive interests eventually supplant or obliterate previous practices. Wadley (2003, p.94 – 95) points out that "indigenous concepts of territory and resource claims may persist alongside state concepts as local people seek multiple, practical ways of securing rights". Parallel governing systems exist in many places, including World Heritage sites, across the world. In one example of this Wadley (2003) explores 'working pluralism' in relation to natural resource management, mapping and boundary marking in West Kalimantan, Indonesia. In this setting it is suggested that colonial and State-based classifications of landscape have, in practice, made significant concessions to local knowledge, and the reality of landscape management is far more subtle and complex than the Western cartographic view of landscape tends to allow. This provides a clear example that pluralism can, and does, work in some situations.

A related point is that the way legal systems operate, even at a seemingly benign or mundane level, can be manipulated to achieve particular ends (Kedar, 2000 – 2001; 2003). Kedar's research into the Israeli/Palestinian land conflict demonstrates that the bureaucratic and legal minutia of proceedings can at once disempower local populations and strip conflicts of broader political significance, yet strengthen the appearance of a fair, open and equitable property regime. Poindexter (2003) also points out that the way in which legal systems limit control over land plays a significant role in the creating or recreating landscapes. She argues that zoning and the fragmentation of land use associated with zoning practice amongst a countless number of local government areas in the United States, is an example of a way in which control (through regulation) becomes isolated to particular areas.³¹ On a larger scale, Seuffert (2007) gives an account of the way in which legal text and legal institutions are used to create and then confirm a nation-state (New Zealand). Her observations provide some insights into the dilemma of legally plural landscape. She notes that, despite the colonial jurisdiction, Maori laws continued to be observed, with some selective incorporation of European notions of law and justice. Indeed, Seuffert identifies the primary function of the New Zealand *Native Lands Act* of 1865 as

³¹ Like Poindexter (2003), the work of Jackson and Wightman (2003) explores the spatial dimensions of private law in the context of an evaluation of aspects of land law.

identifying “ownership’ of land held according to Maori proprietary customs... replacing those customs with ownership of land in Crown-derived titles...” (2007, p.110). In other words, there was a concerted administrative effort through formal governance to replace existing land-society interactions with those derived from Western legal origins. Seuffert’s work illustrates the apparent success (depending of your point of view) of this regulatory change.

Land law regimes, coupled with modern mapping practices, are often set against pre-existing community connections to the land. This scenario is often more nuanced when lands become subject to protective regimes. Mawani (2003) describes how the creation of one of Canada’s largest urban parks was, and remains, beset by socio-legal conflict through time. Stanley Park is a 960 acre urban park located in downtown Vancouver, British Columbia. The Spanish first charted it in 1791 and importantly, these early maps did not take account of the existing local population. As was the case in Australia, the dominant discourses, shaped initially through mapping and then, later, through the enactment of laws which then verify and cement the mapped ‘truth’, creates certain landscapes; ones in which pre-existing claims to land may be unheard.

2.4.3 Summary

The studies of many scholars in legal geography (for example the works of Kedar, Seuffert, Delaney, and Mawani described in this section) provide parallel narratives to the issues explored in this research. Each exposes how officially sanctioned legal obligations can re-create landscapes; how the imposition of rules and regulations often times leads to new property regimes. These examples also take place at different jurisdiction and geographical scales. The issue of scale is considered in the next section.

2.5 SCALE/S AND CREATING TERRITORIES

2.5.1 Introduction

Landscapes reflect all the complex interactions between the human and physical realms and it is often said that landscapes are saturated with multiple meanings and, moreover, are “socially

constructed" (Marston, 2000). Spaces (which become "places") are imbued with meanings derived from specific spatial associations. As these social dimensions are examined, spatial analysis inevitably becomes social analysis of one kind or another. Moreover, part of social analysis must take account of governance and administration, which leads to questions surrounding the role of laws, regulation and norms. Therefore, the growing concern with the ways law and geography interact. There is also a growing need or imperative to understand the scale of this phenomenon, particularly in light of accelerating globalisation (Osofsky, 2007). As is argued through this research, tailored regulatory responses to local circumstances are required (in other words, local problem solving is essential) for good management, but the next step is to recognise the extent to which local circumstances interact with national and international influences. The World Heritage setting gives the location a national, regional and international identity. Governance is multi-dimensional; multi-scalar in this legally plural setting. Moreover, global exchange takes place primarily through (Western) legal structures and norms (Sibley, 1997).

It is equally important to take consideration of the way we create landscapes and in this regard the influence of cartographic practice (mapping) cannot be underestimated (Ford, 1999). Using the metaphor of mapping, de Sousa Santos also identifies that the "dialectic of representation and orientation applies to law as much as it applies to maps" (1987, p.283). Understanding this makes analysis of the spatial representation of law (for example, zoning plans and heritage overlays) ever more important. Different "legal realities" are created by different scaled regulatory burdens (de Sousa Santos, 1987). The reality of this observation is borne out through any analysis of the regulatory landscape of the World Heritage site at Angkor.

2.5.2 Scale/s

Scale in geography usually refers either to spatially defined places (as in a scale on a map, or 'cartographic' or 'geographic' scale) or levels of phenomena (as in local, national, regional, global, or 'operational' scale) (Marston, 2000). This research is concerned with elements of these themes, yet there is another construction of scale, which appears to be often overlooked by geographers; the influence of law, and the concepts associated with the practice of law, including the concept of "justice". Hubbard (*et al.*, 2002) writes, "(j)ustice... is not a given but is seen to be constructed and negotiated by members of society via processes of governance. This

is why laws change as we negotiate how society is operated, and why rights vary across space...” (p.201). Again, the point is made that law and geography interact, and the importance of legal relations in the way we describe the world spatially cannot be underestimated.

It is essential to take account of different levels of scale as each relates to governance and law because, as Cash (2006) suggests, there has been a long history of policy failure through the concomitant failure to take account of scales and cross-scale dynamics. Issues of scale, and the way in which scales can collide to the disadvantage or advantage of some is explored by Riles (1995) in her analysis of a British/US dispute over American land claims in Fiji in the late nineteenth century. She shows how international and local concerns are embellished or minimised according to the particular needs of the party at any particular point in time. In other words, at times the local perspective dominated the dialogue and at other times concerns were flavoured with an international perspective. She makes the point that the legal arguments can be understood “... as strategic shifts from one scale to another” (*ibid*, p.49) as lawyers re-create or translate local events for the benefit of international or diplomatic dialogues. The result, she argues, is that differences between scales can seem “unnatural, synthetic, two-dimensional rather than three” (*ibid*). Similarly, in her critique of globalization Sibley (1997) is concerned with the prevalence and dominance of imported Western legal systems. She remarks that it is folly to assume a “one-size-fits-all” approach to issues of justice, although cognisant of the value some tenets from Western legal thought (for example, human rights law) (Sibley, 1997, p.222). The consequence is that local variations, conditions and norms – the concerns of the local scale - tend to be overwhelmed.

Thinking in terms of scale/s is also vital to a consideration of territorialisation as this concept works at (least) two levels. Much of the literature about territory identifies with international Statehood – invoking concepts of boundaries and sovereignty. Yet, territorialisation is also apparent within states (Vandergeest and Peluso, 1995, pp.386 – 387). Both concepts are explored in the next section.

2.5.3 Creating Territory; the Process of Territorialisation

Territorialisation is most often associated with the work of Sack (1986) who defines the concept as an“(a)ttempt by an individual or group to affect, influence, or control people, phenomena,

and relationships by delimiting and asserting control over a geographic area" (*ibid*, p.19). In the context of legally plural landscapes, the concept is a useful lens through which to view the way in which landscapes are created in a multi-scalar environment. Peluso (2005) argues that understanding the subtleties of territorialisation is important for resource management strategies at all operational scales because territorialities are not spatially or temporally exclusive, and as such create conflict.

There is a distinction to be drawn between territorialisation at the national/State level and "internal" territorialisation, whereby polities divide their territories into zones, in which process cartography plays a central role in formalising and legitimising territorial rule (Vandergest and Peluso, 1995). Wadley (2003) writes, however, that these imposed, cartographically sanctioned territorial zones do not always work when in conflict with pre-existing social or legal boundaries, leading to complexity, inefficiency and in some cases instability. The challenges of accommodating pre-existing communities, and of linking plural regulatory systems (rather than having them sit awkwardly sit-by-side), are particularly acute in a developing country setting.

Communicating control (and, by corollary) restrictions on places (Vandergest and Peluso, 1995) is fundamental to effective territorialisation. Rose (1985) contemplates how things come to be owned with specific reference to the issue of possession and a consideration of the rationale behind how we think about owning. Starting with reference to Locke's³² formulation on property - that labour mixed with a thing establishes ownership - Rose considers the position of ownership with reference to the common law; that "possession is the root of title" (*ibid*, p.75). She suggests that two premises define possession, the first is "notice to the world through a clear act" and the second is "reward to useful labor" (*ibid*, p.77). In her analysis about the importance of communicating to the world at large your possession of property (whether by paying taxes; building fences etc), Rose points out that possession can be traced through acts which can be "read". A potential problem with this is an assumption that "the text will be 'read' by the relevant audience at the appropriate time" (*ibid*, p.83). Some of the dilemmas relating to ownership in and around Angkor could be read in this light. The abolition of recorded ownership records with the Khmer Rouge regime is an obvious stumbling block – there were no official documents to enable anyone to read the text of ownership. First possession becomes

³² The version of John Locke, Second Treatise of Civil Government, An Essay Concerning the True Original Extent and End of Civil Government, I refer to is reproduced in Barker, R., (1960), Social Contract. Essays by Locke, Hume and Rousseau, Oxford University Press, at pp. 1 – 206.

incredibly difficult to demonstrate, especially in terms the evidentiary burden. Rose (*ibid*) suggests, “in defining acts of possession that make up a claim to property, the law not only rewards the author of the ‘text’; it also puts an imprimatur on a particular symbolic system and on the audience that uses this system. Audiences that do not understand or accept the symbols are out of luck” (*ibid*, p.85). This recalls Kedar’s (2004) views on the role of legal process in marginalising local populations. Successive regime changes have resulted in piecemeal changes to the property laws in Cambodia since 1979, some of which remain in place while others have been replaced. The imposition of the World Heritage listing and the associated regulatory changes to proprietary rights has had some impact on the ability of people to understand the implications for the way they possess their land. Although the management authority has been extremely successful in communicating the rules to local communities through local meetings, leaflets and signs, the extent to which these communications alter ownership rights is debatable.

Spaces are not experienced as abstract places and land use planning practice (a process of territorialisation) can be jeopardised when it ignores existing social histories and relationships (Vandergeest and Peluso, 1995). Vandergeest and Peluso suggest that ignorance can result in governing bodies needing to rely on force, or coercion, to implement these land use controlling practices. Yet, as they also point out of the Thai experience (which is the case study explored in their paper), “(l)andholders look to local enforcers to protect their land claims.” (*ibid*, p.391). It seems that whether characterised as customary or formal, enforcement is central to any attempt at territorialisation. In fact, despite land management reform that came about with land reform developments in the 1800s and 1900s in Thailand, both customary and formal systems rely on some form of coercion to enforce rules (Vandergeest and Peluso, 1995). The Southeast Asian experience, particularly with the prevalence in the region of multiple regulatory systems provides interesting case studies for the territorialisation concept. Peluso (2005) provides some insights into the conceptualisation of property in a Southeast Asian context in her paper on local territorialisation in West Kalimantan, Indonesia. Adopting Sack’s (1986) concept of territoriality she explores the way in which territoriality is expressed in two village communities. Her observations illustrate that a number of different types of land use, regulation and rights have developed and are recognised by successive generations through oral histories, and, moreover, their approaches to land management remain valid “despite its absence in the tenets of colonial or contemporary land laws” (Peluso, 2005, p.2). Peluso (2005)

points out that “neither legal systems nor state notions of territoriality always and forever determine what will actually happen” (p.2). Parallel systems of land administration can give rise to enormous complication and, sometimes, cause fundamental social friction. Some suggest that this is due to inadequate consideration being given to pre-existing systems. McAuslan (2003) makes this point for property laws in China, arguing that the transplantation of Western land law into a Chinese context will only be effective if some degree of congruence exists with pre-existing culture. This need for congruence is particularly relevant for land management within World Heritage sites, and is an argument permeating this research (see also, Gillespie, 2009). Compatibility of land law systems is essential for effectiveness. The current land administration system nation-wide in Cambodia is complex and the World Heritage listing has compounded the discordant systems (see Chapter 4).

The process of defining territory can be very arbitrary and there is enormous power associated with the physical location of the boundary. In many instances, there is a self-fulfilling prophecy associated with boundaries and the definitiveness of map-making. Is there anything inherently problematic about favouring one view of territory over another? In short, the answer is “yes”. Human geography can illuminate this, particularly as issues of distribution take on a decidedly geographical dimension. Soja’s (1995 - 1996) call for legal-geography scholarship to concern itself with issues of justice informs this research. He says:

“I would urge scholarship in this field³³ to not only seek to adjust and adapt legal development to changing geographical circumstances but also to realize that these changing geographies may represent a much more profound challenge to law and critical legal scholarship than has heretofore been imagined... Ways need to be found to use law to reshape the social production of space in more socially beneficial ways; to restructure the relations between space, knowledge, and power; to deal more effectively with the problems ... of oppression...; to create a more forceful notion of spatial justice to guide law’s road to geography” (Soja, 1995 – 1996, p.1429).

Soja suggests that there is both a soft and hard “response among critical scholars to the dramatic restructurings ... of space... the soft response... generally involves a call for greater flexibility, hybridity, and derigidification in the law to meet the challenges of globalization and

³³ Soja is referring to law and geography.

the new geographies” (1995 – 1996, p.1428). This thesis forms part of this movement. In fact, if legal geography is a disciplinary rubric, spatial justice could be the activist mode for those working in this context. Soja³⁴ points out that locational discrimination is everywhere and there is some degree of injustice embedded in all geography. Moreover, complete evenness in spatial distribution is impossible, the search for justice in spatial terms is a universal one, as is the search for universal human rights – both are detached from the specifics of time and place. So he claims there is a huge place for critical spatial scholarship. Indeed, Soja’s classic work (1989) places this call centre stage – and the importance of space as a way of thinking is reasserted.

2.5.4 Creating Territory; Mapping

This section explores how spaces are created and how territories take shape through the applied process of mapping. Mapmakers make conscious decisions about how they represent places and these decisions are not divorced from the way in which policy dictates how the landscape ought to be used. Understanding the limitations and assumptions of maps and the mapping process is fundamental to enhancing our understanding of dynamic landscapes (Monmonier, 1996).

Configurations of territory are shaped, interpreted and legitimated through legal process, and in particular, they are shaped through the process of mapping. Dorsett (2007) suggests that “(t)he practice of mapping makes possible the existence of the legal concept of territory” (p.138). Mapping the boundaries of a World Heritage site also shapes conceptions of territory, as is discussed in later chapters. Without a sense of territory, administration of the World Heritage site becomes null and void. Dorsett (2007) also explains how space becomes place by virtue of mapping; how spaces are given an identity through co-ordinates/distances between / directions and, *therefore*, become places of embodying meaning. This conceptualisation is important, and can be related to the applied research of this thesis, in the physical demarcation of boundary markers of the World Heritage site (Chapter 6). Dorsett (2007) provides an historical account. One pertinent observation is that:

³⁴ Soja, E., (2009), comments made during the launch of the new e-journal “Spatial Justice”: call for geographers to embrace the concept of ‘spatial justice’ in which he also provides an historical overview of the term.

“(i)n early modern Europe, to the extent that jurisdiction was territorial in nature, the reference point for dealings with such jurisdictions – as with land – was local memory and customs. Law was embedded in local life, and in the particularities of local knowledge and circumstance. Boundaries and communities were amorphous, lacking in physical and geographic distinction. What distinctions existed were maintained by customary practices rather than by geographic ‘bright lines’” (*ibid*, pp.140 – 141).

Dorsett’s reference to ‘bright lines’ is a reference to Ford’s (1999) work (see below). However, it is Dorsett’s work exploring the difficulties in physically marking boundaries that is particularly useful here. She writes about attempts to fix the boundaries between South Australia and Victoria in the 1800s. An inability to physically fix the boundary, due to different interpretations by surveyors, led to a ‘zone of lawlessness’ (Dorsett, 2007, p.150). This is an example of the very real interaction between law and geography. The historical act of delineating, of physically marking borders, ensures that “law, ... become inscribed on the landscape, visible in trees and fences, cairns and posts” (*ibid*, p.152). As discussed later, precisely delineated borders are not part of the everyday concerns of the villagers at Angkor. A great deal of imprecision exists; village boundaries are illusive, and for local residents village identities tend to be based on social norms and practice. This vagueness in defining villages around Angkor is further complicated through administrative (or “official”) accounts. For example, in some instances conglomerates of buildings, which would, to the ordinary observer, be representative of a village, are not officially mapped.³⁵ The implication is that villages do not exist. Giving meaning to place through mapping, therefore, becomes a highly contested and even contentious issue in some instances (Fox, 2002; Wadley, 2003).

Boundary making through mapping is often highly subjective and even arbitrary. The creation of new boundaries often does not either account for or accommodate earlier practices or norms. Yeh (2003) highlights some of these issues in her research on the impact that the formalisation of boundaries has had on Tibetan herders. Yeh (2003) points out that new boundaries are not congruent with and often contrary to previous land divisions, and that this has created conflict among local people whose land was in many cases fractured into several administrative units, the boundaries of which were not made clear to local people. As becomes evident in the

³⁵ Relating to conditions at Angkor see Moylan, E., (2009, *pers. comm.*), unpublished seminar presentation, Angkor Research Facility Talks, 2 September 2009, The University of Sydney.

following chapters, there are distinct parallels with this narrative and the way in which land administration evolves, in and around Angkor. Presciently, these insights are particularly troubling in terms of dispute resolution processes for residents living in the shadows of the World Heritage monuments of Angkor. Both these conditions of which Yeh (2003) writes; the lack of historical borders and fractured authority, are features of the landscape which is given regulatory shape once the World Heritage classification is effected.

Cultural context has become increasingly important in mapping and the creation of new territories. Many of the processes at work in territorialisation and modern map-making are distinctly Western. Concepts of control and exclusion through mapping and boundary making must be contextualised. Wadley (2003) writes that boundaries restrict rights but different stakeholders can differ significantly in how they define boundaries, citing the example of pre-State conditions in Southeast Asia where, rather than fixed borders, rulers held power over groups of people; a situation which resulted in ambiguous and fluid boundaries. Others confirm Wadley's observations of Southeast Asian territories (eg Higham, 2002, writing of Iron-age chiefdoms to early states in Southeast Asia). In a modern context, one of the more oft-cited works in this regard is that of Thonchai (1994). Thonchai provides insights into the processes of mapping in the Southeast Asian context, using the specific case study of Thailand as his example. It is through the modern mapping process that the State of Thailand gains legitimacy – for some (*ibid*, pp.52 – 56). It is equally true that, in the past, the need to identify borders was far less important. Thonchai recounts an exchange between British and Thai officials regarding the border of Thailand with Burma during the 1820s, and writes:

“It is clear that a ‘boundary’ as understood by the British on the one hand and their Siamese counterparts on the other was a similar thing but not the same. For the Siamese court, it was hard to imagine why the question of boundary should be so important; it should have been a matter for the local people, not those in Bangkok. As a result, in the draft of the treaty prepared by the Siamese there was nothing about boundary settlement... (e)ventually, however, (the British) persuaded the court to reach broad agreement about boundary demarcation, and he put it in the subsequent drafts and in the final 1826 treaty” (1994, p.64).

Clearly it is the influence of the colonial power, the British, which ensures the exact demarcation of the national boundary. Without this influence, the boundary is left to be decided according to local customs and norms.

Transferring these observations through scales to the specifics of local circumstances, we can draw on Hirsch (in Hirsch, 1993) who makes some similar points, again in a Southeast Asian context, in his consideration of the bounding of villages in rural Thailand. Hirsch contends that villages became bounded as identifiable, discrete and separate entities (in space) as much through the growing influence of State power as by any other means. Hirsch writes of (discrete) resistance to the call of the State, exercised through the Village Chief, to build distinct village 'communities' with houses in close proximity distinguished through bamboo fencing. The resistance arises as the call to bound these spatially proximate households does not reflect the pre-existing reality of households who prefer to live on their land in a scattered settlement fashion (Hirsch, 1993). The notion of a homogenous nucleated spatially bounded community, represented as a "village", is called into question.

In a Cambodian context the work of Fox (2002) is particularly useful. Drawing on Thonchai's (1994) work Fox suggests that the success of modern mapping is dependent on the extent to which maps (which are derivative from Western mapping techniques) can accommodate local or indigenous ways of thinking about geographical areas. Most importantly, in the context of boundary making, Fox observes with regard to villager perceptions about boundaries that:

"(w)hile villagers in Poey have a clear sense of ancestral lands, specific boundaries between hamlets were not traditionally required unless the cultivation areas from two hamlets met one another. Villagers believe that if they farm on the other side of another hamlet's swidden fields and hence have to cross those fields frequently, the spirits will be unhappy and cause misfortune or death. When a hamlet's swidden fields are adjacent to those of another hamlet, village elders may meet to decide the boundaries. But in most cases the physical location of the swiddens and the taboos against crossing each other's fields for cultivation define the limits of cultivation" (Fox, 2002, p.69).

The implications of fixing boundaries in a Cambodian context, according to Fox (2002), is that it leads to a lack of flexibility between neighbours and this can give rise to increased conflict for it

becomes impossible for these fixed boundaries to be ignored or informally negotiated. The later discussion about local perspectives vis-à-vis boundaries in the context of the World Heritage Park at Angkor adds further empirical-based evidence about the notion of boundaries in this setting.

Returning to the rubric of legal geography, Ford's (1999) work highlights a number of key ideas relating to the phenomenon of mapping and the rise of the concept of territorial jurisdictions. He makes the point that the notion of a territorial jurisdiction ("the rigidly mapped territories within which formally defined legal powers are exercised by formally organized governmental institutions", *ibid*, p.843) is a development concomitant with the rise in mapping technologies and legitimised through State use. Indeed, territorial disputes remain a significant cause of dispute to this day in the region. The current Thai/Cambodian dispute over the World Heritage site at Preah Vihear highlights the fact that these sites are not immune from the national-level scale debates about borders.³⁶ There is also debate between Vietnam and Cambodia about the movement of the national border between the countries (in Cambodia's Svay Rieng Province). It is alleged that national boundary markers have been moved into Cambodia and Khmer farmers have lost land ('overnight') as new boundary markers appeared, which has led to conflict.³⁷ Ford (1999) suggests that:

"(o)nce cartography made the production of precisely demarcated legal territories possible, territorial relationships quickly became dominant. The territorialisation of social relations served important institutional purposes more effectively than did the older status relationships. Hence the famous historical shift from status to contract was accompanied by an equally significant shift from status to locus" (p.845).

While these observations are easily borne out by observations in a Western context, the extent to which the notion of territorialisation has replaced status relationships in a Southeast Asian context is unclear. With distinctly Gramscian³⁸ overtones the system of patronage and status is still very much in evidence within village societies in rural communities in Angkor (Luco, 2002).

³⁶ See BBC, (2008), *Tranquil temple at centre of a storm*, BBC News, 22 May 2008, available at <http://news.bbc.co.uk/2/hi/asia-pacific/7352333.stm>.

³⁷ See, <http://www.phnompenhpost.com/index.php/2009121530209/National-news/srp-police-scuffle-on-vietnam-border-visit.html>.

³⁸ This is a reference to the philosophies of Antonio Gramsci and the concept of "hegemony" in which dissent is minimised through cultural norms (Leiboff and Thomas, 2004, pp. 281 – 282).

Yet, this system of patronage does not necessarily conflict with modern mapping practice; in fact, mapping villages may reinforce existing power bases (drawing on Harley, 1989; Corbett and Giacomo, 2009).

Boundary making through the process of drawing a line on a map is made real through social acknowledgement of the line. Conventions, norms and social practices make boundaries real (Ford, 1999). It is the recognition of the line that confers legitimacy. It is a combination of social customs plus the law, which reinforce jurisdictions (Ford, 1999). In the legally plural landscape of Angkor this idea is of the utmost importance. What if the lines drawn on a map do not reflect practice? The exact location of the World Heritage boundary at Angkor remains a concern for international observers and the World Heritage Committee has made repeated requests for the management authority to clarify boundaries for the site (Chapter 3). Later chapters investigate whether the World Heritage site at Angkor lacks some legitimacy by virtue of a disconnection between the lines on the map and the pre-existing practices of resident communities.

In the process of creating a jurisdiction through the act of mapping and bounding/defining an area, do local concerns become obscured by homogeneity? (Ford, 1999; Li, 2001) How do you take account of the need to address plurality? Ford argues that: “we should consciously weigh the pros and cons of territorial identification. We should ask: what aspects of human flourishing are discouraged or excluded and, more importantly, what identities and subjectivities are produced, encouraged, sanctioned or imposed?” (1999, p.922) Further, “(w)e should ask whether the identities and territories produced through compulsory territorialism are the type of identities that can contribute to a healthy and just society” (*ibid*, p.928).

Drawing on Soja (1989), Mawani (2003) argues that it is of utmost importance to be reminded of the way in which landscapes are shaped by maps and laws in an apparently benign way – describing the process as an “apparently innocent spaciality” (*ibid*, p.132). Thonchai (1994, p.53) makes a similar point and suggests that maps are often seen to be non-interfering and are a seemingly innocuous documentation of a grounded reality. But the process of mapping does distort details, and the “ZEMP” map produced for the World Heritage site at Angkor is an example of this (see Chapters 4 and 6 herein). This debate about the distorting and negative effects of mapping continues and alternative ways of mapping are increasingly being sought, with local participatory techniques being at the forefront of these initiatives (Corbett and

Giacomo, 2009). These approaches highlight a more adaptive approach to representing the world through the maps.

2.6 SUMMARY

The discussion in this chapter illustrates that law and space interact in important ways and the emerging sub-discipline of legal geography provides a valuable disciplinary vantage point to understand these processes. Neither law nor space operate in isolation from one another and, as much of the literature in legal geography shows, laws can shape and legitimise, often in a seemingly benign way, landscapes. The reverse is also true; landscapes influence the way in which legal systems develop. It is in the core concerns of land and property that connections between the disciplines are illustrated to intertwine in complex ways. Moreover, law and geography scholarship has a particular value in combining to address social issues; including issues arising in heritage contexts. It also becomes clear that processes of territorialisation are at work in the creation of places and the process of mapping and boundary-making is illustrative of this. The role of scale and the way in which different scales can be invoked to promote or undermine administrative ends is important for informed public policy debates. To this end, a detailed consideration of both the concept and operation of World Heritage is addressed in the next chapter.

Chapter Three

WORLD HERITAGE STATUS

3.1 INTRODUCTION

World Heritage places sit in our collective conscious; they are testimony to the iconic, the beautiful or strange and, more than anything, we imbue these places as sites of 'outstanding universal value'. Sites across the globe, from Australia's Kakadu, Uluru and the Great Barrier Reef, to Borobudur, Angkor, the Great Wall of China, the Taj Mahal, the historic centre of Prague, Venice and to Yellowstone, there are images and imaginings – a symbolism - associated with these places. All are designated World Heritage sites and all differ but illustrate the great diversity of the places we call World Heritage.

The designation is designed to conserve and preserve for all; those of us here today and those of us to follow. Indeed, the principle of intergenerational equity is alive and well with the World Heritage phenomenon. The manner in which we protect these sites – through legal regulation – is a relatively recent development. The law is called upon to control the human/environment interaction. In a World Heritage setting, it does this in a spatially defined context. This notion that places are protected (through regulation) in order that they ought to be enjoyed by all has a contemporary history. In 1872 President Ulysses S Grant presided over the creation of the first National Park – Yellowstone – through dedicated legislation (see Rydell and Shivers Culpin, 2006). A dedication to preservation in the name of the people is represented by the "Roosevelt Arch" located at the gateway to the northern entrance of the Park in which the words "for the benefit and enjoyment of the people" are inscribed. In 1976 Yellowstone became a designated Biosphere Reserve and the Park now enjoys World Heritage status, having been added to the World Heritage list in 1978.³⁹ Its World Heritage designation takes the sentiment echoed in the Roosevelt dedication to the world. But how can a place belonging to the people of the United States also belong to the people of the world? The answer is found in the 1972 *Convention*.

³⁹ See Advisory Committee report, available at http://whc.unesco.org/archive/advisory_body_evaluation/028.pdf and World Heritage Committee, Report of the Second Session of the Committee, available at <http://whc.unesco.org/archive/repcom78.htm#28>.

Countries that ratify the Convention recognise that sites inscribed on the World Heritage List, although located on their territory, actually constitute a world heritage “for whose protection it is the duty of the international community as a whole to cooperate”.⁴⁰ There are currently 911 properties with a World Heritage classification and as at 2010 186 State parties had ratified the *Convention* – UNESCO claims that this makes it amongst the most successful international conventions.⁴¹ How does the designation translate to local conditions and what is the effect of a listing on existing resident communities? In particular, are pre-existing tenure arrangements altered by the classification? These are some of the key questions addressed by this research.

This chapter explores the concept and application of the term World Heritage, and provides the necessary background and context for understanding Angkor’s inclusion in the World Heritage “club”. In the first instance there is a review of the term “heritage” which is useful in helping to elaborate the wider concept. This chapter goes on to explain what is meant by a World Heritage listing and details the process by which properties are listed onto the World Heritage List. Further, the listing process for Angkor Archaeological Park is described in full, from pre-nomination through to final listing and beyond. The importance of the *Convention* and its administrative dimensions is also explained. Such an analysis of the World Heritage concept is fundamental to our understanding of the impact of listing on local communities for the guiding principles behind the local regulations can be traced back to the *Convention* and its *Operational Guidelines*. From this arises a concern with spatially defined planning management strategies. The use of buffer zones is explored for protected area site management within a heritage framework and the possibility of adopting curtilages in a landscape approach to management is considered. In this chapter the concept of “outstanding universal value” is explored and the desirability of flexibility in tenure arrangements for a heritage site is posited.

⁴⁰ Article 6, sub-section 1, available at <http://whc.unesco.org/en/Conventiontext/>.

⁴¹ See UNESCO’s official World Heritage website, available at, <http://whc.unesco.org/en/35>.

3.2 THE CONCEPT OF HERITAGE

3.2.1 What is "Heritage"?

The concept of heritage⁴² has evolved in recent decades to encompass a more widespread meaning than its original denotation. Boer and Wiffen (2006) point out that the development of the notion of heritage reflects "a growing realisation of the historical, cultural, aesthetic, and political significance of the built environment, in terms of architecture and the use of materials, and of cultural objects of all kinds." (*ibid*, p.7). The up-swell in interest in all things "heritage" over recent decades is observed by Lowenthal (1998). In the first few pages of his book he writes:

"The current craze for heritage seems to me likely to last and hence essential to understand. Its potential for both good and evil is huge. On the one hand, it offers a rationale for self-respecting stewardship of all we hold dear; on the other, it signals an eclipse of reason and a regression to embattled tribalism." (*ibid*, pp.2 – 3)

Further, he points out that "(f)ifty years back, book titles and indexes suggest, heritage dwelt mainly on heredity, probate law, and taxation; it now features antiquities, roots, identity, belonging" (*ibid*, pp.3 – 4). Lowenthal (*ibid*) also suggests that the French language equivalent of the word "heritage" - "patrimony", has suffered the same fate, as it broadened in meaning from a concept centred on inheritance to a meaning today which includes 'cultural legacies' (*ibid*, p.4). Like Hall and McArthur (1996), Aplin (2002) turns to the dictionary as an aid in his attempt to define "heritage" and considers that dictionary definitions tend to favour a "western preoccupation with economic rationalism" with a preference for heritage to reflect the idea of inheritance (*ibid*, p.13). An important point made in Lowenthal's (1998) work is his observation that the language or text of current day heritage is formed in (primarily) Western tones, moreover, he points out that "(g)lobal popularity homogenizes heritage" (*ibid*, p.5). Management of heritage, therefore, takes on uniformity across the globe, with such a uniformity having been conceived on Western terms and conditions.

⁴² Heritage here connotes both the cultural and natural dimensions. However, the discussion tends towards an analysis of cultural heritage, as Angkor is classified as a cultural site, despite the fact that the *World Heritage Convention* embraces both.

The fluidity of the concept is undoubted, as is the subjective and ever-evolving nature of the idea (Boer and Wiffen, 2006; Aplin, 2002). Some critics now argue that the all-embracing nature of an ever-expanding definition may, ultimately, do more harm than good for, in practical terms, current management of heritage is currently fraught with challenges (Von Truestzsch, 2005). The dilemma associated with adequately defining heritage is further addressed by Lowenthal (1998, pp.94 - 95) when he observes that “(h)eritage today all but defies definition... Yet its very *lack* of explicit meaning endears heritage to many custodians...Untrammelled by definition, heritage agencies feel free to back whatever they favour at any given moment”. These observations suggest a cavalier approach – where those with an agenda can evoke the term for their use to justify their actions (see also Lowenthal, 2005).

Often cited for his definition of heritage, Davison (1991) indicates that the ‘heritage’ was once traced to the concept of inheritance but in more recent times, particularly in the latter half of the twentieth century the term has evolved to incorporate a “more specialised usage as the name we give to those valuable features of our environment which we seek to conserve from the ravages of development and decay” (*ibid*, p.1). He also suggests that the term’s value is not necessarily limited to a precise meaning but draws value from “its psychological resonance” (*ibid*, p.4). Arguably, this observation is reinforced by the rhetoric and language of many of the instruments (and practitioners) of the heritage profession today which praise natural and cultural sites lavishly for their “beauty”, “uniqueness”, “symbolism” and other such similar, evocative and descriptive sentiments. Read (2001) describes this as a “naturalized, picturesque model of landscape” (refer to Chapter 6 herein). Butland (2009) makes the point that heritage Charters and other documents of the profession (citing as an example the Burra Charter) have veered away from embracing the term “heritage” in favour of the use of the term “culturally significant places”.

Davison and McConville (eds, 1991) devote an entire chapter (Chapter 3, McConville) to the language of heritage, or as McConville calls it “heritage terminology”. He does make a compelling point that with the rising popularity of heritage come a number of heritage professionals who embrace the concept of conservation – in the name of the preservation of heritage – with the utmost enthusiasm. He also reflects that the language of the heritage professional is personal – though hidden by a professional mask so that while purporting to be

objective in their analysis of a building or site, ultimately the assessor makes a personal judgment about the inherent value and character of it. The significance of this is that the value of heritage may be skewed in favour of the current fashions favoured by those in the heritage industry and, therefore, rarely reflect the views of those who 'own' the heritage. Arguably, one way to combat the possibility is to refer, or defer, to the people who live or work in or around, or to those who simply use the site or building in order to gauge the heritage value (or otherwise) from their perspective. The links between heritage and local people is explored further in this research in Chapter 6. In light of the ever-evolving definition of the concept, Evans (2000) is keen to suggest that a flexible approach be taken in any attempt to narrow or simply define the concept of 'heritage'. This is a particularly important point in light of the competing demands on the use of the concept as a tool in fields as divergent as law, architecture, art, art-history, archaeology, or GIS in a complex, plural society. In this thesis, the concern is to identify the value of local perspectives in World Heritage management; especially in land administration practice. Heritage, therefore, can take on multiple meanings, as the preceding discussion indicates. The banner of heritage can be invoked to protect monuments while simultaneously the concept can be used to promote the rights of pre-existing communities (as in promoting their land management heritage). These multiple evocations can create tensions, and create particular challenges for site managers. It is contended that the conservation and protection of the monumental heritage is predicated on ensuring resident expectations about lifestyle choices can be met.

Having attempted to define heritage – or at least examined the expanding scope of the concept - a further concern is to consider what types of legal mechanisms can be used to conserve, preserve and protect 'heritage'?⁴³ This also gives rise to a question of whether legal mechanisms are the best way to ensure heritage protection and conservation (*per* Pratt & O'Keefe, 1989, p.14) and their observation, which is worthy of endorsement, that 'the law has its limits' - meaning that an over-reliance on legal mechanisms for the protection of heritage ought to be avoided.⁴⁴ There is also an argument to be made that when a concept is subject to constant renewal it is difficult to create legal mechanisms that protect something so ill-defined. This is also a view recognised by Evans (2000, p.53) who cites Bates (1995) with approval:

⁴³ Conserve and preserve are often used interchangeably. Each has its own meaning. In this context, issues of conservation and preservation run secondary to the primary concern of protection.

⁴⁴ Such a perspective is reinforced by observations emanating from the Brundtland Commission, or the World Commission on Environment and Development (1987), *Our Common Future*, Oxford University Press, Oxford, p.63: "The law alone cannot enforce the common interest."

“The extent to which governments actually use legal, rather than administrative techniques to achieve policy determinations varies widely; just because policies and means of action are enshrined in statutory legislation does not necessarily mean that those provisions are legally enforceable, rather than merely administratively persuasive or desirable.”

Evans (*op cit*), in fact, argues that a ‘principles-based’ rather than a ‘rules-based’ approach has more merit in heritage protection regimes than would otherwise be the case in other areas of the law. The inherent flexibility in this approach seems appealing in a legally plural post-conflict society such as Cambodia – this country context shall be investigated further in the following two chapters.

Boer and Wiffen (2006) identify a long *legal* tradition in the protection of heritage. They explain that this tradition has its origins in Plato and Aristotle’s references to ‘treasure’ through Roman laws from 200 AD which deal with antiquities right through to ‘modern’ European legislation of the 1800s. These give rise to the increasing international concern for heritage protection which becomes reflected in international instruments ranging from, to illustrate with selected examples, the *Hague Convention* of 1954 (UNESCO, 1954), the *Venice Charter* of 1964 (ICOMOS, 1964) to the *World Heritage Convention* of 1972, and the range of instruments which have followed it.

Where did this drive to rally a global response in the name of cultural and natural heritage emerge? The antecedents of the international heritage movement, and of the creation of the *Convention*, emerged post two World Wars and the damage they inflicted on the cities of Western Europe (Evans, 2000), in particular, and from selected incidents where the mobilisation of multiple actors (State and non-State) witnessed the ‘rescue’ of famous sites (O’Keefe, 2006). In particular, the flooding of the Abu Simbel temples in Egypt as a result of the decision to build the Aswan Dam in 1954, is cited as a pivotal moment in shaping the international heritage movement (Turtinen, 2000; Pocock, 1997). Following an appeal emanating from the governments of Egypt and Sudan under the auspices of UNESCO, more than 50 countries donated up to half of the US\$80 million required for the project to save the Abu Simbel and Philae temples (which were moved and saved) (Turtinen, 2000). The success of this project

triggered other campaigns, including efforts to safeguard Venice; the archaeological ruins at Mohenjo-Daro (Pakistan) and the Borobudur temple compound (Indonesia) (*ibid*). As a consequence of these actions, UNESCO, together with ICOMOS, prepared a draft *Convention* for the protection of cultural heritage (*ibid*; Titchen, 1995).

At the same time as the concern emerges for the protection of cultural sites across the globe, a similar call was made for the protection of sites with natural significance. Linking the two concerns, a conference held in Washington, D.C. (United States) in 1965 “called for a ‘World Heritage Trust’ that would stimulate international cooperation to protect ‘the world’s superb natural and scenic areas and historic sites for the present and the future of the entire world citizenry’” (Turtinen, 2000). The IUCN had similar concerns and together with the UNESCO and ICOMOS proposals for the protection of cultural heritage, the movements merged and were both introduced to the 1972 United Nations conference on Human Environment in Stockholm (Sweden) (*ibid*, Aplin, 2002; Evans, 2000). This conference gave rise to the 1972 “Stockholm Declaration”.⁴⁵ Evans (2000) points out that since this time key themes or concepts (“universal principles”) and which are variously labeled, for example, “sustainable development”; “precautionary principle”; or “intergenerational equity”, have emerged as significant influences in the growing field of environmental and heritage law. Importantly, for the issues raised in this thesis, he states:

“... the philosophy of sustainability entails some redefinition of environmental and property rights and a paradigm shift from an ethic of unfettered dominion over cultural and natural heritage toward an ethic of a revived form of stewardship.⁴⁶ In this context other key universal principles... assist to redefine property rights towards conservation...” (Evans, 2000, p.6).

The shift away from the domination of proprietary rights is a key issue explored throughout this research (see both Chapters 2 and 4). Yet, from these concerns, which were adopted at the international scale via instruments like the Stockholm Declaration, emerges the *World Heritage Convention*, adopted in Paris in 1972 and coming into force with the requisite number of signatory countries in December 1975.

⁴⁵ The 1972 Declaration of the United Nations Conference on the Human Environment, available at <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503>, accessed 5.3.08.

⁴⁶ Lowenthal, D., (1986), (2006).

3.2.2 What is World Heritage?

On 16 November 1972 the General Conference of the United Nations Educational, Scientific and Cultural Organisation (UNESCO), during the course of its seventeenth session, adopted the *Convention Concerning the Protection of the World Cultural and Natural Heritage*. The preamble to the provisions provides the rationale for the *Convention* (Box 3.1). From this recital the emphasis on the global scale and subsequent obligations imposed upon the global community to act (conserve and protect) is clear. The preamble is also useful for providing the language from which the management philosophies for World Heritage protection emerge.

Noting that the cultural heritage and the natural heritage are increasingly threatened with destruction not only by the traditional causes of decay, but also by changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction,

Considering that deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world,

Considering that protection of this heritage at the national level often remains incomplete because of the scale of the resources which it requires and of the insufficient economic, scientific, and technological resources of the country where the property is to be protected is situated,

Recalling that the Constitution of the Organization provides that it will maintain, increase, and diffuse knowledge, by assuring the conservation and protection of the world's heritage, and recommending to the nations concerned the necessary international *Conventions*,

Considering that the existing international *Conventions*, recommendations and resolutions concerning cultural and natural property demonstrate the importance, for all the peoples of the world, of safeguarding this unique and irreplaceable property, to whatever people it may belong,

Considering that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole,

Considering that, in view of the magnitude and gravity of the new dangers threatening them, it is incumbent on the international community as a whole to participate in the protection of the cultural and natural heritage of outstanding universal value, by the granting of collective assistance which, although not taking the place of action by the State concerned, will serve as an efficient complement thereto,

Considering that it is essential for this purpose to adopt new provisions in the form of a *Convention* establishing an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods.

Source: UNESCO⁴⁷

Box 3.1 Preamble to the *World Heritage Convention*, 1972.

⁴⁷ UNESCO, available at <http://whc.unesco.org/archive/Convention-en.pdf>.

There is an emphasis on responsibility to conserve and protect in a collaborative manner and the text sets the scene for inclusiveness in heritage management. UNESCO elaborates on the concept, and suggests that “world heritage” is:

“... our legacy from the past, what we live with today, and what we pass on to future generations. Our cultural and natural heritages are both irreplaceable sources of life and inspiration... What makes the concept of World Heritage exceptional is its universal application. World Heritage sites belong to all the peoples of the world, irrespective of the territory on which they are located.”⁴⁸

There is clearly an emphasis on concepts such as “intergenerational equity” and a “common heritage”; the language is vivid and emotive, but what does it actually mean? Again, the responsibility falls to all, rather than on the country (and its people) in whose territory the site is located. This appeal to an international norm - of an international community working toward a common goal in heritage management - permeates policy and practice in World Heritage circles. Sites might be local but they are, simultaneously, global. The key to a successful World Heritage listing, however, is the presence of “outstanding universal value”.

Thus, what makes a site worthy of a World Heritage classification is whether it meets the yardstick of “outstanding universal value”. There are now ten criteria to determine whether a property makes the grade (Box 3.2).

⁴⁸ UNESCO, World Heritage Centre, available at <http://whc.unesco.org/en/about/>.

- (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;
- (vi) 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);
- (vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;
- (viii) be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;
- (ix) be outstanding examples representing significant ongoing ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;
- (x) contain the most important and significant natural habitats for in-situ conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

Source: UNESCO, 2008; Clause 77 *Operational Guidelines*

Box 3.2

The ten criteria for "Outstanding Universal Value"

The concept, however, is not without debate and its definition remains nebulous. Currently, "outstanding universal value" is defined in the *Operational Guidelines* as:

"... cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity. As such, the permanent protection of this heritage is of the highest importance to the international community as a whole..." (UNESCO, 2008, clause 49, p.14).

Again, the rhetoric alludes to intergenerational equity and common heritage. The concept, in this respect, is vague. To this end, the World Heritage Committee has begun to reconsider the

meaning of "outstanding universal value".⁴⁹ In an attempt to narrow the broad definition, the IUCN suggests that the concept be further restricted (in UNESCO, 2007) for the purposes of better managing the World Heritage list.

3.2.3 Types of World Heritage Sites

World heritage sites are divided into cultural sites; natural sites, mixed sites and cultural landscapes. Commonly, the division between cultural and natural sites lies at the heart of the typology of World Heritage site classification (Lowenthal, 2005). This system of classification is inevitably artificial to some extent (Hall and McArthur, 1996) and one that may be counter-productive for heritage purposes in some contexts. Article 1 of the *Convention* defines cultural heritage while Article 2 defines natural heritage (Box 3.3).

Article 1:

For the purpose of this *Convention*, the following shall be considered as "cultural heritage" monuments:

- architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;
- sites:
 - works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 2:

For the purpose of this *Convention*, the following shall be considered as "natural heritage":

- natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty.

Source: UNESCO⁵⁰

Box 3.3

Articles 1 and 2, *World Heritage Convention* 1972.

⁴⁹ Sitting in its 30th Session in Lithuania in 2006, the World Heritage Committee considered an evaluation of the concept of 'outstanding universal value' in reports provided by both the IUCN and ICCOMOS (UNESCO, 2006). The work of assessing outstanding universal value and of giving the concept practical meaning goes on and was the subject of consideration in the World Heritage Committee's thirty-first session held in Christchurch, New Zealand in July 2007 (UNESCO, 2007) and this work continues.

⁵⁰ UNESCO, available at <http://whc.unesco.org/archive/Convention-en.pdf>

Ostensibly, therefore, the list appears to be divided, pursuant to Articles 1 and 2, into “cultural” and “natural” heritage sites. However, there is also a third category and, as an alternative, some properties may be both cultural and natural sites – these are called “mixed” properties and are classified as such if they satisfy part or all of the conditions of Articles 1 and 2. However, the category of a “mixed” property was not found in either the *Convention* or the *Operational Guidelines*. Pocock (1997) suggests that it was inevitable that mixed sites drew out complex interdependencies, a fact which is credited with the creation of a fourth World Heritage type – a “cultural landscape” (Rössler, 2006 & 2000; UNESCO, 2004).

The notion of a cultural landscape is not defined within the *Convention* itself but it is defined in the *Operational Guidelines* as properties which:

“... represent the ‘combined works of nature and of man’ designed in Article 1 of the *Convention*. They are illustrative of the evolution of human society and settlement over time, under the influence of the physical constraints and/or opportunities presented by their natural environment and of successive social, economic and cultural forces, both external and internal” (UNESCO, 2008, Article 47, p.14).

It is argued that this new category makes “the recognition of heritage more accessible to regions currently under-represented on the World Heritage List and (have given) new momentum to the interpretation of heritage” (Rossler, 2000, p.32). Rossler has also observed that the category allows for better recognition of local populations and their links to heritage, and provides for a more holistic approach to human/environment connections (see also Pannell, 2006).⁵¹ It is also asserted that the Asia-Pacific region “is at the origin of the development of the concept of cultural landscapes” (UNESCO, 2004). For cultural landscapes in an Asian setting Taylor (2004) writes of the need to embrace local conditions in site management, especially in the face of the globalising effect of international heritage organisations. It is in the heritage of cultural landscapes that communities can both accommodate and celebrate the heritage of the everyday (Taylor, 2004).

⁵¹ O’Donnell, P., (2004) provides insightful commentary on the links between World Heritage cultural landscapes, in particular (a type of World Heritage site) and other IUCN classifications.

In its Southeast Asian setting, Angkor Archaeological Park is classified and listed as a cultural heritage site, although calls have been made for its reclassification as a cultural landscape (Taylor and Altenburg, 2006). Indeed, as early as the time of the original nomination calls were made by the ZEMP⁵² team for the site to be considered for the cultural landscape classification (Wager, 1995; Wager in von Droste *et al.*, 1995, Ch. 13). Some continue to argue for this reclassification (Mackay *et al.*, 2008) and much of the work undertaken by a range of professionals working in and around Angkor is consumed with establishing the extent of the Angkorian Empire⁵³ and could, arguably, support any submission to the World Heritage Committee for a re-inscription of the site to a cultural landscape (providing the criteria are met)⁵⁴. However, a significant question remains as to whether the expertise of management in light of the World Heritage listing has taken the authorities any further down the road to resolving many of the uncertain issues relating to the living landscape. Logan (2005) makes a similar point in his commentary on the dearth of re-nominations to this category. He comments that it is due to the complexities of these sites; they often cover vast areas and are home to divergent local communities who seek to maintain, or even improve, their lifestyles. Moreover, Logan (2005) points out that it is unethical to call for these landscapes to be frozen “into fixed representations of a traditional and exotic past.” In an Asian setting he also observes that rapidly increasing populations and the need to modernise fuel the need to develop, and suggests that, “(i)n such a context it is difficult enough to argue for the protection of individual monuments and small historic neighbourhoods; the ambition of conserving larger, more complex cultural landscapes is even more challenging, perhaps even too challenging” (Logan, 2005, p.3). This thesis argues that these observations and sentiments apply equally to any attempt to reinscribe Angkor. Although the cultural landscape phenomenon provides an unprecedented opportunity to celebrate “the remarkable existence of continuing living history” (Taylor and Altenburg, 2006, p.269) the question becomes how to allow these traditions to continue and evolve while simultaneously preserving and protecting? Efforts must be made to ensure that management systems, including regulatory approaches to land administration, allow living histories to be maintained without strangulating resident communities.

⁵² ZEMP refers to the UNDP project on the “Zoning and Environmental Management Plan” created for Angkor, see pp.101-105 herein.

⁵³ Or the settlement extent of the Empire, as an example see the work of scientists and archaeologists of The University of Sydney “Greater Angkor Project” (“GAP”), <http://acl.arts.usyd.edu.au/angkor/gap/> done in collaboration with APSARA and the EFEO, or see Fletcher, *et al.*, 2007.

⁵⁴ Taylor and Altenburg, 2006, suggest Angkor clearly meets the challenge of outstanding universal value in both categories of “Organically Evolved Continuing Landscapes” and “Associative Cultural Landscapes”, at p.274 – 276.

3.2.4 The *World Heritage Convention*

As noted elsewhere the *Convention* is often cited as one of the most successful pieces of international treaty making ever undertaken (Pocock, 1997; Strasser, 2002). This claim is based in large part on the fact that 186 countries (State parties) are signatories to the *Convention*, representing 911 properties worldwide.⁵⁵ Nonetheless, there are shortcomings with the treaty. As Bianchi and Boniface (2002) point out, there is no mechanism for intervention by either UNESCO or an advisory body to ensure compliance with the treaty. Nor is there an overarching regulatory body, the result of which is that regulation of a World Heritage site can become vague and ambiguous, as can any international treaty without adequate supervision and no effective enforcement mechanisms. Bianchi and Boniface's (*ibid*) observations were written for an Editorial of the *International Journal of Heritage Studies*, commemorating the 30th anniversary of the *Convention*, and highlight the inherent dilemmas associated with (a) international law, but, and more importantly for the purposes of this work, (b) the ever-complicated arrangements which can evolve with a World Heritage classification for actual, effective, site management.⁵⁶

Many of these issues were canvassed at a 30th Anniversary Workshop (of the *Convention*) on "The Legal Tools for World Heritage Conservation" held in Sienna, Italy in 2002. Various themes were canvassed but the workshop focussed on two key issues, the first an attempt to establish whether the evolution of international law post-1972 has had an impact on the *Convention*, and the second being an assessment of the *Convention* as an instrument of international governance (Francioni, 2002).⁵⁷ For the purposes of this thesis, in terms of the need to redress deficiencies in the treaty it was noted that,

"19(ii) The issue of private ownership of heritage was raised in relation to questions of access, protection and economic gain. It was considered that this issue could

⁵⁵ As at August 2010, see <http://whc.unesco.org/en/list>.

⁵⁶ Of course there are other ways of assessing the success or otherwise of the *Convention*. One might be to determine whether heritage sites are being maintained, improved or degraded. Heritage sites may be degraded through climate change, looting or neglect. This research seeks to understand if World Heritage site management adequately takes account of local perspectives in landscape management.

⁵⁷ UNESCO, 2003c, Item 4 of the Provisional Agenda: Policy/legal issues concerning inscription of properties on the List of World Heritage in Danger and the potential deletion of properties from the World Heritage list, World Heritage Committee Sixth Extraordinary Session, 17 – 22 March 2003, Decision WHC=03/6 EXT.COM/INF.4D, available at <http://unesdoc.unesco.org/images/0012/001299/129972e.pdf> accessed 6 December 2005.

become of increasing relevance to the implementation of the *World Heritage Convention* in the future” (UNESCO, 2003c, p.4).

These issues, firstly, to ensure protective mechanisms in the form of legal regulations for heritage protection and, secondly, the quandary associated with private “ownership” (not restricted to artefacts but includes real property – or land) are two of the issues which are explored in relation to the management of the Angkor World Heritage site throughout this research. In particular, empirical data collected during the course of fieldwork and presented and discussed in Chapter 6 shed further light on the implications of these two issues.

3.2.5 Administration of the *Convention*

The *Convention* is administered by the World Heritage Centre acting as the *Convention’s* Secretariat (pursuant to Article 14). The Centre itself operates under the auspices of UNESCO and is based in Paris, France. The World Heritage Centre receives advice on World Heritage nominations and periodic reporting from three international bodies⁵⁸; (1) ICCROM, (2) ICOMOS, and (3) the IUCN.

The World Heritage Centre is directed by the World Heritage Committee⁵⁹ and the World Heritage Bureau. The Committee comprises representatives of 21 member States who serve on a rotational basis. The Committee meets once a year and takes responsibility for the implementation of the *Convention* in that they make decisions about listing new properties; about the disbursement of funds from the World Heritage Fund; about the listing or de-listing of sites in danger. Importantly, it is the role of the Committee to examine the reports on the state of conservation of World Heritage properties and the Committee is empowered to request States to take action in conservation or protection of a site if it so deems fit. The World Heritage Bureau is a sub-group of the Committee and is composed of 7 State members who are elected annually to provide administrative assistance to the Committee (for example, to co-ordinate meeting dates; agendas etc).⁶⁰ For the benefit of State parties, the *Convention* is complemented

⁵⁸ These bodies are given advisory status by virtue of Article 8.3 of the *Convention*.

⁵⁹ Established by virtue of Article 8.1 of the *Convention*. The set-up, role and functions of the Committee are further articulated in the *Operational Guidelines* at Part I.E, pp. 5 – 7.

⁶⁰ The information on the role and function of the World Heritage Committee and World Heritage Bureau is available at <http://whc.unesco.org/en/committee/>

by *Operational Guidelines*.⁶¹ The *Operational Guidelines* are subject to continual review. In 2002, for example, a review of the legal dilemmas within the guidelines dealt with a raft of issues, but the pertinent one for the purposes of this research revolved around ‘whether management of a World Heritage property should be based on evaluation and protection of that property as a whole, or should be limited to ensuring the protection of certain specifically identified “values” (IUCN, 2002, p.10). The implications for site management are significant and are related to the discussion about the role and use of planning tools such as buffer zones which is discussed later in this Chapter.

Importantly, for the Asia-Pacific region, a “Global Strategy”⁶² was implemented by the Committee in 1994 to redress the perceived geo-political imbalance of the List (Strasser, 2002). As a site in Southeast Asia, Angkor is one of the more prominent in the region. As a consequence it appears to receive reasonable attention from the World Heritage Centre and the international heritage community generally. It has also been heralded as a role model for management practice in greater Southeast Asia. Given this, the need to address shortcomings in site management is ever more critical. The geographical imbalance within the World Heritage list itself is credited to the fact that those countries seeking listing (and preparing tentative lists) are predominantly Western European. This is a fact which reflects the reality that these countries tend to have pre-existing heritage protection regimes in place, making nomination of sites, and compliance with the *Convention’s* obligations, easier (Strasser, 2002). Strasser also points to administrative hurdles within the World Heritage Committee vis-à-vis the General Assembly in which the Committee is seen to have more effect than the Assembly and while the *Convention*, by virtue of Article 8.2, seeks equitable representation across the globe, there is no mechanism to ensure that this objective can be achieved. Despite these shortcomings, there are continuing efforts aimed at achieving a more representative list.

3.2.6 The Listing Process

The process for listing a site for nomination to the World Heritage List is summarised in Box 3.4.

⁶¹ The current version of the Operational Guidelines dated January 2008 is available at, <http://whc.unesco.org/en/guidelines>.

⁶² In 1994 the World Heritage Committee launched the “Global Strategy for a Balanced, Representative and Credible World Heritage List” available at <http://whc.unesco.org/en/globalstrategy>.

1. Tentative List

The first step a country must take is to make an 'inventory' of its important natural and cultural heritage sites located within its boundaries. This inventory is known as the Tentative List, and provides a forecast of the properties a State Party may decide to submit for inscription in the next five to ten years and which may be updated at any time. It is an important step since the World Heritage Committee cannot consider a nomination for inscription on the World Heritage List unless the property has already been included on the State Party's Tentative List.

2. The Nomination File

By preparing a Tentative List and selecting sites from it, a State Party can plan when to present a Nomination File. The World Heritage Centre offers advice and assistance to the State Party in preparing this file, which needs to be as exhaustive as possible, making sure the necessary documentation and maps are included. The nomination is submitted to the World Heritage Centre for review and to check it is complete. Once a nomination file is complete the World Heritage Centre sends it to the appropriate Advisory Bodies for evaluation.

3. The Advisory Bodies

A nominated property is independently evaluated by two Advisory Bodies mandated by the World Heritage *Convention*: the International Council on Monuments and Sites (ICOMOS) and the World Conservation Union (IUCN), which respectively provide the World Heritage Committee with evaluations of the cultural and natural sites nominated. The third Advisory Body is the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), an intergovernmental organisation which provides the Committee with expert advice on conservation of cultural sites, as well as on training activities.

4. The World Heritage Committee

Once a site has been nominated and evaluated, it is up to the intergovernmental World Heritage Committee to make the final decision on its inscription. Once a year, the Committee meets to decide which sites will be inscribed on the World Heritage List. It can also defer its decision and request further information on sites from the State Parties.

5. The Criteria for Selection

To be included on the World Heritage List, sites must be of outstanding universal value and meet at least one of the ten selection criteria. These criteria are explained in the *Operational Guidelines for the Implementation of the World Heritage Convention* which, besides the text of the *Convention*, is the main working tool on World Heritage. The criteria are regularly revised by the Committee to reflect the evolution of the World Heritage concept itself.

Source: UNESCO, World Heritage Centre⁶³

Box 3.4

World Heritage Listing Process

The process described involves a formal, stepped approach to a World Heritage listing – something that was, in effect, manipulated in the situation of Angkor's listing.

3.2.7 Periodic Reporting

After a successful nomination, what procedures are put in place to ensure that a property is maintained in line with the World Heritage Listing? It was not until 1997 that "periodic reporting" came into effect for World Heritage properties. Part seven (VII) of the *Convention*

⁶³ Available at <http://whc.unesco.org/en/nominations/>.

provides for the presentation of reports on both the state of implementation of the *Convention* and the state of conservation of properties subject to the *Convention*. Specifically, Article 29 provides that State Parties are obligated to “give information on the legislative and administrative provisions they have adopted ...” (sub-section 1). Reports are required on a six-year cycle. Again, this clause did not come into effect until 1997 when it was advocated by the twenty-ninth session of the General Conference. The periodic reporting exercise is completed through the mechanism of a standard format questionnaire with the aid of “Explanatory Notes”. The process is designed to aid member States in fulfilling their obligations to the treaty. This remains the only way in which monitoring, and regulation of, World Heritage sites takes effect. These provisions, therefore, are particularly important in the absence of any overarching regulatory body where questions of continued listing might be asked or adjudicated (Bianchi and Boniface, 2002).

3.2.8 Implementing the *Convention*

Article 4 of the *Convention* provides that State Parties recognise the obligations to identify, protect, conserve, present and transmit “to future generations” heritage situated in its territory. Hall and McArthur (1996, p.5) point out that, in terms of defining heritage, the notion of ‘inheritance’ recurs in Article 4 by virtue of the intergenerational tenet in the wording “future generations”. O’Keefe (2004) argues that this obligation is enforceable by all the parties to the *Convention* against a non-complying party because these obligations are owed to all parties (known as an *erga omnes partes* in international law). O’Keefe (*ibid*) also suggests that the obligation “to future generations” may create a situation where a non-signatory State could take action against a non-complying State. O’Keefe (*ibid*) explores this idea, using the international law concepts surrounding third-party rights vis-à-vis treaties and concludes that in the absence of consent (implied by the intentions of the *Convention*), the treaty would have no binding implications for third party States. Upon an examination of the case study of the destruction of the Buddhas of Bamiyan in Afghanistan, O’Keefe concludes that the protests of the international community – being mostly phrased in non-compulsory language (he cites the use of wording such as “responsibility” compared with “duty” or “obligation” which give rise to different drafting intentions, *ibid*, p.203) – indicate that there is no intention on behalf of the international community to impose a customary law obligation for the enforcement of heritage conservation for the common good of humanity *per se* (*ibid*, p.205). So, if the conclusion is that

no customary obligation is created, are there any obligations on the international community at all created by Article 4? O'Keefe argues that diplomatic efforts which amount to intervention in a sovereign States' affairs is possible through an analysis of the case study he explores;

“The upshot is that, although it cannot be concluded that a State currently owes obligations to the international community as a whole in respect of cultural heritage situated on its territory, the international community as a whole, jointly and severally, is permitted by general international law to subject a State's peacetime treatment of such heritage to scrutiny, comment, and, where appropriate, criticism” (2004, p.207).

The role of the World Heritage Committee, and its ability to monitor and re-evaluate the status of World Heritage Sites (and to remove the status) would suggest that this comment reflects the reality of the international community's inability to intervene in a State's management of its heritage, but only to offer criticism and comment upon it.

Within the *Convention*, the national obligations of State parties are further articulated in Articles 5, 6 and 7, Box 3.5.

Article 5:

To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage situated on its territory, each State Party to this *Convention* shall endeavor, in so far as possible, and as appropriate for each country:

- (a) to adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programmes;
- (b) to set up within its territories, where such services do not exist, one or more services for the protection, conservation and presentation of the cultural and natural heritage with an appropriate staff and possessing the means to discharge their functions;
- (c) to develop scientific and technical studies and research and to work out such operating methods as will make the State capable of counteracting the dangers that threaten its cultural or natural heritage;
- (d) to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage; and
- (e) to foster the establishment or development of national or regional centres for training in the protection, conservation and presentation of the cultural and natural heritage and to encourage scientific research in this field.

Article 6:

1. Whilst fully respecting the sovereignty of the States on whose territory the cultural and natural heritage mentioned in Articles 1 and 2 is situated, and without prejudice to property rights provided by national legislation, the States Parties to this *Convention* recognize that such heritage constitutes a world heritage for whose protection it is the duty of the international community as a whole to co-operate.
2. The States Parties undertake, in accordance with the provisions of this *Convention*, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.
3. Each State Party to this *Convention* undertakes not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage referred to in Articles 1 and 2 situated on the territory of other State Parties to this *Convention*.

Article 7:

For the purpose of this *Convention*, international protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the *Convention* in their efforts to conserve and identify that heritage.

Source: UNESCO⁶⁴

Box 3.5

Articles 5, 6 and 7, *World Heritage Convention*

From these provisions come some of the primary responsibilities of implementation of the *Convention*. Article 5 clearly illustrates that there is an imposition on a signatory State party to provide supportive management structures – ranging from the technical through to legal frameworks deemed necessary to sustain a World Heritage property on the List. It is important to emphasize that the obligations under Article 5, in particular Article 5(d) are couched in language that gives some leeway to individual nations, as the first paragraph of the article includes the words “shall endeavour, in so far as possible, and as appropriate for each country.” Despite the burdens associated with Article 5 for State parties to the *Convention*, Article 6

⁶⁴ Available at <http://whc.unesco.org/en/>

follows with the proviso that national sovereignty remains fully protected under the terms of the treaty. The provisions of Article 6 shall be returned to repeatedly throughout the course of this research. In particular, the concept of “without prejudice to property rights provided by national legislation” is a key concern for any study that seeks to elaborate on the extent to which proprietary rights may be compromised by a World Heritage classification. The co-operative nature of the treaty is reinforced by Article 7. The supportive, collaborative nature of World Heritage listings is evident in the associated administrative arrangements which emphasis “assistance” for States in the implementation phase.⁶⁵ Having examined some of the more important clauses within the treaty and the guidelines it is appropriate to move on to consider the listing process for Angkor.

3.3 THE LISTING OF ANGKOR

3.3.1 Introduction

Angkor was listed on the basis that it met the demands of the cultural heritage selection criteria which are designed to judge whether the property can claim the “outstanding universal value” moniker (as previously discussed). These criteria are set out in the *Operational Guidelines* (UNESCO, 2008, II.D, p.19). Angkor was listed on the basis of criterion C, representing a ‘cultural’ property, sub-categories (i), (ii), (iii) and (iv) (Box 3.6).

⁶⁵ Assistance varies but this can amount to technical and monetary support.

Clause 77, Operational Guidelines 2008

77. The Committee considers a property as having outstanding universal value (see paragraphs 49- 53) if the property meets one or more of the following criteria.

Nominated properties shall therefore:

- (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...

Source: UNESCO, 2008

Box 3.6

Operational Guidelines, 2008, Outstanding Universal Value, Criteria (i) – (iv)

It was also listed on the basis of “authenticity” and “integrity” pursuant to Part IIE of the *Operational Guidelines*. These twin concepts are essential for nomination success, and, importantly, Article 78 of the *Operational Guidelines* suggests:

“To be deemed of outstanding universal value, a property must also meet the conditions of integrity and/or authenticity and *must have an adequate protection and management system to ensure its safeguarding*” (UNESCO, 2008, p.20, my emphasis).

The following analysis of the listing process reveals that it is this essential requirement for *adequate protection and management* that was tested and, arguably, continues to be tested, with the Angkor nomination.

3.3.2 The creation of site 668: Angkor Archaeological Park

The call for a World Heritage listing for the monuments and temples of Angkor emerged in the late 1980s and early 1990s, concurrent with the changing political scene within Cambodia and the Paris Peace Accords (Wager, 1995; Rooney, 2005; Vann, 2002). In late 1989 the process for Angkor’s inscription on to the World Heritage began. In a meeting in 1 September 1989 between the Director-General of UNESCO and H.R.H. Prince Sihanouk on behalf of the UN

recognised Coalition Government of Democratic Kampuchea held in Paris, Cambodia made a request for the help of the international community in conserving and preserving the monuments of Angkor (UNESCO, 1993; Wager, 1995b). In June 1990 the "First Technical Round Table of Experts on the Preservation of the Angkor Monuments" took place in Bangkok aided by the support of the Japanese government and under the auspices of UNESCO's "Plan of Action for the Conservation of the Angkor Monuments" and brought together over thirty representatives from both the government and non-government sectors (UNESCO, 1993). This was followed by the "Second International Round Table of Experts on the Preservation of the Angkor Monuments" held in Paris between 9th and 11th September 1991 (UNESCO, 1993). Amongst the main recommendations of this meeting was the call "(v) that a zoning plan for the Angkor area be developed in co-operation with the relevant Cambodian authorities and that UNESCO should initiate activities for the elaboration of a comprehensive master plan to guide long-term preservation and management of the site" (*ibid*, "Executive Summary", p.1).

The Director-General of UNESCO visited Angkor in late November 1991 and called for the international community to rally around and support the protection of the unique site (UNESCO, 1993, Annex 7). His narrative was emotive and poetic.⁶⁶

"(t)here are times in the history of humanity when both history and humanity keep silence.

Thus, it is that tragic, unfathomable periods go unrecorded, too fearsome, too distressing to enter the annals.

At such times, it only remains to wait for the awakening of history and with it humanity at that moment when tragedy, beauty and hope reappear together.

Today in Cambodia, tragedy withdraws, hope is reborn and the beauty of Angkor reaffirms its permanence in history...

Angkor, city of the Khmer Kings, is waiting to become once more the symbol of its country. Vestiges, which bear witness to a rich and glamorous past, reflect all those values that are a source for the Khmer people of hope reborn and identify recovered.

Yet, this symbolic city is in peril. The ravages of time, the assaults of nature and the pillaging of man further its decline with every passing day.

⁶⁶ This passage brings to mind and seems to affirm Lowenthal's (1998) comment that "We value our heritage most when it seems at risk." p.24

It must be saved!”

Vann observes that “(t)his date was the point of departure of the setting up of the international institutional machinery for the management of the site” (*op cit*, p.111). While Beschouch (2002) dates international community involvement emanating from the time of the request from Cambodia to UNESCO for inscription of the site (10 September 1991), others point to the petition from HRH Prince Norodom Sihanouk which was tabled before the Director General of UNESCO on July 1 1991 requesting that the site be placed on the World Heritage list (Libourel and Ogawa, 2003) as the relevant date. Regardless of the actual date upon which the site came to the (official) attention of the international community, there is little doubt about the strength of the call for Angkor’s nomination – the rhetoric and language surrounding these calls is emotive and strong.

During the course of the following year⁶⁷, under the auspices of the UNDP with partner organisations including the Swedish International Development Agency (SIDA), the IUCN, the Ecole Francaise d’Extreme-Orient (EFEO), the Angkor Foundation of Hungary, the United States National Park Service, and the Thai Fine Arts Department, a Zoning and Environmental Management Plan (ZEMP) for the region was developed as part of the continual work involved in the nomination process (Wager, 1995). Beschouch (2002, p.107) also points to the significance of a decision taken by the General Conference of UNESCO sitting in its twenty-sixth session (October – November 2001) to request the Director General “to assist the Cambodian authorities in elaborating the necessary legislative action and in preparing nominations for inclusion on the World Heritage List”. In September 1992 ICOMOS, one of the advisory bodies for the World Heritage Committee, drafted a report evaluating Angkor as a potential World Heritage site (UNESCO, 1992). This report (dated 16 November 1992) was the basis upon which the decision to list the site was made by the World Heritage Committee sitting in its Sixteenth Session in Santa Fe in December 1992.

The “Advisory Body Evaluation” provided by ICOMOS recommended Angkor’s *tentative* inclusion as a property worthy of inclusion on the World Heritage List on the basis of Criteria (i), (ii), (iii) and (iv) (Box 3.2), yet the report was mindful of the challenges for Angkor and:

⁶⁷ Work on the ZEMP began at the end of 1992, see Wager in von Droste, (1995), p.139, immediately after the inscription of the site.

“...recommended that final inscription be completed once the Committee has been satisfied on the following points:

- (a) a comprehensive and effective monuments law is in force in Cambodia;
- (b) an adequate monuments protection agency has been established, is property staffed and resourced, and is carrying out its work competently;
- (c) the boundaries of the World Heritage Site are reconsidered in the light of the results of the UNDP Zoning and Environmental Management project;
- (d) meaningful buffer zones which can be effectively managed are defined (also in light of the ZEMP)...” (UNESCO, 1992).

At this point in time of the pre-nomination process it seems that the advisory bodies share some significant concerns about whether the site shall be adequately protected and managed. The inadequacy of the administration, and regulatory arrangements for Angkor are highlighted in other documents. For example, in an internal (and unpublished) UNESCO Memorandum dated 20 August 1992,⁶⁸ that comments on the proposed cultural heritage legislation for Cambodia (prepared by a French jurist, Mr Fraoua, UNESCO, 1992) it is noted that in a number of ways the proposed legislation does not conform with World Heritage listing requirements:⁶⁹

“While the provisions of the text create a firm basis for protection of the site of Angkor, the protection will not be effective until the appropriate “reserve zone” is delimited (Art.8). This requires a decree of the Minister of Culture on the advice of the National Commission for the protection of the cultural heritage ...The consultant expert has proposed that, while the delimitation could be based on the old perimeters of the archaeological park of Angkor, this will not be adequate to protect the site from construction on the lands adjacent to the site... and there are already advanced schemes for such projects which would impinge on the world heritage value of the site... There is no management plan for Angkor. Such a plan should be embodied in the resolution to give it legal effect.

⁶⁸ Authored by the distinguished heritage law academic, Professor Lyndell Prott who was an official with the Cultural Heritage Section of UNESCO at the time. This memorandum was found during a visit to the ICOMOS international headquarters in Paris. It was amongst papers contained in the dossier on Angkor in the ICOMOS library.

⁶⁹ As previously indicated Article 5 of the *Convention* requires that State Parties have adequate protection mechanisms in place for a nominated site, see Box 3.5.

There are problems with implementation of the legislation..." (Prot, 1992, pp. 2 – 3, unpublished).

Monroe (1995, p.281) confirmed this view when he wrote that "ICOMOS recommended against the nomination - pending the implementation of effective zoning and land management legislation". Beschaouch (2002), on the other hand, was a strong advocate for a successful listing. He suggested that there was an excessive pre-occupation with procedural requirements throughout this pre-listing process that "constituted an obstacle." Moreover, he reveals that he used his position and influence ("I made cautious use of my influence...") as a senior member of the World Heritage Committee (and as both a Chairperson and Rapporteur during 12 years of service) to win "approval for the principle of an emergency inscription ..." (*ibid*, p.107). For Beschaouch, the need to list the monuments took priority over any administrative or regulatory hurdles. Angkor's listing was, in this sense, highly unusual.

These pre-listing remarks show a tension between the urgent call for protection and the need to ensure adequate regulatory processes were not overlooked. Nonetheless, Angkor was consequently submitted for inclusion on the World Heritage List in December 1992 and by virtue of Decision 16COM EA of the World Heritage Committee sixth session of 14 December 1992 (WHC-92/CONF.002/12) Angkor was inscribed on the World Heritage Sites in Danger List as a Cultural Heritage Site and accorded the World Heritage site number "668".

3.3.3 A "Site-in-Danger": conditional listing

The site in danger status was not requested by Cambodia, but Angkor was given this designation by virtue of the State of Conservation Report prepared by the advisory body, the IUCN (UNESCO, 1992, Decision 16COM EA).⁷⁰ This designation is not surprising given the political instability of Cambodia at the time and the reservations of experts (as described above). The text of the decision is replicated in Box 3.7.

⁷⁰ Beschaouch (2002, p.108) claims authorship of the text adopted by the Committee.

UNESCO, 1992, Decision 16COM EA

(I) Given the unique situation in Cambodia, which, in accordance with the Paris `Peace Accords, has been placed under the temporary administration of the United Nations since July 1991, the Committee has decided to waive some conditions required under the Operational Guidelines and, on the basis of criteria (i), (ii), (iii) and (iv), has inscribed the Angkor site, together with its monuments and its archaeological zones as described in the "Perimeter de Protection" accompanying the ICOMOS report, on the World Heritage List.

The Committee stressed that this action was not to be taken as setting a precedent for the inscription procedure. Therefore, in order to guarantee protection of the site for a three year period (1993 - 1995), the Committee has decided that a special in-depth study will be made of the Angkor site, and that reports will be presented to the Bureau and the Committee on the status of the monuments and the protective perimeter;.....

(II) In order to deal with the urgent problem of conservation quickly and effectively, the Committee has inscribed the site of Angkor on the List of World Heritage in Danger, and has requested, on the recommendation of ICOMOS, that the authorities concerned take the necessary steps to meet the following conditions:

- enact adequate protective legislation;
- establish an adequately staffed national protection agency;
- establish permanent boundaries based on the UNDP project;
- define meaningful buffer zones;
- establish monitoring and coordination of the international conservation effort.

Source: UNESCO, 1992

Box 3.7

Text of the Decision to Conditionally List Angkor

In an unusual move, the representative from the United States insisted on recording a separate declaration as an Appendix to this decision. This declaration was to the effect that it was the original intention of the United States only to support the listing provided that the ICOMOS recommendations were adhered to but that, subsequent to this, they would support "the compromise consensus to inscribe Angkor immediately" (UNESCO, 1992, Annex VI). Such an action reinforces the tentative nature of this listing and the manifest reluctance of some members of the World Heritage Committee.

What happened after the elapse of these three years and were these five conditions met in a timely manner? From earlier discussions we know that the monitoring the management of World Heritage sites was very limited prior to the introduction of the "periodic reporting" requirements. In assessments of this period it is the uniqueness of the listing process which is consistently emphasized. Lemaistre and Cavalier (2002) argue that the Cambodian authorities met the five conditions set out in the 1992 listing with the following events:

“December 1993: creation of the International Coordinating Committee for the Safeguarding and Development of the Historic Site of Angkor (ICC).

28 May 1994: adoption of the decree on the zoning of the region of Siem Reap/Angkor which was symbolically the first royal decree promulgated by the Royal Government of Cambodia.

19 February 1995: creation of the Authority for the Protection of the Site and the Development of the Region of Angkor (APSARA).

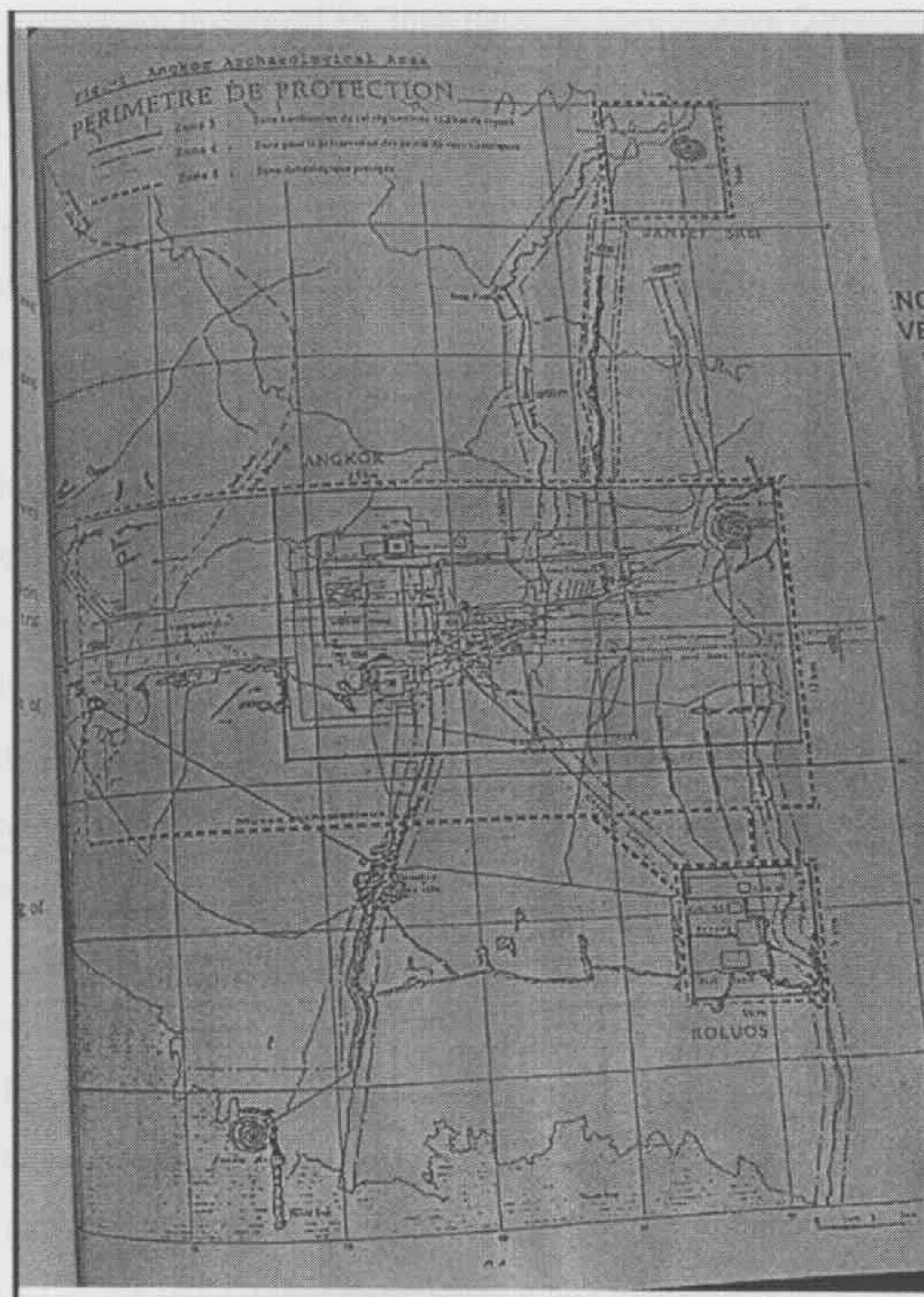
21 January 1996: promulgation of the law on the protection of national cultural heritage” (*ibid*, p.125).

The timeframes they outline suggest that the three year deadline was substantially adhered to. Candelaria (2005) suggests that the tentative, conditional listing was met in this timeframe, but cites the Paris Declaration of 2003 (some 6 years later) as evidence of the World Heritage Committee’s satisfaction with Cambodia’s progress. Others, however, such as Chau Sun Kerya (an APSARA Deputy Director-General) argue that the conditions were met in a prompt manner (that is, in the three years stipulated) by the Cambodian authorities (in Hoffman, 2006). Of these events it is the 1994 zoning law which is of central concern in this research. The conditions relating to the creation of the management authority, APSARA and the 1996 national law on cultural heritage protection are important in the suite of regulations aimed at site protection, but are not the primary concern of this research. The creation of the International Coordinating Committee for the Safeguarding and Development of the Historic Site of Angkor (the ICC), however, warrants some attention and before turning to the land management arrangements created by the 1994 zoning law, examination of the role and work of the ICC is required.

3.3.4 Monitoring the site (1): The ICC

One of the more unusual features of the administrative arrangements for Angkor is the continuing role of the ICC. Ordinarily UNESCO would maintain a more direct association with site managers than ensued at Angkor. The ICC was created in October 1993 with a meeting of experts hosted by the Japanese government, and met for the first time in December 1993 (UNESCO, 1993; Chau Sun, 2006). The aims of the meeting were articulated by the co-chairmen, Mr Syonzo Azuma, Parliamentary Vice-Minister for Foreign Affairs (Japan), and Mr Serge

Boidevaix, Secretary General, Minister of Foreign Affairs (France), and centred on coordinating assistance in the preservation and maintenance of the monuments of Angkor together with the need to improve the socio-economic infrastructure of the surrounding area (UNESCO, 1993a; UNESCO, 1993b). At this stage the need for a Master Plan was clearly identified which would include plans for rules regarding land use (*ibid*). Terms of Reference for such a Master Plan were presented to the first meeting of the ICC (December 1993) and it is apparent that the issue of land use/management and the planning policies to control these issues were identified at this early stage and a zoning map was actually produced at this time (Figure 3.1) (UNESCO, 1993c). The map uses the square and rectangular formulations which reoccur in other images (refer to Chapter 4 for discussion on the spatial representation of the regulatory regime at Angkor).



Source: UNESCO, 1993c

Figure 3.1

Master Plan Proposed Angkor Park Boundaries

As a result of this first meeting of the ICC the “Tokyo Declaration” was adopted. This was a general statement that set broad goals for support, assistance, rehabilitation and promotion of the site.⁷¹ The ICC continues to meet regularly (twice per year) and operates under the co-chairmanship of Japan and France with UNESCO acting as its permanent secretariat (Winter, 2007; UNESCO, 2003b). The Committee is constituted by those States and international organisations who adopted the Tokyo Declaration and are expected to contribute (financially or through in-kind support) to the development and safeguarding of Angkor (UNESCO, 1995). This form of administrative oversight was proposed very early in the history of World Heritage status for the site. In the field notes of a ZEMP team member dated 23 December 1992 – 13 January 1993 an “ideal administration” is recommended in the form of an international consultative committee. This consultant proposed an “International Consultative Committee for Angkor” (“ICCA”) which would:

“...work with the Cambodian authorities to supply the most expert advice, funding and international sourcing to meet the carefully planned strategy needs of the park’s continuing renovation and development...” (UNESCO, 1993b).

The value of an ICC approach has been reinforced with other nations adopting a similar body, where sites are deemed to be “in danger”. Accordingly, in Afghanistan and Iraq bodies modelled on the ICC have been created (Bouchenaki, 2005). However, some, including Winter (2002), have reflected critically on the ICC process and argue that the management authority adopts the position of a “child” of the ICC. In her critique of the process of creating international legal documents Riles (1999) describes slow, negotiated and technical sessions where diplomats and their aids work tirelessly to produce endless reams of paperwork, “(i)t is a detailed, labour-intensive building-block approach. One slowly pieces the text together, phrase by phrase, heading by heading. The objective is not so much meaning but logic and language” (Riles, 1999, p.813). Much the same could be said for the process of twice-yearly ICC meetings. Allocated a conference room in an international hotel in Siem Reap, delegates are given headphones for simultaneous translations between English, French, Japanese and Khmer. Senior delegates sit at the head of the room while a procession of projects presents their

⁷¹ The text is available at http://www.autoriteapsara.org/en/apsara/about_apsara/history_organization/tokyo_declaration.html

progress in 5 – 10 minute time slots. Riles' observations are making the obvious point – that the “theory and practice of international law are far apart” (1999, p.805).

In terms of meeting the obligations required in the initial listing declaration, by the time of the ICC Technical Committee meeting of 31 March 1995, both co-chairmen were indicating that the Cambodian authorities (with the aid of the ICC) ought to be congratulated for (or going most of the way towards) fulfilling the obligation to secure an adequate legal and institutional framework for Angkor (UNESCO, 1995, p.1 “Statement by the Japanese Co-Chairman”;p.3 “Statement by the French Co-Chairman”). Moreover, much of the discussion centred on the need to fulfill the remaining obligation – the need to create a national cultural heritage law (and the fact that this was being worked on, *ibid*, see p.12). Moreover, by the Fourth Technical Committee Meeting of 6 -7 October 1995, the Head of the Cambodian Delegation articulated in detail how the obligations had been met (UNESCO, 1995a), describing the evolution of protective legislation, the establishment of a dedicated protective agency, and the creation of protected area spatial zones with buffers.

3.3.5 Monitoring the Site (2): Periodic Reporting and Land Management

As discussed earlier, the periodic reporting mechanisms (“State of Conservation” reports) came into effect from 1997. It is through the paper trail of the periodic reporting documents that we witness a growing emphasis on land management issues and local community involvement in site management. Table 3.1 summarises selected decisions as they relate to the status, management and regulation arising from the reports to the World Heritage Committee. Of the reports and decisions made at the international level for Angkor, the most significant for the purposes of this thesis are those which go to the growing interest in land management-related issues and local community input as opposed to the traditional weight given to the restoration and preservation of monuments and temples (and other archaeological items).

Table 3.1 Decisions of the World Heritage Committee relating to issues of status; management and regulation of Angkor.

YEAR	SUMMARY / DECISION	REFERENCE
1992	Santa Fe decision, List in Danger	
1995	Berlin 19 th Session decision	
1998	The Committee retains the site on the List of World Heritage in Danger. Concern regarding theft and illicit trafficking of cultural property.	WHC-98/CONF.203/18
1999	The Committee retains the site on the List of World Heritage in Danger. Concern regarding theft and illicit trafficking of cultural property.	WHC-99/CONF.209/22
2002	No new documentation received & an oral report presented to the Committee. Decision 26COM.21(a) 10: (3) The Committee “urges” a report be provided by the next session a “report with technical details on all activities carried out over the past ten years” and (4) retains the site on the List of World Heritage in Danger.	WHC-02/CONF.202/18 26 th Session WHC, Budapest, Hungary.
2003	Decision 27COM 7A.22: (2)(c) The Committee “encourages” APSARA to “reinforce on-site legal provisions for heritage protection together with their administrative measures for implementation of such provisions” and (6) retains the site on the List of World Heritage in Danger (effected by Decision 27COM 8B.2).	WHC-03/27.COM/07A 27 th Session WHC, Paris, France
2004	Decision 28COM 15A.23: (6)The Committee “strongly urges” Cambodia “to elaborate a comprehensive Master Plan to address conservation issues, development control and tourism management..” and (7) removes the site from the List of World Heritage in Danger (effected by Decision 28COM 15C.3).	WHC-04/28.COM/26 28 th Session WHC, Suzhou, China.
2006	Decision 30COM 7B.61: (4) The Committee “expresses full support” to recommendations made by ICC in 2005 “concerning the strengthening of the management for protected Zones 1 and 2 and the preparation of a management plan ...” WHC-06/30.COM/7B – State of Conservation Report, pp. 151 – 153 refers to significant problems with legal mechanisms (articulated further in text below).	WHC-06/30.COM/19 30 th Session WHC, Vilnius, Lithuania

<p>2008</p>	<p>Decision 32 COM 7B.65: The Committee, “6. <u>Reiterates its serious concern</u> for the continuing and increasing threats posed to the Outstanding Universal Value and integrity of the property by the ongoing uncontrolled urban expansion in the property and its buffer zones, despite the efforts made by the Cambodian authorities; 7. <u>Requests</u> the State Party to address these threats by ensuring swift and full implementation of the recommendations of the 2005 mission, and in particular to: a) clarify, including by passing new legislation if necessary, the rules regarding property rights, ownership and building codes applicable to zones 1 and 2; b) enforce existing laws regarding illegal occupation, unauthorised construction and development and park-land appropriation/alienation; c) strengthen the capacities of APSARA to enable effective land use planning and management, including by providing it with the necessary resources.....”</p>	<p>WHC- 30th Session WHC, Quebec, Canada</p>

Source: UNESCO⁷²

Concern about land management around Angkor clearly emerges in the documentation during the 2000s. In 2002, at its twenty-sixth session in Budapest the World Heritage Committee, by virtue of Decision 26COM.21(a)10, retained the site on the List of World Heritage in Danger (UNESCO, 2002, WHC-02/CONF.202/18, p.20). Moreover, the Committee also appealed to Cambodia to report on the past ten years of activity (*op cit*, Decision 3) through the Periodic Reporting mechanisms. Accordingly, such a report was prepared - the 2003 Period Reporting (cycle 1) Section II Summary and, for the original report, 2003 Periodic Reporting (cycle 1) Section II.⁷³ These documents report that amongst the factors known to be adversely affecting the site are “unclear land ownership” and “encroachments and illegal constructions” and recommend as a remedy that “legal protection measures, together with their administration and enforcement, need to be reinforced” and “international assistance from the WHF may be

⁷² Available at <http://whc.unesco.org/en/list/668/documents/>

⁷³ Both the summary document and the fully completed Questionnaire for the 2003 reporting exercise are available at <http://whc.unesco.org/en/list/668/documents/> accessed 24 January 2008.

needed to... reinforce on-site legal protection" (UNESCO, 2003, Section II Summary, p.121 - 122). Moreover, in the Questionnaire format of the periodic reporting requirements (the original reporting document), APSARA reports that the legislative protection could not be considered sufficient for adequate site protection (UNESCO, 2003, Section II State of Conservation of specific World Heritage properties, Part II.4, "Management", p.10). Thus, sitting in its twenty-seventh session in Paris in 2003 the Committee made the decision to retain the site on the World Heritage List in Danger (Decision 27COM7A.22). Moreover, it encouraged APSARA to "reinforce on-site legal provisions for heritage protection together with their administrative measures for implementation of such provisions" (*ibid*). 2003 was also the year of the Second Intergovernmental Conference for Angkor (November) which was convened in Paris and followed ten years from the first such meeting (which produced the "Tokyo Declaration"). The purpose of the Paris meeting was to review the past ten years of experiences in safeguarding Angkor and to outline a 'plan of action' for the following ten years from 2004 until 2014 (Beschouch, 2002). The Paris Declaration is a 17-point declaration agreed to by 37 countries and 10 international organisations (including the ADB, FAO, UNDP, ICOMOS and World Bank) of both congratulations and aspiration – to improve co-ordination; to harmonise and to work together to protect Angkor and its monuments and so forth. Only one reference is made to local communities, other than those references to involving communities in tourism, in Clause 8 (Box 3.8).

Paris Declaration

...8- We warmly welcome the new partners of the Kingdom of Cambodia and invite them to work with the ICC in harmonizing their project proposals for heritage preservation, environmental protection and the accommodation of the local communities;

Source: APSARA⁷⁴

Box 3.8

Clause 8, Paris Declaration 2003

The Declaration, therefore, appears to pay some little regard to the existence of local communities – to the extent that they need to be "accommodated". The meaning of this clause

⁷⁴ Available at http://www.autoriteapsara.org/en/apsara/about_apsara/history_organization/paris_declaration.html

is far from clear. Does it mean that their housing needs are to be accommodated or is it a reference to inclusion? Most of the text of the Declaration is general in nature and it appears that there are few binding commitments arising from the document.

In 2004 the World Heritage Committee made the significant decision to remove the site from the World Heritage in Danger list. However, the decision to “strongly urge” the management authority to pursue a masterplan for the site should not go unnoticed for it represents a call, repeated since the time of the original inscription, to address this deficiency. The site management dilemmas associated with the absence of a cogent management plan is a continual lament of both the international community (articulated through the workings of the ICC) and site managers alike at Angkor. The following year, in 2005 a French jurist, Mr Lucien Chabasson was requested to examine the legal framework and, in particular, he was asked to report on the efficacy of the existing zones as they relate to adequate site management. This development is noted in Decision 30COM 7B.61 (and State of Conservation Report, WHC-06/30.COM/7B) of the 30th Session of the World Heritage Committee in Vilnius, Lithuania in July 2006 (Box 3.9).

"At the beginning of 2005, UNESCO learned of the alarming situation affecting the protected areas, particularly Zone 2, linked to ongoing developments not in conformity with existing regulations. At the request of His Excellency Sok An, Vice Prime Minister of the Kingdom of Cambodia and President of the national authority APSARA, the Director-General of UNESCO decided to send a legal expert (Mr Lucien Chabasson) in September 2005, to examine the present situation regarding the zones in question and to make appropriate recommendations. ... the overall situation of the protected zones was judged to be satisfactory. Nevertheless, although the existing regulatory conditions for the development of these zones are clear in their principles and with respect to the participation of local populations in maintaining the intrinsic values of the property, they appear to be obsolete or lacking clarity from the standpoint of concrete modalities with regard to their application.

The ambiguity regarding property rights of the zones concerned and the lack of an accurate cadastral survey makes it difficult to judge the legality of some building requests.

The lack of technical expertise of the APSARA Authority in the areas of urban planning and communication, and of legal competence in matters relating to land was noted.

The following recommendations were made by the legal expert to respond to the problems identified:

- a) Update the existing legal tools concerning the status of the zones in question, in particular the 1994 Royal Decree, if necessary by preparing sub-decrees to clarify the application modalities of this Decree;
- b) Draw up an inventory of the new buildings located in Zones 1 and 2, as well as the establishment of a register of residents in these two zones;
- c) *Clarify the rules regarding property rights and ownership applicable to Zones 1 and 2;*

Strengthen the capabilities of the APSARA Authority with regard to urban planning, land-use control and communication with the various players."

Source: UNESCO, 2006, WHC-06/30.COM/7B pp.151 – 152

Box 3.9

UNESCO State of Conservation Report Angkor 2006, (*my emphasis*)

The anomaly associated with a lack of recognition of pre-existing proprietary rights for residents within the Park (not to mention the dilemma associated with those residents who moved to the Park after the time of listing) is one of the key issues in this research and a significant concern for the management of the site, as is clearly illustrated in this quote.

The Chabasson Report was produced and made available to the World Heritage Centre, Paris, and the member State, Cambodia, but was not released as a generally-available public document. However, during the course of an interview with a World Heritage Centre official, the author was permitted to read this report, but not to make a facsimile or full transcription of

it.⁷⁵ The first part of original report navigates the evolution of laws relating to Angkor and thus covers the listing process, the development of the 1994 laws relating to the zones and continues in this manner. The second part of the report provides a more detailed description of the 1994 law with a focus on Articles 8 and 17, which relate to residential uses and prohibit development (see Chapter 4). In this second part Chabasson comments that the matters of interpretation (of the laws) are “delicate” and suggests that with the increasing number of villagers living in the highly protected zones in addition to the extreme increases in tourist activity, that ‘urgent’ attention is required to redress land management problems at the site. Moreover, this report identifies the fact that the existing zones lack spatial certainty and the interpretation of boundaries causes the management authority significant difficulties.

This report carried several important consequences. The text of the World Heritage Committee’s 30th Session Decision (2006, Decision 30COM7B.61) provides a partial answer, see Table 3.1. Clauses 4, 5, 7 and 9 indicate there is an *obvious* need to redress the inadequacies of the existing management structures, especially with regard to the legal regime as this relates to issues surrounding land management. In July 2008 the World Heritage Committee considered a State of Conservation Report for Angkor (see Table 3.1). The Committee focused on land management and governance issues at the site by reproducing the conclusions of the New Zealand-funded project (APSARA, 2007) which confirmed the “worrying” findings of the Chabasson Report. The Committee acknowledged that significant efforts had been made by the management authority, however they appear to endorse the New Zealand funded study and the Chabasson Report (which was endorsed by World Heritage Committee Decision 30 COM 7B.61 in 2006) when they suggest that “in order to ensure the safeguarding of Angkor it would still be necessary for the Cambodian authorities to pass urgent legislation to bring certainty to the rights of community members living in the Park area, further clarify the planning provisions within the protected zones ...” (UNESCO, 2008c, WHC-08.COM/7B). The Committee also considers a proposal to address the need for a complementary project to the New Zealand-funded plan (APSARA, 2007); a “Heritage Management Framework”. The Committee commented that this initiative “would finally provide Angkor with the comprehensive management framework” that had been repeatedly called for. However, they also said:

⁷⁵ An interview with Mr Giovanni Boccardi, Chief of Unit, Asia and Pacific Section, World Heritage Centre, UNESCO, Paris.

“It is important to note that the scope of this initiative is larger than the actual area inscribed on the World Heritage List. The Greater Angkor Project, undertaken by the University of Sydney, in conjunction with the Ecole Francaise d’Extreme-Orient and APSARA, has indeed identified the extent of Angkor as a medieval urban complex, covering about 1000 sq km. An important implication of this new research might be the need to reconsider appropriate boundaries for the property and related management zones, in due time” (UNESCO, 2008c, Angkor State of Conservation Report, p.119).

The last sentence is crucial. It appears that understanding how to manage the Angkor landscape has become more complex. This thesis also suggests that it is timely to reconsider the existing boundaries and land management approach in light of local perspectives. In a joint press release in December 2008 (APSARA, the Australian government and UNESCO), it was announced that funding of A\$1.13 million was to be provided by the Australian government to support the “Heritage Management Framework”, which will, in part “support the development of a land administration system for Angkor, undertaken by the APSARA National Authority in response to the World Heritage Committee’s resolution at its Quebec meeting in July 2008”.⁷⁶ At the ICC meeting of 15 December 2009 it was announced that a Memorandum of Understanding between the Australian government, UNESCO and APSARA had been signed to take the Heritage Management Framework forward.⁷⁷

The documentation clearly traces a growing concern regarding the efficacy of landscape regulation, pursuant to the 1994 zoning laws. Despite having fulfilled the conditional listing requirements with the passage of this law, consecutive decisions of the World Heritage Committee expose the extent of concern about Angkor’s land management system. The 1994 law was designed to provide for a spatially zoned land management system. The success of the law is debatable. It is important to bear in mind that the source of their information is the periodic reports prepared by the responsible country. With this in mind, it seems that overseeing and controlling the resident population has become, over time, one of the more pressing issues for management. The next section considers why this zoning management approach was adopted in the first place.

⁷⁶ See the Australian Embassy in Cambodia media release, available at <http://www.cambodia.embassy.gov.au/penh/files/Joint%20Initiative%20to%20Preserve%20World%20Heritage%20Sites%20in%20Cambodia%2epdf>

⁷⁷ See the Australian Embassy in Cambodia media release, available at <http://www.cambodia.embassy.gov.au/penh/files/Media%20Release%2dHMF%2dEng%2epdf>.

3.4 MANAGING ANGKOR

3.4.1 The Evolution of the 1994 Zoning Law: ZEMP uncovered

The 1994 zoning law (*Royal Decree Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management*) was a product of the unique circumstances in which Angkor was listed. The following Chapter (4) investigates the law in depth, but in this section the background to the law is explored. The “site-in-danger” listing required that “permanent boundaries based on the UNDP project be established” and that “meaningful buffer zones be defined” (conditions “c” and “d”, UNESCO, 1992, p.38). The reference to the UNDP project is a reference to the expert-authored report on the “Zoning and Environmental Management Plan” (ZEMP) for Angkor. The following paragraphs provide a précis of the ZEMP process and draw heavily from internal memoranda prepared within the ZEMP team.

A 1993 Discussion Draft document of the “Initial Executive Summary” of ZEMP provides insights into the motivation of the process. The document says “the development of the Siem Reap area, even when done with a focus on archaeological attractions, must be conducted from an approach to strategic zoning and phasing that *supports an equitable distribution of wealth and sustainable utilization* of the cultural and natural resources.” (UNESCO, 1993a, p.3) Clearly poverty alleviation permeates one rationale for the approach adopted by the consultants. Moreover, the team leader of ZEMP has said that the planning process used in ZEMP was based on up-to-date approaches used in the planning and management of national parks and protected areas, as well as the then current guidelines on planning and management of World Heritage sites (Wager, 1995). He also stated that: “(t)he objective was to produce a comprehensive zoning plan for the Angkor area” (Wager, 1995b, p.143). This comment confirms the fact that, from the outset, the issues associated with spatial planning for site protection were uppermost on the minds of those involved in the World Heritage listing. This position is also confirmed in an “Executive Summary” tabled at the 1993 ICC meeting which reiterates Wager’s point that the ZEMP process incorporated the latest thinking on conservation and protection embodied in national park management (UNESCO, 1993c).

The study area of the ZEMP expert reports was said to be approximately 6,000 km² (UNESCO, 1993c). ZEMP recommended a zoning solution for the planned management of the area based on different classifications. The Angkor World Heritage Area (AWHA) was to be managed as multiple use area. They envisaged special Angkor Archaeological Parks (AAPs) to cover an area of 800 km² 9 (*ibid*, p.4). The AAPs were to be comprised of Core Monument Areas containing the better-known monuments and temples and Sites of Archaeological Concern and Ecologically Sensitive Zones (water corridors; Tonle Sap protected area; forest management areas) (*ibid*, p.8) and Urban Development Zones (urban conservation zone; urban expansion zone; tourist development zone). As far as the proprietary rights over the site are concerned it was suggested that:

“All land within the core zone will, once it is designated a Restricted Area, become (if it is not already) State property: the designation of a Restricted Area effects a permanent expropriation of any private property rights that might exist there. There is no provision for compensation, as there is under other expropriatory provisions in the Decision. This omission might theoretically cause constitutional difficulties if the new republic’s constitution were to include a property protection clause. However, there seem presently to be no private property rights in the core area; and hence the position with regard to restricted areas under PCH confirms what appears to be already the status quo, both de facto and de jure”(UNESCO, 1993c, p.10, unpublished).

It transpired that the new *Constitution* did include compensation provisions (see Chapter 4). The observation that “there seem presently to be no private property rights in the core area” also proves to be wildly inaccurate. Arguably, these mistaken premises that form part of the reasoning of the ZEMP team, have created the confused landscape management scene we see today. Despite this working paper preference for the land to become property of the State, it was also recognised that this would not result in a denial of “occupation” rights. The suggestion was that a management authority would be able to confer occupation licences to enable people already living in the designated area to continue to do so. The recommendations went further by suggesting that this right be time-capped (“5 years” and that resident populations could be relocated over this time); and that it would mean that occupiers would be “denied a transferable property right in the meantime” (UNESCO 1993b, pp. 6 – 7). As is discussed in Chapter 4, mechanisms such as the occupation licence have only recently been introduced at

Angkor. The issue of relocation, also, remains extremely complicated at Angkor (see Chapter 4 and 6).

The ZEMP Steering Committee meeting minutes of 27 March 1993 suggest that several zoning options were under discussion ("being debated", UNESCO, 1993a). Reaching a zoning consensus with the number and diversity of reporting experts appears to have been challenging. In the same meeting minutes, it was noted that the implementation and enforcement guidelines were inhibited by a lack of formal, complementary national legislative action in the post-UNTAC era for land tenure (*ibid*, at p.6). Moreover, in another internal memorandum outlining the "Principles for Preliminary Zones and Jurisdictional Authority" it was noted that:

"(l)imits to rights of ownership within the management zone will be specified in the legislation setting up the jurisdiction of the authority. The authority would have rights over all land under its jurisdiction. Land would become the property of the authority, subject to rights of use by farmers and inhabitants. No one from out side (sic) the area would be able to acquire land or use rights. Land would be held from the authority who (sic) would have powers to take possession in the interests of the management of the area with appropriate compensation." (UNESCO, 1993b, p.2, unpublished)

The intention to deny resident communities any type of alienable property right seems clear. Further insights into the objectives of the initial ZEMP process are articulated in the UNDP Project documentation for the study (CMB92/011 cited in UNESCO, 1993b, at p.3). These reinforce the socio-economic development aspects of the study, but also highlight how important it was to formulate a zoned plan for the site as this remained the "immediate" objective. Wager's internal memo also highlights the project's objective to "introduce and justify the concept of integrated conservation and development of cultural, natural and human resources" (*ibid*, p.3).

Within the internal memorandum of the ZEMP team it was noted that the Council of Ministers had passed Resolution No.84 dated 5 October 1992, which divided Angkor into five zones (Box 3.10) (UNESCO, 1993b).

1. Temple Zone; 30 m around temples, moats and baray;
2. Archaeological Parks; 300 m around temples, moats and baray;
3. Scheduled Zone; 2,500 m around temples, moats and barays;
4. Zone for protection of nature and historic features;
5. Archaeological Protection Zone; areas for archaeological research and excavation.

Source: UNESCO, 1993d, unpublished

Box 3.10

Proposed 1992 Zones for Angkor

Boundaries at 30 metres, 300 metres and 2 500 metres were thus established. At this point Wager noted that “(r)egulations which apply to each zone have been passed but the capacity to monitor and enforce them does not exist.” (*ibid*) So while the boundaries and zones were being debated, it appears little attention was given to how these zones would be managed. It is reported that the 1992 zoning solution was influenced by a 1973 French Consultative Committee report for Safeguarding of Borobudur, Indonesia. This report suggested a 30 metre sanctuary zone as a planning solution for site management; the ZEMP experts suggested the same for Angkor. The protective zone would, therefore, extend from the temples (of the small and grand circuits; Banteay Srey and the Rolous Group) in a 30 metre radius. The boundaries appear also to be derivative from the French maps of as early as 1934 and 1935 in the work of Georges Trouve and Henri Marchal a 30 metre sanctuary zone with a 300 metre Park zone are identifiable (*ibid*; see also Chapter 4).

Despite the passage of this 1992 zoning law debate continued about the extent of the site and how it should be spatially regulated. However, the UNDP –ZEMP team eventually produced a 5-zone map which remains in use today, and it is this map which was given formal status in 1994 when the Royal Decree *Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management* was passed by the Cambodian National Assembly. The map includes a buffer zone to aid in heritage protection. As far as the approach taken at Angkor is concerned, Wager noted that it was important to adopt the buffer zone concept because of the conditions at Angkor – if a large area was classified as requiring maximum protection this would prove hard to achieve, with financial and human resources being scarce at the time; enforcement would prove extraordinarily challenging (Wager, 1995). Observations such as

these cement the notion that land management through regulation using a spatially defined buffer zone was considered important at Angkor.

3.4.2 Site Management Policy Approaches: Boundaries and Buffers

Although management arrangements for World Heritage properties vary substantially from country-to-country, it is possible to identify a number of management challenges that are faced regardless of country context. In the Australian context it has been observed that a number of different management arrangements exist for World Heritage site management (Evans, 2000). Evans suggests that, for Australian World Heritage properties, it is political interests that influence site management more than site-specific needs. This results in some properties being “without adequate strategic and land management guidance as a result of a failure to develop appropriate management arrangements.” This point of view is valid, but it is worthwhile remembering that the World Heritage sites in Australia are subject to the provisions of national legislation in the form of the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth). Management principles for Australian sites are set out in the Regulations of this Act and provide guidance for site management. Nonetheless, while management systems may aim to abide by the latest in best-practice planning for protected area management, Evans’ remarks are a reminder that these systems may not exist in a vacuum and can be highly vulnerable to interests that lie outside a site-specific regulated planning regime. The World Heritage site at Angkor is no exception.

Much of the planning policies that informed protected area management during the creation of ZEMP in the 1990s have been updated. Importantly, the role of buffer zones in World Heritage site management is currently under debate. Buffer zones have been favoured as a land use management tool for some time. In World Heritage management, the concept of buffer zones can be traced to the 1977 version of the *Operational Guidelines* (clause 26), and various versions appeared throughout the 1980s and 1990s. Interestingly the draft version of the 2004 guidelines provided that “Nominated properties must have legislative, regulatory, contractual, planning, institutional/or traditions measures ... integrated within a coherent management system...” (Clause 77, ICOMOS position paper, UNESCO, 2009, p.33 – 34). This version, which mandated buffer zones in strong terms, was not approved. Feilden and Jokilehto’s “Management Guidelines for World Heritage sites” was updated with a second edition in 1998.

In this version their generalised framework for site management is further articulated – as are the most “pertinent principles in the management of World Heritage” (1998, preface). Importantly they recognise that: “... only a few State Parties... have adjusted their administrative and town planning procedures, to recognise this new and enhanced status of a site...(t)he designation of buffer zones is an urgent priority” (*ibid*,p.18). While calling for an increase in the use of buffer zones, they make an equally important observation when they suggest that the concept of zoning is too limited to provide all-embracing protective solutions for heritage sites (*ibid*, p.84). They point out that the use of zones to limit uses in defined spaces can be “... contrary to the cultural richness and social diversity of a thriving historic centre... The pattern of ownership and effect of the State Party’s traditions and legal practise requires careful consideration.” (*ibid*, p.84) This is an important observation. It reinforces the point made throughout this research: that local conditions relating to tenure need to be considered before, during and after the designation of a World Heritage listing.

Also writing in the 1990s, Vandergeest (1996) made some pertinent observations on the use of buffer zones in protected area management that was based on empirical research in Thailand. He defines a buffer zone as “a transition zone to more exclusive areas” (*ibid*, p.259). He suggested that the exclusion of people from parks, and limiting human occupation to buffer zones outside the protected area, is problematic for conservation. Vandergeest’s point is that laws and practices which have been enacted to enhance conservation do not recognise the property claims of local villagers because buffer zones as a management tool exclude human uses; conversely, to promote conservation goals there is a need to deal with local claims to property. It is interesting that use of a buffer zone was seen to be linked with attempts to exclude local populations from protected areas and to impose restrictions on populations adjacent to, but not within, the protected area. Certainly, the language and the way in which the zones of management at Angkor have been articulated also reflect this position. This idea is further developed in Chapter 4.

The *Operational Guidelines* refer to buffer zones as a means for increasing site protection, however, the concept is not (yet) enshrined as *mandatory* in either the *Guidelines* or the *Convention*. Clauses 103 – 107 of the 2008 *Operational Guidelines* on “Buffer Zones” are reproduced in Appendix Seven. Article 103 uses the word “should” clearly implying that the

obligation is not compulsory.⁷⁸ Yet, by virtue of Article 106, it seems clear that the burden imposed on the regulators is to include buffer zones, and their absence requires explanation. The Guidelines appear to suffer from an internal contradiction. This apparent tension had led to calls for a review of the use of buffer zones in World Heritage site management and the status of the buffer zone is now the subject under consideration. In March 2008 UNESCO convened a meeting on the policy and use of buffer zones in World Heritage site management. This meeting arose as a consequence of a 2006 World Heritage Committee Decision (UNESCO, 2006). It was designed to review the concept as it applies to World Heritage properties⁷⁹ and resulted in a World Heritage Centre Discussion Paper (UNESCO, 2009).

Within this 2009 publication on the use of buffer zones in the conservation and protection of World Heritage properties each of the international heritage organisations (ICOMOS, ICCROM, IUCN, WHC and MAB) that provide advisory body recommendations about World Heritage issues provided position papers on the use of buffer zones in site management. Throughout the document the notion of “zones of influence” appears and reappears. The debates reflect the diversity of professions represented in the process (there were 35 participants from 16 countries and representatives from the international heritage and conservation organisations, UNESCO, 2009). Another key concern is the issue of setting and visual integrity of World Heritage sites. However, probably the issue of most concern is whether the World Heritage site itself includes the buffer zone; it was concluded that it does not. This conclusion has enormous ramifications for a site such as Angkor where the national legislation extends legislative protection throughout the entire Siem Reap Province (by virtue of the Zone 5 classification). No one would argue that the “outstanding universal value” of Angkor covered the entire province. There is a problem in definitions. Although there is a core (zone 1) at Angkor and a notional buffer zone (zone 2), there are 3 other zones which apply to the landscape in the area which also provide various degrees of protection. It is unclear whether the actual World Heritage site at Angkor is restricted to the “core” zone; interviews with personnel within the management authority (APSARA) have not clarified this situation. The presumption is that the site itself is comprised of zones 1 and 2 (though management maintains its responsibilities for heritage in zones 3 – 5). The ICCROM position paper makes the point simply: “(u)nfortunately... buffer

⁷⁸ This follows from an interpretation of the rules in legal drafting which suggest that “shall” does not connote a strict obligation to perform whereas the word “must” is more commonly used to express obligation and provides a more certain, less ambiguous way of expressing this sentiment, see Aitken and Butt, 2004, pp.70 – 71.

⁷⁹ For information on this March 2008 meeting see (<http://whc.unesco.org/en/events/473/>).

zones in the World Heritage context often are ambiguous and confusing” (in UNESCO, 2009, p.45). Confusion arises because when terms such as “core” and “buffer” (or even “transition”) are used there is an intrinsic assumption that the World Heritage property covers all these areas. Again, the overwhelming consensus amongst heritage practitioners (UNESCO, 2009) is that the World Heritage site itself does not include periphery or buffer zones.

In the World Heritage Centre’s position paper, results from an initial assessment on the issue of buffer zones were presented. Using State of Conservation Reports submitted for the 2007 Committee Meeting the World Heritage Centre analysed when, and in what way, the issue of buffer zones arose in the 163 cases submitted as part of periodic reporting. For the 2007 meeting 73 of the 163 Reports listed the buffer zones as an issue in management (44%). A range of problems were reported but the Centre Report has, for simplicity, grouped these into four issue areas: (1) Urban developments within buffer zones, (2) Unclear boundaries, (3) Absence of buffer zone and (4) Legal aspects. This research considers issues (2) and (4) in the context of Angkor. The March 2008 meeting made a number of conclusions, from which recommendations emerged. Of the conclusions, there were four legal considerations that arose, summarised as follows:

1. A “World Heritage buffer zone is not only a line on a map”; there is a need for effective legal frameworks to protect Outstanding Universal Value & must consider enforcement provisions;
2. Particular difficulties associated with transboundary properties;
3. Regulatory mechanisms should include land-use planning and zoning provisions; and
4. People living in and around World Heritage sites need to be aware of the legal status and enforcement provisions. (UNESCO, 2009)

Each of these concerns, with the exception of clause 3, sits at the heart of this research. Data presented in Chapter 6 details local perspectives on issues relating to enforcement, planning and consultation/education as they relate to two villages within the Angkor group.

The recommendations from the meeting and the discussion paper have not yet been adopted and they continue to generate debate.⁸⁰ The result is that site managers, those implementing the *Convention* on a daily basis, have no clear answers about how to effectively integrate the concept into planning. This is particularly problematic for cultural heritage sites in which permanent communities live. The World Heritage Committee meeting “noted support for the principle of empowerment of communities within the governance structures for World Heritage properties and their buffer zones, and that participatory planning process can be considered as good practice. However, further reflection on this area of discussion was required as it was beyond the core tasks of the expert meeting” (UNESCO, 2009, p.62). The effective integration of local perspectives through the use of buffer zones appears to be in its infancy in World Heritage management. Yet, as pressure to develop grows, particularly on land and property either within or peripheral to a World Heritage site, the needs of those living near or adjacent to the site must be taken into account in site management.

The debate taking place at the World Heritage Committee level evidenced in successive Decisions, reports and debates reflects tensions amongst the various professionals who take responsibility for heritage management.⁸¹ While some consider that buffer zones have become weak tools of management in World Heritage settings (see, for example the arguments made in the ICCROM submission, UNESCO, 2009, p.45), others make strong arguments for an increase in the use of buffer zones as part of site management. For instance Wiffen (2006) provided an assessment of buffer zones in an Australian context. Australia’s federal governance system makes a coherent approach to heritage management a perennial challenge, and there are diverse approaches to the use of protective regimes in heritage management. Wiffen (2006) concluded that in times of increasing economic stress and with heritage sites near populated areas coming under increasing pressures from development the role of buffer zones becomes more important and warrants further research.⁸²

⁸⁰ One example of this debate took place at the Institute for Professional Practice in Heritage and the Arts at the Australian National University in August 2009 when a one-day session examined buffer zones in World Heritage management. Buffer zone examples from Australia and the Asia-Pacific region were presented and key issues relating to managing buffer zone areas were discussed (personal attendance).

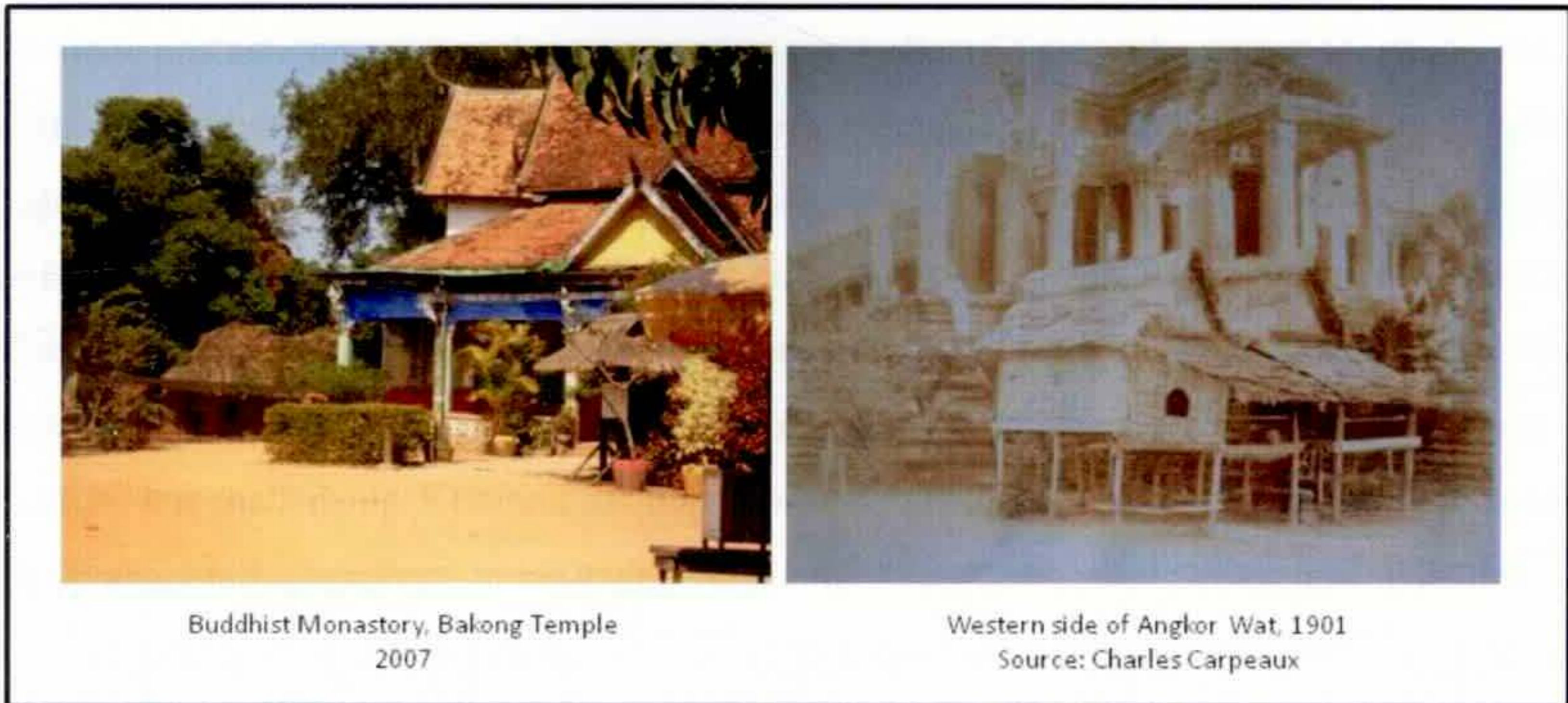
⁸¹ For example, the professionals composing the ICLAFI (International Committee for Legal, Administrative and Financial Issues of ICOMOS) attended an ICOMOS Japan Conference in November 2006 and made recommendations regarding buffer zones in World Heritage management, <http://www.law.kyushu-u.ac.jp/programs/english/hiroshima/index.htm>.

⁸² Relatedly, Shipley (2000) makes the point that the value of heritage properties is affected by the zoning rules that apply to it and that this is not well understood. Ashworth (2002, p.22) makes a similar point.

One of the key issues from the World Heritage Committee's scrutiny of buffer zones in site management centres on the difficulty in finding common ground in the use of terms by different professionals involved in conservation management. Terms such as "core zone", "areas of influence", "setting" are used in reference to buffer zones, but not necessarily in the same manner. To this end World Heritage Committee Decision 32 COM 71 requested that the term "core zone" be removed from use by the World Heritage Centre and its Advisory Bodies (reproduced in UNESCO, 2009, p.193). Although not used as commonly as the term "buffer zone" the related concept of 'curtilage' in heritage protection is worthwhile considering as a tool in heritage management. Aplin (2002, p.122) describes a curtilage:

"(t)he immediate area around a historic building may contribute to its heritage value... The *curtilage* can be considered as an envelope around the main item, the preservation of which is important."

There is a clear spatial dimension associated with the degree of protection and impact that these planning concepts may have on the landscape. Evans (2000) points out that the twin fundamental concerns in heritage practice – that of the maintenance of authenticity and integrity – are inherently related to the spatial questions as to what is "core"; "ancillary" and "peripheral" to conservation. Arguably, the question of how far a curtilage extends beyond the immediate monument/building (or site) and what type of protective regime is linked to the curtilage is of major significance for resident populations who live in close proximity to the protected site. This is an issue which is re-visited throughout this research – and is of some interest and concern to those residents who live within close proximity to the temples of Rolous at Angkor (see Chapter 6). Restrictions based on spatial zones may be problematic on the basis of cultural sensitivities. In fact, for Khmer culture in which "... the location of a residence and its proximity to sacred sites acted as ... significant indicators of power and status" (Edwards, 2007, p.43) these restrictions may be counter-productive. Photographs capturing residence in proximity to monuments is observed, most obviously, by religious orders and was, and continues to be, a feature at Angkor, Figure 3.2.



Source: Gillespie, 2007; Carpeaux, 1901

Figure 3.2

Residences adjacent to Monuments

There are echoes of the curtilage concept in the 30-metre zone used by the French and proposed in the 1992 law. The attraction lies in the way in which it limits the physical territory that is subject to the most stringent restrictions. Arguably, this may prove to provide more equitable outcomes for local resident populations – restrictions may also be better understood if they have a physical association with the protected site. The idea of stringent regulations immediately surrounding a site may also reflect the local value that attaches to the site; making it more appropriate to local customs and circumstances.⁸³ In a similar way, Scott (1998) advocates tailored zoning approaches in forest resource management when she suggests that zones ought to reflect people’s patterns of forest use, through the use of access via existing strips in the forest.

Nevertheless, it may be argued that regulating, and thereby restricting uses, in spatially designated areas using zones may not be the only, or even the best, way of promoting a heritage conservation agenda. Buffer zones are part of the legislative and administrative framework used to tackle heritage conservation, but there are limitations to this approach. Pearson and Sullivan (1995) point out that using the law as a “bible” in the everyday practice of

⁸³ Use of curtilages should not mean that some form of zoning cannot be used; the concepts are complementary and could be used in combination because adjacent land uses do have the potential to impact (adversely or otherwise) on the protected area (Leask and Fyall, 2006). The Man and Biosphere concept which uses a “whole systems” approach through the idea of “core”, “buffer” and “transition” zones reflects this spatially-regulated, tiered approach to management (Aplin, 2002; Matysek, *et al*, 2006).

heritage management would border on being an act of neglect. They suggest that law is part of a heritage protection toolkit and can be used to good effect “if properly written or used” (*ibid*, p.37). In the absence of well-written and properly enforced laws, is there any value to adopting a legally-inspired management framework as the *Convention* requires (by virtue of Article 5(d), see Box 3.5)? Sullivan (1991, p.19) makes the point that laws can have very important symbolic value in heritage management “even when its actual force is meagre”. In a non-Western setting this is useful to bear in mind – for the force of formal regulation can be very meagre. In many countries it is challenging, if not impossible, to provide the level of administration necessary to sustain a legislative response to heritage management and Cambodia is a clear example of this. Using a legal paradigm, which aspires to universality to regulate heritage, can create a situation in which local conditions are not adequately accounted for (Sullivan, 1991).

3.5 GLOBAL AND LOCAL CONCERNS: RECONCILING PERSPECTIVES

3.5.1 Re-prioritising Local Concerns

The global/local nexus implied within this research draws our attention to issues of scale. On the importance of taking scales into account in a heritage context Aplin (2002) has observed that:

“Scale is absolutely critical in any attempt to define heritage or to identify specific heritage items. What is important locally may or may not be important nationally or internationally. Hence there is an implied hierarchy of heritage “lists”. In most cases, of course, something as important as global heritage will also be seen as important on the national and local scale, although not always. The scale at which heritage sites are considered of importance affects the way protection and presentation are administered, financed and carried out” (*ibid*, p.2).

The imposition of a World Heritage classification imposes an international scale on a local site and with this comes the burdens of protection and conservation which emerge from the international obligation, rather than those which may have existed or evolved at a local, regional or national level – in other words – the priorities may be different and the burdens of management are likely to reflect this. Nonetheless, accommodating the needs of local populations has become a growing concern in World Heritage management (and was reinforced

through the Budapest Declaration, UNESCO, 2002, Decision 26COM9). The IUCN has long regarded the role of indigenous communities as being of vital importance in the planning and management of protected areas, and calls for better integration of local communities into *natural* World Heritage property management in order that these properties maintain a viable future (in UNESCO, 2007).

Lane (2006) provides a useful perspective on the role of planning in achieving better outcomes for indigenous communities in “post-settler” states (that is, countries such as Australia, Canada or New Zealand). The value of Lane’s paper is that it sheds light on the importance the planning process can have in resolving land-based tensions. There are clear parallels in Lane’s call for greater integration of indigenous communities in the planning process with the one of the central tenets in this research - the need to better integrate the views of communities living within World Heritage Park boundaries. When “one aim of conservation is **not** lower living standards” (Feilden and Jokilehto, 1998, p.3), the inclusion of local perspectives should be fundamental to achieving this end. Again, the IUCN advocates consultation in the planning process – including seeking localised advice on the use of zones (in UNESCO, 2007, p.34). Consultation can prove invaluable for World Heritage site managers as they attempt to navigate the demands of protection and the needs of local communities.

As the concept and practice of ‘heritage’ grows and re-defines itself, the increasing importance of engaging local communities in the process of heritage management also emerges (Hall and McArthur, 1996). If the value of a World Heritage site is defined *not just* by its physical monuments but also (in part at least) by the local community then the dislocation (or even physical removal) of locals from these landscapes may well have significant consequences for the site’s integrity. Accordingly, there is the potential that ignoring the local significance of a site, and failing to appreciate how local communities (in all their varied forms) interact with the site, can undermine the site’s value. The way in which the locals value a site is of critical importance. Many heritage professionals, academics and managers understand that prioritising local concerns has not always featured in heritage discourse:

“Notwithstanding attempts to avoid the ‘monumentalisation’ of residential and sacred spaces, and in some cases the exclusion of local residents from World Heritage sites, discourses of World Heritage often fail to give adequate voice and representation to the

'local'. Even where outright exclusion from the sites themselves, or from decision-making processes associated with their management, is not apparent, nuanced and subtle forms of marginalisation and exclusion still persist. Finally, several contributions also raise the spectre of *indifference* or, at the very least, ambivalence, towards World Heritage status amongst local residents, a factor not normally considered in the literature on this topic" (Bianchi and Boniface, 2002, p.80).

These observations raise a number of issues, the most pertinent being that a local community may not value a site in the same way (or indeed at all) as others working for conservation and protection at the national or international level. Lipe (1984, p.2) writes of the meaning of 'value':

"(v)alue is not inherent in any cultural items or properties received from the past... Value is learned about or discovered in these phenomena by humans, and thus depends on the particular cultural, intellectual, historical and psychological frames of reference held by the particular individuals or groups involved".

In other words, 'value' must be contextualised through attention to local perspectives.

Hall and McArthur (1996b) also point out that it is in a clash between community and national levels, conceived in political terms, which result in some items and practices being favoured. Heritage decisions are inherently value-laden (Dutton and Luckie, 1996; Hall and McArthur, 1996d) and the need to identify, define and adequately express the values of any particular community is a constant challenge for heritage managers. Moreover, values ought to incorporate people's connections to the land; their ability to access land; their ability to alienate it and even recognition of informal connections to it. That is to say that values must include the local communities perception of place which relates directly to their attitudes and opinions about how they interact with their places of residence and/or and land-holdings. Arguably the inclusion of the "value" (not limited to a monetary value) of land to locals – be it a house or rice field – can be used as a yardstick for the assessment of successful heritage site management. As Dutton and Luckie (1996, p.186) point out:

“Prevailing methods of value measurement tend to overlook or otherwise not properly account for the spectrum of values which exist in relation to landscape/places, lifestyles/people and their interrelationships”.

Kirby (1996, p.231) writes about ways to “explore(s) connections between the ways in which people identify with land and what happens when that land is defined as heritage”. Arguing that reading landscapes provides a creative way of focusing heritage site managers on representational issues, Kirby (*ibid*) identifies the ideological issues that permeate how people understand and relate to the land they occupy and what it is that motivates individuals and communities to value different aspects of the heritage landscape. Kirby (*ibid*) conducted qualitative fieldwork in the Te Wāhipounamu/Southwest New Zealand World Heritage area on New Zealand’s South Island to seek views about how locals identified with the protected area and what it was that they valued about the region. Kirby (*ibid*) found that one geographically defined area can be the subject of widely varied views but that, “again and again identity was related to specific places and particular histories. Place, heritage and identity appeared to be strongly connected” (*ibid*, p.240). Evans (2000) also analyses the roles of values in pluralist societies and concludes that effective decision making in such societies requires a thoughtful reflection on ways in which consensus can be built between private and public interests – in order that heritage preservation reflects broader community concerns.

If addressing broader community concerns means that managers need to observe how a community relates to the landscape in which they live, then surely this also means that they need to observe the ‘sense of place’ created by a particular geographical setting. What does it mean to describe an individual or a group as having a ‘sense of place’? Moreover, exactly whose sense of place takes priority in heritage management when local sites are classified for their global significance? Hall and McArthur (1996c, p.181) write:

“(t)he issues of whose heritage, whose sense of place, and who are we dealing with, pose major challenges to heritage managers. In both townships and cities many well-meaning local councils have passed highly restrictive regulations about appropriate architectural styles, building material selection, paint colours and the retention of some vegetation and the elimination of others. The implementation of such local ordinances

may help present a particular unified view of the past. However, why one portrait of the past and not another?”.

To this end, Davison (1991, p.11) wryly observes (of the Australian context) that “(w)hen heritage consultants come to town they always inspect the buildings, but they do not always consult the locals.” Perhaps this is no longer the case, for re-prioritising the local view has become a particular concern for World Heritage management in the recent past (UNESCO, 2004a).

At Angkor there has been a clarion call for integrating local perspectives into the fabric of management. A perusal of ICC documentation indicates that although the emphasis for many years was the restoration and preservation of monuments and temples, there was also a parallel concern to address the needs of local residents. For example, as early as 1995 the ICC Technical Committee agenda reflects this concern in the discussion of a proposed UNVP (United Nations Volunteer Programme) project on community participation in the protected zones (UNESCO, 1995; 1995a). In 1999, the ICC further reports on the activities of the UNV programme in eleven target villages (UNESCO, 1999). Moreover, in 2005, in an ICC Technical Committee meeting the committee’s recommendations in regard to promoting sustainable development of the site include a suggestion that there be more community involvement by way of “integrating human populations” in any future project proposals (UNESCO, 1995a, p.6). Just how do managers ensure that the views of resident populations are integrated into site management, especially into land administration? This question highlights some of the inherent difficulties in reconciling daily site management challenges with the rhetoric associated with unique World Heritage places.

3.5.2 Whose land is it?

UNESCO’s specialist World Heritage Centre describes World Heritage sites as “belonging to all peoples of the world, irrespective of the territory on which they are located.”⁸⁴ Is the use of the word “belong” an accurate reflection of the international community’s (however defined) perceptions? Words are, or should be, chosen exceedingly carefully when crafting public statements from institutional bodies. Sullivan observes:

⁸⁴ Available at <http://whc.unesco.org/en/about/>.

“World Heritage is a global concept and process imposed... through fear of the effects of global development on the variety and richness of the World Heritage. It is imposed from above – a submission by a national party to an international committee with the aim of achieving recognition of a value of universal significance. This process can often be intimidating, mysterious, and highly technical to local people and Traditional Owners. This creates a high potential for resentment, misunderstanding and hostility...” (2004, p.51).

Lowenthal also points out that “(t)he growing worth of heritage aggravates conflicts over whose it is, what it means, and how to use it” (1998, p.248). Article 6 of the *Convention* (Box 3.5) makes explicit the point that existing property rights ought not to be altered by a World Heritage Listing.

It is not always the case that the consequence of a World Heritage listing is the replacement of private ownership with public ownership of the site. For instance, land tenure arrangements for Australian World Heritage sites illustrate that there are alternatives to public-only ownership. Indeed, at the national level government policy insists that World Heritage status does not preclude private ownership.⁸⁵ Thus, in Australia, World Heritage sites are subject to a wide variety of tenure arrangements ranging from public ownership through to wholly private ownership – with variations in between. Moreover, from co-management arrangements between government and the indigenous communities in Kakadu to long-term leaseholder rights of farmers in Willandra, Australian government policy suggests that security of *pre-existing* tenure arrangements should not be adversely affected by the imposition of a World Heritage listing.⁸⁶ The observation that a number of different tenure arrangements exist in the Australian context should not lead to the conclusion that one or another is more successful. The extent to which different tenure arrangements succeed is debatable, and is explored in the next chapter. The point to acknowledge is that the imposition of a World Heritage classification on a landscape does not automatically imply that the land automatically reverts to state ownership, and the *Convention* itself stipulates no such requirement either, rather a respect of state sovereignty is reaffirmed in the *Convention* itself (Article 6.1, Box 3.5).

⁸⁵ Available at <http://www.deh.gov.au/heritage/worldheritage/implications.html>.

⁸⁶ *Op cit*

Another example of alternative tenure arrangements comes in the form of the listing of East Rennell in the Solomon Islands as the first natural World Heritage property to be added to the World Heritage list whilst under a customary ownership regime. The advisory body's report (the IUCN Technical Evaluation of the nomination), noted that the issue of customary land tenure could provide a barrier to successful listing for it was often difficult to implement a national legislative agenda – as a successful listing would require – in areas subject to customary land tenure (UNESCO, 1998, pp.81 – 82). In debate on the merits of a listing the delegate of Thailand to the World Heritage Committee (sitting in its twenty-second session at Kyoto, 1998a) would not support the nomination for in his opinion it did not comply with the *Operational Guidelines* because “customary land tenure does not automatically guarantee effective customary management and that there are no legislative provisions to protect the site from rapid changes such as tourism, which may affect it” (UNESCO, 1998a, p.26). Nonetheless, the property was inscribed on the list and:

“(t)his case established an important standard and precedent in relation to the acceptance of customary law and management as a sufficient basis for the management and long term protection of natural World Heritage properties” (UNESCO, 2007, p.33).⁸⁷

Again, alternatives for regulating World Heritage sites through regulatory mechanisms have generally been limited to the laws offered by the State, through formal, structured legal process. Article 5 (Box 3.5) of the *Convention* requires adequate legal mechanisms be put in place and, to some extent, this creates an assumption of a degree of vertical integration from the international through the national to the local level. While this situation may be suitable for countries with well-developed planning processes into which heritage obligations can be integrated, the pursuit of conservation through formal means may not be ideal in countries without this legal infrastructure. Alternatives such as that illustrated with the World Heritage site in East Rennell provide, potentially, incentives for other countries to pursue tailored solutions.

⁸⁷ Note now that the while customary law and management was seen to be a sufficient basis for listing of East Rennell, Solomon Islands, the site is now not considered to be adequately protected because of pressure from development interests, see the State of Conservation Report, East Rennell Report dated March 2007, available at <http://whc.unesco.org/en/decisions/1402>.

The people-park conflict is well traversed in literature assessing national park conservation and protected areas, and the situation parallels the problems faced by those who live in and around World Heritage sites. The issue of how, and indeed, whether or not to, incorporate people within protected areas is also subject of considerable debate in general literature. For example the October 2006 issue of National Geographic was dedicated to the issue, under the cover title: "Places We Must Save, World Parks at Risk" (National Geographic, 2006). An essay within this issue explored the idea that national parks are increasingly under threat as residents demand access to lands from which they have been excluded. In Guatemala's Laguna del Tigre National Park demands from local residents took the form of an armed seizure of a research and management camp with the taking of four hostages. The locals demanded better access and recognition of their status "as settlers in the park" (Quammen, 2006, p.63). The conflict was peacefully settled but highlights the potential for conflict and the very threatening complications associated with the exclusion of people from protected areas. The IUCN has commented that:

"... World Heritage nominations of the States Parties only rarely reflect on local cultures, the rights of these cultures, and prospective conflicts between these cultures and international efforts for protection" (in UNESCO, 2007, p.34).

Thus, despite the fact that there are a vast number of options for managers to allow for recognition of land rights in World Heritage sites, it is essential that such tenure systems are not necessarily imposed from international or national agendas but do reflect the very real concerns of local resident communities.

3.6 SUMMARY

This review demonstrates that the assignment of a World Heritage designation is a complicated process. Consideration was given to the evolution of the concept of "Heritage" and, in particular, "World Heritage" and the role of law in the protection of sites with "outstanding universal value". This chapter has also reflected on the World Heritage listing process in general and explained the role of the *Convention* and its attendant *Operational Guidelines*. Angkor's designation as a World Heritage site was given detailed deliberation. This analysis has shown

that the haste surrounding Angkor's listing meant that, while issues surrounding boundaries, buffers, regulations and local perspectives were considered in the preliminary stages of the World Heritage site's history, these issues were quickly overshadowed by competing priorities. Moreover, the spatial expression of Angkor's protective zones appear to have been strongly influenced by the boundaries defined by the French, in turn influenced by the rectilinear nature of the archaeological remains, and there appears to have been little or no consideration of the normative landscape. Although formal, legal regulation was prioritized and undertaken for Angkor from the start, the success of this approach, judged from the Periodic Reporting and World Heritage Committee's Decisions for the site, is debatable. Nonetheless, from the initial conditional listing as a site-in-danger in 1992 through efforts to regulate the site via an International Coordinating Committee and through formal Periodic Reporting requirements, Angkor's management to date has been the focus of considerable national and international attention as will be revealed in subsequent chapters.

Chapter Four

LANDSCAPE REGULATION

4.1 INTRODUCTION

In July 2009 the BBC World Service documented the enormous human costs of unregulated land grabbing throughout Cambodia (BBC, 2009). Media reports such as these suggest that official sanctioning of land trading, often in the name of governance, without obtaining adequately informed consent in rural and urban communities is creating widespread resentment throughout the country. Literacy levels are uneven and knowledge about land regulatory regimes is inconsistent, not surprising given the changes in law that have taken place over the past two decades. In this context, it is important to pay attention to the way in which land regulation has changed in Cambodia. This chapter provides both temporal and spatial accounts of landscape regulation country-wide and within the World Heritage site at Angkor. Mitchell (2003), citing the works of Olwig (2002; 2004) and Blomley (2003), call for accounts of landscape change to “pay close attention to the theory, history and contemporary struggles over property” and an analysis of different land administrations through time, provided herein, goes some way towards achieving this goal.

As part of the temporal overview of Cambodian land use, this chapter provides an account of the landscape regulatory regime from the pre-Angkorian era through to the 1992 World Heritage listing and beyond, in order to offer a context for the assessment of local land regulation within the Park. However, a detailed consideration is given to the period since 1944, as from this point in time eight different regulatory regimes have applied in Cambodia (Kiernan, 2007). Consideration is given to the meaning of ‘property’. The use and meaning of descriptors and concepts such as ‘usufruct’, ‘ownership’ and ‘possession’ in the Cambodian context is also explored. This is important because the distinction between ‘possession’ and ‘ownership’ while clear in formal, legal, terms since the 1920 Civil Code,⁸⁸ this clarity in meaning does not

⁸⁸ The Civil Code suggest that “Possession is when a person physically occupies a plot of land and uses it for their own benefit, whereas ownership is a legal status granted by authorities that officially gives the owner the “right to have the benefit of, and dispose of, property in the most absolute manner, provided that no use be made thereof which is prohibited by law or regulation. Civil Code, Article 544”, in Hartman (2006), p.124.

necessarily have any conceptual or practical meaning for many Cambodians (Hartman, 2006). Chapman makes a similar point (1998). Importantly, an analysis of the legislative response to the World Heritage listing at Angkor is included in this chapter (following Gillespie, 2009), and issues surrounding land use and land ownership within the Park, including the limitations within the existing legislative framework, are identified.

This chapter also interrogates a series of apparently unresolved conundrums regarding the role of private ownership in protected area management, an investigation which makes clear the need for ongoing research into the role of private property regimes within World Heritage sites. The relative merit of the approach, which sanctions private property regimes under the call for improvements in security of tenure, is explored under the sub-heading “Security of Tenure; legal pluralism and the privatisation agenda”. Following this the specific demands of the heritage agenda which call for the protection of cultural heritage resources through a formalised land-use planning process (Cleere, 1984) are addressed. The final section considers the scalar dimension of heritage obligations; from soft law obligations arising on an international scale through the *Convention* to the localised concerns of World Heritage site residents.

4.2 THE MEANING OF ‘PROPERTY’

“Property” is a term used in a huge variety of contexts by a wide variety of people. In Chapter 2 different proprietary approaches (for instance, the public/private divide) were discussed in the sub-disciplinary context of legal geography. In this chapter the focus is to consider how the land within a World Heritage site is regulated. To that end, it is necessary to consider different types of property relationships. Property, in this sense, becomes shorthand for the way we characterise land. Of course there can be many types of property including non-land chattels and possessions. Property, therefore, can mean many different things, yet in a Western/English tradition, it is often used interchangeably with “land”. In this section the categories of property in relation to land are considered, as are issues relating to tenure and in/security of tenure.

4.2.1 Tenure

This research adopts Shipton’s (2004) definition of tenure:

“Tenure’ (from L. *tenere*, to hold) or landholding need not refer just to a particular form of legal, political, or economic regime (such as freehold, fiefhold, or collective village ownership) but can indicate human-land attachment in a broader sense, taking about unofficial, illegal, or occasional use, and of persons living, dead, or unborn” (2004, pp. 8256).

Simply, tenure expresses how humans attach and access land. Tenure, clearly, can also therefore take many forms. It is a way of classifying and categorising human/land interactions. In this way tenure has distinctly regulatory overtones. Tenure can include public or private or collective classifications. Tenure is also more than “ownership”, although again the terms are often used interchangeably. Simultaneously, tenure can be officially sanctioned through State endorsement; can be part of a normative, un-codified system; or, again, a mix of both (Shipton, 2004). Tenure “rights” (often also called ‘property rights’), similarly, take all different forms.

4.2.2 Security of Tenure – land titling programmes

In Chapter 2 consideration was given to the work of de Soto (2000) who suggests that landlessness perpetuates poverty and a solution to this dilemma lies in effecting land titling programmes (especially in relation to formalising property rights in the informal sectors of developing countries). The idea is that market mechanisms take over; people gain access to credit which, in turn, ultimately creates a brighter economic future. Apart from access to credit, other virtues of providing formal titles in land include the facilitation of land sales and building a tax base. These considerations form part of what is referred to as the “Washington Consensus”⁸⁹ and has been described as a part of a neo-liberal approach to development (McCallum, 2009). Advocates of this approach suggest that land titling ought to be the main focus of land tenure reform. However, land titling programmes are not exempt from criticism.

Bromley (2008) writes of the ‘discredited Washington Consensus’ in his critique of the value in formalising title to alleviate poverty. In a sub-Saharan African setting Bromley (2008) articulates the differences between ‘possession’ and ‘ownership’. He writes that the process of

⁸⁹ The “Washington Consensus” is succinctly described by McCallum; “Originally coined by John Williamson, a US economist, the phrase has been used to describe the range of reforms considered necessary to address development issues in crisis-plagued developing countries. Over time, the Consensus has evolved to include support for the development of democratic institutions alongside the more traditional economic aspects of the paradigm.” (McCallum, 2009, p.6).

formalisation where possession becomes ownership only has value if the ownership comes with an entitlement – a property “right”. This right itself only has value if it is predicated on a system which allows it to be enforced – in other words the right is meaningless if it cannot be enforced (*ibid*, pp.20 – 21). If the regulatory framework (or overriding governing structure) does not recognise the right – or title – it does not act to alleviate poverty – it is a mere piece of paper. Bromley’s (2008) point is valid, and is further discussed in Chapter 6 when residents within the World Heritage Park were asked to comment on whether they ‘owned’ their land. The legitimacy of their tenure then becomes the issue. Bromley (*ibid*, pp.23 - 24) also picks up on points made by Deininger (2003) and Fitzpatrick (2005) who suggest that formalisation is not strictly necessary for improving security of tenure and other policy measures may work just as well, depending on the circumstances. This reasoning is based on a growing body of research that finds little or no link between formal titles and improved agricultural productivity. Other research in an urban setting also cast doubt on the formalisation of title as a solution to urban poverty. Reerink and van Gelder (2010) suggest that titling programmes in kampongs of Bandung in Indonesia may provide some financial benefits to residents, but that this is not necessarily always the case. In research which examines perceptions of security Reerink and van Gelder find that even those residents with less secure titles still perceive themselves as secure – largely because even those with semi-formal or informal tenure arrangements have some paperwork to support their claim to land (*ibid*, pp.83 -84). Their conclusion, therefore, is that “tenure should not be categorised in dichotomous terms, and directly equating tenure with security and informality with insecurity is too simplistic” (p.84). To further the case for subtlety, van Gelder (2010) calls for better clarity in the use of the term ‘tenure security’. He suggests the use of three terms to aid in our understanding of tenure; (1) tenure perception, (2) *de jure* tenure and (3) *de facto* tenure. The first is concerned with perceptions of residents and occupiers, the second with the legal construct and the third with factual (as in control or possession) rather than actual legal status of an interest in land (*ibid*, p.451). The argument is made that research and policy is better informed by viewing tenure security as being composed of these three ideas. He writes:

“On the basis of the tripartite view we can understand why tenure legalization and other kinds of intervention that view ‘the’ formal and ‘the’ informal as a dichotomy may not generate the intended effects. Underlying them is a view of the relation between tenure legalization and tenure security that is also assumed to be of a dichotomous

'and-and' nature, where informal tenure situations are insecure by definition and legal(ized) tenure situations imply security by default. While this may hold true in theory ... the reality of land tenure and land conflict in developing countries suggest otherwise" (*ibid*, p.453).

Elements of the three classifications suggested here are apparent throughout this research. In Chapter 6 perceptions of the residents living within the World Heritage site regarding their tenure status are explored. The legal construct within which tenure arrangements exist in the World Heritage site are considered in this chapter and Chapter 3, whilst *de facto* tenure where possession and control become important, is a central idea permeating much of the analysis throughout the thesis.

Hall *et al.* (forthcoming, 2010) provide an extensive account of *exclusion* from land in a Southeast Asian context. Their work illustrates that exclusion takes many forms – and formal land titling programmes are part of this process; in fact, the exclusion in these instances becomes State-endorsed (*ibid*, Chapter 2). They write:

"Titling is the most comprehensive manifestation of the modernist project of states and development agencies to formalize boundaries and conditions of access and ownership within them. Land titling is also an exclusion by definition, by nature and by intention. By definition, land title is the right to exclusive use of a parcel of land. By its nature, titling excludes all but the individual owner from using and accessing land, and it gives exclusive and complete rights to dispose of land through sale or mortgage. By intention, land titling programs are designed to remove the insecurities and ambiguities assumed to stem from less than fully exclusive property rights. One might say that the goal of land titling programs is the perfection of exclusion. Land titling's proponents, however, describe it primarily in terms of *inclusion*" (forthcoming, 2010, p.30).

Notwithstanding these debates about the merits of titling programmes as part of a poverty alleviation agenda, and the apparent tensions within the concept (and application) of land titling, it remains the case that many developing country governments continue to adopt and pursue titling projects. For landscape management in World Heritage locations that are situated in a developing country context with a titling agenda in place, the challenges for conservation

take on another dimension – how to effect protection within a rapidly changing land tenure situation. This is the case for the World Heritage site at Angkor. It also means that principles related to planning, including land use planning, upon which the management of World Heritage landscapes is often based (see Chapter 3), should take into account land tenure issues. It remains the situation that land management in a developing country context is influenced by planning concepts borrowed from developed countries, and that these tend to take inadequate account of existing tenure arrangements (Gillie, 1979). Land use control and restrictions tend to (but are not always) predicated on a system of private ownership in which the State ‘intervenes’ for the common good to limit the types of activities which may take place. This is reflected in the approach taken to upholding a heritage conservation agenda in some World Heritage sites, including Angkor; State-formulated and imposed controls restrict what residents may do. The situation at Angkor, however, is complicated by the unclear status of residents and their landholdings. This issue is explored in the following sections of this Chapter.

4.3 CAMBODIA’S LAND REGULATION FRAMEWORK – AN OVERVIEW

4.3.1 Introduction

This historical overview begins with the land administration system of the Angkorian period (circa 9th – 15th Centuries AD). For a contemporary study this might seem unusual. However, it is justified by the parallels that can be drawn between the Angkorian⁹⁰ arrangements and practices that persist today. An obvious example is that of seeking arbitration from the sovereign, which was an entitlement during the Angkorian period and which is echoed in the modern day arrangement that allows citizens to petition the Prime Minister. The persistence of traditional, customary land management (and dispute resolution methods) requires some examination of their place in Khmer society through time; an exploration of land use in the past addresses this. This account sheds light on and helps to inform an understanding of traditional land management in the country. Table 4.1 provides a broad synopsis of land tenure regimes for Cambodia. In a similar way to Vandergeest and Peluso’s (1995) analysis of Thai property rights, the following analysis is:

⁹⁰ Some scholars lament the imposition of defined ‘eras’ in scholarly works about Cambodian history, the commentary about land and tenure arrangements is described in these categories herein. There is some debate over the use of the term “Pre-Angkorian” and “Angkorian”. Some scholars rely on recently emerging archaeological and paleo-environmental evidence to suggest that the nomenclatures are no longer strictly applicable, Pottier, C, (*pers comm*). Nonetheless, for the purposes of this thesis these terms shall be used.

“... a history of the wholesale adoption of Western models, incapacity to implement these models effectively throughout Thailand, and subsequent reforms that combined some recognition of local practice with attempts to make people conform to national laws” (*ibid*, p.402).

Although the Thai experience differs significantly (in that it was not a colonised State) from the first Thai land code enacted in 1901 through to the present, the waxing and waning of State land titling programmes echoes the Cambodian situation. Therefore, in this chapter the relationship between the State and the village in the administration of land is explained and, in the process, the impact and influence of the long presence of foreign interests (in particular, French) is demonstrated. This part also highlights the failure of successive regimes to establish a formal land registration system and the practical blurring of concepts of ‘ownership’ and ‘usufruct’/‘possession’ in Khmer land management.

Table 4.1 Overview of the history of tenure in Cambodia

Property Regime	Period	Collective Ownership	Individual Possession (or Usufruct)	Individual Ownership
Pre-colonial	- 1863	In the hands of the King	Y	N
Colonial	1863 – 1953	Idem	Y	Y
Sangkun/L.Nol	1953 – 1975	Idem	Y	Y
Khmer Rouge	1975 – 1979	In the hands of the State	N	N
Krom Samaki	1979 – 1989	Idem	Home lots only	N
Krom Prewas Dey	1989 – 1991	Idem	Y	N
UNCTAD period (Land Law 1992)	1991 – 1993	Idem	Y	Home lots only
Constitutional Monarchy	1993 – ongoing	Idem	Y	Idem
Constitutional Monarchy (Land Law 2001)	Ongoing	Idem	Y	Y

Source: Adapted from Van Acker, 1999, p.32; Henderson, 1999, pp.5 – 6.

4.3.2 Pre-Angkorian Land Use

Little is known of the ownership conditions in pre-Angkorian times,⁹¹ although Vickery (1986) points out that Cambodians “have inhabited their present homeland since the beginning of recorded history in the second and third centuries AD”. Chandler (2000, p.16) observes,

⁹¹ A note on sources is useful, for historical information is based on inscriptions in which Sanskrit-language inscriptions relate to royal and religious events, whereas Khmer-language inscriptions deal with administrative and logistical issues (Chandler, 2000, p. 21). It is from the latter, therefore, that most of the detail of pre-Angkorian land-use and ownership arrangements can be gleaned.

“...the notion of alienable ownership of land, as distinct from land use, does not seem to have developed in pre-Angkorian Cambodia. Land left fallow for three years reverted to state control. The king, theoretically at least, was the lord of all the land in the kingdom, which meant that he could reward people with the right to use it. Many of the Cambodian-language inscriptions from the Angkorian period, as we shall see, dealt with complicated disputes about access to land...”.

Vickery’s analysis (1998) concurs with Chandler (2000) to the extent that land ownership did not lie in the hands of individuals, but argues that – at least for practical purposes - land ownership was ‘vested in local communities’ rather than the State, and was traded by local officials through temples, and without reference to any higher administrative or religious power. Centralised Royal land ownership was not evident in theory and certainly not in practice, based on the Khmer inscriptions. The Khmer-language inscriptions dealt in some detail with land disputes (Chandler, *op cit*) and detailed the boundaries of particular land “parcels” (Vickery, 1998, pp.297 - 298). The legal gravitas necessary to establish land grants or lands associated with particular temple foundations was achieved, Chandler asserts, merely through recoding the details in stone (Chandler, 2000).

4.3.3 Angkorian times

With the unification of Cambodia’s disparate polities under Jayavarman II in 802 AD and the beginning of the “Angkorian Period” came the centralization of land ownership and land administration under the influence of the Royal capital. The key distinction between the “pre-Angkorian” and “Angkorian” periods in terms of land ownership appears to have been a more explicit recognition of Royal ownership of land and while Royal ownership of all Cambodian land was apparently recognized at a conceptual level, land, land use and user rights were commonly administered, as in the pre-Angkorian period, without recorded reference to the King, his councilors or administration (Chandler, 2000).

Ricklefs (1967) provides a useful insight into tenth century Khmer land holdings, gleaned from an analysis of translated inscriptions and Coedes’ work.⁹² Ricklef (1967) points out that

⁹² This is a reference to the French scholar, Professor George Coedes, *Inscriptions du Cambodge: Collection de Textes et Documents sur l’Indochine* (8 volumes).

controlling land was of some significance in terms of power structures in tenth century Cambodia – for agricultural production and the populations dependency on the land were paramount. In such circumstances the King maintained his considerable power by virtue of his prerogative to grant land parcels. Ricklef (1967) suggests that Royal grant was not the only means of alienating land, moreover, it may not have been the most popular way of gaining ownership privileges. He writes that the sale and purchase of land amongst non-Royals was common as references to the transactions are recorded in multiple inscriptions. The inscriptions also suggest that the type of right attached to land transactions was one of *exclusive* possession and that boundaries were described with rigour. The descriptions of such a land administration system suggest a subtle and sophisticated system was in place at this point of time in the tenth century.

Chao-Ta Kuan (Smithies, 2001) makes no mention of land administration in his otherwise invaluable account of daily life around Angkor in the late 13th century (1296-1297 AD) yet from the inscriptions some details about land holdings can be garnered, as the lands attached to the temples were often described (Chandler, 2000). While Van Acker (1999) writes of the concept of “acquisition by the plough” as a traditional way in which property rights were asserted. This system allowed those farming the land to possess it (Osborne, 1979) and if left untouched for more than three years the land reverts to communal (that is, sovereign) ownership (East-West Management Institute, 2003). This concept of acquiring land by tilling it is reaffirmed by Nim (1982) who suggests that it continued into the twentieth century, for many still considered the ‘prolonged occupation’ of land as tantamount to ownership – a variation of the usufruct concept.

4.3.4 The “Middle Period”: 16th – 18th Centuries

Chandler (2000, p. 83) cites Spanish accounts of Cambodia in the mid 16th century which indicate “royal interference in everyday life” which included royal ownership of land, with privately “owned” land (again, the distinction between ownership and user rights seems to have been irrelevant) reverting to royal control upon the death of the (male) “owner”. Such power, Chandler (2000) suggests, may have been used to keep the elite in check and shore-up the power of the monarchy. In the mid 19th century landholdings – even among the elite – were small (Chandler, 2000, p. 101). Disputes within villages were resolved by conciliation mediated

by chiefs or elders rather than by reference to formal law (Chandler 2000, p.104). Chandlers' view of this period suggests weak centralized authority and 'inward looking' village communities, with an informal and flexible relationship with other villagers, the district and the state.

For many years during this period Cambodia was subjected to, or perhaps even buffeted by, the influences of its closest neighbours – Thailand and Vietnam. For much of the 1830s and 1840s the country was under the direct administration of Vietnam (Osborne, 1979) whilst provinces to the north and east, specifically Battambang and Siem Reap Provinces were under Thai control for much of the nineteenth century. As a consequence it seems highly likely that, from an administrative viewpoint, the land administration system during this period was fragmented and piecemeal.

4.3.5 The French Influence: 1863 – 1953

It is commonly suggested that the temples of Angkor were “discovered” in the nineteenth century by Frenchman, Henri Mouhot (Chandler, 2000) and it is from this time that the influence of the French can be clearly traced.⁹³ The era known as “French Protectorate Period” extends from 1863 through to 1953 and it is from this era that the antecedents of the current land laws evolve (Van Acker, 1999). Following Mouhot's discovery the French swiftly became interested in the region and in 1883/4 King Norodom I formalised a treaty with the signing of the “Treaty of Protectorate” which claimed to protect the area under Norodom's control from the Vietnamese and Thai.

The 1884 Treaty with the French sought, among other things, to institutionalize land ownership by instigating four categories of property ownership; royal property, public property, inalienable public reserves for lease and inalienable private property (Edwards, 2007, pp. 44 – 45).

Scholars such as Chandler (2000) regard this Treaty as revolutionary because it established wide-ranging French control over Khmer affairs. This view may be reinforced by a depiction of Prince Yukanthor's scandalous role as *agent provocateur* in Paris, in which he declared through the Parisian media “you have created property and thus you have created the poor” (Chandler 2000, p. 147). It is clear that the Treaty triggered a widespread rebellion, and the French were

⁹³ For a helpful reference to place the French influence into perspective see Keay (2005).

forced to take a more conciliatory line. While the Treaty itself was ratified in 1886, the reforms it established would not come into place for at least another 20 years after King Norodom's I death. Importantly, those opposing the French influence are said to have ceased such opposition once the French agreed to respect "Cambodian customs and laws – that is, the pre-treaty system" (Vickery, 1986, p.4). Thus, it was not until 1920 with the promulgation of the French-inspired Civil Code of Cambodia that land law reform took hold (Hartman, 2006). Hartman writes that this created a paradigm shift:

"Derived largely from the French Civil Code, it (*land administration*) was fundamentally different from the ancient Khmer conception of property. No longer did the King own all the land in the kingdom. Instead, included in the Code were such concepts as right of possession and private ownership. The Civil Code allowed an owner to dispose of his property as he saw fit, and his ownership was absolute and exclusive" (Hartman, 2006, p.116).

There is little doubt that the codification of property rights established and implemented by the French through the Civil Code fundamentally altered the way in which property rights were allocated – at least from a formal perspective. The extent to which the Code impacted on the daily lives of Cambodians, particularly rural Cambodians, is far from clear. A reading of historical accounts from the early twentieth century (for example, the works of authors such as Vickery, 1986; Chandler, 2000; Kiernan 1982; or Osborne, 1979) suggests that the true nature of land use/ownership regimes may have changed very little. Moreover, as Edwards (2007) points out of the early 1900's, far from being benign and subservient to the French, there were some amongst Cambodia's elite who sought land-related reforms to improve agricultural productivity. Yet, even with such seemingly progressive sentiments, little by way of land tenure regime change took place throughout these years.

Kiernan (1982) writes that there was "relative" peace under French rule until the 1930s and, in particular, until the year 1941 when the provinces of Battambang, Siem Reap and Preah Vihear were taken by Thailand – with Japanese support. Of course the events of 9 March 1945 should not go unnoticed – it was on this date that the Japanese interned the French in Cambodia. At this time the treaties with the French were abrogated (Vickery, 1986). French authority, however, was restored later the same year. Following the formation of a joint French-

Cambodian Commission, voting privileges were extended to all Cambodians, elections took place and a new Constitution came into effect. In 1949 while France recognised the independence of Cambodia it did not regain sovereignty until 1953 (Jennar, 1995). Throughout these post-war years the sanctity of property was ensured by virtue of Article 7: "Property shall be protected by law. No one may be deprived of his property except for reasons of public utility in the cases established by law following a just and prior indemnity" (Jennar, 1995, p.38).

4.3.6 The year 1953: The Kingdom of Cambodia / The Republic of Cambodia

Cambodia gained her independence from French rule in 1953 and for land tenure arrangements at least, little appeared to change – the provisions of the 1947 Constitution (Article 7, above) remained in place. Reflecting on his visit to Cambodia in the years preceding the Khmer Rouge reign Milton Osborne (1979, p.132) acknowledges his limited first-hand experiences of rural life and land arrangements but, nevertheless, makes the following observations of conditions in 1966:

"With some important exceptions, such as areas in Battambang Province, the farmers of Cambodia worked their own land ... It is quite certain that the problem of indebtedness was widespread. And with indebtedness went usury... Rice merchants ... held many of the peasant farmers in a grip that tightened every year".

Yuon (1982) confirms the role of usury in the oppression and exploitation of the peasant communities. These conditions undoubtedly contributed to the conditions that made the rise of the Khmer Rouge possible throughout the 1950s and 1960s (Kiernan, 1982). The conditions are also reflected in the writings of Cambodians such as Yuon (1982) and Nim (1982), which are identified in the following passages.

Kiernan (1982) writes about landlessness throughout Cambodia in the period 1930 – 1970 and notes the extent of inequity in land distribution *not* between landlord and peasant but, rather, between or within the peasant classes. He writes that small, family-based, land holdings became far less visible as those people increasingly moved to the growing cities. In an eerily familiar echo of more recent times, Kiernan (*op cit*, p.5) also documents forced land seizures and massacres in the area of Kampong Speu Province in the 1960s. Writing on the basis of his

experiences Yuon (in Kiernan, 1982, Chapter 1) notes that the apparently fragmented landscape – which looks as though it is composed of many, individually owned plots – is in fact more often than not part of a larger land holding shared between a small number of individuals and are, ergo, not small-scale family holdings as a cursory glance at the landscape may suggest.

Of the land ownership situation circa 1950 Yuon (in Kiernan, 1982) observes:

“Kampuchean land is very parcellized. The rice-fields are generally small, bounded by high or low dykes. The *chamcar* [garden farmlands, usually on the river-banks] also take the shape of long, narrow strips... It is important to understand that often these small plots do not form single holdings, but are scattered, especially in the countryside, far from the owner’s dwelling place. The Kampuchean countryside is made up of small and medium-sized family farms. One cannot find large, capitalist-type operations, employing a lot of labour. Everywhere one notices that the peasant works the land himself, that he cannot own more than his working capacity permits...

... the predominance of small and medium-size farms does not preclude the existence of large holdings. It does not mean that the small and middle peasants cultivate their own land. It is often the case that the land they work belongs to others... The general point is that big property is thus disguised, somehow hiding behind small family farms” (*ibid*, pp.35 – 36).

The nature of these observations is reinforced by Nim (1982) who writes about the inherent problems for development associated with the parcellization and fragmentation of rural holdings. These hurdles he identifies as low productivity and a lack of innovation, which combine to suppress progressive agricultural development, which, in turn, restrains or stifles the livelihoods and living conditions of the rural poor. Such were the conditions of land ownership/administration leading to the revolution of 1975. Indeed, Kiernan (1982, Chapter 8) refers to the role of land administration when he describes the overthrow of Prince Norodom Sihanouk in 1970 by the National Assembly led by General Lon Nol and the subsequent peoples’ revolt against the new regime. In this chapter he traces the rise of landlessness concurrent with an emerging revolutionary sentiment throughout the 1950s and 60s as part of the background to the conditions that lead to Pol Pot’s notorious Communist reign.

4.3.7 Democratic Kampuchea ["DK"], 1975 - 1979

The notorious reign of the Khmer Rouge regime (the period of governance known as Democratic Kampuchea) is said to have begun on 17 April 1975 and persisted for four years until the Vietnamese forces occupied Phnom Penh in January 1979 (Chandler, 1991). The ascendancy of the Khmer Rouge threw society into chaos and millions of people were displaced as urban dwellers were forced into the country-side. During this period, *all private property entitlements, which had been established under colonial administration, were void and all land registration records were destroyed*. This revolutionary policy can be stated simply but its consequences have been exceedingly complex and long-lasting. Even some twenty years later Williams (1999a, p.8) wrote that: "Cambodian society is still struggling with the consequences of the obliteration of social spatial relations". For many this remains true to this day, over 30 years since the fall of the Khmer Rouge.

4.3.8 The People's Republic of Kampuchea ["PRK"], 1979 – 1989

The impact of the complete prohibition on the alienation of private property together with the collectivisation of all Cambodian property following the Democratic Kampuchea reign persisted into the 1980s and created profound and continuing social, economic and demographic effects (Chandler, 2000). Yet, the year 1979 is of some significance in Cambodian history, for it was on 24 December 1978 that Vietnam invaded Cambodia and on 7 January 1979, Phnom Penh was liberated (Jennar, 1995). Apart from marking the end of the Democratic Kampuchea years, 1979 stands as a turning point for the re-introduction of a modified form of private property entitlements. Under the PRK regime a new Constitution was enacted and the provisions as they relate to land ownership allowed families an entitlement to residential housing plots which could pass to children through inheritance provisions (Articles 15 – 18, Jennar, 1995; Vickery, 1986) although all land remained classified as State land (Article 14). Vickery (1986) notes that *former* property rights were not recognised under the new regime although those that had remained on their land or those able to return immediately after January 1979 were entitled to keep it. Thus from 1979 land reform began, albeit very slowly in the first few years, and a system of re-privatisation began (Sovannarith *et al.*, 2001). Yet, although the tenure system changed in post-Khmer Rouge years, the property ownership situation was not necessarily clear. Chandler (2003, p.230) described conditions in the 1980's as generally chaotic, noting that "rural

society was a shambles". Thus, despite the end of the Khmer Rouge regime, access to land remained problematic. Under the People's Republic of Kampuchea there were growing food shortages and collective property rights wherein 12 to 15 families were allocated 15 – 25 hectares per unit (the "Krom Samaki") continued for a few years (Van Acker, 1999).

Writing from a personal perspective, as one who witnessed first-hand the PRK's land regulation system, Mak (1997, pp. 50 -51) describes the three types of farming categories permitted. The first was full collectivisation in which the "rice harvest was collectively kept and distributed to the work-force after 'selling an amount to the state' and collective debts or expenses" (*ibid*). The second system described by Mak is comprised of two alternatives. The first was that, "after all rice land had been transplanted by collective work, the fields were distributed to each family (according to work force category and number of persons per family) to look after and harvest individually" (*ibid*). The second alternative was when land and tools were provided to family groups within a village and "land was farmed on a family basis but they helped each other in ploughing, uprooting, transplanting and/or harvesting as in *provas dai* (exchange labour) that used to be done traditionally" (*ibid*). The final type "involved division of land among families and all production was organised individually. It was, effectively, private farming. There was only a small collectivisation program in the village. However, land still belonged to the state" (*ibid*).

Vickery (1986) describes some of the problems of the solidarity groups approach from a land management perspective when he identifies that conflicts arose when former owners returned to lands which had been already allocated – in such cases the State would refuse to intervene and left the resolution of these matters to "local authorities". Moreover, in a footnote (*op cit*, p.194) he suggests that this was the only feasible way to deal with these issues given the complete annihilation of land records (and the imprecise nature of any records which may have previously existed). Vickery's analysis is based on a Circular dated 30 August 1980 entitled "Increasing the Family Economy". Other inequities of re-distribution at this time have also been identified by Vickery (*op cit*, p.141), in that families who continually occupied land would be entitled to keep working that land even if it was larger than the allocations given to others. Arguably, the tensions that Vickery identifies in this period have continued to this day, indeed, some of the qualitative results articulated in this research (Chapter 6 herein) could be used to support this interpretation.

Yet, despite these restrictions, over the years of the PRK there was a gradual relaxation of the state control and ownership of land (Adler, 2006a). So despite the fact that initiatives such as the enactment of regulations including the 1985 Sub-Decree No.6, *Control and utilization of agricultural land* (Russell, 1997) which prohibited the purchase and sale of land, towards the late 1980's the importance of "new laws...allowed farmers to pass title to land on to their children and householders elsewhere to buy and sell real estate" (*ibid*, pp.105) cannot be minimised.

4.3.9 The State of Cambodia; 1989 – 1993

In 1989 the PRK's policy of collectivism was abandoned, marking another turning point in the reform agenda of recent Cambodian politics. Following meetings between Prince Sihanouk and Mr Hun Sen in December 1987 and January 1988 and through the "Jakarta Informal Meetings" a reform agenda evolved and a new Constitution was enacted in 1989 for the "State of Cambodia" (Jennar, 1985, p.110). Land rights were highest amongst those issues revisited at this time and, as Frings (1994) points out, these rights were reformulated through a resolution of the National Conference of Cadres in April 1989. Under this resolution whilst land was reaffirmed as the property of the State three types of rights were now recognised, namely (1) ownership (*kamasetthi*), (2) possession (*phoukea*) and (3) concession (*sompatean*).⁹⁴ Specifically, ownership rights were available for residential units; possession rights for agricultural lands having been cultivated for one year from the date given by the State and concession rights were available on "other types of land" (*op cit*, p.52).

While it was not until the 1993 elections that Cambodia embraced a democratic system of governance⁹⁵, the process of reform had began two years earlier when, on October 23 1991, the Paris Peace Accord was signed and the United Nations, under the auspices of the authority known as UNTAC (United Nations Transitional Authority), entered Cambodia (Jennar, 1995). It was during this era that a significant milestone in property rights was achieved for, on 13 October 1992, the National Assembly of the State of Cambodia passed a new *Land Law*. The

⁹⁴ By virtue of the passage of Sub-Decree No.25, Council of Ministers of the People's Republic of Kampuchea, 22 April 1989, Political Instruction No.3, Enforcing Instruction of the Principles for the Management (krup krong) and Use (prae prass) of Lands, Council of Ministers of the State of Cambodia, 3 June 1989, (Sik, 2000, p.1; East-West Management Institute, 2003, p.23).

⁹⁵ There is considerable debate about the extent to which the principles of democracy are accurately reflected in Cambodian politics, see, for example, Hughes, C., "International Intervention and the People's Will. The Demoralization of Democracy in Cambodia." in Kiernan and Hughes (2007), pp. 45 – 68 or Vickery, M., (2007), *Cambodia: A Political Survey*.

importance of the 1992 law cannot be overstated as it was the passage of this law that trumpeted the return of private property rights after an absence of over two decades.

Nonetheless, the 1992 law had significant shortcomings and by 2001 a new *Land Law* had been enacted. There were difficulties in transitioning from possession to formal ownership, and some of these hurdles remain today. For example, while the 1992 law allowed for a possessor of land of five years duration to apply for ownership – after 2001 this provision no longer applies – and this has created some ambiguity for areas left unoccupied, but where possession has been claimed (see Sokha *et al.*, 2008, especially p.224). Another shortcoming was that the 1992 law was seen to be incompatible with the subsequent 1993 Constitution (East-West Management Institute, 2003). It was this fundamental problem which, combined with other dilemmas, (see, for example, Williams, 1999) resulted in the necessity to re-write the *Land Law*, and after almost a decade a re-written land law emerged and was promulgated in 2001. It is now perceived that the current 2001 *Land Law* substantially redresses many of the shortcomings of the 1992 law (East-West Management Institute, 2003).

4.3.10 The Kingdom of Cambodia 1993 – the current system

The current political entity known as the Kingdom of Cambodia commenced with the passage of the *New Constitution of the Kingdom of Cambodia* in 1993 following elections held in May of the same year and the establishment of a Constituent Assembly which commenced sitting in June (Jennar, 1995). Following the enactment of the 1993 Constitution work commenced on a new land law (East-West Management Institute, 2003). One of the most important priorities for this new phase in land administration has been to design and implement a national registration (cadastre) program.

Attempts to instigate a cadastre programme in Cambodia are not new, beginning with the 1920 Civil Code (Hartman, 2006), and remain, to date, incomplete. The current regime for the governance of property stems from the legislative requirements of the 2001 *Land Law* and the work of the Royal Government of Cambodia's Ministry of Land Management, Urban Planning and Construction (MLUPC).⁹⁶ The work of land titling, established through the LMAP process,

⁹⁶ MLUPC is one of the government bodies responsible for the "Land Management and Administration Project" (LMAP). The Ministry, with the support of international bodies, specifically with the aid of the German Government (through the

was estimated to take approximately 15 years to complete (World Bank, 2004). While some international funding and support has officially ceased⁹⁷ the programme of systematic land registration continues. But how is this country-wide registration programme implemented within the confines of the Heritage Park?

It has only been relatively recently that the management authority for Angkor has become active in land administration. Concomitant with a growing focus on local and community needs within the Heritage Park has been management activity designed to address land ownership issues. Following the 2008 restructure of the APSARA Authority, there now exists a Department of Land Planning and Habitat Management (Sub Decree/Anukret No.50 ANK/BK dated 9 May 2008). Article 10 provides for duties of this department to include "the establishment of occupation certification procedures and plot registration". During the course of 2009 pilot programmes were introduced into two villages within the core zone of the Park which have plotted and registered titles – known as occupancy certificates - for residents. Another recent initiative is the development of Commune Land Use Planning (CLUP). All 1621 Communes throughout Cambodia have been provided with maps (produced with international assistance by the national government) to assist land use planning at the local level.⁹⁸ Both of these land management developments apply to land within the World Heritage site.

In parallel to the formal land administration program are recent national attempts to regulate, in a consistent and comprehensive fashion, Protected Areas in Cambodia. The *Protected Areas Law* of February 2008 provides for a system of zoning for protected area management under the Ministry for Environment.⁹⁹ The draft law provides for different types of management zones (Article 11), including "core", "conservation", "sustainable use" and "community" zones. Article 11 also provides that land title enabling people to use property within these areas must be obtained from the Ministry for Environment. The evolution of this approach for Cambodian protected areas is in its infancy but there are parallels to the zoning approach adopted at Angkor. However, the extent to which there has been any consultation between the emerging

auspices of the GTZ, Deutsche Gesellschaft für Technische Zusammenarbeit), the World Bank, the Finnish Government (under the auspices of Finnmap)⁹⁶ and the ADB (Asian Development Bank), began the LMAP initiative in 2002; see Sar, 2005, p.4.

⁹⁷ See Footnote 8 herein.

⁹⁸ Details available at, for example,

<http://www.phnompenh.um.dk/en/menu/AboutUs/News/CeremonyHeldintheMinistryofInteriorToHandoverLandUseMapstoAll1621CommuneCouncilsinCambodia.htm>, accessed 31 December 2009.

⁹⁹ An unofficial translation of the Ministry of Environment Protected Areas Law February 2008 is available at <http://faolex.fao.org/docs/texts/cam81966.doc>.

approach for protected area management in Cambodia and the experiences of World Heritage site management is unclear. It is noteworthy, however, that the draft law specifically excludes areas under the control of the APSARA Authority.

4.3.11 Summary

Tracing the evolution of land laws from a temporal perspective emphasizes how the concepts of ownership have changed through successive political regimes. The imposition of different approaches to land laws reflects changing political climates, though it remains a constant concern, regardless of the dominant political force. It is important to be cognisant of the warning that “States’ attempts to impose their own property regimes over the years had varying degrees of success as many failed land law reforms have shown” (Griffiths *et al.*, 2009, p.7). Moreover, the slow pace of reform, which characterises the privatisation of property, is, arguably, a product of the fact that “...older regulations and the spaces they have defined may continue to be of social and political significance long after the state has replaced them by new legislation...” (*ibid*, p.9). Nonetheless, this overview of land laws illustrates how the regulatory regime has, over time, attempted to further narrow and define the concept of ownership in a country where the population was without a strong concept of ownership in pre-colonial times and, once established, was entirely stripped of any private property during the Khmer Rouge regime. The evolution of property rights reflect State-inspired attempts to control land management and can be interpreted as a mode of territorialisation (following Vandergeest and Peluso, 1995).

4.4 LOCAL LAND USE OBLIGATIONS AT ANGKOR

4.4.1 Introduction

It is against this background of evolution in national land law that land use obligations in Angkor must be understood. Angkor Archaeological Park is populated by over one hundred villages and 100,000 residents in the two most highly protected management zones (APSARA, 2005b), many of whom occupied the land prior to the World Heritage listing. For those living within the Park it is the case that the issue of land use and ownership has considerable currency just as it does for

those living outside the Park. For in Cambodia generally it remains almost impossible to overestimate the value placed on private property after years of civil turmoil in which access to land was severely restricted. Security of tenure is of unparalleled importance and it is seen as such nationally and internationally with both local and international media regularly highlighting the plight of the landless (for examples see Baars, 2005; Kimsong & Kate Ten, 2004; Vachon, 2004; Kazmin, 2007). References to the need for Cambodians to secure tenure of their land/s are littered throughout policy documents, so much so that the concept of security of tenure has become securely ensconced in the country's development rhetoric.¹⁰⁰ Moreover, the Royal Government of Cambodia increasingly recognises the importance of land to its citizens, especially in the context of a predominantly rural society with pressing poverty alleviation priorities (SCW, 2006).

In these circumstances it is timely to review the legal responses to site management with a particular focus on the twin impacts of zoning regulations and the restrictions placed on ownership in the Angkor Archaeological Park. It is also timely to note that land planning and management around Angkor are administratively complicated.¹⁰¹ Before embarking on the task of describing these regulatory arrangements for the World Heritage site, an overview of the history of land law within the Park is fruitful.

4.4.2 History of Land Tenure within the World Heritage Park

Angkor Archaeological Park was first inscribed on the World Heritage List as a "site in danger" in 1992 (UNESCO, 1992). Yet the history of protection of the site can be traced back to the days of the French Protectorate. As Edwards (2007) notes, it was not until 1907 that the area around Siem Reap and Angkor was ceded to the Cambodians – until this point it had been under the control of Siam (Thailand). Yet the French did not appear to be compromised by this technical point and maintained access to the monuments and temples from the time of Mouhot in 1860, as Edwards (2007, p.22) points out, "(f)rom 1863 until the absorption of Siem Reap into Cambodia in 1907, French scholars and administrators, unable to claim sovereignty over the

¹⁰⁰ Some examples include the Royal Cambodian Government's, "Rectangular Strategy for Growth, Employment, Equity and Efficiency" (available at http://www.car.gov.kh/hunsen/rectangularstrategy_en.asp :p. 7), and the Royal Cambodian Government's "National Forum on Land Management 2004", available at http://www.car.gov.kh/hunsen/landmanagement_en.asp). Accessed 7 December 2007.

¹⁰¹ The arrangements have been described as "... complex, characterized by 'administrative and bureaucratic gray zones' caused by institutional fragmentation, unclear roles and responsibilities, and weak enforcement.", from Session 2 Final Report Siem Reap PRCUD, December 2008, in Rabe (2008).

actual site of Angkor, began to stake out an intellectual and cultural sovereignty ...". The École Française d'Extrême-Orient (EFEO) was also created in Cambodia in 1907 when it was assigned responsibility for conservation of the Angkor monuments.¹⁰²

In 1911 processes were put in place to "tame" the environment with the clearing of forests and the creation of road access to the monuments (Wager, 1995b, p.140). 1911 is also the year that a Royal Ordinance was passed which defined a two hundred metre boundary around the monuments (Luco, 2006). It was also under the auspices of the French that a small area surrounding the monuments at Angkor was declared a national park in the year of 1925 (Wager, 1995; Wager, 1995b). Article 1 of the Arrêté creating the Angkor Archaeological Park (1925) stipulates that the boundaries of the Parc d'Angkor will be determined by the Resident General of Cambodia with the assent of the Director of the EFEO. Interestingly, the designation of the Angkor Archaeological Park is cited as the first classification of a national park in south-east Asia by the Cambodian government (Ministry of Environment (1998), at p.40).

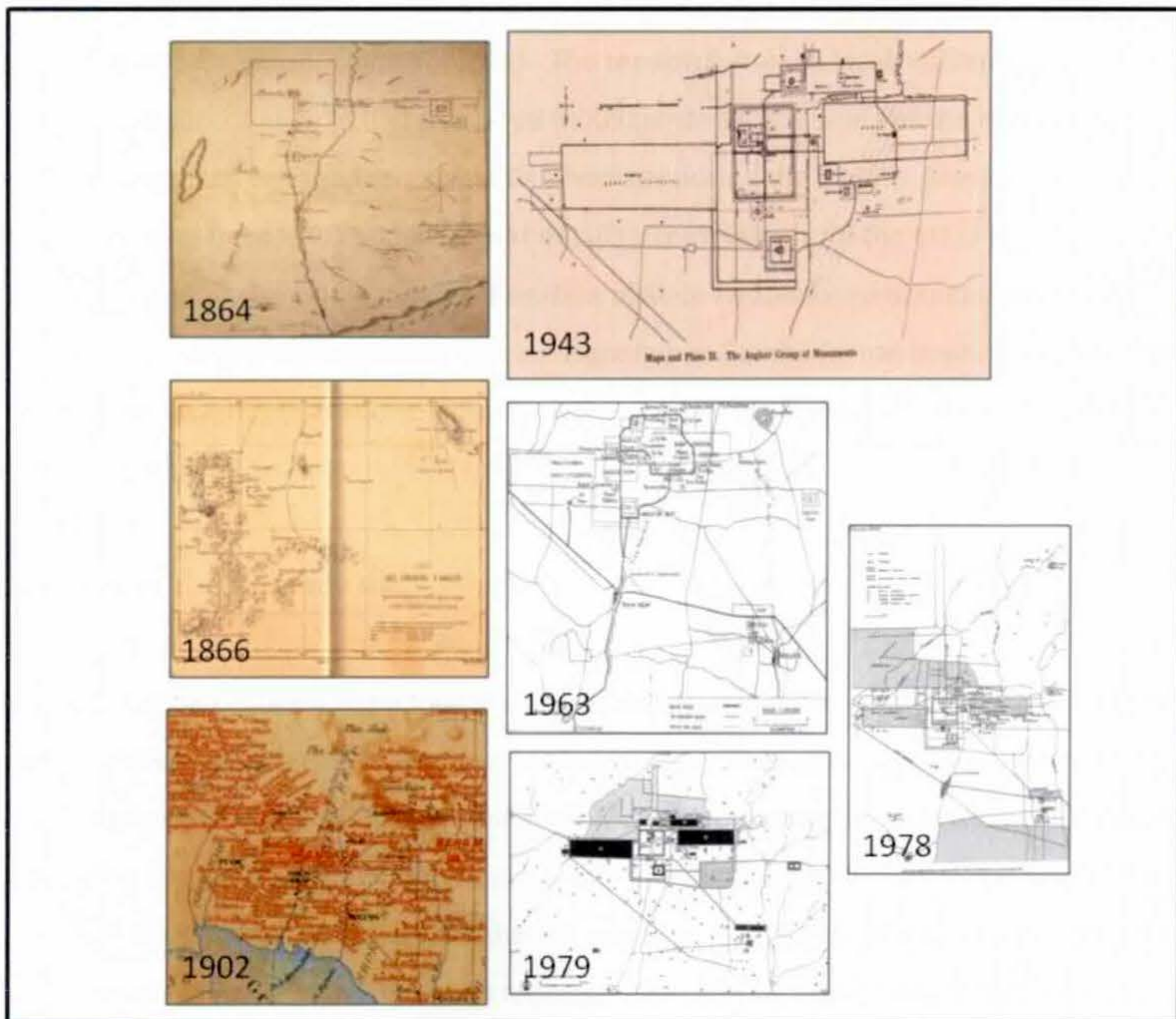
Edwards (2007, pp.125 - 126) describes in poetic terms the Angkor landscape when the French encountered the monuments:

"Besieged by unfettered jungle growth ranging from the powerful roots of massive banyan trees to rampant lianas, Angkor was the antithesis of the pastoral landscape celebrated in the literary and artistic tradition of *la douce France* (sweet France), with its regulated rivers, vineyards, and orchards... From the early 1900s, archaeologist and administration joined forces to convert Angkor into parkland that would appeal to European tourists and coincide with French notions of monumental space".

Edwards (*ibid*) continues with an explanation which suggests that the transformation of the landscape sat at odds with indigenous expectations about spatial form and function – she points out that forest spaces, though unregulated, were spiritual places and to this day, the importance of trees as "repositories of ancestral spirits, or *neak-ta*" (p.126) remain (see also Lloyd, 2009). Maps dating back to 1864 depict the area with square and rectangular representations of the monuments (Figure 4.1). From the earliest European maps, particularly Henri Mouhot's map of

¹⁰² See <http://www.efeo.fr/en/presentation/siemreap.shtml>, accessed 19 June 2009.

Angkor, (Evans, 2007¹⁰³) through to more modern images, the association of square and rectangular representational forms on maps is clear. The images appear to have arisen as cartographers (and archaeologists, Evans, 2007) outline the outer moats and walls of the main temple structures (especially at Angkor Wat and Angkor Thom) but the legacy of the rectilinear form seems to extend to the modern day maps, and clearly informs the ZEMP (Zoning and Environmental Management Plan) zones. The physical features have informed the spatial form of regulation suggesting that landscape shapes the law. The physical form of the settlement and the way it has been mapped influence the way regulations were designed, leading to changes in the landscape. This is a situation in which landscape shapes the law and the law shapes the landscape.



Source: Greater Angkor Project, The University of Sydney

Figure 4.1 Maps of Angkor since 1864

¹⁰³ Evans (2007) also notes that maps of the Angkor area can be traced back 'at least a thousand years' (p.4)

The pre-existing landscape, now captured through remote sensing archaeological investigations, when added to material gleaned from historical sources such as the inscriptions, identifies distinct landscape patterns (Evans, 2007). There seems to be little doubt that the efforts of the archaeologists who mapped, and continue to map, the area make a substantial contribution to the way in which landscape use is perceived today.

Under the auspices of the French, further laws were put in place to limit the rights of residents within the Park and to define the extent of the Park. In particular Article 20 of this law suggests that the Resident shall decide the regulations as to the rights of grazing animals, fishing rights, hunting, movement and settlement.¹⁰⁴ Luco (2006) says that this same decree set out to define the spatial extent of the Park to a “preserved zone”. Yet, she also observes that these same rules, which were designed to severely curtail the local villagers within such a pre-defined space, were “rarely implemented” (*ibid*, at p.121). The tension between local residents and heritage managers is apparent even in this era. Lloyd (2009) writes about some of the management conflicts arising between the French and Cambodians during the 1930’s. She provides an example, sourced from EFEO archives, that details a complaint from the EFEO Director to the Resident-General of Cambodia that the Resident of Siem Reap moved boundary markers.¹⁰⁵ Lloyd (2009) makes a clear argument that heritage law in Cambodia has been, throughout the nineteenth and twentieth centuries, heavily influenced by the French and their “Western conservation ideals”.

4.4.3 Rolous¹⁰⁶ – the study site

The Rolous region probably has a long history of pre-historic settlement judging by its expedient position relative to the fertile soils of the Tonle Sap lake's flood zone, but no evidence of any prehistoric occupation has been reported amid the ruins of later historic settlements. According to epigraphic sources the city of Hariharâlaya was founded by Jayavarman II, the first of the Khmer 'god-kings', in the early years of the 9th century C.E, although traces of slightly earlier Angkorian-style urban design have been reported (Penny *et al.* 2006; Pottier, 1999, see, in particular p.155 (LL588) which provides the inscription located at Preah Ko which describes land

¹⁰⁴ Article 20, Decree dated 30 September 1929, reported in Luco, 2006.

¹⁰⁵ Lloyd, 2009; Available from EFEO Archives, Carton 37 Dossier 1909 – 1939 Section R.5 Subsection Conservation d'Angkor.

¹⁰⁶ There are various spellings for the Rolous Group and spelling is divided into “Rolous” or “Roluos”. Throughout this thesis “Rolous” is used.

use control in this period). The appearance of a single unifying Khmer ruler in the historical record, and the design and layout of the city he founded, mark the start of the Angkorian period. Hariharâlaya flourished under King Jayavarman III (circa 835-877 C.E.) and, particularly, King Indravarman I (circa 877-886 C.E.), to whom most of the remaining building works are ascribed (Freeman and Jacques, 2003). According to archaeo-botanical studies, land-use in the area during the 9th century was intensive and agricultural, but the area appears to have been abandoned for agriculture (but not necessarily deserted) at the end of the 9th/start of the 10th centuries, concurrent with King Yashovarman's move from Hariharâlaya to Yasodharâpura - on and around the hill of the Bakhaeng some 15 km to the north-west. From that time the landscape appears to have been barely utilized, despite the significant modifications made to the Bakong temple in the 12th century which implies some residual religious or political significance for the Royal Court. Some researchers argue that the Rolous area was probably re-occupied in an intensive way from the late 17th to mid-18th centuries C.E. (Penny *et al.*, 2006), and is it possible that the modern villages apparent there arose at that time.

4.4.4 1992: the World Heritage listing and ZEMP

In the context of a society rebuilding itself after years of civil turmoil, the impact of the 1992 World Heritage listing on local resident communities was significant. As already discussed (in Chapter 3) the 1992 World Heritage listing of Angkor on to the "World Heritage in Danger" list was unusual. At the time of listing Cambodia was, following the Paris Peace Accord of 1991, under the temporary administration of the United Nations Transitional Authority in Cambodia (UNTAC), and in these circumstances some of the conditions required for listing were waived (Beschaouch, 2002; Chau Sun, 2006; Candelaria, 2005). The World Heritage Committee requested that:

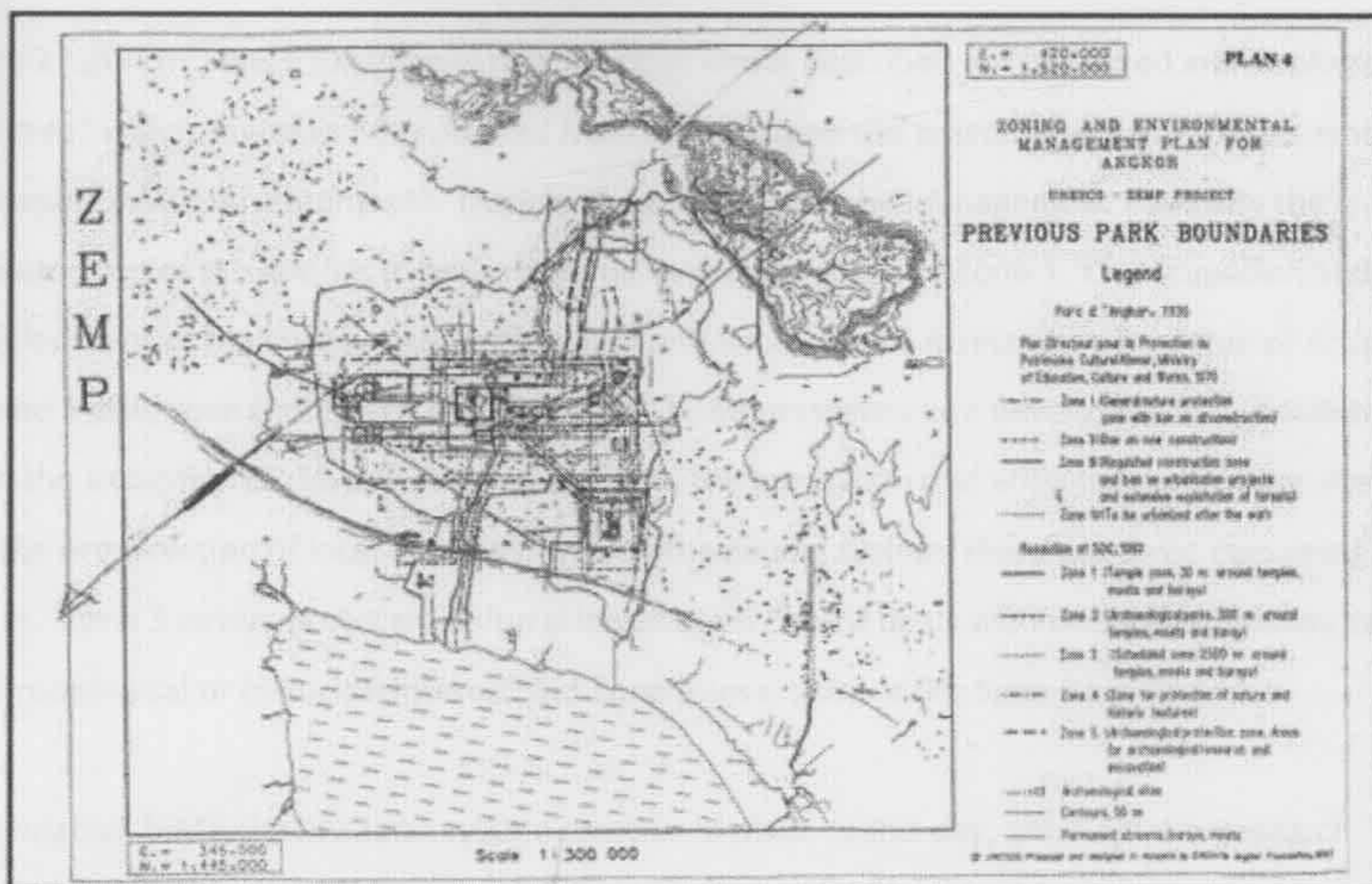
- "II. In order to deal with the urgent problems of conservation quickly and effectively, the Committee has inscribed the site of Angkor on the List of World Heritage in Danger, and has requested, on the recommendation of ICOMOS, that the authorities concerned take the necessary steps to meet the following conditions:
- (a) enact adequate protective legislation;
 - (b) establish an adequately staffed national protection agency;
 - (c) establish permanent boundaries based on the UNDP project;

- (d) define meaningful buffer zones;
- (e) establish monitoring and coordination of the international conservation effort” (UNESCO, 1992, p.38).

Other than a three year time frame in which an in-depth study was commissioned for the site (*ibid*), no time frame was set for the implementation of these recommendations. This research is particularly interested in the impact of two of these “specific conditions”: first, the requirement that the national government enact adequate protective legislation as articulated in sub-section (a) and, secondly, that they establish planning controls for the site as provided for in sub-sections (c) and (d). The former condition was met with the passage of the *Law on the Protection of Cultural Heritage*, 1996. The later requirements were met following the recommendations of the United Nation Development Programme (UNDP) funded Zoning and Environmental Management Plan (ZEMP).

The ZEMP was implemented with the assistance of a number of international experts within a very short time frame – at times with as little as two site visits within five months (Wager, 1995).¹⁰⁷ The ZEMP process led to the formulation and articulation of plans, policies and guidelines for the management of the monuments and landscape of the Angkor area. International experts were represented by an assortment of professions including lawyers, town planners, architects, archaeologists, ecologists and community experts, and considered a wide variety of issues. Comments on land use, landscape regulation and spatially defining the extent of the World Heritage site were provided from most of the experts and there was considerable disagreement (UNESCO, 1993a). There were conflicting views about the extent of the site between different professions. Previous Park boundaries were considered (see Figure 4.2) as were also existing and projected population growth and existing land uses (*ibid*).

¹⁰⁷ Indeed, the international expert assigned the task of drafting zoning and land use control laws provided a 46 page report outlining the existing laws for protection and alternative ways of implementing further land use management protections but remarked that “(t)his is still a draft report, because detailed information about much of the existing structures of local government, construction controls and land tenure has not been available during my brief visit to the country. Much of it seems unknowable, so fluid are the present arrangements in each of these areas...” (Grant, 1993, p.1).



Source: UNESCO – ZEMP, 1993a

Figure 4.2: UNESCO – ZEMP Project, Previous Park Boundaries

Importantly, the results of the ZEMP process were codified with the enactment of the 1994 Royal Decree *Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management*.¹⁰⁸

4.4.5 Implementing International Obligations: the enactment of local planning controls

The 1994 Royal Decree (*op cit*), which implemented the ZEMP, codified the Park boundaries and introduced a graded system of regulation for the landscape surrounding the monuments (see Figure 1.2). There are 5 zones for the Archaeological Park. Zone 1 covers an area of 208 km², incorporating the “most significant archaeological sites” and the area has been accorded the highest level of protection (Article 3). In terms of the restrictions as they apply to local residents and “development”, the restrictions on land-use in this zone include a complete prohibition on residential uses (Article 17) in addition to a complete prohibition on development, with the exception of development for the protection and enhancement of the site (Article 8).

¹⁰⁸ Kret No.001/NS Dated May 28 1994 Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management.

Zone 2 (193 km²) has a lower level of protection and is described as “protected archaeological reserves” which “need to be protected from harmful land use practices and the consequences of inappropriate development...”(Article 4). According to the management authority the intended use of this zone is to act as a buffer to protect the core Zone 1.¹⁰⁹ Occupation and development of the land located within the confines of Zone 2 is restricted by virtue of Articles 17 and 8 also, such that all the old villages are to be preserved and development is prohibited, with the exception of development essential to the protection and enhancement of the site or for the preservation of local lifestyles. Within the zoning system, there are three remaining zones. Zone 3 covers protected cultural landscapes, Zone 4 deals with sites of archaeological, anthropological or historical interest and Zone 5 covers the entire Siem Reap Province.

The original ZEMP classification system remains in place to this day, although this research articulates how regulations refining the obligations contained therein have been modified (albeit slightly) over time. The significance of this is that the rules and boundaries articulated in the ZEMP process have evaded significant review while the priority for site management has been focussed on the protection of the site’s monuments and temples. The direction for management priorities can be gathered from a review of the documentation produced by the International Co-ordinating Committee for the Safeguarding and Development of the Historic Site of Angkor (known as the ICC). As previously mentioned (in Chapter 3), the ICC is an overseeing body that is jointly chaired by French and Japanese representatives. The ICC meets twice per year with the APSARA Authority, UNESCO representatives and international, national and local project teams (or representatives thereof) who work in the Archaeological Park. The Committee produces two reports per year which document the proceedings of the meetings. A review of the text contained in ICC documents released between 1996 and 2009 finds that, for the best part of a decade, issues surrounding land and local residents were not prioritised in terms of management of the heritage site (Butland, 2009). However, this is no longer the case and both the international community and the management authority are increasingly interested in the concerns of the local communities at Angkor – and amongst the highest of these concerns is the issue of security of tenure within the Park (Khoun, 2006).

¹⁰⁹ See APSARA Authority website, http://www.autoriteapsara.org/en/apsara/about_apsara/legal_texts/decree3.html

4.4.6 Implementing International Obligations: local ownership controls

In addition to the zoning restrictions placed upon land-use in the Park, it is important to examine the legal regulations, which govern ownership of property in the Park. Indeed, there are many laws in addition to the 1994 *Royal Decree establishing Protected Cultural Zones in the Siem Reap / Angkor Region and Guidelines for their Management* that exist to restrict the resident population and their impact on the landscape. As previously mentioned, one of the criticisms levelled at countries which legislate to implement the *World Heritage Convention* at the national level is that the legislation can be piecemeal, limited and generally inadequate and, as a consequence, the national and local responses offer little by way of guidance to site managers (UNESCO, 2004). In the light of such criticism some consideration of the ownership laws, which apply to the World Heritage site at Angkor, are worthy of articulation and scrutiny.

In Cambodia there exists a raft of legislative provisions, and lesser regulatory by-laws, that relate to ownership and land-use for World Heritage site management. An appropriate starting point for the enunciation of laws with regard to private property "ownership" in Cambodia generally is Article 44 of the Kingdom of Cambodia's *Constitution 1993*, which restricts ownership of property to Khmer citizens (and legal entities)¹¹⁰, enshrines the protection of "legal private ownership" in law, and provides for "fair and just" compensation provisions for those who are forced to abandon this right.

Together with the Constitutional provisions relating to 'ownership', it is important to recognise the impact of the *Land Law 2001*, particularly concerning the provisions for state and private dominion of land.¹¹¹ Article 15 defines state public property as including properties with "archaeological, cultural and historical patrimonies". On the basis of this definition lands within Zones 1 and 2 of the Park are rendered "state public property". Following this provision, Article 16 then prohibits the alienation of state public property - although it is important to note that it may be subject to authorisation to occupy. This latter consideration is highly important for the residents living within the World Heritage designated area.

¹¹⁰ Although, this may be subject to change in the near future, see Barton, C, (2008).

¹¹¹ A note on terminology is fruitful and here the definition of "ownership" pursuant to Article 85 of the 2001 *Land Law* is used. It is defined as follows: "The owner of immovable property has the exclusive and extensive right to use, enjoy, and dispose of his property, except in a manner that is prohibited by law."

Turning to the situation of ownership within the Park there are a number of provisions (initiated at various levels in the regulatory hierarchy) that limit the extent to which individuals are able to alienate immovable property. In terms of land use management within the Park, a 1995 law established the management authority, the *Autorité pour la Protection du Site et l'Aménagement de la Région D'Angkor* (the Authority for the Protection and Management of Angkor and the Region of Siem Reap or "APSARA").¹¹² This law, read together with the 1996 *Law on the Protection of Cultural Heritage*,¹¹³ reinforces that APSARA is the responsible authority for the site. If there was any remaining doubt, a further law enacted in 1999 amended many of the provisions of the 1995 law and reinforces APSARA's control over the area.¹¹⁴ Article 6 of the 1999 law also articulates that the Authority has the exclusive right to grant building permits and any transfers or concessions issued by other authorities may be void (*ibid*, Article 6 (1),(2) and (3)).

Some of the other regulatory provisions which apply to the site include a law dated May 2003 which reiterates APSARA's exclusive control over permits and which, again, renders permits issued by other authorities invalid.¹¹⁵ A June 2004 regulation requires that the protected area zone boundaries be marked out and also requires that signs be placed around the park to inform residents and visitors alike of the land use restrictions which apply.¹¹⁶

Perhaps one of the more important legal restrictions on ownership and land use within the Park is articulated in law dated September 2004.¹¹⁷ This Decision provides that the blanket prohibition that provides that "State public property cannot be alienated", should be modified in a concession to the reality of the resident population living within the Park. This Decision provides:

"Article 1

¹¹² Royal Decree No. NS/RD/0295/12 dated 19 February 1995 on creation of the Authority for the Protection of Angkor and the Region of Siem Reap known as "APSARA Authority".

¹¹³ Article 5 reads "...in the Siem Reap/Angkor region, the Authority for the Protection and Management of Angkor and the Region of Siem Reap, called APSARA, is responsible for the protection, the preservation and the enhancement of the national cultural heritage."

¹¹⁴ Royal Government of Cambodia, Kret NS/RKT/0199/18 dated January 22 1999 amending some provisions of the Kret establishing the APSARA Authority.

¹¹⁵ Circular of the Royal Government of Cambodia No.01/SR dated May 6 2003, in the highly protected zones 1 and 2.

¹¹⁶ Order of the Royal Government of Cambodia No.02/BB dated June 23 2004.

¹¹⁷ Decision of the Royal Government of Cambodia No.70/SSR dated September 16 2004.

All the land in Zones 1 and 2 of Siem Reap-Angkor Sites is State public property, which the APSARA Authority has to manage, preserve, and develop in a sustainable manner.

Article 2

Standards for utilization of land in Zones 1 and 2 of Siem Reap/Angkor Sites shall be defined as follows:

- The citizens who have long been dwelling in the Zones may continue living there without being subject to any evacuation;
- The residents may renovate or repair dilapidated houses, or construct a new house to replace an old one, with authorization from APSARA Authority;
- The residents are entitled to manage the land, in ways such as the transfer of ownership from parents to their descendants or the sale of their property to other members of the village community, in order to cope with the difficulties of life..." (*ibid*).

Thus, despite the blanket ban on private property ownership within the heritage site, some form of "ownership" appears to exist. In a Western context planners and legal practitioners would characterise these amendments as giving voice to "existing use rights" for residents and land holders within the Park. A useful definition for "existing use rights" is provided by Fogg (1982):

"...the general principle with regard to existing development which does not conform to the provisions of a scheme is that the regulatory power of the State limits the use which an owner may make of his property, but does not deprive him of ownership, so that whatever rights he may lose are not taken over" (p.196).

The extent of local resident's knowledge of these regulations is debatable and findings from fieldwork conducted as part of the current research throws light upon a number of potential problems with these provisions.

Prima facie, these arrangements appear to go a significant way towards establishing the requisite legal framework for the management of the World Heritage site. However, it is possible to argue that the cumulative effect of the regulations is that they *only* fulfil the

obligation that the Cambodian government has as a party to the *World Heritage Convention*.¹¹⁸ The apparent lack of community consultation on issues, particularly that of security of tenure for residents within the Park, is highly problematic. Additionally, there exist some significant shortcomings or omissions within the legal framework itself.

4.5 A LEGALLY PLURAL LANDSCAPE

This section considers two issues arising from the fact that the World Heritage site is situated within a legally plural landscape. The first issue relates to the deficiencies in the existing regulatory framework. The second issue is the pre-existing legal framework and how the World Heritage legal system has failed to work successfully within, or incorporate, this framework to advance the cause of heritage protection.

4.5.1 Imperfections in the Legal Framework

In November 2005 Mr Francesco Bandarin speaking at the International Co-ordinating Committee (ICC) bi-annual meeting for Angkor in his capacity as the Director of the United Nations Educational Scientific and Cultural Organisation's (UNESCO) World Heritage Centre, observed:

"Everything needed is there in the legal framework, the need for both conservation and for community development, which must remain one of the essential purposes of what we are doing. So I think the legal apparatus is clearly in focus, but the concrete enforcement thereof is unfortunately a little vague. There is no implementation regulation ... For example, APSARA is a regulatory institution empowered to enforce these decrees that stipulate what land belongs to the public domain. However, because of the prevailing very uncertain land holding system, transactions are taking place despite the fact that on paper ownership is held by the State" (UNESCO, 2005, p.49, my emphasis).

This comment on lack of regulation highlights the broad inadequacies of the framework. There are, in addition, other concerns within the existing provisions. For example, arising as a direct

¹¹⁸ Pursuant to Article 4 of the *World Heritage Convention*, *op cit*.

consequence of the provisions of Article 6 (2) of the September 2004 Decision is a fundamental question of definition. How are citizens "*who have long been dwelling in the Zones*" defined? There is no definition provided within the provision and there is no case law on the matter. It appears that deciding what constitutes "long been dwelling" is left to APSARA administrators, as interviews conducted with managers revealed. This is an obvious problem for transparency of process. Research conducted by the author within Zone 1 (Chapters 6 herein) indicates that residents are keenly aware of the importance of claiming a long period of occupation in order to legitimate their "ownership" of their land. However, and critically, many of these residents are often unaware of the fact that they do not legally own the land they occupy. This raises the issue of whether there exists a pre-existing customary tenure system.

As Bandarin (UNESCO, 2005) has said, there are a number of frailties in the existing legal framework, and chief amongst them is the lack of appropriate enforcement and remedial regulations. Is it possible to conclude that the absence of enforcement and remedial provisions is a concession to the specific conditions arising from the Cambodian context? This is probably not the case – if it were then perhaps at the very least informal dispute resolution processes would be included, for it remains the situation that other studies conducted on the issue of conflict resolution in the Cambodian context tend to favour the inclusion of informal techniques for dispute resolution (see, for example, Luco, 2002). In fieldwork this perspective was not universal and many interviews revealed that informal dispute resolution methods were not unanimously favoured by either residents or administrators at the local level (see Chapter 6). Regardless of the cause of the oversight, the absence of enforcement and remedial regulations is problematic for a State which characterises itself as a constitutional monarchy – and one which is seeking to embrace a market economy doctrine (Sok & Sarin, 1998). Without mandatory provisions for the enforcement of regulations the effectiveness of management is called into question. Appropriate penalty provisions that effectively punish breaches are essential for protection of the site. With recent initiatives it is possible to say that, to some extent, the management authority has been mandated to give effect to enforcement provisions with the establishment of a sub-department (the Department of Security and Co-operation in September 2006) within the management authority. The effectiveness of such an initiative is yet to be fully tested, but the absence of evidence on its efficacy does not detract from the observation that the absence of enforcement provisions has the potential to undermine the protection process.

Another example of an omission in the prevailing regulatory framework for the Archaeological Park relates to the lack of compensation provisions in the local regulations. From a national perspective, Article 44 of the *Constitution* requires that there be “fair and just” compensation provision.¹¹⁹ Additionally, Article 5 of the 2001 *Land Law* provides:

“No person may be deprived of his ownership, unless it is in the public interest. An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and *after the payment of fair and just compensation in advance*” (my emphasis).

Additionally, in late 2009, the Council of Ministers approved a *Draft Law on Expropriation*, which was approved by the Cambodian Senate in January but is yet to be signed by the Monarch. This proposed legislation allows the government to take land (“seize”) for infrastructure or construction projects. The Draft provides that occupants of expropriated land should receive “compensation equivalent to its market price when the government takes over” (Vong, 2009, p.2). Therefore, at the national level, takings (compensation or seizure) laws, by virtue of the *Constitution* and the *Draft Law on Expropriation*, provide some legislative underpinnings for fair and just compensation. Yet, the tailored local regulatory provisions for the World Heritage site appear to overlook compensation provisions, save for management policy on the provision of land for relocation purposes (discussed further in Chapter 6).

A warning about floodgates is appropriate at this juncture, for this research should not be taken to be advocating burgeoning laws which create unnecessary burdens for both managers and residents. Tailored solutions are preferred to remedy the problematic issue of “owning” land in a World Heritage location. Nonetheless, if residents are adversely affected by the World Heritage listing can they access these compensation provisions? It seems unlikely given the user rights that have been established for existing residents. Should they be able to do so however, precedents in Australian and US courts, for example, illustrate just how complicated and nuanced compensation claims can become. In New South Wales, Land and Environment Court decisions show that claims for compensation can be made not only by landholders but also by

¹¹⁹ Article 44 provides, inter alia, “The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.”

businesses that operate on the acquired land (Nash, 2009).¹²⁰ In the US, Fifth Amendment takings claims raise compensation issues.¹²¹ It has been determined that compensation arises if a landholder's right to exclude others has been destroyed and the landholder's right to use his/her property free from interference has been compromised.¹²² The point here is that there *do* exist compensation provisions in Cambodian law; these examples show us that if they were to be called upon the laws could be subject to endless litigation.

The reality for resident communities in Angkor is that life continues – property is bought and sold, new houses are constructed and land is used in ways which conflict with the overarching legal framework (Chapter 6). This situation is flawed for residents and managers alike. It may be the situation that the effectiveness of the regime in terms of the protection of heritage is met (as the monuments of Angkor are restored and protected). However, it is arguable that the failure to adequately take account of local needs by inadequately addressing ownership issues weakens the existing regulatory framework.

4.5.2 Multiple legal frameworks: reconciling different systems

The regulatory framework for the World Heritage site consists of laws designed to implement obligations for heritage protection pursuant to commitments arising through the *World Heritage Convention* (Chapter 3). Yet, at Angkor, as for the rest of the country, there is a pre-existing legal system. This system is itself a result of past governance and normative, customary practices. This research argues that the success of landscape regulation in the World Heritage setting must be determined to some extent by the efficacy of efforts to blend the pre-existing system with the recent heritage management framework.

To appreciate the intricacies of the pre-existing legal system some exploration of the way in which the legal system evolved in a Cambodian context is warranted. An account of the legal system provided by Chao-Ta-Kuah, which is said to reflect happenings at the end of the Angkorian period, records that minor disputes go before the sovereign and there are references to the influences of celestial powers in the dispute resolution process (Smithie, 2001). Some

¹²⁰ Based on section 55 of the US, *Land Acquisition (Just Terms Compensation) Act* 1991.

¹²¹ By virtue of the United States *Constitution*, *Fifth Amendment* "Takings" Clause,

¹²² See *Otay Mesa Prop.L.P. v United States* (2009) U.S. Claims (US Court of Federal Claims) for a summary of some of the ways takings have been construed.

Khmer inscriptions support the assertion that the Crown was available to everyone (Jacobsen, 2005).

In the post-conflict era there remain remnants of the system described by Chao-Ta-Kuah. Miura (2004; 2005), Luco (2002), Chandler (1996) and Nees and McCallum (2009) all describe normative legal and governance systems in operation throughout Cambodia. The system is based on custom, belief and patronage. Some even trace the system to Angkorian times, that is, the early ninth century (see, for example, Chandler, 1996). Despite significant changes with colonisation, including “a progressive undermining of traditional agrarian and authority systems” (McCallum in Nee and McCallum, 2009, p.11), the patronage system of influence and protection continues to this day (see also Chapter 6). Nee describes the patron-client culture:

“In traditional Khmer society, leadership is strongly bounded by the patron-client relationship. The patron here refers to a person who can speak on behalf of community members and has the ability to provide material and financial support to members when necessary... Transparency and accountability are far less important than trusting relationships between the patron (as leader) and clients (the followers)...” (in Nee and McCallum, 2009, pp.21 – 22).¹²³

This system sits alongside an official governing structure, in which a formal legal system has been established (Sok and Sarin, 1998; Neam, 1998). While the efficacy of the Cambodian legal system *per se* is beyond the scope of this research, issues of accountability and transparency, for instance, remain key concepts in any account that seeks to judge the effect of rules on local residents.¹²⁴

Theoretically any Cambodian citizen can choose to have a dispute adjudicated within the formal, court-based, legal system. However, access to this judicial system remains problematic (Adler *et al.*, 2006a). Nevertheless, Cambodians can choose from either (or both) systems to resolve disputes, including land-use disputes. Chapter 6 articulates some localised perceptions about resolving land based conflicts within the World Heritage site. This documentation of attitudes

¹²³ This patronage system is also well described in other anthropological studies, see, for example, Ebihara (1968).

¹²⁴ This position also clearly reflects a neo-populist model/approach to issues of conservation and development, see McCallum, 2009, p.6 in Nees and McCallum, 2009). McCallum outlines 5 concerns articulated by this approach, including “Respect for local diversity and agendas” and “Expression and insertion of local voices into development.” (*ibid*).

to dealing with conflict highlights the perpetuity of both the formal and informal regulatory regimes. Like de Sousa Santos (2006, p.39) this research adopts “the concept of legal hybridization” for the “purpose of showing the porosity of the boundaries of the different legal orders and cultures in ... and the deep cross-fertilizations or cross-contaminations among them. Special attention is given to the multicultural plurality resulting from the interaction between modern law and traditional law”. More generally, Fingleton (1998) also addresses this legal plurality in his work and suggests that the dilemma for cultural integrity becomes “how to recognise a group without converting it to something else”; in other words, recognition requires the adoption of formal processes, yet in so doing it becomes difficult to ensure that cultural practices (which, arguably, include use of communal norms and laws), are not undermined.

In the Cambodian context others observe that development takes place in an environment “in which numerous, contradictory and competing sets of rules and norms regulate social, economic and political relationships” (Adler *et al.*, 2008, p.45). Moreover:

“... formal precepts of liberal democracy as codified in new laws and regulations are often inconsistent with prevailing social norms and administrative practices. In fact, they may be fundamentally at odds with the interests of economic and political elites who have an interest in contesting, neutralizing or capturing institutions created under the new legal framework...

Issues of legal pluralism in Cambodia are well illustrated in relation to land. Despite the fact that few households have formal title, tenure in Cambodia is more secure than is generally assumed. This may appear to be a strange claim in a country where land disputation is such a high profile issue, but assertions of general tenure insecurity are nevertheless difficult to substantiate” (*ibid*).

The latter claim, of security rather than insecurity of tenure prevailing within Cambodia is discussed further in Chapter 6 (in relation to sites within the World Heritage Park). Determining whether residents are secure or insecure with their tenure arrangements is, therefore, far from straightforward. The prevailing assumption tends to be that without a secure title, residents are not secure in their tenure (Dieninger, 2003), yet this is clearly not necessarily always the case, nor has it been the case for much of Khmer history.

Within the World Heritage site there has been little research on the relationship between management and local residents' vis-à-vis regulatory issues and security of tenure. However, some reports do allude to the issue. One such example is a 2002 report (CCC-ADI) which stated that:

"There does not appear to be any mechanisms for consultation between the rule-making authorities, those responsible for implementing the rules, and those actually subject to the rules. Without any means of consulting with people or their village leaders (or VDCs), there is no formal route for feedback into the management system governing Angkor Park. For example, when asked how they could solve any problems they may have with Apsara, some people said that they were afraid to protest to the authorities, some said they might go to the village chief, and others said they might try to resolve a problem by paying someone. Of the three options, going to the village chief is certainly the most appropriate, even though it is not clear what links the village chiefs actually have with Apsara" (*ibid*, p.19).

Such reports reinforce a disconnect between management and local customs/norms in a regulatory sense – reflecting the legally plural conditions which are operational within the World Heritage site.

An argument could be made that the imposition of a site-specific land regime, as a result of the World Heritage classification, is akin to the way settler-state legal systems (and the corollary land administration systems) are imposed on pre-existing communities (Kedar, 2001). Moreover, the ways in which new (settler) legal systems act to hamper the existing population's claims to land seem hauntingly similar to the situation at Angkor (see Chapter 6). Kedar (2001) identifies three ways in which settlers impose their legal systems on others, and ergo, potentially erase pre-existing norms, customs, practices and rights. In the first instance a blunt denial of any pre-existing rights takes place. This is explained as a cultural clash where, most often, Western nations fail to recognise the way indigenous populations interact with their land - and fail to recognise that some form of proprietary right may exist, though it does not take a recognisable form. Even when these relationships are recognised it is suggested that this is no more than "an act of grace" - which leads to the second way in which existing property rights

are erased – through the *non*-enforcement of laws (international and domestic) which may favour existing communities. The third factor is the (mis)use of legal proceedings in circumstances where understanding (not to mention informed consent) may be limited. Kedar (2001) shows how the legal system rules and procedures can work against the interests of pre-existing landholders. Kedar examines the evolution of land laws in the Israel/Palestine region beginning with the *Ottoman Land Code* of 1858, which remained in force for almost 100 years until the *Israeli Land Law* of 1969. The Ottoman code established several sets or categories of land with attaching legal status. The “Mulk” was full ownership of land and was not common, the more popular category was that of “Miri” where formal ownership was held by the State but many forms of user rights and possession existed. “Mewat” was considered dead or uncultivated land. Importantly, the Ottoman Empire, through the Code, failed in its attempts to create a land registration system. Instead social arrangements for land possession were recognised at the village level where norms, relationships and conventions dominated how people interacted with the land they inhabited. When the British colonised the region they effected changes to the land system, including in the 1920s the adoption of the Australian system of Torrens title. Kedar’s (2001) overriding point is that something as seemingly benign as legal process can be much more than mere pragmatic functions of a legal system. Burdens of proof, delay, complexities and cost beset most legal systems and yet these issues may be overlooked and characterised as largely procedural problems, which can be redressed with reform.¹²⁵ Another example that serves to highlight the way in which an imposed legal system can legitimise itself and disadvantage pre-existing communities is recorded by Nan Seuffert’s (2007) description of the role of jurisdiction in nation building in New Zealand (see Chapter 2). In a later chapter, the bureaucratic processes associated with administration of the World Heritage site will highlight a similar plight for some site residents and illustrate the extent to which administration can function to exclude some residents from effecting secure rights to land (Chapter 6).

¹²⁵ These observations are reinforced through my own experiences working in the legal profession in Australia.

4.6 TENURE, 'OWNERSHIP' AND THE SANCTITY OF *PRIVATE* PROPERTY

4.6.1 The importance of 'ownership' *within* the Heritage Park

As with Cambodians elsewhere, residents and land-holders within the highly restricted Zone 1 of the Archaeological Park, *prima facie*, require security of tenure. In a setting where there are few studies on the significance of land to those living within the World Heritage site those studies which do refer to this issue have highlighted the chaotic land ownership and trading system which has been, and continues to be, operational within the Park (for example, Luco, 2002). Qualitative fieldwork conducted for this research within the highly protected Zone 1 of the Park indicates that residents remain concerned about the cost of land and are equally uneasy about their ability to leave land to (all of) their children (Chapter 6). The management authority is aware of the need to further consider the needs of local communities and is endeavouring to address this concern (various ICC reports make reference to this, see, for example, UNESCO, 2002a; or comments from the Deputy Director-General of the Department of Land and Housing Management in the Angkor Park, Khuon, 2006),

It is arguable that in a society that is embracing a market economy, the issue of security of tenure remains highly important for the purposes of sustainable development generally. Moreover, some argue that it is valuable for the specific objective of World Heritage site management as the integration of local perspectives becomes integral to overall site management (UNESCO, 2004; Velazquez *et al*, 2005; Miura, 2005). Absorbing local values, and in particular, ensuring that the local population can establish security of tenure *according to their requirements* may be a pre-requisite for sustainable site management. It is also arguable that an acknowledgement of the extent of private ownership within the Park may encourage better co-management of the site, particularly in an area with high rural poverty as characterises much of the landscape surrounding the monuments of Angkor, where a lack of access to land can be related to issues of poverty (Deininger, 2003).

Regulation of land tenure (ownership) and land use within the core zone boundaries of the Angkor Archaeological Park is simultaneously comprehensive and yet woefully inadequate. While the laws exist, there is also a lack of enforcement and remedial provisions within the existing regulatory framework. It is a central argument of this research that this situation

reflects tensions arising from bestowing a World Heritage classification on a site without adequate consultation with local communities and without due regard for pre-existing cultural norms. It also reflects the inherent problems associated with the implementation of international norms to local situations – the fact remains that international obligations cannot be enforced without appropriate national legal frameworks – and it remains the case that it is inappropriate for the international community to undermine State sovereignty. So, despite the plethora of legal initiatives in place for site protection at Angkor, there are a number of shortcomings in the present framework. The practicality of enforcing restrictions aimed to enhance site preservation is severely compromised by the limited remedial regulatory framework. Yet, the situation is far from bleak, as the management authority continually attempts to address the need for site protection through improved communication with and education of local resident communities.

4.6.2 Security of Tenure and the Privatisation Agenda

The process of classifying a site as a World Heritage area does not necessarily mean that the existing tenure arrangements will be altered – many World Heritage properties are subject to a variety of tenure arrangements (Chapter 3). In a Cambodian context, the problem of reconciling property rights in relation to tenure arrangements and development issues cannot be overstated. The development of Cambodian land laws, however, highlights that access to land, especially for the rural poor, has been and remains, problematic. In the distinctive context of reconstruction in post-civil turmoil years under the influence of international organisations¹²⁶ there has been a growing emphasis on nation building, stability and sustainable development and it is in this context that the issue of security of tenure has become a national priority. It is also well recognised that the challenges of reconciling property rights with development are faced by many developing countries (Unruh, 2006; Platteau, 1996; de Soto, 2000) when they seek to establish, formalise and implement strict 'proprietary rights' into systems and societies which previously did not, necessarily, formally recognise such 'rights'. A continuing argument in this research is that there ought to be better recognition of the different styles of tenurial arrangement that exist amongst different people and societies. This is part of a growing call which recognises but also challenges the dominant norms of the law and economics literature

¹²⁶ Including international governments, for an example see the Australian government's, "Australia-Cambodia Development Cooperation Strategy, AusAID, 2003, p.5).

on property rights (Fitzpatrick, 2005 - 2006; Baland and Platteau, 2000), being that private property rights evolve as resource values rise. This literature suggests that as resources demand increases and scarcity grows, the need to establish rights to those same resources also grows and, accordingly, proprietary interests emerge. However, as Fitzpatrick, points out, although this perspective is valuable, this is not necessarily a perspective that fits every society:

“... the normative implication that Third World states should establish secure property rights is impractical when the process of establishing and securing those rights itself creates new forms of uncertainty and conflict” (2005 - 2006, p.1009).

Improving security of tenure is lauded as a panacea for many problems – and in particular as an aid to the alleviation of poverty (Durand-Lasserve, 2006; Dalrymple *et al.*, 2004; Deininger, 2003). Security of tenure is most often seen to be achieved through the privatisation of lands through formal land titling projects. But how compatible is it to implement a formal land registration process that privatises an individual’s access to land when multiple legal systems overlay this process? Fitzpatrick observes:

“Extending land administration and dispute-resolution functions to the village level is notoriously expensive and technically difficult. Even when informal institutions do not provide proxies for these functions at a lower cost, a Third World state may be institutionally incapable of providing and maintaining effective land administration and dispute resolution for long periods of time” (2005 - 2006, p.1039).

Prima facie, this description applies to the Cambodian land registration system. It is one of the central tenets of this research that the merit of any land reform agenda – especially in the context of a World Heritage site – is that appropriate regulatory mechanisms need to be in place to ensure system success. As Deininger (2003, p.36) writes:

“(i)n any given situation, the ability to enforce rights depends on the ease with which rights holders can access the required institutions and obtain legally binding decisions from them and whether such decisions enjoy local legitimacy. Examples abound of cases where legislation mandating strong formal protection of property rights was of limited value as it could not be enforced at the local level, where the institutional capacity to do

so was lacking. Having a legally defined right will be of little value if, in case of violation of this right, access to the courts is difficult, the case will not be heard for a long time or will not be resolved without paying bribes, or court orders in relation to a specific piece of land cannot be enforced”.

The point is straightforward; achieving security of tenure for residents and land-holders through a land registration system is a complicated process.

4.6.3 Privatisation and Heritage Protection: Questioning the “sanctity of private property”

Evans (2000) writes about the implications for heritage policy in a common law system and draws on Bates (1995; latest edition 2010) to make some observations about the way in which the once apparently invincible shield of private ownership can be broken in the name of environmental and heritage protection (see also Chapter 2 herein). Is there a certain irony in the fact that post-industrial societies revere private property while being simultaneously positioned at the vanguard of the calls for heritage protection? Could it be that, had a more “traditional” Cambodian (that is, pre-colonial) tenure regime remained in place, the monuments of Angkor may have been better protected whilst the needs of those living in their shadows were catered to?

In practical terms, once a system of private property rights has been established, what are the consequences for those who hold those rights and live in areas which are effected by a heritage overlay which places (extra) restrictions on how they use their property? This is a key issue throughout this research and the results of the qualitative data collection process highlight the potential adverse impacts. In a paper on the effect of heritage designations on property values in Canada, Shipley (2000) confounds the expectation that property values are negatively influenced by a heritage classification. While the fact that the paper is written about the Canadian property system may mean that the insights are not directly transferable to a Cambodian context, Shipley raises some interesting findings that ought not to be ignored for any discussion on the role of private property in a heritage setting. One of the more interesting aspects of Shipley’s (2000) analysis is that he asserts that Canadian heritage legislation is, comparatively, fragile and that this is due to:

“(t)he prevalent North American attitude towards the sanctity of private property. In general, people do not like property regulations... It is argued that designation restricts what owners can do with their property. This, in turn, it is said, limits the number of buyers willing to accept such restrictions, and therefore limits the demand – with the result that the potential market price for the properties is diminished” (*ibid*, p.84).

Shiple (2000) further points out that there is very little by way of empirical evidence to support this proposition – despite the fact that this attitude prevails amongst many property professionals. He argued that anecdotal information ought to be replaced by reliable, supported data. To that end, Shiple (2000) used real estate data from heritage locations within Ontario to assess property price trends to find that, in general, properties subject to heritage restrictions actually improved in price when compared with those neighbouring properties which were not subject to the same restrictions.

In contrast to Shiple’s position that a heritage designation is assumed to have a negative impact on property values, Ashworth (2002) suggests that the reverse is true and that those working in heritage and conservation readily assume “that heritage designation somehow in itself creates value” (*ibid*, p.9). An example of this is provided by pro-listing article written by Heritage NSW (2001). In this article entitled “Heritage listing: a positive for owners”, a myriad of reasons is provided for the ways in which a heritage listing has positive implications for owners – with the ultimate being an increase in property values. This article alleges that the perceived negative impacts of a heritage classification are based on falsehoods, citing the following:

- Listing places no legal restriction on the sale or leasing of properties.
- Heritage buildings are best cared for when they are lived in and loved...
- Listing does not exclude changes or additions or new buildings on the site provided that these do not detract from the heritage significance of the listed items.
- Listing does not exclude the adaptive reuse of a heritage item for another use...
- Other than normal maintenance it is not expected that owners take any special care of a heritage property...” (*ibid*, p.7).

Yet, these falsehoods are truisms for the heritage overlay imposed at Angkor because (1) there are restrictions on the sale of land; (2) the listing process does not allow for affordable changes

(for instance the use of concrete pillars in housing construction, see Chapter Six) for fear that developments shall adversely effect the landscape aesthetics; and (3) adaptive uses are subject to stringent control and are more often than not completely prohibited by the existing legal framework.

Despite the on-going dominance of a pro-listing approach that heritage/conversation practitioners tend to favour, Ashworth (2002) finds value in exploring of a case of the failure of heritage initiatives in St John's (Newfoundland, Canada). The following is a summary of the factors he perceives as being influential in the lack of success for this project:

- Failure of enforcement of the regulations (p.19);
- Unsuitable and prohibited alterations have a harmful impact on streetscapes (p.20);
- An incorrect assumption that once designation takes place "local economic and political interests will unite in a coalition of support" (p.20).

Poindexter's (2003) work explores the undiluted reverence for private ownership in an American (US) suburban context and, suggested in an earlier chapter, the tensions between private spaces, characterised by exclusive proprietary rights, control, ownership and public spaces, characterised by access controlled through State apparatus, become crystallised in a World Heritage setting. Poindexter's analysis, though contextually different, draws attention to the way in which the legal system (in her case of the United States) encourages private property idolatry. In a capitalist culture, the drive towards home ownership as a wealth-building exercise is hugely important. It is this phenomenon, she says, which reinforces the primacy of individual, rather than collective, concerns (*ibid*, pp.195 – 197). It becomes the actual regulatory practice of zoning which leads to tensions between individual and public agenda, she points out:

"The issue is not whether private property rights exist ... Clearly they do. But these rights function within the wider context of community and the public interest. The focus, then should be on the tension between unfettered private property rights and the recognition of public interest in private ownership" (Poindexter, 2003, p.198).

Poindexter (2003) concludes that "...(i)dolatry flourishes when the law fails to champion the rights of the community... balance is the key. The concepts of power (through control) and gift

(through neighbourliness) hang in the balance... Notwithstanding the complexity both concepts must be given due respect to ensure that private rights are respected, but only to the point that recognition of the common good restricts idolatry" (*ibid*, pp.206 – 207).

The private/public dichotomy for landscape regulation is not new. In a classic piece Leopold (1966) wrote of the dilemma facing farming communities' vis-à-vis conservation efforts and concluded that the ever-burgeoning obligations increasingly fell to government – a situation he regarded as unsustainable. Rather, he called for a "land ethic" which assigns more obligations to the private landholder. The debates about who should have the burden of conservation have raged in protected area management (see Brockington, 2003), and are also increasingly likely to become important in World Heritage management.

In this section many of the practical consequences associated with heritage restrictions have been identified and in so doing the issues have crystallised the wider private/public conceptual divide about property entitlements and resident rights. A major contention of this research is that the local resident community's values and needs, particularly their desire to alienate land, must be given priority before, during and after the imposition of a World Heritage classification. To do otherwise results in a piecemeal, fragmented regulatory process where managers and residents alike are unclear of their obligations, duties and responsibilities in the protection of the "outstanding universal value" of a unique World Heritage site. A comprehensive and tailored regulatory package, which gives voice to the concerns of residents while remaining sympathetic to heritage protection, is a more just, equitable and desirable outcome for World Heritage site management.

4.7 SCALES: MIXING GLOBAL AND LOCAL CONCERNS

4.7.1 Landscape Protection: the collision or confluence of global and local concerns?

As previously noted, it is a prerequisite for the bestowing of a World Heritage classification, that the relevant country enact and implement protective legal provisions.¹²⁷ International obligations create national responses, which, in turn, produce local consequences. Issues of

¹²⁷ Article 4, and more specifically, Article 5(d), of the *Convention* and paragraph 92 *Operational Guidelines*.

geographical and jurisdictional scale emerge. In the transfer of obligations between scales it has been found, however, that the national response to the listing can result in piecemeal laws (UNESCO, 2004), especially in relation to land use and ownership. Often these regulations fail to take adequate account of local values and needs. A clear illustration of this is identified by Sullivan (2004, p.49) who writes of the frustration experienced by the divergent local communities living within the World Heritage Willandra Lakes Region of western New South Wales, Australia:

“...fifteen years of management of the area was characterised by a growing crescendo of discontent and distress from the local community, including farming families who grazed sheep in the area and Aboriginal groups with ancestral affiliations. Neither of these groups had been properly briefed on the significance of the area, and its management for World Heritage values had severe consequences for them. The graziers found that their farming practice was severely restricted, and were able to demonstrate that their land had fallen in value because of these restrictions... The Aboriginal community was incensed that their ancestors were being treated as scientific specimens... and that their ownership claims to ancestral land had been overridden by the concept of universal value.”

This is clearly an unsatisfactory situation both for the resident communities and management alike. Left unresolved, issues such as these threaten the long-term protection of the heritage the regulations were created to protect. For World Heritage site management across the globe, the need to take account of the local resident communities' connection to the land they occupy and to establish a regulatory framework which adequately reflects these needs is essential for the long-term preservation of these valuable sites (Mumma, 2004). Many of the technical reports of the World Heritage advisory bodies (IUCN; ICOMOS; ICCROM) that provide the assessments of World Heritage sites as part of the periodic reporting requirements for maintenance of a site on the World Heritage List highlight the universal nature of this dilemma for World Heritage site management *per se*.¹²⁸ Clearly, achieving a balance between the global demands for heritage protection while tending to the needs of local communities requires

¹²⁸ See, for example, the Questionnaire for State parties to complete as part of the Periodic Reporting exercise, especially the sections on “Management” (II.4) and “Factors affecting the property” (II.5), available at <http://www.unesco.org/documents/pg-287-2.pdf>, pp. 9 – 18; 18 – 21.

managers to be aware of these often competing, but not necessarily incompatible, burdens (UNESCO, 2003).

4.8 SUMMARY

The observation of Fitzpatrick (2005 – 2006, pp.168) that the *process* of establishing private property rights remains fraught in many developing countries, applies to the land registration ambiguity within Cambodia generally and within the Heritage Park specifically. The titling of land is incredibly problematic within the Park, with inadequate regulation, a lack of resourcing for enforcement and ill-equipped dispute resolution techniques all reinforcing this situation. This thesis contends that a greater recognition of the pre-existing land ownership scheme must be achieved. This first step must be closely followed by an acknowledgement of the reality that the World Heritage listing has imposed restrictions and management mechanisms on a landscape-based largely on Western concepts of property. Accordingly, it becomes impossible to avoid implementing protective regimes that are not in accord with these perspectives. Therefore, it is ultimately contended that private land ownership enforced by an effective land registration system is important for development in Cambodia and is desired by those living within the Heritage Park. This chapter illustrates that property rights are:

“More than a question of law, or institutional choices between agreements, court decisions, and state regulation. Well before the creation of modern nation-states, social norms developed to maintain order in multiple-user environments. The degradation of these norms... is at the heart of modern property rights failures” (Fitzpatrick, 2005 - 2006, pp. 1046 – 1047).

There are myriad ways and means of regulating the landscape and also an equal variety of means of resolving disputes in any given context. The subtlety of any tenure arrangement designed to prevent threats to heritage must also take account the process of effective implementation. In a Cambodian context this will undoubtedly involve the question of how to, in effect, usurp centuries of tradition where villagers have relied on patron-client relationships with their community to resolve disputes.

Chapter Five
METHODOLOGY AND METHOD:
TECHNIQUES & PERSPECTIVES ON DATA ACQUISITION

5.1 INTRODUCTION

As noted, this thesis explores the impact of a World Heritage designation on residents living in the shadow of the monuments of Angkor and, in order to achieve this end, it was necessary to understand the opinions of these residents. It was also necessary to understand how World Heritage obligations were converted into regulations, which, in effect, cause the impact. Accordingly, the methods used in this thesis range from an analysis of legal regulation in the form of codified laws and informal norms through to field-based primary data collection using qualitative research techniques. As for the use of qualitative methods, the way in which this information is gathered, and the pros and cons of these techniques, are explored in this chapter.

Before describing the details of the fieldwork methods, it is important to reiterate the well-established notion that the fieldwork does not take place in a vacuum, free from the social and cultural filters brought to the study by the researcher (Howitt and Stephens, 2005). Prior to undertaking the field-based data collection process (and throughout the entire course of the research), there was an assessment of the available information surrounding this research topic. The textual¹²⁹ component of this research followed two substantive themes: (1) World Heritage, and (2) Landscape Regulation (Chapters 3 and 4). Due to the nature of the research problem it was necessary to draw on a breadth of literature.¹³⁰ Some of this documentation is considered “grey” literature and takes the form of technical and policy documents including the internal working papers of the management authority (APSARA), the reports of the World Heritage Committee and other United Nations bodies, for example. However, a significant proportion of

¹²⁹ “Textual” in this instance refers to both written and photographic materials and images, in addition to mapping imagery, following Crang (2005) this material is not limited to ‘text’ alone.

¹³⁰ These include many secondary data and incorporates legislation, reports, internal working documents, theses, books, leaflets, workshop events, books, journals, conference presentations, print and digital media and archival materials. Maps, aerial photography and conventional photographic material were also sourced and drawn upon throughout the course of this study.

this documentation is original material. Although there is a rich tradition of academic literature based in and around Angkor, especially from an art-historical and archaeological perspective (for example, Glaize, 1993; Freeman and Jacques, 2003; Snellgrove, 2000), little has been written from a geo-legal perspective about the people who live in and around the monuments. This study aims to partly fill this void. The recent work of two anthropologists is notable exceptions to this, and is of particular significance for their work at Angkor (Luco, 2002; Muir, 2005). Luco's (2002) study of local conflict resolution mechanisms (Cambodia-wide, with selected interviews within the Archaeological Park) and Muir's (2005) research in and around the village of Nokor Krau in central Angkor are both timely and comprehensive insights into Cambodian village life. Interestingly, both scholars reflect that the dearth in documentation for societal systems prior to 1975 is problematic for contemporary research, a view largely confirmed in the current research. Although this situation should not ignore the importance and significance of anthropological work such as that of Ebihara's of the late 1960's (Ebihara, 1968), which provides an excellent insight into Cambodian village life (though it is not located in or around the Angkor Park region).

Literature on the use of qualitative techniques in human geography helps to inform the data collection component of this thesis. An assessment of this literature reveals that there is little application of qualitative techniques to the issue of a World Heritage listing on the resident communities (two examples of exceptions to this are Maikhuri *et al.*, 2001 and Trakolis, 2001, discussed below). As a consequence, in order to document the "impact", the research was informed by narratives on the use of qualitative techniques in (human) geography generally (for selected examples, see Crang, 2002, 2003; Hay (ed), 2005; Shurmer-Smith (ed), 2002; Hubbard *et al.*, 2002; Cloke *et al.*, 2004). Qualitative methods, and the variety of techniques which accompany this category of research, are a standard component of social science research and form part of the repertoire of human geography's catalogue of commodities (Crang, 2002 & 2003; Hay (ed) 2005; Clifford and Valentine (eds), 2003; Limb and Dwyer (eds), 2001; Flowerdew and Martin (eds), 1997). Moreover, in-country (field-based) social research techniques permeate much of the report-based literature produced by many NGOs working in Cambodia, including the World Bank, the UNDP (United Nations Development Programme), the Asia Foundation, CDRI (Cambodia Development Resource Institute) and others. From the perspective of studies undertaken within the broad rubric of '*justice*', two timely examples are relevant. One is the use of qualitative methods in the UNDP's report into "Access to Justice" in

Cambodia (UNDP, 2005, 40 - 43). The methods adopted by the UNDP include semi-structured, in-depth interviewing, designed to “obtain qualitative information from communal authorities” (*ibid*, p.42). Similarly, the World Bank’s “Justice for the Poor” programme (Adler, *et al.*, 2006a), which examines legal and judicial reform hurdles and avenues for success, field-based research employed “semi-structured interviews” (*ibid*, p.8) to shed light on current local dispute resolution techniques.

As previously mentioned, although limited in number, there are some qualitative studies that seek local perceptions on the impacts of restrictions associated with a World Heritage classification. In a study of the World Heritage Nanda Devi Biosphere Reserve, India, researchers acknowledge that: “...studies on the knowledge, aptitude, and perceptions of local people are very limited” (Maikhuri *et al.*, 2001, p.169). The authors used surveys (questionnaires) and interviews to gather data on local community perceptions (419 households in 10 buffer zone villages). Trakolis (2001) investigated planning and management issues in the World Heritage site at Prespes Lakes National Park (Greece) some twenty-four years after the designation of the protected area. Trakolis showed how a lack of community consultation was counter-productive to good governance at that site. In Trakolis’ study qualitative research techniques were adopted in which the local population living within the park were surveyed using a questionnaire administered through an interview. Increasingly, the need to understand the views of local residents in a World Heritage setting is also a pressing policy priority (UNESCO, 2003). These are but two examples of the use of qualitative data collection techniques in a World Heritage setting, while other examples often use a combination of qualitative and quantitative methods (Wiesmann *et al.*, 2005).

It is also important to recognise that the methods used throughout this study fit into a conceptual setting (or methodology), where such methodology (*sensu* Shurmer-Smith, 2002) is the epistemological setting which guides and contextualises the methods. The difference between “methods” and “methodology” merits consideration. This research adopts Hoggart *et al.*’s (2002, pp. 48, 310) definition wherein “method refers to the ‘process’ or technical means of collecting data” and “methodology embraces issues of methods of data collection and analysis when these are grounded in the bedrock of a specific view on the nature of ‘reality’ (ontology) and the basis of which knowledge claims are made (epistemology)”. Accordingly, it is important

to reflect upon the way in which methods are used and in this Chapter consideration is also given to assessing the dynamics of the chosen methods.

5.2 QUALITATIVE METHODS

The data collection techniques used in this research are based in qualitative method. Accordingly, it is useful to consider what it means to conduct “qualitative” research and the definition provided by Labuschangne (2003) is adopted throughout this research:

“The word *qualitative* implies an emphasis on processes and meanings that are rigorously examined... (they) typically produce a wealth of detailed data about a much smaller number of people and cases. Qualitative data provide depth and detail through direct quotation and careful description of situations, events, interactions and observed behaviours” (p.100).

Qualitative methods extrapolate how people understand their world and provide the opportunity for people to give extensive, wide-ranging accounts of their situation. Data collected during fieldwork seasons based in two villages within Zone 1 at Angkor take the form of semi-structured in-depth interviews and questionnaires. Drawing on the interview responses, the remarks of residents provide verbally rich and nuanced accounts of individual experiences (Chapter 6). The questionnaire provides a complementary data set, with a combination of qualitative and quantitative information collected. It is in the essential character of this research to be concerned with the quality, rather than the size, of the data under scrutiny, despite the use of a questionnaire that is often characterised as quantitative and statistically “significant” in character. Nonetheless, this does not gainsay the importance of ensuring compliance with precise and exacting standards in research.

5.2.1 Fieldwork-Based Data

The decision to conduct fieldwork, and to acquire primary data, was based on many factors. The sentiments expressed by Rundstom & Kenzer (1989, p.294) when they suggest that primary data collection remains critical in geographical studies to generate first-hand information *in situ* are

reflected in this research. However, another significant motivator was the absence of any secondary data sources on the issues raised by the research questions. Although interviewing remains a “time consuming, labor-intensive task” (Rundstrom & Kenzer, 1989, p.301), it is also amongst the best ways of accumulating data in a developing country, which lacks the administrative infrastructure to produce reliable secondary data sources, such as census data. One of the virtues of being involved in an industry-based research project¹³¹ is that the project itself could support on-site fieldwork programmes, thus the associated costs of conducting primary data collection fieldwork in an international setting were offset and did not, therefore, act as a deterrent to the adoption of this technique.

5.2.2 Research Design & Rigour

Framing this research in a qualitative structure was informed by a consideration of the appropriate method for conducting field-based research activities (with a view to answering the research questions), in addition to a deliberation about the theoretical setting in which the research takes place (adopting Bradshaw and Stratford, 2005, p. 69). This was achieved by drawing upon the literature surrounding the applied use of qualitative methods in human geography (Hay (ed), 2005, Limb & Dwyer (eds), 2001, Eyles & Smith (eds), 1988, Flowerdew and Martin, (eds), 1997). It was also done by consulting the literature which goes beyond instructional prose to a more critical reflection on the use of those methods, although the way in which these methods are adopted here does not challenge the standard approach of human geographers conducting surveys and interviews (unlike the new directions articulated by Davies & Dwyer, 2007, pp.257 – 266).

Qualitative research methods are not immune from criticism. For semi-structured interviews, the main issues of contention are commonsensical – that narratives derived from conversations are selective and anecdotal. While the fruitfulness of this technique lies in the possibility for expansive answers and a broadening of the researchers knowledge (Valentine, 2005), there are consistent calls for social science researchers to be wary about the rigour (or trustworthiness) of their approach or the validity of their results (Baxter and Eyles, 1997). Crang (2002) says “(i)n geography, there has also been debate about ways of ensuring the rigour and evidential quality

¹³¹ The researcher was an APAI (Australian Postgraduate Award, Industry) PhD Scholarship holder with the ARC-funded Linkage “Living with Heritage” project.

of qualitative work, set in motion by Baxter's and Eyles's (1997) critique of the lack of methodological transparency in published papers based on interviews." This sentence is critical to the position adopted in this research – the methods used in this research can and should be subject to a degree of attention which will enable them to pass a test of rigour. This call for transparency is not restricted to the (human) geography discipline, as examples of social science research across the board embrace the call (for example, de Wet & Erasmus, 2005, pp.27 – 40, write under the auspices of sociology). Drawing upon Baxter and Eyles (1997), this research aims to illustrate that a thorough account of the research methods should ensure that the research is subject to a clearer scrutiny than might otherwise be the case.

Baxter and Eyles (1999) apply their rigour yardstick to their own study in which face-to-face, semi-structured interviews were used to accumulate knowledge about how residents felt about the locating of landfill in their neighbourhood. They argue that to meet the standards of rigour in qualitative research an evaluation criteria must be incorporated into the research design, and that often the failure to maintain rigour is brought about by an unwillingness by researchers to articulate, in full, the methods adopted for their study (*ibid*, pp.310 – 311, see also Bradshaw and Stratford, 2005). For this reason the details about methods in this study are described in as much detail as is practically possible. As Baxter and Eyles (1999, pp. 311 – 315) dictate, in this research consideration is given to expressing the history of the research, data collection and analysis techniques, sampling strategies, the significance of the way in which results are presented, and the transferability of findings.

In response to the Baxter and Eyles (1997) position, Bailey *et al.* (1999) have also called for rigour in the qualitative research of human geography in order to achieve the objective of an "evolving criteria for the evaluation of qualitative research in human geography"(p.176). More recently, Bradshaw and Stratford (2005) reiterate the point that a researcher has a responsibility to "share, interpret, and represent others' experiences" and that this obligation implies that the results need to pass a test of evaluation. They observe, " it is vital that we document all stages of our research process. Such documentation allows members of our interpretative and participant communities to check all of these stages so our work might be considered dependable" (*ibid*, p.75). Compliance with this prescription is the intention of this research so the findings may be replicated, or perhaps corroborated, by further research.

Crang's (2000) commentaries about the use of qualitative techniques in human geography are insightful. In the first instance, rather than defend the use of qualitative techniques in research, Crang suggests that the discipline has moved beyond debating the use of these techniques to a critique "within qualitative methods over establishing orthodox approaches and standards" (2000, pp.647 - 648). Crang (2002) further observes that his previous call has been answered and that qualitative methods are considered to be an "orthodox" approach in geographical studies. In other works, Crang (2003, p.501) has described qualitative research as embodying "formulaic discussions of fixed positionalities" and urges researchers to embrace visual mediums in addition to textual and verbal forms. This research does not react to Crang's (2000; 2002; 2003) description of the evolution of qualitative techniques, but it does note with interest the evolution of the characterisation of qualitative techniques in human geography, particularly in the last decade and arguably, this research itself is part of these developments. In a Southeast Asian setting Scott *et al.* (2006) observe that academic social science research in Vietnam is in an evolving state. There is a pre-existing preference for studies that use positivist practices – and they identify surveys, questionnaires and mapping – in preference to techniques such as semi-structured interviews. Arguably the Cambodian context is similar, with government programmes and policies favouring empirically positivist-focussed approaches. Nonetheless, the decision to conduct qualitative research is warranted in this study for, in a commentary on "doing fieldwork" in contemporary geography (De Lyser and Starrs, 2001, pp.iv – viii) note that field research has a long history and this helps us to better understand the world we live in and understand the role we play in it. In this light, the next part describes the integral, and complex, role the researcher plays in the fieldwork process.

5.2.3 Reflection and Reflexivity¹³²

Conducting research in a country such as Cambodia, which is classified as a post-conflict society, presents a plethora of issues. For a non-indigenous researcher who is based elsewhere, bringing an outsider's perspective, field-based research is ever more complex. This is neither a localised, or otherwise unique phenomenon, as the observations of a researcher working in the Central American country of Guatemala indicate:

¹³² "Reflexivity" is defined as "(s)elf-critical introspection and a self-conscious scrutiny of oneself as a research", (Hay, 2005, p.293) while "Reflection" draws on the following definition of "action-reflection" as "(p)eriods of action followed by times when participants reflect on what they have done and what can be learned. The learning informs the next phase of action creating an iterative cycle of action and reflection. This process enables change to occur throughout the research process.", (Hay, 2005, p.275).

"I find myself both loving and hating Guatemala. When I am in the field, talking with Maya farmers in the Cuchumatanes highlands, I can think of no other place I would rather be at that moment. Guatemala's cultural and physical landscapes have indeed cast a spell on me when I am in country. Yet, when I look more closely at the landscape and, for example, see small memorials dedicated to the victims of the civil war in rural areas, or after reading about continuing political violence and assassination of human rights advocates, I often ask myself, why work in such a setting? This contradictory facet of the landscape is reflected in the publications of scholars who work in Guatemala.

... Of all the dozens of books that have been written, perhaps the title that best summarizes this contradictory feeling towards Guatemala is, *A Beauty that Hurts: Life and Death in Guatemala* by geographer George Lovell. For me, there is no better way to describe my feelings toward my research location than this title. There is so much that is beautiful about Guatemala's cultural and physical landscapes, but there is also so much that hurts, so much that is hidden within that beauty that includes a history of extreme inequalities and continued repression. When one begins to examine and read the landscape more closely the beauty is tarnished if not completely obliterated, as were many Guatemalan families and villages during the recently concluded civil war" (Steinberg, 2006, p.14).

Such reflections on the realities of fieldwork, even presented in explicitly personal and emotional tones such as these, are essential for a scrupulous approach to data collection techniques that employ some ethnographical elements. This quote is based upon observations from research in a post-conflict context in Guatemala. From the perspective of this research project based in Cambodia there are many parallels, as the traces of conflict are revealed in many obvious as well as subtle ways.

Positioning this research in an epistemology that intertwines themes of pragmatism (answering a research question squarely based in a pragmatic problem) with elements of idealism (answering a research question through the lens of an equity/rights-based approach), this study is entrenched within a critical geographical perspective, particularly given the observation that:

“(c)entral to critical research is the claim that scholarship can be used to contest the hegemony of dominant representations. Critical geography, while clearly rejecting positivist ‘value-free’ science, nevertheless expresses a faith in rigorous, grounded and clear-eyed analysis (Agger, 1998: 180). Rational inquiry offers both analytical and political insight” (Blomley, 2006, p.91).

A reliance on “rigorous, grounded and clear-eyed analysis” is at the heart of this research. However, the notion that this research clearly rejects a positivist perspective is fraught. Arguably it is preferable to adopt the approach of Poon (2005), whose work questions the specific delineation of a positivist tradition devoid of reflexive thought, and recognise that it is nonsense to have either full objectivity or, indeed, full subjectivity in research activities. To this end, this thesis is written in a way that does not embrace the first person narrative, despite being consciously situated in a reflective and, for in-field data collection purposes, a reflexive position.

The twin concepts of “positionality” and “situatedness” in reflexive studies are well established in the realm of social science research in geography (Haraway, 1991; Rose, 1997; Chacko, 2004). Although the terms are awkward, they recognise that research is a product of the time, space, and social setting(s) in which it takes place. More than this, the position or situation of the researcher vis-à-vis the research is crucial (Haraway, 1991). While this research aims to achieve transparency through introspection (an exercise in positivist reflexivity according to Crang, 2003); it aims to do so without “navel gazing” (citing Farrow in Rose, 1997). It is important not to take this point too far, as Crang (2003, p.651) points out, “(r)eflexivity has become something of a shibboleth – no one will brag about being unreflexive – but it has been critiqued for implying the eventual goal of a fully known social situation”. Moreover, the shortcomings of a transparent reflexivity have been established by Rose (1997) who, by virtue of a chance remark during the course of an interview threw up a plethora of questions which lead her to conclude that she could not write her positionality in a thorough-enough fashion - in the manner advocated by many feminist geographers. In other words, the practice of research makes it impossible to cede to the “demand for transparently reflexive positionality” (*ibid*, p.311; see also p.313). This is not a critical feminist research project, but the observations of those writing in this tradition (such as Rose) should not be ignored. A final point, made also by Rose (*ibid*, p.315) is endorsed in this research; “(i)t is important to remember that the aim of situating

academic knowledge is to produce non-overgeneralizing knowledges that learn from other kinds of knowledges, and that remains the crucial goal.” Salient points about positionality are made by Chacko (2004) in her graduate research in rural India. She observed that while self-reflexivity is important as a process through which the research produced is informed, “active measures” taken during the course of fieldwork which attempt to equalise any power imbalance between the researcher and the researched may do more to validate the research in the eyes of the researched than would otherwise be the case. In other words, it is the way in which fieldwork is conducted which is as important as an analysis of the researcher’s individual traits (*ibid*, p.55). While endorsing Chacko’s observations, it is timely to consider the position of this researcher vis-à-vis the research and the researched.

5.2.4 The Researcher

There is no doubt that the representations of the people who are the subject of the study are filtered through the researcher – her knowledge; experiences and the way in which she communicates, all play a significant role in the way in which the researched are depicted. As a tertiary educated, white female postgraduate researcher, neither native to Cambodia nor fluent in Khmer, there is a multitude of variables which may act to influence the way in which accounts from local residents living in a World Heritage Park in south-east Asia are articulated in the research. So, this research is conducted by a “*barang*” – a foreigner. From this perspective, the research is framed, organised and executed by an “outsider”. It attempts to embrace Crang’s (2003, p.496) wariness “of work that divides positionality formulaically into being insiders (good but impossible) and outsiders (bad but inevitable)”, and Rose’s rejection of clear “‘inward’ and ‘outward’ reflexivity demanded by transparent reflexion” (1997, p.316). There are shortcomings associated with not being indigenous, but there are too, advantages for researchers.

Mullings (1999 p.341) describes her insider/outsider dilemma as “a black woman of British/Jamaican heritage, from a North American University” in the setting of interviews conducted in Jamaica, and suggests that she is neither insider nor outsider, challenging the assumption of static insider/outsider positions in cross-cultural settings. It is Mulling’s (1999) use of ‘outsider’ status – to the advantage of her research – which is interesting for this study. She concedes that she actively promoted ‘outsider’ status, by aligning herself with her British past and North American University position, rather than as someone with a Jamaican heritage,

to “represent (herself) in the least threatening way” (*ibid*, p.344). In the course of conducting interviews in Cambodia, this researcher took advantage of the ‘outsider’ label for the very same reason – to avoid affiliation with authority in an attempt to bring a perception of neutrality to the interview (in practice this meant that the affiliation with the University of Sydney and the pure ‘research’ elements of this work were often reiterated during the course of an interview with local residents).¹³³ On the other hand, when interviewing managers (both local and international), an element of empathy for the challenges facing management required the researcher to understand, and articulate, the questions from the perspective of ‘insider’ - in as much as questions were prefaced by outlining a sympathetic position towards management. Mullings (1999) suggests that this flexible positioning leads to ethical problems, saying that her “... search for shared spaces where (she) could develop some degree to trust made it difficult to assess whether (she) should have been explicit about all the dimensions of (her) positionality” (*ibid*, p.347). Hubbell (2003) also writes about the inherent deceptiveness involved when a researcher adopts a flexible approach about presenting him or herself. Rather than a game of deception, is this not a product of the nature of the semi-structured in-depth interview, where the researcher seeks to build some rapport with the respondent in a personal, face-to-face interaction? As Mandel (2003) observes, it seems impossible to become an insider, but this does not forego the necessity to comply with local expectations regarding dress standards or appropriate culturally-sensitive conduct whilst in the field in order to build rapport or empathy. Crang (2003, p.497) observes, “(w)hile deception can and does occur, from both parties, it is also quite important to recognize that our projects are often unstable entities which are not only presented, but actually exist, in multiple versions given to funders, colleagues, friends, family, peers and (different) respondents, one of which need be necessarily the ‘true one’.” Is it not impossible, in the course of an interview (which may last any length of time, and in this research they were usually between thirty minutes and two hours) for the researcher to give a thorough account of their position – after all the point of the exercise is to understand the way the respondent thinks. The conclusion must be that evolution of the interview is complicated.

¹³³ In the conduct of fieldwork the researcher did not indicate to the respondents that she was legally qualified. Rather, the interviews were conducted on the basis that the researcher was a student (albeit a more mature, married one with children) conducting research which would form the basis for a PhD thesis. An emphasis was placed on the value that the respondent’s perspective could give to the way in which World Heritage sites are managed. This anonymity (in as far as not being identified as a legal professional) was useful. It meant that the interviewee was less likely to be daunted by the potential power imbalance that may accompany a lawyer interviewing individual’s about their knowledge of the legal obligations which applied to them by virtue of the World Heritage overlay. It is also important not to be naïve to the fact that it is nigh impossible to eliminate power relations during the course of social science research (see, for example, Dowling, 2005, p.23).

Such complexities are made more problematic by the difficulty of conducting research in a language that is not native to the researcher.

5.3 FIELDWORK METHODS: INTERVIEWS AND QUESTIONNAIRES

The following sections detail the primary data collection methods adopted in this research; interviews and questionnaires. Considerations relating to the core procedures for the conduct of fieldwork are discussed; questions about where, who, how and what and when the primary fieldwork data was collected are addressed.

5.3.1 Where: Site Selection & the Spatial Setting

The rationale for site selection was, in the first instance, based on an examination of the existing maps and remotely sensed imagery covering the Park.¹³⁴ It is not possible within the confines of this project to acquire primary data through a systematic and thorough survey from all village locations within Zones 1 and 2 as there are over 100,000 people living in over 100 villages in this location. Site selection was also partly based on information gathered from technical reports and policy documents of the organizations working within the Park. In the first fieldwork visit, both informal and formal discussions were conducted, with key informants who shared stories about the dilemmas facing both management and residents within the Park.¹³⁵ Land management issues, particularly the prevalence of inappropriate and illegal development, prevail throughout the entire Park. A number of initial interviews took place in the village of Nokor Krau (see Chapter 6, Figure 6.11). In this village a number of land management tensions were evident; from internal villager conflict over boundaries to controversy arising from land allocated to refugee repatriates to concerns regarding the World Heritage-inspired land use restrictions. Despite the factors at play in the village of Nokor Krau, it was decided that a case study within the core zone (zone 1), that sat within a broader landscape of land not affected by the highly restricted classification (of zone 1 and 2), would provide a more coherent picture of the impact of the heritage-inspired land use rules. Therefore, it was a combination of sources

¹³⁴ Spatial information was available from a number of sources, associated with the "Living with Heritage" project, and includes IKONOS, SPOT, Landsat TM Imagery and aerial photography.

¹³⁵ These informants included both junior and senior staff members of APSARA, staff from the EFEO (the Ecole Francaise D'Extreme Orient) and researchers aligned with affiliated University of Sydney project, the Australian Research Council-funded "Greater Angkor Project", Project ID: DP0558130, 2005 - 2009.

that informed site selection to key villages. Two villages, Ovloak and Thnal Trang, both located in Zone 1 and immediately adjacent to major monuments, were selected to obtain information about local perspectives (Table 5.1).

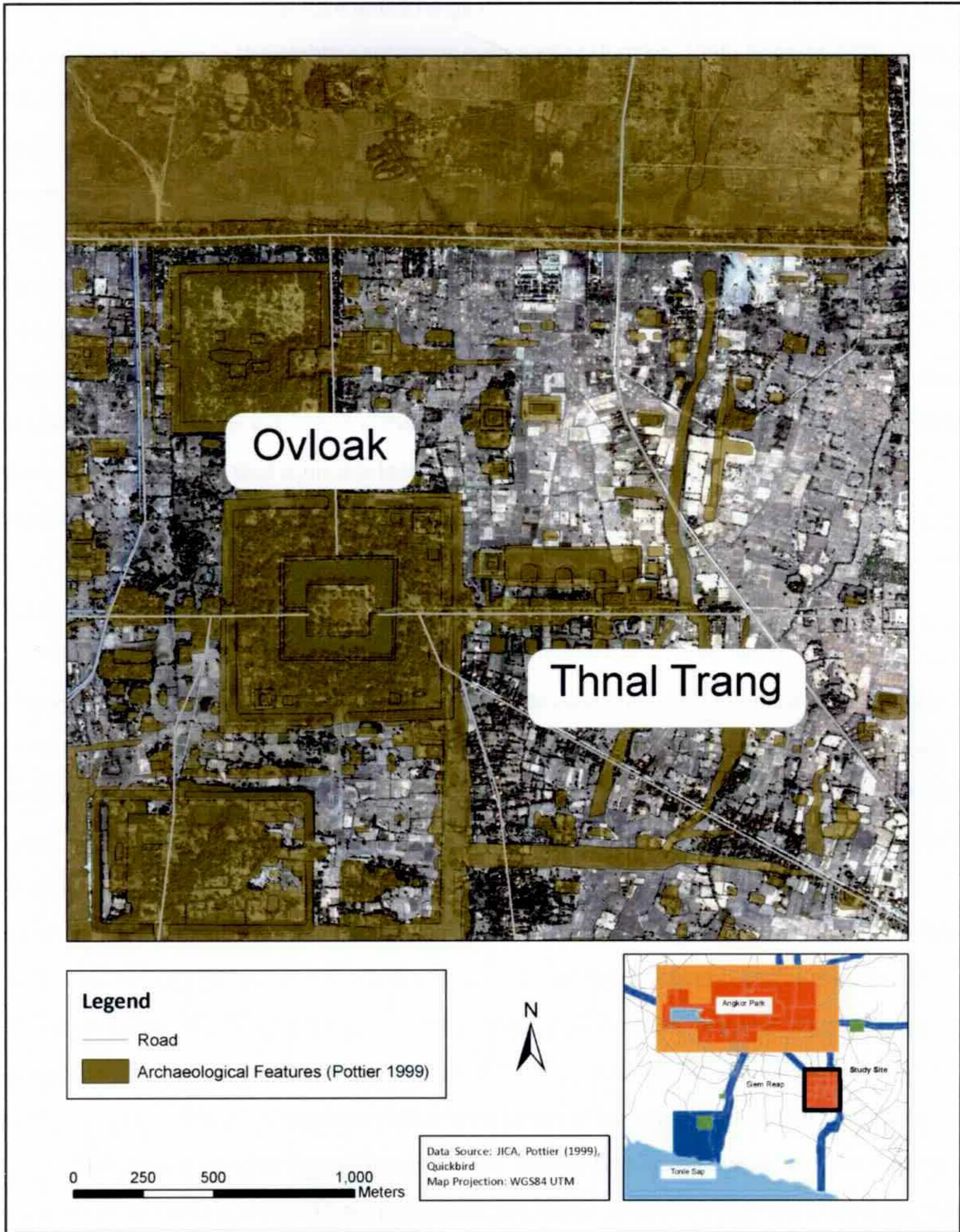
Table 5.1
Demographic and Land Area (ha) of Ovloak and Thnal Trang villages.

	Family	House	Popul'n	M	F	Total	Zone 1	Zone 2
Ovloak	354	335	1598	804	794	542	542	0
Thnal Trang	251	228	1177	611	566	235	235	0
Commune Bakong	1032	958	4878	2439	2439	1452	1365	87

Source: APSARA internal census, 2005b.

5.3.1.1 Ovloak

The first location for fieldwork was the village of Ovloak (Figure 5.1), also referred to as Olok (APSARA, 2003). Ovloak is in the Rolous Group of monuments that is classified as Zone 1 and is located approximately 12 kilometres east-southeast of the town of Siem Reap. Administratively, the village is part of the Bakong Commune. According to an internal APSARA survey conducted in 2005 there are approximately 354 families in this village (APSARA, 2005b). The village of Ovloak is located along the main road leading to the Preah Ko and Bakong temples from the main highway between Siem Reap and Phnom Penh (Highway 6). This area is distant from main group of monuments in Zone 1 (the "Central" Park), which are located nearer to Siem Reap.



Cartography: E. Bruce

Figure 5.1: Location of Study Villages of Ovloak and Thnal Trang, Rolous Group of Monuments, Angkor Archaeological Park, Cambodia

A major consideration in choosing this site is due to its location as part of the Rolous group of monuments. The Rolous Group of monuments are composed of three (primary) temples of Preah Ko, Bakong and Lolei (Rooney, 2005). This group of monuments pre-dates many of the

temples located in the Central Park and a range of scholars indicate that the area may have been an urban centre in the eighth century or even earlier (Pottier, 1996; Rooney, 2005; Penny *et al.*, 2006). This is also the location of the first state monuments of the Angkor period (Stern, 1954). As the Rolous group, although part of Zone 1, is not contiguous with the Central Park monuments north of Siem Reap this site is surrounded by land which is not subject to strict World Heritage restrictions. This means that land, which is spatially proximate to a highly restrictive classified zone, is free from these same restrictions. The buffer zones (Zone 2) for the Rolous group is small (approximately 50 metres wide) in this location, particularly by comparison to the buffer around the main monuments. In a legal geography context the choice of a site such as Ovloak is valuable for the relative size of the buffer zone heightens the contrast between legal overlays, that is, in this location there is a relatively abrupt change in legal obligations over a relatively small spatial distance.

5.3.1.2 Thnal Trang

Adjacent to Ovloak is the village of Thnal Trang and this was the location of the second study site for the purposes of this research (Figure 5.1). This village is also part of the Rolous group of monuments. The meaning of *thnal* in Khmer is road, and this village runs along one of the roads leading from the Bakong monument to the market village of Rolous, which is situated further to the east on the banks of the Rolous River. Thnal Trang is home to 251 families and 228 households with a total population of 1,177 people. The total land size which is located in Zone 1 for Thnal Trang is 235 hectares (APSARA, 2005b). Thnal Trang was chosen for the site for fieldwork for (like Ovloak) its proximity to the Bakong and Preah Ko monuments and the implications a legal overlay which restricts the use of land in this location may have for the inhabitants of the village. The primary difference between the villages of Ovloak and Thnal Trang is that Ovloak remains the main route in and out for tourists and visitors to the Bakong and Preah Ko temples whereas Thnal Trang is located down a road which branches off the main tourist route, and, as a consequence, very few tourists and/or visitors stray into the village of Thnal Trang.

5.3.1.3 The setting

At the individual level, interviews were conducted on-site, *in-situ*, in each instance. The interviews took place beneath houses, on open-platform bed frames outside houses, sitting or standing outside dwellings (including in a make-shift Japanese school) and in offices (from various Commune offices to APSARA offices located in the township of Siem Reap). In some cases, participants invited the interviewee to sit inside their houses. In no instances were interviewees required to attend a particular location to participate. There are commentators who regard the setting of the interview as of some significance (Hoggart *et al.*, 2002; Valentine, 2005). Elwood and Martin (2000) provide some useful insights into the importance of the location of the interview. They suggest that that “microgeographies of interview locations” enable researchers to “...’read’... important insights into social geographies of places being studied” (*ibid*, p.652). Other commentators (for example, Sin, 2003) suggest the interview setting can add extra insights and make the obvious, but crucial point, that home spaces make a interviewee feel at ease during the interview (see also Valentine, 1997). Moreover, adverse interviewing conditions can be both negative (background noise, lack of privacy in communal settings) and positive (for shedding light on people’s social/work settings and their status in the wider community) (Sin, 2003). Almost intuitively the spatial context of the interview can shed light on some of the issues under discussion in this research. In conducting research which aims to reveal how local residents feel about the regulations imposed upon them, their physical spaces (their yards and homes) can and do reflect the extent to which they do comply with the restrictions. In this research understanding the impact of the rules was enhanced with face-to-face interactions. For instance, when residents explain that boundary markers are traditionally in the form of cactus rows the interview moves to the boundary and discussion ensues on the use of cactus or banana trees for this purpose. In another example when discussing how residents interpret the rules about how big the new house or extension may be, this is explained by walking around the existing house and pointing out that the house can only “be as big as this” (and has to accommodate 10 people). Both examples illustrate how qualitative methods are essential in creating more discerning, astute and thoughtful understandings about the effect of the World Heritage classification.

5.3.2 Who: The Local Resident Population

In order to understand the impact of a World Heritage listing on a local population it is necessary to collect information on local views, opinions and experiences of the listing. The fieldwork data collected for this research is comprised of interviews and surveys of residents in two villages located in Zone 1 of the World Heritage site. When it came to recruiting participants two issues arose, one relates to access and the other sampling strategies.

5.3.2.1 Access / Permissions

Following Scott *et al.* (2006) one of the major concerns for researchers in conducting fieldwork in Southeast Asia is the political context in which the research takes place. In the case of the research in Vietnam described by Scott *et al.* (2006) the concern is to be aware of the way in which a society in transition from socialist structures to a market economy may impact the research. Cambodia, however, had no remaining indigenous political structures post Khmer Rouge, thus the transition is less from a socialist structure than it is from genocide and chaos to a market economy. Nonetheless, the observations (*ibid*) that access and permissions to conduct interviews are restricted by a bureaucracy that requires a hierarchical structure to be adhered to – that researchers must have prior approval to conduct interviews from the “authorities” is no less relevant to Cambodia than it is to Vietnam.

Whilst comments by Scott *et al.* (2006) about the political setting of the research are valid; there may be supplementary factors to consider, for it is arguable that societal issues – in addition to the political context are at play in both site access and gaining permission for researchers working in a cross-cultural setting. The significance of hierarchy in Cambodian society cannot be underestimated:

“In Cambodian society social stratification and differences in status are extremely important. Everyone knows, and needs to know, their place relative to that of others. This is exemplified through the every day language people use to address each other which acknowledges their respective age and status” (O’Leary and Nee, 2001, p.48).

A Cambodian proverb suggests:

"Kom bos san touch ro long phnom.

Don't throw the fishing line over the mountain.

- You cannot do anything that is not following the 'proper' way, according to hierarchical structures" (*ibid*, p.51).

There is a Gramscian element to these observations.¹³⁶ Many ethnographic, anthropological and social/political commentators of Cambodian society write about its inherent hierarchical character (for example, O'Leary and Nees, 2001; Chandler, 1991; Ebihara, 1968). Understanding that these Gramscian tendencies, and the phenomenon of patrimonialism, exist in Cambodia (Pak *et al.*, 2007) become important when interviewees explain their actions.

It is also important that the link between access, permissions and power should be acknowledged for:

"(o)ne goes to the field as a kind of "stranger", and draws on that status to see difference and ask questions that under other circumstances might seem (even more) intrusive, ignorant, or inane to those who answer them. The answers, and what one makes of them, have currency in other sites of enunciation – journals" (Katz, 1994, p.68).

Yet, in the process of engaging with people in the field, in the actualities of being present in another place, establishing contacts, gaining rapport and taking advantage of affiliations, these connections of themselves may influence the researcher's position and the power relations inherent within fieldwork (*ibid*; Chacko, 2004). In the case of research conducted at Angkor, affiliations with the management authority are a pre-requisite for access to the Park. Is independent (in as much as this is possible), academic research compromised by the need for affiliation with bureaucracy? Will the researcher stand accused of bias? Will his or her motives be attacked? Perhaps, but this is not necessarily the case, nor is it necessarily an entirely negative phenomena. Mandel (2003) has written about the role of (male) gatekeepers during the course of her fieldwork which was conducted in Porto Novo, Benin, Africa. She writes of the importance of local (male) gatekeepers in providing access to, and giving authority for, her

¹³⁶ This refers to the philosophy of Antonio Gramsci and, in particular, his concept of "cultural hegemony" in which the dominant class within a society maintained power through cultural power using the law, medial, social values and beliefs (Leiboff and Thomas, 2004, p.281).

research and admits to underestimating the role of the local gatekeepers (in her fieldwork it was the neighbourhood chief). In this research, fieldwork conducted within the villages of Ovloak and Thnal Trang is limited by the same phenomenon – access to villages can be direct but even with passes from ‘higher’ government or administrative authorities it remains not simply good manners but essential protocol to negotiate access to villages through the village chief as recognition of the role he (or she) plays in the structure of village life. Acknowledging and working within the constraints of this cultural norm is vital both to good field work practice but also to the quality of the end product of the research.

Hubbell (2003) describes some of the problems and solutions he encountered in a variety of ‘foreign’ fieldwork settings but it is his comments regarding establishing contacts which are germane to this research. Hubbell remarks that “(p)ersonal contacts are the most reliable way for obtaining access to interviewees. Especially in foreign countries, “cold calls” to potential interviewees seldom result in an interview” (2003, p.200). In the case of fieldwork conducted by a foreigner in a regulated World Heritage setting, it was the case that many of those interviewed only took part having established the bona fides of the researcher. Therefore, having a legitimate “pass” issued by the management authority provided an entrée to the residents of the Park.¹³⁷

5.3.2.2 Sampling strategies

“Permissions” to conduct this research both within the Park, generally, and in individual villages, in particular, were necessary. Access to the World Heritage Site is strictly controlled, and public visitors are required to purchase passes to gain access to the area. For researchers working in and around the site, the management authority provides a (pre-arranged) Park Pass.

The site for this fieldwork, the World Heritage site of Angkor Archaeological Park, is an ideal location for considering the research questions posed by this study for three reasons. Firstly, in

¹³⁷ As has already been indicated, this research forms part of an Australian Research Council Linkage grant (the “Living with Heritage” project) which worked in partnership, inter alia, with Cambodia’s national management authority (APSARA). Under the auspices of this project, APSARA undertook to provide researchers with permissions to access the World Heritage site. Upon arrival in Siem Reap, researchers were required to attend an APSARA office with a passport sized photograph in order to obtain their work Permit. To enter the Park, the researcher was required to present the Permit (or pass) to the Entrance Booth on each occasion for verification and date stamping. The researcher’s details were recorded each time the Park was entered. This Permit was also provided to a number of individuals for perusal, including the Heritage Police, Village Chiefs, Commune representatives and even individual respondents.

the turmoil of the original inscription process for World Heritage site status, the listing of Angkor in the 'sites-in-danger' category allowed certain pre-conditions to be overlooked (Chapter 3). Secondly, in such extraordinary circumstances there was a lack of community consultation on the listing and ensuing management process. Finally, the importance of effective heritage management to the domestic economy in Cambodia cannot be understated as a tool in a recovering civil society. Yet, the selection of villages for case studies and individuals within these villages is not so preordained. This leads us to ask what principles ought to be used for determining sampling? Curtis *et al* (2000) draw on the literature to extract some basic features, two of which are particularly pertinent to the sampling strategies adopted in this research – (1) small samples generating large amounts of information and (2) the need for samples to be explained through explicit and reflexive accounts of choice. Valentine (2005, p.112) declared that: “the aim... in recruiting informants for interview is not to choose a representative sample, rather to select an illustrative one.” Accordingly, in order to understand the implications of the restrictions imposed by virtue of the World Heritage listing on people living within Angkor Park, recruitment is based on choosing individuals who can shed light on this issue, therefore landholders and householders are identified as essential to this end.

To reiterate the point that standard sample sizes are not relevant to all studies (and in particular, this thesis), the following observation is endorsed:

“There are no rules for sample size in qualitative inquiry. Sample size depends on what you want to know, the purpose of the inquiry, what’s at stake, what will be useful, what will have credibility, and what can be done with available time and resources... The validity, meaningfulness, and insights generated from qualitative inquiry have more to do with... information-richness... and the observation/analytical capacities of the researcher than with sample size” (Bradshaw and Stratford, 2005, p.73).

The approach adopted in this research uses a combination of sampling methods. From identifying and liaising with key informants who were often playing the role of “gate-keeper” through to using the “snowball” technique to recruit people to interview from the recommendations of those already interviewed and providing the opportunity to introduce another potential interviewee (Valentine, 2005). Recruitment varied according to the time and place in and at which it took place. However, this is not to imply that recruitment was merely

opportunistic. The selection of participants was based on an ever-evolving understanding of the cultural sensitivities of working in a cross-cultural setting, and in particular, the peculiarities of working in a Cambodian context (following, for example, O’Leary and Nee, 2001; Muira, 2004; Luco, 2002). Accordingly, recruitment of potential participants was made in deference to patterns of hierarchy, notions of patronage and an awareness of power relationships both between the respondent and interviewee and gatekeepers and potential recruits.

The primary recruitment technique was based on a key informant approach. This is part of a purposive sampling technique which “aims to uncover information-rich phenomena/participants that can shed light on issues of central importance to the study” (Hay, 2005, 292). Using a key informant approach, the views of the Village Chief were sought for identifying members of his village who may be able to comment on issues of land management. Therefore, the Village Chief, in addition to being a local resident, also acted in identifying other residents who could shed light on the themes of this research. In the absence of advice from the Village Chief or Commune Representative, individuals were sought within households who may have been experiencing some difficulties in complying with the rules and regulations for the site. One way of identifying these individuals was to observe the appearance of homes/dwellings. The rules for building construction within the Park differ for those outside the Park, being more restrictive as to the type of material which should be used in construction of dwellings; as to size and location; and as to appearance. Observation, therefore, plays a part in identifying compliance and non-compliance issues with the regulations – for housing (within the Park) built with concrete poles and with a non-traditional appearance are visually distinctive.¹³⁸

Accordingly, choosing to approach both complying and non-complying households was one basis upon which recruitment was made. Observation, however, was not usually used in isolation. Rather, other villagers were often consulted as to whether (or indeed which) neighbours may be available for interviewing. This snow-ball recruitment (Monk and Bedford, 2005) technique was a very useful method for identifying potential interviewees.

To gain an understanding of the challenges facing management both senior and junior APSARA staff was interviewed throughout the course of the study. For a broader perspective, in

¹³⁸ Traditional Khmer-style houses are easily identifiable, and APSARA produce a number of leaflets for residents to identify this style of housing.

particular to gain an understanding of the expectations of World Heritage site management from the international view, UNESCO management based in Paris was consulted.¹³⁹

5.3.3 How: The Data Collection Procedure

5.3.3.1 Interviewing

An interview is a face-to-face exchange; where the interviewer asks and the interviewee answers questions. In a social science setting the interview is usually this and more, as recognition is given to the phenomena of the “co-construction” of data; meaning that the interplay between interviewer and interviewee results in an interview product. Researchers in the geographical tradition have commented extensively on fieldwork, which employs in-depth, semi-structured interview techniques. Lindsay (1997, p.56) says that interviewing “is not an easy option” for organising people, places and times and is very time-consuming. Dunn (2005) suggests that “(i)nterviewing in geography is so much more than ‘having a chat’” and reiterates the organisational demands from making contact through to the dedicated hours of transcribing, all before even beginning any analysis” (2005, p.79). Nonetheless, human geographers continue to use interviews to collect primary data as:

- interviewing provides an opportunity for a researcher to delve into a subject with more depth than other techniques such as questionnaires or surveys;
- a face-to-face one-on-one discussion about a variety of topics (within the realm of the research issue) enables a researcher to understand another’s perspective in a more comprehensive way – answers can be clarified in two way exchange using a conversational manner;
- it enables us to gain perspective on the issues in question the researcher needs to understand how others think;
- because the interview offers the opportunity for the participants to exchange ideas - to create a dialogue; and,
- interviewing can transform the assumptions about what may appear to a casual observer to be a culturally homogenous landscape (Duncan and Duncan, 2001, p.401).

¹³⁹ The World Heritage Centre is part of UNESCO and sees to the administration of the Convention, for an overview of its functions see, <http://whc.unesco.org/en/134/>.

Duncan and Duncan (2001, p.401) observe “(o)nly interviewing... can extract the conflicts, interconnections, anxieties, and specificities (historical or emerging) that roil beneath the calm surface”. Although some contend that it is obligatory to use interviews in the pursuit of a qualitative thesis (Crang, 2003), the criticism on the basis of compulsion is not valid in itself for, as articulated above, there remain many other compelling and convincing reasons to adopt interviewing as a method for data collection.

A three-page interview guide was used to conduct these semi-structured in-depth interviews (Appendix Two). It is the nature of semi-structured and in-depth interviews that some degree of flexibility is required during interviewing (Dunn, 2005). The interview guide did not purport to represent an exhaustive list. It was inevitable that during the course of interviewing many other issues are canvassed, sometimes in great detail and at other times fleetingly. Before commencing any interview, the interviewee provided the translator and respondent with an information sheet about the project. In addition to being generally regarded as “good practice”, this was also a requirement for University “Ethics” approval for social science research (Appendix One). As the researcher did not speak, read or write Khmer, the interviews were conducted using a Khmer / English speaking translator unless the respondent was comfortable in speaking English alone. To aid recall and provide a permanent record of the interviews most of the interviews were digitally recorded using a hand-held recording device. Hand-written notes were used to supplement the digital recording.

This research uses interviews because it embraces the idea that “(i)nterviews are useful for getting people to state the normative values of the community (the way that it is felt things ‘ought’ to be)” (Shurmer-Smith, 2002, p. 96). This research explores people’s stories, to understand how they interact with the landscape, to understand how (if at all) the regulations affect their daily lives. Importantly, interviewing can be a useful technique in some sensitive social situations (Bennett, 2002, p.155). In the context of heated debate around land use, ownership and cultural heritage protection at Angkor, interviews seem an appropriate vehicle for shedding light on these, at times, sensitive issues. What are the attributes of a successful interviewer? Is the process of interviewing influenced by the skills of the interviewer? Highfield (1962, p.53) observes:

“The skilful interviewer possesses qualities of patience, common sense, and friendly bearing, as well as an intelligent, responsive mind. His success in interviewing depends upon prior planning, a friendly approach, ability to lead a discussion systematically while being a good listener, and skill in recording the interview in an unobtrusive manner.”

Such grand ideals are probably never quite achievable nor perhaps entirely unattainable. The intricacy of the interview places many challenges in front of even the most skilled interviewer. Highfield (1962) is not alone in this call for empathy during the interview. Winchester (1996) argues that empathy in interviewing has the potential, in the right circumstances, to produce better results that would be achieved by aiming for an objective and non-responsive approach. Further, she argues that empathy may go some way towards redressing the power imbalance between the researcher and researched which is evident in many interviews. Using empathy in interviewing often became part of the interview process in this research, and some interviews undoubtedly benefitted from the researcher adopting (often not premeditated but rather intuitively) this technique (see Chapter 6).

5.3.3.2 Bias, Shocks & Falsehoods

The inherently unpredictable nature of interviewing is undeniable; it is fundamental to the nature of the experience. Those familiar with the interview process tend to understand that events often depart from any pre-prepared script – even if this script is supposed to be as flexible as possible in order to take account of the daily exigencies of life. Semi-structured, in-depth interviews, as employed in this study, are considered to be amongst the more flexible approaches to data collection (Dunn, 2005). But what happens when the interviewee and/or respondent react to questioning in a capricious way?

Sands and Krumer-Nevo (2006) address issues of shock in interviews. They define shock as “cognitive emotional reactions of the interviewer to the unexpected” (*ibid*, p.950). In this article, the authors (*ibid*) use a ‘postmodern lens’ to describe the influence of dominant (“master”) narratives on the interview interaction and illustrate how interviewees may react against (consciously or unconsciously) this dominant narrative and adopt shock tactics to, effectively, sabotage it. In interviews conducted in a cross-cultural setting, the complications of shocks may be compounded. Three types of shock are identified by Sands and Krumer-Nevo

(2006); (1) the violation of a social taboo, (2) shock over role reversal (for professionals) and (3) shock on the basis of reversing stereotypes. However, shock over role reversal and stereotypes are, perhaps, unlikely to occur in interviews conducted outside the researcher's dominant master narrative because issues of stigma are not always obvious to a researcher working outside his or her own cultural settings. However, maintaining fundamental inter-personal dignities during the course of the interview process is an aim of this research process. In writing about the challenges confronting novice interviewers, Roulston, *et al.* (2003), reveal that unanticipated and disconcerting events have a significant impact on the interview process. Although in many instances the effects have negative connotation, this need not always be the case, and new threads in the interview may emerge as a consequence of the unexpected. The individual researcher's ability to deal successfully with a difficult situation is marked by the circumstances in which the dilemma arises in addition to the researchers own, individual, experiences and characteristics.

It may appear harsh to add "falsehoods" to the heading of this sub-chapter; yet, it is excessively naïve to assume that the information gathered from interviews is always a clear, comprehensive, balanced and a neutral account of events or a disinterested narrative of opinion. This point is well made by Perramond (2001) in his account of fieldwork conducted in rural Mexico. He points out that all interactions camouflage a variety of nuances, many of which go unnoticed in "not-so-blissful ignorance for a fieldworker who is trying to grasp community social dynamics" (*ibid*, p. 153). This article also identifies how the researcher, making premature assumptions, can easily fall victim to falsehoods – where it is nigh impossible to fathom or appreciate the motivations of respondents (*ibid*).

5.3.3.3 Recording and Transcribing

The wish to keep the respondents thoughts flowing meant that assiduous note taking was not always possible – it could break the flow of the conversation and take excessive time in a free-flowing communication. As previously mentioned all interviews were digitally recorded. Although hand-written note taking was not eliminated completely, considerable reliance was placed on recorded interviews. This enabled the researcher to listen again to the interview and also to transcribe the interview into a written format. The usefulness of recording interviews

cannot be overstated and has been long recognised as having enormous benefits to the research and researcher alike (Highsmith, 1962; Roulston *et al.*, 2003; Valentine, 2005).

Despite the advantages of recording interviews there are a number of negative elements associated with this process. One of these is the wariness of a respondent to the recorder for people often seem far more comfortable chatting in the absence of a recording device. Of her experiences of interviewing in a cross-cultural setting using a tape recorder, Farrow (1995) found that taping interviews exacerbated power imbalances. However, digitally recording interviews was essential in this research to maintain rigour for the purposes of ensuring a measure of quality-control in a cross-cultural setting. Moreover, in recording translations, from English to Khmer then from Khmer to English, the translation could be later subject to further checking and verification using interpreter-translating services.

5.3.3.4 Translators

The official language of Cambodia is Khmer, and throughout the country there are different dialects. This research was conducted by a foreign researcher, through translators, in English. English is not widely spoken in Cambodia. This situation presents obvious problems. Without a doubt, a fluency in the language in which fieldwork is conducted, makes for better research and the calls for fieldworkers to familiarize themselves with the language of locals is well-intentioned (Veeck, 2001; Gade, 2001; Watson, 2003; Nash, 2000). Yet, "(t)he ideal has to cede to the realistic. If the total field period is shorter than seven months, learning to speak a new tongue may not be a wise investment of time. Engaging an interpreter is the best overall solution for short-term projects, assuming one keeps in mind that the informant is always more in tune with the interpreter than with the researcher formulating the questions." (Gade, 2001, p.376). This reflects the position of this study.

During the course of this research three translators were employed.¹⁴⁰ In this study "translator" rather than "interpreter" is used because, it is contended, there is a strong supposition that to "interpret" is to infer or read a meaning, even to deduce meaning, rather than to "translate" which ought to imply that the information is explained without alteration. In many instances

¹⁴⁰ All three were aged in their 20s. One had formal tertiary qualifications and had extensive translating experience. The other two have years of English guide experience for tourists visiting the temples but had both worked with University of Sydney research projects.

such a distinction cannot be maintained, particularly in the context of research conducted by a foreign researcher, unfamiliar with the social context in which the interview is situated, it is important that the translator (as far as practicable) convert words literally from English to Khmer and vice versa.

Many writers advocate that fieldwork is best conducted in the tongue of those being interviewed and argue that a linguistic understanding helps the researcher understand cultural and social nuances (for example, Hoggart *et al.*, 2002, p.212). Undoubtedly, the use of translators has its limitations, but how much is lost in translation? Arguably, errors in translations occur even when those involved speak the same language. Given the time restrictions on this study, it is contended that being alert to these dilemmas is an important step towards understanding the limitations of the research conundrum. Watson (2003) writes that her rudimentary grasp of language did not enable her to be free from the shackles of “help”:

“I continued to work with help. Otherwise the technical details and subtleties of the language often escaped me, and the regional variations were confusing. I knew enough to understand that sometimes people used my lack of language expertise to deny contradictions in what they had told me... The ‘translator’... was also more than someone who just translated from one language to another. He was not trained in social science methods, but his longer-term engagement with the research gave him an overall perspective on it, and added a great deal to the research, as someone with whom I could discuss research progress, problems and ideas.” (*ibid*, p.66)

These remarks do not obviate the lack of language skill in the individual researcher, but they do justify the need for assistance through a translator. Additionally, while Smith (2003) addresses the issue of working with different languages she observes that while learning basic language skill can benefit the research, the translation of concepts can be elusive and can be difficult to achieve with rudimentary language skills. Accordingly, the role of the much-needed translators and their impact on the research process needs to be examined and ought not be “conspicuously absent” (Twyman, *et al.*, p.315). Arguably this becomes a case of “interpreter/translator reflexivity”. In this research the role and significance, in terms of positionality and power relationships of the translator, is discussed in the section on “Ethical Considerations” (below). The voices of interviewees are presented verbatim in this research.

No attempt has been made to alter the dialogue to present a first person narrative (which might be more readable) and the results are presented herein with the words of the translator.

The translation of concepts is a particularly fraught dilemma (Helms, 2005, p.245). In this work it is the use of the label "World Heritage" which gives cause for concern. During the course of fieldwork it became apparent, through many conversations with translators, that the idea of "World Heritage" was often a difficult notion to translate, especially to an illiterate respondent. With much to and froing between the researcher, translator and respondent the concept of what "World Heritage" meant, and was understood as, gradually became clearer, but the inherent difficulty of translating the concept shadowed the entire research process.

5.3.3.5 Questionnaire Design

De Vaus (1995, p.80; also cited with approval in McGuirk & O'Neill, 2005) identifies the need to address four facets in the development of a questionnaire, namely, "selection of areas about which to question, construction of actual questions, evaluation of questions and the layout of a good questionnaire". Under the auspices of these categories, the research design of the questionnaire used in this study is analysed.

The topics included in the questionnaire were borne from the results of the in-depth, unstructured interviews conducted in December 2006 / January 2007. The categories for exploration in the questionnaire were refined questions, building on the successes and failures of the questions used during interview process (following Cloke *et al.*, 2004). The questionnaire was divided into six categories, and included questions under the following broad themes: demographics; property issues; World Heritage; population growth; administrative arrangements and dispute resolution. Although some warn (De Vaus, 1995, though this warning is without explanation) that a questionnaire should not start with demographic questions, the in-depth interview experiences suggested that participants were comfortable with beginning an interview in this fashion. Arguably, it was the ability to talk about their children, their ages and gender (etc) that provided a wonderful introduction to an interview. Building on this success, demographic questions were chosen to begin the survey. Each of the other themes was narrowed to particular questions, on the basis of the results from the in-depth interviews previously conducted. With regard to property issues, for example, it had become clear that

access to a title document was inconsistent; therefore a question about paperwork for land title was deemed to be useful in trying to establish a clearer picture of how many people had claimed paperwork for 'ownership'. Similar rationales were used to build the question contents for the entire survey.

As regards the construction of the questions, or the wording of the questionnaire, De Vaus' sixteen-point checklist (1995, pp. 83 – 86) was consulted amongst other literature (for example Cloke *et al.*, 2004) – though not all of the considerations they identify in questionnaire construction were relevant to this study. Simplicity of language (*ibid*, p.83; Oppenheim cited in Cloke *et al.*, 2004, p.137) is undeniably important in a cross-cultural survey and this was the subject of some scrutiny, as both a consequence of the previously conducted in-depth interviews, and as a consequence of consultation with translators during the pre-testing stage (see below). Unnecessarily long, complex and non-leading questions were also avoided (De Vaus, 1995). Two points of specific concern were the extent to which a respondent would have the appropriate knowledge – especially as regards conceptual notions such as the concept of “World Heritage” and the issue of meaning (*ibid*, p.84) – given the need to translate the questionnaire from English to Khmer then back to English. Even though it was identified that respondents may have a limited understanding of the World Heritage concept, it was decided to test this issue as it was considered important to understand the extent of any lack of knowledge. As to the loss of meaning, considerable consultation with English-Khmer speakers was attempted to limit the impact of this concern.

Pre-testing or pilot-testing is regarded as essential in the design process because the process should lead to a better end result (De Vaus, 1995; Cloke *et al.*, 2004; McGuirk & O'Neill, 2005). For the purposes of the questionnaire the pre-testing process was set in place, but, unfortunately, was compromised to some extent by the unforeseen impact of a local Cambodian holiday. In other words, the designated timing of the pre-testing was interrupted and it could not take place as had been planned (in a village located within Zone 1 of the Park but in a different spatial setting from that where the actual questionnaire was to be conducted). As a solution, extensive consultation between the researcher and translator – who was responsible for conducting the questionnaire – took place to clarify issues of question simplicity, meanings and alternate responses. The effectiveness of the Khmer-English translation process was done in consultation with Khmer-English teachers. Arguably, these consultations resulted

in some form of pre-testing and ought to have mitigated the loss of the planned pre-testing initiative. Additionally, given that in-depth, semi-structured interviews had already taken place in the selected villages, issues such as the appropriateness of the questions or determining which question type would succeed or fail and identifying how long the questionnaire would take (following Cloke *et al.*, 2004, pp.145 – 146) had been previously addressed.

There is some debate amongst social science researchers about the relative merits of adopting “open” and “closed” question types within a survey (for examples, see both De Vaus, 1995; Cloke, 2004; McGuirk & O’Neill, 2005). Both open and closed questions were used in this questionnaire. For example, a closed question process was used to record demographic information (whether the respondent was male or female). Open questions were used to understand in a little more detail what the respondent felt or understood about an issue. An example of this begins with the closed question requiring a “yes” or “no” answer, and if the response is affirmative, an explanation of the issue is called for:

“Q.7 Are you aware of any restrictions on selling your house or land?
Yes / No (please circle)
If “Yes”, please explain the process of sale.”.

A number of lines (that is, spaces) were provided in the questionnaire for any explanation. The choice of this approach is based on the fact that “using open questions make it possible to pose complex questions that can reveal, to a greater depth than closed questions, people’s experiences, understandings, and interpretations...” (McGuirk & O’Neill, 2005, p.152).

5.3.3.6 Questionnaire Implementation

From 14th to 16th October 2007, the questionnaire was conducted in the study villages of Ovloak and Thnal Trang, in the Commune of Bakong, Siem Reap Province. From a 2005 APSARA internal census, there are 251 families living in the village of Thnal Trang and 354 families living in the village of Ovloak (Table 5.1).

Fifty-six face-to-face surveys were conducted in both villages with twenty-seven in Thnal Trang and twenty-nine taking place in Ovloak. This represents 12% of houses (households) in Thnal

Trang and 9% of households in Ovloak. During the three days of the survey, interviews were conducted between 8.00 am and 4.00 pm. Most respondents (60%) were aged between 35 and 54. All but one respondent indicated that he or she had children. Questionnaire results are detailed in Appendix Five herein. The outcomes of the questionnaires are discussed in Chapter 6.

It is contended that the actual layout of the questionnaire is important as it improves efficiency and flow – for ease of use for the person conducting the questionnaire and arguable, for better cooperation on behalf of the respondent (De Vaus, 1995). The questionnaire is 6 ½ pages in length (double spacing) with only one A4 side printed for filling in. This ensured that there was plenty of room for the interviewee to add extra comments (following De Vaus, 1995). It should also be noted that the form of the questionnaire was a face-to-face interview, taking no more than 10 minutes for respondents in person. The survey was conducted entirely in Khmer and the responses were translated to English after the in-field questionnaires were finished (Appendix Three and Four herein).

While the value of interviews lies in the way in which they can illuminate processes and opinions, the value of questionnaires is that they may provide insights into patterns (Mandel, 2003, p.200). McGuirk and O'Neill (2005) identify three strengths in using questionnaires: (1) they can be an effective way of determining trends; (2) they are often cost-effective (and are therefore a practical research device) and (3) they are adaptable. All three attributes constitute the rationale for adopting questionnaires in this research. In addition, the questionnaire provided an opportunity for those who were not available to respond to interviews (due to time) to voice their opinions. Similarly, the limitations of questionnaires as an effective way to shed light on the human dimensions of research should be acknowledged, for this research method can be superficial, as McGuirk & O'Neill (2005) note. However, combined with complementary in-depth, semi-structured interviews which have been conducted in the same locations (that is, the same villages) as the questionnaire, this technique does provide an effective means of supplementing the richer, more nuanced accounts of respondents.

5.3.4 When: The temporal context

Over the course of the research four fieldwork site visits took place, between December 2005 and June 2009. Visits varied from two to six weeks in duration. Most of the field visits occurred during the relatively cool dry season of December/January, although one round of interviewing took place in June. Table 5.2 provides an overview of the timing, type and location of fieldwork.

Table 5.2
Fieldwork Schedule, 2005 - 2009

	Fieldwork 1	Fieldwork 2	Fieldwork 3	Fieldwork 4
Time	December 2005 – January 2006	December 2006 – January 2007	October 2007	June 2009
Location	Various locations throughout the WH site	Ovloak and Thnal Trang	Ovloak and Thnal Trang	Ovloak and Thnal Trang
Type	Semi-structured in-depth interviews	Semi-structured in-depth interviews	Questionnaires	Semi-structured in-depth interviews

Seasonal variation played a part in the timing of fieldwork visits. Cambodia has two discrete seasons, from mid May to October (rainy, humid season) and from November to March (drier, less humid season), while the times between these are intermediary (SCW, 2006). Fieldwork visits were mostly arranged during the November – March dry season for reasons of practicality, including using tuk-tuk and moto's on dirt roads and tracks to access sites.

5.3.5 What: A matter of substance.

The content of the questionnaires has been discussed (above at "Questionnaire Design"). A number of thematic questions informed the nature of the semi-structured, in-depth interviews. The themes were expressed under broad headings, which included 'background', 'house/land – ownership/papers/selling/buying', 'boundaries', 'administration', 'dispute resolution', 'restrictions', 'world heritage knowledge' and 'organisations'. Chapter Six discusses the results of these interviews. The themes are designed to produce information outcomes in the process

of data generation but the themes were also designed to generate discussion more generally. To this end, the themes acted as prompts for discussions to allow for the researcher to gain an understanding about the residents' needs and opinions on a variety of issues – from their understanding of the rules to which they are subject through to the discussion of the relative merits (or otherwise) of the existing management authority. In so doing, many peripheral needs could be identified.

5.4 ETHICAL REQUIRMENTS AND CONSIDERATIONS

5.4.1 Ethical Mapping

As this study is concerned with the rules governing heritage management at the Angkor Archaeological Park, it is considered important to locate the interviews, and the issues arising from them, in relation to their proximity to the protected monuments and the various boundaries between the zones. Therefore, the locations of interviews were recorded using a Global Positioning System (GPS)(UTM Projection WGS84 Datum, Zone 48N). Accordingly, this information can be represented spatially, however in order to comply with formal ethic requirements in the conduct of research involving humans,¹⁴¹ the locations of interviews and questionnaire responses have not been reproduced in this thesis.

Nonetheless, the spatial elements of this work are intrinsically important because the regulatory overlay is spatially represented on this landscape – the points at which people can and cannot do things to their environment (homes and land) are clearly mapped. At Rolous, for example, it is possible to cross three legal overlays in the space of a little over 200 metres (section 6. 3, Chapter 6). Additionally, the issue of proximity is clearly important, for it is the proximity which gives rise to the different categories of regulation, therefore, the closer one lives to a (highly) protected monument the more restrictive the rules are. When the locations of interviews are recorded using GPS and then mapped using GIS software, one of the essential issues of contention - that the existing regulatory framework fails to take adequate account of its impact on the landscape - comes into clear focus. Yet, in mapping the locations of interviews and making this information publicly available, the confidentiality obligations owed to respondents

¹⁴¹ Appendix 1 provides the documentation of compliance with the University of Sydney's ethics code.

(Hay, 2003), as part of the ethics considerations of this research, is clearly breached – for in mapping the location of their home (for residents within the Park) – it is possible to clearly identify who these individuals are.

5.4.2 Other Ethical Considerations

Some consideration has already been given to privacy and the use of translators. However, there are a number of other real and potential ethical considerations that arise throughout this research (following Hoggart *et al.*, 2002). One such concern is to acknowledge the motivations of research (applying Baxter and Eyles', 1997, rigour test of "confirmability"). As Duncan and Duncan (2001) observe, the process of researching can bring out ethical tensions that result in selective use of material for analysis. This is an inevitable part of the research process, but one to be mindful of nevertheless. It is clear in this research that the results have been influenced by the rights-based concerns associated with the application of concepts of equity, fairness and justice (following Bennett's, 2002, p.160 concern to expose "the impossibility of the cool, detached researcher").

The relationship between geographical research and ethical considerations is well canvassed.¹⁴² For the purposes of this study the primary concern is that of *applied* ethics – the conduct of the professional geographer in carrying out his or her research task (applying the methods) when that task is concerned with the spatial dimensions of justice (*sensu* Proctor, 1997; Harvey, 1973; Hay, 2003, and from Hay, 1995, regardless of which sub-category of equity, fairness and justice this falls). In short, ensuring that the researcher "behave(s) with integrity and ... act(s) in ways that are just, beneficent and respectful... (e)thical research is carried out by thoughtful, informed and reflexive geographers who act honourably because it is the 'right' thing to do..." (Hay, 2003, p.37). From Hay (*ibid*, p.43) it is possible to place ethics into sub-categories of "consent", "confidentiality", "harm" and "cultural awareness".

Under the rubric of potential "harm" (Hay, *ibid*; Dowling, 2005), is the consideration that some participants may be uneasy about the use of the information collected (Myers, 2001). In the post-conflict environment of Cambodia the interviewee is conscious of the need to preserve each individual participant's privacy. Others who have worked on research projects involving

¹⁴² Indeed an entire journal is devoted to the topic, see *Ethics, Place and Environment*.

residents in and around Angkor have documented the stories of locals also reflect on these considerations (Muro, 2005; Luco, 2002). It is possible that interviewees can and do experience some level of distress, especially if the respondent believes the researcher is collecting information that may bring them into conflict with authority. The reluctance of some to elaborate on answers during the interview process may reflect this concern. To address this concern the preamble to the interview involved reading either the “Dialogue Statement” or the “Participatory Information Statement”,¹⁴³ or in many instances summarizing both documents, in an attempt to reassure the interviewee that the information sought is to be used for the purposes of research. Interviewees were informed that they could choose not to answer questions or could withdraw from the interview at any time. The use of a local (using local dialect) and independent (that is, not aligned with the government or management authority) translator was intended to allay concerns.

The maintenance of confidentiality is essential to this research. Researchers conducting qualitative fieldwork with humans are required to following the University of Sydney’s formal ethical guidelines and to apply for clearance to conduct such fieldwork.¹⁴⁴ The requirements of this process are that raw data must be securely stored for a period of seven years. The interviews results collected during the course of this study have not been provided as an Appendix herein because to do so would breach the confidentiality obligations of this researcher’s ethical clearance as the interview material identifies participants. However, due to the storage rule this material is available upon request.

The potential for participants to view the researcher as being aligned with the management authority (and other bodies representing power) ought not to be underestimated. This is a double edged phenomenon – on the one hand the affiliation may be daunting to those who disagree with the authorities but on the other hand, others may view the affiliation as a vehicle through which their grievances may be addressed. Both dimensions were encountered during interviewing. Hence from an ethical perspective it was important to clearly explain the role of the research project vis-à-vis the management authority and this was both called for and done in a number of instances throughout the data collection process.

¹⁴³ See Appendix 1.

¹⁴⁴ See Appendix 1.

A confronting dilemma for researchers conducting fieldwork in a developing country context is whether or not potential respondents should be paid for their time in participating in the study. Scott *et al.* (2006) comment on this somewhat controversial issue and confirm that a great deal of pressure and expectation can exist in certain communities (especially rural ones) for the researcher to pay participants for their time. Again, this expectation was encountered throughout the course of this research – although it was by no means a uniform expectation. Prior to commencing fieldwork, the appropriateness of compensating participants was discussed amongst the researcher's advisers and peers (alongside consultation with the literature as it is widely accepted to be problematic) – with no conclusive consensus. Ultimately, this decision was left with the researcher to decide on an individual basis and, with the advice of the translator doubling as field assistant, occasional gifts of a token nature¹⁴⁵ would be given when interviews were complete.

Another ethical consideration is the extent to which a researcher should commit to a respondent that their plight/story can be altered by the research process. In other words, what commitment can a researcher give to a respondent that by virtue of documenting their problem, a solution will emerge? In the course of this fieldwork, it was made clear to respondents that while the research project results may impact on policy – that is, effect change – this was by no means a guaranteed outcome and Mandel (2003) outlines a similar perspective. Again, on occasions throughout the course of the data collection process the researcher was confronted with this dilemma. In every instance the researcher reiterated that although it may be hoped that the research results would inform policy makers and therefore, policy, it could not be guaranteed that the management authority would make any changes to benefit the participant.

The interpretative nature of a study steeped in a human geographical tradition requires that the researcher reflect on his or her role in the research process (discussed above, Eyles, 1988) but when the research is set in a cultural setting which is foreign to the researcher and which necessitates that the researcher rely on translators and interpreting services, the role of the translator in the research process ought also be examined. In other words, in an effort to show respect for those participating in the research (Hay, 2003), the role of a local translator should

¹⁴⁵ These included low cost items such as pens, pencils and notebooks which were provided for the children of interviewees.

be carefully scrutinized. Scott *et al.* (2006) also comment that the positionality of the translator is often poorly reported. Muller (2007) also argues that the implications of conducting fieldwork through translators must be addressed in a more comprehensive manner than it appears to have been done to date. The benefit in using local people for translation lies in the value of having someone conversant in the local dialect and familiar with local customs and traditions. Conversely, however, will the local translator be a threat to potential participants in an interview for fear that divulging information to a local may be viewed as a breach of privacy? Although the researcher is subject to the strictures of University ethics obligations and the need to conduct his or her research in an ethical manner more generally, is a local translator hired to do a specific job subject to the same obligations? It does not seem likely, particularly given that there is little hope, in reality, of enforcing any such obligation. In a bid to overcome this quandary any translator recruited in the course of this research were explicitly informed that the nature of the interviews were such that the participant's privacy should always be assured. Additionally, translators were recruited not from within the villages which were interviewed, but from within the provincial capital, and were therefore physically removed from the site of interviews. However, being local to the region they had some degree of empathy with the participants (following Scott *et al.*, 2006). Although formal training of the translators used in this study was not undertaken, there were extensive discussions of the issues regarding the conduct and content of the interview process. Some of the translators had previous experience in interview work with international NGOs and the researcher was able to draw upon these experiences to enhance the process. Time spent building professional working arrangements with translators, which stresses the ethical dimensions of social science research, was time exceedingly well spent.

5.5 SUMMARY

Looking beyond the fact that these data collection approaches are within the traditions of studies in human geography, it is important to reiterate why these, of a range of methods, were chosen for this research. These methods provide rich, complex views and opinions from local residents about the way in which the restrictions impact on their lives, though they are not without criticism. Moreover, the cross-cultural setting requires some reflexivity on the role of the researcher and on the use of translators. Semi-structured in-depth interviews allow an

individual's opinion to be thoroughly canvassed and explored without the restrictive format of a questionnaire with its proscriptive set of answers, and this allows for a more detailed exploration of complex issues and facilitates nuanced responses. The questionnaires complement the data collected during interviewing and act to provide rigour in the data collection process; these results can go towards proving or disproving apparent trends. Questionnaires allow for a survey of a broader respondent base, are short in duration and provide an opportunity for those residents that cannot take the time for an in-depth interview to voice their views. Combined these methods provide tangible results reflecting local perspectives on the effect of the restrictions arising from the World Heritage listing.

Chapter Six

LOCAL PERSPECTIVES

6.1 INTRODUCTION

In the heritage management context of Angkor, a perpetual challenge to management lies in creating an effective and just land administrative regime. The monuments of Angkor are located in a landscape setting and the integrity of its outstanding universal value is compromised by land management conundrums such as inappropriate development. Land administration policy that disenfranchises local people, and that may materially disadvantage them, threatens Angkor's status as a "lived-in", cultural heritage site, and the current movement toward re-inscription of Angkor as a "cultural landscape" (Taylor and Altenburg, 2006; Mackay, *et al.*, 2008). The importance of local communities to this designation is paramount;¹⁴⁶ but if these communities, comprised of the resident population, reveal discontent with the status-quo in terms of their own land-use expectations the proposed re-designation may be in jeopardy. This research is concerned with local responses to the land management regime within the World Heritage site at Angkor. Using qualitative methods the project explores the impact of the regulations arising with the World Heritage designation. A combination of in-depth interviews and questionnaires shed light on local perceptions about the rules that govern them. The research offers an exploration of how international obligations, embodied in the *World Heritage Convention* and its *Operational Guidelines*, translate to local regulations and then considers how locals understand and react to this regulatory framework. An understanding of the spatial dimensions of this legal framework is also crucial in this exercise.

It is argued throughout this research that local perspectives are important; in terms of the overall success of the Park (meeting heritage conservation goals), in terms of supporting traditional links with the land of local inhabitants, and in terms of how to manage rights in protected areas more broadly. This is underwritten by an assumption that "top down"

¹⁴⁶ Cultural landscapes represent "the combined works of nature and of man", from Article 1 of the Convention. Moreover, "(t)hey are illustrative of the evolution of human society and settlement over time...", see the *Operational Guidelines*, UNESCO (2008, p.85).

approaches to heritage management may alienate local people (Logan, 2005) and lead to conflict while “bottom up” approaches, that take better account of local needs, have the potential to improve outcomes all around. Although effective management may not require this approach, arguably the incorporation of local perspectives creates the conditions for a more equitable management regime.

In this chapter data collected during fieldwork are presented and discussed. Writing about the use of individual narratives to explain power relationships, Ewick and Silbey (2003) observe that it would be “a pity to lose possible ways of thinking about the manner in which people make claims on others simply because vernaculars seem local and strange.” Accordingly, despite the limitations of cross-cultural research (discussed herein), the benefits of voicing local perspectives regarding land administration at Angkor are manifest. In an applied way, one way to address the reflexive dimension of this research is to write the fieldwork experiences into the text in order that the rigour of the qualitative approach can be tested (following Baxter and Eyles, 1997), biases evaluated and outcomes re-produced by others. Some of these reflexive aspects became apparent during the course of interviewing. Akin to the journalist who becomes part of the story, being ever mindful of the Heisenberg principle¹⁴⁷, the researcher attempted to ensure that her presence did not influence the interactions. However, despite these efforts, there is no doubt that the presence of the researcher (with a translator) caused the interactions that were being observed to be altered - to think otherwise is unnecessarily naïve. Despite these observations, the interview process was not characterised by a dogged, doughty approach to accumulating information, rather it was highly reflective, intuitive and reflexive in nature. Many of the perspectives presented in this chapter reflect the humour, goodwill and rapport that characterised the interview process.

Fieldwork for this research was conducted at irregular intervals from an initial site visit in December 2005 until June 2009. While a number of interviews were conducted throughout this time, twenty-one in-depth interviews with residents living in field-site villages were selected to present in this research. These interviews expose how people understood and responded to the World Heritage classification of their land. The interviews ranged in length from thirty minutes

¹⁴⁷ Heisenberg’s “uncertainty principle” arose in a physics context but Tuttle argues that: “(T)he social corollary of this Uncertainty Principle is that the act of observing an event changes the nature of that event, and for two reasons: (1) the event immediately becomes relative to the observer; and (2) observing the behavior of people who know they are being observed changes their behavior. This principle has become well-known owing to its many applications in literature and journalism.”, (Tuttle, 2005, p.1092).

to over two hours. Most interviews were conducted within or immediately outside the respondent's home. Table 6.1 provides an overview of the villager demographic profile of the in-depth interviewees.

Table 6.1: Summary of Villager Profile, In-depth Interviews

Demographic					Village	
Age	Gender	Marital status	Number of Children / Grandchildren	Employment	Ovloak	Thnal Trang
35	M	Married	2	Vendor / Construction	x	
60	F	Widowed	5 / 2	Farming	x	
66	M	Married	6 / 5	Retired	x	
26	F	Married	2	Homeworker		x
65	F	Widowed	9 / 40	Retired		x
48	F	Married	8 / 4	Homeworker	x	
45	F	Married	5	Homeworker	x	
62	M	Married	5 / 16	Retired		x
56	F	Married	6	Retired		x
72	M	Married	7 / 15	Retired	x	
43	F	Married	4	Farming	x	
56	M	Married	7 / 12	Retired		x
26	F	Married	0	Employed	x	
24	F	Married	2	Homeworker	x	
18	F	Married	1	Homeworker	x	
49	F	Married	7	Homeworker		x
26	F	Married	3	Homeworker		x
49	F	Married	5	Crafts		x
41	F	Married	3	Homeworker		x
18	F	Single	0	Employed	x	
36	F	Married	6	Homeworker	x	

Interviews were also conducted, confidentially, with APSARA staff involved with planning and enforcement, including both management and field-workers, however demographic details were not recorded. In addition to the in-depth interviews residents of the selected villages were also surveyed through a questionnaire. In October 2007 fifty-six residents were surveyed in person (in Khmer) through a seven-page questionnaire. Sixty per cent of questionnaire respondents were aged between 35 – 54 (Appendix 5, Figure A.1.1). Eighty per cent of questionnaire respondents were female (Appendix 5, Figure A.1.2) and most respondents were recorded to have children (with the predominant age range for these children of between 11 – 30 years of age, see Appendix Five, Figure A.1.3).

A full list of interview topics is provided in Appendix Two while a full list of questionnaire topics is provided in Appendix Four. Questionnaire results are detailed in Appendix Five. Table 6.2 provides a summary of the themes and issues covered during both the in-depth interviews and the surveys.

Table 6.2: Summary of Interview & Questionnaire Issues according to Themes

	Questions / Issues			
Themes				
Knowledge of World Heritage	Overarching governance	Role / Knowledge of APSARA		
Boundaries & Buffers	Village boundaries	Zone Boundaries	Resolution of disputes	
Ownership & Land Values	Form of ownership	Inheritance	Paperwork	Land Values
The Rules & Regulations	Knowledge of restrictions	Dispute resolution mechanisms	Consultation	Reaction
Heritage Management	Concept of World Heritage	Individual meaning	Zones	

It is the analysis and interpretation of these two data collection exercises that are presented in this Chapter. This chapter is structured around the following five themes identified in Table 6.2: (1) local knowledge of World Heritage, (2) the issue of boundaries and buffer Zones, (3) ownership and land values, (4) the rules and regulations (restrictions) and (5) the role of heritage management and practice. Although the broad themes are defined by the research questions themselves, a more nuanced understanding of what was significant to the issue as seen by local people emerged from the process of talking with them. The themes arose initially *a priori*, from the research questions, but later evolved and emerged inductively from the data, thereby allowing the local interviewees to identify what is significant to them (and leave out what is not).

6.2 KNOWLEDGE OF WORLD HERITAGE

In the Ninth Plenary Session of the International Co-ordinating Committee's sitting in Siem Reap, these salient words were uttered:

"Few of the villagers know anything about the World Heritage site in whose shadow they live" (UNESCO, 2003, p.52).

This session took place in 2003 – a decade after the initial listing of the site. The ramifications of these words are enormous – could it really be the case that the people who live among the monuments of Angkor do not comprehend the World Heritage listing and the implications it may (or may not) have for them? Initial observations made from a reconnaissance fieldwork trip in 2005 suggest that this remained the case. It was also clear that there were significant complications associated with the words or phrase, and the idea of "World Heritage" was discussed on more than one occasion with translators during the course of fieldwork.

Perceptions relating to the concept and how the locals relate to the monuments is the purview of other, related studies (for example, the work of Butland, 2009 or Lloyd, 2009), yet for the purposes of this research some clarity was required to understand the extent of knowledge generally held within local resident communities. To this end, both the in-depth interviews and questionnaire attempt to gather information about the community's knowledge of the World Heritage concept.

In order to gain some understanding of whether locals were familiar with the concept two linked questions relating to this issue were included in the questionnaire. Responses to the first part of the question: *Are you aware of the World Heritage listing? Yes / No (Please circle)* were very evenly mixed, with slightly more than half of respondents lacking awareness of the World Heritage listing/classification with slightly less than half responding that they knew of the classification. There were no non-responses (Figure 6.1).

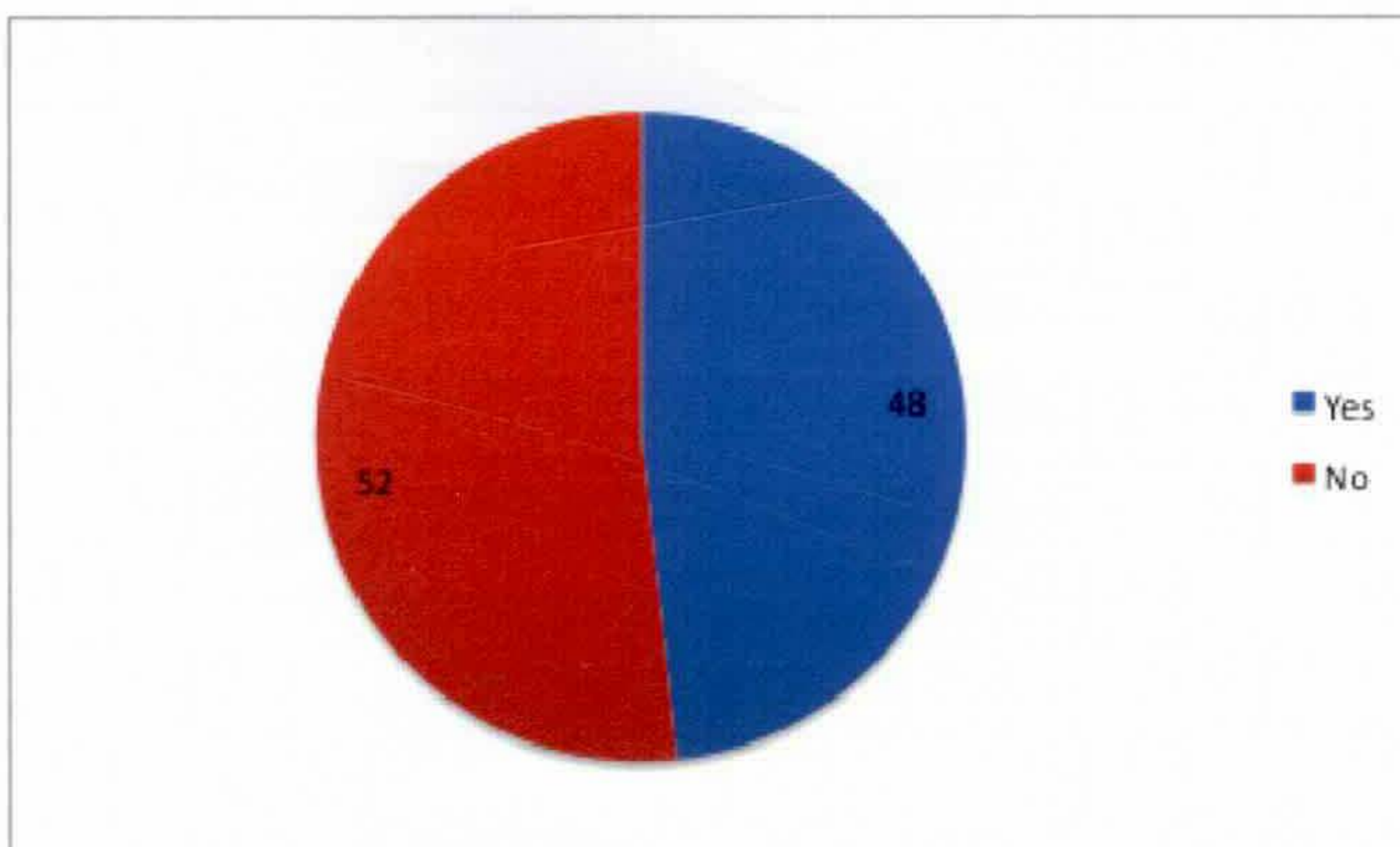


Figure 6.1: Awareness of World Heritage Listing, expressed as a % of respondents

There are undoubted limitations associated with these responses – for a number of interpretations could be suggested. For instance, does a “no” response mean that the respondent is not familiar with the minutia of the listing process? Or does it mean that they do not understand the concept *per se*? The second part of this question sheds light on the extent to which respondents understood the concept. This part read: “If “Yes”, what does this mean to you?”. Although respondents were not required to elaborate unless they answered in the affirmative, those who did so suggest that anyone who answered in the negative was commenting on their understanding of the concept rather than for any detailed knowledge about World Heritage. Respondents gave a variety of replies (Table 6.3).

Table 6.3: What does the concept of World Heritage mean to you?

Respondent	
1	I am happy that there is the World Heritage listing. However, Cambodia is not in a good situation.
2	I am happy. But I do not understand anything related to the World Heritage listing due to illiteracy.
4	I don't know.
7	Angkor will be safe.
8	Angkor will be well known to the world.
13	I am happy that Angkor is known by the world.
16	To me I am happy; But keep Angkor from belonging to someone.
17	I am happy. But I do not understand anything related to the World Heritage listing due to illiteracy.
20	Keep good opportunities for the next generation to know; Moreover it will attract a lot of tourists to Cambodia.
21	It is very important because it will bring a lot of tourists to Cambodia.

23	It is a great honour to have Angkor in the World Heritage listing.
27	Not sure.
35	Temples will be very famous
36	I don't understand the concept of WH listing
38	No idea.
39	No idea.
40	It indicates that the temples of Angkor belongs to Cambodia.
42	I think that it seems to belong to Cambodia; it seems to belong to the World
44	It will be known to the world
46	Not understand the concept.
47	Not understand anything.
48	it will be famous and known by al the people in the world.
49	It is a good thing because it will be known by all the people in the world.
52	No idea.
53	After listing Angkor as the World Heritage our temples will be famous all over the world.

The prevailing trend from these responses is a sense that fame and fortune does follow the World Heritage designation; Cambodia and Cambodians should be proud and tourist numbers will increase.

Interview responses to questions designed to ascertain the depth (or otherwise) of understanding of the World Heritage concept suggest that residents in the area have a generalised notion of what World Heritage designation means. One respondent suggested that the classification meant that the monuments were their (meaning local people's) ancestral heritage and they are obligated to look after them and protect them. She also considered that the concept meant that the monuments attracted tourists. Another responded said that she did not understand the concept, explaining by way of a justification that she has a "low education and doesn't know". This was not an unfamiliar response. In many instances respondents, especially full-time female carers, cited a lack of education as a reason for a lack of knowledge. A more knowledgeable respondent, working within the Bakong Commune administration, viewed the concept as setting a standard, meaning that he viewed the restrictions as a form of local planning regulations that were valuable for without them the World Heritage status might be diminished. This respondent well-understood both the idea and practice of World Heritage. Another older resident (60 plus year-old grandmother) linked preservation of the monuments with the World Heritage concept. This respondent explained by way of example: when the management authority had visited the village they had told her that she could build a new

house because the land in question was a sufficient distant from a *prasat*¹⁴⁸ mound. This was her experience of what the World Heritage designation meant. The status meant that new rules and regulations had been created and now governed the way in which the village could develop, based on maintaining historical remnants in the landscape.

These interpretations provide interesting and varying insights into how the concept is locally perceived. Another interesting response was that of a Village Chief. He replied that World Heritage meant that the land inside the Park is not owned by anybody. World Heritage in this light is perceived to be linked to land ownership. Although this response arose in the context of having previously talked about land-related issues, it provides an interesting interpretation of the meaning of World Heritage. Although this response is technically correct it was not anticipated given most responses were inclined to cite the importance of the monuments and temples. Also unexpected was one respondent's answer, which corresponded to an official version of the concept, when he replied that it meant that: "the property belonged to the world, and was to be looked after for the world." It transpired that this respondent had worked for the management authority. Interviews conducted in the final phase of fieldwork (June 2009) tend to provide more informed responses to this question. This awareness may be explained by the widespread publicity surrounding the Cambodian/Thailand dispute regarding sovereignty over the World Heritage listed Preah Vihear temple.¹⁴⁹ One respondent said that she had not heard of the phrase "World Heritage" until news about the border dispute was reported, despite living within a highly protected planning Zone within a dedicated World Heritage area. The management authority has also invested a great many resources into educating local people in more recent years and these results may reflect their efforts.

Two issues immediately arise from these results. First is the issue of a lack of general understanding of the World Heritage concept. The second is the related issue of knowing or understanding that the concept is the basis for the restrictions that apply to residents living proximate to the monuments. There are many implications arising from the *lack* of information generated by the data. Clearly, any attempt to define the term and understanding the concept of World Heritage is fraught. Titchen's (1995) research dedicates considerable effort to defining

¹⁴⁸ A *prasat* is a stone, or more probably brick monument or tower.

¹⁴⁹ The Temple of Preah Vihear was inscribed on the World Heritage list in 2008 (Decision 31COM 88.24), see www.whc.unesco.org. The Temple is located in Cambodia near the Cambodia/Thailand border and has been subject to some territorial dispute, see, for example, <http://www.bangkokpost.com/news/local/147111/troops-on-standby>, accessed 26 June 2009.

the meanings behind the concept yet found during the course of her research that World Heritage is not generally understood.

At the international level a great deal of emphasis has been placed on improving local involvement in the World Heritage process. Indeed, involving local communities in managing a sustainable future for World Heritage was the theme for an international collaboration in 2003 (UNESCO, 2004a). Moreover, in an interview with the Chief of Unit, Asia and the Pacific Section of UNESCO's World Heritage Centre, Paris, the policy goal of sustainability in World Heritage management was reinforced. The argument that the sites of heritage are compromised if local communities are not adequately involved in management is well traversed – and sits at the heart of this research. Yet, this research has found that in these small villages, immediately adjacent to significant World Heritage monuments, the very concept of World Heritage is not understood, indeed, on the basis of responses it could be suggested that there is an overwhelming sense of ambivalence towards the World Heritage listing *per se*.

The priority given to legal rules in World Heritage management is particularly troublesome given that these laws were developed, not for local circumstance but in accordance with the prevailing international norms of heritage management (see also Lloyd, 2009, for her treatment of this dilemma with regard to intangible cultural heritage management, Chapter 3).

Throughout this thesis an important argument is that the use of (formal) law as a management tool may be one reason for the lack of understanding amongst local residents. One interviewee explained that she was not aware of restrictions that the management authority had placed on the land around the Bakong temple and, when pressed, she reiterated that that she had not been spoken to about any restrictions. This is not an unusual response in a country where the rule of law is not paramount as Jennar (1995) explains; the patron-client relationship tends to prevail as a societal norm. One interviewee clearly illustrated this point when she remarked that: "Cambodian's do not think much of laws". Certainly, the informal social structures referred to earlier in this thesis override any formal rules and regulations imposed from 'outside'.

Improving community knowledge of World Heritage has been a concern for management in recent times. Management rhetoric and practice revolve around the notion that if people understand the importance of their heritage then efforts to protect and preserve shall be made

easier. Kay and Alder (1999) provide a case study where breaches of the *Great Barrier Marine Park Act* (in Australia) were recorded to have dropped following the implementation of an extensive community awareness programme. Efforts at education within the Angkor Park have included direct information campaigns through the use of leaflets and brochures distributed to residents, radio and television broadcasts and a mailbox and direct phone line to APSARA (UNESCO, 2006a).

The results reveal that the concept of “World Heritage” is simply not well known or understood. Although many residents are informed about aspects of heritage management and there is evidence that policy programs of the management authority have had some success, (elaborated further in this chapter) it remains a fact that the concept of World Heritage remains far from clear for many of those living in the shadow of monuments deemed to be worthy of the designation.

6.3 BOUNDARIES & BUFFERS: ORGANISING SPACE

6.3.1 Spatially Defining World Heritage

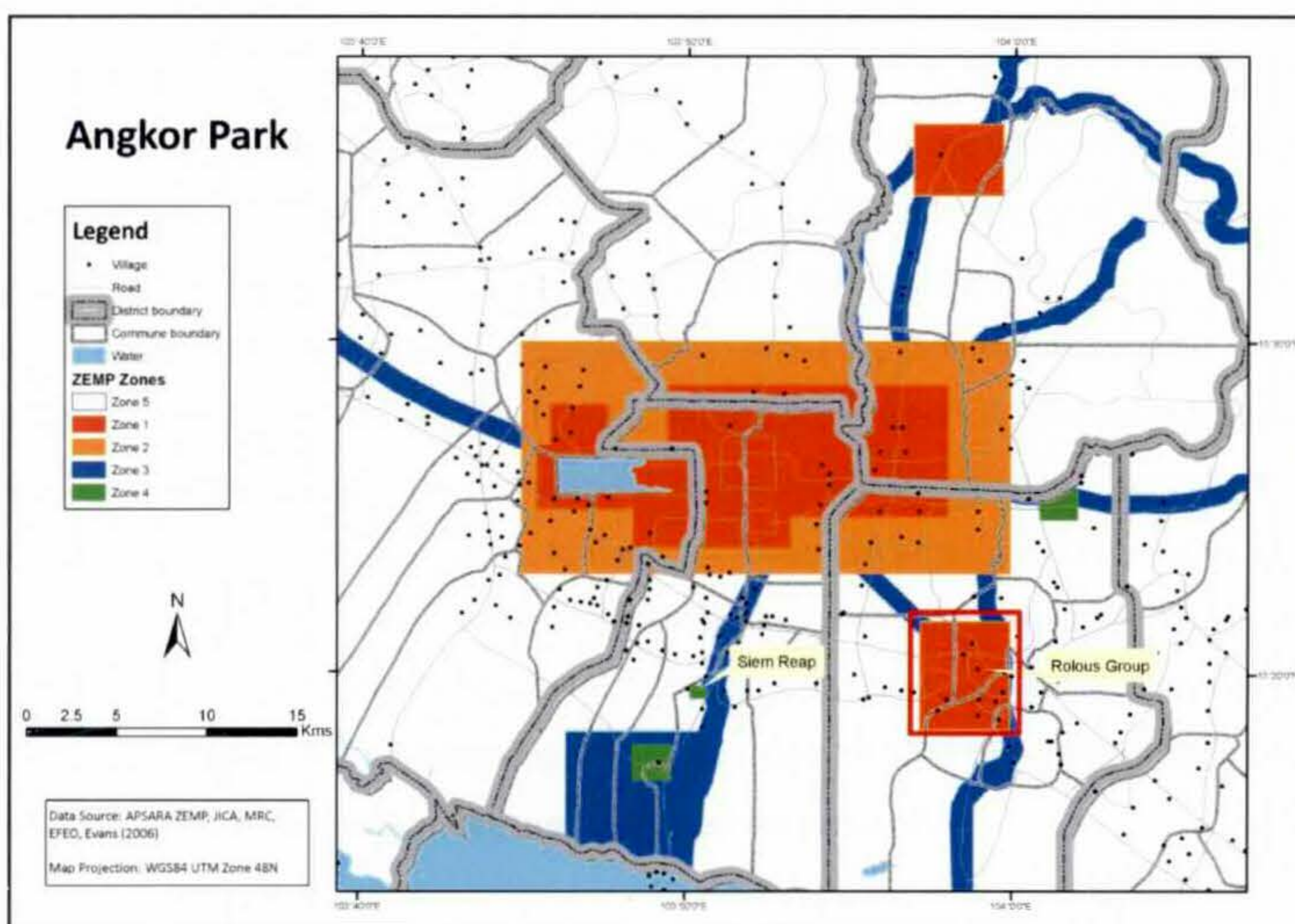
The *World Heritage Convention* does not specify particular obligations upon signatories to create *boundaries* for World Heritage properties; rather, the obligations are couched in broad terms. Article 5, for example, requires that State Parties put in place “adequate protection mechanisms” while Article 6 provides that State Parties have a duty to protect the outstanding universal value of a site “without prejudice to property rights provided by national legislation” (Box 3.5). However, the *Operational Guidelines* (at Chapter II.4 which covers “Protection and Management”) includes specific obligations at paragraphs 97, 99, 100 and 102 to create boundaries for World Heritage properties (Appendix 6 herein). These subsections indicate that listed properties should “include adequately delineated boundaries” (paragraph 97). Note that the drafters have used the mandatory “should” in this paragraph. Moreover, paragraph 99 provides that such delineation is “an essential requirement for the effective protection of nominated properties” and ought to be drawn to ensure the outstanding universal value and integrity/authenticity of the site is maintained. Paragraph 102 declares that while boundaries may coincide with existing/proposed protected area zones only some of these zones “may satisfy criteria for inscription” (UNESCO, 2008, pp.25 – 26).

Likewise, the *World Heritage Convention* is silent on the issue of *buffer zones*. Buffer Zones, therefore, are not formal components of World Heritage sites. However, again, there are references to the concept within the *Operational Guidelines* at paragraphs 103 – 107 inclusive (Appendix 7 herein). Paragraph 104 defines a buffer zone as an area around the property with “complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection”. The Guidelines state that buffer zones should be provided “wherever necessary for the proper conservation of the property” (paragraph 103). The concept of buffer zones for heritage protection is not (yet) enshrined as mandatory in either the Guidelines or the Convention. Yet, as has been discussed previously, the concept is currently of the utmost concern in heritage management circles (Chapter 3). The central issue is whether the buffer zone comprises part of the World Heritage site; the current consensus is that it does not. There are immediate implications. For instance, how are concepts of setting and zones of influence which remain important to the outstanding universal value of the site but which physically remain outside the World Heritage site properly accounted for in management? Defining the perimeter of a World Heritage site becomes a complex process, with the potential for enormous social impacts. This is a core concern of this research. The problematic use of crisp lines on a map does not generally allow for recognition of complex land use patterns on the ground.

6.3.2 Spatially Defining Angkor’s World Heritage

Angkor’s management is defined spatially by virtue of the Zoning and Environmental Management Plan (ZEMP) drafted in the early 1990s and brought into force with the passage of the 1994 Royal Decree *Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management* (Chapter 4). These management tools, created through regulatory mechanisms, have been produced with the assistance of the international community or some might say by “colonial and global influences” (following Roth, 2004, p.15). The continuation of this spatially defined framework for management is problematic. Local residents did not participate in the development of the management framework, and from the previous section it becomes clear that some residents are not aware of or familiar with the

World Heritage concept itself.¹⁵⁰ Clearly, the simplistic rectilinear spatial expression of the heritage protection categories defined by ZEMP can have little coherence with locally significant boundaries or even pre-existing formal administrative boundaries (see Figure 1.2, Chapter 1), and fails to reflect the realities of the human/environment relationship of those living near the monuments. There is a dearth of data on the significance of the boundaries and the buffer Zones of the World Heritage site at Angkor.¹⁵¹ The in-depth interviews and questionnaires used in this research are part of an attempt to redress this inadequacy.



Cartography: E. Bruce

Figure 6.2: ZEMP Map of Angkor Archaeological Park with Province, District and Commune Administrative boundaries, Rolous Group of Monuments (study site) highlighted showing the lack of coherence between ZEMP and other Administrative boundaries.

A premise of this research is that while the designation of a World Heritage classification is motivated by the need to protect the monuments and temples of Angkor and regulations are

¹⁵⁰ Although in more recent times the management authority increasingly consults with village residents, see for example, efforts made by the Department of Land Planning and Habitat Management in the Angkor Park, (DATGH), on improving relationships with the local population and increasing public awareness on the value of preserving heritage and the regulations associated with this, Report available in 15th Plenary Session of the International Co-ordinating Committee Report, December 2008, pp.88 – 89, available at <http://unesdoc.unesco.org/images/0018/001836/183676e.pdf>.

¹⁵¹ Indeed, the issue of boundary management and the use of buffer Zones in World Heritage management worldwide have been discussed previously, see Chapter 3.

promulgated to achieve this end, there needs to be better recognition of pre-existing conditions landscape use and management. Accordingly, a discussion about the significance of boundaries in this context sheds light on the implications of the spatial dimension of the regulatory framework. Moreover, this empirical work and discussion contributes to the evolving literature on legal geography (Chapter 2). The rise of homogenous maps as a consequence of a “centralised narrative” (Blomley, 1994) reflect the way in which law can be a crucial element in the way in which spaces and boundaries are shaped (Griffiths *et al.*, 2009). Does this perspective stand up to empirical scrutiny? The following section attempts to address this question.

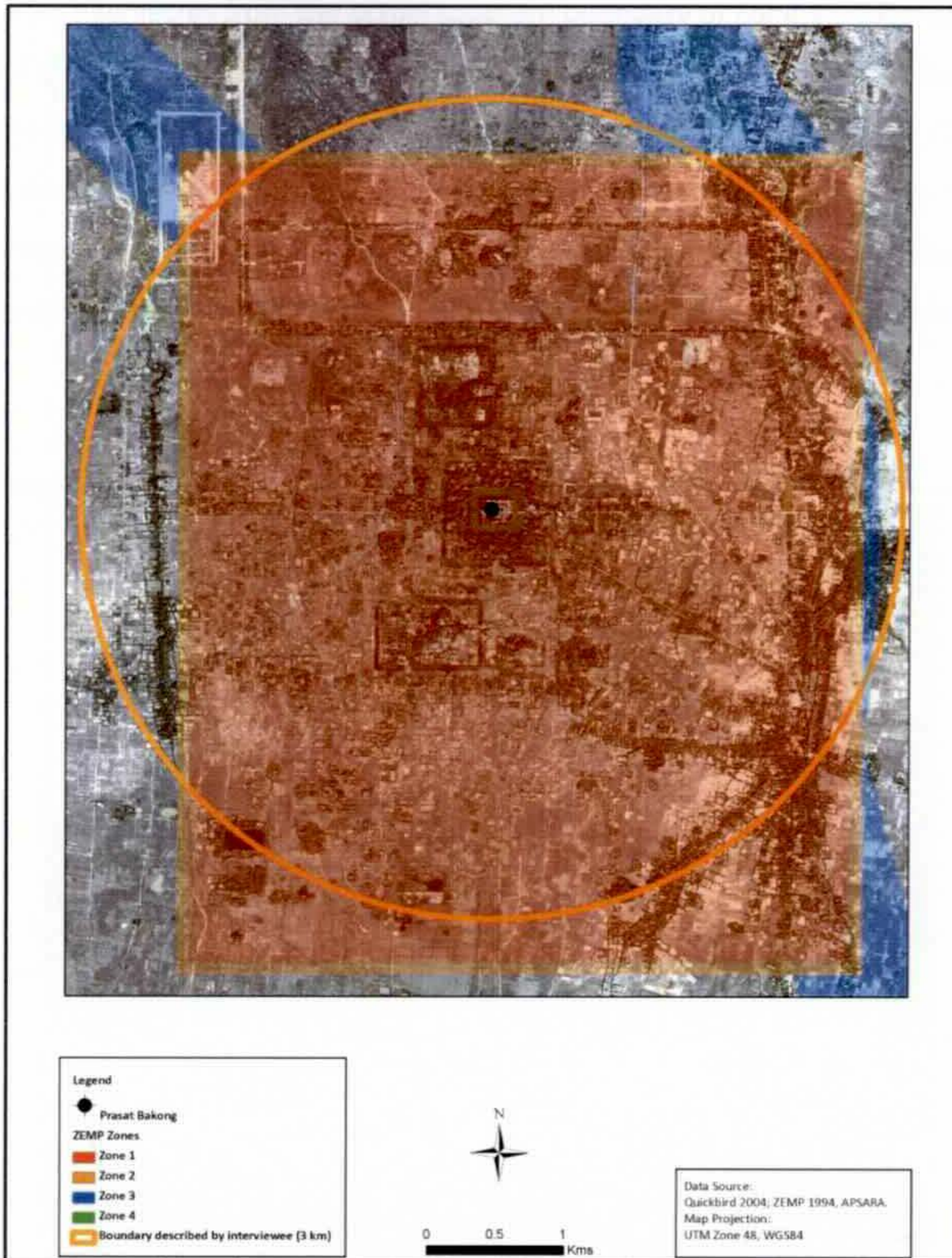
The Zoning and Environmental Management Plan (ZEMP) defines the categories of management at Angkor. The plan divides Angkor into five Zones, from the highly protected Zone 1 through to the provincial wide category of Zone 5, as reproduced in Figure 1.2 (Chapter 1) and Figure 6.2 herein. These spatially defined legal / management zones have different restrictions associated with each bounded area (see Chapter 4). From Figure 1.2 and Figure 6.2 the boundaries seem simplistic – straight lines with little variation – imposed upon a complicated¹⁵² and highly populated landscape. *Prima facie* these boundaries reflect the primacy of pragmatism in meeting the requirements stipulated by UNESCO for Angkor’s listing in the early 1990’s, and are clearly not sensitive to either existing or previous patterns of land use. For those living within the highly protected Zone 1, does this map have meaning? Do they know where the mapped boundaries of the World Heritage site are located on the ground?

In response to the in-depth interview question asking about the location of the World Heritage boundaries it became apparent that interviewees who had associations with APSARA were familiar with exact boundary locations on the ground. For example, one respondent who was able to describe the World Heritage boundaries, despite the absence of marked boundaries, was an official employed by APSARA. This interview arose by virtue of a recommendation to attend the enactment of an enforcement issue (discussed further below, see Section 6.5.2 on Non-Compliance/Breaches). The official gave a very good description of the Zone boundaries – and offered to show the researcher the actual boundary markers used to define the extent of Zone 1. He described the boundary as extending three kilometres in all directions from the Bakong temple. Figure 6.3 illustrates the extent of the Zone as understood by this APSARA official, and

¹⁵² Particularly complicated in an archaeological sense, see Evans, D., (2007) and Pottier, C., (1999).

compared with the actual Zone boundaries, illustrates an excellent spatial understanding of the extent of Zone 1.

Although not employed by APSARA, both Village Chiefs indicated that Zone 1 extended three kilometres from the Bakong in all directions (see Figure 6.3), confirming the view that officials living in the World Heritage site are well informed about the extent of the Park. Another respondent with family connections to the management authority also recognised that they lived in Zone 1 and that the Zone extended 3 kilometres in the cardinal directions from the Bakong monument (again, represented in Figure 6.3). The answers from those interviewees with links to administration almost replicate the official boundaries.



Cartography: E.Bruce

Figure 6.3: Zone Boundary described by an Interviewee at 3 kilometres from the Bakong.

Despite the ease with which some interviewees could describe the World Heritage boundaries, it remained the case that most people, when asked, were not able to do so. Responses ranged from complete lack of knowledge through to those who were prepared to provide a well-educated guess. The question often created extensive conversation amongst the crowd that inevitably tends to gather around an interview. One older resident suggested after some considerable consultation with her wider family and some neighbours (a conversation that took place in Khmer and which, due to the pace and length, was only intermittently translated; in this scene the question generated lively debate judging by the body language, arm gesturing and tone/intonation which was observed) that the Zone extended to the Tonle Sap lake in the south

(approximately 5 kilometres from the actual southern boundary of Zone 1). After some further discussion the group conceded that they were not sure about the location of the exact boundaries for Zone 1 of the World Heritage Park. Nonetheless, they did provide some natural feature co-ordinates, which are plotted in Figure 6.4. However, no consensus was to be had on the Western boundary although some members of this group suggested that it ran north/south in alignment with the bridge to the West over Highway 6, and this alignment is plotted in Figure 6.4.



Cartography: E.Bruce

Figure 6.4: Debated Boundaries described by interviewee group.

Other results from in-depth interviews also confirmed a paucity of knowledge about spatial boundaries. Examples from later interviews suggested that the boundaries were one kilometre from the Bakong. For example, initially a younger (24 year old) respondent said that the boundary was 500 metres from the Bakong but she quickly changed her mind when this number was repeated back to her ("500 metres?") and she hastily amended this distance to 1 kilometre from the Bakong monument (depicted in Figure 6.5). The manner of her response was telling; she appeared hesitant and uncertain, as though she felt compelled to give a "right" answer. Again, this was not an isolated response. On more than one occasion respondents seemed to be concerned to give 'correct' answers, or would say nothing at all; although it is impossible to say conclusively in this bi-lingual and cross-cultural setting, it often appeared as though respondents were fearful of being assumed to be ignorant.



Cartography: E.Bruce

Figure 6.5: 500 metres and 1000 metre Zone Boundary described by Interviewee

The questionnaires provide mixed results about local knowledge of boundaries. Twelve respondents (21%) indicated that they understood the whereabouts of the boundaries for the Park (Figure 6.6).

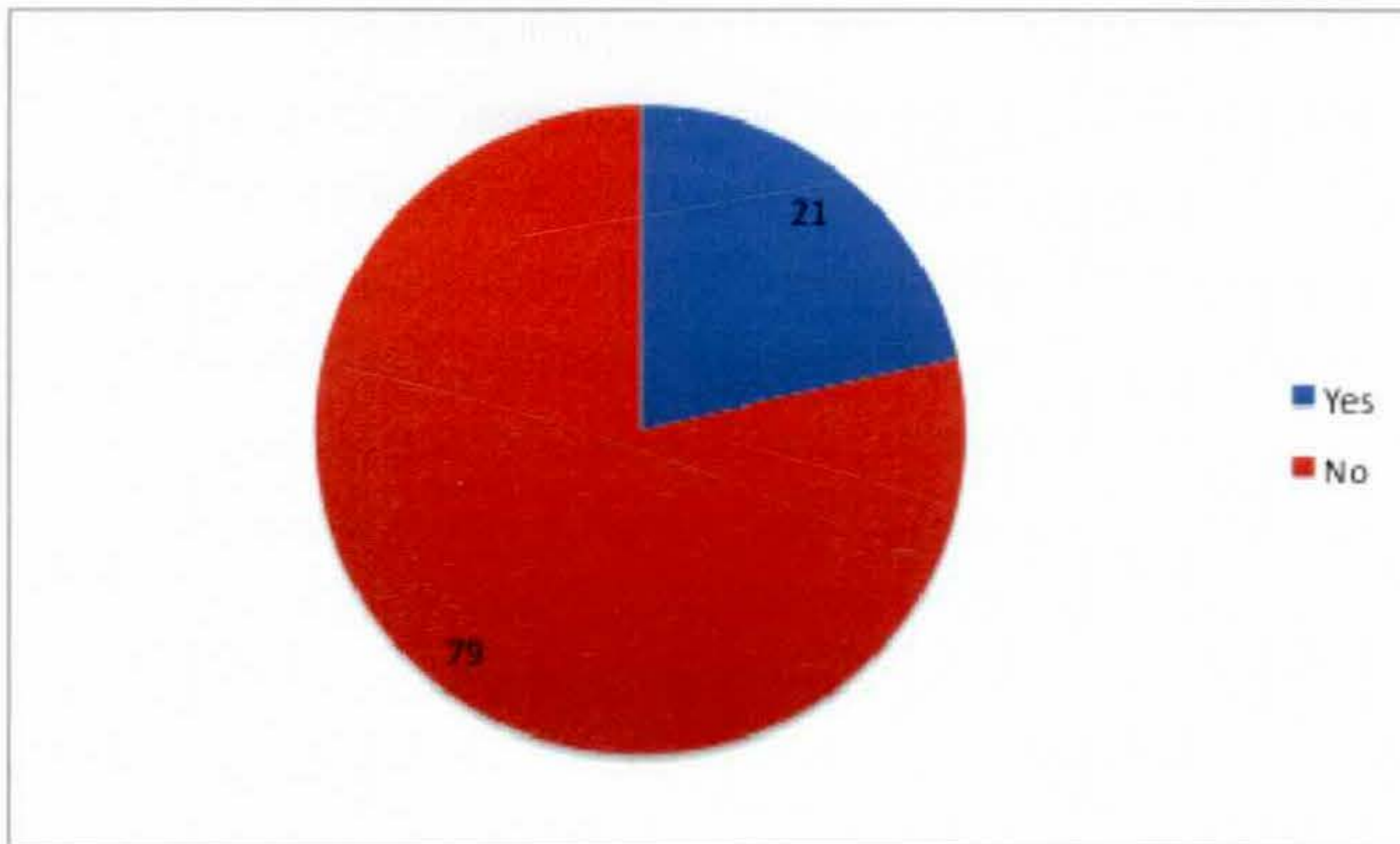


Figure 6.6: Awareness of World Heritage Park boundaries, expressed as %

Each respondent could describe a natural feature to delineate the boundary and accuracy varied, though generally was reasonable (Table 6.4).

Table 6.4: Description of World Heritage Park boundaries

Respondent	
1	West - Kaek Bridge; East - Angkroung market; North - Trapeang Roeung; South - Trapeang Pong.
2	West - Ou Bridge; East - Angkroung market; North - no idea; South - no idea.
3	West - Ou Bridge; East - Ou Anchien; North - no idea; South - no idea.
8	West - Ou Bridge; East - Phum Steung Bridge; North - Kom Choeung; South - Kom Pong.
9	West - Ou Thom; East - Ang Krong; North - Phnom Bok; South - Trapenpong
14	West - Kaek Bridge; East - Ou Anchien Bridge; North - north of Lolei; South - Trapeang pong.
20	West - Spean Kaek village; East - Rolous Commune; North - north of Lolei; South - Rolous Commune (south).
21	West - Kaek Bridge; East - Rolous River; North - north of Lolei temple; South - Prast Trapenpong
33	West - Kaek bridge; East - Rolous river; North - Lolei Pagoda; South - Toteoving village.
35	West - Kaek bridge; East - Rolous river; North - Lolei Pagoda; South - Totoeng village
49	East - Ou Anchien Village; West - Rolem Bridge; North - 265 metres north of the Indratataka reservoir; South - Trapeng Pong
56	West - Kaek Bridge; East - Ou Anchien; North - Lolei; South - Trapenpong

As the boundaries are not clearly labelled, physically defined or associated with a landscape feature, it is almost impossible for residents to know, unless they have been educated on the point, whether land and/or housing is located in either Zone 1 or 2 (or, for that matter, Zones 3, 4 or 5). Despite the use of high precision GPS equipment and GIS data provided by APSARA it was very difficult to locate the Zone boundary markers in the field.¹⁵³ It is not surprising that local residents are not cognisant of the exact boundaries. APSARA officials were far better able to describe the actual physical boundary markers (pillars fixed in concrete). Figure 6.7 shows a boundary marker obscured by trees and undergrowth. An APSARA respondent said these boundary markers had been placed along the Zone 1 boundary but “some are left, while the rest have been pulled out by the local people”. Although the location of this marker was known to this official, it took some time to locate this marker amongst the domestic garden of a residential house located along the Rolous River.

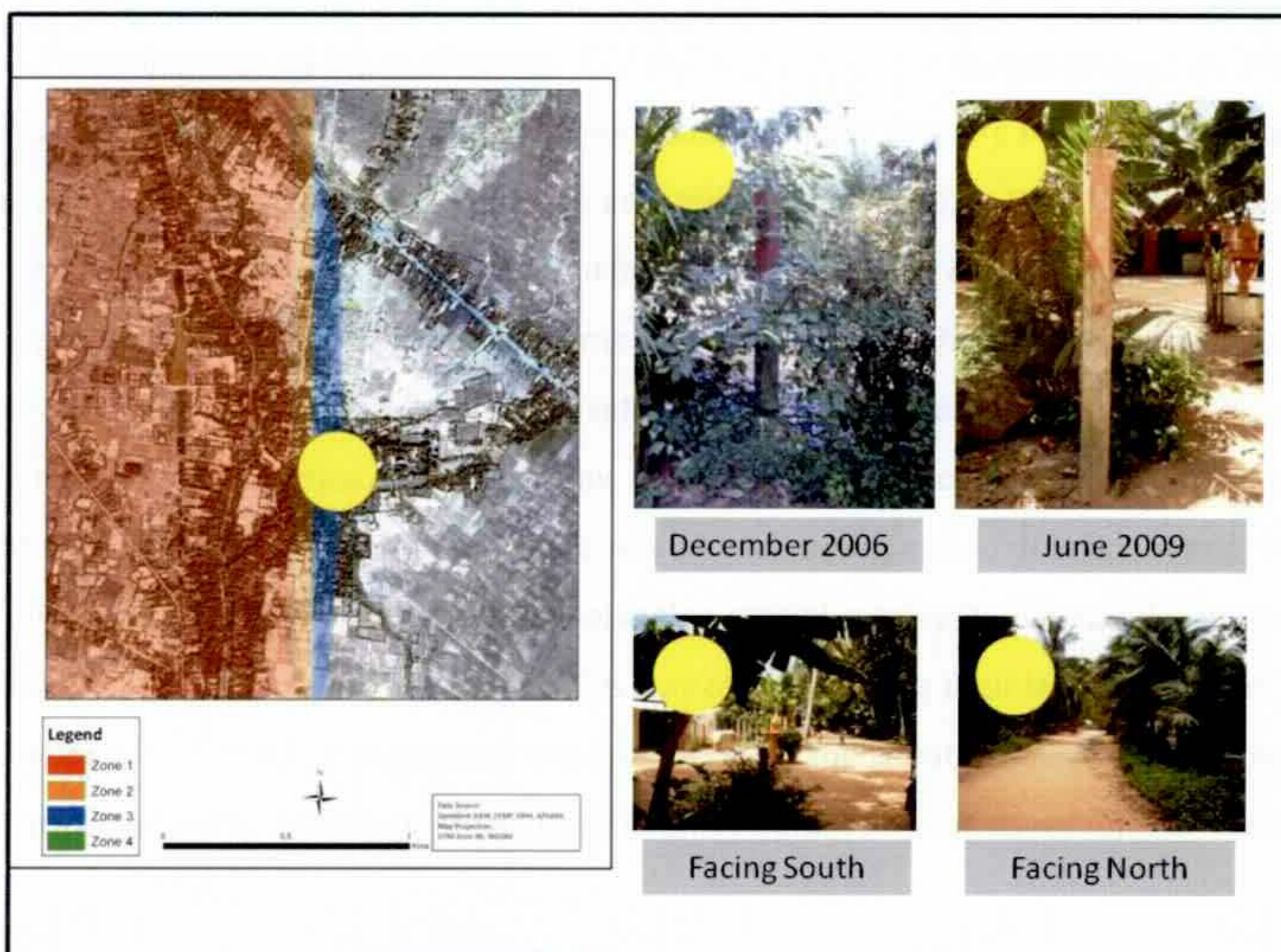


Figure 6.7: Exposed boundary marker located along the roadside verge east of Rolous River and Yellow circle marking location of photographic images of the boundary.

¹⁵³ Author's own fieldwork experiences.

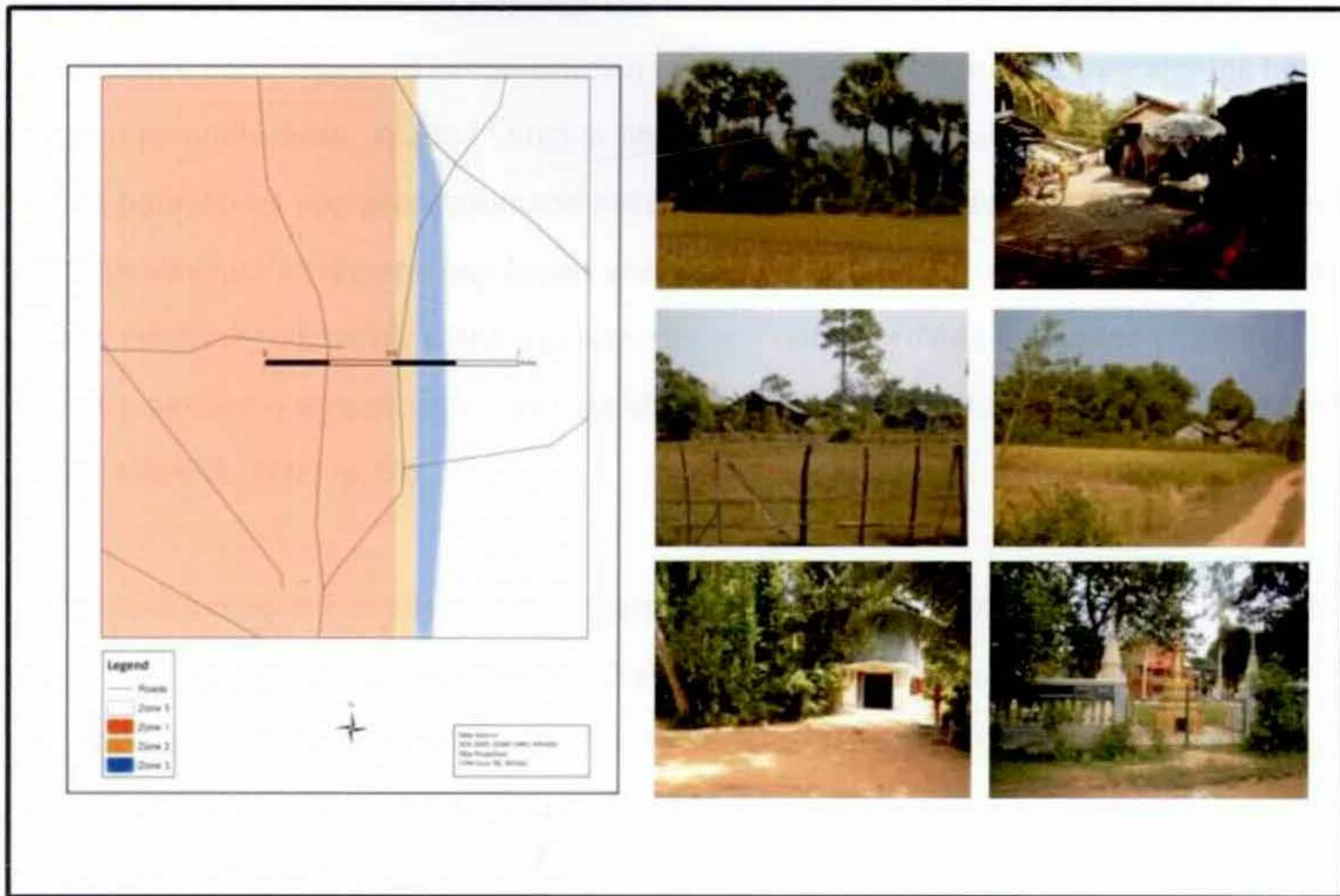
Interview and questionnaire findings indicate that the spatial representation of the World Heritage site, and, in particular, the delineation of its boundaries is inadequate. The appropriateness of spatially defined rules should also be considered in the context of existing cultural perceptions of the landscape and knowledge or use of spatial references and tools (Moylan, *pers comm.*). Strictly spatially defining the rules as an approach for effective site management for Angkor needs to be reconsidered. These findings correspond with work by Wadley (2003; or Scott, 1998) in which it was observed that imposed territorial Zones do not always work well, especially if they are not attuned to pre-existing social and legal boundaries.

Development regulations appear to be clearly understood at the village level, but the reasons for those regulations and how they are arranged over space, are less clearly understood. This may suggest that the legal landscape, as defined in the ZEMP and the subsequent laws, has little resonance in the lives of people within the World Heritage Park, reflecting the arbitrary nature of the plan's design. A system of land management that is sensitive to features that already have local meaning may be more effective. The practise of the way people respect boundaries in everyday interactions is fundamental to their success; unless they are incorporated into conventional norms the rules do not become enacted (Blomley, 2002). Development controls may exist 'on paper' through the formal regulatory framework, and knowledge of their existence might be widespread, but if residents do not implement the rules they cease to have any practical effect. The spatial/legal nexus relies on more than recognition of rules, it relies on implementation. The practice of the everyday, in the observations of boundaries; in respecting different spaces, is a fundamental part of the way all societies operate. If resident populations do not enact their spaces using the heritage planning spatial overlay (the laws/rules imposed upon them) they are not giving meaning to this way of categorising their landscape. The consequences for heritage management are enormous for the situation creates the potential for non-compliance which, in turn, gives rise to problematic enforcement issues for management.

Clearly education on the boundaries and buffers zones of the World Heritage site is an issue for land management in the Park, and one which is addressed institutionally with the work of the management authority (see above, UNESCO, 2006). If, however, people understand the rules but fail to understand that they apply to them by virtue of their location, something appears to be amiss. It undermines the notion of using the rule of law for heritage protection. It appears to be a piecemeal approach with fundamental flaws, and efforts need to be made by

management to ensure that the rules and spatial understanding of their extent is made more available to residents. This situation also presents the dilemma that individuals may find themselves in breach of rules they know about but have presumed do not apply to them because they have not understood the spatial extent of the jurisdiction. The presumption of knowledge (in a strict liability sense) cannot work in such circumstances. This has implications for the issue of penalties and, especially, the imposition of fines for non-compliance. These findings lend weight to the problems associated with this legally plural landscape and the ever-increasing need to reconcile multiple rules and regulations within this area.

The crudeness of the mapping/boundary/protection conundrum is reinforced with an image depicted in Figure 6.8. This image shows the transition from the highly protected Zone 1 through Zones 2 and 3 by virtue of buffer zones. In this location (the eastern edge of the Rolous protected zone) the regulations change substantially over a relatively small distance with four zones present within 250 metres. This is a largely rural landscape, with the market village of Rolous concentrating village life near the Rolous River. It becomes clear that the buffer zone, which is only 90 metres wide at this location, is far too narrow to have effectiveness for management. This may reflect the requirements of the listing process rather than practical implementation. In practice this buffer zone will not substantially protect Zone 1, and it traverses through pre-existing villages (and individual plots) reflecting limited regard to the conditions 'on the ground' during the zone planning process.



Cartography: E. Bruce

Figure 6.8: Four ZEMP Zones within 250 metres, eastern boundary of Rolous Group with landscape photographs of the immediate area showing housing, agricultural land, Rolous village market and Rolous Wat.

In imposing a heritage overlay, the landscape and consequently the lives of residents is complicated by four different planning Zones within a very limited space. Arguably, this ought to be regulated by a correspondingly complicated planning process – but this is virtually absent at Angkor. In a western heritage management context, the effectiveness of these spatial overlays is often dependent on the associated planning processes, which include administrative, bureaucratic and legal dimensions. For example, in Australia this would include local council planning regulations, building departments, land and environment courts and mechanisms for appeal. However, these planning processes do not exist to support the zone plan at Angkor. Clearly there is some tension between the need to maintain simplicity in regulating the area (that is, recognising the fluidity of written rules in the Cambodian context) and the ability to adequately protect a landscape classified as archaeologically significant. The spatial complexity of this regulatory landscape (four different management zones and corresponding rules within 250 metres), the fact that residents do not know which Zone they reside in and the presence of boundaries that do not incorporate existing community landmarks all highlight that the World Heritage overlay has created an inherently unjust, or arbitrarily regulated, landscape.

Management of the Angkor World Heritage site is under constant review. Overseas-led expert reports are often commissioned in conjunction with APSARA to refine their overarching heritage preservation commitments. A 2007 “Angkor Management Plan” considered, *inter alia*, the question of boundaries and protection and noted that the zones did not become incorporated in a meaningful way into landscape regulation practice. In particular this plan commented that the zones were established to protect the monuments and not to provide landscape planning, adding that “they are not appropriate or logical ground based areas for landscape management purposes” (APSARA, 2007, p.13).

The imposition of regulations across the landscape on, arguably, an arbitrary basis¹⁵⁴ (if arbitrary can be defined as a lack of community consultation) could be described as a form of territorialisation (Sack, 1986; Vandergeest, 1996; Roth, 2004). Using Sack’s formula that territorialisation occurs when a State exerts control over its population by drawing boundaries across space and excluding some by use of prescribing/proscribing defined activities (Vandergeest, 1996; Roth, 2004). Moreover, both Vandergeest (1996) and Roth (2004) describe three stages of territorialisation in Thai government control over forested landscapes. In a similar vein, a staged territorialisation could be inferred at Angkor. The first is the Cambodian government’s signing of the *Convention*, the second is the enactment of regulations empowering a national authority with the right to make rules and regulations to enforce the World Heritage commitment (with the *Law on the Protection of Cultural Heritage*, 1996), and the third is the delineation of this new World Heritage landscape over a pre-existing landscape (ZEMP; 1994 *Royal Decree Establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management*), thereby permitting or prohibiting certain activities. Roth (2004) explores the linkages between the process of territorialisation and the spatial form of conservation and she observes that the process of drawing boundaries is abstract; it does not become territorialisation until enforcement of the boundary takes place. This observation is highly relevant to the current research. Ordering the landscape by virtue of plotting bounded areas on a map and attaching specific rules to these areas is the way in which managers control land use. In an Australian context this is the act of strategic planning (Fogg, 1982). It is argued in this research that it is essential to the success of a World Heritage listing that this process is put in place. Yet, problems with compliance, breaches and enforcement

¹⁵⁴ There is much to support the argument that the boundaries are archaeologically arbitrary too, see the work of Pottier, C., (1999) or Evans, D., (2007).

shall arise if these abstract plans are emplaced on a pre-existing landscape with little, or no, concession to local users.

6.3.3 Administrative Conflict

World Heritage listing is contingent upon defining spatially the area subject to protection. Although Angkor has, both through applicable laws and attendant maps, complied with this requirement, the success of this is in question given the lack of knowledge displayed by locals about the boundaries of the Park. The situation, however, is complicated significantly by Cambodia's byzantine administrative arrangements.

Cambodia is governed by national, provincial, district and commune authorities. Provinces are divided into districts (*srok*) and districts are divided into communes (*khum*) (Article 126, *Cambodian Constitution*). Article 127, Chapter XI of the *Constitution* provides these entities shall be governed in accordance with organic law.¹⁵⁵ Administratively, the protected World Heritage site called the Rolous group and, in particular, the villages of Ovloak and Thnal Trang within Zone 1, are governed by Siem Reap Province, Prasat Bakong District and Bakong Commune (see Figure 6.2). The World Heritage overlay also means that the area is subject to the authority of a nationally created body, APSARA.

In the Prasat Bakong Commune there has been concern about boundary issues with neighbouring communes. A Commune Clerk¹⁵⁶ explained that since the commune elections in 2002 the boundaries have been re-aligned and although the dispute over the location of boundaries has been resolved the official maps still reflect the error. The boundaries were decided by officials from Siem Reap using satellite data and were made to ensure that some forested land would remain intact. It seems there was some, albeit little, consultation. In a 2004 report, "Law Harmonisation in Relation to the Decentralisation Process in Cambodia", it was suggested that there had been little preparatory work committed to commune boundary distribution (Oberndorf, 2004). It appears that the process of boundary-making through the

¹⁵⁵ The principles of organic law were reinforced with the passage in 2008 of the Organic Law on Administrative Management. It is part of the Royal Government of Cambodia's efforts at decentralisation and deconcentration (the "D & D" policy), in which decision making is devolved to local people. For an explanation and commentary see <http://cambodia.ka-set.info/powers/news-decentralisation-deconcentration-democracy-local-councils-elections-090209.html>.

¹⁵⁶ A commune clerk deals with secretarial and administrative tasks for the Commune Council, Oberndorf, 2004, p.26.

spatial regulation of the landscape is also fraught with difficulty for areas outside but adjacent to the World Heritage site.

It is the role of commune councils to serve and represent local communities (Law on Administration and Management of Communes, "LAMC", 2001). Although few official interviewees were willing or able to talk about the linkages (or absence of linkages) between the Commune Council and APSARA, some officials provide a little insight for this research. During the course of a group interview with four interviewees - one person from APSARA, the Army, the Heritage Police and a Commune Representative - the participants indicated that there was good co-operation between the authorities for every Commune. They said that for the Rolous group of monuments three different provinces have authority (for villages in Zone 1): the communes of Rolous; Mean Chey and Bakong. They pointed out that in Mean Chey commune only one village is in Zone 1 and then only a quarter of this village is within the zone. When asked if this causes any tensions between the villagers (as some are subject to tighter regulations) they did not respond directly but, rather, said that for areas outside Zone 1 the villagers go the Provincial officials for permission for building approvals but within Zone 1 they must go through APSARA. These interviewees stressed (of their own volition) that governments and officials have no right to take money from the villagers in these cases.

From the in-depth interviews with residents it appears that although many can describe the relationship between the two different administrative structures – especially in relation to two issues (the approval process for new buildings and conflict resolution) the relationship is far from clear. This multifaceted governance structure seems particularly nuanced, not a particularly surprising position given the country context. On a positive note, many residents were able to cite with ease the way in which these two issues, in particular, proceed through governance processes. The first is the process of building approval grants through the various administrative structures. A Commune representative described the building permission process for houses in the protected area as follows:

“So to build anything they have to have permission. The permission is coming from village chief, commune chief, district chief and the last is the APSARA Authority.”

This is a complex process that in some cases residents have attempted to avoid. For example, one interviewee had commenced building a new house but conceded that she had failed to get APSARA permission. APSARA officials had visited the house to halt construction and the respondent was required to undertake to cease construction until a building permit was issued. The authorities required a thumbprint as signature and documentary “proof” that she would not continue to build. According to the authorities represented in this instance, this was not an isolated incident, and visiting illegal construction, warning the residents and securing a thumb print as a form of undertaking was part of their daily work. It may be the case that if the process for obtaining permission for building becomes too complex and onerous then people may seek to avoid or “opt out” of the system altogether.

The building application process has been officially described in the 15th Plenary Session of the ICC, under the heading “Issuing Building Permits”:

“Building permit applications are sent to the DATGHA (*Department of Land Planning and Habitat Management in the Angkor Park*), which then carry out a verification on site, analyse the documents and establish relevant recommendations which are sent to the General Director who has the power to approve or not the issue of the permits.”
(UNESCO, 2008, p.86)

In the period of 1 June to 30 October 2008 it was reported that the department had received 86 applications, 143 files had been processed and 29 building permits had been issued while 114 applications had been rejected (*ibid*). This poor success rate for building permit applications (20% of applications were successful) is likely to reflect the problem of an overly complex, burdensome system that is not adjusted for local conditions. The in-depth interview and questionnaire results are mutually reinforcing in this regard. Moreover, non-compliance does not appear to be a problem of ignorance. From the questionnaire it becomes apparent that general awareness of the role of APSARA was extremely good with all 56 respondents being aware of the existence of the management authority (Figure 6.9).

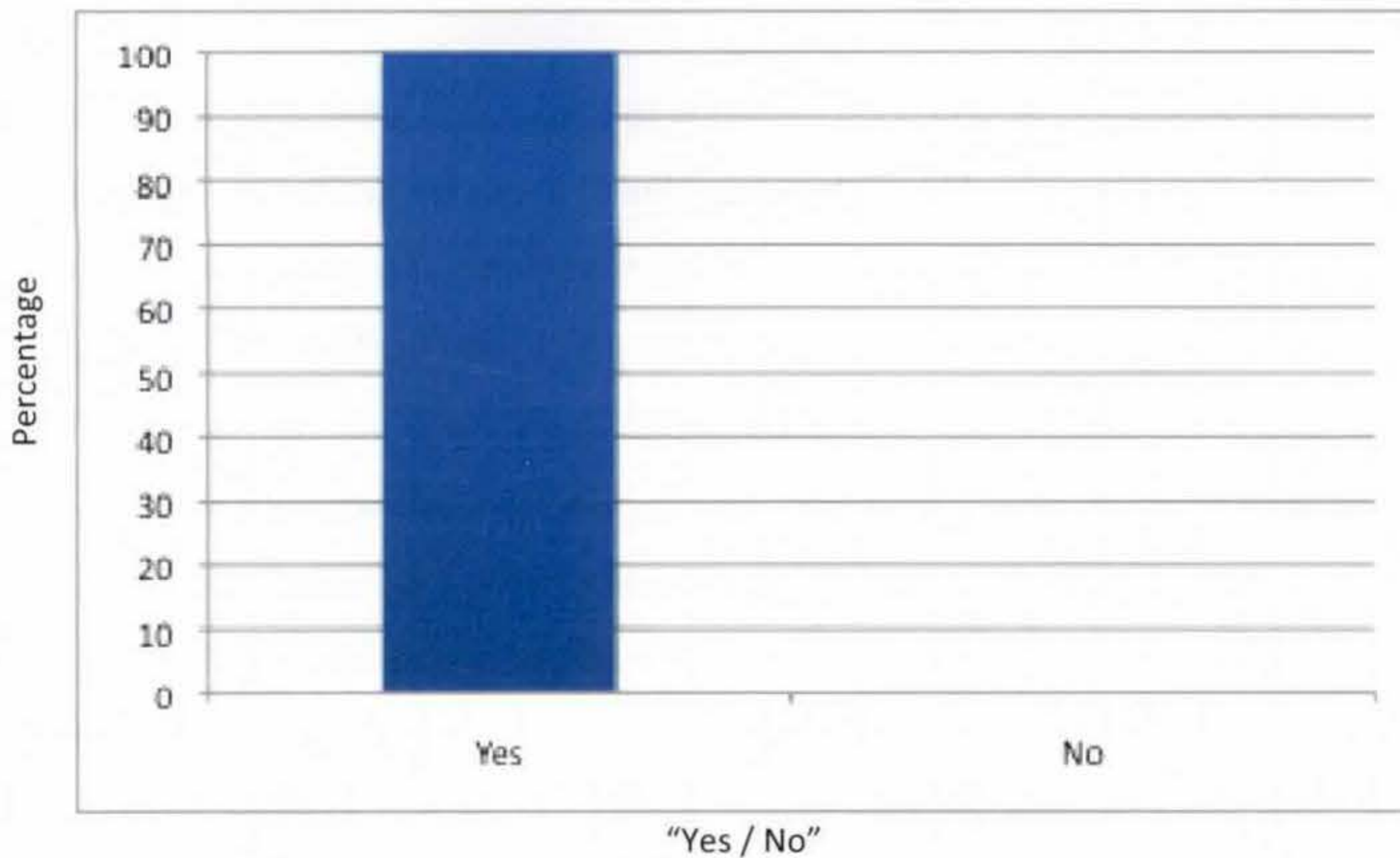


Figure 6.9: Awareness of APSARA Authority, expressed as a %

Knowledge about the APSARA-imposed restrictions on the site was also very good, suggesting that knowledge about the role of APSARA and their function was reasonably well understood. From the 51 respondents who said that they knew about the rules or laws that applied to their own house, many could articulate the APSARA imposed restrictions. Some of the responses were (for the full list see Appendix, Table A.7):

“Must have construction permission before building; bare land can have agricultural activities.”

“3 month permission in advance; no big house is allowed to build; no room underneath house is allowed to build; land can only be cultivated; no digging.”

“Traditional house is allowed to build; one room only under the house; construction must have permission; bare land without original or old house is not allowed to build.”

“Build house must have permission from APSARA Authority; only traditional house is allowed; no cutting the tree to expand the land.”

“Ask the permission through the Village Chief before getting to the APSARA Authority.”

“Even with the permission in hand it is difficult; land is only for the agriculture.”

This raises another question, which will be addressed in the following section on “Non-Compliance / Breaches”; if education about the role of APSARA (with regard to building approvals) is reasonably good, why does violation of its decisions continue to occur?

The second process involving both layers of administration concerns the mechanisms through which conflicts are resolved. Again, residents were reasonably clear about the way in which this process works. When asked to describe the role each administrative body/person played in protecting the World Heritage Park, the questionnaire responses give insight into the way protection is perceived. Although the APSARA authority is responsible for heritage protection, those surveyed clearly view the Village Chief and Commune Council as being central to the protective process. Figure 6.10 graphs the perceptions about who could be ascribed a heritage protection role. These results confirm that the respondents perceive all levels of government/administration as being involved in heritage protection. As it stands, few villagers are able to access APSARA directly and choose to deal with the Village Chief/Commune office instead. While this remains expedient for residents, it is cumbersome for the administrators and exposes the management authority, as the body with ultimate responsibility for the site, to the exigencies of local politics and power structures. The results highlight the tensions of a legally plural landscape. The local custom is to deal with local issues through local administrative structures (that is the Village Chief and Commune) and little account has been taken of this pre-existing governance system in the way the national authority is designed and mandated to protect the heritage site.

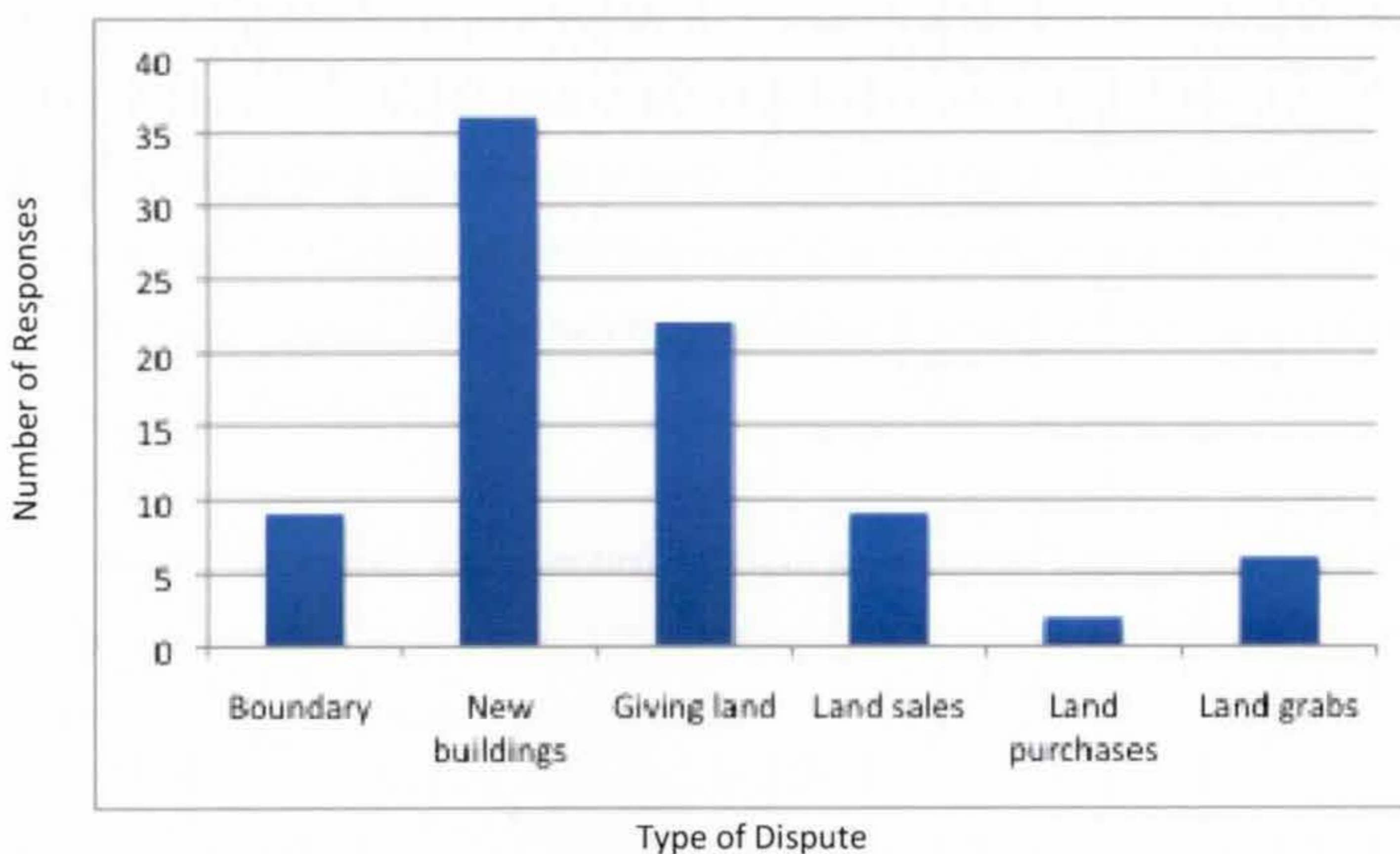


Figure 6.10: Villagers perceptions about those who play a role in heritage protection

There has been significant emphasis on decentralisation of governance, which has accelerated since the 2002 Commune Council elections.¹⁵⁷ It is clear from interview and questionnaire responses that Commune level officials play a key role in governance and administration in and around the monuments at Rolous. The creation of Commune Land Use Planning maps (see Chapter 4) also complicates the role of the different authorities vis-à-vis land use management. The findings, however, cannot support the premise that institutional issues and multiple levels of governance adversely impact on the ability of either body to govern generally. Few people, if any, were willing to comment on the efficacy of the administrative arrangements between APSARA and the province/district/commune network. Yet, the multiple systems do seem to be onerous for individuals, with multiple bureaucracies meaning an increase in 'red tape'. Nonetheless, in the highly protected Zone One it could be argued that excessive management is exactly what is required in order to maintain the integrity of the World Heritage site. The 2007 Angkor Management Plan (APSARA, 2007) suggests that in drawing their Commune Development Plans there was inadequate (formal) consultation between the communes and APSARA. Moreover, while community involvement is at the forefront of APSARA's agenda, and while they are keen to use the development of the commune plans as a way to encourage this, APSARA is wary of being excluded from the process because it has ultimate responsibility for the preservation of the site. This plan observed:

"Past experience has shown that works proposed by the community... can conflict with the Authority's obligation to protect the archaeological assets within the Park. There is the need for procedures which require Communes considering works within the Park to consult with and obtain APSARA's approval. The procedures should specify the aspects APSARA will review, and the fact that APSARA will not arbitrarily withhold its approval" (APSARA, 2007, pp.11 & 12).

Administratively, the process of consulting different government bodies is complex. As it stands, few villages are able to access APSARA directly, and choose to deal with the Village Chief/Commune office instead.

¹⁵⁷ The decentralised agenda is contained in a number of legislative and policy documents, see Footnote 9 herein for example.

In an attempt to redress this dilemma, the management authority has proposed numerous solutions. One proposal is the creation of a “Community Liaison Officer” to work between APSARA and the villages/villagers. During the course of the six months from June to December 2009 several international consultants were commissioned by New Zealand Aid to work together with APSARA to create stronger community participation in decision-making throughout the Park.¹⁵⁸ In two pilot case studies, Community Liaison Teams have worked to build better relationships between the management authority and Park residents. It is too early to review the success of this initiative.

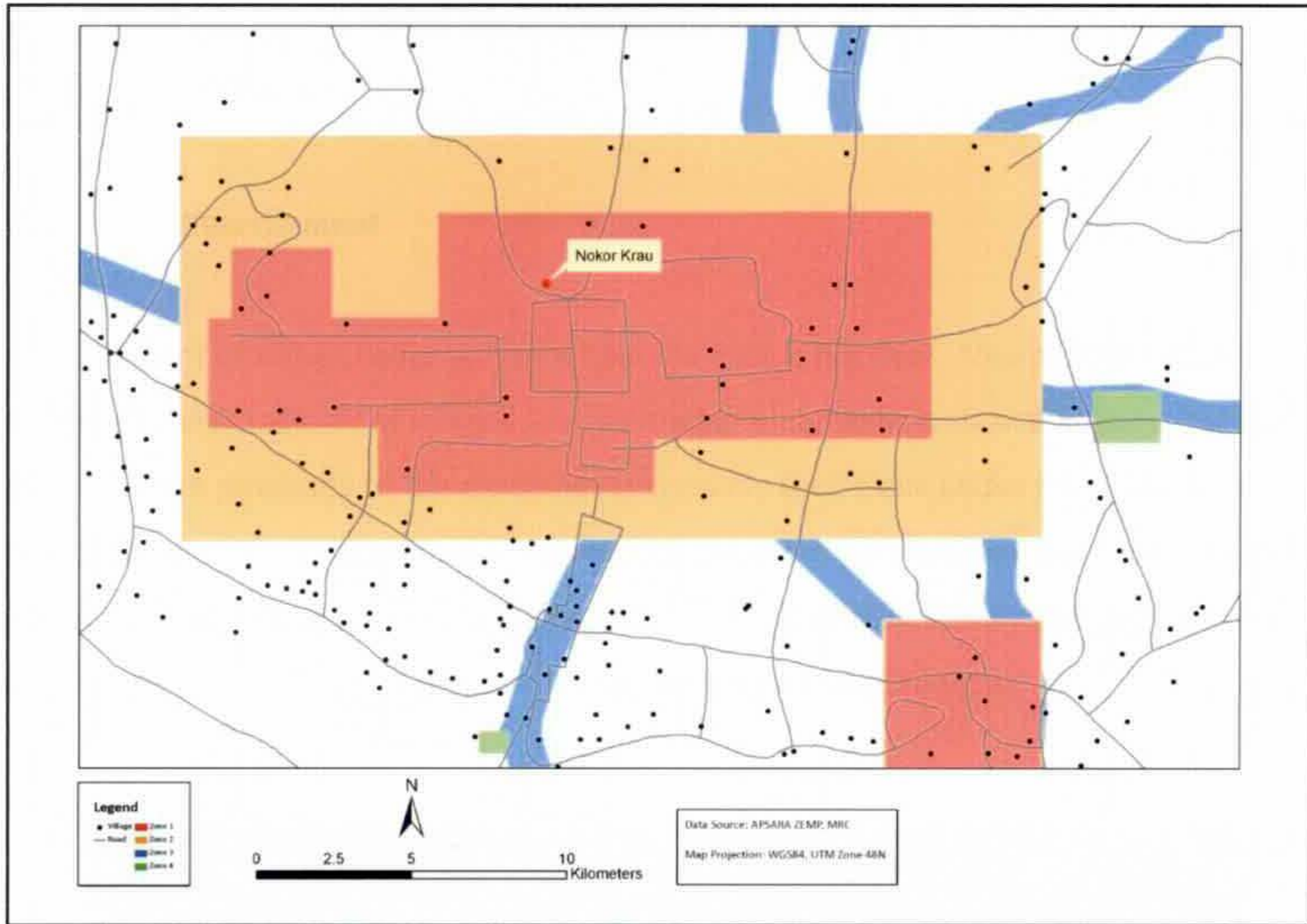
6.3.4 Villager Disputes

This section presents views on, and discusses the issues arising for, villagers living within the highly protected Zone (Zone 1) as related to three recurring themes; (1) Resettlement; (2) Inheritance, and (3) Small-scale land demarcation disputes. Dispute resolution was canvassed to enhance our understanding of governance in this landscape. Information on dispute resolution also aids in policy and legal solutions for World Heritage administration. It is necessary to appreciate that the findings presented herein are set against the background of a post-conflict society. From previous chapters, we know that in a Cambodian-wide context the contentious issue of entitlements to land retains currency. As yet, however, there are few data on the phenomenon of landless children migratory trends. Certainly the issue of rural to urban migration causes some concern more generally in Cambodia. Heinonen (2006) suggests that environmental concerns play a pivotal role in rural-urban migration and it is the problem of not being able to earn a living that drives people from rural areas. Interestingly, this study does not mention access to land as a causal factor in the rural–urban migration trend. Arguably access to land or rather, a lack of access, lies at the very heart of the migration issue.

The dilemma of post-conflict settlement in the World Heritage Park area is relevant to the findings on village disputes. Although the village of Nokor Krau, located immediately north of the Angkor Thom in Zone 1 of the park (See Figure 6.11), was not selected as a site for intensive fieldwork (see discussion in Chapter 5, section 5.3.1), some initial interviews took place in this

¹⁵⁸ Discussions about the role of the NZAID project took place in Siem Reap during a series of meetings between the consultants and the author, on behalf of the University of Sydney Living with Heritage Project initially on 11 June 2009 and subsequently through personal communications.

location and these shed light on the broader setting for land-based intra and inter-village disputes.



Cartography: E. Bruce

Figure 6.11: Location Map of Nokor Krau, in relation to Angkor Archaeological Park.

The Nokor Krau/Kok Krouel conflict arose when Thai-border refugees were repatriated to this area. The allocation of land to refugees, and the claims of the adjacent villagers of Nokor Krau that their land had been inappropriately allocated, remains problematic. In an interview with a senior Nokor Krau villager (in 2006), he explained that they were working to get the land back through the district and provincial level channels. He said that he has little dialogue with officials from Kok Krouel village. Set against this entrenched land dispute, he indicated that although residents are aware of the restrictions for buying and selling land within Zone 1, few villagers were able (in a position to) to buy up land. Instead, “outsiders come and build houses in a secret way.” An older villager also explained that the unresolved conflict between villagers from Nokor Krau and Kok Krouel had, and continued to, cause friction between people. She described instances of some families illegally ploughing another’s rice fields – leaving some without rice and without compensation (as the culprits were jailed only for 3 or 4 days). The Nokor Krau/Kok Krouel conflict arose from the official resettlement of border refugees to an

apparently unclaimed/unallocated landscape (a case of *terra nullius* writ small?). Although neither of the case-study villages of Ovloak nor Thnal Trang have such a history, the problems of conflict between villages and villagers still exist, although the evidence of villager conflict in subsequent in-depth interviews is not as compelling as was initially expected from reconnaissance fieldwork.

6.3.4.1 Resettlement

The resettlement of village communities within the Park is not new. Miura (2004) traces resettlement (“dislocation”) of villages around Angkor and makes it clear that the expulsion of residents in close proximity to the monuments certainly took place under French influence as early as 1924 when residents were to be moved outside the Park boundaries. Clearly some relocation took place throughout the early 1900’s, for in a photograph by Charles Carpeaux dated 1901, homes are located adjacent to Angkor Wat (see Figure 6.12).

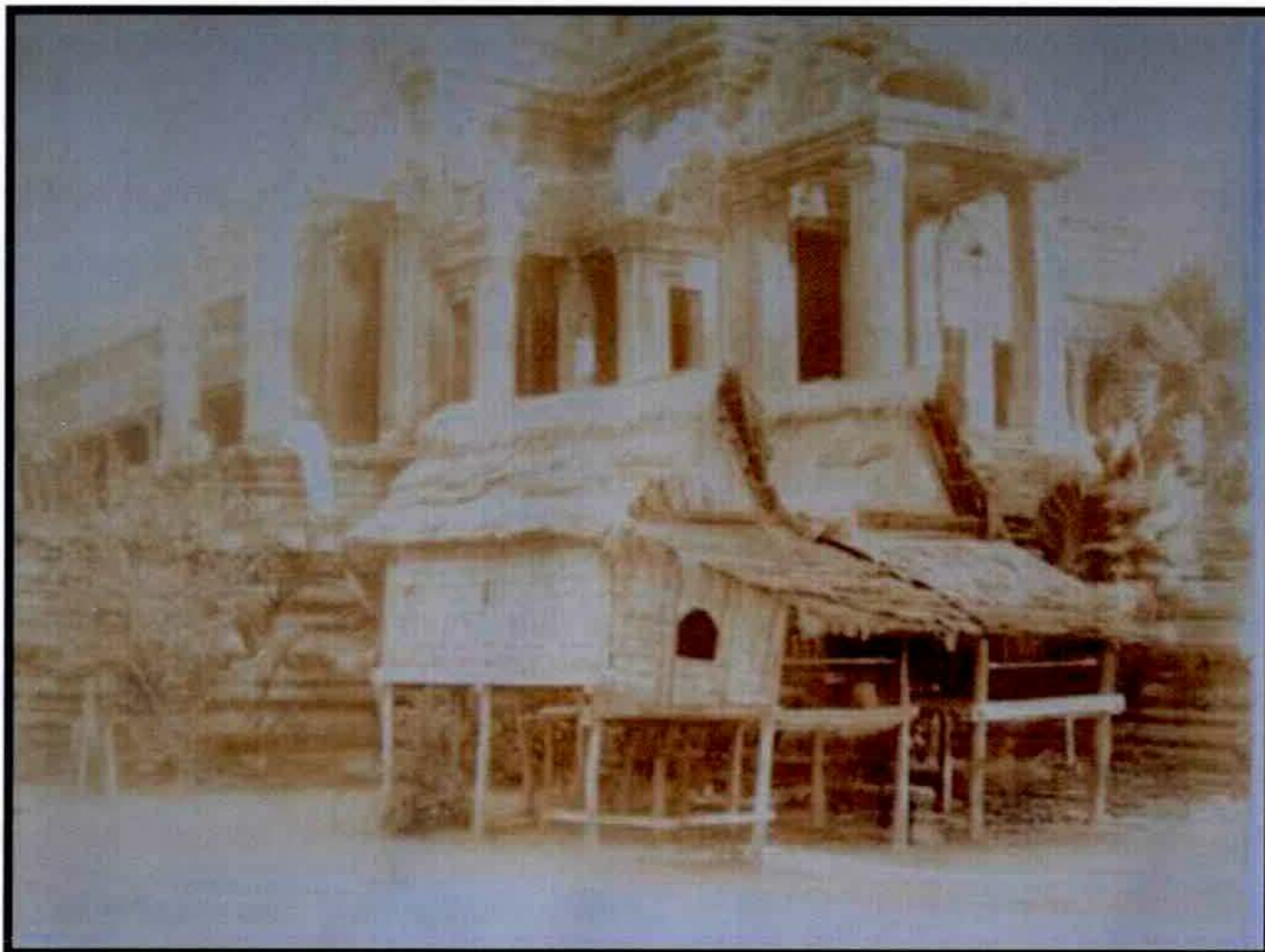


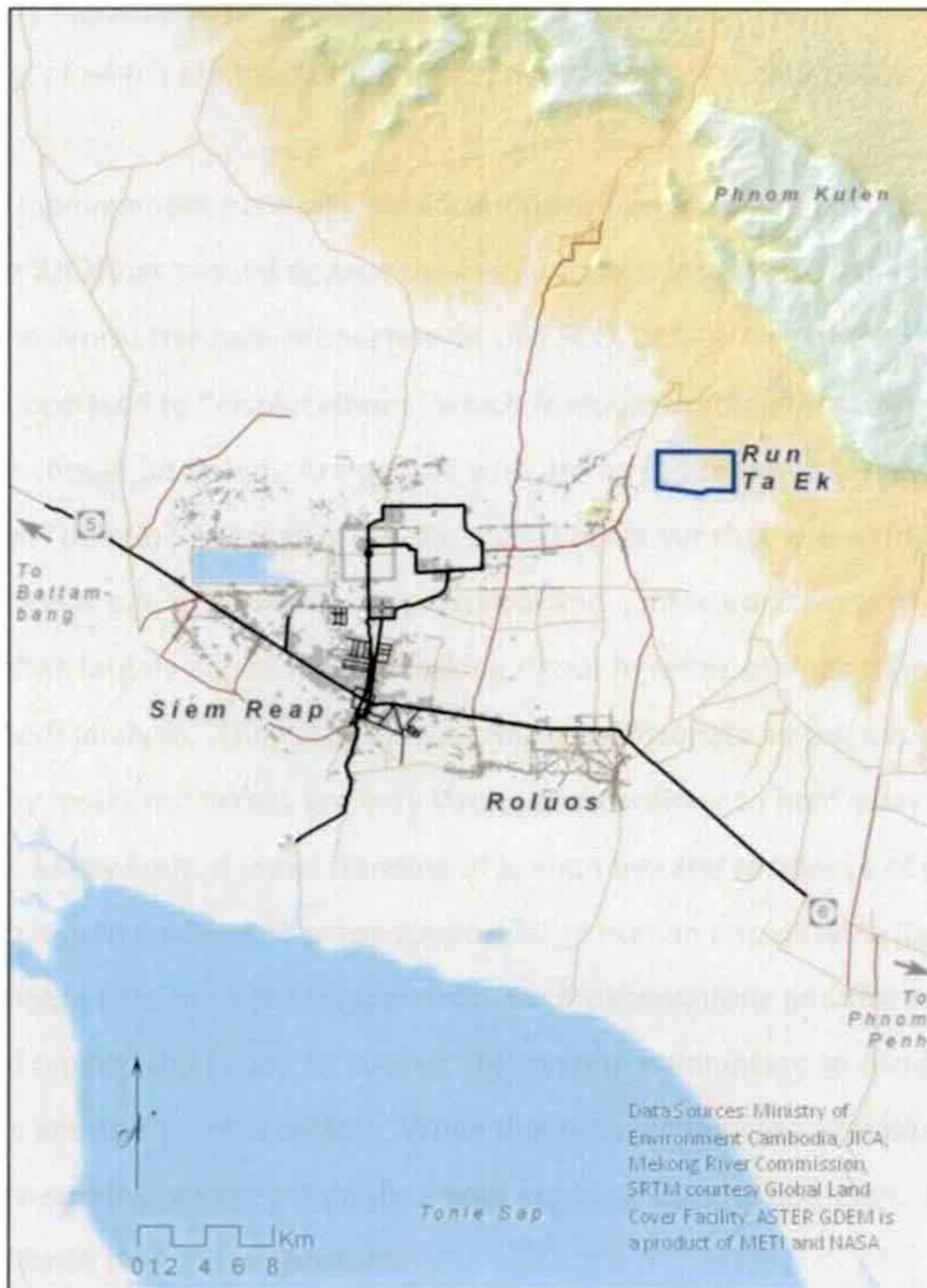
Figure 6.12: Western Side of Angkor Wat, photograph by Charles Carpeaux 1901.

The issue of future resettlement arose on many occasions during the in-depth interviewing sessions. Part of the introductory questions focussed on family and discussions surrounding

how long people had lived in their homes naturally arose in this context. Yet, it is also a crucial point in terms of the September 2004 Order which allows residents who “have long been dwelling” to continue to live within the Zone “without being subject to evacuation”. It may be that the results are indicative of a high level of knowledge among residents of this clause and their responses were tailored so as to strengthen their claim to long-term occupation.

At the official level, a Commune Clerk made a very insightful reference to the resettlement issue. The respondent lives very close to one of the main temples and said he “is original people here. But in Pol Pot regime he went to Battambang Province and he returned back to his homeland in 1980 when the Khmer was finished.” He said that around this time (1980) the government declared that people have the right to choose any land and that they may grow rice and build a house.¹⁵⁹ The conversation turns from potential conflicts arising from resettlement (which was politely avoided) to the problem now confronting some of the poorer families living in the village. He mentions that although he has been in a position to buy some extra land (from others in the village in compliance with the regulations) many poor families have been forced to sell their land and as a consequence they do not have enough land to subdivide between their children. He is aware that APSARA has a plan to accommodate those who are unable to subdivide for their family. This plan shall provide for children when they want to move. He concedes that the area set aside for the relocation of these children is, indeed, a long way (Run Ta Ek, more than 17 km to the north, see Figure 6.13). He says, “For the people that are rich they have a lot of land here and land inside and outside (the Zone) which they can use. But the poor don’t have a lot of land and they are unhappy about it but it is complicated for people to settle away from their homeland.” When asked if APSARA consulted with locals before this relocation plan was made he said, “No, they have not yet consulted. And for that development they not just collect people from this Commune but they collect all the people from Angkor (park, this place).” He appeared genuinely concerned that this would cause hardship for some people. Clearly, the significance of distance varies according to individual circumstances; nonetheless, the inconvenience of the distance between Ovloak and Thnal Trang and the relocation site is borne out by many interviewees.

¹⁵⁹ Corroborated by Sokha, *et al*, 2008, p. 43.



Cartography: Kevin Davies

Figure 6.13: Location of Run Ta Ek Relocation Settlement

The management authority is not unaware of this problem. In the ICC Report of July 2007, the Run Ta Ek Project was explained (UNESCO, 2007a). With the purchase of 1,000 hectares the management authority has established a committee to oversee and plan out this new community, which is designed to accommodate population growth within the Park. Importantly, resettlement to this site is all voluntary. If new residents (including the adult children of existing residents) do not wish to relocate they are entitled to remain living with their parents. The management authority suggests a land carrying capacity of 5.5 persons per family on 1 hectare so the area has a carrying capacity of approximately 5,000 people (*ibid*, p.21). Accommodating the growing population at Angkor is a real problem and management has in place a policy of relocation, as just described. However, the efficacy of this policy is in

doubt, for there are significant ramifications associated with relocation for residents subject to the policy not least of which are the human rights implications of such a policy.

In protected area management generally significant attention has been devoted to the issue of relocation and the IUCN has argued against the involuntary relocation of local communities from within natural World Heritage properties (in UNESCO, 2007). Use of the term “resettlement” as opposed to “displacement” which features in some literature on protected area management should be noted. Are people who are forced to move simply “resettled” or are they “displaced” people? West *et al.* (2006, p.257) point out that while “(d)isplacement from protected areas is one of the most controversial and contested aspects of protected areas” this literature is often largely anecdotal and lacking rigour in terms of impact (especially economic/livelihood) analysis. They suggest that this is unfortunate as the impressions of injustice created by restricted access are very strong and continue to hold sway in policy debates. There is a very limited understanding of human use and residence of protected areas despite the fact that many protected areas support large human populations (Brockington *et al.*, 2006). World Heritage sites are not excluded from such observations and the situation at Angkor appears to typifies the issue. Of course, this system is voluntary so residents are not forced to relocate, and this point is critical. While this remains the case, it is possible to argue that the inability to subdivide land within the zones could amount to coercion. In this scenario the issue of inheritance becomes important.

6.3.4.2 Inheritance

Directly related to the issue of resettlement is the problem emerging with inheritance for those living in Zone 1. In this regard the rules provide for land to be transferred from resident parents to children. The Decision of September 2004 provides that residents may transfer ownership from parents to children (“descendants”) or sell land to other residents of the village “in order to cope with the difficulties of life.” The situation is that parents can transfer ownership to their children but children cannot then subdivide these plots, ensuring that no new houses can be built. Initial observations determined that the inheritance issue was exceptionally problematic. Moreover, few people were willing to accord with the spirit of the rule and new housing continues to be built adjacent to an original parental home. In order to obtain an insight into the challenge of providing land to children, the questionnaire asked if it was the person’s

intention to gift land to their children (when they reach the necessary age). Careful consideration was given to the wording of this question for preliminary investigations suggested that some residents were not aware of the APSARA rules relating to inheritance. Accordingly, a deal of caution surrounded how to approach this issue in a questionnaire format. It was decided that a general question concerning intentions to provide for children would be the better way to proceed with collecting information about this issue, rather than a question which was specifically framed about inheritance or dying. This question received one of the most overwhelming responses in the questionnaire. *Every respondent, except one (with no children), indicated that they intended to provide for their children by giving or bequeathing land (Figure 6.14).*

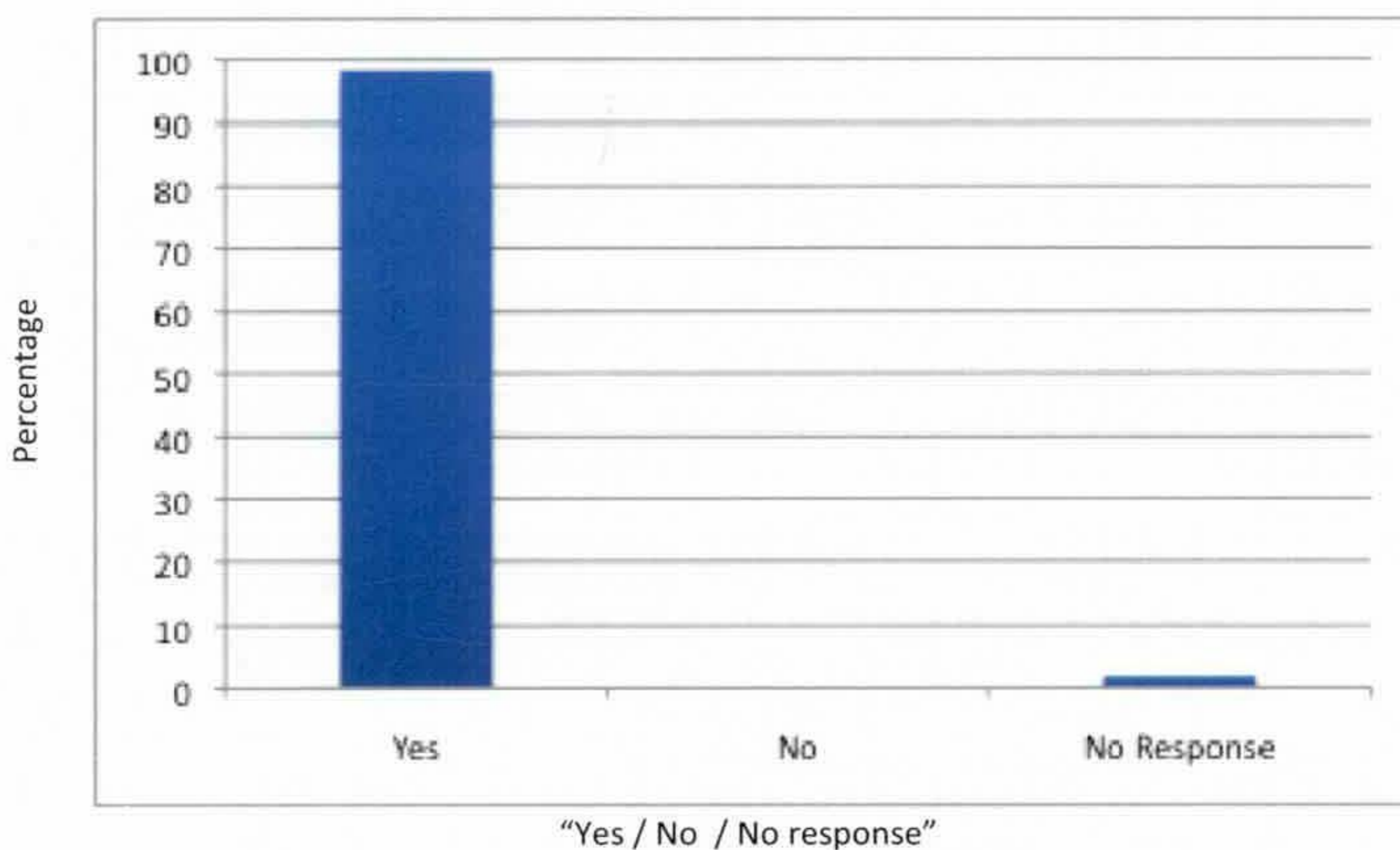


Figure 6.14: Desire to give land to children, expressed as a %

Respondents were asked to describe this process. Responses varied; some were not sure about the process, and others intended to divide their land equally. Table 6.5 provides the range of explanations for how this process is anticipated.

Table 6.5: Description of how land is passed between the generations

Respondent	Description
1	The first born will be given more land; other will get less land. The last born will live in the parents house.
2	The one who spent hard time with parents will be given more land on inheritance.
3	No prediction

4	All property will be given to the only child.
5	We will keep our children living in this area
6	Make a letter of land ownership; give land as much as I can
7	The more I have the more the children will receive.
8	Give land as much as I have.
9	Give one plot to each child; 1.5 hectare for farming land.
10	Give only one plot of land for housing.
11	Not sure because the children are small.
12	Not sure.
13	Give land to children equally; The youngest will get more because he/she will live in the original house with additional land.
14	Not sure because the Apsara Authority said that the listing of the number of married people will be able to build the house. Other who are not yet married will not be allowed to build a house on the land given by the parents. They will live somewhere else managed by the APSARA people.
15	Give a plot of land to each child equally - for the married children.
16	Give land to the children by using the tape measure.
17	Give land to the children by using the tape measure.
18	Allocate the size of land to give to children.
19	Give only one plot of land.
20	Give a plot of land to each child.
21	Give a plot for each
22	Give them land, 25 m x 60 m.
23	Give them land by using the tape measure.
24	Give land to the children for housing.
25	Give as much land as possible.
26	Give one plot of land for housing and ask the village chief to make a letter of ownership.
27	Give land only for building the house.
28	Give them each of the land only - 30 m x 40 m
29	I am not sure yet.
30	Give one plot of land for housing.
31	Give land only for house for each child.
32	One plot of each land to each child.
33	Give one plot of land.
34	Allow the children to live in this area.
35	Give a plot of land to each child equally.
36	Give as much land as I have.
37	I can effort my land in giving to the children as much as I have
38	I will give as much as I have.
39	Share the land I have with the children.
40	The children who get married to the better living condition will live in that house; other will allow them to live with parents.
41	Use the tape measure to divide land for children.
42	The youngest of the family will own the house after the parents. Others will have a plot of land.
43	I have no expectation at this stage
44	Land for the children is for housing, no land for agriculture
45	I don't know because my child is small and I have only one.
46	I have only one child; all the properties will be given to my daughter.
47	This land where I am living on will be divided by the number of children and then

	they will live here.
48	I am sure but if anyone or relative who looks after me when I am old I will give all my properties to him/her
49	Will give land surrounding this house to the children.
50	Give land to children for housing; the youngest child will keep in the same place.
51	Give a piece of land for housing.
52	Give the surrounding land to the children to live.
53	Don't know yet.
54	Not sure yet.
55	Give only one plot to each of them for housing.
56	Give a plot of land to each child for building the house.

The overwhelming response was that a plot would be given to each child to build a house.

On the issue of inheritance a tale from a young mother describes a common experience. She was born in 1980, making her a post-conflict child born to a generation in recovery. She was born in the village (Thnal Trang) and has relatives living all around her. She says that she owns her own land, having been given the plot (25 m x 90 m) by her parents. Her parents had a plot measuring 50 m x 90 m that was divided evenly between herself and her brother. Her parents live in the same village (further along the road). When the land was subdivided and given to her permission was sought and paperwork arranged through the Commune and District Chief's. From both the questionnaire responses and in-depth interviews it becomes clear that inheriting a plot is a widespread convention in the communities surrounding the Bakong.

Societal norms provide that land is acquired through inheritance and there is a near universal expectation that land can be allocated amongst children. It therefore becomes clear that land will, inevitably, run out. The total land area needed to provide for the 247 children of the 55 parents surveyed by questionnaire, if each child was to receive an average plot (1375m²), would be 33.9 hectares.¹⁶⁰ There is only a limited amount of land surrounding Ovloak and Thnal Trang available for future allocation to family members. Despite the apparent vacant appearance of some of the land, very little of this land is available for subdivision due to the restrictions associated with regulating the landscape. Evidently natural population growth is a significant conundrum for management authorities and the discrepancies between community expectations and the reality of life amongst the monuments present an ever-pressing challenge.

¹⁶⁰ Calculated on the basis of information from interviews.

The issue of whether giving land to children resulted in disputes or conflict was also raised in the questionnaire. The second most common type of dispute identified by residents in the villages was associated with giving land to children (see Appendix Five Figure A.18). When asked to elaborate respondents gave a variety of replies, including:

“We worry that APSARA Authority does not allow to build more house for our children because we only have land inside the park”;

“After the giving of land to the children I am afraid that APSARA Authority doesn’t allow for the construction”;

“Not enough land for the children”;

“Not enough land to give to the next generation of the children”;

“Less land with a lot of children; be afraid of the people from APSARA do not allow to build house”;

“No land in other places or areas except here in the park”;

“A father get married to another women and no land to give”;

“Not enough land for the children.”

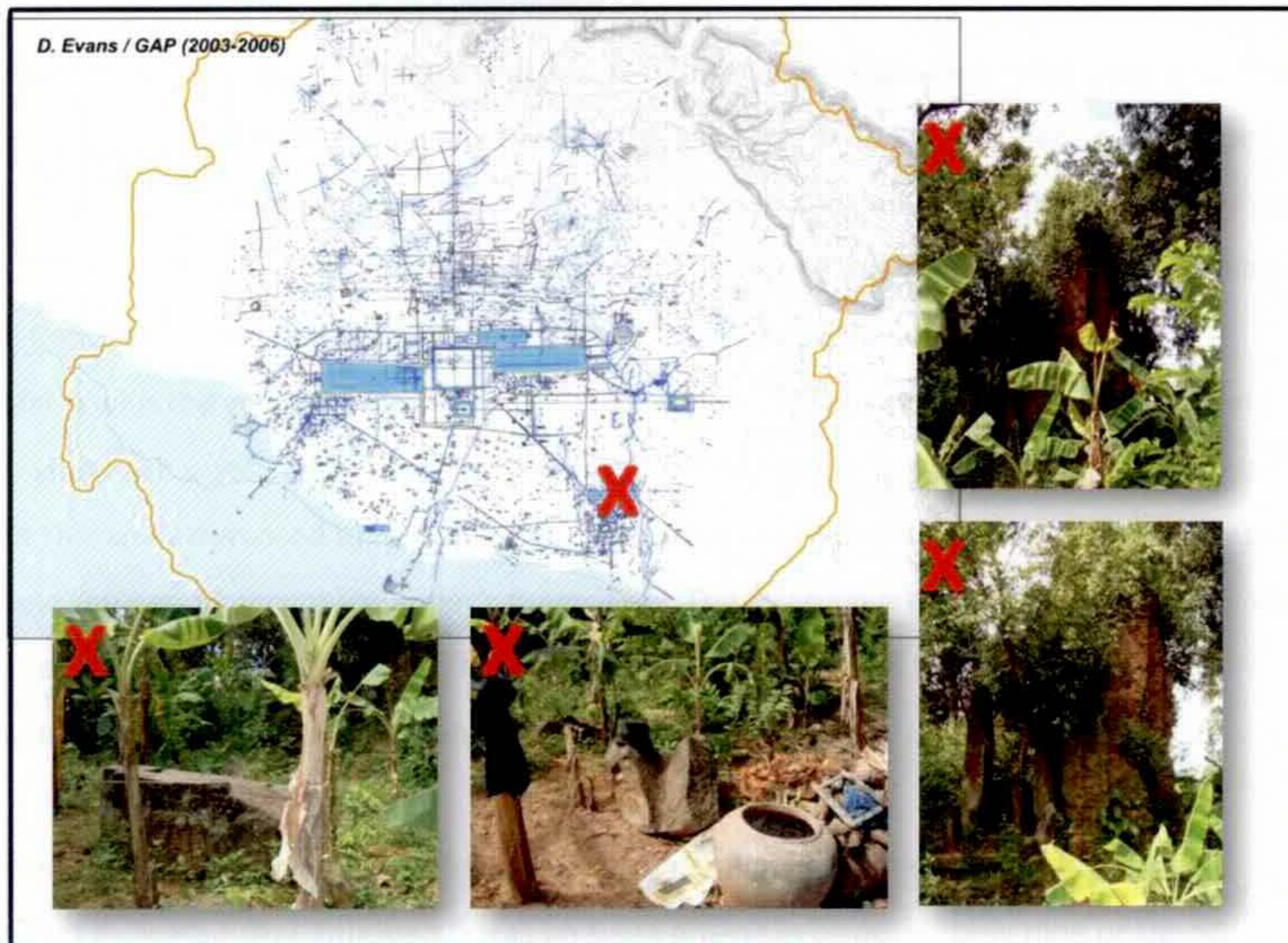
For a full list of responses refer to Appendix Five, Table A.18.3. It is clear that tensions between siblings may arise in this context. The potential for conflict was illustrated by a story from a twenty-six year old newly married female who had been given land from her parent’s land holdings. The parent’s had also constructed a new house on this plot. The land was located directly opposite the Bakong. She commented that as the eldest of her siblings, she had been given a new plot, as would the brother and sister next in age from her as there was only enough land for two new plots to build houses (meaning the three eldest would be entitled to new plots). The younger siblings would be expected to have the land from the old house. She thought that there would be just enough land for the siblings and small areas for plantings around the house. A similar situation was described by a newly married eighteen year old mother of one. She was in the process of excising a piece of land from her parent’s plot to build a new marital home for herself, child and husband. Again, this land was adjacent to the parent’s house and directly opposite the Bakong monument. Before the land could be excised and construction of a new house could commence she and her family were living with her parents. She also had three younger siblings who live with other relatives in the village (for lack of room at her parents’ house). The conversation with this young mother turned to the future – where

did she expect her children would live? She said she would “keep children here, she will share some land – she has small land” – and with nervous laughing (which appeared to cover uncertainty) she said that she “really hopes that she’ll be able to share her land”. This scenario clearly highlights the intensity of the land shortage for new buildings to accommodate the land-inheritance convention.

It is important to recognise that the right to inherit land has been recognised and is prescribed in law and Part Three of Chapter 6 of the *Land Law* 2001 deals with succession (Articles 71 – 79). Moreover, inheritance as a form of land acquisition is well established in Cambodia, though it often remains an informal (domestic) process (Sokha, *et al.*, 2008, p.45). As a Commune Clerk observed:

“but it is complicated for the villager because they say this is their homeland so they don’t want to give it up, so it is a concern for APSARA. Because mostly the people don’t understand about the heritage and they just think that this is their own land.”

In her research in villages within the World Heritage Park, Miura (2004) made observations about the strong sense of inheritance and related sense of place and belonging villagers feel in and around Angkor. Miura writes about ownership of trees and rice fields and argues that “(i)n a society in which the past is consecrated and the ancestors exert almost unquestionable authority over the living posterity, heritage – both tangible and intangible – including family inheritance, becomes sacred property that cannot be touched or altered by anybody...” (*ibid*, p.107). Similarly, a single, childless respondent who was living at home with her mother and brothers in Ovloak explained that the family’s land extended to and around the satellite monument that was located adjacent to her mother’s house. This scenario is depicted in Figure 6.15.



Source: Evans (2007)/Pottier (1999); Cartography: Evans

Figure 6.15: Photograph of lintels and small temple amongst banana trees in an Interviewee's backyard, Rolous Group

This land, she said, would be sub-divided amongst herself and her brothers. Her answers were direct and without pretence – it was simply a matter of convention that she and her siblings would remain in this location.

6.3.4.3 Small-scale Land Demarcation Disputes

In a country in which land is an extremely valuable commodity, land-related disputes and, in particular, land encroachment issues are often at the forefront of the nation's consciousness.¹⁶¹ For communities living within the Heritage Park, do small-scale land boundary disputes arise often? If so, how are they dealt with given the complex administrative and legal pluralities of the area?

¹⁶¹ Cambodian and national media frequently highlight this issue, see, for example a report in the Phnom Penh Post 27 March 2009, "Freedom sought for villagers", in which a dispute between villagers over 92 hectares of farmland escalated and resulted in a police officer shooting a protestor, <http://www.phnompenhpost.com>

It became apparent from both the interviews and questionnaires that few people understood or had experienced the formal dispute process. One interviewee, however, had been involved in a land boundary dispute that had proceeded to the local court. In 2004 someone attempted to acquire this interviewee's land to sell – they put a marker stick on her property – located on the main highway (Highway 6) between Siem Reap and Phnom Penh outside Zone 1. The Village Chief, Commune Chief and District Chief were not available to adjudicate so they filed a complaint with the court in Siem Reap. A Court-appointed investigator visited the site and spoke with both sides. He made a decision to return her land. The other party refused to accept this and attempted to sell the land. However, the prospective purchaser went on to the land and refused to accept the seller's boundary. The interviewee appeared reasonably well informed about their right to seek formal legal redress. They said that if any problems are encountered it is possible to approach an NGO and seek help.

There were few other incidents of land boundary conflict identified. The questionnaire responses indicated that although it was an issue arising in disputes, only nine of the 56 respondents (16%) indicated a willingness to identify this as a theme for disputes (see Appendix 5, Figure A.18). Those who did so explained boundary-related disputes in the following way:

“Expand one's land by ploughing”;

“Boundary problems happen when the sisters or brothers want more land than others”;

“Boundary disputes happen when one expands one's land”;

“Build fence between 2 houses”;

“Make the fence” (see Appendix 5, Table A.18.1).

A senior village official suggested that there were no disagreements about boundaries in his village. Given the way in which some parcels of land have been fenced in a manner which prevents trespass (and excludes) perhaps it is the presence of this fencing which is indicative of attempts to avoid disputes. ‘Modern’ fencing techniques prevent access more successfully than traditional forms of fencing and over the course of fieldwork (2005 – 2009) there has been an increase in the use of more modern fencing techniques. Figure 6.16 shows the way in which fencing has been used (‘traditional’ and ‘modern’ methods) to demarcate and include/exclude.



Source: Gillespie, 2006

Figure 6.16: Examples of 'Modern' and 'Traditional' Fencing Styles

Despite this recent trend to fence in a manner that acts to prevent others trespassing or encroaching on this land, it may be the case that small boundary disputes are not a feature of life in these villages as the senior official claimed. Few were willing to comment on this issue. One of the respondents suggested that if there were boundary conflicts over the land they resolve it amongst themselves or ask an elder or group leader in the village to help decide the boundary. She suggested that they take an older villager into the field and show them the boundary and they discuss it and try to solve problems this way. She added that any escalation of the problem was unlikely for "people around here never had that kind of dispute". Another interviewee suggested that a land boundary dispute that sometimes arose was that between siblings after parents had died and the land to be given to children was not clear.

Although some village communities are established without (obvious) fencing to identify boundaries, in other cases, the traditional means for isolating one's house or land is clear. Figure 6.16 also shows the use of planting, and as is the case in this image, a common planting for the purposes of segregating an individual's property is the cactus. When asked to describe the boundaries of her land, one respondent indicated that: "in Khmer society we plant the high plants to limit the boundary. There you can see the well next to the coconut which limits the boundary and here you can see the cactus.... because we do not have the new technology to

build the fence.” Others also mentioned the use of cactus, banana trees and other plantings were used to provide a visual boundary marker between residential plots.

The notion that boundary making has its antecedents in cultural practice has been identified by Blomley (2004; see Chapter 2 herein). To reiterate, he asserts that from an early age children in Western cultures are taught that trespassing is delinquent behaviour and that one ought not invade another’s space for fear of retribution. The cultural tendency to fence and exclude reinforced the dominant approach to tenure – the ultimate sanctity of private property. In a Southeast Asian context, does Blomley’s analysis translate? The answers from fieldwork suggest that there is a discrete concept of exclusion – using vegetation families demarcate their own spaces. Yet, to the non-indigenous observer these demarcations are not always clear and actual boundaries can be hard to discern on the ground, especially in clustered village settlements. Cambodia’s unique recent history also provides some explanation for the cultural tendency to create distinctly spatially defined household units, and while this is not directly addressed in the interviews, perhaps the subtext of what is said when individuals explain the extent of their lands, provides some evidence of this.

The subtle and complex interactions surrounding the role of the Village Chief is once again highlighted in his role overseeing boundary disputes between villagers. For example, one Village Chief said that if there is a boundary dispute he assembles the people involved together and they talk through the dispute and a solution usually results. Yet, when pressed further about specific disagreements between villagers, he withdrew from his original position and suggested that such disputes are few. There are a number of reasons for his reaction, some of which have been previously identified (see Chapter 5) which refer to the prevailing norms of Khmer society (and also see Luco, 2002 and Muira, 2004). A related explanation is Nader’s notion of a “harmony ideology” in which the maintenance of (see the commentary of Just, 1992) amicable social relations remain valued above all else.

The role of the Village Chief provides one of the most useful insights into the practical dilemma associated with accommodating plural legal systems, highlighted in the views articulated by a Commune-level official.¹⁶² In his capacity as a mediator between locals in conflict, he

¹⁶² For a thorough examination of the role and function of Commune Council’s in Cambodia see, Ninh, K & Henke, R, 2005, “Commune Councils in Cambodia”, at pp. 51 – 56.

acknowledged that while most people attempt to resolve disputes locally they had “a right to do anything they want. They can go straight to Court”. The choice between the more traditional means of conflict resolution, seeking out the advice and counsel of village elders, remains firmly in place. Yet, as one of these very village elders, when he was asked which method (informal mediation or Court proceedings) he indicated a clear preference for the latter as it enabled him to avoid “taking sides” in local matters. An overwhelming number of questionnaire respondents viewed the Village Chief as the “go-to” person for any land-related disputes (see Figure 6.19, below). This suggests that locals perceive the Village Chief’s role as significant (which is a reflection of traditional village-level governance) but the Village Chief himself (or Commune representatives too) may find this arrangement problematic. In the context of land conflicts specifically this respondent expressed a clear preference for the formal process, particularly when there is an absence of documents. This issue resonates throughout the country. National survey work by Ninh and Henke (2005) demonstrates that small-scale land conflict (for example, land demarcation) is common at the local level. With the process of formal titling in its infancy, few people have up-to-date documentation (discussed in Chapter 4). Moreover, small-scale land conflicts, especially boundary issues, tend to arise more frequently in a domestic context. This again raises the fact that inheritance issues are particularly problematic for Angkor, as it is one of the only means of securing access to land within the highly restricted Zone 1. Commune officials, such as the one interviewed, express some trepidation in becoming involved in these types of conflict. This is not an unfamiliar scenario in the cultural context. In work on community-based natural resource management in Laos, it was similarly observed that:

“In some cases, to avoid conflict between villages, people have simply asked authorities to deal with disputes. For example, when villagers from Don Samphan illegally cut trees in Namon’s forest area, people from Namon reported the case to subdistrict authorities to avoid direct confrontation and conflict with their neighbours” (Hirsch, *et al.*, 1999, p.15).

Another example of this at Angkor was provided by an interviewee from Ovloak, who had worked for the management authority, but had resigned because he felt the obligations imposed on residents were too divisive within his own community. In a 2005 Report examining citizen-commune council relationships it was observed that while Village Chiefs and Commune representatives believed citizens were part of the planning process by virtue of a once a year

invitation to attend meetings, many citizens did not believe that these meetings were as participatory as claimed (Council for Development of Cambodia, 2005). As previously explained, throughout Cambodia policy is driven by a push towards decentralisation and implementation of organic law, which aims at locally inspired management (and dispute resolution). However, the success of this initiative is called into question if local Commune officials are reluctant to embrace this policy position. The extent of consultation with those charged with implementing the scheme is unclear. What is clear, however, is that responses such as those of the Commune Clerk calls into question the success of a legally plural system in this context.

6.4 OWNERSHIP ISSUES AND LAND VALUES

This section presents observations about ownership issues and examines the value of land inside the World Heritage boundaries compared with the value of land outside the boundaries. Regulations imposed upon the landscape surrounding the monuments also apply to the sale of land in Zone 1 of the World Heritage site. The primary point remains that by virtue of the *Land Law 2001*, state properties include those with “archaeological, cultural and historical patrimonies”, and the transfer of state-owned land is prohibited (Articles 15 and 16). Moreover, Articles 43 and 44 prohibit the acquisition of state owned land. Yet, Sub-point 3 of Article 2 of the September 2004 Decision provides that residents can transfer ownership in restricted ways. Two options for the transfer of land are provided for by this regulation. The first is through inheritance and the second is by sale (to other villagers). This situation appears, *prima facie*, to contradict the ownership laws regulated by the *Land Law 2001* which provide for an entitlement to own property. The general provisions regarding ownership are articulated in Chapter 1, which deals with principles of ownership. Articles 4 to 11 provide for such things as a right to ownership; that only legal possession can lead to ownership; no one shall be deprived of ownership (with the proviso of fair and just compensation); regimes prior to 1979 are not recognised; and that to meet the needs of, for example, land management the provisions of these entitlements may be altered (Article 11). Other reports have produced similar findings (APSARA, 2007). Clearly, the need to meet the obligations of heritage protection creates a land management regime, which alters these basic ownership precepts. This creates a challenge for management.

It could be argued that the processes of international heritage management have successfully taken legal (if not *de facto*) ownership away from individuals within local communities and placed it in the hands of the national management body, APSARA, which manages the landscape for national economic and international conservation goals. Roth (2004) makes a similar observation about the role of national forest management agencies in Thailand. An argument could be made that restrictions on selling together with limited ownership entitlements have the potential to negatively impact on livelihoods.

6.4.1 Ownership – securing adequate tenure

The view that management/community partnerships in management practices work in favour of site preservation prevails in many instances. An emphasis on the community-led initiative also permeates heritage management practice and comments such as “(t)he most effective way for an Indigenous community to manage its heritage is for that community to have ownership of its land”¹⁶³ are common. Indeed, land management rights for indigenous communities have been a feature of heritage management practice in many new world countries.¹⁶⁴ From the analysis of ownership provisions in the regulations it is apparent that the official version of tenure rights in Angkor could be described as feeble or vague. However, what do the resident’s think about their entitlements to the homes they occupy and the land they work? Is an apparent lack of secure tenure problematic?

When surveyed, all questionnaire respondents except one (55 of 56 respondents), when given a choice to describe the type of tenure they enjoyed, described themselves as “*owning*” their land. The choices were “*owning*”; “*renting*”; “*occupying*”; “*other*”. These options are framed in plain language and are influenced by Western concepts of property. Nonetheless, this was an overwhelming response (Figure 6.17).

¹⁶³ <http://www.environment.sa.gov.au/reporting/heritage/heritage/centrarchive.htm>.

¹⁶⁴ See, for example, in Australia, the rise of the IPA “Indigenous Protected Area” created pursuant to the Australian governments National Reserve System, for more information see <http://www.environment.gov.au/indigenous/ipa/background.html>.

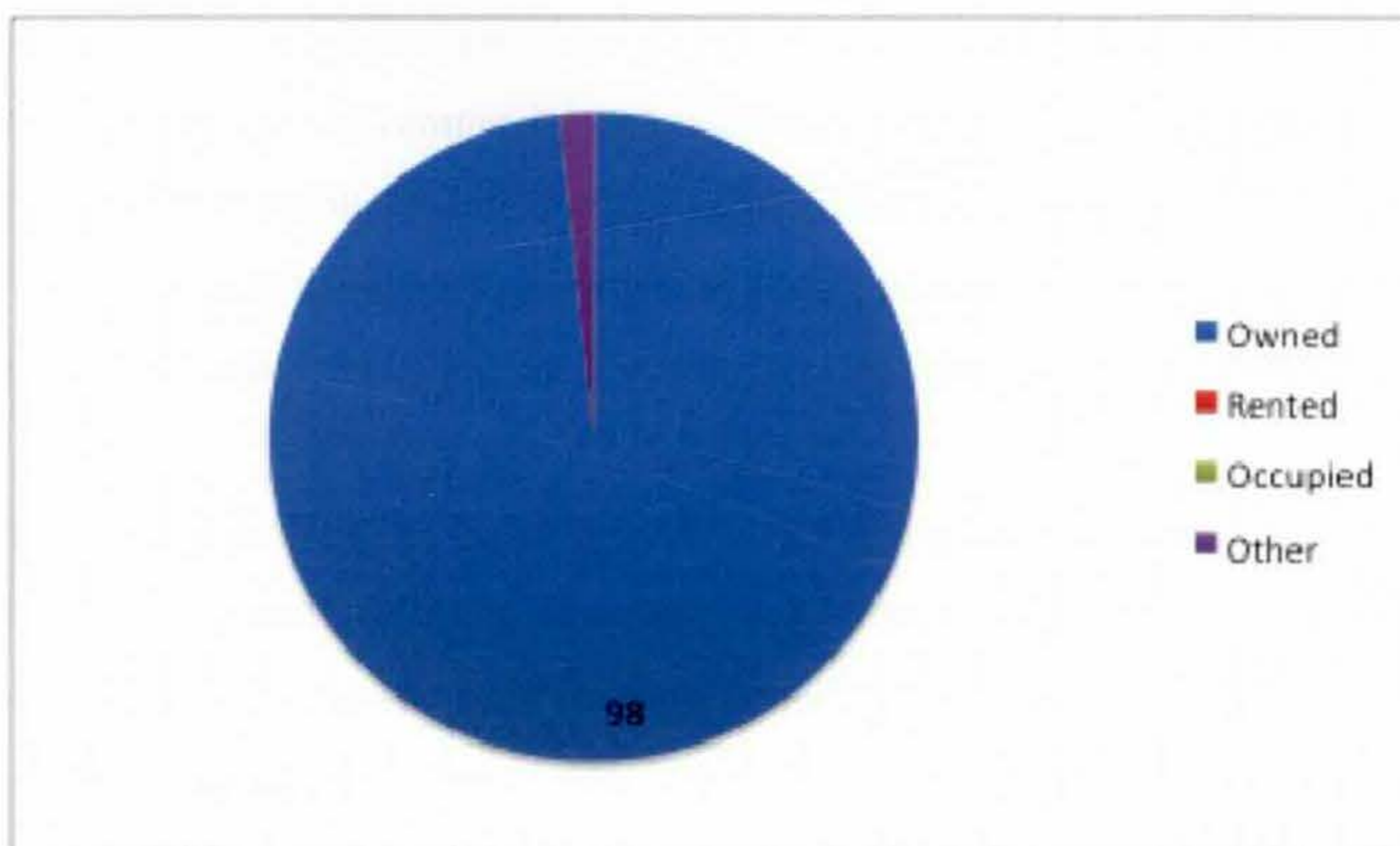


Figure 6.17: Perception of land-ownership status, expressed as a %

These perceptions about ownership are also borne out by other studies; a 2007 report found that for those living within the Park, a great majority (92%) of families said that they own their own houses (APSARA, 2007). Despite the fact that land within the highly protected Zone 1 of the World Heritage site is classified as State-owned land, almost all respondents (for in-depth interviews corroborated the questionnaire findings) regarded themselves as “owning” their house/lands. No respondents referred to any other type of tenure rights, despite the fact that the *Land Law* 2001 lists seven different types of ownership (Article 10). In the results no mention is made of them: possession rights; social concessions; leases; usufruct; use and stay or easements and although these categories were not listed as options in the questionnaire, there was ample opportunity to mention different types of tenure rights.

In responding to the ownership issue a Village Chief said that if the land is located inside the Park it is not owned by anybody. Importantly, this interview was conducted in later fieldwork (June 2009). It was clear that since the time of initial fieldwork, when not one respondent had suggested this answer, APSARA had conducted information sessions with local residents informing them about the rules applying to Zone 1 land. This was supported by the Village Chief who said that everyone had now been informed about the rule. However a contradiction became apparent for, when talking about the need to obtain permission to build new houses, he conceded that part of the documentation required was evidence of land ownership – certificates. When asked if everyone has these certificates (of ownership) he said that everyone

has them. In further conversation about the different types of tenure available, and in particular, the phenomenon of renting, he said that every family “owned” their land; no-one rented it. This exchange highlights one of the most sensitive and problematic issues for managers – the tension between classifying land in Zone 1 as State-owned while simultaneously recognising that local residents believe, and in fact, have actually previously “owned” their land.

Another village official asserted his ownership of his house and lands despite having no documentation to support his position. However, he said that although he “doesn’t have any documents for his own land he can get it from his father”. He said that he can make the documents “when he wants” by firstly making a plan then taking that to the Commune Chief and they go to the Planning Office. He said there was no need to consult with the management authority (only if they were building a new house). Another official associated with the local Commune office also indicated that he had no documents for his home and his land. He said that although he was relocated during the Khmer Rouge years he was an “original people here” and returned after the end of that regime. He indicated that around 1989 the government declared that: “the people have a right to choose any land and grow rice and to build a house”. At the time of the reign of Kampuchea he says the government had made about 70% of the documents for properties but these were only for rice fields.

Some residents hold proof of ownership. Figure 6.18 shows survey respondents who believe they hold legitimate paperwork for their house / land.

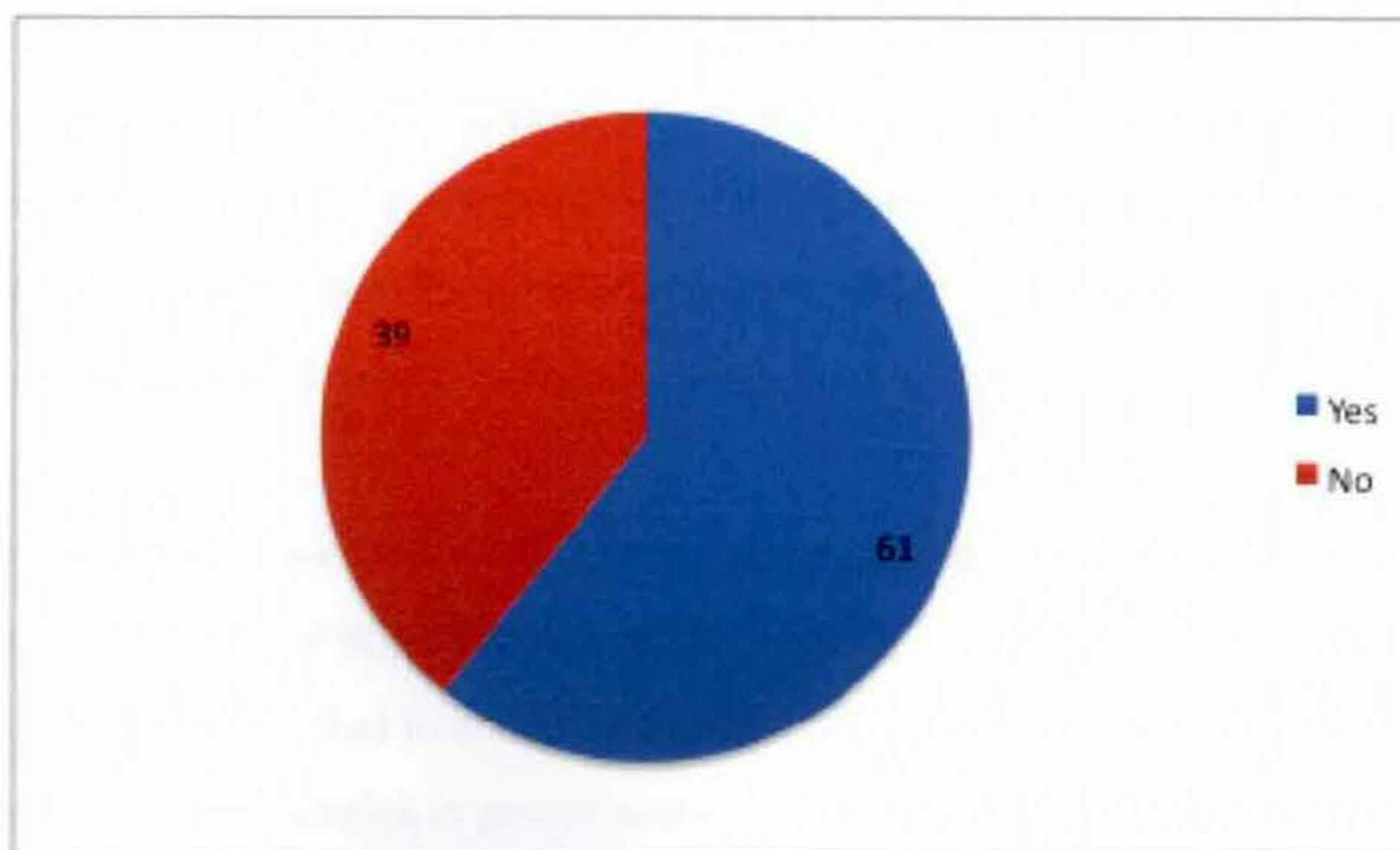


Figure 6.18: Respondents who hold Registration Papers, expressed as %

Having inherited her plot, one respondent said that her parents also gave her papers to the Commune and District Chief to record her ownership. Another described the land as belonging to his ancestors – and that it was registered at that time but never handed to him. This family does not have papers and built a house in 1996 and “at the time there wasn’t any APSARA Authority” suggesting that there was no need for any paperwork at that time. Another interviewee asserted that she owned her house but did not have any papers. She said that “years ago it was registered by the chief of village but he has died” and she did not know what became of the papers. She could not recall the year of registration. A more senior villager also said that she owned her house and had the papers to prove this (stored in the Commune office). She also said that after the War the government declared the people were to have the land and they were to go and make their proprietary rights official but that only some families did this.

There is a valid argument that it is not necessary for residents to have (paper) titles for the conduct of everyday lives and livelihoods. It is not uncommon for countries to adopt multiple registration systems and to recognise different types of title (Dalrymple *et al.*, 2004) and there have been a many attempts to organise tenure regimes throughout the history of Cambodia. This further highlights the implications of imposing a Western-influenced legal system on a very complicated pre-existing legal and social landscape. A recent study (Sokha *et al.*, 2008) suggested that to ignore the phenomenon of derived rights, access and appropriation leaves any policy attempt in the area of land transactions a hollow exercise. Moreover, they observe that policy should be grounded in a thorough knowledge of local practices and processes and that little has been written about how land transactions in Cambodia actually work. This leads to a clarion call for further in-depth research into rural land transaction processes. Importantly, Sokha *et al.* (2008) correctly identify the Western style influences in the current *Land Law*, particularly its favouring of Western-based proprietary concepts.

Other studies have made observations that land users regard their tenure as insecure despite the fact that they hold a legal title to their land (Broegaard, 2005). From a case study in rural Nicaragua Broegaard argues that in addressing either perceptions or the reality of insecure tenure factors such as inequalities in power and wealth and lack of enforcement are key issues. This research suggests that there is a need to consider landholder perspectives when assessing

tenure security. Usefully, this article discusses the shortcomings of land titles in increasing (perceived) security of tenure. The point is made that security is not “a dichotomous phenomenon but a gradual concept of more or less” (*ibid*, p.846). These are valid points in any assessment of land management and within this research some attempts have been made to understand the importance of secure tenure from local perspectives.

In the Cambodian context if landlessness maintains its currency and if illegal land grabs and forced relocation are an issue, does not this situation increase the importance of documentation? The questionnaire results suggest that land grabs arise as an issue of conflict within the villages (Appendix 5, Figure A.18). Six (approximately 10%) of respondents indicated that land grabs have occurred. These responses indicated:

“Land was grabbed by the other people from different village; there is land grab claim filed”;

“People sold land to the buyers and within the area of the land there is one main irrigation system of the people. This occurred because the buyers claims it to be theirs. Therefore the people put the complaint against the buyers”;

“Happens when the highest people want the land of the poor”;

“People of Lolei grabbed the land of mine because my land located in Lolei” (see Appendix 5, Table A.18.6).

Comments such as these highlight vulnerability within the respondents to outside factors. There appears to be a perception that outsiders or ‘others’ are responsible for undermining existing ownership claims. This raises an issue of scales of perception. Land grabbing conflict is described at different levels and between different sets of people. This scalar difference appears in other studies, as Hirsch *et al.* (1999) point out in relation to community-based natural resource management and conflicts over watershed resources in Lao. They suggest that ambiguities in tenure arrangements can lead to conflict and degradation. This situation implies that village level activities must coincide with definitions and demarcations used at district and other levels of government. The same conclusion could be drawn about the land tenure arrangements at Angkor, with the existing system of multiple user rights, limited paper titles and in some cases, no formal land registrations at all, creating a chaotic set of conflicting entitlements.

6.4.2 Land Values

Residents, when surveyed, estimate that land outside the World Heritage designation has a market value more than three times the value of land within the World Heritage area.

Residents are conscious of selling restrictions and it emerged, during in-depth interviews, that they are acutely aware that these restrictions have an adverse impact on property prices.

In the questionnaire, residents were asked if land inside or outside the Park boundaries¹⁶⁵ was more expensive to purchase. Of the 56 responses, 52 (92.8%) claimed that land outside the World Heritage site was more expensive than land inside the zones (Figure 6.19). There were three non-responses and one respondent said that land was more expensive inside the site.

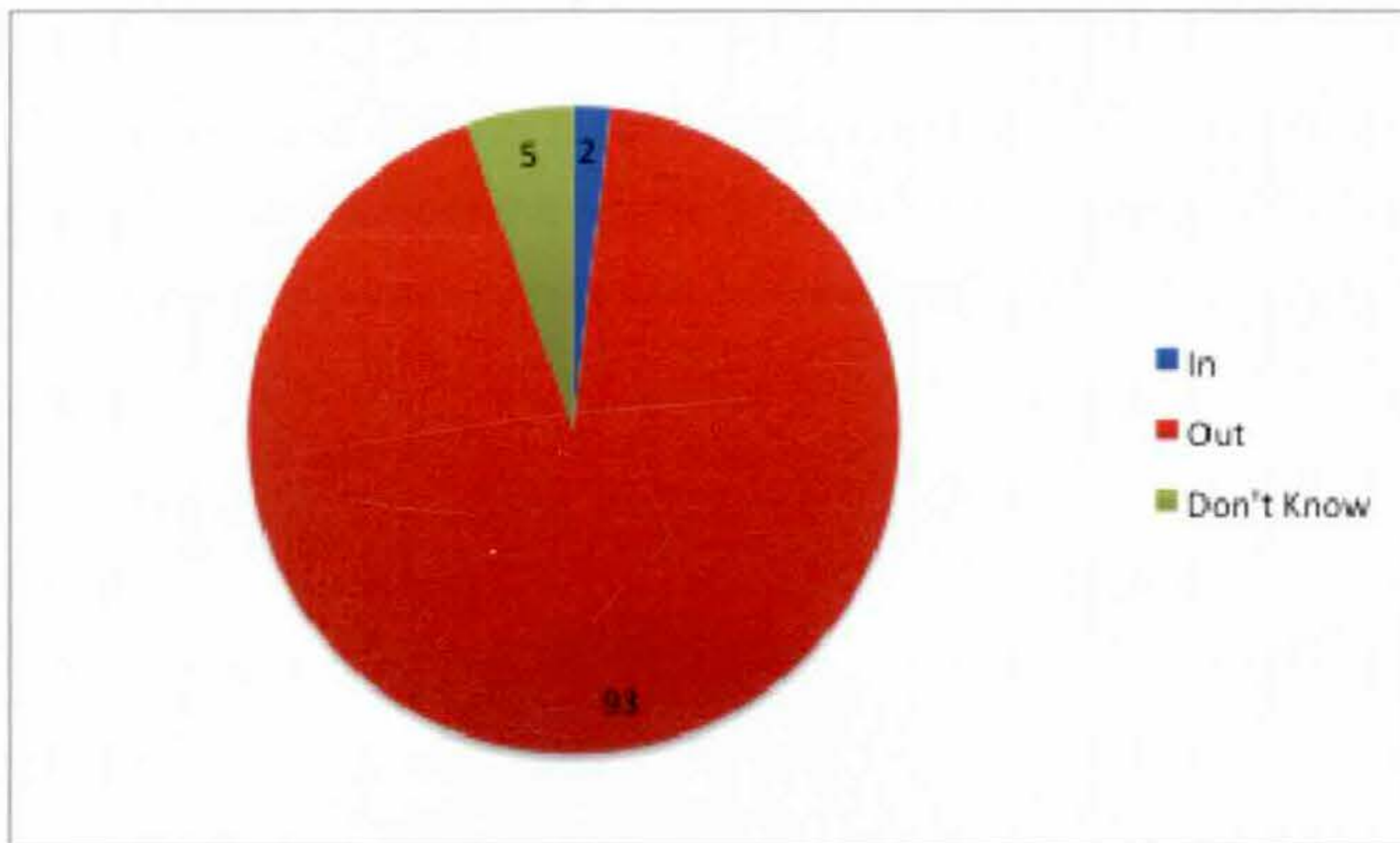


Figure 6.19: Are Prices "In" or "Out" of the World Heritage Park more expensive? Expressed as a %

Respondents were then asked to estimate the value of land both inside and outside the Park. Estimated values for land inside the Park are indicated in Figure 6.20. This graph indicates that most (25) respondents view land within the World Heritage site as worth between \$US 0 - \$US 50,000.

¹⁶⁵ A potential very real restriction on this data is related to the question aimed at discovering if residents understood the extent of the World Heritage site (section 6.1 herein). Nonetheless, even if perceptions of site boundaries are inaccurate, the perception that land inside/outside differs in value is an important issue.

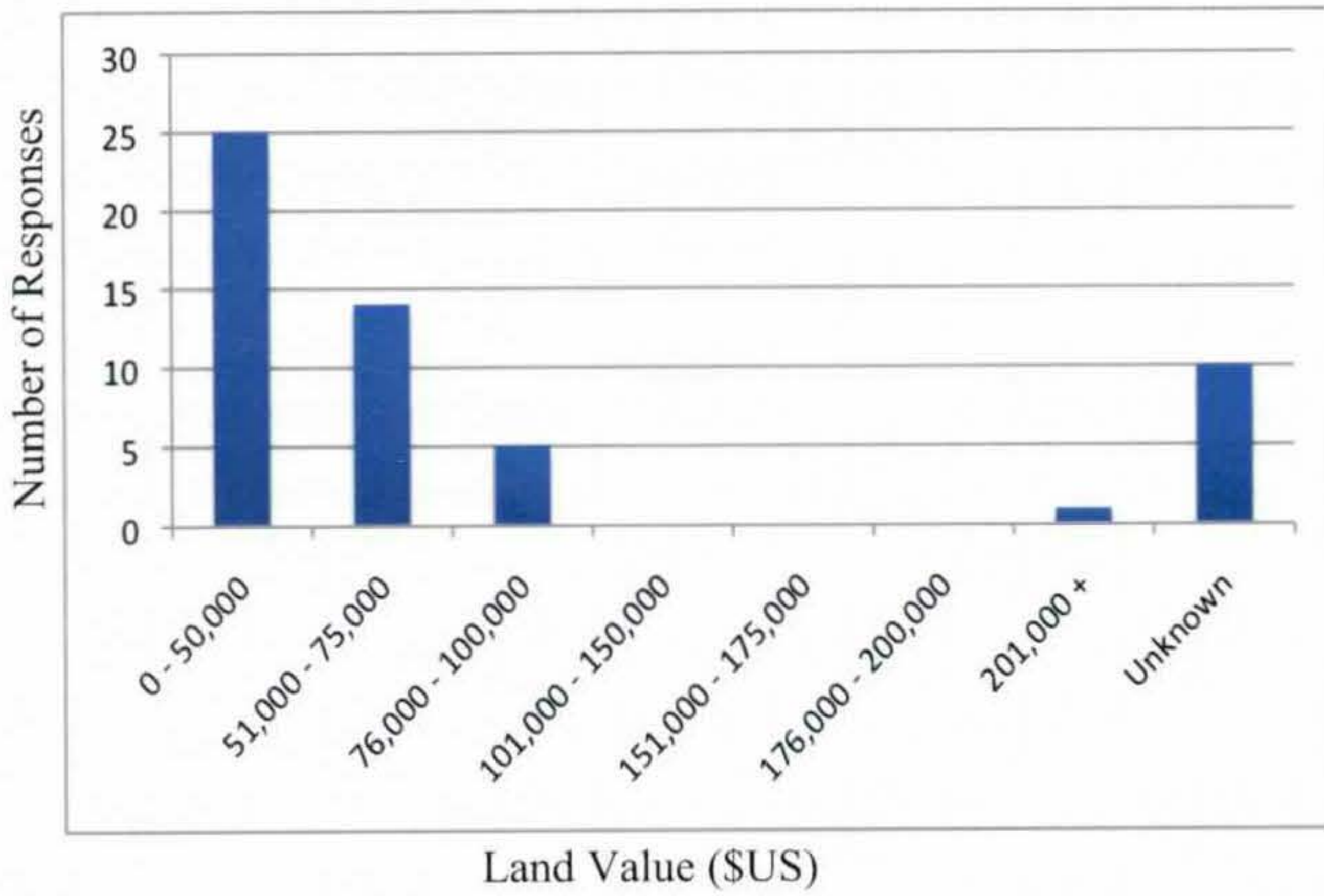


Figure 6.20: Estimated value of land (\$US) Inside the World Heritage Park

Figure 6.21 shows land value estimates for land located outside the World Heritage Park. The majority of those who responded to this question indicated that they did not know the value of this land. From those who provided a response, land values peak between \$US 76,000 - \$US 150,000.

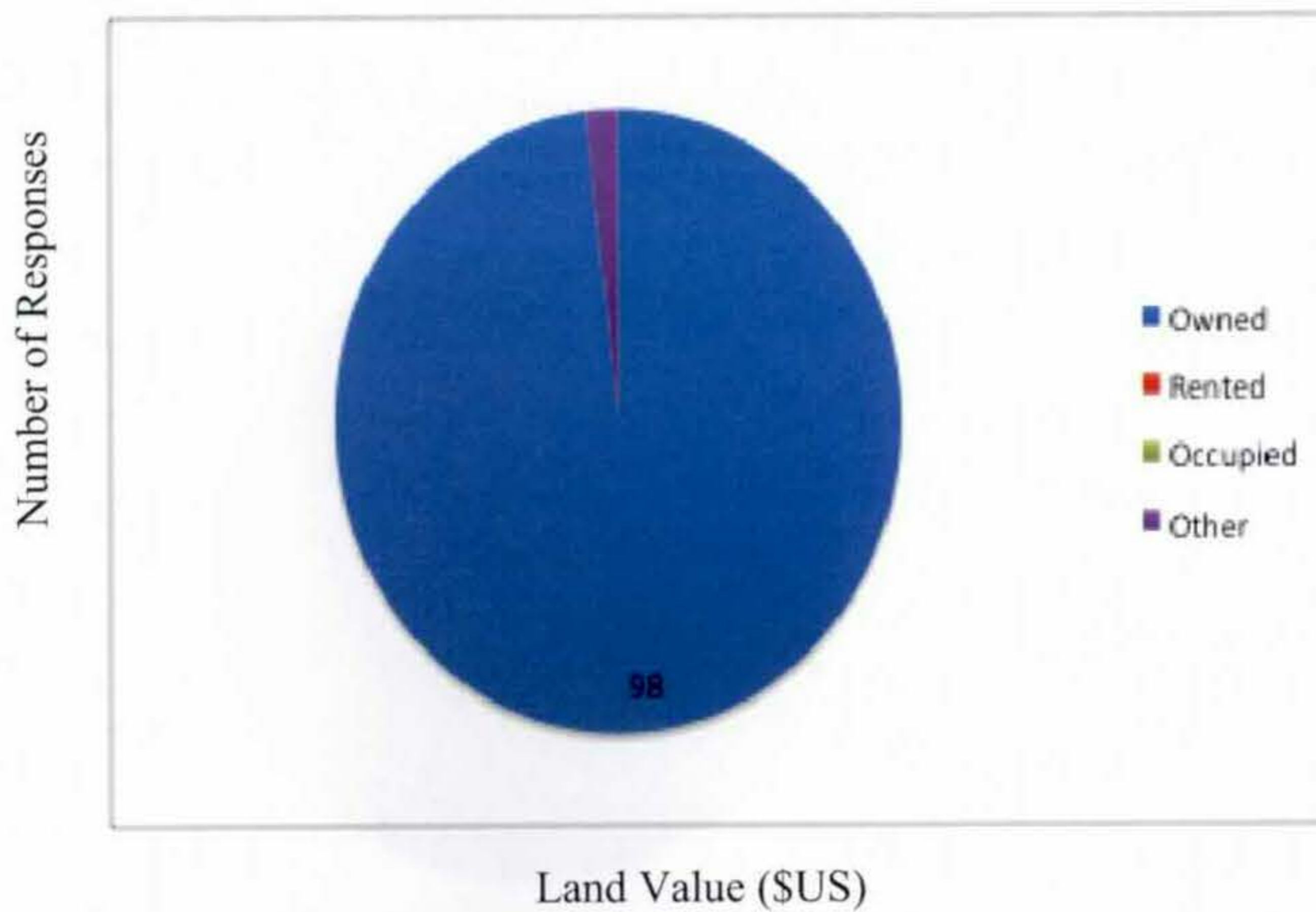


Figure 6.21: Estimated value of land (\$US) Outside the World Heritage Park

Calculated on the values provided by the respondents, the average value, per hectare, for land inside the Park is described as US\$67,717 per hectare while land outside the Park has an average value of US\$187,429 per hectare. Accordingly, land inside the Park was perceived to be approximately one third of the value of land outside the Park (approximately 36%).

There are very few data available on land values as they pertain to land within or outside of the World Heritage site. The distinction about values on the basis of the World Heritage boundaries has not been the subject of any in-depth analysis. However, a 2008 French-led nation-wide study does corroborate the price differential perceived by local people living within the World Heritage Park. In this study, which includes some villages located inside the APSARA Zones, they note that land sales had been affected by APSARA “new competency”. This report suggests that land within Zone 1 had decreased 5 – 6 times since 2004 while land outside the zone had (variably) increased in value (Sokha, *et al.*, 2008). The focus of the French-led project is different to that of this thesis, which is concerned with local *perceptions* of land values rather than actual market values. This reflects the fact that local residents recognise it is a problem for them. The key point is that the price differential is only a problem for the local resident if he or she believes it to be; if they are not aware of it or if it does not matter to them then the issue has less significance.

Questionnaire results mirror the information from in-depth interviews. In particular, most residents are aware of the selling restrictions (Figure 6.22).

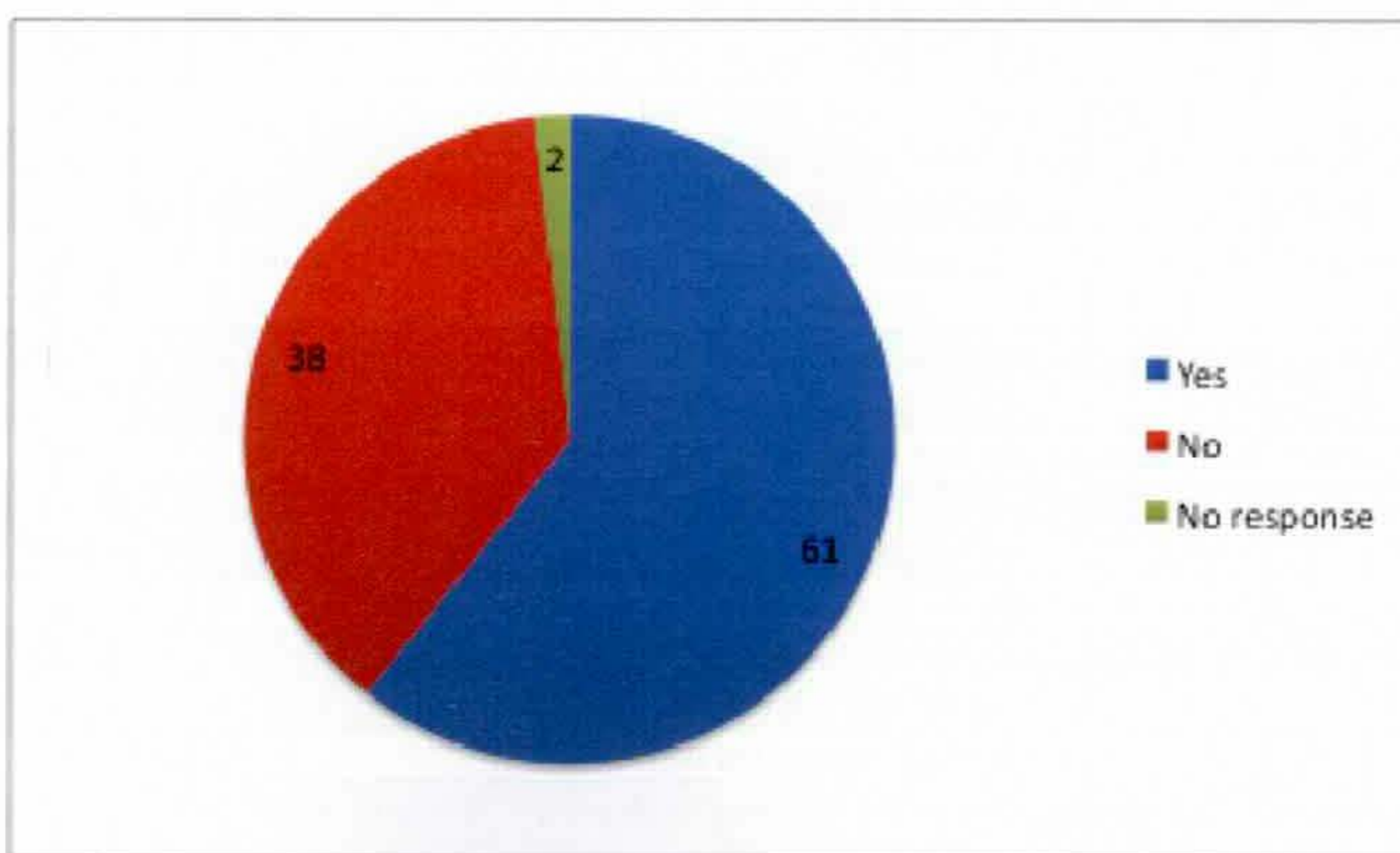


Figure 6.22: Resident Awareness of Selling Restrictions, expressed as a %

Interpretations of the nature and extent of these restrictions vary. Table 6.6 provides a summary of how respondents explained or described selling restrictions.

Table 6.6: Description of Selling Restrictions

Respondent	Explanation of Selling restrictions
1	We only sell to the people living in the same community; if we sell the land we have to inform the authority in advance.
2	No concrete house is allowed to build or 2 storey concrete house; sell land to people in the same village.
6	Land sale available only in the village, not outsider is allowed to but a few months ago people could sell to the outsiders too.
7	Village chief or commune chief do not sign an agreement of selling land
8	Land is sold to the outsider but not allowed to build; land is sold through the village only.
14	Outsiders cannot buy the land here.
18	Apsara prohibited the people from selling land because they are afraid the next generation will not have land to live.
19	Land in the park is not allowed to sell to people outside the Park.
20	Outsiders cannot buy land in the park; people in the village can buy in case they do not have land for farming or housing
21	People cannot sell land in the park but they can sell their land to the people living in the same village.
22	No land selling activities because this park is governed by Apsara Authority.
23	A few months ago selling land was not prohibited but now it is.
25	Land in the park is not for sale.
26	If people sell their land in the park the village or commune chief will not sign for agreement.
27	Not sell the land because it is in the park.
30	The Authority does not allow the people to sell their land to the outsider. But people in the park can buy land in the park.
33	Land is not sold in this park.
34	Land in the park is not for sale
35	Land selling is prohibited and Village Chief doesn't make a letter of land ownership for the buyer.
38	Not allow to sell land to the outsiders because it is afraid that they will build big houses.
39	Not allow to sell land to the outsiders because it is afraid that they will build big houses.
40	People who sell their land have never had any problem I have heard of.
41	Land which is close to the temples is not allowed to sell, but other far land is sold too.
42	The Village Chief won't make a letter of land ownership to the buyer
44	Not allow to sell land for the outsiders but only in the village for people who do not have land
45	Land in the park is not for sale.
47	Land governed by the Apsara Authority is not allowed to sell - but previously people could sell some.
48	Land in Zone 1 is not allowed to sell for the outsiders but it is possible for people in the village who does not have land.

49	Not allow to sell land for the rich buyer because the authority is afraid that they will build big houses; one case is that one rich buyer came to buy but the village
50	Land in the park is not sold for the outsiders.
55	Outsiders cannot buy land from people living in the park.
56	We can only sell for the people in this village.

One interviewee, who has rice fields measuring 0.4 hectare within Zone 1, said that she can sell this land to people from Siem Reap or Phnom Penh but for her land held within the village she can only sell land to other people in the same village. Yet, other interviewees were more keenly aware of the regulations and the negative impact they could have on local residents. One described land “inside APSARA Zone cheap and outside expensive” and indicated that she was upset about it for they (those owning land either inside or outside) have the same traditions. She also indicated that although the restrictions do not prohibit the sale of land between villagers “inside the village they can buy and sell but not to make document paper. They can sell and buy between families. If they go to the Village Chief they will have a problem with APSARA.” This answer implied an unofficial trading or bartering amongst villagers. For land administration managers these habits may prove very difficult to overcome or to bring within an officially endorsed practice. The implications of these observations are varied but any heritage protection overlay should deal with the impact that regulations have on property prices and accommodate the various resultant behaviours of residents attempting to minimise the impact on land values.

A senior commune official indicated that, prior to 2003 (when APSARA reasserted control over the Zones 1 and 2) people bought and sold their land freely. Yet, he also recognised that people were trading amongst themselves (as described above). He described land outside the Park as more expensive “because they can do anything they want, build a big building or anything. Also people from outside the commune can buy and sell.” Another local resident gave a snort of derision/resignation when asked about the price differential between land values inside and outside the Park. He said that no one wants to buy land in Zone 1 anymore. He had lived in the village since 1979 and land had been bought and sold freely – people from Phnom Penh wanted to purchase these lands. However, after the rules were tightened (associated with APSARA having a more active role – dated to about 2003/2004), there was no longer any interest in these lands. Again, the impact of the restrictions on property demand (the land market) is

neither well understood nor accommodated by management policy, which remains silent on the issue.

Another interesting perspective reflecting the wealth differential between poorer and wealthier residents was highlighted in an exchange with a respondent who said that he had been in a position, due to his wealth, to buy a lot of land both inside and outside the protected Zone enabling him to divide these lands between his children. He indicated that, for land outside the World Heritage Zones, the villagers themselves are responsible for regulating development, and only after that (consultation) do issues go to the commune and then the district levels. This was in stark contrast to development in villages within the highly protected Zone. There is no doubt that some residents living in the highly restricted Zone 1 are trapped in a cycle of poverty. They are unable to raise capital against an asset (land), which is declining in value, and many are forced to sell or live in increasing poverty-stricken circumstances. Distressed selling is a very considerable, and arguably a growing, problem for Park residents (supported by observations in the Angkor Management Plan, see APSARA, 2007, p.14). However, with a limited buying market (that is, other villagers) this, in itself, is problematic. Yet, the recent study (Sokha *et al.*, 2008) indicates that sales of distress may not be as straightforward as they first appear, and selling/accumulating landholdings is motivated by a variety of complex reasoning. Although it is important to be mindful of the subtleties of land exchanges, a material point of difference is that the regulations for those living within the highly restricted Zones in and around the monuments, means that sales are conducted in equally restricted circumstances. Unfortunately, the data collected in this research do not address the reason for sales so it is not possible to draw any conclusions about rationales.

Linked to the issue of land sales are data associated with the types of disputes that arise within the World Heritage site. When asked about the type of disputes arising in the area, respondents were faced with a choice of alternatives. Disputes relating to (1) selling and (2) buying land were amongst these choices (Appendix 5, Figure A.18). A total of 11 of 56 respondents (19.5%) identified this type of dispute within the villages. Problems associated with selling land featured more prominently (9 of 56 respondents or 16%). These responses included (see Appendix 5, Table A.18.4 for a full list of responses):

“Some amount of money will be taken after the selling”;

“Land selling is not so expensive as outside of the park”;
“Cannot sell the land”;
“Can't sell land without letter of ownership and plan”;
“Land's price is not good enough”;
“Village chief doesn't agree and sign for the agreement”;
“Price of land here is not as expensive as the outside area of the park”;
“We can't sell land to the outsider to get lots of money”.

Selling land within the Park appears to be a vexed issue for residents. These responses cover a gamut of issues, from insinuations of bribery through to frustration at the price of land. The imposition of rules restricting selling within the site does cause consternation for residents. Their inability to raise money through selling has varied ramifications, including the potential that residents adjacent to the Park are caught in a poverty trap or cycle (when those living a little further away from the monuments are not subject to the same selling restrictions). This circumstance further highlights the problems associated with the arbitrary nature of the World Heritage Park boundaries.

6.5 THE RULES

Very often legal regulation means little without reference to the penalties imposed upon those who do not comply. What are the implications of breaching laws about how to behave in a conservation Zone? Some of the penalty provisions in the national *Land Law* 2001, in particular, Articles 248 and 259 are directly relevant to this issue (Appendix 7). Article 248 relates directly to the situation at Angkor for it provides that an improper or illegal occupation of State public property is an infringement of the law and is subject to penalty. Sub-part Two of Part One of the *Land Law* 2001 Penalty Provisions (Title VII) deals with infringements against public property. This section provides that an infringement may result in fine or imprisonment and immediate vacation of the property with no entitlement to indemnity for improvements to the property. These provisions are clear and those occupying public property face reasonably tough penalties, with both fines and imprisonment available to prosecutors. Oberndorf (2004) observed with regard to the previous land law (of 1992) that the law was silent as to who is responsible for enforcement. This situation appears to remain the same for the 2001 law. In

the absence of specific provisions Oberndorf (2004) concludes that the commune, district or provincial authorities must be responsible. He also makes the point that appeals of decisions are not dealt with in this legislation – and thus concludes that an individual must refer to the Constitutional right (Article 39) to appeal decisions of government. This is the broad national context, what of the situation as it relates to the World Heritage site?

The Circular of May 6 2003 provides some enforcement provisions for the World Heritage site. This rule deals with “the anarchical activities” within the Park. It gives to the management authority particular powers including the exclusive power to issue building permits and to order the dismantling of illegal constructions. Moreover, the text of section 7 of the Order of June 23 2004 “on the cessation and eradication of anarchical activities in the Angkor Archaeological Park of Siem Reap Province” states that:

“Anyone acts contrary to this order will be responsible to face the laws on protection of cultural heritage, on forestry, on land law and general provisions in force” (Royal Government of Cambodia, 2004a).

The language of this provision is very broad and all-embracing. Nonetheless, the provisions of the Circular of May 6 2003 provide some guide for law makers regarding intent about who ought to be the responsible authority for enforcement. The 2007 “Angkor Management Plan” noted that while there is recognition of the role of APSARA in monument protection, misunderstandings between the Authority and village communities persist in relation to the control of home construction (APSARA, 2007). Clearly, management obligations give rise to competing demands; from the international arena through the listing process to protect the site and demands from local resident communities who remain keen to enjoy their land and develop according to their own agenda. These demands do not always match. This research finds that there is a critical need to reconcile (or work towards the reconciliation of) obligations to the international community with the needs of local population, especially in relation to demands to develop. Arguably, there are potential human rights implications if these challenges cannot be met. In an increasingly globalised era, a variety of human rights instruments may act to protect the interests of residents. It is possible to argue, for instance, that the provisions of the *Declaration on the Right to Develop*, adopted by the United Nations General Assembly

Resolution 41/128 in 1986¹⁶⁶, could be undermined by restrictions on opportunities to develop. These tensions are highlighted in the context of land management. Indeed, it is in the heritage management context of Angkor that the very real challenge of creating an effective land management regime lies. The monuments of Angkor are located in a landscape-wide setting and exist within, between and amongst existing communities. The land management regulations imposed on these communities are designed to ensure World Heritage site integrity. However, this can be compromised by non-compliance and breaches. This is not an idle concern, for it has in recent years been the subject of reports and debate to the World Heritage Committee. As recently as July 2008, and referring to the 2005 Chabasson Report (see Chapter 3), the Periodic Report for Angkor identified the lack of an appropriate management system as a real threat to the site. A World Heritage Committee Resolution called for these concerns to be addressed. The text of the World Heritage Committee addresses central concerns of this research:

“Requests the State Party to address these threats by ensuring swift and full implementation of the recommendations of the 2005 mission, and in particular to:

- a) Clarify, including by passing new legislation if necessary, the rules regarding property rights, ownership and building codes applicable to Zones 1 and 2;
- b) Enforce existing laws regarding illegal occupation, unauthorised construction and development and park-land appropriation/alienation;
- c) Strengthen the capacities of APSARA to enable effective land use planning and management, including by providing it with the necessary resources.” (UNESCO, 2008, Decision 32COM 7B.65)

The management response is to impose restrictions on land use activities. However, it is argued here that a regulatory response is ineffective without an adequate enforcement regime. This is particularly challenging in the legally plural landscape of Angkor as the results of fieldwork data which aimed to expose what the local residents thought about the rules and regulations which govern them, outlined below, suggest.

¹⁶⁶ The text of Resolution 41/128 “Declaration on the Right to Development” of 4 December 1986 is available at <http://www.un.org/documents/ga/res/41/a41r128.htm>.

6.5.1 Compliance with Development Controls

While knowledge about the regulations was very good amongst local people within Zone 1, disputes relating to building new houses were perceived to be the most common type of dispute. This situation highlights the enormous non-compliance issues facing the management authority (Appendix 5, Figure A.18). Therefore, one of the most significant problems facing the management authority is that of illegal building/construction within the highly protected Zones of the World Heritage site. A long-time NGO worker familiar with the landscape of Angkor observed:¹⁶⁷

“As I work every day around the villages of Angkor, I also noticed recent uncontrolled constructions being built in the villages and along the roads. These constructions are usually of high dimensions and in concrete, in a style that has nothing in common with Khmer architecture” (UNESCO, 2002, p.53).

Uncontrolled development (that is, not subject to a planning overview process), permeates the landscape of the World Heritage site. Accordingly, the management authority is constantly attempting to address non-compliance problems. For instance, internal management restructures have aimed to support and strengthen APSARA’s role in land administration. In a 2008 restructure, for example, the “Department of Land Planning and Habitat Management in the Angkor Park” (DATGH) was established.¹⁶⁸ The goals of this new department are to deal with issues associated with land planning; construction works and relationships with the population. This department has been tasked to issue “Certificates of Compliance” and to plot registrations (an initiative first identified for Angkor in the New Zealand funded Angkor Management Plan, 2007, p.89). Thus far, pilot projects have been established (Khuon Neay, *pers comm.*, June 2009), and it is too early to comment on the success of this initiative. Nonetheless, management is mandated to effect land use management/administration changes.

¹⁶⁷ Ms Ravynn Karet Coxen, the Chairperson of the Nginn Karet Foundation for Cambodia in her address to the Ninth Plenary Session of the ICC in 2002. The NKFC is headquartered in the United Kingdom. It is a non-profit humanitarian organisation. See, <http://www.nkfc.org/>, accessed 30 March 2009. The NGO has a base in Siem Reap.

¹⁶⁸ By virtue of Sub-decree no.50 ANK-BK dated May 9 2008, Article 10.

6.5.2 Non-compliance / Breaches

The regulations allow residents within Zone 1 to build (or re-build) but with significant restrictions by virtue of Article 2 of the September 2004 Order (“The residents may renovate or repair dilapidated houses, or construct a new house to replace an old one, with authorization from APSARA Authority.”) Residents are *very aware* of these restrictions. Fifty-one of the fifty-six respondents (91%) were able to articulate some of the local laws (Appendix 5, Tables A.12 – 16). Moreover, when asked about the type of disputes that arise in the villages, those disputes relating to building new houses dominated responses (36 of 56 respondents or 64%), making this issue number one amongst conflict issues, see Figure 6.23.

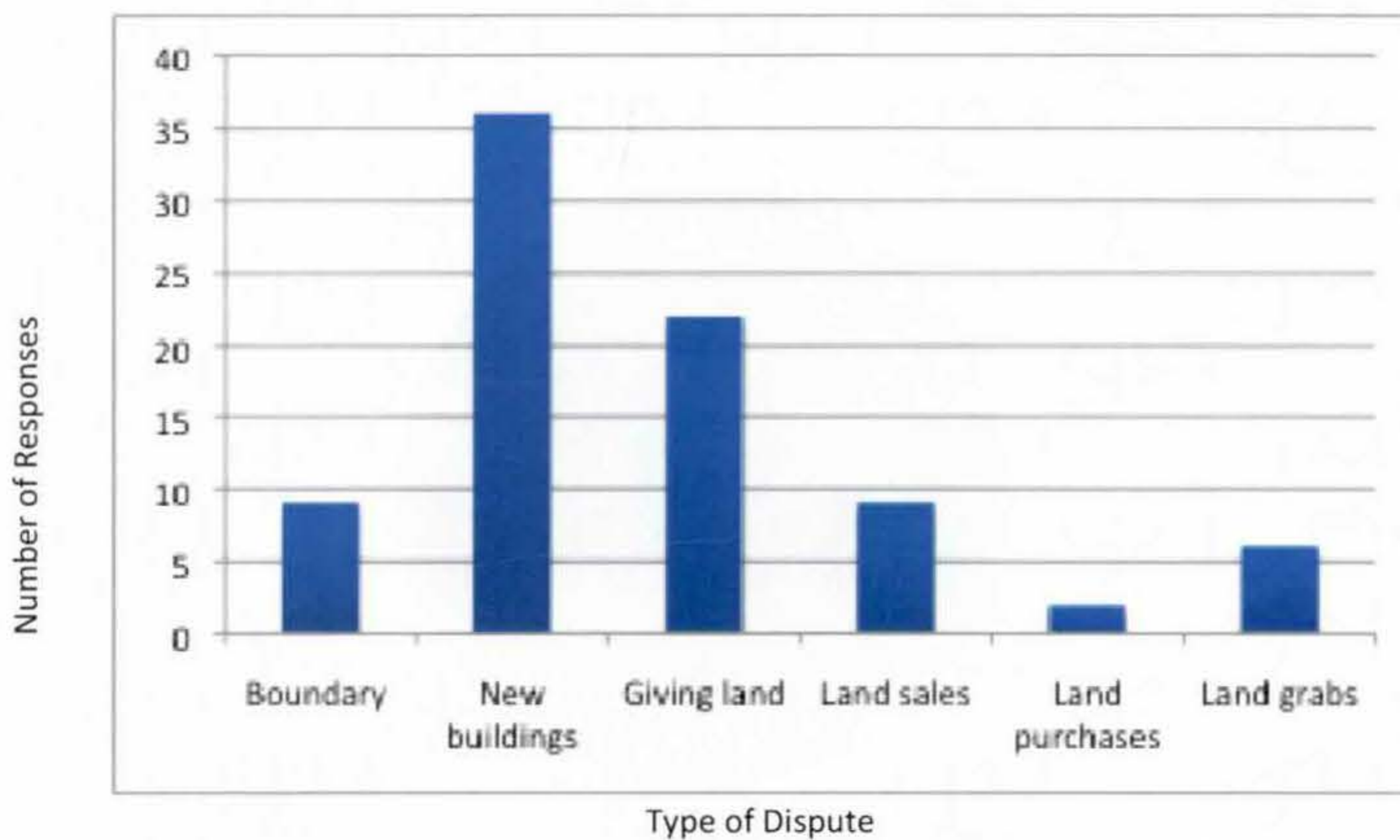


Figure 6.23: Awareness of different types of disputes, expressed as responses

In Chapter 1 Figure 1.3 depicts an APSARA public notice outlining some of the restrictions imposed on the site. This particular sign is located on the boundary of Zone 1 and 2 of the main road into the Central Park. Similar signs are located on the main roads entering the highly restricted Zone 1. The sign, which had been vandalised with an axe, makes five points as follows:

“This information is for the people and they should pay attention to it as it applies from this point onwards.

- From this point on the stone in the area of Angkor is to be protected.

- There must be no selling of land in the Angkor Park and if land is sold the government may take the land away.
- The APSARA authority have full rights to build or construct things in the Park.
- All permits for construction must be obtained from APSARA and there is to be no construction on Park land.
- The existing buildings must not be destroyed by the owner (effective within a month of this notice)."

Despite the apparent frustration exhibited in Figure 1.3, the success of the information campaign may be measured in the extent of knowledge about these restrictions. Ninety-one percent of respondents knew of local heritage-protection laws, Figure 6.24.

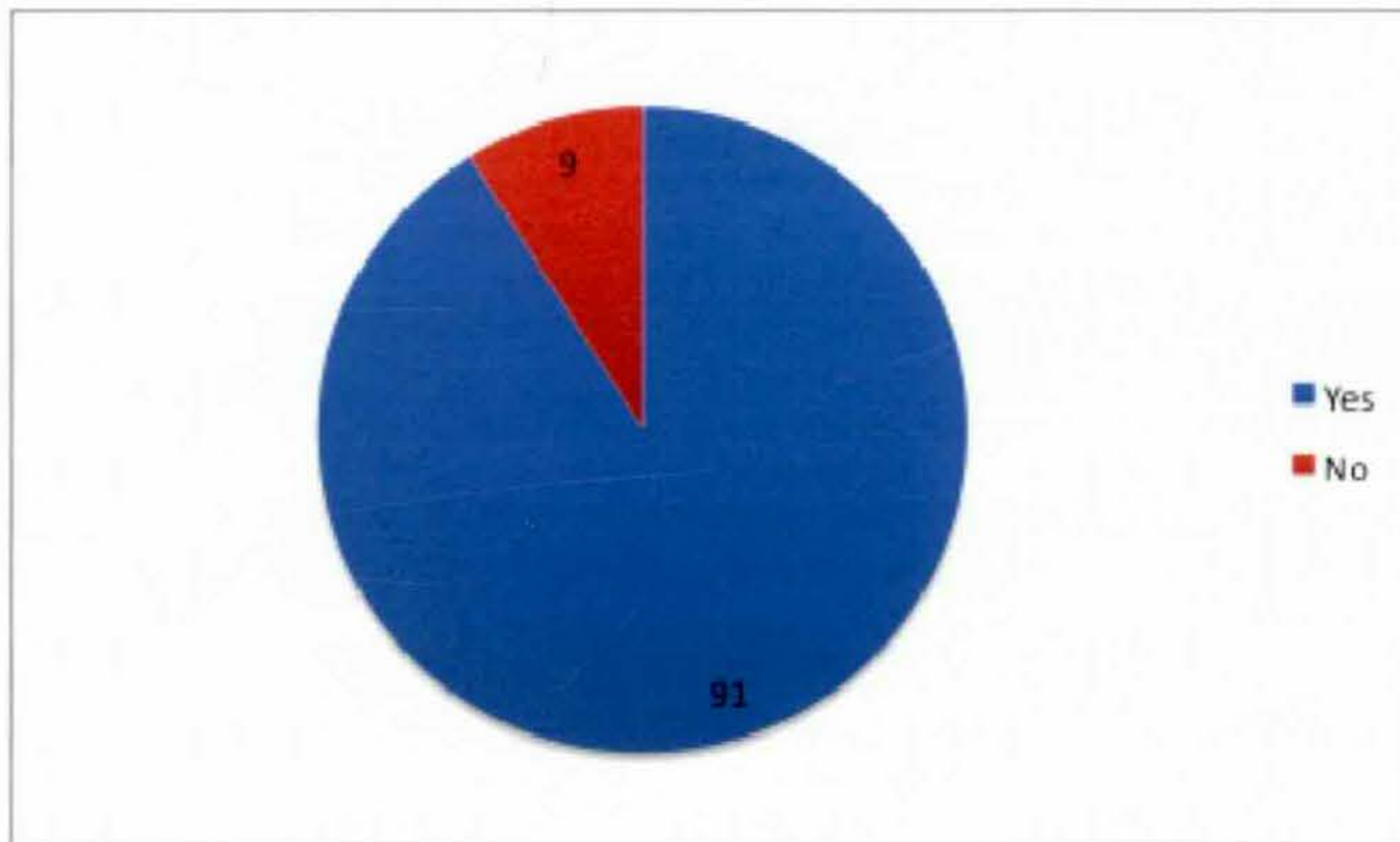


Figure 6.24: Awareness of localised rules and laws

Those surveyed provided the following examples of the types of laws arising with the need to protect heritage:

Table 6.7: Description of local rules

Respondent	Description
1	The rule does not allow to build a new house, but the house can be expanded when the last gets married. Other will be given some land at Tany area.
2	Land is only for the vegetation or farming; prohibit to dig illegally on the land in the house except for the backyard.

3	Available for the vegetation; Be able to build house if has construction permission.
4	Must have construction permission before building; bare land can have agricultural activities.
5	More room under the main house are not allowed to build - only one. No concrete house
6	Old house can be repaired or build new but with permission; can build room after the permission; no filling in any kind of pond; no digging the hillock; no digging for the plant growing
7	3 month permission in advance; no big house is allowed to build; no room underneath house is allowed to build; land can only be cultivated; no digging.
8	Traditional house is allowed to build; One room only under the house; construction must have permission; bare land without original or old house is not allowed to build.
9	Old house needs to be repaired must ask for a permission 1 month in advance; many floors are not allowed - not high - not too big; land (bare) is for cultivation - no house construction
10	Ask permission before the construction; bare land is for the cultivation.
11	No concrete house; no tinned roof.
12	Ask permission 3 months in advance.
13	Build house must have permission from Apsara Authority; only traditional house is allowed; no cutting the tree to expand the land.
14	Ask permission before the construction; building is easy for the old house - if not it is very hard to ask for the permission; bare land is not allowed to build only for the agriculture - no digging.
15	Ask permission before the construction started; house is made only of wood.
16	Ask the permission through the Village Chief before getting to the Apsara Authority.
17	There is house pattern for the people who want to build the house; Thai-styled house is not permitted to build.
18	I am not quite sure.
19	Construction must have permission; Maximum height is 9 metres; Land without old house is also possible to ask for the permission.
20	Construction is available for those who have old house; construction can be conducted unless there is permission from Apsara; People can have a choice of house style as they wish.
21	People who have old house can repair or build new; land is not allowed to dig or expand the land or filling in the shallow place.
22	Make permission before doing something; land needs to have letter of ownership.
23	Old house is okay to build the house but must ask for the permission and without any house or cottage is not allowed to build the house.
24	Even with the permission in hand it is difficult; land is only for the agriculture.
25	
26	Must ask the permission for any construction; wooden house with red tile roof; 2 floor house is not allowed; follow house pattern of Apsara; one room is allowed to build; land is used for agriculture; before doing anything must ask the permission.
27	Before building the house one must ask the permission; land without house is for agriculture only.
28	People who build new house must ask the permission from the Apsara

	Authority; the site of the house must go with what is said by Apsara; rules or laws of land - I am not sure
29	I don't know the process related to rules or laws about the house.
30	Must ask permission before the construction; Land cannot be expanded by means of digging or cutting the trees.
31	Must ask permission for construction; land needs to have letter of ownership.
32	The law is strict but there is a lot of construction.
33	Must have permission before the construction; must follow the house pattern by APSARA Authority; no rules or laws of land use.
34	
35	New house building must have permission; House is made of wood (1 floor) - one room underneath; no rules or laws related to the use of land; not able to sell land in the park.
36	If there is permission there is construction. Rules or laws of land - I don't know.
37	Ask permission before construction if not will be fined or demolished; build house by the house pattern issued by APSARA; land without anything on it is not allowed to build anything
38	People living in this area can build house but must ask permission; land needs to be owned by a letter of ownership.
39	Ask permission before the construction starts; maximum height 7 metres; traditional house; land is for the agriculture but not for digging.
40	Old house can be allowed to repair or build new house after the permission. Land is not allowed to build new house but other places I have noticed they could build houses. This shows the unfairness.
41	Ask permission from APSARA Authority by the Village and Commune Chief; house is a traditional style; Bare land is possible for the agriculture but not for building the house.
42	No big house is allowed; Land is not allowed to dig or cut the trees on the land
43	Ask construction permission by village chief; cannot build big house; bare land cannot be dug except for cultivation
44	No permission, no construction. No more 2 floors include the basement. Old house can be repaired or built new. Land is not allowed to demolish the hillock
45	Ask the permission from the Apsara Authority; no concrete is allowed; house is made of wood; land - no rules or laws.
46	To ask the permission is quick and easy for the old house; if not, it must be very difficult to ask; land which has old house or cottage is allowed to build new house; bare land is not allowed to build - only for agriculture.
47	Old house can ask permission for the building but for those who are newly married will have chance to build house on bare land because they are listed by the Apsara people but for those who were listed by the time the Apsara people listed in they will not allow to build house on the bare land; Apsara Authority tried to keep the same numbers of houses today which is easy to control.
48	Ask 3 months for the permission before the construction; house is made of wood applied the red colour; hillock is not allowed to clear or demolish; if it is the pond it is alright to make it deeper; no filling in the pond.
49	Old house is allowed to repair or to build new house must be made of wood; bare land is not allowed to build the house.
50	Old house is possible to build but must have permission; house is made of wood with red tile; bare land is not allowed to build

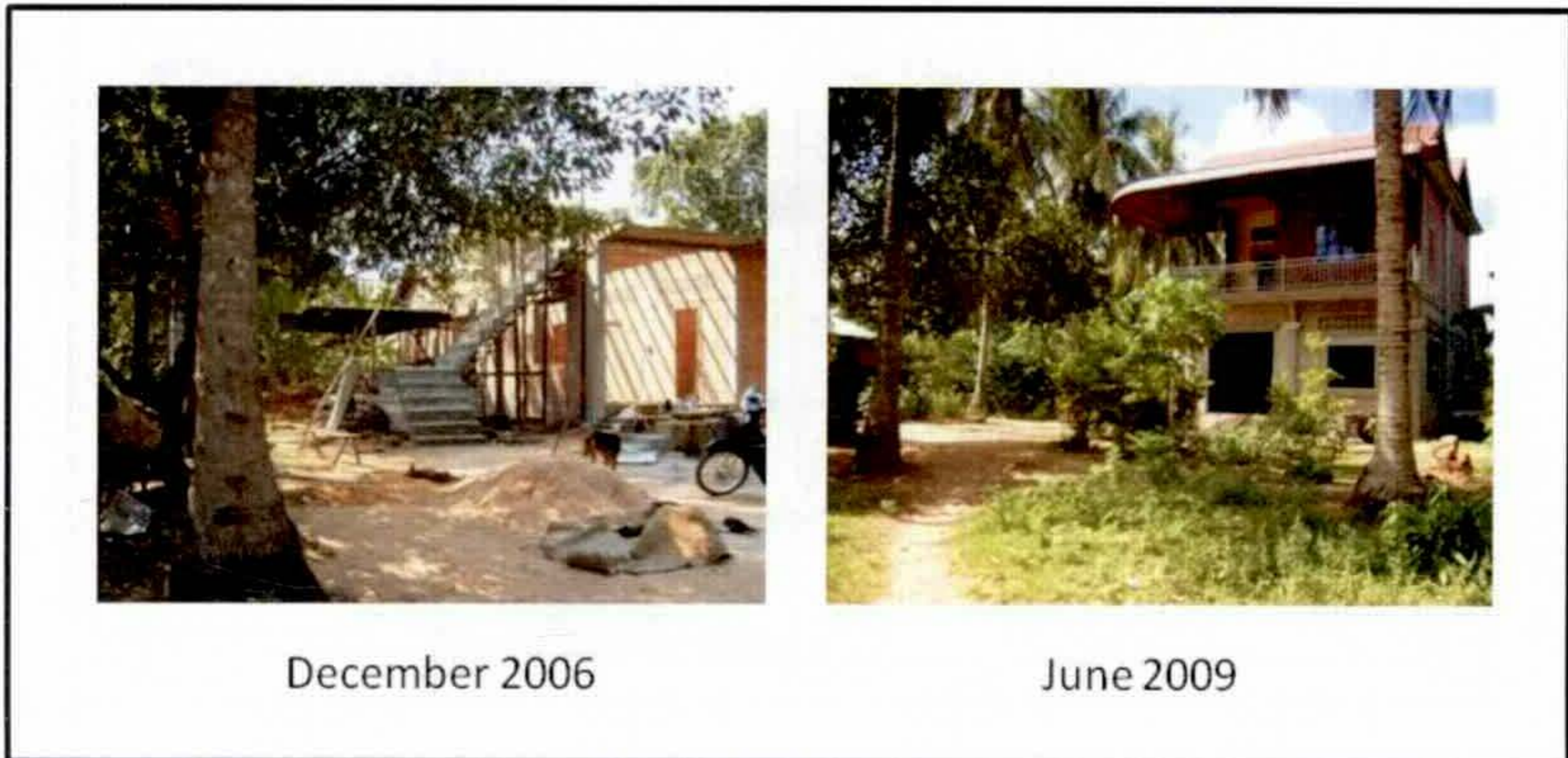
51	Ask permission from Apsara Authority; bare land is not allowed to build the house.
52	Ask permission 3 months before the construction starts; house must have the correct size; no rules or laws apply to the house/land.
53	Ask for permission unless there is an old house; the house is traditional and wooden; one room only allowed to build; no concrete house; no high house; land is sellable.
54	
55	For whom who have old house can repair or build a new one by asking permission; build traditional house; Apsara Authority does not allow to sell the land.
56	Old house is allowed to repair or build a new one; the house can be expanded but not allow to build another closer new; the house has the maximum size of 9 x 9 metres with the height of 7 metres; the land can be changed ownership to the children's ownership.

Particular rules are repeated, especially those requiring permission to build/re-build (construction) and those relating to building style and design. In one in-depth interview, the respondent actually found and provided the interviewee with a copy of a booklet, which describes the rules and regulations that apply to people living in Zone 1. This booklet reproduces the 1994 and 2004 rules and provides a section on frequently asked questions for residents. This booklet was distributed to households located adjacent to the Bakong monument. Therefore, while this respondent could not recite the details of the laws, she had the information at her disposal.

Nonetheless, and despite the extent and level of knowledge about the rules (regarding land use and building), there remain very many instances of housing and building stock located within Zone 1 which fails to comply with the current rules. While much of this development has occurred under previous regulatory regimes, many newer houses also fail to comply with APSARA rules.

One such example of the failure of new houses to comply with building requirements is that of the house of a 62 year-old grandmother, who has lived in her village all her life. Figure 6.25 shows two photographs of her house – one during and one after construction. It does not comply with the Khmer-style building requirements set out by APSARA because, for example, it is made of concrete, rather than wood, and fails to adopt the timber cladding and external style required by the rules. Moreover, this particular house also breaches the requirement that permission be sought prior to construction. One of the rationales for requiring permission from

APSARA before building new houses is that it allows the Authority to check if the new building impacts on any archaeological resource. Although the grandmother in this case is re-building a house on what she perceives to be her own land, as allowed under the regulations, she has moved the location of the house slightly. The previous house was a dilapidated wooden structure, with one primary room. The new house is a two-storey brick, concrete and timber structure set on a higher ground.



Source: Gillespie, 2006, 2009

Figure 6.25: House on Prasat platform

While use of the higher elevation is commonsensical in an area which frequently is subject to flooding during the wet season monsoon, the mound upon which the house has been located is also a known archaeological feature – a prasat mound – the raised platform upon which an ancient monument would have stood. The construction of a new (non-conforming) house on an archaeological feature is a clear and significant breach of the rules. Permission was sought from APSARA to build this new house but the management authority refused because of the (mapped and is therefore “known”) presence of the prasat. Nonetheless, despite numerous visits from those in authority and despite acquiescing to stop construction by providing a thumb print on official forms as evidence to this effect, the home was finished without any adverse consequences. Figure 6.26 is a map identifying archaeological features throughout the greater Angkor area, with the Rolous region highlighted. Mapping of the archaeological features around the greater Angkor region has a long history, with recent efforts of the EFEO and The University

of Sydney providing the most comprehensive evidence of a vast engineered landscape in the region (Stone, 2009).

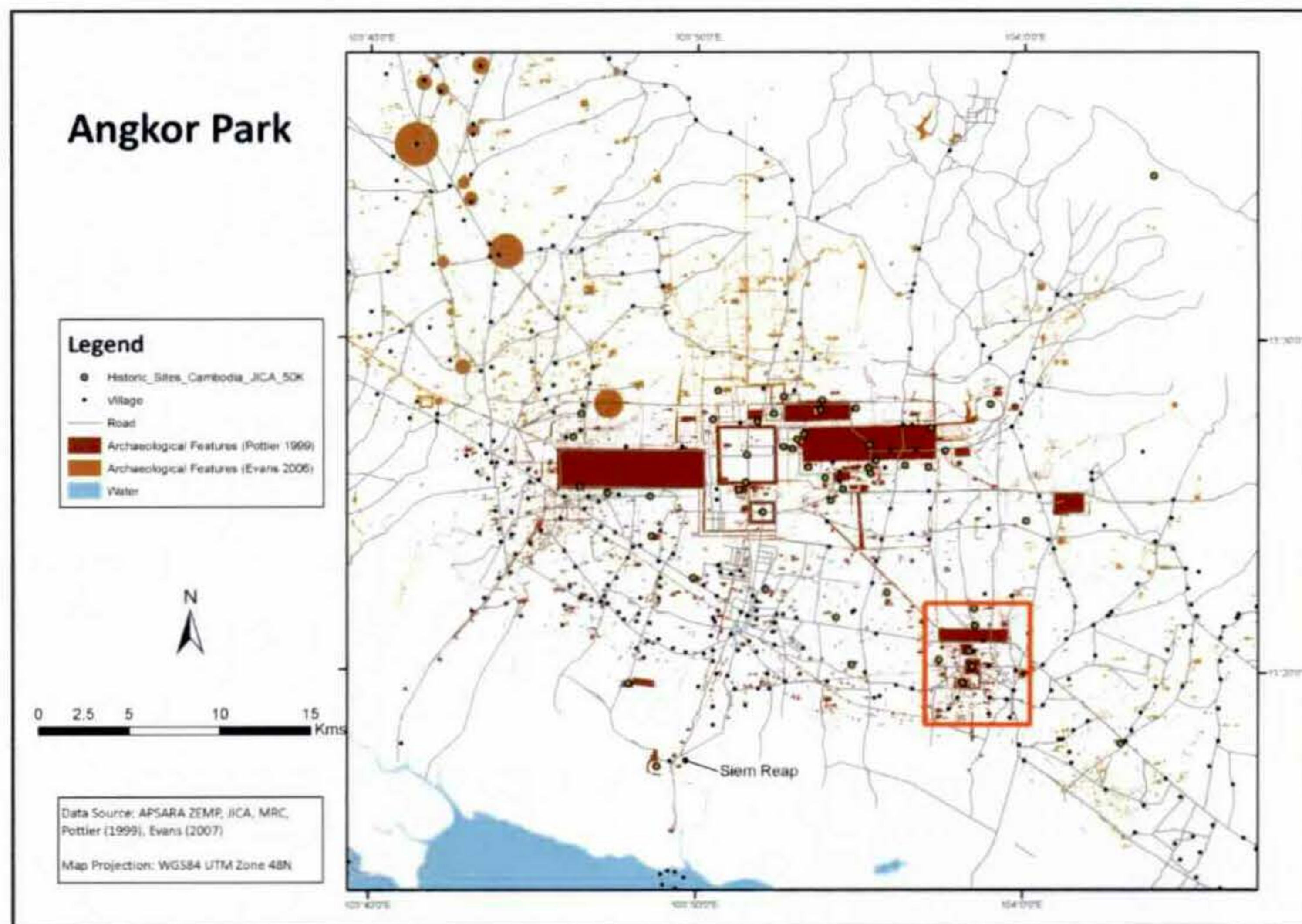


Figure 6.26 Archaeology Map of the Greater Angkor Region with Rolous Group highlighted

While the map represents the archaeological features apparent on the landscape, it is based on remotely sensed data supported by limited ground-truthing, and cannot prescribe archaeological, scientific, or any other 'value', to all the features described (Evans, 2007). The uncertain value of features mapped in cartographic representations highlights the difficulties in determining/directing building approvals. Although the house has been built on a feature identified on this map, and which is clearly an archaeological feature, it is also clear from the in-depth interview with the home owner that her need to build a new house was of uppermost concern – and the value of the prasat mound for this resident was exclusively topographical rather than scientific or cultural. Evans (2007) notes a tendency within Siem Reap (as a low lying Province) for modern populations to adapt and use ancient features including elevated areas.

The local Commune office was also concerned about this particular house construction on the prasat platform. The concern arises partly as a consequence of the inconsistencies (over time)

they perceive in the management authority's approach to enforcement. A Commune Clerk said:

"...for APSARA it is too late for stopping the people because this rule came in 1994 but APSARA started to practice their law strictly... about 3 years ago. Compared to outside land theirs is expensive ... this land is cheap and this is a problem for the people.... [because no one wants to buy their land] ... they [meaning the Authority] had to go to Court to get a signature to stop it (the house on the prasat)".

Another example of a non-compliant construction is the house depicted in Figure 6.27. This photograph shows an existing house with wooden poles. However, in this image there are also four concrete poles that are set to replace the existing wooden poles – in breach of the rules.



Source: Gillespie, 2007

Figure 6.27: Replacement of wooden poles/stilts with concrete poles

The resident of this house is a mother of five who works in the fields and around the house. She was born in this village, was relocated during the War (the Khmer Rouge regime years, 1975 – 1979) but afterwards returned to her village. She had this house built in 2002. At that time she gained permissions from the Village Chief and the Commune Chief. The Commune Chief sent

the proposal “to the people working in the APSARA authority” and she obtained permission to build a house. At that time permissions were not as difficult to obtain as they have subsequently become. She said that one example of the newer rules was that the length of the house is limited and if it is extended in error the occupant will be fined. Although, during the course of an in-depth interview, she indicated that she understood the restrictions, in that “if she has a little house from the time she started living here she can build the house by asking permission from APSARA authority”. When pressed about other types of restrictions, including building in accordance with traditional or Khmer style housing, she avoided a direct answer by reciting other restrictions (the prohibition on cutting down wood). Although this response could be explained by the vagaries of cross-cultural interviewing, it may be that she was unwilling to talk about the regulations regarding the style of housing because she was intending to breach these rules. Another general point is useful at this juncture – there is a link between wood availability and the use of forest resources. Wood has become more expensive as residents can no longer harvest timber or other resources from the remaining forest, and residents interviewed suggest that the restriction of supply has driven prices up. As a consequence the use of concrete poles in house construction has become widespread. Moreover, instances of replacing existing wooden poles with concrete poles are also common with reasons beyond merely economic practicality (such as, termite problems). Many people believe that a house may be cursed if the wood used has been cut down from a sacred tree. Spiritual beliefs are widespread throughout Cambodia as well as within the World Heritage Park itself (Lloyd, 2009). Animist beliefs, such as widespread belief in local spirits including the *neak ta*, are often associated with objects such as trees (*ibid*). In these circumstances some villagers who were interviewed showed a preference to build with concrete poles for this guarantees that a *neak ta* tree has not been disturbed and cannot bring ill-will to the resident household.

In an interview with a forty-three year old mother of two, the prohibitive cost associated with compliance with the housing regulations was highlighted. The house built by this interviewee was new and highly visible; especially to tourist traffic travelling along the road between Highway 6 and the Bakong temple (Figure 6.28).



Source: Gillespie 2007

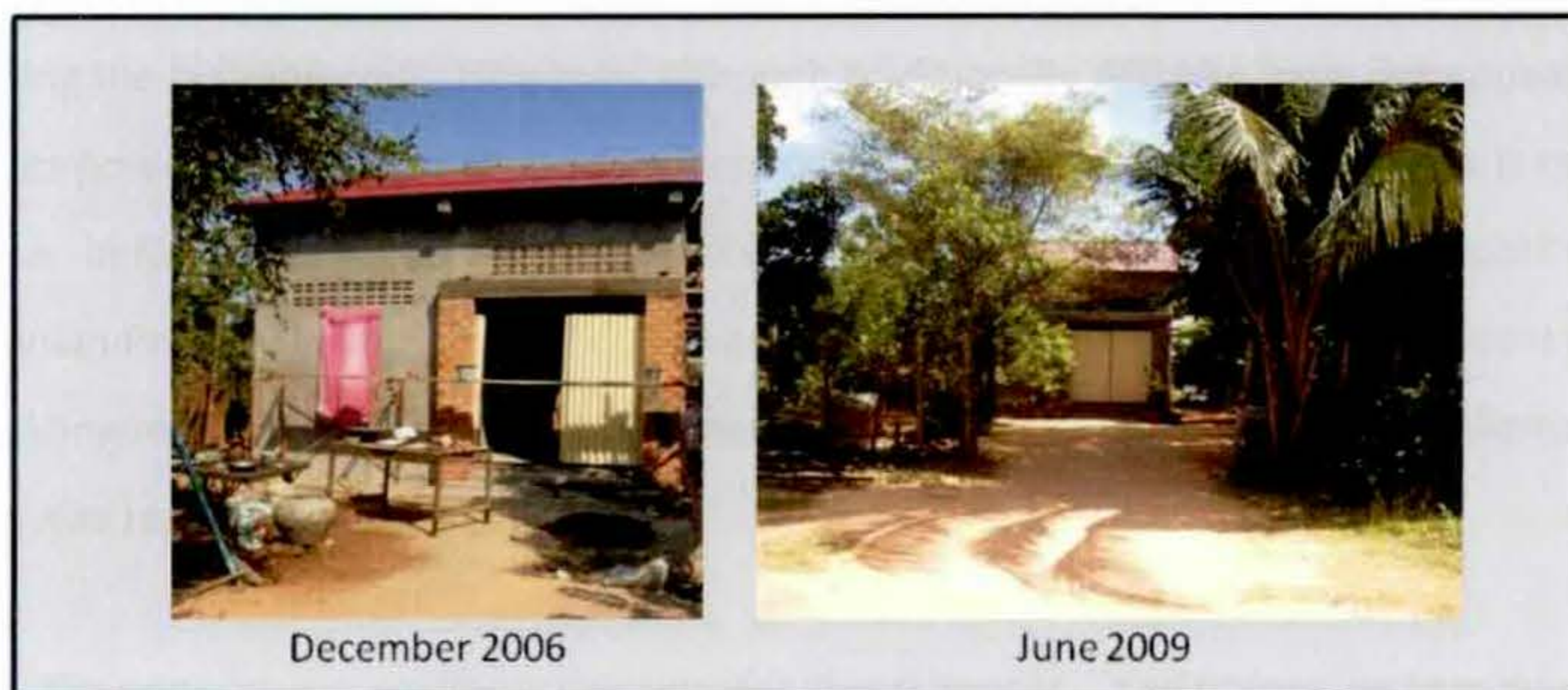
Figure 6.28: Regulatory compliant housing with problems for owners associated with the cost of materials

To obtain permission to build the family's new house they described a three-step process. They first went to the Village Chief, then the Commune Chief and then District Chief who then forwarded their application to the APSARA authority. In making their application to the Village Chief they asked him to provide the paperwork they need to complete for APSARA. They completed the forms and provide photos of the old house. They gave this to the Village Chief, who forwarded it to the Commune Chief, who, in turn, provided the application to APSARA. A few days later, people from APSARA came and measured, assessed the application and drew plans. They did not pay a fee to APSARA but they did pay money to each of the Chiefs. They reported that there is no set fee and they are not required to pay any money by virtue of the regulations but there is a convention to provide some money to pay for photocopying, paper, the phone and so forth. The authorities do not ask for this fee. However, despite the discretionary nature of this fee, it does add to the cost of building. Moreover, the requirement to build in expensive wooden materials to comply with the Khmer-style, can be financially challenging. Although this family had permission to build a new house, it had not been completed because they did not have enough money. They intended completing the house when they had saved more money.

6.5.3 Enforcement & Resolution

The management authority is responsible for policing non-compliance within the World Heritage site. Although the residents have some understanding of the role of the management authority, data from both the interviews and questionnaires suggests this is largely confined to the view that it is solely responsible for preserving the monuments and temples. However, the Authority's mandate extends well beyond preservation of the monuments.

An in-depth interview with a young mother with two children under the age of three illuminated the problem facing both the residents and authorities alike. Figure 6.29 depicts her recently constructed house. It is located in Zone 1 approximately 300 metres from a main monument (but it is not visible to those on the tourist route). The photograph on the left depicted in Figure 6.29 was taken while the authorities (including representatives from the Army, APSARA's "Intervention Unit", the Commune Council and Heritage Police) were in the process of extracting a thumb print from the home owner in late December 2006.



Source: Gillespie, 2006, 2009

Figure 6.29: Recently constructed non-compliant house

The thumb print is required to ensure that the residents commit to changing the house to ensure it complies with the building style required by the management authority. To "fix" this house they were required to build a second storey in timber. The respondent explained that the costs of building in timber and putting on a second storey on to this home were excessive

given the high costs of wood. Although she was aware that permissions were required from APSARA before building work commenced, she had not gained any permissions:

“She said she knows it but she wants to build it for a while for just living and when they got enough money she will rebuild completely so it is not yet complete. They will complete when they have enough money...

She said it is very hard to pay for the wood and also very expensive. When we take wood from the forest it is cheap but on the street there a lot of police to stop them to ask for more money, that is why it is a problem”.

She also stated that she did not understand why her land was subject to restrictions – and that the authorities had not talked to her about the restrictions. She was very concerned that without the permissions the authorities could knock the house down and although she had not seen or heard about any case where the authorities had actually done so, she said that they had threatened this action the previous day. If they pulled down the house she had no plans about how she would then proceed. As is illustrated in Figure 6.29, two and a half years later this house had not been rebuilt to meet the required style, nor had it been demolished for clearly breaching the building code. However, although traditionally APSARA have not appeared willing to use its power to demolish illegal constructions, media reports suggest that this is no longer the case. In November 2009 villagers from within Zone 1 (Kork Chak Commune) petitioned the Cambodian Prime Minister after a house had been demolished by APSARA because it breached the building regulations. The Director General of the APSARA Authority, His Excellency Bun Narith, was reported as saying:

“In general, we are doing this only for illegal houses... and before we tear down homes, we ask villagers to move their illegal constructions. If they do not listen, then this is the last stage.” (Rann, 2009)

A management perspective on dealing with conflicts was provided by an APSARA official during an in-depth interview. The Department of Security and Co-operation was established within APSARA in 2006 under a law designed to coordinate APSARA, the Heritage Police, the military (army), Village Chief's, Commune Chief's and District Chief's. This department is responsible for patrolling and stopping construction in the protected Zone. The APSARA official indicated that

there were very many difficulties with residents. He mentioned that many people move into the area from other provinces and want to cut down trees and build houses and, while they know the rules, they still break them (often during the night). Although he also admitted that many people do approach APSARA for building permissions others “who don’t know just build small houses”. He thought that most understand that it is a protected area (“ancient”) and comply because they are afraid they will lose tourists. In terms of dealing with breaches he said that they will not pull the houses down or fine them, and that another department “may know how to deal with this”.

The dilemma of enforcing the regulations is not restricted to the World Heritage site. The problem of achieving good governance, represented through formalising the regulatory framework for transparency and accountability, remains one of the overarching concerns for the country and the international community (World Bank, 2004). In this setting the lack of enforceability at Angkor is but a small example writ large by virtue of the World Heritage listing. Observations of Jacobsen (2005) shed some light on this from an historical perspective, when he writes that little has changed in terms of *punishments* from the colonial period through to today and despite the ability of Cambodians to bring conflict to the Courts for resolution, few do so, for “they seem to have little faith in the impartiality of the police and judiciary” (*ibid*, p.253). Despite years of rule by foreign powers and from domestic interests, the punishment regimes have been relatively static. Given this, there has been a commonsensical call by many observers of the justice system that reform ought to be built on understanding existing legal norms and cultures – and not simply imposed upon the community without reference to their existing ways (Nee, 2003). The critical need to understand the prevalent legal culture should also underpin policy with regard to planning and regulating the heritage site and it should not be immune from this process simply because the laws are enacted by virtue of the country’s obligations to an international legal instrument. Accordingly, the research questions driving this research sought to gain some understanding of the way in which conflicts are solved on a daily basis.

The questionnaire specifically sought to examine the different ways individuals solve land-related conflict. When asked to choose from a variety of people to help them resolve hypothetical land related conflicts an overwhelming number of respondents (42 of 56 or 75% of those surveyed) would seek the advice of the Village Chief (Figure 6.30; Appendix Five, Table

17.1). This is not a surprising result given the existing cultural norms, which have been reinforced through the central government's policy of decentralisation.

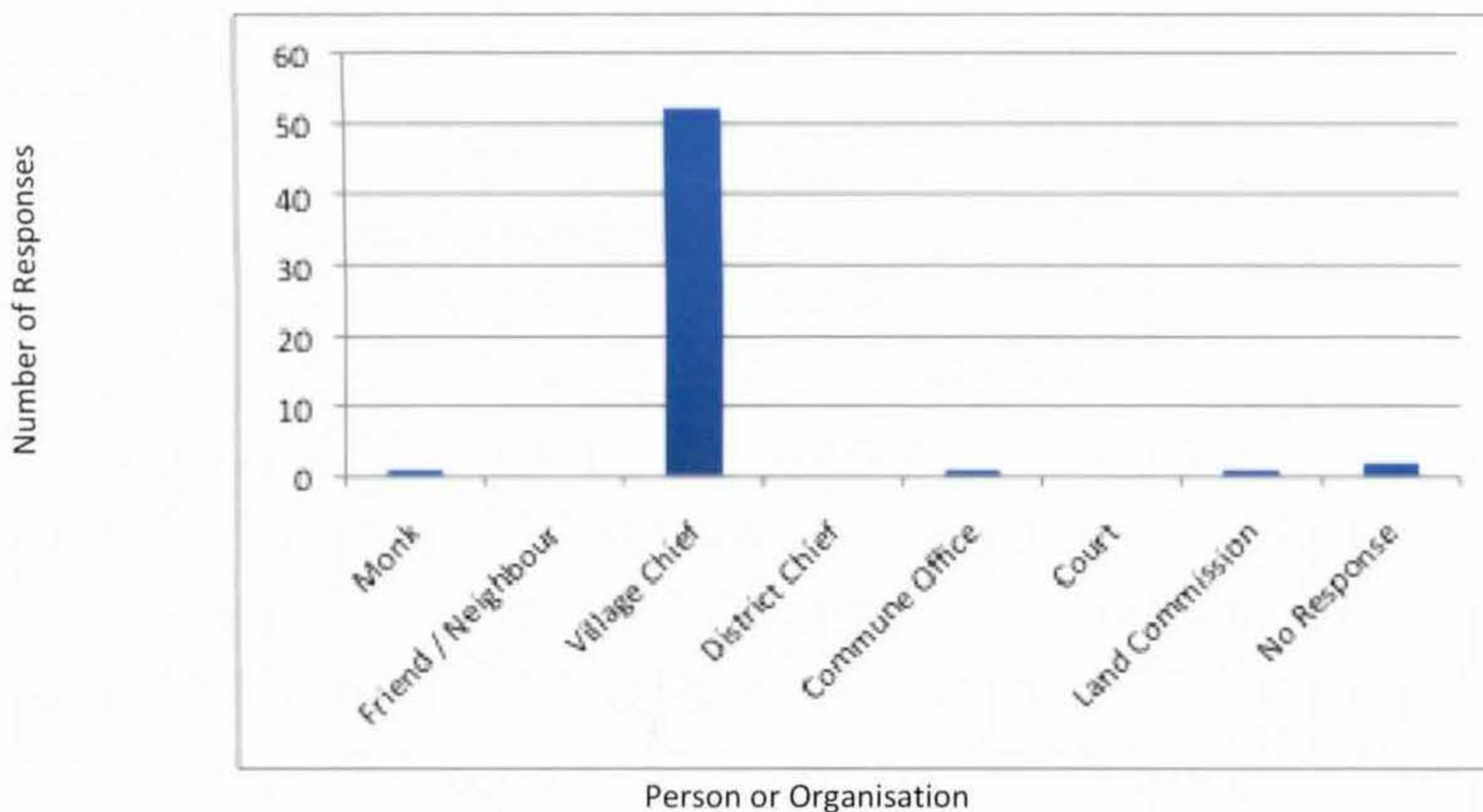


Figure 6.30: People/Organisations respondents would turn to for help, expressed as number of responses

When asked to elaborate on the reason for their choice many respondents gave similar answers, including:

“Protect people’s security”;

“Co-ordinator”;

“Manage the problems in the village” (see Appendix Five, Table 17.1).

A very significant challenge to this prevailing conflict resolution model (where the Village Chief is the first port of call), arose during the course of an interview with a Commune Clerk. As a long-time resident and as someone with standing in the local village he had been called upon to adjudicate upon countless disputes between villagers. In his comments about the efficacy of this system, compared with a more formal adjudication process, he expressed a strong preference for the imposition of a more formal conflict resolution system. This perspective contrasts with the results represented in the graph (Figure 6.30). It brings into focus and reinforces the fact that the landscape is legally plural – there are dual legal systems in place here. It also appears that the systems are not working particularly well together. There

appears to be a missing link between the more normative, tradition system that most villagers appear to prefer and the State-sanctioned system, which the Commune Clerk prefers. Few villagers expressed a good understanding of or willingness to embrace a formalised conflict resolution mechanism.

6.6 HERITAGE MANAGEMENT AND PRACTICE

An internationally respected heritage professional has written about management practice at Angkor. She observes:

“Locals have been excluded from management decisions, have laboured under the direction of foreign ‘experts’ and their long-standing rights to farm and utilize the area are increasingly restricted in the interests of the conservation of these World Heritage values” (Sullivan, 2004, p.50).

Much has also been written about the “living” landscape at Angkor and hundreds of thousands of people that call the area home. Figure 6.31 depicts images from the Rolous Group of monuments which illustrate the lived-in dimension of this landscape. The main monuments of Preaek Ko and the Bakong Temple are shown, both of which lie in direct proximity to the villages of Ovloak and Thnal Trang. The Bakong monument is also home to a working monastery, and the region surrounding the monument is actively worked agricultural land. The situation in which locals are excluded from management juxtaposes an incongruity given the living nature of this region. Given this, how much knowledge do local residents have about the site? Moreover, do they understand the role of the management authority?

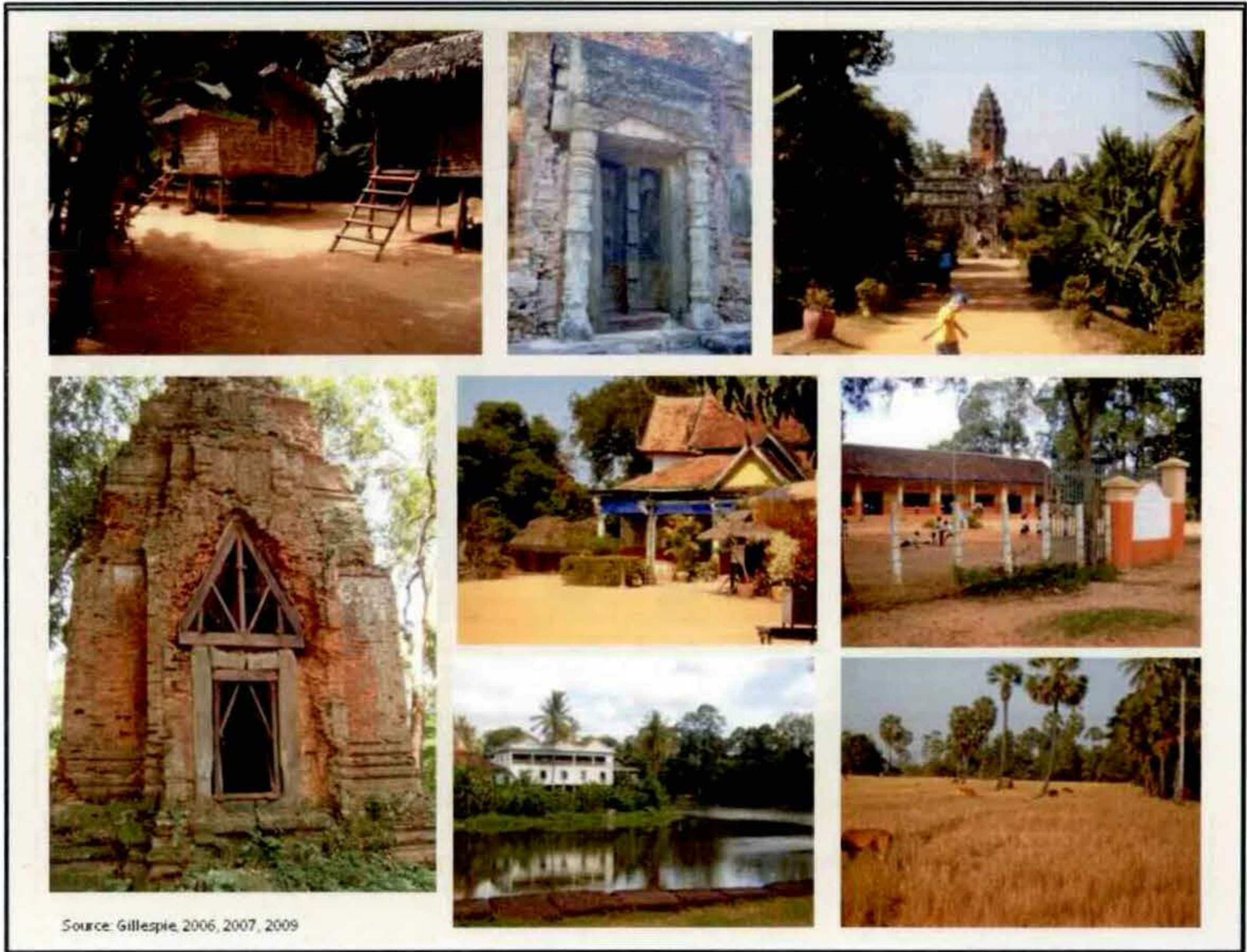


Figure 6.31: The living landscape: Images of houses, temples, schools, a monastery and agricultural land within the Rolous Group

In this section consideration is given to the function of the heritage management authority. All respondents to the questionnaire (100%) knew about the APSARA Authority (Appendix 5, Figure A.16). Moreover, all but four participants could describe some of the functions the authority undertakes. In the absence of *a priori* questionnaire categories, each translated description invoked the word “protect”, see Figure 6.32.

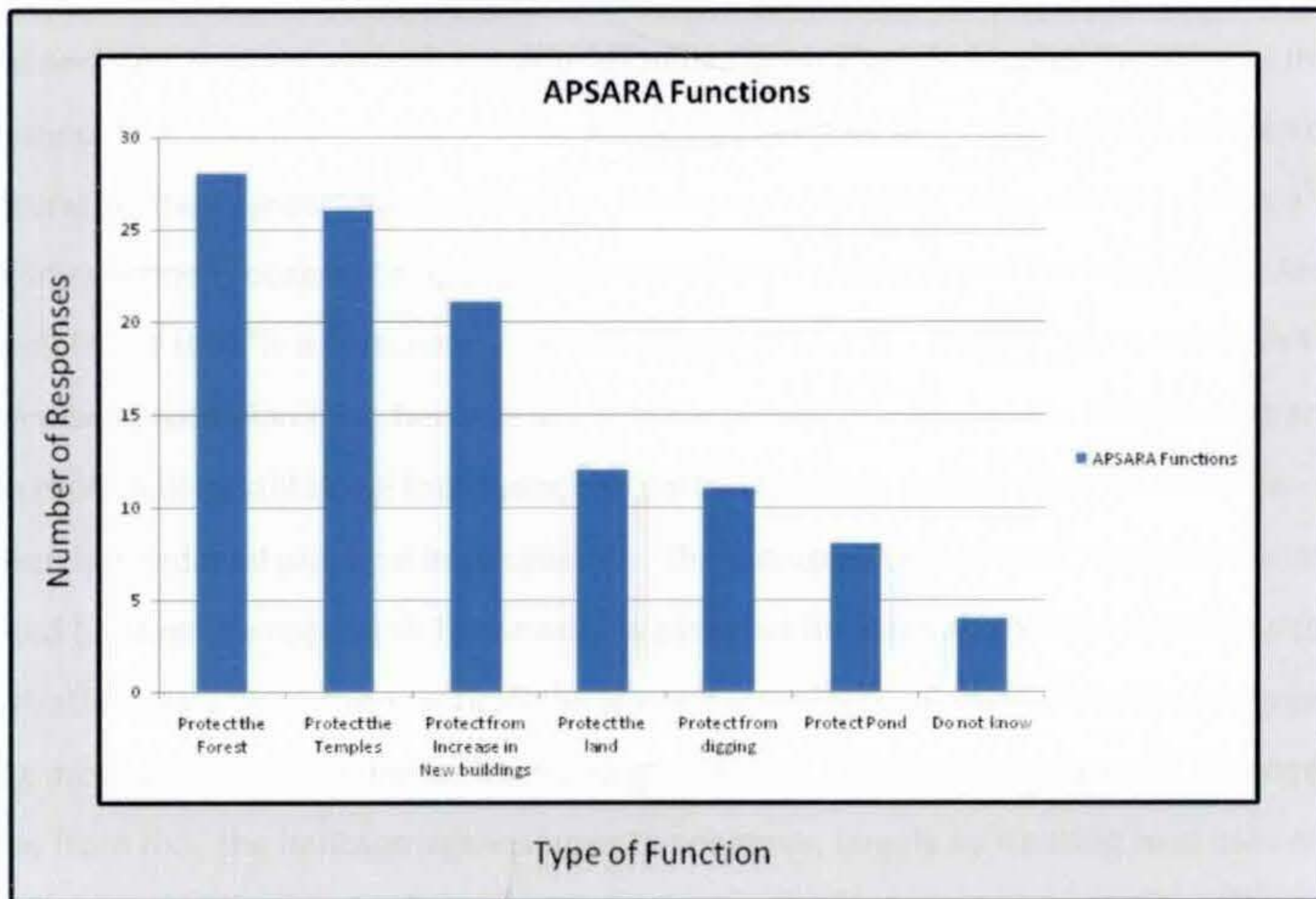


Figure 6.32: Villagers Perceived role of APSARA Authority “Functions” by type.

In terms of heritage management practice, the problems facing the APSARA authority are not unique and apply to heritage sites across the globe as many of the World Heritage nomination portfolios can testify.¹⁶⁹ Read (2001) observed that plans made in the name of heritage protection fail “while at the same time abrogating private property rights and significantly increasing the power and influence of professionals... This has occurred through the application of a naturalised picturesque model of landscape that fails to consider the relationships people have with their surroundings, which are at the root of heritage significance.” Although physically distinct and far from directly comparable to Cambodian conditions, these observations nonetheless provide a salient message for heritage management at Angkor. The relationship between residents and their occupied landscapes; the way in which they use, interact and value their environment, are all enormously important and need to be accommodated in heritage management practice. Read’s (*ibid*) “naturalised picturesque model of landscape” is also apparent at Angkor. A preoccupation with temple and monument management, driven by the circumstances of inscription, has been well described by others (see, for example, Lloyd, 2009; Miura, 2005). Yet, the point that monument preservation has been privileged over and above the welfare of resident communities made in such works (*ibid*),

¹⁶⁹ See, UNESCO website, <http://whc.unesco.org/en/35>, which provides details of the nomination process and challenges faced by all World Heritage properties.

remains valid. In a similar vein, Roth (2000) writes about people-park conflict in the highlands of Thailand and says that not enough consideration has been given to local circumstances in management practices that continue to be shaped by colonial and global forces. In the context of a cultural heritage landscape classification for a site in Vietnam, Logan (2005) makes a particularly pertinent observation, also easily transferred to the World Heritage site at Angkor. Logan points out that “it is fortunate – for the conservationists – that Western attitudes to heritage place protection have become accepted in official planning policy frameworks and, with decision making still being top-down, the general public’s apathy towards heritage protection has reduced practical implications”. The incorporation of local perspectives into an integrated heritage management framework is essential for equitable World Heritage site administration. However, the practicalities of implementing local voices into the heritage planning process are likely to be far from straightforward. Local concerns are not homogenous, but aside from this, the heritage agenda aims to conserve, largely by freezing land uses or by restricting development. This schema clashes directly with local needs and values, which favour development in line with prevailing and emerging social norms.

6.7 SUMMARY

Data collected during the course of this research contribute to our understanding of how a World Heritage designation impacts resident communities. Local perspectives indicate that the current approach, in which regulations are imposed through international and national channels, do not mesh with normative ideas about space or governance. Imposed boundaries are poorly understood and carry little meaning for local residents, partly as a result of limited physical evidence and partly because of a lack of coherence with the normative landscape. The ramifications of the gulf between local values, needs and expectations regarding land-use and heritage management practice are significant. Social norms associated with inheritance, village development, conflict resolution and ownership have been little given priority in management approaches. Although the restrictions are well recognised, there is a general lack of understanding of the World Heritage concept. The consequence is that the rationale behind the restrictions is not well understood.

During the course of fieldwork, residents in Rolous have identified the shortcomings of the current heritage arrangements. There is little doubt that the problems are compounded by confusing enforcement arrangements, due in part to a failure to engage meaningfully with traditional governance. The World Heritage-imposed regulatory arrangements have produced complex administrative structures that do not engage with the traditional patron-client system favoured by local residents. As a consequence, land-use management – particularly with regard to small-scale land-use issues - has become opaque to management, making centralised management difficult and leading to an (exaggerated) perception of “anarchical” land-use. To this end, the aims of World Heritage designation; conservation, preservation and protection are compromised. Moreover, this scenario requires that further legal and policy initiatives be developed to redress this situation.

Chapter Seven

CONCLUSION

7.1 INTRODUCTION

Since 1978 nine hundred and eleven World Heritage sites have been designated across the globe.¹⁷⁰ The number of sites designated worldwide each year varies, from a minimum of seven in 1989 to a maximum of 61 in 2000. In the Asia-Pacific area the maximum number of sites designated per year was 11 in the years 1987, 2000 and 2004. Asia-Pacific sites now represent 22 per cent of all World Heritage sites.¹⁷¹ The growth in site designation in the region in the past decade emphasises the importance of this research. Each site is revered for its “outstanding universal value”, conferred with World Heritage site status, and joins the World Heritage List. As part of the listing process, the site is spatially defined and often new regulations for site management are *required* to be created as part of a country’s commitment as a signatory to the *Convention*. Thus, the rhetoric of international heritage protection encapsulated in the *Convention* translates to local reality as boundaries, buffer zones and rules are created to regulate the site. This research examined the implications of this process for local resident communities using the case study of the World Heritage site at Angkor. The findings of this research suggest that if managers ignore, exacerbate or overlook local concerns in attempting to construct and legitimize World Heritage sites then the resultant landscape becomes a contested space – an unsatisfactory situation for managers and locals alike. Potential conflict resulting from variant notions about land use and control mean that local understanding of the land regulation process is essential for ensuring effective World Heritage site management. Qualitative data collected during fieldwork has provided revealing insights into local perceptions about the protective regime. Research methods have exposed both resident expectations and needs regarding land use within the World Heritage site. The results present instructive assessments by stakeholders who do not typically have a voice in the formulation of heritage protection regimes. The findings highlight that heritage management

¹⁷⁰ As at August 2010, see <http://whc.unesco.org/en/list>.

¹⁷¹ A total number of 198 sites as at August 2010, see <http://whc.unesco.org/en/list/stat#s1>.

values and local values do not always coincide, but neither do they necessarily collide. Rather, this research has found that the ways in which people interact with their environment are far more complex than that considered in current heritage management approaches. What is clear is that residents living in proximity to the temples of Angkor have connections and expectations about tenure and land use which have not been sufficiently accounted for in the management planning process. This conclusion is not a condemnation of management practice *per se*, yet a continuation of this situation would be inherently unjust and threatens the long-term sustainability of heritage conservation efforts. In this chapter some of the key findings are discussed, as are implications and suggestions for further research.

7.2 KEY FINDINGS

The broad intent of this research was to identify, in a World Heritage setting, the extent to which local expectations about land use are met by the regulatory framework put in place to protect heritage. To achieve that aim, this research explored World Heritage obligations, local land use regulations for Angkor and local perspectives on the impact of the heritage-inspired rules (Figure 1.4). The heritage-inspired regulatory framework for Angkor, from a local resident perspective, falls well short of expectations and is incongruous with local values and needs. The Angkor Archaeological Park World Heritage site provides many examples of the problems that arise in the designation of a cultural heritage site and many of the observations that have emerged from this research apply at other World Heritage sites, especially in a developing nation context. Some issues have direct relevance to the Southeast Asian setting.

7.2.1 Heritage Conservation: Public versus Private Rights

Tensions in heritage management between stakeholders are often derived from the perceptions of conflict between private and public interests. Heritage law, like the broader field of environmental law of which it is part, imposes restrictions on private rights ostensibly for the greater good. Under the principles of intergenerational equity, rules about land use activities are designed to preserve the cultural heritage of the monuments of Angkor. However, these rules often impose restrictions which become burdens on residents living in close proximity to heritage properties, and may have been so long before any heritage value was formally recognised. Any exclusive proprietary right is compromised by State-imposed controls in the

World Heritage setting at Angkor. Law is used as a tool in this process; a process which recreates the landscape through the imposition of rules and restrictions. Local expectations about land use and tenure arrangements are not necessarily compatible with a broader heritage management agenda. For local residents around Angkor, security of tenure is assumed; many have pre-existing entitlements to their homes and land. Little is understood of the technical impact on property rights (that is, the land is owned by the State) of the World Heritage listing. In this research it was clear that the exclusion of World Heritage land from nation-wide reform is problematic for a number of reasons. It creates a situation where the ad hoc system of land administration which currently exists (similar to a user-rights/usufruct system) leaves the residents exposed to land use restrictions which are seen to impose unreasonable burdens vis-à-vis their fellow Cambodians. The World Heritage designation adds a new dimension to an ordinary (but very complicated) binary between private and public tenure rights. The obligations to protect and conserve result in what is, in effect, a new land use type that goes beyond customary, usufruct or formal tenure compacts. To this end a new "heritage tenure" label for heritage-burdened land might be considered.

7.2.2 Land Use Restrictions

UNESCO policy states that World Heritage status does not preclude land rights for the inhabitants of the site and the *Convention* explicitly provides (in Article 6.1) that existing property rights ought to be respected. Nonetheless, the land at Angkor is State owned and is, strictly speaking, subject only to limited usufruct entitlements. This research has revealed that there are significant concerns amongst local people with regard to the regulations arising from the World Heritage listing, most notably relating to the right to develop, or with restrictions that curtail this right. The particular concerns of greatest importance to the Park residents are the restrictions relating to land use activities, such as building a new home, subdividing existing plots and selling/buying land. Residents perceive themselves as having inalienable (that is, private property) rights to use their property as they wish and there is a discord between their expectations and the rules imposed to protect the monuments. As successive World Heritage Committee State of Conservation Reports for Angkor demonstrate, in addition to the perspectives of local people recorded here, the reconciliation of these accounts has become a pressing policy consideration. The documentation of local perspectives about land tenure arrangements provided in this research provides an empirical basis upon which more informed

policy decisions can be made. Better understanding this situation should facilitate better policy at this site, and at other comparable sites in the Asia-Pacific.

The designation of a World Heritage site may be considered to be a ticket to prosperity with a significant tourism industry having developed in the recent past around World Heritage properties (Taylor, 2004; Winter, 2007). Although it is clear to any visitor to Angkor that some local residents benefit from the tourist industry, some of the findings in this research confound any expectation of broader benefits. For people living within very close proximity to the protected monuments of Angkor, their prosperity has been compromised by the World Heritage listing. Actual land and property values within the highly protected zones have been adversely affected by the listing, which creates financial burdens for residents within the Park. Other adverse conditions have also arisen, not least of which relates to the way in which villages develop. The issue of inheritance provides an example. The societal norms governing village expectations about land sub-division in which a parcel of land is gifted to children, allowing them to continue to live amongst elders if they choose has the potential to be significantly eroded by the World Heritage site management policy. Restrictions on sub-division and new housing and the policy of relocating natural population growth within Zone One sit at odds with prevailing social customs, and sits in stark contrast to the desires and expectations of most local residents. Populations within the Park are relatively young, on average, so this issue has yet to fully emerge. However, it has the potential to provoke a significant backlash amongst residents of the World Heritage site. As the resident population ages and residents maintain their reluctance to embrace relocation, this is likely to become a more acute issue, creating a potential flash point for conflict between local communities and the management authority.

The observation, borne out through fieldwork activities, is that the knowledge of heritage, and the heritage value of large monuments (such as the Bakong or Preah Ko adjacent to the villages of Ovloak and Thnal Trang) is understood in terms of supporting tourism and not necessarily for any "outstanding universal value". Moreover, the smaller parochial heritage at the village level is not perceived or understood to have any such value and the significance of the Angkorian remains (monuments) is overwhelmed by the more immediate needs for land and improvements in quality of life. Considering World Heritage site designation vis-à-vis land tenure arrangements is not a traditional concern for heritage managers; the priority tends to be cultural artefact restoration and preservation. Nonetheless, for sites with resident populations

who have pre-existing societal tenure arrangements there is a need to re-prioritise management preferences. The demands of a human rights agenda make this more compelling. Conditions relating to placement and location have meaning for human rights. Thinking geographically about restrictions imposed on some, and not others, is the basis upon which procedural and substantive human rights cases are borne out; spatial inequities have the potential to form the basis of human rights claims. This research provides the empirical basis for the argument that a nexus ought to exist between the landscape, people and rules that govern them.

7.2.3 The Role of Law

One of the most interesting implications to arise from this study is that administrators, at any level, do not seem well equipped to deal with a variety of land-use related disputes. Clearly, the imposition of World Heritage status has created additional obligations that are difficult to meet within either the customary or formal regulatory systems which co-exist at Angkor. The existing regulatory system is piecemeal and dispute resolution is confused. There is lack of effective enforcement and penalty provisions and this reflects a significant and growing weakness in the existing regulatory framework. For local residents this creates a bewildering end-result and for the international community it creates the appearance of a diluted international heritage protective regime. In protected area management Fisher *et al.* (2008) point to the idea of negotiated landscapes as a way in which poverty reduction and conservation aims may be better met across large areas. In the present research, it is suggested that effective World Heritage land administration through regulation is a constant challenge for management but solutions can be achieved through a more nuanced, tailored regulatory response which blends elements of both the informal and formal systems together into a coherent whole.

Cambodia has met its *Convention* obligations through the development and passage of a number of legal regulations aimed at site preservation and conservation at Angkor. In this process, however, little attention has been paid to the pre-existing legally plural conditions and to the opinions and perspectives of resident communities. It is argued here that this result has the potential to undermine conservation efforts. This takes place against a more recent national push to decentralise governance through organic law which has created a situation where customary and normative systems begin to play a key role in administration at the local level (Oberndorf, 2004). This thesis argues that land management in the World Heritage site must

take this into account for much of the current regulatory arrangements remain unclear and untested. The imposition of a separate governance structure within the Park creates confusion and the argument of this research is that a tailored regulatory system should be implemented to reconcile these divergent approaches. To this end it is proposed (based on the results of this research) that such a system could be created which:

- Leverages existing structures (mimicking what is already in place informally);
- Formalises the system without institutionalising it (this allows for monitoring and evaluation of performances; deriving metrics and identifying corruption);
- Makes administration more transparent to meet the demands of Western-inspired concepts of governance;
- Meets multiple needs, international heritage management needs and local needs.

A reformed regulatory approach could adopt a tiered system which reflects local customs. Such a system would take advantage of the role of the Village Chief and Commune Chief in village affairs. There clearly needs to be greater coordination between the national management authority and local administrative practices.

7.2.4 Territorialisation

Many local issues at Angkor can be recast as part of a larger, generic set of issues that arise as a result of the imposition of spatially defined planning controls. The process of territorialisation is at work as policies and regulations reshape the landscape. The largely academic concern with the impact of specific laws in a spatial setting that has been explored in the World Heritage site designation at Angkor illustrates this concept in action. Understanding the World Heritage site designation both generally and specifically for Angkor and the historical context of landscape regulation in this geographical setting provides the basis for a thorough account of the way in which the legal frameworks shape and form lived-in landscapes. In the tradition of legal geography this research has provided much needed empirical scrutiny and conceptual reflection (von Benda Beckmann, 2009) on the way in which law acts to shape places, especially in legally plural landscapes. Geography and law have collided in this cultural World Heritage site in complex and interesting ways. The specifics of the way tenure is characterised and ownership

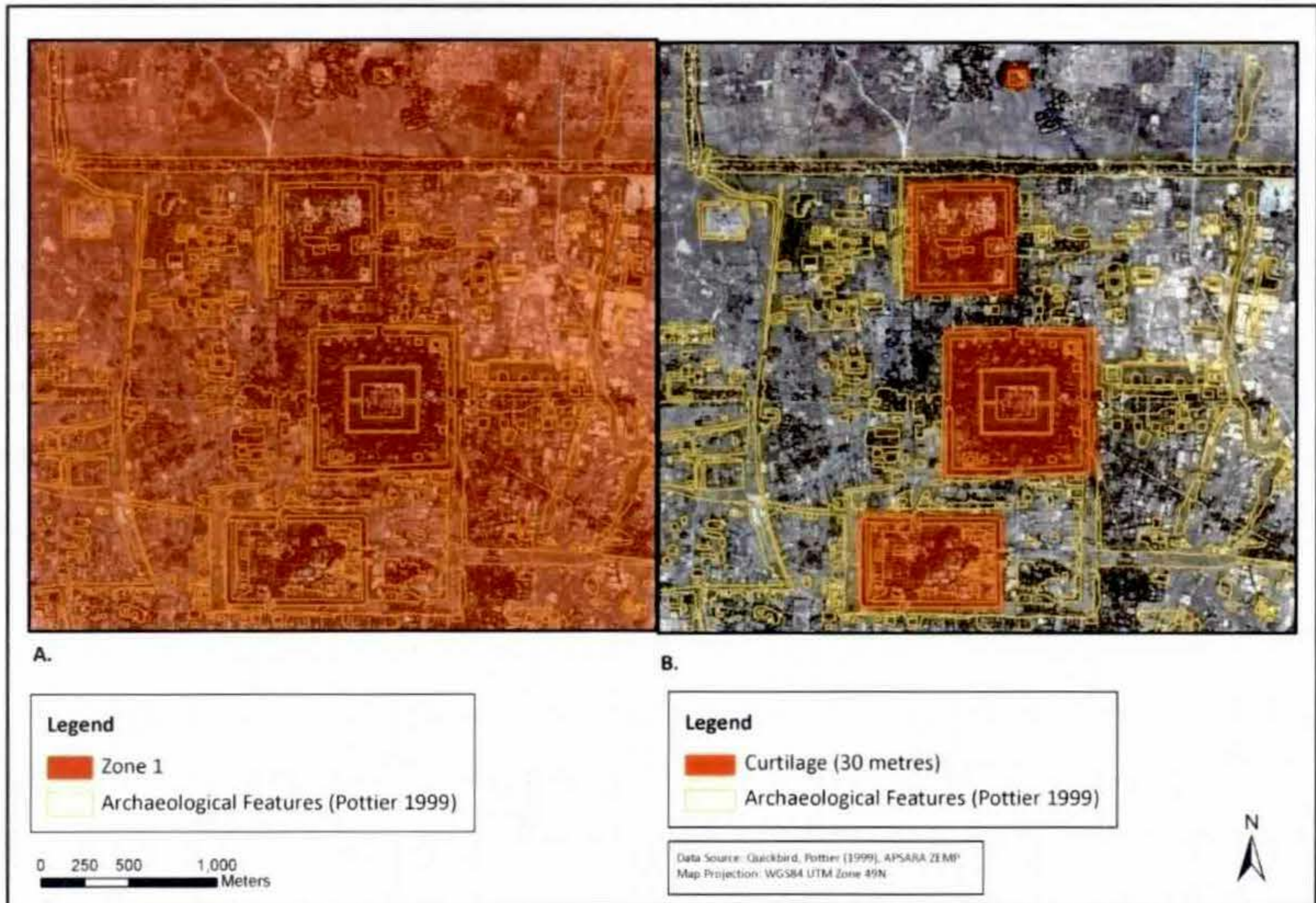
entitlement are created, and the primacy given to private property rights, need to be considered in any analysis that examines how land use rights are impacted through (heritage) regulation. As a result this research explored the role of law in property/ownership models which have a history in Western jurisdictions but which also prevail globally. It is clear that legal conceptions of property, particularly formal conceptions that align with private proprietary entitlements as discussed in Chapter Two, play a central role in the way people view connections to land. The findings suggest that the disenfranchisement of local residents from property entitlements can create conditions of uncertainty. The situation at Angkor Archaeological Park, in which the land formally belongs to the State, creates a tension between resident expectations and governing policies. Formalising property rights may not be a panacea but there is a clear need to amend the existing regulatory approach to consider resident expectation and needs regarding tenure. Clearer and tailored rules are required.

7.2.5 Spatial Regulation

The results suggest that the use of spatially defined restrictions, implemented through a strictly bounded and zoned planning overlay at Angkor is problematic. During the course of planning the site in the early 1990s (a process conducted in haste and with little or no local participation) minimal attention was paid to the pre-existing societal structures and norms relating to land use. While knowledge of the World Heritage concept continues to be limited, it is also the case that knowledge of boundaries and buffer zones is also limited. The rectilinear spatial expressions of the heritage protection categories defined by the ZEMP do not reflect local conditions or pre-existing administrative and social structures. The data collected throughout this research sheds light on the issue of boundary irrelevance. There has been very little examination of local perspectives about boundaries and the use of buffer zones as a heritage protection tool in World Heritage site management generally, although this is now beginning to be redressed (UNESCO, 2004). At Angkor, although a zone planning process was implemented as a prerequisite for inscription, it was well over a decade after inscription that the issue of boundaries gained recognition, as the population increased significantly and inappropriate development burgeoned. The management authority acted by placing boundary markers around Zone 1 of the Park. The research suggests that the success of this programme is questionable. Also of dubious value at Angkor is the use of buffer zones to act as a zone of transition between highly protected areas and adjacent territory. In international heritage

management circles, buffer zones are now undergoing extensive critique (UNESCO, 2009). Findings presented in this research demonstrated the gulf between the practice of buffer zones (defining them on a map) and the on-ground reality of incongruous and unsuitable boundaries bring this debate into sharp focus. This research illustrates a disconnection between the theory and practice of buffer zones as a heritage management tool at Angkor.

The inappropriateness of the current five - zones plan for World Heritage site management at Angkor is clearly illustrated throughout this research. There are, however, potential solutions to the disparity between the formally zoned boundaries and on-the-ground realities. It has been argued in this research that the adoption of the curtilage system may be an approach with considerable merit in a landscape where significant monuments are scattered over a large area. This system provides that the area immediately surrounding the monument is given the highest level of protection, ensuring the preservation and conservation of the actual property deemed to possess 'outstanding universal value'. Using a curtilage has the potential to ease the burden of restrictions on resident communities. In so doing, such a scheme may go some way towards the maintenance of local land use rights whilst maintaining the integrity of the outstanding universal value of the heritage features of Angkor. Figure 7.1 provides an illustration of the proposed scheme. Adopting a curtilage system within a vast World Heritage site may represent a way of preserving a cultural landscape without strangulating the local population in restrictions, providing it is married with a sensitive land administrative regime. In Figure 7.1 illustrates two scenarios. In the first image, (A), the current management approach (ZEMP) is shown, with uniform restrictions applying to the entire landscape. In the second image, (B), a curtilage of 30 metres has been applied to the most significant monuments within the Rolous Group. The highest level management restrictions would apply to the curtilage area while the surrounding region, together with its archaeological features, would be subject to a different regulatory regime; one which is tailored to local needs and gives residents some opportunity to develop. It is not proposed that this second scenario would be without some regulation, but that such regulation would not be excessively burdensome for residents living in this area. This proposal seeks to address the need to balance regulation (for protection) with existing proprietary rights.



Cartography: E. Bruce

Figure 7.1: Proposed Curtilage Zone for Bakong, Rolous Group. Archaeological features outside the immediate curtilage zone in Image B exist within a landscape scale protected area and would be regulated accordingly

It becomes evident throughout this research that the apparently arbitrary way in which the World Heritage park boundaries for Angkor were created and have been applied has significant ramifications for resident populations. Residents have a very limited understanding of the extent of the World Heritage classification and are generally challenged to nominate precise boundaries. One consequence of this situation is that even if residents understand the restrictions placed upon land around the monuments, they do not necessarily know where these restrictions begin and end. The boundaries created for the Park do not reflect the realities of the lived-in landscape at Angkor. The consequence is uncontrolled development and breaches of the regulations throughout the Park. The conclusion from these observations is that there is a pressing need to address localised spatial perceptions and to reconcile the spatially fragmentary rules and regulations of this legally plural landscape. It is suggested that a tailored solution will reduce conflict by being more sensitive to the existing normative perceptions of land use and tenure.

7.3 FURTHER RESEARCH

The call for a tailored approach to land management for the World Heritage site at Angkor through a merger of formal and informal systems deserves further research. Technical issues of implementation and bureaucratic organisation need to be considered in depth. Research findings on (1) boundary awareness/appropriateness, (2) the way in which local approach conflict resolution, (3) the actual heritage-inspired rules provides a solid basis for further study into these issues. The ramifications of the World Heritage listing on local resident communities are a worthy cause for future research as policy agenda change towards incorporating local perspectives into heritage management. The implications for World Heritage site management in the Asia-Pacific are clear. The Asia-Pacific region remains the most underrepresented region on the World Heritage list and great efforts are being made to redress this underrepresentation.¹⁷² This creates a situation where policy makers need greater information about the implications of a World Heritage listing on pre-existing tenure arrangements, especially in countries that do not have planning processes into which the World Heritage obligations can easily fit. Research that provides a clearer understanding of the effects of heritage-inspired rules on tenure will help better inform policy decisions.

Any potential call to re-nominate the World Heritage site at Angkor as a cultural landscape should bear in mind the findings of this research. Recent research now provides evidence for a considerable expansion of the extent of the archaeological site around Angkor (Evans, 2007; 2007b). A re-nomination to a World Heritage cultural landscape may take this new extent into account but it must also contend with pre-existing populations across a vast geographical area with pre-existing tenure entitlements. Using the boundary and zone approach adopted in the current regulatory framework at Angkor would present considerable challenges. The current legal framework has created the need for complex infrastructure for management without paying adequate heed to what actually already exists in terms of administration. The feasibility of a re-nomination of Angkor to cultural landscape could be undermined without simultaneously creating a more nuanced approach to land-use regulation; failure to do so is likely to create

¹⁷² The World Heritage Centre has a number of programmes to facilitate the inclusion of more sites in this region on to the World Heritage List, see <http://whc.unesco.org/en/pacific2009>.

prodigious land management problems. Research on the implications of a cultural landscape status for local land use should be conducted prior to any consideration for renomination.

The research argues that local land use conditions, tenure arrangements and social norms should be respected and accounted for in a World Heritage site designation. The observations about the impact of a World Heritage listing on residents at Angkor should be tested at other World Heritage locations with different tenure arrangements. Further research of this kind could reveal the generic roots of the relationship between World Heritage designations and land tenure.

7.4 CONCLUSION

This thesis has shown a lack of articulation between territorialisation through World Heritage management using spatial regulation and the pre-existing population's perceptions, desires and needs; a proposition that may place the whole venture of World Heritage designation at risk. Above and beyond this, however, this research highlights the fact that tens of thousands of residents at Angkor, and potentially many hundreds of thousands around the world, struggle with the consequences of World Heritage management practices. These populations are, in effect, making sacrifices for the "greater good" – heritage conservation and protection of the outstanding monuments of Angkor – and it is past time that their voices were heard more clearly.

A legal geography perspective has provided a galvanising conceptual vantage from which to view World Heritage management, enabling the complexities and subtleties of land-use management to be viewed plainly and in a broader context. Supported by robust social science methods, this research moves beyond the merely anecdotal to provide a solid empirical basis for the conclusions made here. While current approaches in heritage management have evolved and developed as they look to incorporate local perspectives, they do not, as yet, challenge the dominant conservation/preservation mantra of heritage practice. It is time to give more weight to these considerations, and the practical ways in which cultural World Heritage sites can be managed for a just and sustainable outcome.

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APPENDICES

APPENDIX ONE

Human Research Ethics Committee, University of Sydney, Research Ethics Approval, comprised of:

- Letter from the University of Sydney Human Research Ethics Committee dated 18 July 2006 granting Ethics approval plus attachments - "A";
- Participant Information Statement – English "B" and Khmer "C"
- Participant Consent Form – English "D"
- Dialogue Statement – English "E" and Khmer "F"

APPENDIX TWO

Semi-Structured In-depth Interview Guideline Questions/Themes

APPENDIX THREE

Questionnaire – English

APPENDIX FOUR

Questionnaire – Khmer

APPENDIX FIVE

Questionnaire – Results

APPENDIX SIX

Clauses 97, 99, 100 and 102, *World Heritage Convention, Operational Guidelines*, Chapter II.4

APPENDIX SEVEN

Clauses 103, 104, 105, 106 and 107, *World Heritage Convention, Operational Guidelines*, Chapter II.4

APPENDIX EIGHT

Articles 248 and 259, Royal Government of Cambodia, *Land Law, Kram NS/RKM/0801/14* dated August 30 2001.

APPENDIX NINE

Circular of May 6 2003, Royal Government of Cambodia

APPENDIX ONE

"A"

THE UNIVERSITY OF SYDNEY HUMAN RESEARCH ETHICS COMMITTEE
APPROVAL
LETTER DATED 18 JULY 2006 plus attachments



The University of Sydney

NSW 2006 Australia

Human Research Ethics Committee
www.usyd.edu.au/ethics/human

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18 July 2006

Dr E Bruce
School of Geosciences
Faculty of Science
Madsen Building – F09
The University of Sydney

Dear Dr Bruce

I am pleased to inform you that the Human Research Ethics Committee at its meeting on 11 July 2006 approved your protocol entitled "International Heritage Governance and Local Communities, Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia"

Details of the approval are as follows:

Ref No.: 07-2006/0000
Approval Period: July 2006 – July 2007
Authorised Personnel: Dr E Bruce
Ms J Gillespie
Dr R Fisher

The approval of this project is conditional upon your continuing compliance with the *National Statement on Ethical Conduct in Research Involving Humans*. We draw to your attention the requirement that a report on this research must be submitted every 12 months from the date of the approval or on completion of the project, whichever occurs first. Failure to submit reports will result in withdrawal of consent for the project to proceed.

The project is approved for an initial period of 12 months with approval for up to three (3) years following receipt of the appropriate report. Your first report will be due on 31 January 2007.

Conditions of Approval Applicable to all Projects

(1) **Reporting of Serious Adverse Events**

Researchers should immediately report anything to the Human Research Ethics Committee which might warrant review of ethical approval of the protocol, including:

- Serious or unexpected adverse effects on participants;

- Proposed changes in the protocol or any other material given to the participants in the study must be known prior to being actioned, including participant information and consent forms; and
 - Unforeseen events that might affect continued ethical acceptability of the project.
- (2) Modifications to the protocol cannot proceed until such approval is obtained in writing. (Refer to the website www.usyd.edu.au/ethics/human under 'Forms and Guides' for a Modification Form).
 - (3) The confidentiality and anonymity of all research subjects is maintained at all times, except as required by law.
 - (4) All research subjects are provided with a Participant Information Sheet and Consent Form, unless otherwise agreed by the Committee.
 - (5) The Participant Information Sheet and Consent Form are to be on University of Sydney letterhead and include the full title of the research project and telephone contacts for the researchers, unless otherwise agreed by the Committee.
 - (6) The following statement must appear on the bottom of the Participant Information Sheet. *Any person with concerns or complaints about the conduct of a research study can contact the Senior Ethics Officer, University of Sydney, on (02) 9351 4811.*
 - (7) The standard University policy concerning storage of data and tapes should be followed. While temporary storage of data or tapes at the researcher's home or an off-campus site is acceptable during the active transcription phase of the project, permanent storage should be at a secure, University controlled site for a minimum of seven years.
 - (8) A report and a copy of any published material should be provided at the completion of the Project.

Yours sincerely



Associate Professor J D Watson
Chairman
Human Research Ethics Committee

Encl. Participant Information Statement
Participant Consent Form
Dialogue Statement

Cc: Ms Josephine Gillespie, School of Geosciences, Madsen Building – F09, The University of Sydney



PARTICIPANT INFORMATION STATEMENT
Research Project

Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia

(1) What is the study about?

This project seeks to determine, when issues of land use conflict arise within the world heritage park, whether adequate dispute resolution mechanisms are in place to deal with such conflict.

(2) Who is carrying out the study?

The study is being conducted by Ms Jo Gillespie, a student, and it will form the basis for the degree of Doctor of Philosophy at The University of Sydney under the supervision of Dr Eleanor Bruce, Senior Lecturer.

(3) What does the study involve?

You will be involved in an in-depth, semi-structured interview. The interview may be recorded. Information provided by you as the participant will be recorded by the interviewer only with your prior permission.

(4) How much time will the study take?

The interviews will be conducted over a period of about 30 minutes.

(5) Can I withdraw from the study?

Being in this study is completely voluntary - you are not under any obligation to consent. You may withdraw your consent and discontinue your participation at any time without prejudice.

(6) Will anyone else know the results?

All aspects of the study, including any digital audio recording and the results of the study, will be strictly confidential and only the researchers will have access to information provided by participants. A report of the study may be submitted for publication, but individual participants will not be identifiable in such a report unless they have provided consent for their comments to be cited.

(7) Will the study benefit me?

You will not receive any form of payment for your involvement in the study. Results of this study will contribute to protecting the cultural and natural heritage of Angkor.

(8) Can I tell other people about the study?

Yes, you may tell other people about the study. If anyone that you discuss the study with is interested in obtaining more information about the study or participating in the study they can contact the researchers directly through the contact details provided.

(9) What if I require further information?

When you have read this information, Jo Gillespie will discuss it with you further and answer any questions you may have. If you would like to know more at any stage, please feel free to contact either Jo Gillespie, +61 2 9351 7179, jgil0729@usyd.edu.au (email) or Dr Eleanor Bruce at the University of Sydney, +61 2 9351 6443 (phone). ebruce@geosci.usyd.edu.au. Locally, you may also contact MAO Vibol for further details on 23 721 150

(10) What if I have a complaint or concerns?

Any person with concerns or complaints about the conduct of a research study can contact the Senior Ethics Officer, Ethics Administration, University of Sydney on +61 2 9351 4811.

This information sheet is for you to keep

HUMAN ETHICS COMMITTEE
APPROVED
DATE: 11 JUL 2006



The University of Sydney



School of Geosciences
Faculty of Science

NSW 2006 AUSTRALIA

Research Project

Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia

PARTICIPANT CONSENT FORM

I, , give consent to my participation in the research project
Name (please print)

TITLE:

In giving my consent I acknowledge that:

1. The procedures required for the project and the time involved have been explained to me, and any questions I have about the project have been answered to my satisfaction.
2. I have read the Participant Information Statement and have been given the opportunity to discuss the information and my involvement in the project with the researcher/s.
3. I understand that I can withdraw from the study at any time, without affecting my relationship with the researcher(s) now or in the future.
4. I understand that my involvement is strictly confidential and no information about me, or any digital recordings made during the interview, will be used in any way that reveals my identity.

Signed:

Name:

Date:





The University of Sydney



School of Geosciences
Faculty of Science

NSW 2006 AUSTRALIA

DIALOGUE STATEMENT

Research Project

Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia

This study is about identifying land use within the world heritage park at Angkor. We hope to find out about the way you use the land surrounding the monuments and temples. The study also hopes to identify how disputes are settled.

This project is being conducted by Jo Gillespie and it shall form the basis for the degree of Doctor of Philosophy at The University of Sydney under the supervision of Dr Eleanor Bruce.

The study aims to collect information about land use using an in-depth interview. The interview may take about 30 minutes to complete, ~~and may be digitally recorded. Digital recordings, if any, will be treated confidentially.~~

Your involvement in this study is completely voluntary. You are not under any obligation to consent to participate. You may stop the interview at any time without penalty.

All aspects of the study will be strictly confidential and only the researchers will have access to information on participants. A report of the study may be submitted for publication but individual participants will not be identifiable in such a report.

The study is a research project and is not intended to benefit any individual participant. You are free to tell other people about this study.

If you would like to know more Jo Gillespie will discuss it with you further and answer any questions you may have. Or, please feel free to contact either Jo Gillespie on +61 2 9351 7179 / jjil0729@usyd.edu.au (email) or Dr Eleanor Bruce at the University of Sydney on +61 2 9351 6443 (phone) / ebruce@geosci.usyd.edu.au (email), or to both on facsimile at +61 2 9351 3644

Any person with concerns or complaints about the conduct of a research study can contact the Senior Ethics Officer, Ethics Administration, University of Sydney on (02) 9351 4811.



"B"

PARTICIPANT INFORMATION STATEMENT – ENGLISH



The University of Sydney



School of Geosciences
Faculty of Science

NSW 2006 AUSTRALIA

PARTICIPANT INFORMATION STATEMENT

Research Project

Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia

- (1) **What is the study about?**
This project seeks to determine, when issues of land use conflict arise within the world heritage park, whether adequate dispute resolution mechanisms are in place to deal with such conflict.
- (2) **Who is carrying out the study?**
The study is being conducted by Ms Jo Gillespie, a student, and it will form the basis for the degree of Doctor of Philosophy at The University of Sydney under the supervision of Dr Eleanor Bruce, Senior Lecturer.
- (3) **What does the study involve?**
You will be involved in an in-depth, semi-structured interview. The interview may be recorded. Information provided by you as the participant will be recorded by the interviewer only with your prior permission.
- (4) **How much time will the study take?**
The interviews will be conducted over a period of about 30 minutes.
- (5) **Can I withdraw from the study?**
Being in this study is completely voluntary - you are not under any obligation to consent. You may withdraw your consent and discontinue your participation at any time without prejudice.
- (6) **Will anyone else know the results?**
All aspects of the study, including any digital audio recording and the results of the study, will be strictly confidential and only the researchers will have access to information provided by participants. A report of the study may be submitted for publication, but individual participants will not be identifiable in such a report unless they have provided consent for their comments to be cited.
- (7) **Will the study benefit me?**
You will not receive any form of payment for your involvement in the study. Results of this study will contribute to protecting the cultural and natural heritage of Angkor.
- (8) **Can I tell other people about the study?**
Yes, you may tell other people about the study. If anyone that you discuss the study with is interested in obtaining more information about the study or participating in the study they can contact the researchers directly through the contact details provided.
- (9) **What if I require further information?**
When you have read this information, Jo Gillespie will discuss it with you further and answer any questions you may have. If you would like to know more at any stage, please feel free to contact either Jo Gillespie, +81 2 9351 7179, jjil0729@usyd.edu.au (email) or Dr Eleanor Bruce at the University of Sydney, +81 2 9351 8443 (phone), ebruce@geosci.usyd.edu.au. Locally, you may also contact MAO Vibol for further details on 23 721 150
- (10) **What if I have a complaint or concerns?**

Any person with concerns or complaints about the conduct of a research study can contact the Senior Ethics Officer, Ethics Administration, University of Sydney on +61 2 9351 4811.
This information sheet is for you to keep

"C"

PARTICIPANT INFORMATION STATEMENT – KHMER



The University of Sydney



School of Geosciences
Faculty of Science

NSW 2006 AUSTRALIA

ព័ត៌មានសំរាប់អ្នកចូលរួម

គំរោងសិក្សាស្រាវជ្រាវ

ចំណងជើង: ការរស់នៅជាមួយនឹងបេតិកភណ្ឌ: ការប្រឆាំងបញ្ហាពេលវេលា ទឹកខ្លាំង និងវប្បធម៌ ដើម្បីអភិរក្សបេតិកភណ្ឌពិភពលោក

- (1) **តើការសិក្សាស្រាវជ្រាវនេះស្តីអំពីអ្វីទៅ?**
ការសិក្សាស្រាវជ្រាវនេះគឺស្តីអំពីការមើលអោយដឹងនូវ គុណប្រយោជន៍បេតិកភណ្ឌធម្មជាតិ និងវប្បធម៌របស់អង្គរ ហើយធ្វើការកំណត់សំរេចអំពីការតំរាមទាំងឡាយដែលអាចកើតមានឡើងចំពោះគុណប្រយោជន៍ ទាំងនោះ។
- (2) **តើអ្នកណាធ្វើការសិក្សាស្រាវជ្រាវនេះ?**
ការសិក្សាស្រាវជ្រាវនេះនឹងធ្វើឡើងដោយសកលវិទ្យាល័យស៊ីឌនី ដែលជាផ្នែកមួយនៃគំរោង សិក្សាស្រាវជ្រាវ ក្រោមចំណងជើងថា ការរស់នៅជាមួយបេតិកភណ្ឌ។
- (3) **តើការសិក្សាស្រាវជ្រាវនេះតម្រូវអោយធ្វើអ្វីខ្លះ?**
លោកអ្នកនឹងចូលរួមនៅក្នុងសកម្មភាពបីម្តងទៅ-១១) បណ្តាក្រុមគោលដៅ ២) បទសម្ភាសន៍ និង ៣) បញ្ជីសំណួរខ្លះៗ។ ព័ត៌មានដែលលោកអ្នកផ្តល់អោយយើងនឹងត្រូវគេកត់ត្រាទុកនៅលើ ក្រដាសបំពេញពាក្យសម្ភាសន៍អាចនឹងត្រូវគេថតសម្លេងដែរ។ ព័ត៌មានដែលលោកអ្នកផ្តល់ អោយ នឹងត្រូវអ្នកធ្វើសម្ភាសន៍ថតសម្លេងទុកដោយមានការយល់ព្រមពីលោកអ្នក។
- (4) **តើការសិក្សាស្រាវជ្រាវនេះត្រូវការពេលប៉ុន្មាន?**
ការរួមប្រជុំរបស់ក្រុមគោលដៅ នឹងត្រូវការពេលប្រហែលជា២ម៉ោង។ បទសម្ភាសន៍នឹងត្រូវការ ពេលវេលាពី ៣០នាទីទៅ៦០នាទី។ បញ្ជីសំណួរទេសចរនឹងត្រូវការពេលប្រហែលជា ១៥នាទីដើម្បី បំពេញ។
- (5) **តើខ្ញុំអាចដកខ្លួនចេញពីការសិក្សាស្រាវជ្រាវនេះឬទេ?**
ការចូលរួមនៅក្នុងការសិក្សាស្រាវជ្រាវនេះគឺជារឿងស្ម័គ្រចិត្ត ពោលគឺលោកអ្នកពុំមានភាពភ័យខ្លាច ត្រូវតែផ្តល់ការយល់ព្រមនោះទេ។ លោកអ្នកអាចដកការយល់ព្រម ឬបញ្ឈប់ការចូលរួមរបស់លោកអ្នកនៅពេលណាក៏បានដែរ ដោយពុំមានធុបប្រទះនូវការប្រកាន់រើសអើងអ្វីឡើយ។
- (6) **តើនឹងមានបណ្តាជនផ្សេងទៀតដឹងអំពីលទ្ធផលនៃការសិក្សាស្រាវជ្រាវនេះឬទេ?**
គ្រប់ផ្នែកនៃការសិក្សាស្រាវជ្រាវ ដោយរួមទាំងលទ្ធផលផង នឹងត្រូវគេរក្សាទុកជាសម្ងាត់បំផុត ហើយមានតែអ្នកសិក្សាស្រាវជ្រាវទេដែលនឹងមានសិទ្ធិមើលព័ត៌មានដែលអ្នកចូលរួមផ្តល់អោយ។ គេប្រហែលជាដាក់សំណើអោយមានការបោះផ្សាយរបាយការណ៍នៃការសិក្សាស្រាវជ្រាវនេះ

"D"

PARTICIPATION CONSENT FORM – ENGLISH (ONLY)



The University of Sydney



School of Geosciences
Faculty of Science

NSW 2006 AUSTRALIA

Research Project

Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia

PARTICIPANT CONSENT FORM

I, , give consent to my participation in the research project
Name (please print)

TITLE:

In giving my consent I acknowledge that:

1. The procedures required for the project and the time involved have been explained to me, and any questions I have about the project have been answered to my satisfaction.
2. I have read the Participant Information Statement and have been given the opportunity to discuss the information and my involvement in the project with the researcher/s.
3. I understand that I can withdraw from the study at any time, without affecting my relationship with the researcher(s) now or in the future.
4. I understand that my involvement is strictly confidential and no information about me, or any digital recordings made during the interview, will be used in any way that reveals my identity.

Signed:

Name:

Date:

"E"

DIALOGUE STATEMENT – ENGLISH

Appendix "2"



The University of Sydney



School of Geosciences
Faculty of Science

NEW 2006 AUSTRALIA

DIALOGUE STATEMENT

Research Project

Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution in the World Heritage Park at Angkor, Cambodia

This study is about identifying land use within the world heritage park at Angkor. We hope to find out about the way you use the land surrounding the monuments and temples. The study also hopes to identify how disputes are settled.

This project is being conducted by Jo Gillespie and it shall form the basis for the degree of Doctor of Philosophy at The University of Sydney under the supervision of Dr Eleanor Bruce.

The study aims to collect information about land use using an in-depth interview. The interview may take about 30 minutes to complete, and may be digitally recorded. Digital recordings, if any, will be treated confidentially.

Your involvement in this study is completely voluntary. You are not under any obligation to consent to participate. You may stop the interview at any time without penalty.

All aspects of the study will be strictly confidential and only the researchers will have access to information on participants. A report of the study may be submitted for publication but individual participants will not be identifiable in such a report.

The study is a research project and is not intended to benefit any individual participant. You are free to tell other people about this study.

If you would like to know more Jo Gillespie will discuss it with you further and answer any questions you may have. Or, please feel free to contact either Jo Gillespie on +61 2 9351 7179 / jgil0729@usyd.edu.au (email) or Dr Eleanor Bruce at the University of Sydney on +61 2 9351 6443 (phone) / ebruce@geosci.usyd.edu.au (email), or to both on facsimile at +61 2 9351 3644

Any person with concerns or complaints about the conduct of a research study can contact the Senior Ethics Officer, Ethics Administration, University of Sydney on (02) 9351 4811.

“F”

DIALOGUE STATEMENT – KHMER



The University of Sydney

NSW 2006 AUSTRALIA



ខេត្តស៊ីដនី ផែនទីសិទ្ធិ
បរិយាកាសសង្គមសាស្ត្រ

សេចក្តីថ្លែងការណ៍សម្រេច
(DIALOGUE STATEMENT)

ចំណងជើង: អភិបាលកិច្ចកេរ្តិ៍ តំណែងអន្តរជាតិ និងសហគមន៍ក្នុងមូលដ្ឋាន : ការដោះស្រាយជំនាញប្រើប្រាស់ដីធ្លី ក្នុងស្ថានភាព តំណែង
របស់ពិភពលោកនៅតំបន់អង្គរ ប្រទេសកម្ពុជា

(Title: International Heritage Governance and Local Communities: Land Use Conflict Resolution
in World Heritage Park at Angkor, Cambodia)

ការសិក្សានេះស្តីអំពីការកំណត់ការប្រើប្រាស់ដីនៅក្នុងស្ថានភាព តំណែងរបស់ពិភពលោក (world heritage park) ។ យើងសង្ឃឹម
ថា នឹងមានកេរ្តិ៍ឈ្មោះដែលលោកអ្នកប្រើប្រាស់ដីនៅទីក្រុងភ្នំពេញ និងប្រទេសជាប់ជុំវិញ។ ការសិក្សាស្រាវជ្រាវនិងអភិបាលកិច្ច ឃើញ
តើពិភពលោកទាំងឡាយត្រូវដោះស្រាយដូចម្តេច។

ការសិក្សានេះកំពុងតែធ្វើឡើងដោយអ្នកអាន Jo Gillespie ដើម្បីចំណេញកម្រៃសំរាប់ទទួលបានសញ្ញាបត្របណ្ឌិត នៃសកលវិទ្យាល័យស៊ីដនី
ក្រោមការដឹកនាំរបស់បណ្ឌិត Eleanor Bruce ដែលជាសាស្ត្រាចារ្យជាតំបន់។

ការសិក្សានេះមានគោលបំណងប្រមូលព័ត៌មានស្តីពីការប្រើប្រាស់ដីដោយប្រើប្រាស់ការសម្ភាសន៍ស៊ីជម្រៅ។ ការសម្ភាសន៍នេះយល់ឃើញ
ប្រហែលជា ៣០ នាទី ហើយប្រហែលជាត្រូវគេជំនុំ។ សំណួរដែលគេបានជំនុំ និងលទ្ធផលនៃការសិក្សានេះនឹងត្រូវគេរក្សា
ជាការសម្ងាត់ដាច់ខាត។

ការចូលរួមរបស់លោកអ្នកក្នុងការសិក្សានេះគឺជាការស្ម័គ្រចិត្តស្មោះស្រស់។ លោកអ្នកគ្មានជាប់កាតព្វកិច្ចត្រូវទទួលបានយល់ព្រមដើម្បីក្នុងខ្លួន
ទេព្រោះ។ លោកអ្នកអាចដកខ្លួនចេញពីការសិក្សានេះបានតាមបំណងរបស់លោកអ្នកដោយគ្មានទទួលបានការពិន័យឡើយ។

គ្រប់ចំណុចទាំងអស់នៃការសិក្សានិងត្រូវគេរក្សាជាការសម្ងាត់ដាច់ខាត ហើយមានតែអ្នកស្រាវជ្រាវទេដែលអាចអានព័ត៌មានស្តីពីអ្នកចូលរួម
បាន។ របាយការណ៍នៃការសិក្សានេះអាចនឹងត្រូវគេដាក់អោយពិស្សដើម្បីធ្វើការបោះពុម្ព ក៏ប៉ុន្តែអ្នកចូលរួមនិយាយនឹងមិនត្រូវបានគេ
បង្ហាញពីអត្តសញ្ញាណរបស់ខ្លួនឡើយ។

ការសិក្សានេះគ្មានគោលបំណងផ្តល់ជំនួយយោងទៅលើអ្នកចូលរួមណាម្នាក់ទេ។ លោកអ្នកអាចប្រាប់អ្នកដទៃទៀតពីការសិក្សាតាម
ចិត្តចង់។

ប្រសិនបើលោកអ្នកមិនបានឆ្លើយសំណួរ អ្នកអាន Jo Gillespie និងពិភាក្សាពីការសិក្សានេះបន្ថែមទៀត និងធ្វើយល់ច្បាស់
ដែលលោកអ្នកអាន។ លោកអ្នកអាចទាក់ទងអ្នកអាន Jo Gillespie តាមទូរស័ព្ទ +61 29351 7179 ឬតាមអ៊ីម៉ែល:
joil0729@usyd.edu.au ឬទាក់ទងបណ្ឌិត Eleanor Bruce តាមទូរស័ព្ទ +61 29351 6443 ឬតាមអ៊ីម៉ែល:
ebruce@deecsci.usyd.edu.au ។ ឬលោកអ្នកអាចផ្ញើទូរសារសម្រាប់អ្នកអាន: តាមលេខ: +61 2 9351 3644 ។

អ្នកដែលមានបញ្ហាផ្ទាល់ ឬពាក្យបណ្តឹងទាក់ទងនឹងការអនុវត្តន៍ការសិក្សាស្រាវជ្រាវនេះ អាចទាក់ទងអគ្គិបាលកិច្ចស្នាក់នៅ ក្រុមសីលធម៌
(Senior Ethics Officer) នៃសកលវិទ្យាល័យស៊ីដនី (Ethics Administration) នៅសកលវិទ្យាល័យស៊ីដនី
តាមទូរស័ព្ទ: (02) 9351 4811 ។

APPENDIX TWO

Semi-Structured In-depth Interview Guideline Questions/Themes

PhD Project:
 The impact of World Heritage Obligations on Local Communities.
 Interview Guide, December 2006

DATE	
TIME	
PLACE	
INTERPRETER	
INTERVIEW NUMBER	
TAPE NUMBER	

Name (voluntary):

Background

Age?

How long have you lived in this village?

Where did you live before?

Can you tell me about your family?

(Are you married, do you have children, do you have brothers and sisters etc)

Do you work?

Where do you work?

Have you participated in an interview before?

House / Land

How many people live in this village?

Where do you live?

How many people live in this house?

(and describe who they are)

Do you "own" this house?

(Ask for their definition of ownership)

Do you have any documents which indicate "official" ownership?

If not, do you know how to register your interest in this house/land?

What was the process involved in getting these documents?

Can you describe what happened before you were required to register your interest in this house/land?

Do most people in this village "own" their homes?

If you don't "own" the house, do you rent it?

(or are there alternative ways of occupying houses?

Eg: Does a friend own it and you look after it?)

If you want to move, how do you do it?

Can you sell your house and land?

Do you know its value? (can you trade in different ways, can you sell part of your house?; can you sell it for stock etc)

Can you describe how you sell your house?

Do you own land?

Where is it located?

How long have you owned it?

What do you do with the land (crops/animals)?

Do you enjoy farming? (would you prefer to work in a different field eg in the city?)

Boundaries:

Where are the boundaries of this village?

(If there is reluctance to specifically show the boundaries, ask for a general understanding of where they are)

Who decides where these boundaries are?

Does anyone own the paths and roads?

Who looks after the common areas?

Administration:

Who is responsible for village administration?

Do you know which commune / district / province we are in?

Can you describe the administrative arrangements? Do they affect you?

Dispute Resolution:

Have you been involved in any disputes with other villagers?

Have you been involved in any disputes about land use or ownership?

Can you describe your experiences?

If disputes did arise in the village about land use or ownership who would you go to for help?

Can you describe the process for settling disputes about land use and ownership?

Once a conclusion has been reached and a decision made, how is this decision enforced?

Are there any fines or other penalties (describe) for non-compliance with decisions?

Have you heard of courts and judges?

Would you use a court to resolve disputes?

Where are the courts located?

Do you know how much it might cost to talk with a lawyer?

Do you know anyone who has used a court?

Restrictions:

Do you know any, or some, of the laws which regulate what you can and cannot do if you live here?

If you want to build another house or change your existing house, how do you do it?

Where do people move to when there is no more room?

Can you tell me how people want to respond to population pressures?

Where should people live?

Do you know / understand the zone classifications?

Can you describe the restrictions of these zones?

Which zone are we in?

(and can you tell me where the different zones are located?)

What does this mean for you?

Have you been consulted about the ownership and land use restrictions imposed on people like you who are living in this village?

Do you know if other people have been consulted? If so, can you describe their experiences?

World Heritage knowledge:

Do you understand that Angkor and some of the surrounding area has been classified as a world heritage area?

Can you tell me what you know about world heritage places?

Does the world heritage classification affect you? In what way/s?

Organisations:

Do you have contact with outside organizations?

Can you describe your experiences?

APSARA:

Do you have contact with APSARA?

Can you describe your experiences?

Perceptions of Space:

Looking at this map, can you tell me where we are? Do you recognize the area?

APPENDIX THREE

Questionnaire – English

Living with Heritage
Questionnaire
Jo Gillespie

DATE	
TIME	
PLACE (please mark the map with the interview number)	Village: _____
INTERVIEWER	
INTERVIEW NUMBER	

The first part of this questionnaire is general and deals with your family situation.

1. Age Group: >18-25 yrs >25-35 yrs >35-45 yrs
 >45-55 yrs >55-65 yrs >65-75 yrs
 >75 yrs (Please tick ✓)

Gender: Male Female (Please tick ✓)

Children: Number, M _____ F _____ Age/s _____

2. How long have you lived here? _____

Where did you live before?

Village _____

District _____

Province _____

3. Have you participated in an interview before? Yes / No (Please circle)

If "Yes", who was this with? _____

The next section deals with property issues.

4. Is this property - (Please tick ✓)

Owned

Living with Heritage
Questionnaire
Jo Gillespie

Rented (does this translate?)

Occupied (without paying money)

Other (Please explain) _____

5. If you "own" this house do you have registration papers proving ownership?
Yes / No (Please circle)

6. Where do you keep your registration papers? _____

7. Are you aware of any restrictions on selling your house or land?
Yes / No (Please circle)

If "Yes", please explain the process of sale

The next section deals with the World Heritage Park.

8. Are you aware of the World Heritage listing? Yes / No (Please circle)
If "Yes", what does this mean to you?

9. Do you know where the boundaries of the World Heritage Park are?

Living with Heritage
Questionnaire
Jo Gillespie

Yes / No (Please circle)

If "Yes", can you describe them to me?

10. Can you tell me about the rules or laws which apply to your house/land?

11. Is land inside or outside the Park boundaries more expensive to buy?

(Please tick ✓)

Inside Park

Outside Park

12. Can you estimate how much land is worth:

a. Inside the Park boundary? _____ per hectare

b. Outside the Park boundary? _____ per hectare

The next section deals with natural population growth.

13. Do you think that you will give some land to your children when they are old enough?

Yes / No (please circle)

Living with Heritage
Questionnaire
Jo Gillespie

Yes / No (Please circle)

If "Yes", can you describe them to me?

10. Can you tell me about the rules or laws which apply to your house/land?

11. Is land inside or outside the Park boundaries more expensive to buy?

(Please tick ✓)

Inside Park

Outside Park

12. Can you estimate how much land is worth:

a. Inside the Park boundary? _____ per hectare

b. Outside the Park boundary? _____ per hectare

The next section deals with natural population growth.

13. Do you think that you will give some land to your children when they are old enough?

Yes / No (please circle)

**Living with Heritage
Questionnaire
Jo Gillespie**

14. If "Yes", can you describe how you do this?

The next section deals with the administrative arrangements for this area.

15. Have you heard of the APSARA authority? Yes / No (Please circle)

16. Can you describe what the APSARA authority do to protect the Heritage Park?

17. What role does the Village Chief / Commune Council / District Chief / Provincial Authority play in protecting the Heritage Park?

(a) Village Chief

Living with Heritage
Questionnaire
Jo Gillespie

(b) Commune Council

(c) District Chief

(d) Provincial Authority

The next section deals with issues surrounding dispute resolution.

18. Have you had or are you aware of any disputes or problems relating to -

(Please tick ✓)

- a. Where the boundaries between people's land are?
- b. The building of new houses?
- c. Giving land to children?
- d. Selling land?
- e. Buying land?
- f. Land grabs

Living with Heritage
Questionnaire
Jo Gillespie

19. Can you tell me about these problems?

20. Who do you ask or would you ask to help you solve problems about land issues in your village?

(Please tick ✓)

Monk (or religious leader)

Friend / Neighbour

Village Chief

District Chief

Court

Land Commission

Other (please explain)

21. Why do you use this method?

(Please tick ✓)

Cheap

Quick

Fair

Living with Heritage
Questionnaire
Jo Gillespie

It is the one I understand the best

Less likelihood of corruption

Other (please explain)

22. Have you or do you know anyone who has used the Court system to resolve land related disputes? Yes / No (Please circle)

If "Yes" can you tell me about this process?

Thank you for taking the time to complete this questionnaire.

APPENDIX FOUR

Questionnaire - Khmer

ការគំរាមដោយប្រព័ន្ធគ្រប់គ្រង

កំរិតសំនួរ

ខ្ញុំ ប្តឹង ចិត្តស្រពៃ

ប្រព័ន្ធគ្រប់គ្រង	
យើង	
អ្វីដែល ប្រព័ន្ធគ្រប់គ្រង បាន ធ្វើ ឲ្យ យើង មាន អារម្មណ៍	ភ្នែក:
ជា ប្រព័ន្ធគ្រប់គ្រង ប្រព័ន្ធគ្រប់គ្រង	
អ្នក គ្រប់គ្រង ប្រព័ន្ធគ្រប់គ្រង	
ប្រព័ន្ធគ្រប់គ្រង	

ខ្ញុំ គឺ ជា ម្នាក់ ដែល បាន ប្រើ ប្រាស់ ប្រព័ន្ធគ្រប់គ្រង

១- ប្រព័ន្ធគ្រប់គ្រង > ១៥-៥៥ ឆ្នាំ > ២៥-៣៥ ឆ្នាំ > ៣៥-៤៥ ឆ្នាំ

> ៤៥-៥៥ ឆ្នាំ > ៥៥-៦៥ ឆ្នាំ > ៦៥-៧៥ ឆ្នាំ

> ៧៥-៨៥ ឆ្នាំ (សូម ប្រើ "✓")

ប្រភេទ : ប្រុស ឬ ភ្នែក (សូម ប្រើ "✓")

ឈ្មោះ ឬ ឈ្មោះ ប្រព័ន្ធគ្រប់គ្រង ឈ្មោះ ឬ ឈ្មោះ ឈ្មោះ ឬ ឈ្មោះ

ឈ្មោះ ឬ ឈ្មោះ ឈ្មោះ ឬ ឈ្មោះ

២- តើ ប្រព័ន្ធគ្រប់គ្រង បាន ធ្វើ ឲ្យ យើង មាន អារម្មណ៍ ដូច ម្តេច?

ប្រព័ន្ធគ្រប់គ្រង បាន ធ្វើ ឲ្យ យើង មាន អារម្មណ៍ ដូច ម្តេច?

ភ្នែក.....

ប្រុស.....

យើង.....

៣ តើ ប្រព័ន្ធគ្រប់គ្រង បាន ធ្វើ ឲ្យ យើង មាន អារម្មណ៍ ដូច ម្តេច? ប្រុស ឬ ភ្នែក (សូម ប្រើ "✓")

តើ ប្រព័ន្ធគ្រប់គ្រង បាន ធ្វើ ឲ្យ យើង មាន អារម្មណ៍ ដូច ម្តេច? ប្រុស ឬ ភ្នែក

ប្រព័ន្ធគ្រប់គ្រង បាន ធ្វើ ឲ្យ យើង មាន អារម្មណ៍ ដូច ម្តេច?

ការរស់នៅជាមួយបេតិកភណ្ឌ

កំរងសំណួរ

ផ្ទះ ហ្គីល លីស្កាយ

៤-តើផ្ទះនេះ

(សូមគូស ✓)

ជាម្ចាស់កម្មសិទ្ធិរបស់អ្នក?

ការរស់នៅជាមួយបេតិកភណ្ឌ?

ជាផ្ទះដែលអ្នកជួល?

ជាផ្ទះដែលអ្នកមកនៅ (ដោយគ្មានថ្លៃ)?

ដទៃទៀត (សូមពន្យល់)?

៥-បើផ្ទះនេះ ជាកម្មសិទ្ធិរបស់អ្នក តើមានលិខិតកាន់កាប់ដីធ្លីដែររឺទេ?

បាទ / ទេ (សូមគូស ហ៊ុំ)

៦-តើអ្នករក្សាទុកលិខិតនេះ នៅឯណា?

៧-តើអ្នកធ្លាប់បានដឹងពីលក្ខខណ្ឌផ្សេងៗ ចំពោះការលក់ដូរផ្ទះ រឺ ដីដែររឺទេ?

បាទ/ទេ (សូមគូសហ៊ុំ)

បើ បាទ / ចាស សូមរៀបរាប់ ពន្យល់ពីដំណើរការនៃការលក់នេះដល់ខ្ញុំផង

ផ្នែកបន្ទាប់នេះស្តីអំពី បេតិកភណ្ឌពិភពលោក

៨-តើអ្នកដែលដឹងការចុះបញ្ជីបេតិកភណ្ឌពិភពលោកដែររឺទេ? បាទ/ទេ (សូមគូសហ៊ុំ)

បើបាទ/ ចាស តើអ្នកយល់ថា ដូចម្តេចដែរ ?

៩-តើអ្នកដឹងថា ព្រំប្រទល់របស់បេតិកភណ្ឌពិភពលោកកន្លែងណាទេ?

ការរស់នៅជាមួយបេតិកភណ្ឌ

កំរងសំណួរ

ជូ ហ្គីល លីស្តាយ

បាទ / ទេ (សូមគូស ហ៊ុ)

បើបាទ សូមអ្នករៀបរាប់ប្រាប់ខ្ញុំផង

១០-តើអ្នកអាចប្រាប់ខ្ញុំអំពីរបៀបរៀបរយ របៀបរបប ការប្រើប្រាស់ផ្ទះ រឺ ដី របស់អ្នកបានដែរឬទេ?

១១-តើដីក្នុង រឺ ខាងក្រៅបរិវេណព្រំប្រទល់ មួយណាថ្លៃជាង ?

(សូមគូស " ✓ ")

ក្នុងបរិវេណ

ខាងក្រៅបរិវេណ

១២-តើអ្នកអាចបានស្ថានអំពីតំលៃបានដែរទេ?

-នៅក្នុងបរិវេណមួយហិកតា

-ខាងក្រៅបរិវេណ.....មួយហិកតា

ផ្នែកបន្ទាប់ស្តីអំពីការកើនឡើងនៃចំនួនប្រជាជន

តើនៅពេលកូនអ្នកធំឡើង អ្នកនឹងចែកដីជូនទៅកូនរបស់លោកអ្នកមែនរឺ ?

បាទ / ទេ (សូមគូសហ៊ុ)

ការរស់នៅជាមួយបេតិកណ្ណ

កំរងសំណួរ

ជូ ហ្គីល លីស្កាយ

១៩-សូមជំរាបប្រាប់ខ្ញុំអំពីបញ្ហាទាំងអស់នេះ

២០-តើអ្នកពឹងពាក់នណា អោយដោះស្រាយបញ្ហាអោយអ្នកនៅក្នុងភូមិរបស់អ្នក ?

សូមគូស " ✓ "

ព្រះសង្ឃ (វី មេដឹកនាំសាសនា)

មិត្តភក្តិ / អ្នកជិតខាង

ប្រធានភូមិ

ចៅហ្វាយស្រុក

តុលាការ

គណកម្មការគ្រប់គ្រងដីធ្លី

ដំទៃទៀត (សូមពន្យល់)

២១-ហេតុអ្វីអ្នកប្រើវិធីបែបនេះ ?

សូមគូស " ✓ "

មានតំលៃថោក

អាចរហ័ស

យុត្តិធម៌

ព្រោះវាជាផ្លូវមួយដែលខ្ញុំយល់ថា ប្រសើរជាងគេ

មិនមានអំពើរពុករលួយ

ដំទៃទៀត (សូមពន្យល់)

ការរស់នៅជាមួយបេតិកភណ្ឌ

កំរងសំនួរ

ជូ ហ្គីល ធីស្តាយ

b) ក្រុមប្រឹក្សាឃុំ

c) ចៅហ្វាយស្រុក

d) អាជ្ញាធរខេត្ត

ផ្នែកបន្ទាប់នេះ ស្តីអំពីដំណោះស្រាយជំលោះ

១៨-តើអ្នកធ្លាប់មាន វិ ធ្លាប់បានដឹងអំពីដំណោះស្រាយ វិ បញ្ហាផ្សេងៗដែលទាក់ទងនឹង :

សូមគូស " ✓ "

- a. ជំលោះ ឬ បញ្ហាច្រាំប្រទល់
- b. ការសាងសង់ផ្ទះថ្មី
- c. ការចែកដីអោយកូន
- d. ការលក់ដីថ្មី
- e. ការទិញដីថ្មី
- f. ការរឹបអូសយកដី

ការរស់នៅជាមួយបេតិកណ្ណ

កំរងសំណួរ

ផ្ទះ ហ្គីល លីស្វាយ

១៩-សូមជំរាបប្រាប់ខ្ញុំអំពីបញ្ហាទាំងអស់នេះ

២០-តើអ្នកពឹងពាក់នណា អោយដោះស្រាយបញ្ហាអោយអ្នកនៅក្នុងភូមិរបស់អ្នក ?

សូមគូស " ✓ "

ព្រះសង្ឃ (វិ មេដឹកនាំសាសនា)

មិត្តភក្តិ / អ្នកជិតខាង

ប្រធានភូមិ

ចៅហ្វាយស្រុក

តុលាការ

គណកម្មការគ្រប់គ្រងដីធ្លី

ដទៃទៀត (សូមពន្យល់)

២១-ហេតុអ្វីអ្នកប្រើវិធីបែបនេះ ?

សូមគូស " ✓ "

មានតម្លៃថោក

អាចរំលែក

យុត្តិធម៌

ព្រោះវាជាផ្លូវមួយដែលខ្ញុំយល់ថា ប្រសើរជាងគេ

មិនមានអំពើពុករលួយ

ដទៃទៀត (សូមពន្យល់)

ការរស់នៅជាមួយបេតិកភណ្ឌ

កំរងសំនួរ

ជូ ហ្គីល លីស្តាយ

២២-តើអ្នកធ្លាប់បានប្រើប្រាស់ប្រព័ន្ធតុលារី អ្នកដទៃដែលស្គាល់ ដើម្បីដោះស្រាយជំលោះដីធ្លីដែរទេ?

បាទ / ទេ (សូមគូស ហុំ)

បើ បាទ តើអ្នកអាចប្រាប់ខ្ញុំអំពីដំណើរនេះ បានទេដែរទេ?

សូមអរគុណចំពោះការចំណាយពេលដ៏មានតំលៃរបស់អ្នក

APPENDIX FIVE
QUESTIONNAIRE RESULTS

QUESTION ONE: (1) Age Group

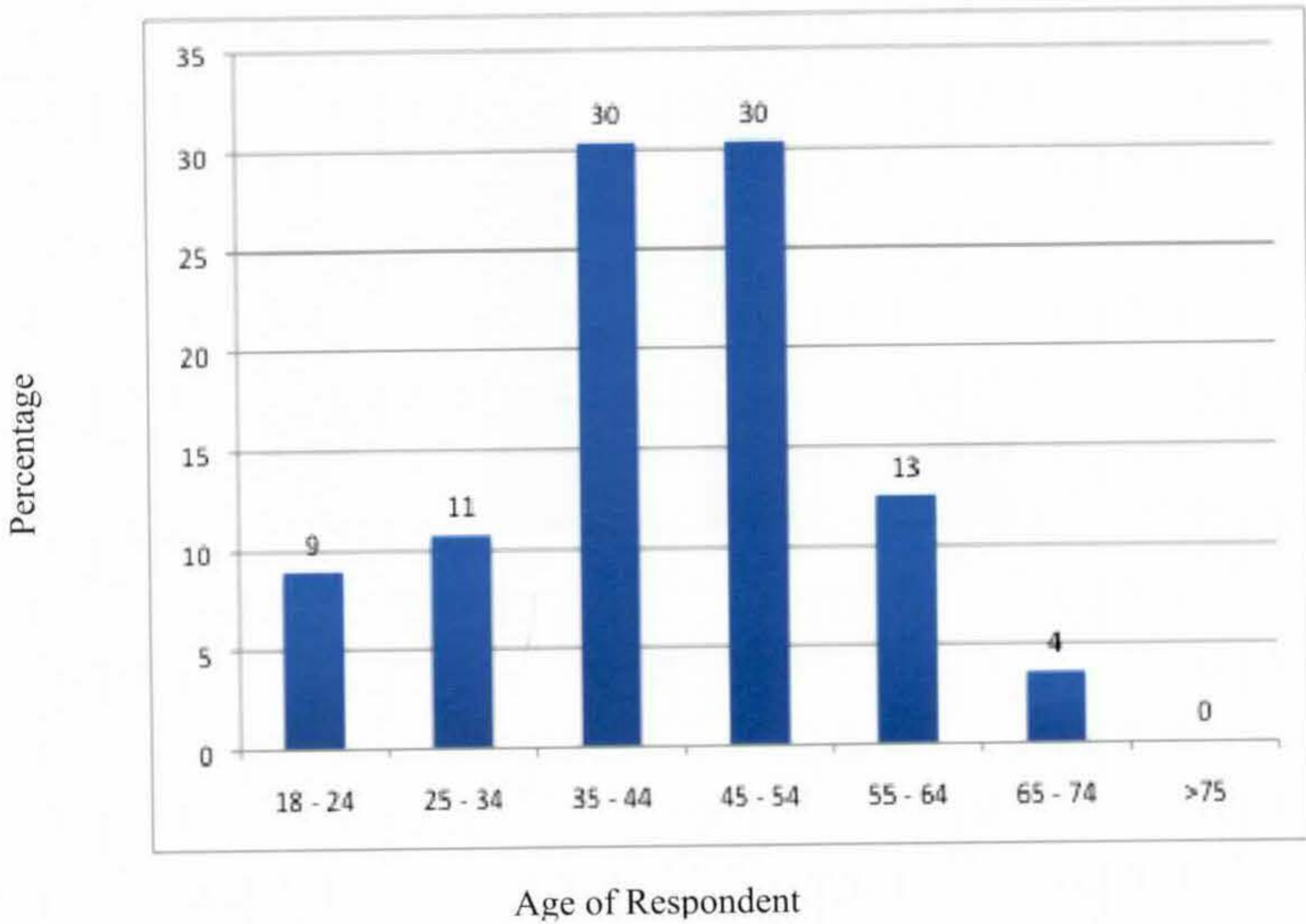


Figure A.1.1: Age of Respondent, expressed as % of total sample

QUESTION ONE: (2) Gender

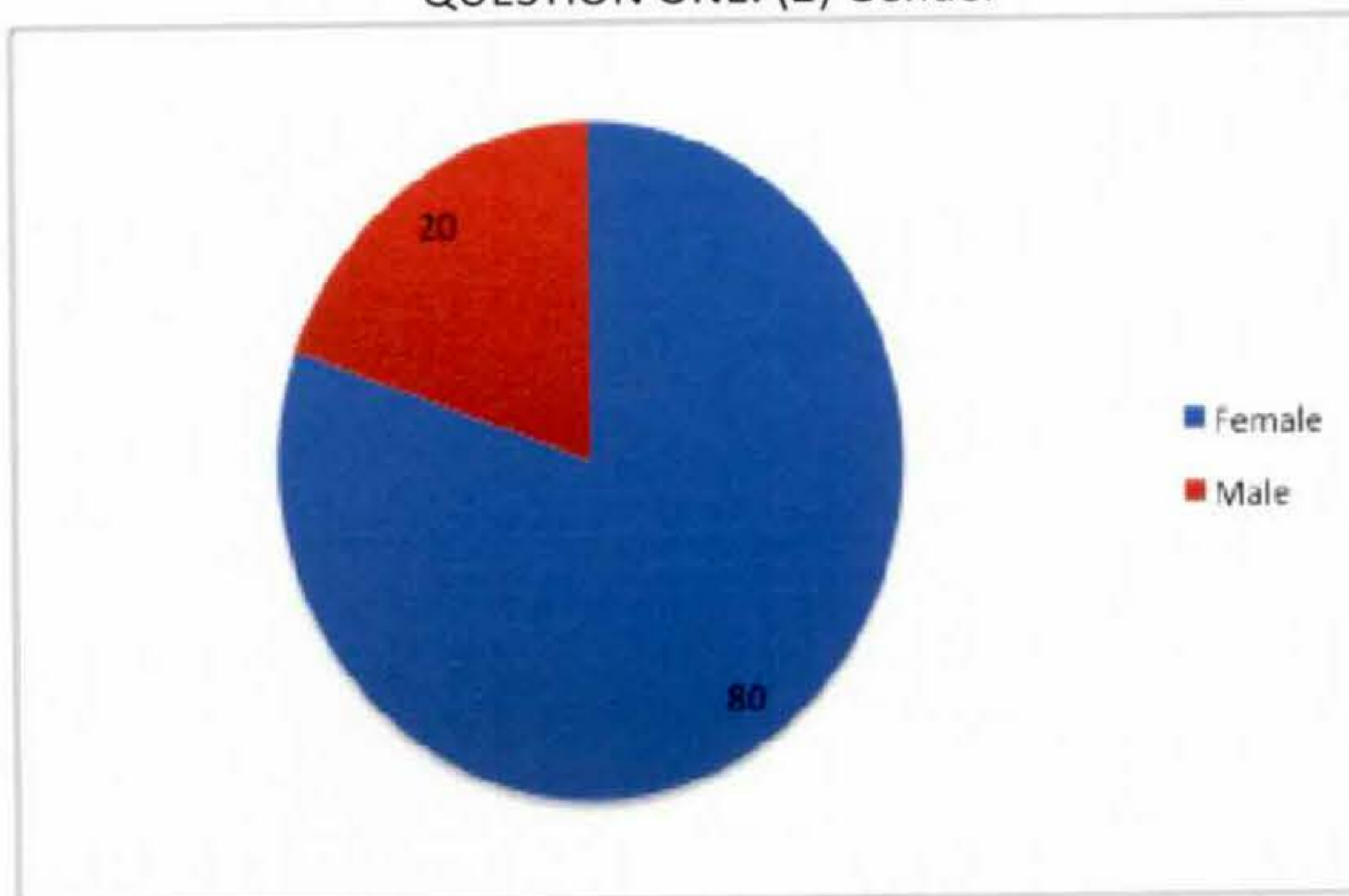


Figure A.1.2: Gender of Respondent, expressed as a % of total sample

QUESTION ONE: (3) Number & ages of children

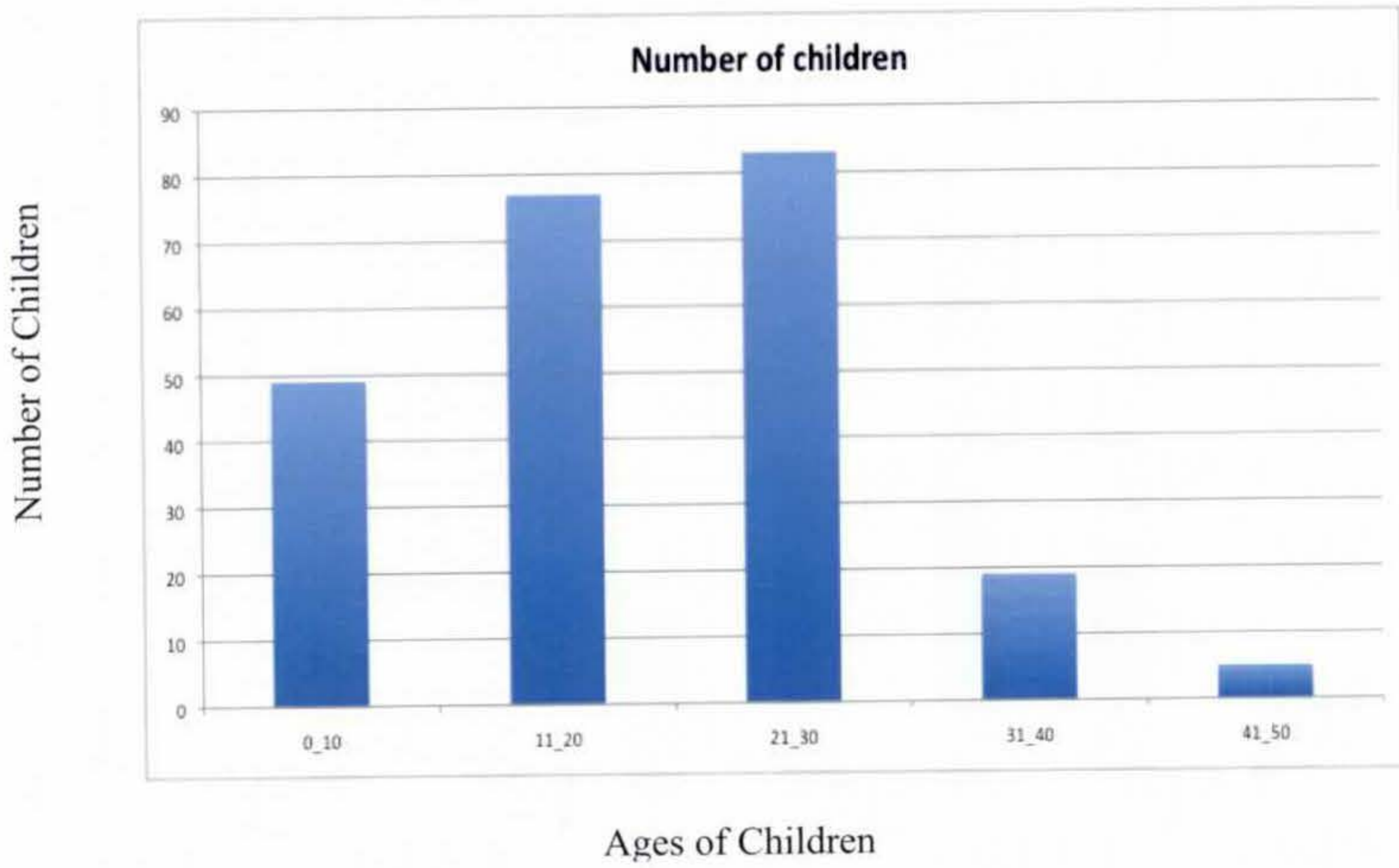
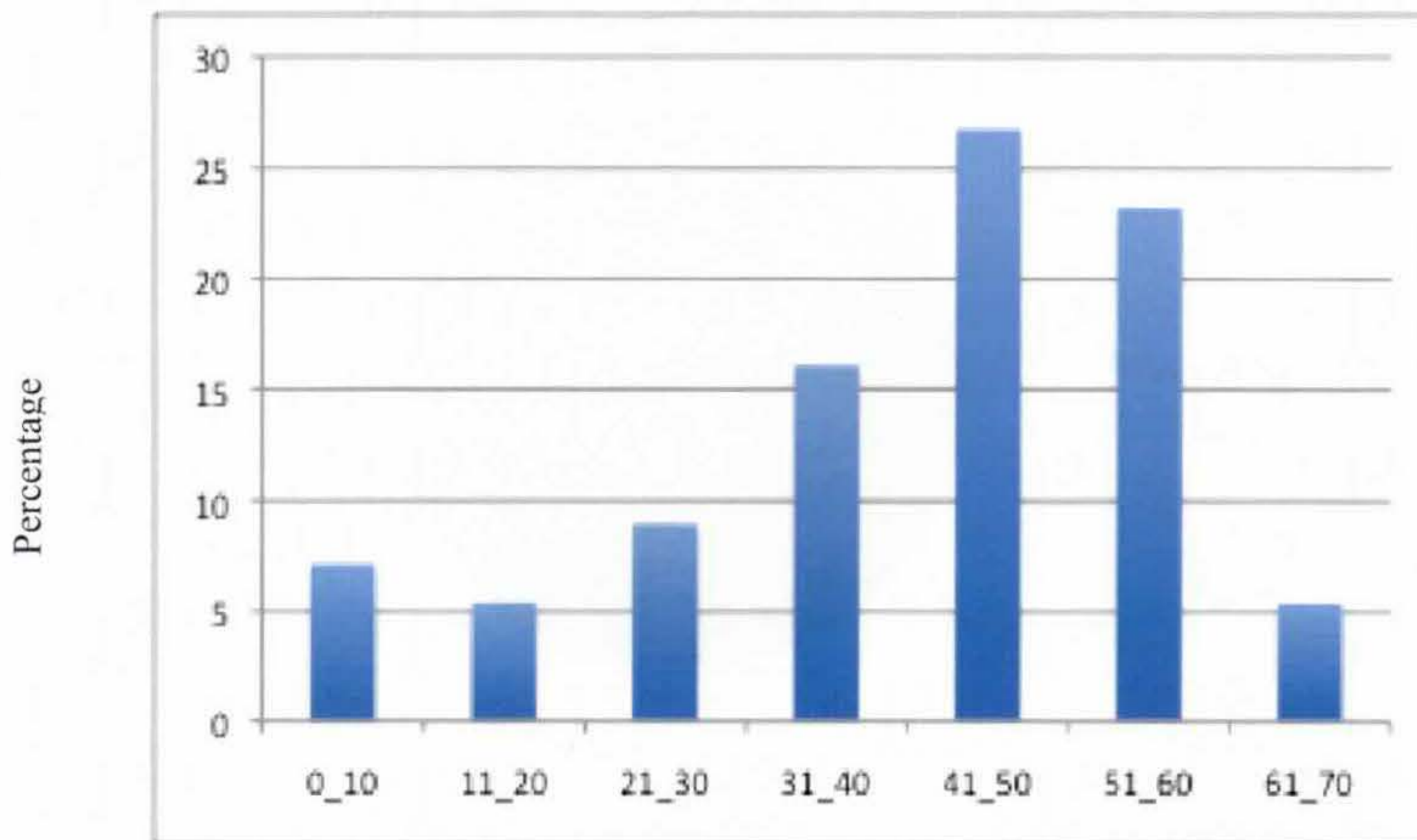


Figure A.1.3: Number and ages of children of respondents expressed as total number.

QUESTION TWO: (1) How long have you lived in the village?



Number of years lived in village

Figure A.2: Years lived in the villages, expressed as total number of years

QUESTION TWO: (2) Where did you live before?

Table A.2: Location of Previous Residence

	Village	District	Province
Respondent			
2	Lolei	Prasat Bakong	Siem Reap
5	Svay Chey	Prasat Bakong	Siem Reap
11	Beng	Chy Kreng	Siem Reap
12	Ko Kou	Prasat Bakong	Siem Reap
36	Stoeng	Sonikom	Siem Reap
37	Trang	Siem Reap	Siem Reap
45	Svay Thom	Siem Reap	Siem Reap
53	Bos Thom	Siem Reap	Siem Reap
54	Bek Kam Ploeung	Prasat Bakong	Siem Reap

QUESTION THREE: Have you been interviewed before?

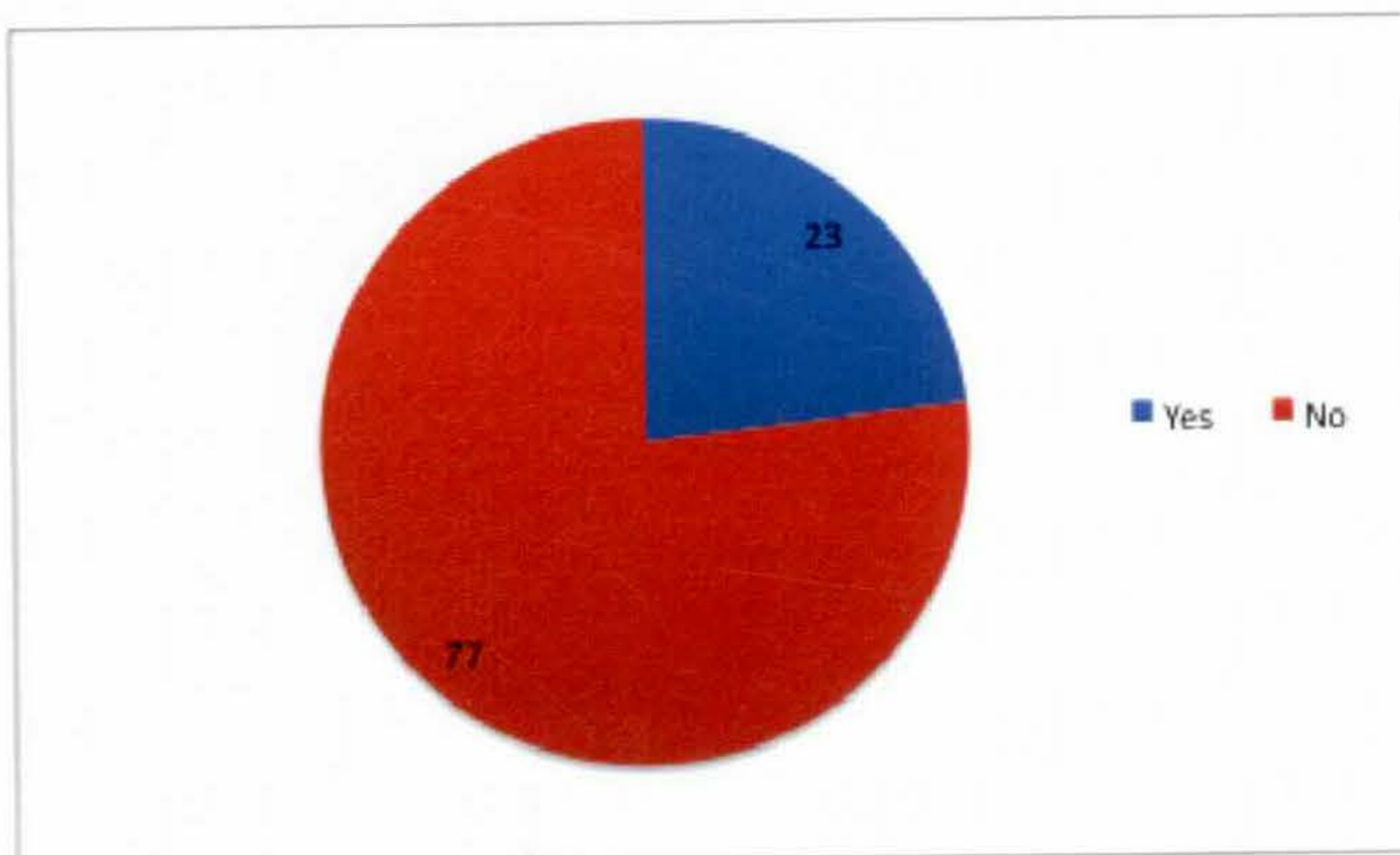


Figure A.3: Percentage of respondents who have previously been interviewed

QUESTION FOUR: Is this property owned? How? [Owned/rented/occupied/other]

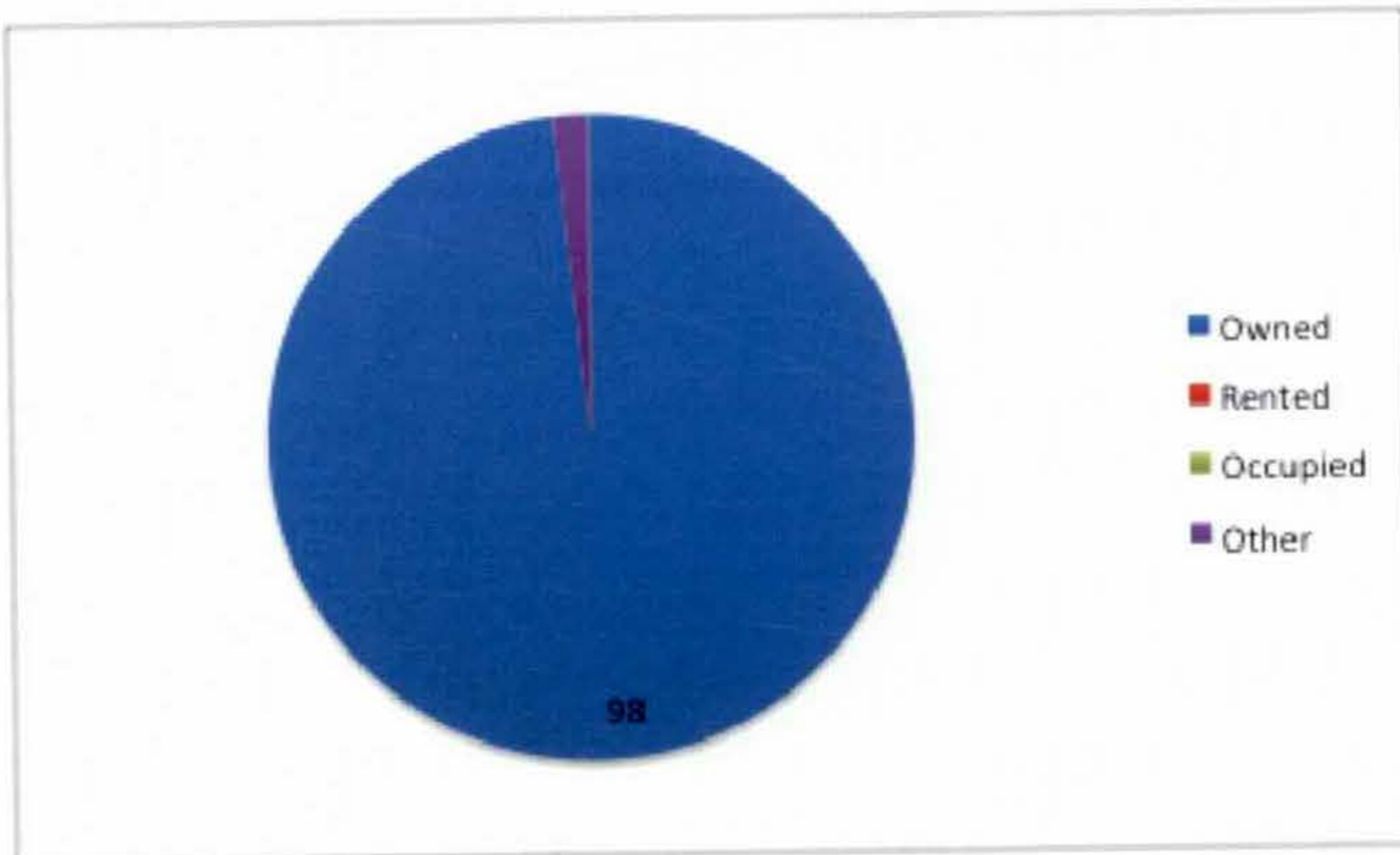


Figure A.4: Perception of land-ownership status, expressed as a %

QUESTION FIVE: If "owned" (question 4) do you have registration papers?

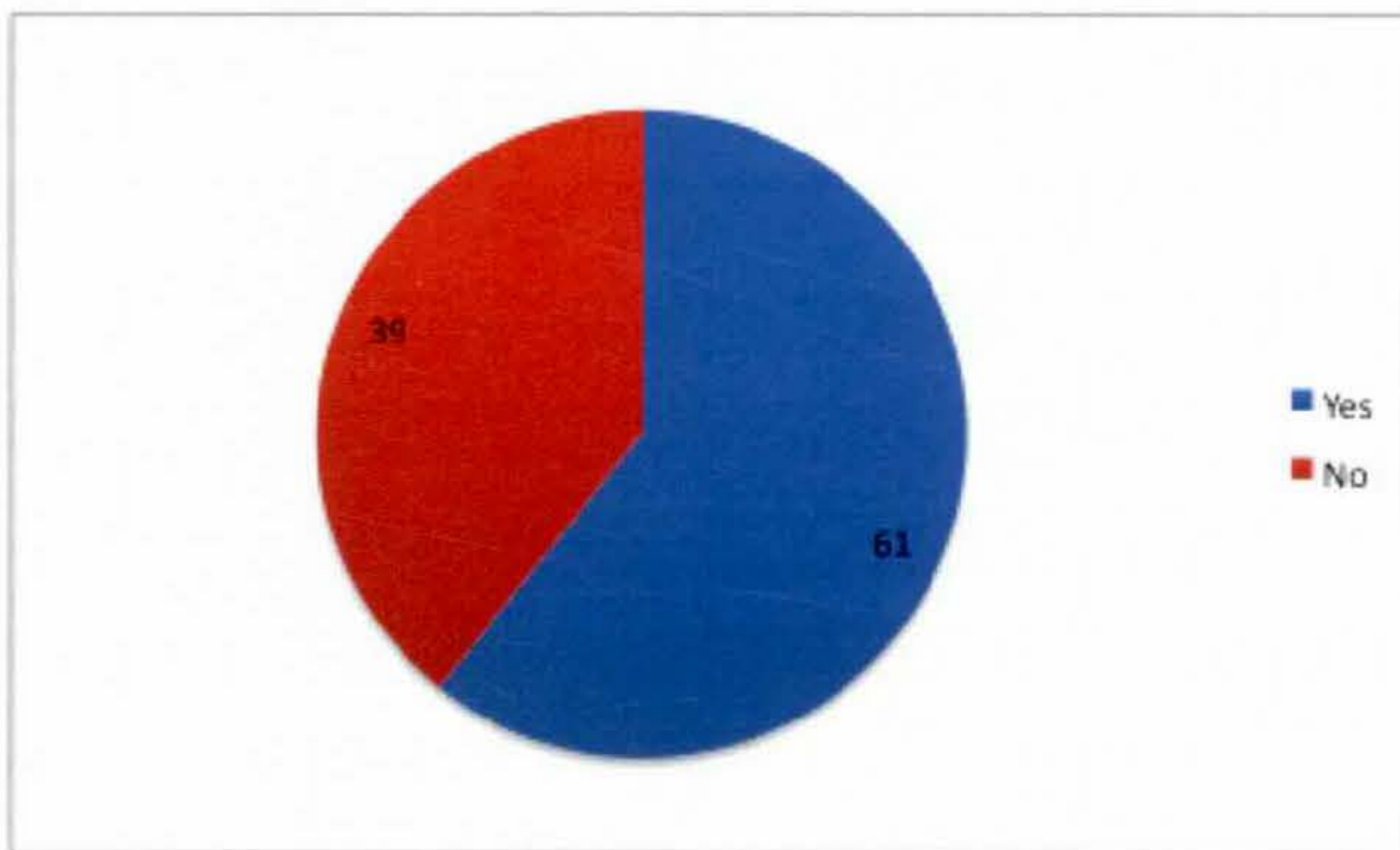


Figure A.5: Registration Papers, expressed as %

QUESTION SIX: Where do you keep your registration papers?

Table A.6: Location of Registration Papers (if held)

Respondent	Location of registration papers
2	In the house.
3	At the commune
5	With sister
6	At home
8	At the Village Chief's.
11	At Apsara Authority
13	At home.
16	At Village Chief's house
18	At home.
19	Chief's house.
20	Commune office.
22	At home.
23	At the village chief's house.
24	Aceleda Bank
25	The village chief.
26	At home.
27	Aceleda Bank
28	At home.
29	At the father's house.
30	At home.
33	At home.
34	At home.
37	Aceleda Bank
39	At the commune office.
42	At home
43	Commune office
45	At home.
46	At the mother's house.
47	At home.
48	At home.
52	The commune office.
53	In the commune office.
56	At home.

QUESTION SEVEN: Are you aware of any restrictions on selling your house or land?

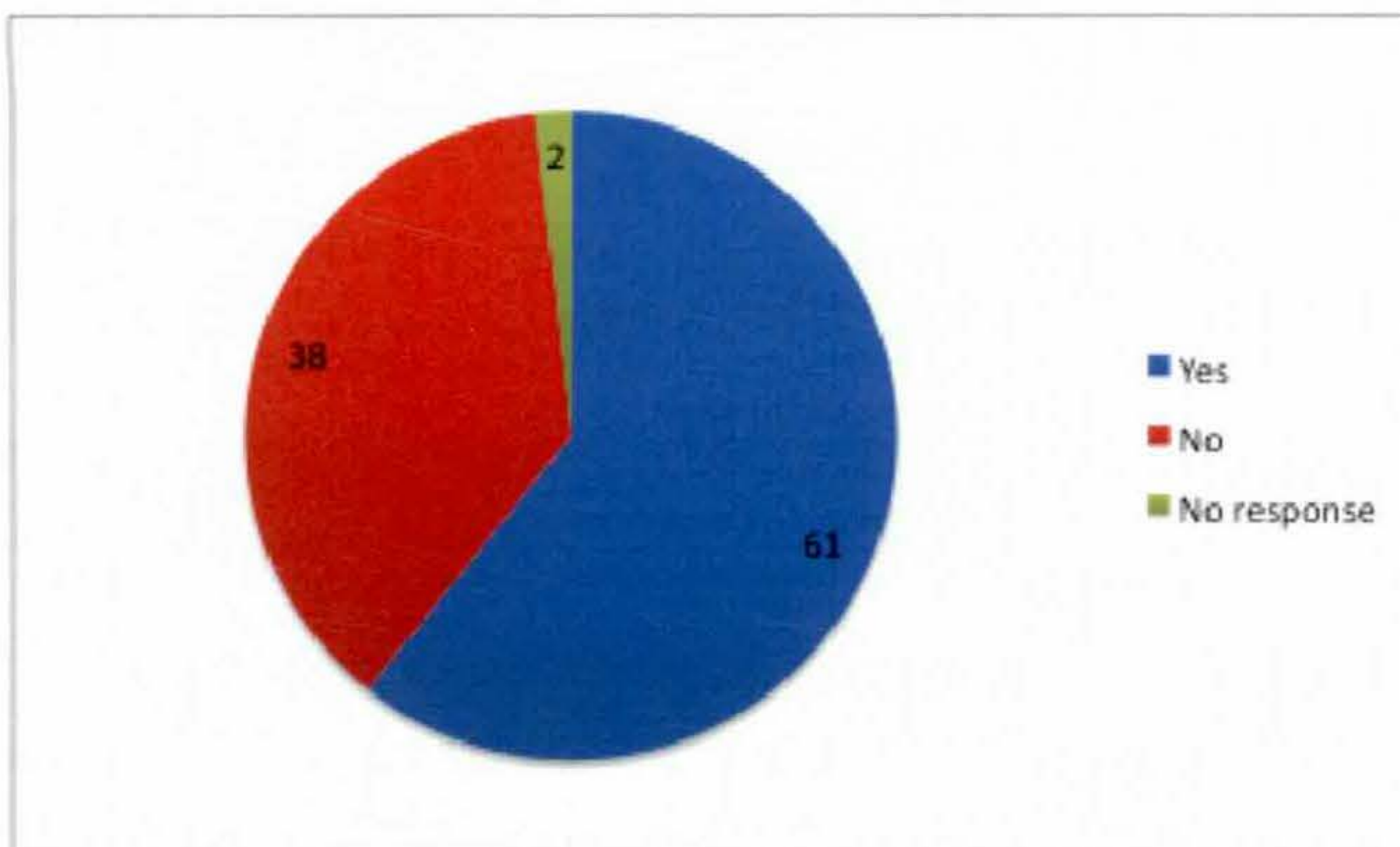


Figure A.7: Aware of selling restriction, expressed as a percentage

QUESTION SEVEN: Can you explain the selling restrictions?

Table A.7: Description of Selling Restrictions

Respondent	Explanation of Selling restrictions
1	We only sell to the people living in the same community; if we sell the land we have to inform the authority in advance.
2	No concrete house is allowed to build or 2 storey concrete house; sell land to people in the same village.
6	Land sale available only in the village, not outsider is allowed to but a few months ago people could sell to the outsiders too.
7	Village chief or commune chief do not sign an agreement of selling land
8	Land is sold to the outsider but not allowed to build; land is sold through the village only.
14	Outsiders cannot buy the land here.
18	Apsara prohibited the people from selling land because they are afraid the next generation will not have land to live.
19	Land in the park is not allowed to sell to people outside the Park.
20	Outsiders cannot buy land in the park; people in the village can buy in case they do not have land for farming or housing
21	People cannot sell land in the park but they can sell their land to the people living in the same village.
22	No land selling activities because this park is governed by Apsara Authority.
23	A few months ago selling land was not prohibited but now it is.
25	Land in the park is not for sale.

26	If people sell their land in the park the village or commune chief will not sign for agreement.
27	Not sell the land because it is in the park.
30	The Authority does not allow the people to sell their land to the outsider. But people in the park can buy land in the park.
33	Land is not sold in this park.
34	Land in the park is not for sale
35	Land selling is prohibited and Village Chief doesn't make a letter of land ownership for the buyer.
38	Not allow to sell land to the outsiders because it is afraid that they will build big houses.
39	Not allow to sell land to the outsiders because it is afraid that they will build big houses.
40	People who sell their land have never had any problem I have heard of.
41	Land which is close to the temples is not allowed to sell, but other far land is sold too.
42	The Village Chief won't make a letter of land ownership to the buyer
44	Not allow to sell land for the outsiders but only in the village for people who do not have land
45	Land in the park is not for sale.
47	Land governed by the Apsara Authority is not allowed to sell - but previously people could sell some.
48	Land in Zone 1 is not allowed to sell for the outsiders but it is possible for people in the village who does not have land.
49	Not allow to sell land for the rich buyer because the authority is afraid that they will build big houses; one case is that one rich buyer came to buy but the village
50	Land in the park is not sold for the outsiders.
55	Outsiders cannot buy land from people living in the park.
56	We can only sell for the people in this village.

QUESTION EIGHT: Are you aware of the World Heritage listing?

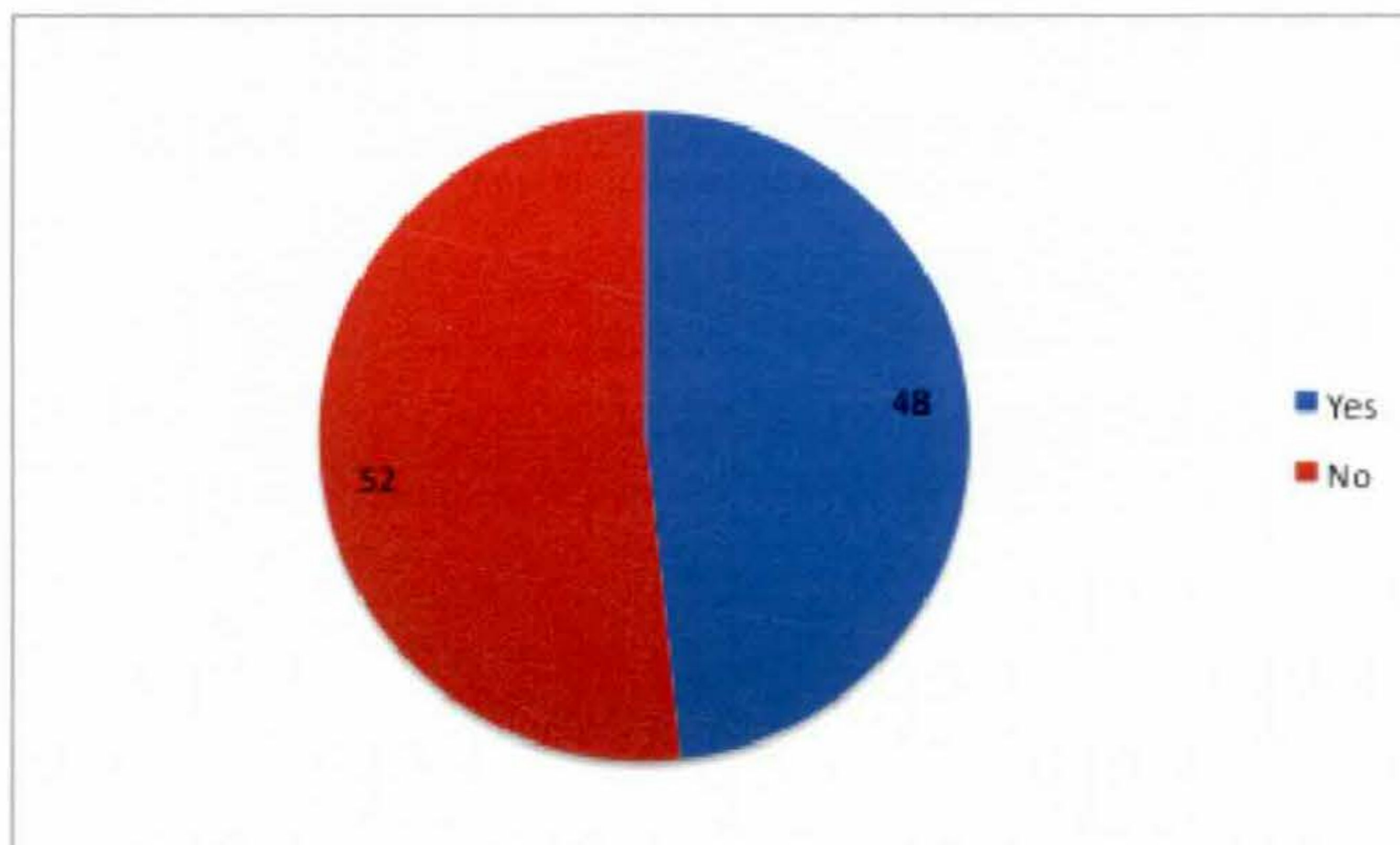


Figure A.8: Awareness of World Heritage Listing, expressed as a %

Table A.8: What does World Heritage mean to you?
[for those who responded “yes” to the previous question]

Respondent	
1	I am happy that there is the World Heritage listing. However, Cambodia is not in a good situation.
2	I am happy. But I do not understand anything related to the World Heritage listing due to illiteracy.
4	I don't know.
7	Angkor will be safe.
8	Angkor will be well known to the world.
13	I am happy that Angkor is known by the world.
16	To me I am happy; But keep Angkor from belonging to someone.
17	I am happy. But I do not understand anything related to the World Heritage listing due to illiteracy.
20	Keep good opportunities for the next generation to know; Moreover it will attract a lot of tourists to Cambodia.
21	It is very important because it will bring a lot of tourists to Cambodia.
23	It is a great honour to have Angkor in the World Heritage listing.
27	Not sure.
35	Temples will be very famous
36	I don't understand the concept of WH listing
38	No idea.
39	No idea.
40	It indicates that the temples of Angkor belongs to

	Cambodia.
42	I think that it seems to belong to Cambodia; it seems to belong to the World
44	It will be known to the world
46	Not understand the concept.
47	Not understand anything.
48	it will be famous and known by al the people in the world.
49	It is a good thing because it will be known by all the people in the world.
52	No idea.
53	After listing Angkor as the World Heritage our temples will be famous all over the world.

QUESTION NINE: Do you know where the boundaries (zones) of the World Heritage Park are?

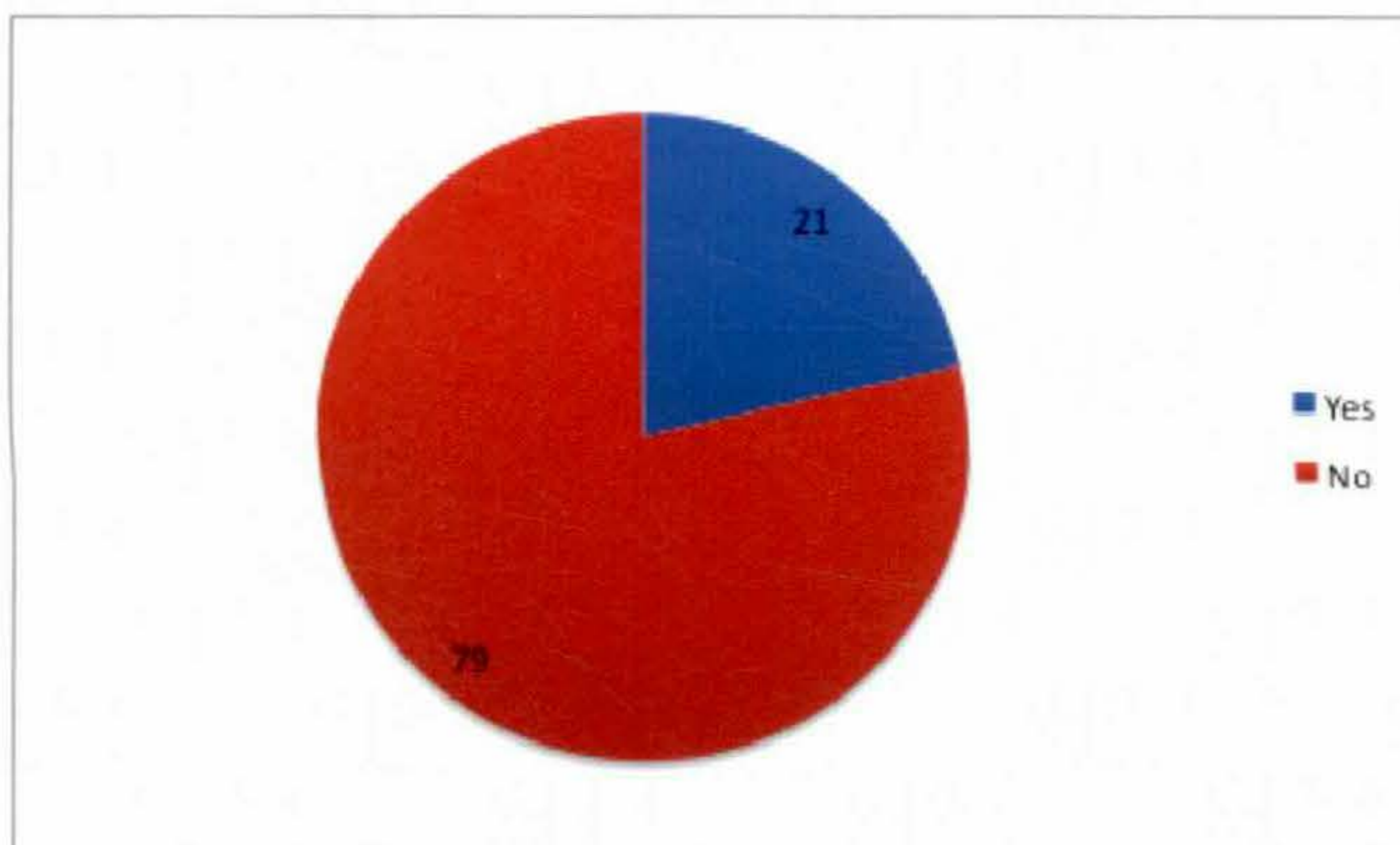


Figure A.9: Awareness of World Heritage Park boundaries, expressed as %

Table A.9: Description of World Heritage Park boundaries

Respondent	
1	West - Kaek Bridge; East - Angkroung market; North - Trapeang Roeung; South - Trapeang Pong.
2	West - Ou Bridge; East - Angkroung market; North - no idea; South - no idea.
3	West - Ou Bridge; East Ou Anchien; North - no idea; South - no idea.
8	West - Ou Bridge; East - Phum Steung Bridge; North - Kom Choeung; South - Kom Pong.
9	West - Ou Thom; East Ang Krong; North - Phnom Bok; South - Trapenpong.
14	West - Kaek Bridge; East - Ou Anchien Bridge; North - north of Lolei; South - Trapeang pong.
20	West - Spean Kaek village; East - Rolous Commune; North - north of Lolei; South - Rolous Commune (south).
21	West - Kaek Bridge; East - Rolous River; North - north of Lolei temple; South - Prast Trapenpong
33	West - Kaek bridge; East - Rolous river; North - Lolei Pagoda; South - Toteoving village.
35	West - Kaek bridge; East - Rolous river; North - Lolei Pagoda; South - Totoeng village
49	East - Ou Anchien Village; West - Rolem Bridge; North - 265 metres north of the Indratataka reservoir; South - Trapeng Pong
56	West - Kaek Bridge; East - Ou Anchien; North - Lolei; South - Trapenpong

QUESTION TEN: Can you tell me about the rules or laws that apply to your house / land?

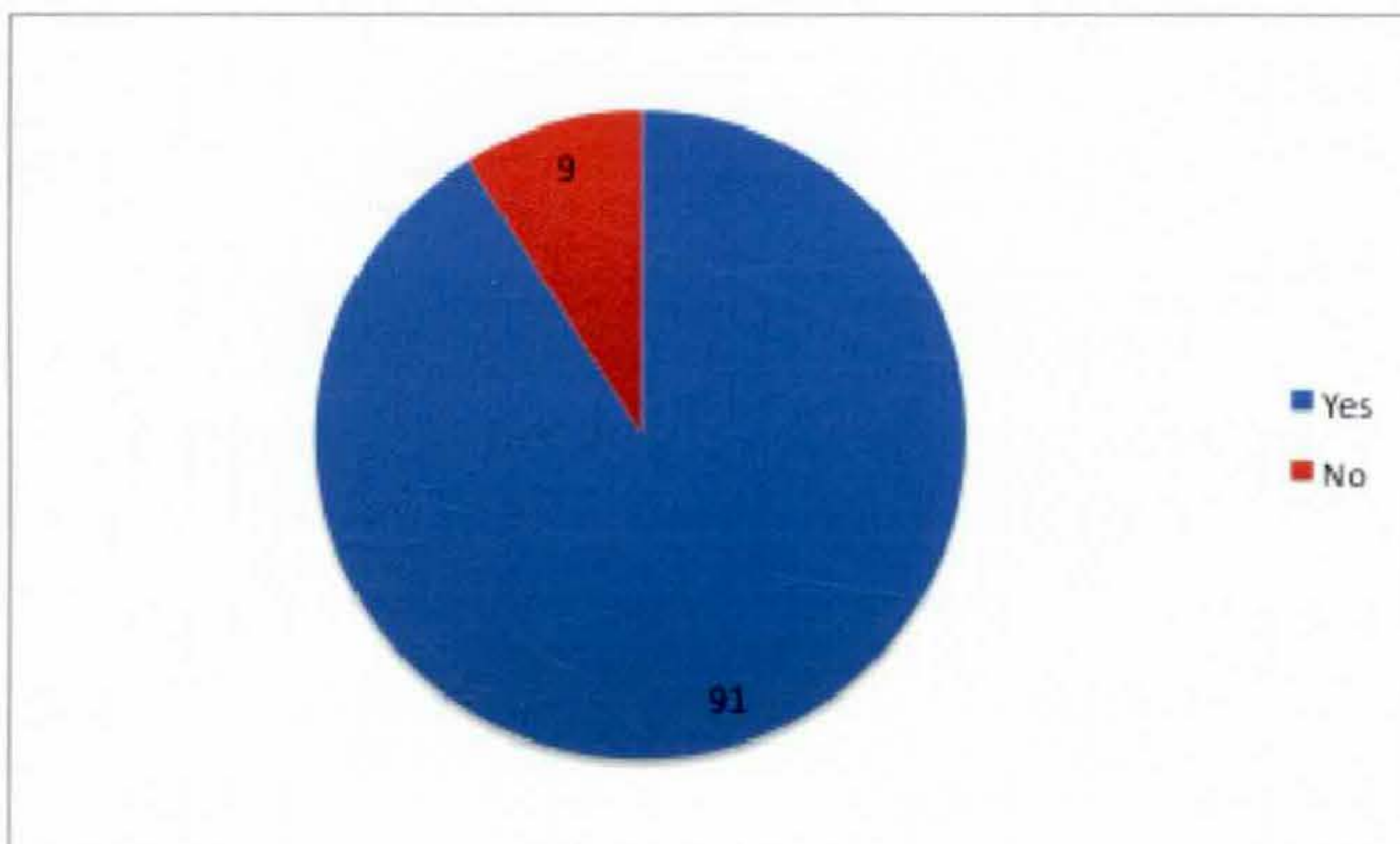


Figure A.10: Awareness of localised rules and laws

Table A.10: Description of rules

Respondent	
1	The rule does not allow to build a new house, but the house can be expanded when the last gets married. Other will be given some land at Tany area.
2	Land is only for the vegetation or farming; prohibit to dig illegally on the land in the house except for the backyard.
3	Available for the vegetation; Be able to build house if has construction permission.
4	Must have construction permission before building; bare land can have agricultural activities.
5	More room under the main house are not allowed to build - only one. No concrete house
6	Old house can be repaired or build new but with permission; can build room after the permission; no filling in any kind of pond; no digging the hillock; no digging for the plant growing
7	3 month permission in advance; no big house is allowed to build; no room underneath house is allowed to build; land can only be cultivated; no digging.
8	Traditional house is allowed to build; One room only under the house; construction must have permission; bare land without original or old house is not allowed to build.
9	Old house needs to be repaired must ask for a permission 1 month in advance; many floors are not allowed - not high - not too big; land (bare) is for cultivation - no house construction
10	Ask permission before the construction; bare land is for the cultivation.
11	No concrete house; no tinned roof.

12	Ask permission 3 months in advance.
13	Build house must have permission from Apsara Authority; only traditional house is allowed; no cutting the tree to expand the land.
14	Ask permission before the construction; building is easy for the old house - if not it is very hard to ask for the permission; bare land is not allowed to build only for the agriculture - no digging.
15	Ask permission before the construction started; house is made only of wood.
16	Ask the permission through the Village Chief before getting to the Apsara Authority.
17	There is house pattern for the people who want to build the house; Thai-styled house is not permitted to build.
18	I am not quite sure.
19	Construction must have permission; Maximum height is 9 metres; Land without old house is also possible to ask for the permission.
20	Construction is available for those who have old house; construction can be conducted unless there is permission from Apsara; People can have a choice of house style as they wish.
21	People who have old house can repair or build new; land is not allowed to dig or expand the land or filling in the shallow place.
22	Make permission before doing something; land needs to have letter of ownership.
23	Old house is okay to build the house but must ask for the permission and without any house or cottage is not allowed to build the house.
24	Even with the permission in hand it is difficult; land is only for the agriculture.
25	
26	Must ask the permission for any construction; wooden house with red tile roof; 2 floor house is not allowed; follow house pattern of Apsara; one room is allowed to build; land is used for agriculture; before doing anything must ask the permission.
27	Before building the house one must ask the permission; land without house is for agriculture only.
28	People who build new house must ask the permission from the Apsara Authority; the site of the house must go with what is said by Apsara; rules or laws of land - I am not sure
29	I don't know the process related to rules or laws about the house.
30	Must ask permission before the construction; Land cannot be expanded by means of digging or cutting the trees.
31	Must ask permission for construction; land needs to have letter of ownership.
32	The law is strict but there is a lot of construction.
33	Must have permission before the construction; must follow the house pattern by APSARA Authority; no rules or laws of land use.
34	
35	New house building must have permission; House is made of wood (1 floor) - one room underneath; no rules or laws related to the use of land; not able to sell land in the park.
36	If there is permission there is construction. Rules or laws of land - I don't know.
37	Ask permission before construction if not will be fined or demolished; build house by the house pattern issued by APSARA; land without anything on it is not allowed to build anything
38	People living in this area can build house but must ask permission;

	land needs to be owned by a letter of ownership.
39	Ask permission before the construction starts; maximum height 7 metres; traditional house; land is for the agriculture but not for digging.
40	Old house can be allowed to repair or build new house after the permission. Land is not allowed to build new house but other places I have noticed they could build houses. This shows the unfairness.
41	Ask permission from APSARA Authority by the Village and Commune Chief; house is a traditional style; Bare land is possible for the agriculture but not for building the house.
42	No big house is allowed; Land is not allowed to dig or cut the trees on the land
43	Ask construction permission by village chief; cannot build big house; bare land cannot be dug except for cultivation
44	No permission, no construction. No more 2 floors include the basement. Old house can be repaired or built new. Land is not allowed to demolish the hillock
45	Ask the permission from the Apsara Authority; no concrete is allowed; house is made of wood; land - no rules or laws.
46	To ask the permission is quick and easy for the old house; if not, it must be very difficult to ask; land which has old house or cottage is allowed to build new house; bare land is not allowed to build - only for agriculture.
47	Old house can ask permission for the building but for those who are newly married will have chance to build house on bare land because they are listed by the Apsara people but for those who were listed by the time the Apsara people listed in they will not allow to build house on the bare land; Apsara Authority tried to keep the same numbers of houses today which is easy to control.
48	Ask 3 months for the permission before the construction; house is made of wood applied the red colour; hillock is not allowed to clear or demolish; if it is the pond it is alright to make it deeper; no filling in the pond.
49	Old house is allowed to repair or to build new house must be made of wood; bare land is not allowed to build the house.
50	Old house is possible to build but must have permission; house is made of wood with red tile; bare land is not allowed to build
51	Ask permission from Apsara Authority; bare land is not allowed to build the house.
52	Ask permission 3 months before the construction starts; house must have the correct size; no rules or laws apply to the house/land.
53	Ask for permission unless there is an old house; the house is traditional and wooden; one room only allowed to build; no concrete house; no high house; land is sellable.
54	
55	For whom who have old house can repair or build a new one by asking permission; build traditional house; Apsara Authority does not allow to sell the land.
56	Old house is allowed to repair or build a new one; the house can be expanded but not allow to build another closer new; the house has the maximum size of 9 x 9 metres with the height of 7 metres; the land can be changed ownership to the children's ownership.

QUESTION ELEVEN: Is land inside or outside the Park boundary more expensive to buy?

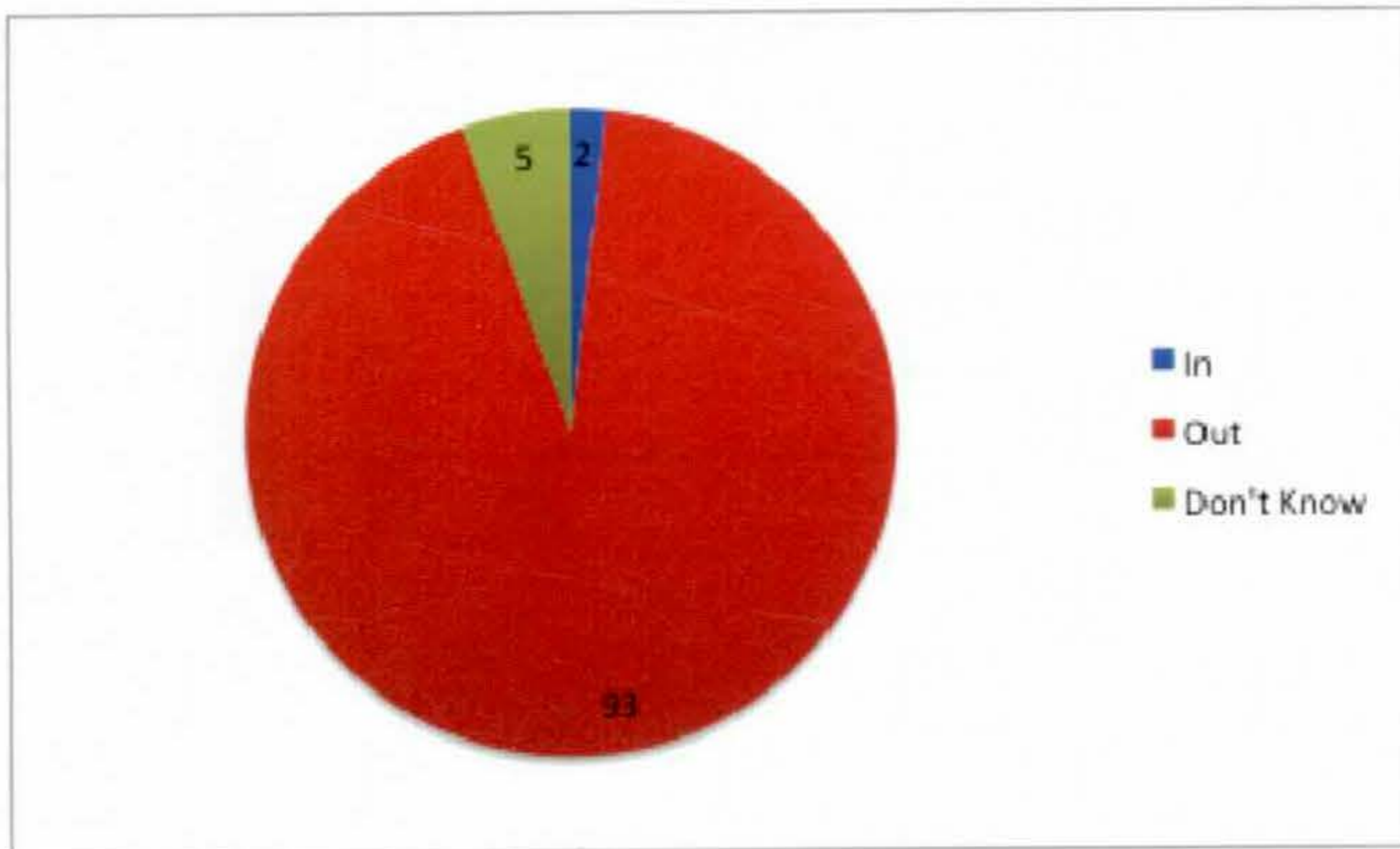


Figure A.11: Prices "In" or "Out" of World Heritage Park more expensive, expressed as a %

QUESTION TWELVE: Can you estimate how much land is worth?

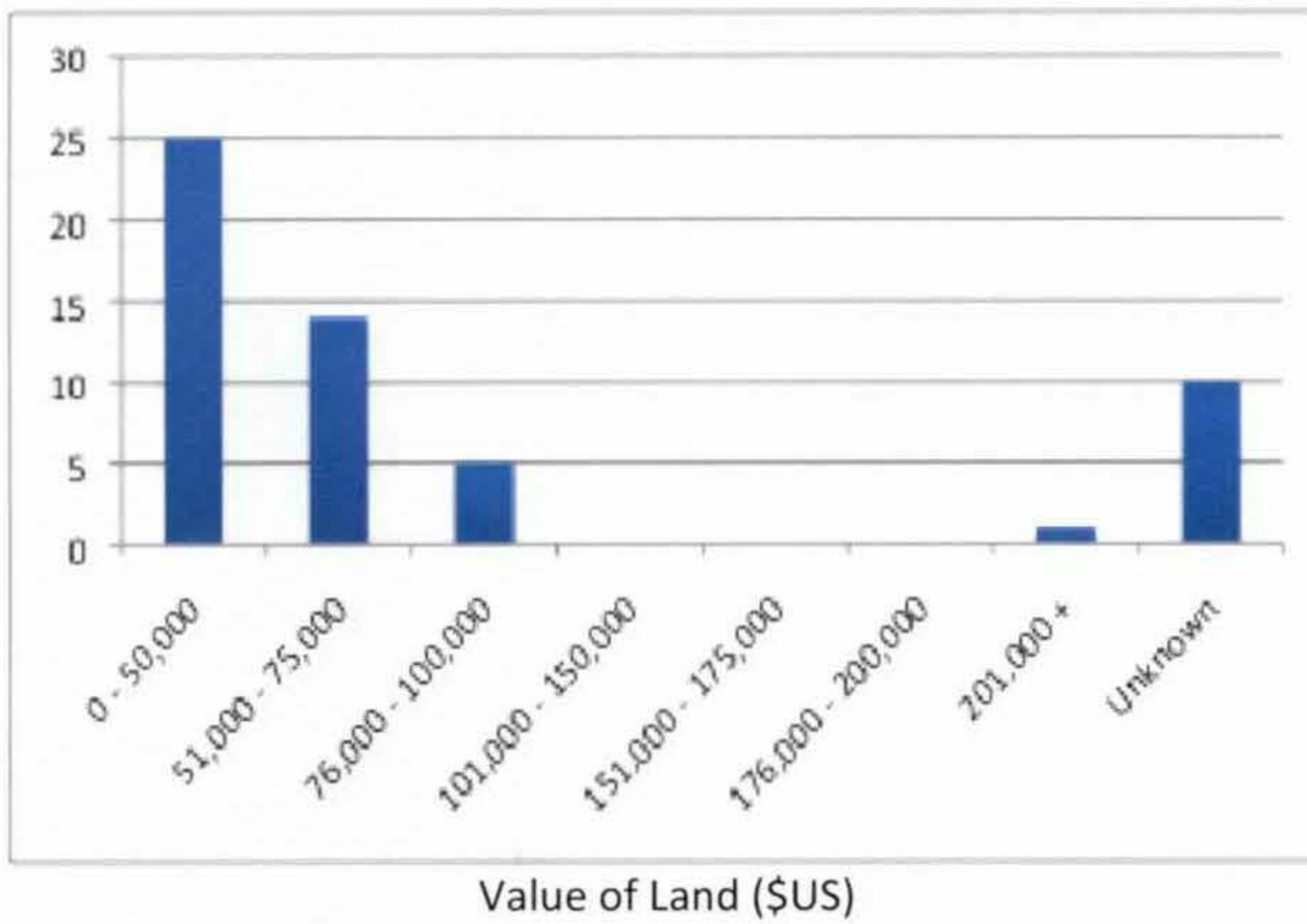


Figure A.12.1: Estimated value of land inside the World Heritage Park, expressed as actual number of responses

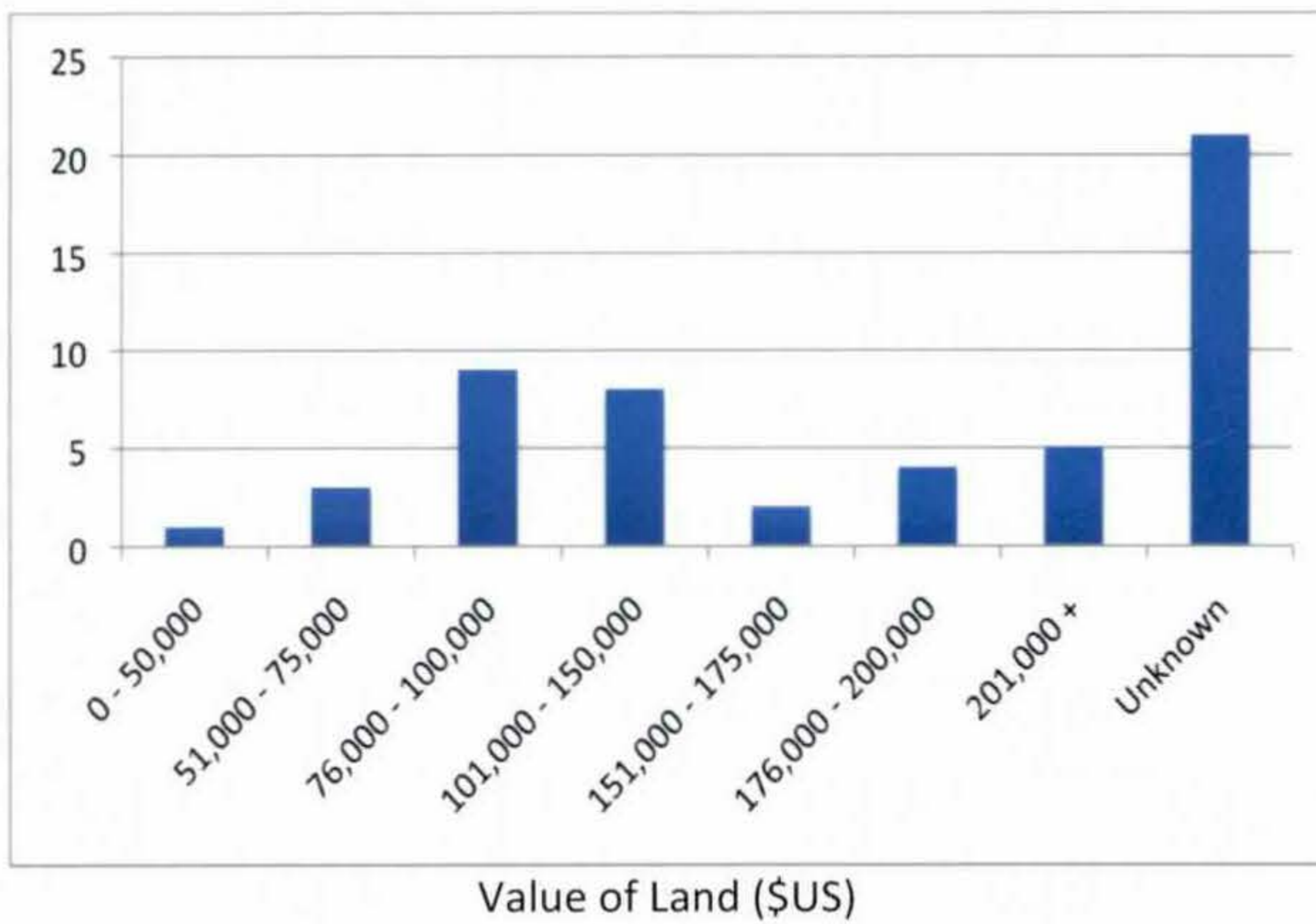


Figure A.12.1: Estimated value of land outside the World Heritage Park, expressed as actual number of responses

QUESTION THIRTEEN: Do you think you will give some land to your children when they are old enough?

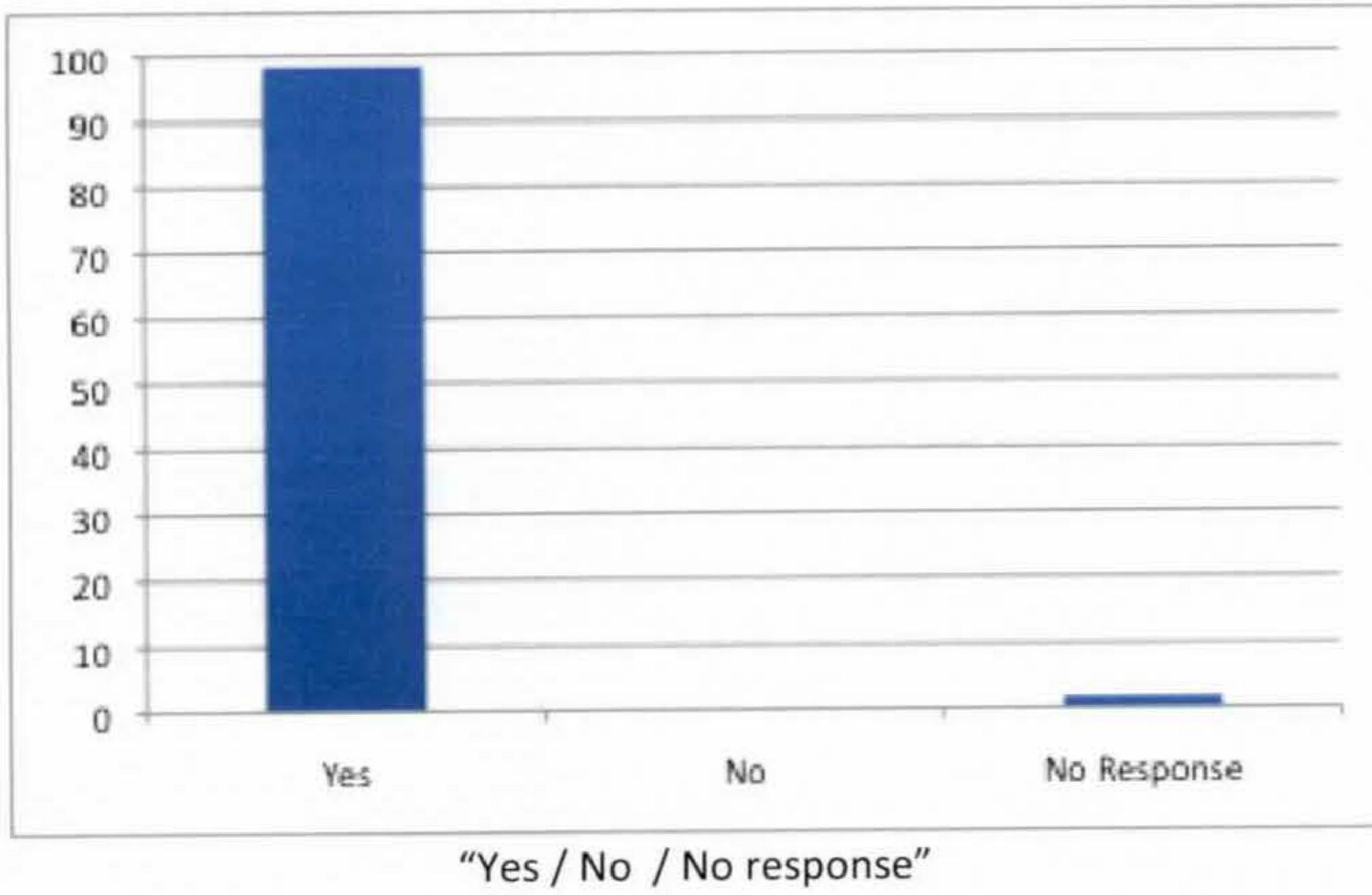


Figure A.13: Desire to give land to children, expressed as a %

QUESTION FOURTEEN: If you would like to give land to your children how do you do this?

Table A.14: Description of how land is passed between the generations

Respondent	
1	The first born will be given more land; other will get less land. The last born will live in the parents house.
2	The one who spent hard time with parents will be given more land on inheritance.
3	No prediction
4	All property will be given to the only child.
5	We will keep our children living in this area
6	Make a letter of land ownership; give land as much as I can
7	The more I have the more the children will receive.
8	Give land as much as I have.
9	Give one plot to each child; 1.5 hectare for farming land.
10	Give only one plot of land for housing.
11	Not sure because the children are small.
12	Not sure.
13	Give land to children equally; The youngest will get more because he/she will live in the original house with additional land.
14	Not sure because the Apsara Authority said that the listing of the number of married people will be able to build the house. Other who are not yet married will not allowed to build house on the land given by the parents. They will live some where else managed by the APSARA people.
15	Give a plot of land to each child equally - for the married children.
16	Give land to the children by using the tape measure.
17	Give land to the children by using the tape measure.
18	Allocate the size of land to give to children.
19	Give only one plot of land.
20	Give a plot of land to each child.
21	Give a plot for each
22	Give them land, 25 m x 60 m.
23	Give them land by using the tape measure.
24	Give land to the children for housing.
25	Give as much land as possible.
26	Give one plot of land for housing and ask the village chief to make a letter of ownership.
27	Give land only for building the house.
28	Give them each of the land only - 30 m x 40 m
29	I am not sure yet.
30	Give one plot of land for housing.
31	Give land only for house for each child.
32	One plot of each land to each child.
33	Give one plot of land.
34	Allow the children to live in this area.
35	Give a plot of land to each child equally.
36	Give as much land as I have.
37	I can effort my land in giving to the children as much as I have

38	I will give as much as I have.
39	Share the land I have with the children.
40	The children who get married to the better living condition will live in that house; other will allow them to live with parents.
41	Use the tape measure to divide land for children.
42	The youngest of the family will own the house after the parents. Others will have a plot of land.
43	I have no expectation at this stage
44	Land for the children is for housing, no land for agriculture
45	I don't know because my child is small and I have only one.
46	I have only one child; all the properties will be given to my daughter.
47	This land where I am living on will be divided by the number of children and then they will live here.
48	I am sure but if anyone or relative who looks after me when I am old I will give all my properties to him/her
49	Will give land surrounding this house to the children.
50	Give land to children for housing; the youngest child will keep in the same place.
51	Give a piece of land for housing.
52	Give the surrounding land to the children to live.
53	Don't know yet.
54	Not sure yet.
55	Give only one plot to each of them for housing.
56	Give a plot of land to each child for building the house.

QUESTION FIFTEEN: Have you heard of the APSARA Authority?

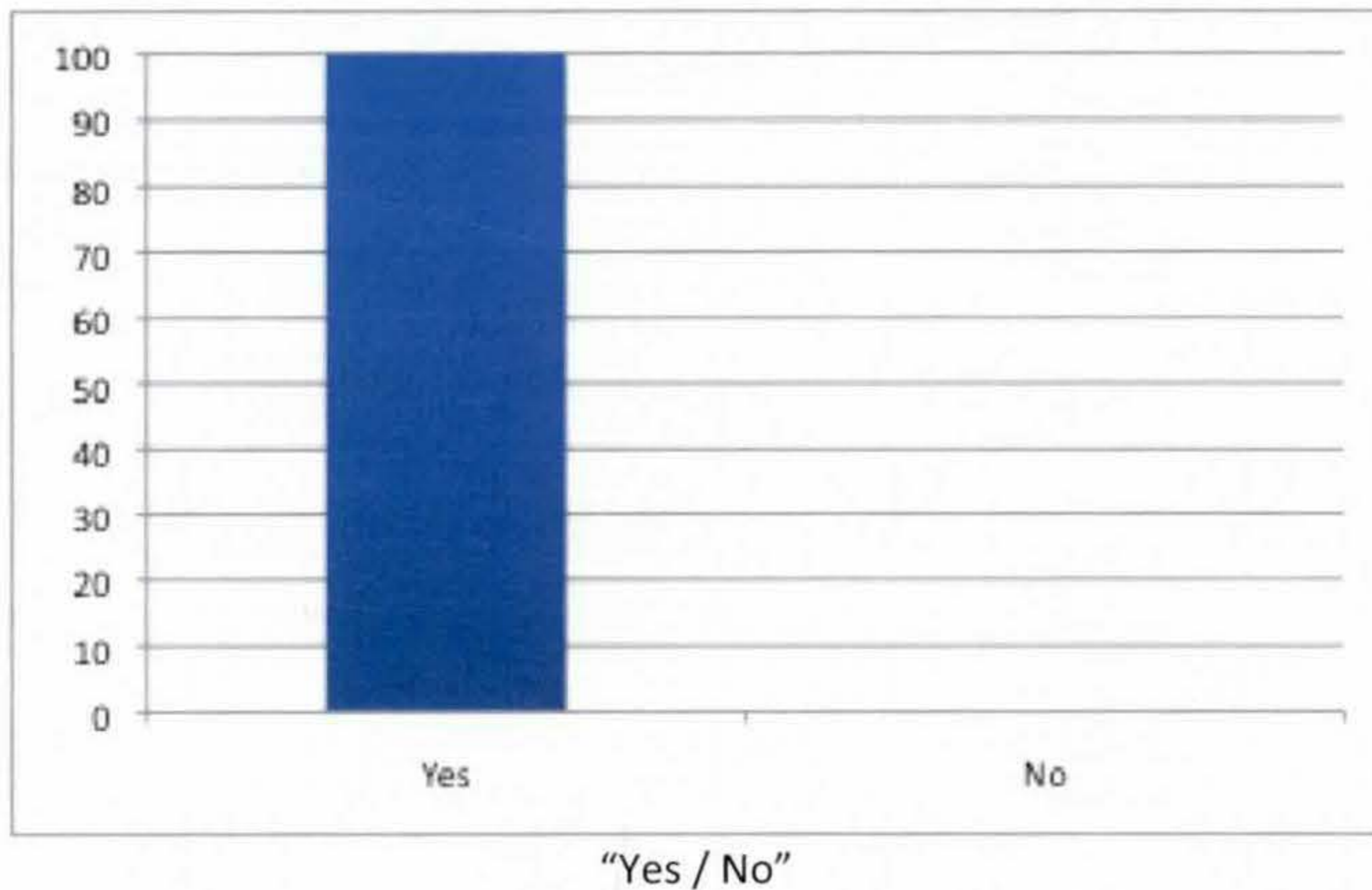


Figure A.15: Awareness of APSARA Authority, expressed as a %

Table A.15: Description of APSARA's role
[for those aware of the Authority]

Respondent	Description of Role
1	Protect forest from cutting; protect land from being sold; protect the temples.
2	Protect land from being sold; protect wild life of birds and animals; protect the forest.
3	Protect the forest; protect the increase of new buildings.
4	Protect the forest.
5	Protect new buildings
6	Protect the security of the tourist; protect the trees from getting cut
7	Protect the new building; protect the land sale; protect the temples.
8	Protect the forest; protect the temples; protect something wrong happening in the Park.
9	Protect the temples; protect the land sale; protect everything in the area controlled by the Apsara Authority.
10	Protect the trees from cutting; protect the digging; protect the building.
11	Protect the building; protect the forest; protect the temples.
12	Protect the land selling.
13	Protect the trees; protect the ancient things; protect the temples; protect the land sale
14	Protect the forest; protect from digging; protect the land sale.
15	Protect the construction near the temples.
16	Protect the temple; protect the forest.
17	Protect the temple; protect the lake and pond which are ancient things.

18	Protect from building new houses; protect the temple.
19	Protect from building the house in the Park.
20	Protect the forest; temples and digging.
21	Protect from building the house; Protect from digging; protect from filling in the pond or lake.
22	Protect the new construction; protect from selling land in the park.
23	Protect the tree; protect the temple; protect from digging a pond.
24	Protect the new construction.
25	I don't know.
26	Protect the temple; protect the new building.
27	Protect from building high houses; protect from digging the channel or pond.
28	Protect the land from being sold in the park.
29	I don't know what the Apsara Authority does.
30	Protect the temple; protect the new construction.
31	Protect the construction; protect the digging
32	Protect the temples, forest, ponds, new construction, digging.
33	Protect from the increasing people from the outside to live in the park; protect the temples; protect the construction; protect from selling land in the park.
34	Protect the temple, land and construction.
35	Protect the forest, environment, street, road and ancient things.
36	I don't know
37	Protect from cutting tree; protect from filling in the pond
38	Protect the tree from being cut or dug.
39	Protect the important things and forests.
40	Protect the forest.
41	Protect the trees.
42	Protect the temples; Protect from being dug; Protect from trees being cut; Protect new buildings.
43	Protect from selling land; protect the trees from being cut; protect the fish from being shocked.
44	Protect the temple, protect or maintain the road, protect the land selling
45	Protect the temples.
46	Protect the tree from cutting.
47	Protect the forest; protect the building from being built.
48	Protect the trees from cutting; cutting can be done unless with permission.
49	Protect the new building; protect from digging; protect the temples; protect the forest.
50	Protect the temples; protect the forests; protect the property.
51	Protect the temples; protect the forest.
52	Protect the forest; protect from filling I the lake or any pond.
53	Protect the increasing of new building; protect the temples.
54	I don't know.
55	Protect from the increasing of new buildings; protect the temples; protect the people from selling their land to rich people.
56	Protect the environment; protect the temples; protect the tourist's security.

QUESTION SEVENTEEN: Which organisations play a role in heritage protection?

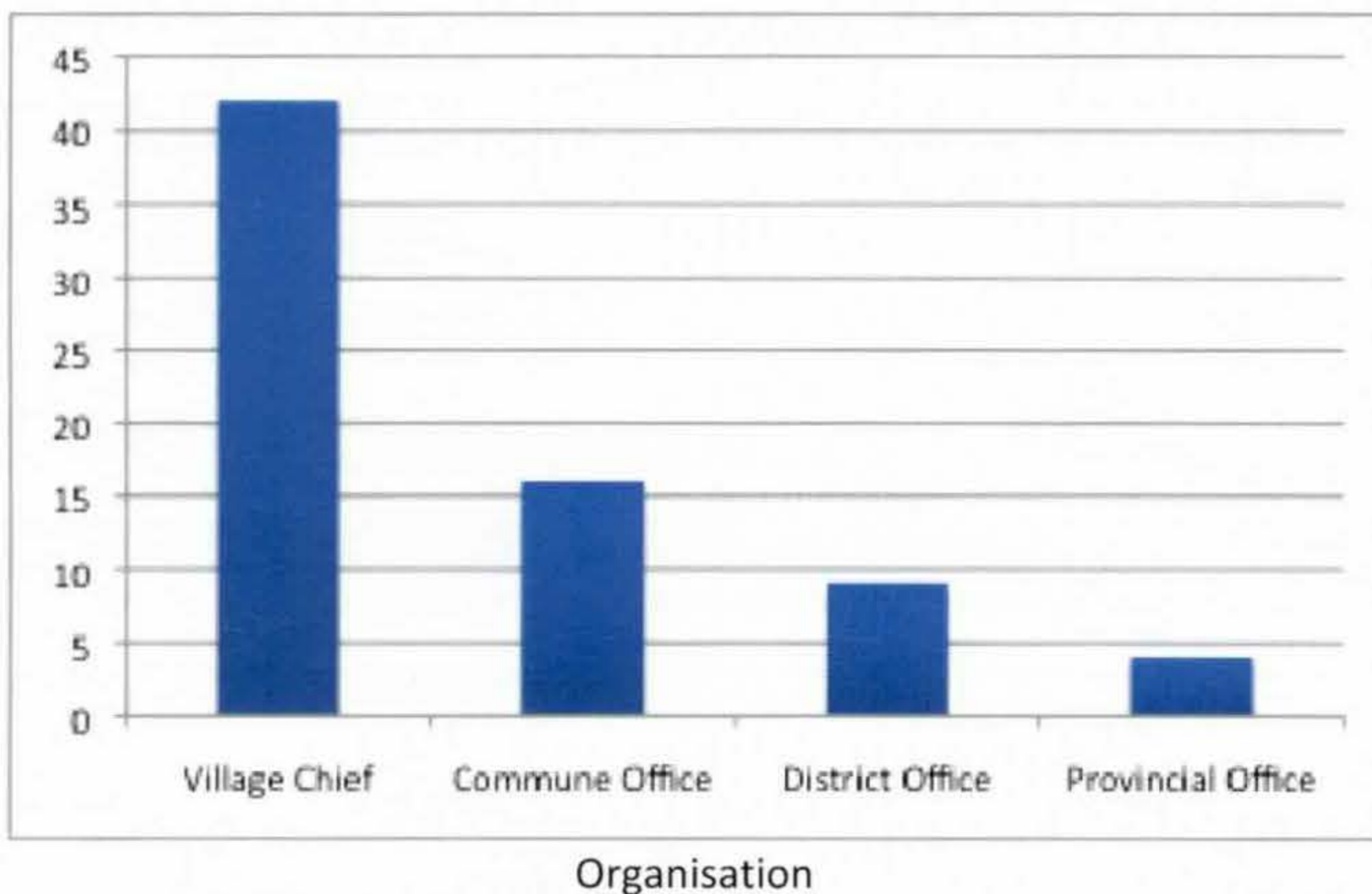


Figure A.17: Organisations with a protective function, expressed as actual numbers (because people could respond more than once)

Table A.17.1: Explain the protective role of the Village Chief

Respondent	
1	Protect the new buildings; protect the illegal digging.
2	Protect a lot of things and inform the authority; give advice about the importance of temples.
5	Protect the security
6	Protect peoples security
7	Security.
9	Co-ordinator
10	Resolve the land dispute and so on.
11	Receive work from the Commune
12	Protect or intervene the illegal selling.
13	Protect the digging from being done by the people
14	Receive work from the Apsara Authority.
15	Manage the problems in the village.
16	Protect the people.
17	Protect from selling land.
20	Protect the temple; protect the forest; protect the moat from being filled in.
21	Protect the people from selling land; protect the new construction.
22	Respect the law and suggestion of Apsara Authority.
23	Protect the land from being grabbed.
26	Practice the work given by the Commune Chief
28	Protect the people
30	Protect the security in the village.

31	Protect the people
32	The people.
33	Protect the land selling.
34	People's security.
35	Join with APSARA people
39	Protect the people; protect the robbery.
41	Protect the tree from being cut.
42	Security protection.
43	Also takes responsibilities like APSARA authority.
44	Protect the temple, protect the forest, security protection
45	Protect the people.
46	Protect everything - security and forest from cutting.
47	Protect the people
48	Security protection in the village.
49	Co-ordinator; protect from cutting the tree; make letter of land ownership for the people.
50	Security protection
52	Forest protection; temple protection
53	Co-ordinator
55	Protect the people
56	Protects the temples; people's security; give advice for not committing the wrong procedure.

Table A.17.2: Explain the protective role of the Commune Office

Respondent	
1	Assist the nursing trees; help the protection of vegetation.
6	Security
9	Protect 7 villages
13	Function as the village chief.
14	Deliver information to the Village Chief
20	same as VC
21	Put order to the VC
22	Protect form selling land
23	Protect the security.
26	Receive the work from the District
28	Protect the land use in the park; protect the people
31	Protect the security.
35	Protect the people.
41	Protect the tree from being cut.
43	Function like the APSARA authority.
49	More responsible than the village chief - irrigation system; water wells.
52	Forest protection; no digging protection
56	Protect the forest.

Table A.17.3: Explain the protective role of the District Office

Respondent	
9	Respond to the work from Province Chief
13	Issue the declaration for the people.

20	Same as VC
21	Put order to the commune chief
26	Deliver information to the Commune
28	Protect the people; protect the land ownership
41	Protect the tree from being cut.
49	Intervene with any issue people have here.
52	Ancient temples; digging protection; forest protection.

Table A.17.4: Explain the protective role of the Province Office

Respondent	
9	Oppress the illegal construction; take action for the illegal activity.
20	Protect the temple; ask for the nursery plant.
21	Put order to the district chief.
26	Receive work from the Apsara Authority

QUESTION EIGHTEEN: Are you aware of any disputes or problems?



Figure A.18: Awareness of different types of disputes, expressed as actual responses because respondents could answer more than once.

Table A.18.1: Can you explain about boundary disputes?

Respondent	
7	Build fence between 2 houses.
11	Make the fence.
16	Expand one's land by ploughing.
18	When making fence.
20	Boundary problems happen when the sisters or brothers want more land than others.
21	Boundary disputes happen when one expands one's land.
27	Boundary disputes happen by ploughing into someone else's field.
32	Make fence especially.
34	Most of the cases happen because of wanting to get someone's land.

Table A.18.2: Can you explain about building disputes?

Respondent	
4	Was stopped during construction because no permission.
8	No permission, will be stopped by Authority.
11	Was stopped because the construction does not have permission.
13	Stopped by the people from the Apsara Authority.
15	No permission - was stopped by Apsara Authority.
19	Apsara people came to stop me from building a new house because the house is on the ancient hillock.

20	Apsara Authority does not allow to build
21	Construction is always stopped because no permission
22	When there is no permission there is problem
23	Have asked the permission for the building but too late to receive the permission; I build during the permission.
24	Authority does not make a letter of permission for even given them money.; build in the night;
26	Apsara people urge to ask the permission
27	Must ask permission from the Apsara - should be from Village Chief.
28	Apsara people stopped because of having no permission.
29	The problem happened during the construction was because of the permission. People build the house without the permission.
30	It takes long time to ask for permission.
31	Even if I have permission in my hands, the people, I cannot justify who they are, ask me for some money for the construction, about \$50.
32	The authority stops construction because without permission.
33	APSARA Authority stopped the construction because no permission.
37	When I started to build the house APSARA people came in and stopped because no permission but I have told village chief before starting it and he agrees
39	The construction started before the arrival of the permission.
40	We build new house we have to ask for permission. The poor cannot build the house on the bare land but the rich (can).
41	My son built the house without permission in hand therefore he was stopped by the APSARA people from continuing.
42	Construction was stopped because the permission did not come
44	Construction started by the arrival of permission therefore stopped by the APSARA people
45	Not good looking and small house was stopped by the Apsara people to build another new.
46	Was stopped during construction because was without permission; difficult to get the permission because no old house; bareland is not allowed to build house.
47	Not allow for the high house and concrete house
48	During the construction even with the permission it was stopped from going on.
49	With permission in hands but was stopped by the people from Apsara and was arrested by the complaint sued by the Mr Bunnarith.
52	Construction without the permission
53	My house was stopped once because the construction started early before the arrival of permission.
54	No permission the house will be paused.
55	No permission will be stopped or fined; no old house the construction of house can happen.

Table A.18.3: Can you explain about giving land to children disputes?

Respondent	
1	The father married another wife; land of land.
2	Lack of land with a lot of children.
3	A father get married to another women and no land to give.
5	Not enough land to give
6	Not enough land to give
7	Receive land unequally.
10	Not enough land for the children.
12	Less land with many children.
14	Land is given to the children but the Apsara Authority does not allow my children to build the house on. This is the problem.
38	Not enough land for housing and agriculture; have land but no construction.
39	No land in other places or areas except here in the park.
43	Not enough land to give
44	Not much land for the children
45	Not enough land.
47	Not much land for the children.
49	Less land with a lot of children; be afraid of the people from Apsara do not allow to build house.
50	Want the authority to give permission on bare land.
51	Not enough land to give to the next generation of the children.
52	Not enough land for the children.
53	After the giving of land to the children I am afraid that Apsara Authority doesn't allow for the construction.
56	We worry that Apsara Authority does not allow to build more house for our children because we only have land inside the park.

Table A.18.4: Can you explain about land selling disputes?

Respondent	
8	Some amount of money will be taken after the selling.
17	The buyer of land bought the land surrounding my land and they ask me to sell but I said no, therefore they are about to grab my land because I have access to my land.
20	Land selling is not so expensive as outside of the park.
24	Cannot sell the land.
27	Can't sell land without letter of ownership and plan
48	Land's price is not good enough.
50	Village chief doesn't agree and sign for the agreement.
55	Price of land here is not as expensive as the outside area of the park.
56	We can't sell land to the outsider to get lots of money.

Table A.18.5: Can you explain about land buying disputes?

Respondent	
7	Police ask for money when there is building, for example the well

	(water).
20	The commune chief is afraid of his agreement in selling land.

Table A.18.6: Can you explain about land grabbing disputes?

Respondent	
4	Land was grabbed by the other people from different village; there is land grab claim filed.
8	People of Lolei grabbed the land of mine because my land located in Lolei.
9	People sold land to the buyers and within the area of the land there is one main irrigation system of the people. This occurred because the buyers claims to be there. Therefore the people put the complaint against the buyers.
17	Land costs too cheap.
27	Happens when the highest people want the land of the poor.
42	Land was already sold to the company. Within that area there is one main water system which the company claimed to be its own.

QUESTION TWENTY: Whom would you ask to help you solve disputes?

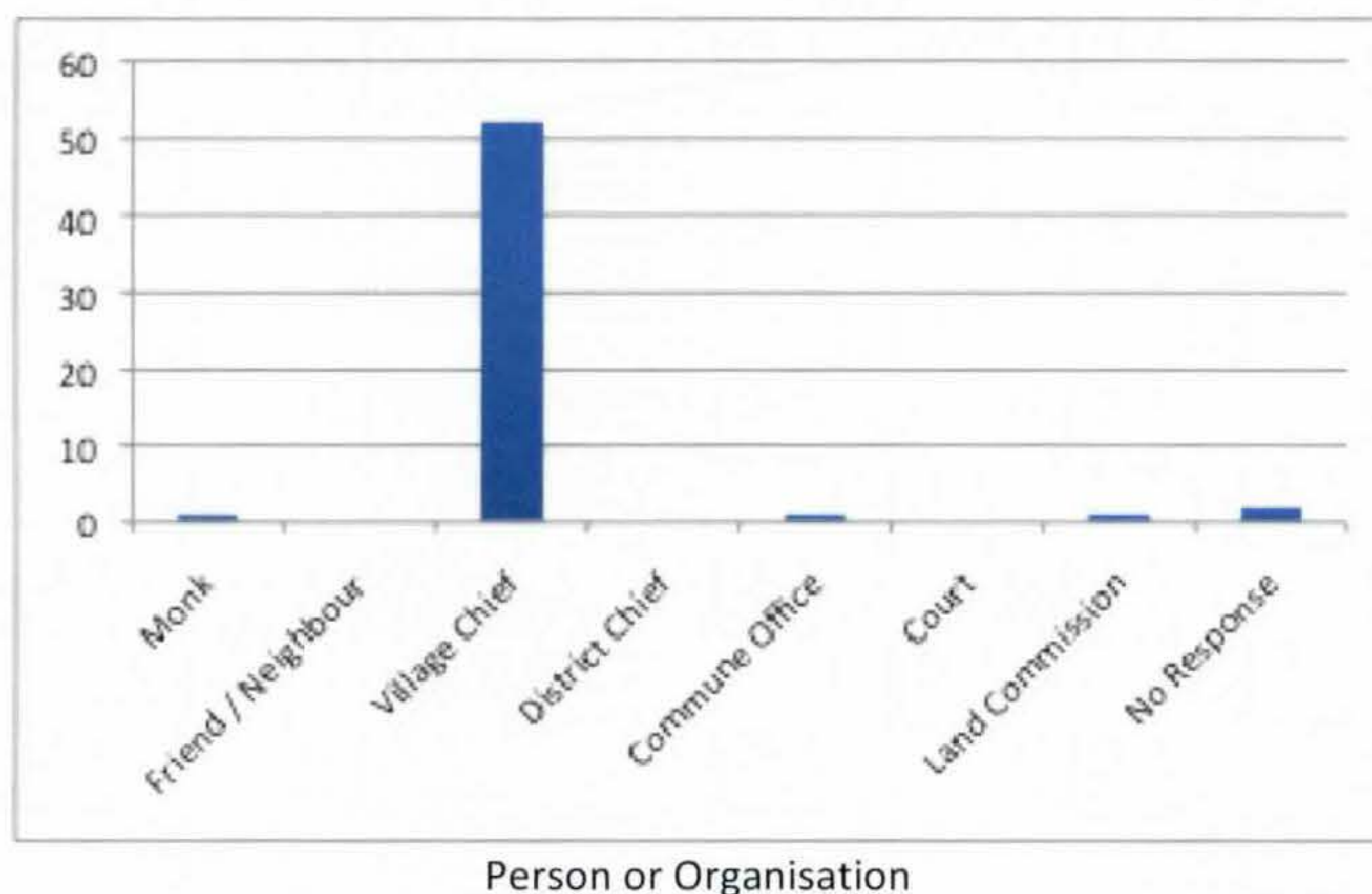


Figure A.20: People/Organisations respondents would turn to for help, expressed as actual numbers because respondents could answer more than once.

Table A.20: Why would you ask this person for help in resolving disputes?

Respondent	Reason	Village Chief
1	Because he acts as a father of the people.	1
2	Because we do from the bottom to top.	1
3	Because he is a closest person.	1
4	He is a father of the whole village.	1
5	They are familiar to the law	
6	We rely on the village chief	1
7	They protect the people.	1
8	Because they are close.	1
9	Responsible for every problem happening in the village	1
10	He knows a lot of things; he is a witness for the people.	1
11	They are the authority of the people.	1
13	He controls this area.	1
14	He acts as a witness in the village.	1
15	He is a co-ordinator.	1
16	He is closest person.	1
17	We go from the bottom to the top.	1
19	He controls everything in the village.	1
20	Because the VC knows all the locations of the people's land.	1
21	He is an authority here.	1
23	He is an important person.	1

25	He is a closest person.	1
26	He is my father in the village.	1
28	Because he responds in solving the problems in the village.	1
29	He is my father.	1
30	He is the closest person.	1
31	He is a boss here.	1
32	I begin from the closest person.	1
33	He is an authority in the village.	1
35	He is a reliable man, a father, but not so fair man.	
36	Because he is closest person	1
37	Because he is an authority	1
38	Because they have power.	
40	He is a boss of the village.	1
41	Because it is only a quick and small problem.	1
42	Because he is a closest person amongst other authorities.	1
43	he is a manager of the people here.	1
44	manager of the village	1
45	The reliable person.	1
46	Because he knows law.	
47	Because he is a father of all the people here.	1
48	He thinks about the people's value.	1
50	He is a person stays close.	1
52	He is an authorised person.	1
53	He manages everything in the village.	1
54	Because he controls everything in the village.	1
55	I feel confident in him.	1
56	Because he acts as a father for all the people.	1

QUESTION TWENTY-ONE: Why do you choose this method of dispute resolution

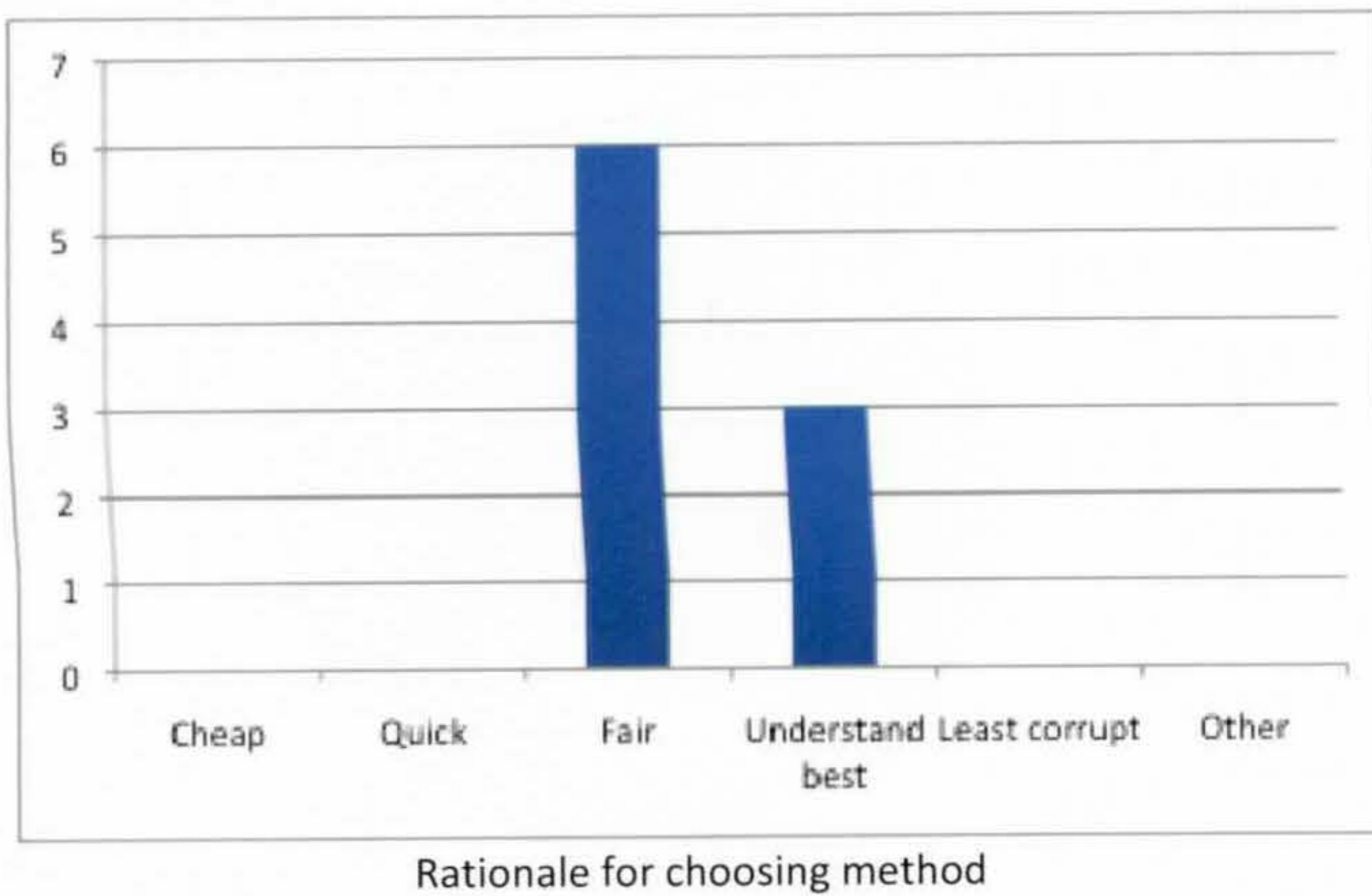


Figure A.21: Reason for choosing method (question 20) for dispute resolution, expressed as number of responses because respondents could choose more than one reason

QUESTION TWENTY-TWO: Have you known anyone to use the Court system?

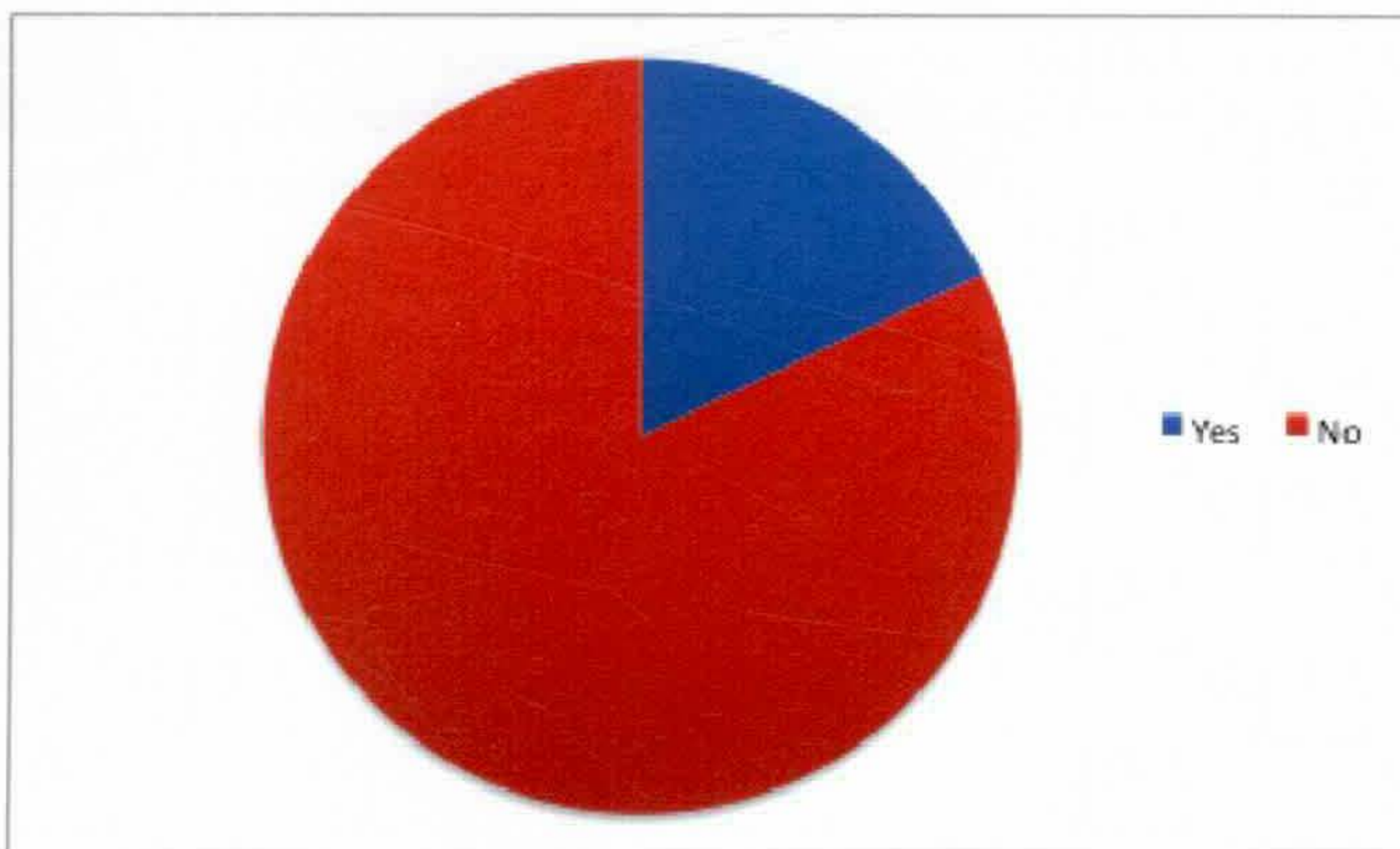


Figure A.22: Know of anyone who has used the Court system, expressed a %

Table A.22: What do you know about the Court process?

Respondent	
9	There was a group of farmers who used to farm on their land. One day after the increased price of land the farmers decided to sell their land. The land belonging to the farmers above is claimed by another group of nonactive farmers, who have never farmed or have never had land. These people claimed for the land. At last the buyers decided to pay for the nonactive farmers after the court decision.
13	A group of people sold their land to a man working the Bakong district. Soon after the district chief of the land bought the man to be the collective property of the people in the district. Later that man put the complaint against the district chief. I do not know any more.
20	Not sure.
32	Not sure.
35	There are 8 people working together as the middle person in selling land. On man of the eight is responsible for everything with money and buyer. When buyer found that this man had done something against his deal the buyer put the complaint against this man. I am one of the 8 people too but I work only for the measurement of land was called to the Court. At last the man above has been to jail for 2 years.
39	I am not sure how the process is.
42	In spite of this case I know, I cannot know how the process goes.
48	In the village there are 2 kinds of villagers - one active and non-active farmers. Non-active farmers do not have land or never claim for their land. One day when the land is expensive the active farmers decide to sell their land. A reaction of non-active farmers occurred. They claimed for their land. Then the complaint was made and at last the buyers decide to pay \$40,000 to them.

49	People of Apsara came to my house and ask permission of the construction. And then I given them the permission. Even though I have got a permission in my hands they arrested me to prove in the Court. This was made by Bunna Rith who gave me the permission. This was because I build a house close to the temple. After the prove in Court and the judges had read everything they sent me back home.
56	I am not sure how the process goes.

APPENDIX SEVEN

World Heritage Convention, Operational Guidelines, Chapter II.4, "Protection and Management", Clauses 103, 104, 105, 106 and 107, Buffer Zones

"Buffer Zones

103. Wherever necessary for the proper conservation of the property, an adequate buffer Zone should be provided.

104. For the purposes of effective protection of the nominated property, a buffer Zone is an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property.

105. A clear explanation of how the buffer Zone protects the property should also be provided.

106. Where no buffer Zone is proposed, the nomination should include a statement as to why a buffer Zone is not required.

107. Although buffer Zones are not normally part of the nominated property, any modifications to the buffer Zone subsequent to inscription of a property on the World Heritage List should be approved by the World Heritage Committee."¹⁷⁵

¹⁷⁵ The 2008 version of the Operational Guidelines is available at <http://whc.unesco.org/archive/opguide08-en.pdf>, pp.25 – 26, accessed 31 December 2009.

APPENDIX EIGHT
Royal Government of Cambodia, *Land Law,*
Kram NS/RKM/0801/14 dated August 30 2001,
Article 248 and 259

Article 248:

“The following acts are considered as infringements on ownership and other legal rights to immovable property and constitute penal offenses [sic] under this law:

- An act or conduct, in fact, that is an intentional violation of the occupation of an immovable property in breach of a title issued by the Cadastral Administration;
- An act or conduct, in fact, that hinders the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps, the ownership rights of which have not yet been fully strengthened under this law;
- An improper or illegal beginning of occupation of State public property or State private property that is not in accordance with the provisions of articles 17, 18 and 19 of this law;
- A transformation of a concession into ownership except in the case of a land concession responding to a social purpose.”

Article 259:

“An infringement against public property shall be fined from five million (5,000,000) Riel to fifty million (50,000,000) Riel and/or imprisoned from one (1) to five years.

The perpetrator must vacate the public property immediately. He has no entitlement to any indemnity for works or improvements that he made on the property.

In the case of a person who was in possession of State public property before this law comes into force and has documents proving and attesting clearly that he bought the property from another person, he can request the competent authority to implement the legal rules against the person who illegally sold public property of the State and in order to recover his damages caused by such act. Regardless of the circumstances, the aggrieved party has no right to continue his possession of the State public property.”

APPENDIX NINE

Royal Government of Cambodia, *Circular of May 6 2003*

Article 1:

“As the Angkor site is a world heritage, the APSARA Authority is exclusively assigned for taking all measures relate to the Angkor perimeter;

- The APSARA Authority is the exclusive institution for delivering building permit for all constructions in the Angkor Park. All building permits issued by other authorities are null and void. The owner, who had transgressed law, without conditions, within 45 days from the warning letter, could dismantle the already built constructions without building permit.

- ... they shall bring up files and send to the court for sentence; they shall stop such anarchical acts from restarting in the two Zones of the Angkor sites.

...

- All measures and authorisations delivered by national or al local authorities, opposite to international obligations in force in the Angkor site that the Kingdom of Cambodia must respect, are invalid...

- The Ministry of National Defence and the Directorate of National Army shall give orders to their units based on the spot to help cease the anarchical activities...”