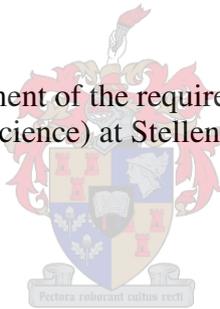


# **Public Opinion on Land Reform in South Africa**

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Thesis presented in partial fulfilment of the requirements for the degree of Master of  
Arts (Political Science) at Stellenbosch University



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## Declaration

By submitting this dissertation electronically, I declare that the entirety of the work contained therein is my own, original work, that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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## Abstract

This study explores public opinion on land reform in South Africa using data gathered by Ipsos-Markinor in nationally representative public opinion surveys conducted in 2004 and 2007, and by an elite survey conducted by Centre for International and Comparative Politics in 2007.

This study explores whether public opinion on land reform reveals distinct trends that correlate with the selected socio-demographic variables of race, language, party affiliation and social status. It is hypothesised that there is an identifiable correlation between these independent variables and the opinions of respondents on land reform, with specific groups tending to support land reform whilst other groups tend to reject it.

The data analyses yielded results that highlight distinct trends in public opinion on land reform. Responses are clustered around specific characteristics of the independent variables and point towards distinct groups having specific views on land reform.

From this set of findings it is inferred that public opinion on land reform illustrates that certain groups of South Africans have contrasting views of how the rule of law and transformation should find expression in a democratic society. These fundamentally differing opinions on key elements of democracy illustrate that South Africans hold diverging opinions of what constitutes democracy, through adherence to either the *liberal* or the *liberationist* model of democracy. These models were previously identified as two distinct and diverging interpretations of democracy in South Africa and were labelled as such. These two models uphold sharply divergent normative prescriptions of democracy, as well as contrasting prescriptions for various policies of democratic consolidation, including that of land reform.

## Opsomming

Openbare mening oor grondhervorming in Suid-Afrika word in hierdie studie ondersoek. Die ondersoek maak gebruik van data ingewin deur Ipsos-Markinor in nasionaal verteenwoordigende openbare meningsopnames uitgevoer in 2004 en 2007, asook 'n elite opname wat in 2007 uitgevoer is deur die Sentrum vir Internasionale en Vergelykende Politiek (CICP).

Hierdie studie ondersoek die moontlikheid dat openbare mening ten opsigte van grondhervorming met geselekteerde sosio-demografiese veranderlikes (ras, taal, politieke affiliasie en sosiale status) korreleer. Die hipotese is dat daar 'n identifiseerbare korrelasie is tussen hierdie onafhanklike veranderlikes en die menings van die respondente ten opsigte van grondhervorming en dat daar spesifieke groepe is wat grondhervorming ondersteun en ander nie.

Analise van die data toon duidelike tendense in openbare mening oor die kwessie van grondhervorming. Menings korreleer wel met die onafhanklike veranderlikes en wys daarop dat bepaalde sosiale groepe uiteenlopende standpunte het oor grondhervorming.

Uit hierdie stel bevindinge maak die navorser die afleiding dat daar, binne die Suid-Afrikaanse bevolking, groepe is met uiteenlopende menings oor hoe die oppergesag van die reg en transformasie binne 'n demokrasie uitgeleef moet word. Hierdie fundamenteel kontrasterende menings ten opsigte van hierdie sleutelemente van demokrasie, illustreer dat Suid-Afrikaners uiteenlopende menings oor demokrasie het in die vorm van ondersteuning van hetsy die *liberale-* of *bevrydingsmodelle* van demokrasie. Hierdie modelle is as twee duidelike en afsonderlike interpretasies van demokrasie voorgestel en beskryf. Hierdie twee modelle verteenwoordig skerp uiteenlopende normatiewe beskouinge oor demokrasie, en bied daarmee saam, botsende beleidsvoorskrifte aan vir demokratiese konsolidering, insluitende beleid oor grondhervorming.

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## List of Acronyms

ANC	African National Congress
BEE	black Economic Empowerment
CICP	Centre for International and Comparative Politics
DA	Democratic Alliance
DLA	Department of Land Affairs
FF+	Freedom Front Plus
ID	Independent Democrats
IFP	Inkatha Freedom Party
LRAD	Land Redistribution for Agricultural Development
MLAR	market-led agrarian reform
NDR	National Democratic Revolution
RDP	Reconstruction and Development Programme
SLAG	Settlement Land Acquisition Grants
VOC	Vereenigde Oos-Indiese Compagnie
WBWS	willing-buyer-willing-seller
WVS	World Values Survey

## ***Chapter 1: Introduction***

The following study explores trends in public opinion on land reform. The transformation process espoused by the African National Congress (ANC), which includes the government's land reform programme, forms a key component of their rhetoric on democracy in South Africa. It is acknowledged within the field of political science that the principle of 'rule of law' is a critical aspect of democratic forms of government. Taken together, transformation and the rule of law therefore constitute major aspects of democracy in South Africa. It is inferred by the researcher that, by assessing public and elite opinion on land reform and its relationship with the rule of law and transformation, one can align public and elite opinion with different normative models of democracy identified in South Africa. Within the South African context there are two diverging and distinct models of democracy — the *liberal* model and the *liberationist* model (Gagiano and du Toit, 1996). These models can find resonance in a broader cultural framework that proposes two distinct cultural orientations, a *low-context* culture and a *high-context* culture.

It will be investigated to what extent South Africans subscribe to the *liberationist* model of democracy or to the *liberal* model of democracy. This will be done through an assessment of public and elite opinion regarding land reform and its relationship to the rule of law and transformation.

The study comprises firstly of a theoretical component which creates a framework with which to understand and interpret views on land reform, and by extension, democracy in South Africa. The ruling ANC's conception of democracy is subsequently investigated in order to determine the normative conception of democracy to which they subscribe. The second and empirical component of the study aims to use the theoretical models of democracy in the interpretation and analyses of public opinion on land reform and its relationship to the rule of law and transformation. Empirical data was obtained from nationally representative public opinion surveys, as well as an elite survey, in order to ascertain which normative model of democracy the public and elites adhere to.

It is proposed that by assessing the views of not only the ruling party, but also of the public and elites, it would be possible to ascertain which normative models of democracy have the largest popular support in South Africa. This in turn, will allow the researcher to draw conclusions on the prospects of consolidating the democratic regime in South Africa, as the two models have divergent prescriptions for land reform in particular, and for democratic consolidation in general.

## ***1.1 Background and rationale***

South Africa's history of unequal land distribution dates back to the 17<sup>th</sup> century with the arrival of the first Europeans. As was common amongst most European colonies, the indigenous population was at the whim of the coloniser and experienced loss of land, livestock and life to pave the way for colonial development. In the early 20<sup>th</sup> century, a range of legal documents was created to ensure that ownership of land be concentrated in the hands of the white minority which served to institutionalise the practice of unequal land distribution. The Land Act of 1913 prohibited the African population from owning any land outside of the Homelands and ensured that the largest segment of the African population would remain landless. The 1936 Native Trust Act stipulated what type of farming was allowed within the reserves, such as amount of cattle allowed. The 1936 Act also formed the basis upon which many forced evictions of Africans took place. Those Africans who managed to slip through the system and hold on to land, were caught by the second wave of legislation, the Group Areas act of 1950 (Bosman, 2007:2).

These legislative watersheds formed the basis of dividing the South African society into a white landed class and a black landless one. This legacy of unequal land distribution is still evident today, and the current government wishes to address the inequalities in land ownership through the land reform programme. These policies form part of the larger process of transformation espoused by the ANC led government that is in turn part of the entire democratic project in South Africa.

The political problem of land reform is a serious issue: South Africans have only to look at the path travelled by our Zimbabwean neighbours to understand what effect

poorly implemented land reform can have on society. In the Zimbabwean case, it has led to large scale social and economic unrest, and in many ways has created a failed democratic project. There is therefore a serious need for the government to address the issue of land reform, as neglecting the issue can have grave implications for the future of our democracy.

Despite the initiation land reform the pattern of land ownership has remained racially divided with most agricultural land remaining in the hands of white farmers. The slow pace of land reform is a cause of concern and it is estimated that in the last 15 years less than 5% of agricultural land has been transferred to African owners (Hall, 2009). The government has set a target of transferring 30% of agricultural land into the hands of black South Africans. It is clear that, at the current pace of land reforms, the target will not be reached by the 2014 target date (Bosman, 2007:10-11).

Due to the sluggish pace of reform and difficulties in implementing desired programmes, the government is reconsidering the willing-buyer willing-seller principle (WBWS). This principle upholds property rights and individual's right to contests land claims in court. Adhering to the land reform policies, as they are currently formulated, protects the rights of landowners as well as the landless, thus respecting the Constitutional rights of all citizens and upholding the rule of law. The rule of law can come under threat if the government abandons the WBWS principle and adopts a more communitarian and drastic pursuit in attempting to achieve the desired land reform target, such as expropriation without fair compensation. To date, only a few farms have been expropriated and it is possible that the figure may rise (Masinga and Hammond, 2008). This does not bode well for the rule of law and prospects for consolidating South African democracy.

Bosman (1997) cites a few relevant reasons as to why the current policies have not achieved the desired effect. These include the fact that the majority of black South Africans do not want to farm; South Africa is no longer a rural society; the agricultural sector simply cannot achieve the desired economic objectives hoped for by the government, as it no longer employs enough people or comprises a large enough portion of the GNP; rising prices of arable land; state ineptness including under-spending of budgets; inadequate capacity and large amounts of vacant posts all

contribute to the poor performance of land reform in the Republic (Bosman, 1997: 30-39). State ineptness is a factor cited by Gran (2007) as being a major factor hindering the process of reform. It should be evident that there are a myriad of problems concerning the goals set by the government and their inability to achieve them. As it currently stands, poor government management of land reform is placing greater pressure on the transformation and the democratization process as a whole.

Even though South Africa will be entering its 17<sup>th</sup> year of democratic rule in 2010, and it is acknowledged that it is a relatively short period of time within the context of democratic regimes, there still exists some doubt whether South Africa's democracy will consolidate or become what Zakaria (1997) has labelled an illiberal democracy. Since the transition from authoritarian minority rule, South Africa has enjoyed a relatively stable and prosperous democratic system governed by what many regard as one of the most advanced liberal constitutions in the world (Mattes, 2002: 24). Four national elections have been held, which have all been deemed free and fair, wherein the ANC has achieved substantial victories in every election.

Positive aspects of the South African democracy include an economy that has shown a steady growth rate with moderate inflation and the implementation of restrained macro economic policy. Furthermore, the emergence and growth of a black middle class (Rivero, du Toit and Kotze, 2003:23) along with considerable improvements in basic service delivery have given the current regime credibility amongst the South African population. Although substantial gains have been made by the democratic regime in South Africa, there are many factors that cast doubt on the future of South Africa's democracy and prospects for its consolidation and survival.

Along with the slow pace of land reform discussed above, Mattes (2002) argues that alongside a positive economic growth rate, the economy has shed approximately 500 000 jobs. Official unemployment figures for the second quarter of 2009 cite the unemployment rate at 23.6% (STATSSA, 2009). Income inequality is also increasing amongst the entire population, including amongst black South Africans (Rivero et al. 2003). The high unemployment rate and widening income gaps are causes for concern. On an institutional level, the continuing pursuit of democratic centralisation

and the pursuit of hegemony by the ANC is blurring the divide between party and state (Mattes, 2002; Giliomee, Myburg and Schlemmer, 2001).

There are also some serious problems with governance such as the rising HIV/AIDS crisis and high crime rates (Mattes, 2002:26-28; du Toit, 2003:104). Furthermore, electoral dominance, sidelining minorities and opposition parties and placing certain issues above public debate are all traits that warrant concern (Giliomee et. al. 2001; Pretorius, 2006). Declining trust in the institutions of the state amongst South Africans is worrisome, as without public support, consolidating a democratic system becomes increasingly difficult (Garcia-Rivero, du Toit and Kotze, 2002:176-177).

Along with these structural and institutional hurdles facing the South African democratization process, is an inherent disagreement amongst the public on what constitutes a democracy. Bratton and Mattes (2001) investigated whether support for democracy in Africa is intrinsic or instrumental. The authors argue that intrinsic support for democracy is a commitment to democracy regardless of social or economic conditions, whilst instrumental support hinges on the government's ability to provide substantive ends, such as jobs or basic services. Without material gains being awarded to them, many South Africans would stop supporting a democratic regime (Bratton and Mattes, 2001: 448). The authors found (Bratton and Mattes, 2001: 445) that in South Africa there is a large disparity amongst racial groups in their support for democracy. Africans tend to equate democracy with the provision of material benefits, such as jobs, houses and increased incomes — their support for democracy is therefore instrumental. White South Africans tend to support democracy in intrinsic terms, supporting the procedural aspects of democracy, with specific focus on the protection of minority rights, regular elections, free speech and party competition. “[And] While many South Africans of all races say they accept the necessity of redistributing jobs, houses and incomes, blacks seem to focus more on ‘equality of results’ while whites stress ‘equality of opportunity’” (Bratton and Mattes, 2001: 455).

This study links up with that of Bratton and Mattes (2001) and will further investigate the inherent differences in how South Africans view democracy. This is done by examining public and elite opinion on land reform, and the implications of these

opinions for the rule of law and for policies of transformation. The significance of these implications will be spelt out by drawing on two particular models of democracy as a conceptual framework of interpretation. Gagiano and du Toit (1996) argue that there are two traditions on democracy within the South African context. The one is labelled the *liberationist* model and the other the *liberal* model of democracy.

This is relevant to South Africa due to the relatively young nature of the democratic regime, and it can be argued that South Africa is in the midst of a transformation stage that is still defined in terms of the negotiated transition of the early 1990's (du Toit, 2003; du Toit 2001). Furthermore, within ANC rhetoric, transformation cannot be separated from the process of democratization, that is to say the ruling party tends to equate the two as indistinguishable processes that are complementary and are of equal relevance (du Toit, 2006: 4). Negotiation and transformation are therefore two inseparable concepts within the South African context and are intertwined in the milieu of democratic consolidation.

The relevance of examining public and elite opinion in terms of the framework provided by these two models of democracy is that these models have different implications for the consolidation of democracy. Gagiano and du Toit (1996: 48) argue that the *liberationist* model does not distinguish between public and parochial interests, and runs the risk of degenerating into corruption. The *liberationist* model of democracy also poses threats to democratic survival through the threat it poses to constitutional liberalism (Zakaria, 1997). The fusion of party and state and the blurring of economic, social and political spheres of powers, opens the door to what Zakaria (1997) has labelled illiberal democracy. The danger is inherent to the fact that constitutional liberalism holds dearly the imperatives of property rights, the rule of law and the separation of powers whilst it is argued that illiberal democracy, is about the accumulation and use of power, and not necessarily about the protection of the above mentioned rights (Zakaria, 1997:30).

It is against the backdrop of the future of the democratic regime, and diverging views on democracy in South Africa, that the issue of land reform is investigated. Land reform can be used to gauge state willingness to subscribe to the rule of law and the

constitutional rights that all South Africans should enjoy and it consequently serves as a barometer for the condition of our democracy and the prospect of democratic consolidation.

## ***1.2 Research problem***

Public opinion on land reform provides the researcher with an excellent case study for investigating divergent opinions of democracy. Land reform has political, social, economic and historical significance in South Africa due to the unequal distribution of land ownership. Land reform policies have bearing on important aspects of democracy in South Africa as it is part of the transformation project and is an exemplar of how the rule of law finds expression. In addition, land reform also engages important aspects of individual rights, most notably the right to own private property as enshrined in the Constitution of 1996. These aspects make land reform an adequate case study for investigating the main research question of this study.

The underlying assumption of this study is that without agreement on normative definitions of democracy, there can be no consolidation of democracy. If there is an inherent disagreement amongst government and the people on what constitutes a democracy, how can democracy become consolidated? If the meanings ascribed to democracy are ambiguous and even competing, it would be erroneous to argue for democratic consolidation.

## ***1.3 Research question, hypothesis and objectives***

The overarching research question guiding this study is: Do South Africans have shared opinions on land reform? The hypothesis will be employed in the empirical component of the study to determine whether demographic factors (race and language), party affiliation and social standing correspond with respondents' support or rejection of the government's land reform policies and venture an answer to the proposed question.

It is hypothesised that there is an identifiable correlation between public opinion on land reform and race, language, party affiliation and social status. This study explores whether public opinion on land reform forms distinct clusters that can be associated with the selected independent variables, with specific groups tending to support land reform whilst other groups tend to reject it.

The main objective of the study is to investigate public opinion on land reform, and determine whether there are identifiable trends within the South African population within this process.

### ***1.4 Research design***

The study is descriptive in nature and will rely on qualitative and quantitative data. The qualitative data include academic journals, books, government publication, ANC documents, working papers, NGO papers and other relevant sources. The empirical data that will be used was obtained from nationally representative surveys conducted in 2004 and 2007 by the private survey research company Ipsos-Markinor. The surveys consisted of 2000 respondents from urban areas and 1500 respondents from rural areas. All respondents were 16 years of age and older and men and women are represented equally in the sample. All data was acquired through personal interviews. The results are weighted and projected onto the national demographic profile, and can be considered to be nationally representative. The sample error for the polls was between 0.72% and 1.66% (du Toit, 2006:8). The other data set that will be used is an elite survey conducted in 2007 by Ipsos-Markinor for the Centre for International and Comparative Politics (CICP) using face to face interviews with a structured questionnaire.

The study employs secondary data analysis in order to address the hypothesis. Other recent studies which also employed the method of secondary quantitative data analysis to investigate or test theories include work by Garcia-Rivero (2006), Askvik (2008) and Leysens (2006). Databases often used in secondary analysis are the Afrobarometer and World Value Surveys.

The study by Leysens (2006) uses empirical data from the Afrobarometer to investigate Cox's theory that the socially marginalised are a social force that could bring about political and economic transformation from below. Although the Afrobarometer survey is essentially designed to poll democratic consolidation in southern Africa, the items in the questionnaire cover a wide range of issues that are relevant to Cox's theory of transformation initiated by the marginalised (2006:39).

Other studies have been conducted using the same, albeit less extensive, datasets that this study employs in the quantitative section. Gerber (2004) and du Toit (2006) used the same dataset, but only had access to the first set of surveys conducted in 2004. It was found by du Toit (2006: 18) that democratic rule has different meanings to different South Africans. The author found that the *low-context culture* and *high-context culture* models, identified by Cohen (1997), corresponded to certain views held by respondents, and that such views show a correlation with demographic factors. Gerber (2004: 66-68) found that demographic factors (race, party affiliation and province) do correspond with respondents' views of land reform and the rule of law. Furthermore, Gerber found that there existed a divergence in what people believed democracy to be. Many respondents could be placed within the *liberationist* perspectives on democracy. The work of these authors has shown that there exists a difference amongst South Africans concerning the meaning of democracy and transformation.

This study follows the same design as that followed by the researchers mentioned above, in that it utilises empirical data to investigate a proposed hypothesis or research question. In analysing survey data on public opinion on land reform this study will also allow an investigation into whether South Africans have a shared understanding of democracy.

## **1.5 Delimitations**

This study uses limited data sets, that of public opinion surveys conducted in 2004 and 2007 and an elite survey conducted in 2007. The land reform policies and developments in land reform under consideration in this study include only those from

the period 1994-2009. The research presented here is that of a Masters study, and has a limited scope.

## ***1.6 Limitations***

The following study is a descriptive study. It is based on empirical data of public opinion regarding land reform and as such is subject to a major and inherent limitation of all secondary data analysis in that the item construction is determined by the primary data collection process. The researcher does therefore not necessarily have any input in the construction of items or questions posed to respondents. It is the task of the researcher to 'make sense' of the hard data available through constructing conceptual models to answer questions or problems deemed relevant by the researcher.

The study is limited to using only Afrikaans and English sources to gather information and create a context of understanding. The study focuses on specific aspects of democracy and only partially assesses public opinion regarding democracy, as all facets of democracy are not investigated or measured by the surveys. The nature of the item construction is confined to scale variables (Likert-scale) and statistical manipulation is limited to those techniques applicable to scale variables. The number of items posed to the respondents was limited to four and index construction is therefore deemed irrelevant.

## ***1.7 Analysis***

The data analysis will be done by using Statistical Package for Social Sciences (SPSS). The survey data will be analysed using SPSS and due to the nature of the data, a longitudinal trend analysis of the survey data will be employed. Cross-tabulation, Chi-square tests and Cramer's V strength of association test will be employed.

The data analysis section of the thesis is unique, and although the 2004 public opinion survey has been used by Gerber (2004) and du Toit (2006) in other studies, the combined use of the 2004 and 2007 data sets is conducted for the first time. The elite section of the data for which the survey was conducted in 2007, was obtained from the CICP, and although it has been used in a publication (Kotze and Steenkamp, 2009) the specific items used in this research project were not previously used. The elite data was provided by the CICP, but all graphs and analysis was done by the researcher. The combination of the 2004 and 2007 public opinion surveys and the 2007 elite survey is original and has not been done before. All statistical analysis deductions and conclusions were done by the researcher, except in the case of the elite survey, for which the cross-tabulation data only was provided by Ms C-L Steenkamp of the CICP.

## ***1.8 Research methodology***

### **1.8.1 Unit of analysis and variable selection**

In the empirical section of the study, the unit of analysis will be individuals within the population of South Africa as represented in the survey data.

The dependent variable of the study is attitudes or opinions held by respondents on land reform, which are gauged by the four items posed to respondents as discussed in chapter five. The independent variables used are race, language, party affiliation and social status. These variables were selected based on availability of the data and the nature of the primary research question. Specific racial, language and political groups have been subjected to different social, economic and political realities due to the nature of Apartheid and the legacy with which it has left South Africa. The use of the Elite component is based on the importance of elites in the theories on democracy. In both the work of Gagiano and du Toit (1996) and Dahl (1971), the role of elites in steering democracy is acknowledged. Although democracy is a form of government that gives expression to the greater population, it is the people in positions of power, rather than the general population, that have a greater influence on the course of democracy.

The independent variables are listed below:

Race: This variable has four categories, white, black, coloured and Indian. The respondents indicated into which category they fell when the survey was conducted.

Language: This variable has twelve categories, including the eleven official languages and one category of 'other'. The respondents indicated into which category they fell when the survey was conducted.

Party affiliation: This variable has twenty-two categories. The respondents were asked the following question, "If there were national elections tomorrow, which political party or organisation would you vote for?". The answer to the question determined the political affiliation through a respondent's willingness to vote for a specific party. The researcher selected only the political parties which are represented in parliament, and the category of 'don't know' due to the high response rate in this category.

Elites: Are defined as "...those people who fill top positions in the largest and most resource-rich political, governmental, economic, professional, communications and cultural institutions in society." (Kotze and Steenkamp 2009:12).

## **1.8.2 Conceptualisation**

### **1.8.2.1 Democracy: Liberal and liberationist perspectives**

Gagliano and du Toit (1996) identify two distinct and conflicting views of democracy in South Africa. These are the *liberal* and *liberationist* perspectives on democracy. The *liberal* view of democracy holds that the Constitution was created in order to liberate the individual from the oppressive Apartheid regime. During the years of Apartheid the concentration of power by social, economic and political elites and their total control of state apparatus resulted in the blurring of the divide between state and society. The oppressive nature of the regime was what is viewed in the *liberal* perspective as repressive and the importance of democracy lies in the protection of individual rights and in the establishment of an autonomous state apparatus. Rules and

procedures that ensure the separation of state, civil society and the economy are what these individuals hold as paramount to the democratic order (du Toit, 2006:3).

The *liberationist* view differs substantially from the legal and procedural perspectives held by the *liberals*. For them, democracy formed part of a larger project of emancipation from centuries of colonial rule and years of Apartheid discrimination. They see democracy as a vehicle to prosperity and for them, the righting of previous injustices is paramount. This emancipation would be pursued in the policies of Affirmative Action, black Economic Empowerment (BEE) and the larger project of transformation. Democracy, to these individuals, is not essentially about laws and procedures enshrined in legal documents, but rather about their struggle towards economic, social and political emancipation. The rights of the individual upheld in the democratic constitution are secondary to those that enable the government to pursue the emancipation project (du Toit, 2006:3-4).

### **1.8.2.2 Democratic consolidation**

For the purposes of this dissertation, a definition of democratic consolidation as put forward by Leftwich will be used. Leftwich (2000: 135) argues that a democracy can be seen to be consolidated when "...people, political parties and groups pursue their interests according to peaceful, rule-based competition, negotiation and cooperation, and where there is agreement that the succession of one government by another is decided by these means." Other authors also stress the difficulties and requirements of democratic consolidation and include Schedler, 1998; Linz & Stepan, 1996 and Przeworski et al, 2000.

### **1.8.2.3 Culture**

The proposed study will use the concept of culture as well as *high-context* and *low-context* perspectives on culture, as defined by Cohen (1997). Cohen recognises that culture is a notoriously difficult concept to define and no single definition can capture the essence of all its aspects. Cohen (1997:11) identifies three main features of

culture. Firstly, it is not the trait of individuals, but of a society of which individuals form part. Secondly, it is acquired through acculturation or socialization. Finally each culture is a “unique and complex set of attributes subsuming *every area* of social life.”. Cohen argues that “...culture is fundamentally a property of information, a grammar of organizing reality, for imparting meaning on the world.” Culture should be seen as a sort of common sense that shapes a specific groups’ view of the world enabling them to live together as a society (Cohen, 1997:11-12).

Cohen draws a distinction between two distinct frameworks in organising and understanding reality in a cultural sense. These he labels *high-context* and *low-context* cultures. *High-context* cultures are typified by the importance that is placed on the community, above that of the individual. Individual characteristics are subordinate to the communal framework. The social context is of utmost importance — negotiations do not take place within a vacuum but rather form part of a continuity of events that comprise the social understanding of reality. Negotiated events give the opportunity to assign meaning to aspects under negotiation, with strong reference to the historical context. There is a strong need in such cultures to sustain relationships and cohesion in order to maintain the communal framework. Hostile confrontations are to be avoided at all costs and “face” must be maintained at all times. Respect and deference are seen as fundamental to successful communication and the functioning of society (Cohen, 1997; du Toit 2003:105-106).

In contrast to this perspective, Cohen identifies a *low-context* cultural perspective which is typified by the Anglo-American society. Here relationships are subordinate to transferring relevant information and ‘getting the job done’. Historical context holds little relevance and issues that are being negotiated are defined outside of historical context. Their meaning is not negotiable or subject to current relationships. The emphasis is on rules and regulations and contract style agreements that must be adhered to irrespective of a contextual continuum. Negotiation is future orientated instead of having a strong historical component (Cohen, 1997; du Toit, 2003:106).

#### **1.8.2.4 Land reform**

This concept will be defined in terms of policies being implemented by the South African government. The larger social role of land reform, will for now, be omitted from the definition. The South African policy on land reform is based on three programmes: Land Restitution, Land Redistribution and Land Tenure reform.

##### ***1.8.2.4.1 Land restitution***

Those who were removed from their property during apartheid are given back land or are compensated in monetary terms. In order to qualify for this form of restitution, applicants had to have been removed from their property after 1913. Claims are made to the Land Claims Court that decides on reasonable compensation (Bosman, 2007:7).

##### ***1.8.2.4.2 Land redistribution***

The goal of this form of land reform is to increase the ownership of property by black South Africans. Previously disadvantaged people are allotted land for residential and productive ends. Redistribution of land is largely aimed at the rural poor, although urban land does fall under its purview. The main programme for implementing this type of reform is known as Land Redistribution for Agricultural Development (LRAD). A basic subsidy of R20 000 is given to those who successfully apply for land to serve as start-up capital for new owners (Bosman, 2007:7-8).

##### ***1.8.2.4.3 Land tenure reform***

This section of land reform is aimed at securing the tenure of all South Africans. It was enacted to ensure the rights of all those who rent property and to ensure that their tenure is stable (Bosman, 2007:8).

### **1.8.2.5 The rule of law**

Sánchez-Guenca (2003:67-69) argues that the rule of law is a property of a political system. The rule of law exists only when there is compliance with the law and the law satisfies specific minimal requirements. The rule of law can be defined, as compliance with the law by all, when the law is general, public, prospective, clear, consistent, performable and stable (Sánchez-Guenca, 2003: 69; Maravall, 2003: 261). In essence, the rule of law refers to the idea that all interactions, at individual and institutional levels, must be conducted within legal constraints placed on them by the law, and that all are subject to the law. For the principle of rule of law to be valid, it must rest on a system of laws that are consistent with the above criteria.

## ***1.9 Chapter outline***

Chapter one provides a brief overview of the study. The chapter provides some background and rationale for the research project, as well as identifying the main research problem, hypothesis and objectives. The method followed, including the variable selection, is described and brief conceptualisations given.

Chapter two examines the historical nature of land dispossession in South Africa from the arrival of Europeans to the onset of democracy in 1994. The chapter focuses on legal measures adopted that institutionalised the racial division of land in South Africa. Attention is paid to how successive powers, used state apparatus, including but not limited to legal measures, in order to entrench and ensure the racially divided nature of land possession in South Africa.

Chapter three presents the theoretical framework with which democracy in South Africa, as well as the empirical data is investigated and analysed. Chapter three represents the main theoretical argument, which is subsequently applied in the chapters that follow.

The nature of democracy in South Africa is described in chapter four. This is done by focussing on the ANC's conception of democracy and related concepts. Attention is

also given to the nature and expression of 'law' in South Africa, through an investigation into certain elements of the Constitution of 1996.

The fifth chapter presents the empirical data and the analysis thereof. The hypothesis and research question are tested in this chapter.

The sixth, and final chapter, presents the concluding remarks.

## **Chapter 2: Historical exposition of land dispossession in South Africa**

### **2.1 Introduction**

Terreblanche (2002: 6) argues that any interpretation of South Africa's history should be conducted from the standpoint of either racial domination; that of land deprivation or that of unfree labour, with the author focussing on the latter. Other authors (Bundy, 1988 and Beinart, Delius and Trapido 1986) also highlight the role of unfree black labour, but emphasise that the dispossession of land was part of a larger process geared towards the creation of a controllable labour force. These authors argue that land dispossession not only served the purposes of racial ideology and political domination, but also played a role in early capitalist development of South Africa. The study at hand follows this argument, and although the merits of viewing South Africa's history solely as a continual process of land dispossession (Drimie, 2003: 39) is noted, it is the researcher's opinion that it will only offer a one-sided view of a multidimensional problem, of which solutions can only be offered to if one understands the issue in a broader sense.

It is the aim of the following chapter to show how successive white-led state structures in South Africa had managed to dispossess the indigenous population of their land and subordinate them to the will of the ruling elite. By no means is the following section an attempt to a complete account of the South Africa's long history of dispossession, it merely serves as an explanatory introduction towards the historical nature of land dispossession in South Africa; first under colonial power and later under the South African Union and the Apartheid state. The analyses will attempt to highlight all the important legislative acts that enabled whites to institutionalise the dispossession of land from the African population.

The first section of the chapter focuses on the period of the first permanent European settlement in the Cape from 1652 to the mineral revolution of the late 19<sup>th</sup> century. The following section deals with transformation of Africans from a landed class to

landless, working semi-urban labour force, after the discovery of gold. Thereafter, a systematic look at the legislative assault on the African peasantry implemented by the Union of South Africa is conducted. The final section deals with the role of the Apartheid state in, not only institutionalising racist practise, but also in creating the impetus for a unified liberation movement in the form of the ANC. Throughout the chapter, attention is paid to the global context of South Africa's development and dispossession is viewed as part of local and international capitalist development. Furthermore, the analysis is state centric in that it focuses on how successive state apparatus was able to dispossess Africans of land and create an African working class ensuring the profitability of capitalist development.

## **2.2 Systematic colonial exploitation: 1652-1886**

The first permanent fortified structure erected by the Europeans at the Cape, under the auspices of the *Vereenigde Oos-Indiese Compagnie* (VOC), was a provision station at Table Bay. The VOC, a Dutch owned trading company akin to the modern day corporation, established a permanent settlement at the Cape to serve as a stopover station for weary sailors embarking on the six to eight month voyage to the East from Europe. At this time, the Cape was inhabited by pastoralists known as the KhoiKhoi, and a group of hunter-gatherers known as the San. Collectively these groups are known as the Khoisan. The Khoisan had lived in southern Africa for approximately 8 000 years prior to European arrival. Initial contact between the VOC and the Khoisan was peaceful, as the VOC was dependant on the Khoisan for cattle and other fresh produce. The VOC employed a policy of trying not to disturb the indigenous way of life or cause a war, as this would be costly to the company. It is only after some of the employees of the VOC were released from their contracts and became independent farmers that a situation arose in which there was competition for land between the Europeans and the Khoisan which consequently resulted in war between the VOC and Khoisan in 1659 (Williams, 1990: 10; Claasens, 1991:45-47).

It took less than a decade of colonial presence in southern Africa for the first violent conflicts between settler and indigene to break out. The Europeans found that land was relatively easily occupied and their military superiority enabled them to eliminate

the Khoisan, either through integration into an agrarian labour force or through campaigns of violence (Terreblanche, 2000:9; Stadler, 1987:37). It is important to note that the Dutch felt that it was their right to claim the land as they saw fit, since they were of the opinion they had won a military victory and were therefore entitled to the spoils of war (Terreblanche, 2002: 155). This rationale of ownership through military conquest was a well established practise amongst European powers during this period as is evident in the historiography of many other regions in the world and can be viewed as part of the early stages of the development of the early global capitalist system.

The Cape was not technically a Dutch colony, but rather the commercial property of the VOC trading company that was extended vast privileges by the Dutch government. It is with the backing of the Dutch government that the VOC was able to exercise extreme power. This came to bear in the mercantile measures adopted by the VOC at the Cape. These measures included tariffs, patronage and corruption to name but a few, and were all geared towards promoting the business interests of the VOC by promoting the sale and trade of their products which were produced as cheaply as possible. The VOC was, for all practical purposes, fulfilling the functions of the state and answered to no other entity except itself, with the sole purpose of maximising profits. The expansion of the agricultural sector was one of the main priorities of van Riebeeck and this occurred with rapid pace at the expense of the indigenes at the peninsula and surrounding countryside (Claasens, 1991:45-48).

The acquisition of land through title deeds and land grants issued by the VOC was first initiated by Simon and later by Willem Adrian van der Stel. Land, in the form of freehold farms, was issued to freeburghers, farmers released from their VOC contracts, with farms increasing from 50 in 1682 to 435 in 1731 (Terreblanche, 2002:155; Claasens, 1991: 45-48). This is a process that would be refined and perfected by British land companies during the latter stages of the 19<sup>th</sup> century. During this period agricultural production expanded at an unprecedented rate, all the while at the expense of Khoisan land ownership. Agricultural production increased to such an extent that the sector suffered from a lack of markets and a shortage of labour. The labour problem was overcome by employing slaves, either using imported slaves or subjugating the Khoisan as serfs (Bundy, 1988: 14-22). This process of subjugating

the Khoisan into the labour force was initiated in the early 18<sup>th</sup> century and had a profound impact on subsequent development of the agricultural, and later the mining sector in South Africa. The practice of turning a once independent landed indigene class from peasants to a coerced labour force is one of the most dramatic aspects of South Africa's historical development.

Although using the Khoisan as serfs was illegal, it was impossible for the VOC to exercise direct control over those farming on the frontiers as farmers moved further away from the Cape. Furthermore, the Khoisan were subjugated to the *inboekstelsel*, a system whereby Khoisan children could be booked in to the ownership of a white land-owning farmer and remained part his work force until the age of 25. This practise was continued with freeburghers' expansion into the interior and applied to the KhoiKhoi remaining on tribal lands. The *Trekboer* and freeburghers moving further inland found it easy to conquer land, thanks to their superior military firepower. The smallpox epidemic of 1713 reduced the KhoiKhoi's remaining numbers significantly and forced them into the labour force as a means of survival. This led to more extensive forms of *inboekelingskap*, as labour was in short supply and buying slaves was too expensive. The *Trekboer* deprived the Khoi of land and livestock as they moved further into the interior, and it was only when the Xhosa was encountered that this process became more difficult (Terreblanche, 2002: 163-168).

Colonial expansion was given a further boost around the turn of the 19<sup>th</sup> century when greater demand for meat was fuelled by an increase in the number of ships visiting the Cape. The increased number of ships also solved the problem of the limited market experienced at the time. Also, as British involvement increased, the British Empire initially became a consumer of wool produced in the Western Cape and later sugar that was obtained from the Eastern Cape and southern parts of Kwazulu-Natal (Andreasson, 2001:189). The trade increase also fuelled the *Trekboer* expansion as they moved further into the Eastern and Northern Cape. The expansion into the Eastern Cape brought the first contact between settlers and the Xhosa as areas traditionally used by the Xhosa for grazing was claimed as colonial property for farming.

This heralded the beginning of the indenturement of Xhosas into the labour force with the *Trekboere*, being far away from administrative control, developing a sense of what Terreblanche (2002: 169) labels 'reckless independence'. This was characterised by the idea that the land owner was law unto himself, a characteristic later embodied by the *Voortrekkers* who moved away from the British-controlled Cape in ever increasing numbers. The 'reckless independence' that developed would greatly influence how the *Voortrekkers* viewed themselves in relation to land and power as well as playing an important role in how power relations developed in South Africa.

With the expansion of the colony entering regions of the Eastern and Northern Cape, a significant shift in power occurred at the Cape Colony, namely the onset of British control that lasted from 1795 to 1910. From 1795 to 1814 three power shifts occurred, with the Dutch retaking control in 1803-06 and the British subsequently regaining control in 1814, remaining in power until 1910 (Bundy 1988:30; Terreblanche, 2002:179). For the purposes of this research study, these power shifts are regarded as negligible, as it did not impact directly on frontier policies regarding land, agriculture and labour relations with the indigenes.

During the period of British domination, the British were the world superpower in what has been named the long nineteenth century by some historians (Terreblanche, 2002:179; Wallerstein, 1988; Hobsbawm, 1979). This period was characterised by unprecedented increases in global production and consumption as well as great advancement in travel, communications and manufacturing technology. This was undoubtedly what Hobsbawm (1979) has labelled the 'golden century' of capitalist development. This era of unparalleled capitalist expansion was dominated by the British and the influence thereof did not go unnoticed in southern Africa. The British rearranged key factors of production (land, labour and capital) in such a way as to promote the interests of the British Empire. The reorganisation included the dismantling of mercantile practises initiated by the Dutch and the opening of markets for the British Empire.

From 1814-1853, the British, under command of successive senior military officers, waged a bloody campaign on the eastern frontier of the colony against the Xhosa. The Xhosa people were ultimately defeated by the British military and were subsequently

deprived of their land and livestock at the expense of British expansion (Terreblanche, 2002:181; Bundy, 1988: 31).

With the areas of the Eastern Cape and parts of southern Kwazulu-Natal under the command of the British, the demand for products from the colony, especially cattle, wine and wool, could be met by the acquisition of these new areas. Under British command, settlers were granted land and holdings in order to produce the goods required by the British. Landholdings of whites increased in size and number, and large areas were given to single farming units. The demand for labour thus increased and was subsequently met by the indigenous people. The expansion of the agricultural sector was done at the cost of the locals together with the deprivation of their land that was transferred into the hands of a white land owning elite. The indigenous people were expected to pay rent to live on land previously owned by them, with rent being extracted either through the barter of goods or increasingly through labour (Bundy, 1988:32, 48-54; Richardson, 1986: 137-143).

The only significant legislation passed in the transitional phase of 1795-1814 was the Hottentot Proclamation of 1809, which legalised the practise of indentured African labour and forced those previously not indentured into the labour force for the first time (Terreblanche, 2002:184). The 1809 Hottentot Proclamation, also known as the Caledon Proclamation after the new British governor Earl Caledon, required a degree of strict administrative adherence. The proclamation required all Khoisan to specify a fixed place of residence. It also stated that, after the labour contract was completed and a worker wanted to change residence, the worker required a pass from their masters stating that they had completed their contract. In addition, if the person in question wanted to change residence from one district to another, they required the permission of the Landrost to do so (Terreblanche, 2002:184). Thus the 1809 Proclamation can be seen as the first state-led attempt to control ownership and movement of the indigenous people in what would become South Africa, and it would be a pattern set to repeat itself. This involvement of the state would have far reaching repercussions, as it can be seen as one of the catalysts for the Great Trek.

Missionary work into the interior of the country, along with the idea of a 'Christian Civilisation', coupled with a sense of western development embodied in the ideas of

Adam Smith's free market and individual interest, led the British to lose sympathy towards coercive labour practices of the early 19<sup>th</sup> century. This coincided with the suspension of the slave trade in 1808 and the abolition of slavery in 1838. The ideological backing for abolishing slavery and coercive labour forms sprouted from the ideas of individual liberties and freedoms. It was however, coupled with a strong economic rationale that a free labour force would be more productive than a coerced one. This train of thought led to the issuing of Ordinance 50 of 1828, which in effect recalled the Caledon Proclamation of 1809. The dismantling of coercive labour forms did not curtail the demand for sufficient and controllable labour required for the profitable production of goods in the colonies of southern Africa. From the 1840's onwards, free labour was acquired by depriving Africans' access to land. The white controlled state machinery created conditions that forced Africans into the labour market, where they had no choice other than entering harsh labour contracts. Although the indigenes were released from slavery, they were subsequently forced into harsh labour contracts due to the lack of land and capital, ensuring a source of income (Terreblanche, 2002: 188-191; Bundy, 1988: 44-60).

The sense of independence of the freeburghers and *trekboere*, as is reflected in their independent nature and behaviour, was tightly coupled to a patriarchal homestead configuration. In this relationship the patriarch was the head of not only the household but also of his workforce. The combination of a patriarchal homestead and a sense of total independence, led to many farmers seeing the 1809 proclamation as a direct state-led assault upon their personal domains. And even though the proclamation strengthened their legal hold over the indentured workers, the rights allocated to the workers were seen as an invasion of their private spheres. This state interference along with other factors, such as a shortage of land, labour and a sense of marginalisation, were all causes for the Great Trek of the 1830's (Giliomee, 2003: 144-149). The migration of many Afrikaner people saw the dominion of whites extend past the borders of the Eastern and Northern Cape, northwards to new areas that are known today as Free State, North West, Northern Kwazulu-Natal, Gauteng, Mpumalanga and southern Limpopo. There was for the first time a clear split amongst the European settlers in southern Africa, with British settlers expanding eastwards along the coast, while Afrikaners were moving towards the interior of South Africa.

It is neither the topic nor the scope of this research study to discuss in detail the different forms of labour subjugation and slavery in South Africa from 1652 to present. What is relevant is how the European powers, in the form of the Dutch and later the British, and subsequently the Afrikaners, managed to incorporate the indigenous population into a coerced labour force, either through outright slavery or a form of indentured labour, and that these forms of labour coercion were preceded by the loss of land of the indigenes. First their land was taken, and then they were forced to cultivate the land for the accumulation of wealth for the land owner. This pattern of land dispossession and forced labour that occurred at the Cape was subsequently repeated throughout the colonised areas of southern Africa, and was accelerated by the discovery by diamonds and gold in the latter half of the 19<sup>th</sup> century (Stadler, 1987; Bundy, 1988; Beinhart et. al., 1986; Drimie, 2000).

## **2.3 The Impact of the mineral and agricultural revolutions on Africans: 1886-1910**

### ***2.3.1 The Cape colonies: British assault on African peasantry 1880's-1910***

The abolition of slavery and serfdom had varying effects on labour patterns in the Western and Eastern Cape. In the Western Cape, most labourers stayed in their positions as there were very limited opportunities for them in the workforce. In the Eastern Cape, many Africans sought refuge at the Kat River settlement or became deserters living outside the influence of whites. In addition, many Africans pursued a form of land tenant farming on white-owned land. This led, paradoxically to the disowning of land, to an overall growth of the African peasantry from the 1840's until the early 20<sup>th</sup> century (Bundy, 1988: 71-81). During this period, the demand for labour rose dramatically which led to a series of laws and acts to be passed in the Cape colonies, ensuring that a docile and coercible labour force could be commanded.

From about 1860 to 1910, a systematic legislative assault was made on those Africans managing to stay outside the lure of the labour market. Africans who managed to stay out of the labour force were living as subsistence farmers on white or crown-owned

land. They were producing enough goods to sell on the local markets, making the rent demanded by the white land owner. This was the situation in the Eastern Cape and Natal, where large numbers of peasant farmers had managed to slip the noose of restrictive labour practices. These peasants were in the form of labour tenants, rent tenants or share-croppers. This would however be undone by the British colonial administration who, fuelled by the mining and subsequent agricultural revolutions of the late 19<sup>th</sup> and early 20<sup>th</sup> century, had it in their best interest to transform landed Africans into a landless, working class (Bundy, 1988:134-140; Terreblanche, 2002: 204-210).

The Masters and Servants Ordinance of 1841 bound former slaves, described as 'people who may be inclined to lead an idle life', to strict contracts and the breaking thereof was treated as a criminal offence (Terreblanche, 2002:196). The appointment of Sir Harry Smith in 1847 saw an increase in the intensity with which the African 'problem', that of insufficient labour, was dealt with. For Sir Smith, one of his major duties was to undermine the power of the chiefs and control them via colonial authorities. The Masters and Servants Act of 1856 tied labourers to a five-year labour contract and imposed severe punishments for breach of contract. A year later, the Kaffir Employment Bill of 1857 was passed in parliament that further strengthened the idea of long term contracts, making it mandatory for all Xhosa work-seekers to sign a contract of indentureship (Terreblanche, 2002: 197-201). In addition, the series of Location Acts passed in 1869, 1876 and 1884, were all aimed at reducing the numbers of rent-paying African tenants on white-owned land (Bundy, 1988:78).

In 1894, the Cape parliament passed the Glen Grey act. This act stipulated that only a selected number of Africans could own land in certain 'Bantu areas' through the allocation of individual and communal land tenure. This system ensured that there would always be a part of the African population living in the Glen Grey district that would not be able to acquire land, and would consequently be forced to become part of the labour force. The Glen Grey act was designed to ensure that the Glen Grey district would be able to provide a steady labour force to the Cape colonies (Bundy, 1988:135; Stadler, 1987: 39; Terreblanche, 2002: 254). In conjunction with the Glen Grey act, which had focussed on minimising the amount of arable land available to Africans and on securing a labour supply, were those acts focussing on Africans

squatting on white-owned land. These include Act 30 of 1899 that permitted farmers to keep Africans on their farms only in the form of permanent employment. Act 32 of 1909 further narrowed definitions of labourers and was more stringently applied than previous Location Acts (Bundy, 1988: 135-137). The Location Acts and other restrictive legislation were being enforced more successfully as state capacity increased which included the creation of a police force to ensure laws would be adhered to. Act 32 of 1909 led to large scale evictions and the removal of people from farms and was one of the first acts of state-led removals of indigenes.

### ***2.3.2 The Transvaal and Orange Free State: The Afrikaner assault on African peasantry 1880's-1910***

The previous sections highlight the effective nature of the British state machinery in creating a coercible labour force through the dispossession of land in the Cape colonies. This was done through the passing and, more importantly, the implementation of successive laws and acts aimed at both African farmers and squatters. The situation in the interior of the country, under the control of the *Voortrekkers*, was somewhat different. The *Voortrekkers* defeated the Ndebele and Zulus before 1840, and created the Republics of the Transvaal and the Orange Free State. The Afrikaners found it relatively easy to take large parts of land from the African tribes, but had more difficulty in turning them into a docile labour force. This can be attributed to the weak political and economic nature of the Boer Republics. In addition, the discovery of diamonds (1867) and, more importantly gold (1886), opened new markets that enabled Africans to farm with relative success. It is only after the creation of the Union in 1910, that the state managed to dismantle African peasantry in the interior of southern Africa (Terreblanche, 2002:219; Bundy, 1988:197-200).

Labour relations in the interior of southern Africa assumed the nature of those in the Cape prior to British involvement — a patriarchal homestead configuration with the farmer viewing the workforce as part of his domain. This pattern of labour configuration stayed in place until after the Anglo-Boer war. As stated above, the

weak state capacity of the Boer Republics made it difficult to turn Africans into a docile labour force. The *Voortrekkers* easily deprived indigenes of their land and in the Republics of the Transvaal and the Orange Free State roughly 850 000 hectares of land was set aside for Africans, with *Voortrekkers* claiming approximately 60 million hectare. Despite the limited land set aside for them, Africans still managed to practice forms of agriculture with relative success (Bundy, 1998: 198-9; Terreblanche, 2002: 219-20, 228-9). The situation in the two Republics concerning the passing of laws, bills and acts, was not nearly as advanced as in the Cape. Apart from the 1887 Squatters Law which stated that a farmer was not allowed to have more than five squatter families on his farm, not many other laws appearing on the statute could be implemented with great success. The Squatters Law was enacted to prevent the owners of large farms from becoming rich off rent received from Africans.

Very few other significant legislation was passed prior to the Anglo-Boer War of 1899-1902 and African peasant farming experienced a growth from the period of 1880's (commencement of mining) to about 1910 (Bundy, 1988:209-210; Terreblanche, 2002:242). This can be ascribed, in part, to the British's war practice of the burning of pastoral lands and homesteads and the destruction of livestock, leaving many Afrikaners without the means to cultivate their land. Everything was destroyed and the Afrikaners' position vis-à-vis the Africans, was such that they were in direct competition in the labour market. The creation of these two competing working classes would have resounding and long lasting consequences for South Africa (Terreblanche, 2002:245).

African peasant farmers were able to acquire land vacated by Afrikaners after the war and were, in many cases, able to productively farm large swaths of agricultural land. The British government was even willing to lift the ban on Africans owning land and this created a substantial African landed peasantry on the *higveld* in the years after the war (Bundy, 1988: 210). Thus the situation in the Republics of the Transvaal and the Orange Free State can be summarized as one in which Africans experienced some freedoms concerning agricultural production and land ownership; the creation of two competing working classes, African and Afrikaners; and the increase in the demand for cheap labour fuelled by the mineral revolution.

### ***2.3.3 The effect of the mining industry on land and labour relations***

The discovery of diamonds in 1867 and, more importantly, gold in 1886 at the Witwatersrand, heralded a new age in South African history. The mineral and subsequent agricultural revolutions would have the most profound impact on African labour and land relations in South Africa. The discovery of diamonds and gold gave the British the impetus to push for a federation of South African colonies under the control of the British Empire. The Anglo Boer war waged from 1899-1902 was one fought for the control of the gold deposits, as well as for the British to gain control of the South African labour force (Legassick, 1995:46; Wolpe, 1995: 62).

During the period of 1886-1905, land ownership was increasingly concentrated in the hands of a few Afrikaner notables and in mining and land companies controlled by the British. These groups entered into what Terreblanche (2002:241) labels the alliance between 'gold and maize'. Many other authors (Bundy, 1988:205; Legassick, 1995:46-48; Wolpe, 1995: 62-63; Bernstein, 1996:4-5) highlight the importance of this alliance. It was this alliance that created a condition favourable to the forming of the South African Union in 1910. This alliance also made it possible to initiate a concerted drive towards the creation of a single state apparatus that had at its fore the goal to transform Africans into a stable workforce for the mining sector, thereby boosting capitalist development. While the British wished to dismantle standing labour and land relations that made it possible for Africans to stay outside of the labour force, the Afrikaners wished to commercialize and capitalise their farming practises, with both requiring cheap labour for the initiatives to be practised profitably.

A large, cheap and totally controllable labour force was required to secure the profitability of the gold-mining sector for at least the first 50 years of its existence. The price of gold was fixed externally and had no bearing on the actual cost of production. Mining gold profitably required a large supply of cheap labour and, even though it was the world's largest known deposit, the quality of ore grades was poor. As surface ore became depleted deep level mining ensued, necessitating site crusher

and extractor plants to create a marketable product. As this became the only way to mine gold, greater capital investment was required, resulting in big companies being the only ones able to mine gold profitably. Within this scenario, labour was the one element of cost that could be controlled and consequently control over recruitment and living conditions of labourers became important in the assurance of profitability (Stadler, 1987: 38).

During this period, the Chamber of Mines set up the Witwatersrand Native Labour Association which recruited labour on behalf of all the mines and distributed the labour equally. Mineworkers signed contracts that stipulated nine months work and three months 'rest' in the homelands, areas set aside by the state as Africa areas. When working at the mine, workers were supplied with accommodation and food in barrack-like quarters, which enabled management to save on labour costs. During the 'rest' period workers went to the homelands and were expected to engage in agricultural production that would provide them and their family with subsistence. The migrant labour system made it possible for mining industry to keep wage levels absurdly low. During the period 1910-1973 wages did not increase in real terms. It was only after 1973 that wages increased dramatically following large scale strikes and the increase in the price of gold (Stadler, 1987: 39-40; Terreblanche, 2002:257).

The political and social structures within South Africa were severely changed by the advent of the mining industry. The goldfields created an effective economic absolutism that coerced thousands of African labourers into the mining sector. What was unique to the mining industry was that it required elaborate systems of labour recruitment and control that consequently transformed the social and political landscape of South Africa (Stadler, 1987: 37-38).

The measures described above to secure cheap labour for the mining industry required close collaboration between the mining interests and the state. The companies that dominated the Kimberly diggings, and later the goldfields operations, had considerable influence with the Cape government during the 1880's. The Glen Grey Act and the railway construction undertaken serve as examples of how influential the mining industry was in securing its needs (Stadler, 1987: 42; Terreblanche, 2002:258). It was however, not a harmonious process where government and mining

needs completely coincided. The British wanted to secure the mining franchise for white foreigners on the goldfields and tension between the British and Transvaal government escalated. In 1899, the Republics of Transvaal and the Orange Free State declared war on the British government. The subsequent defeat of the Boer Republics in 1902 advanced the interests of the mining industry and put it in a position to dominate political power for a quarter of a century.

The war intensified the transformation of society that was begun with the opening of the goldfields, and paved the way for British colonial administration intent on modernising the state and developing the mining industry (Stadler, 1987: 43). Direct British governmental control did not last as long as was hoped for by the British colonial powers. By 1909 there were Afrikaner ministries in both the Orange Free State and the Transvaal with the Cape depending heavily on the Afrikaner vote for political power. The consequences of the war on the social structure of the Boers were immense —white people had become poor and landless after the war. Many whites migrated to mining areas in search of work. This urbanised Afrikaner population (mostly poor) would later provide the foundation on which the National Party would win the election in 1948 and institutionalise the system of Apartheid (Stadler 1987: 45-51). Wallerstein (1986:111-113) points to the effects of British hegemonic decline during this period and the effect it had on the global system. The fact that the Union of South Africa was able to gain a measure of political independence at such an early stage may also be attributed to the decline in British power. Although Britain was not in total political control, it must however, be noted that gold was being produced for export and Britain stood to gain from gold mining practices in the South Africa.

### ***2.3.4 Effects of agricultural sector on land and labour relations***

Following the mining development new markets opened up in the agricultural sector. The Transvaal Highveld and the Free State became centres for agricultural activity, supplying the mining areas with agricultural products. Poor soil, droughts, low rainfall and the system of inheritance stimulated the control of the labour force that were

comparable in purpose, but different in form to the mining industry. As noted above, most Afrikaner farmers could not survive and became an industrial urban working class after the Anglo-Boer war. Those that managed to survive on agriculture production during the early 20<sup>th</sup> century had to pay ruthless attention to production costs. The state was invoked to control the labour force, supply subsidies, credits, loans and technical assistance. These systems created a small land holding elite and a vast number of impoverished black workers (Stadler, 1987:51).

The agriculture sector suffered from a lack of markets, and was forced to seek export markets for its goods as early as 1908. The black mining and manufacturing labour force could not afford to buy produce and were therefore not a viable market. In addition, the white populations in urban areas were too few in number to provide an adequate market. Agricultural producers were forced to seek external markets in which they felt the full brunt of international competition. Global markets were markedly more favourable for African exports for the period 1900-1913 than for the period 1914-1946 with markets being more difficult to penetrate during the latter period (Wallerstein 1986:120). African producers struggled to compete effectively, making profitable agricultural development very problematic. South Africa was affected by this and many agricultural producers could not compete in this environment and subsequently went out of business and left the sector. Many rural areas were depopulated of white farmers between 1900 and 1948. The exodus of white farmers further served to stratify the white population and increase white urban populations. The low economic productivity of the agricultural sector as a whole also served to reinforce strict controls on the African labour force (Stadler, 1987: 53-54).

## **2.4 The formation of the South African Union: 1910-1948**

During the period from 1910 to 1948, state building in terms of institutional capacity with white supremacist rule was consolidated. It is during this period that the state, in conjunction with gold mining and agricultural elite, developed into a power bloc capable of enacting and enforcing a wide range of restrictive laws aimed at turning the Africans into a controllable labour force. It is also during this period that some of the most severe segregationist acts were instituted, most infamously the 1913 Natives

Land Act. The creation of the Union of South Africa in 1910 enabled those who controlled the state apparatus to enact measures throughout the whole geographic area of South Africa for the first time. It is with this robust state apparatus that further dispossession of Africans could take place with unprecedented speed and effectiveness.

The first decade of the 20<sup>th</sup> century after the Anglo-Boer War and preceding the creation of the Union can be viewed as an era of compromise between mining capital and Afrikaner settler (agricultural) elite. It is during this era that the power bloc consisting of these two forces (section 2.3.3) was able to create a new state with unprecedented economic and bureaucratic sophistication (Bernstein, 1996:5). One can safely conclude, that the state that developed from this milieu was one geared towards serving the needs of the capitalists. These included instituting an environment where Africans became landless and were turned into a working class. This was achieved through establishing segregationist policies aimed at enriching those in power and securing a coercible labour force.

During the Anglo-Boer war, Africans were assured by the British authorities that they would receive equal rights after the Boers were defeated. This is also the grounds on which the British were able to secure help from the Africans during the war in the form of supplies and other auxiliary services. In an about turnaround by the British, they conceded to Afrikaner needs in the form of Article 8 of the Peace of Vereeniging signed in 1902. The British agreed to postpone the issue of African suffrage until after self government had been restored to the ex-ZAR, leaving Africans disenfranchised and without a voice (Terreblanche, 2002:245).

As discussed in section 2.3.3 and 2.3.4, the mining and agricultural sectors had secured the labour required to ensure profitable operation. It should, however, be noted that during the first decade of the 20<sup>th</sup> century the Mining Commission had some difficulty in securing African labour (Wolpe, 1995:63; Legassick, 1995:46-48; Bundy, 1988:208). Africans still had the ability to stay outside the labour force by entering or continuing agricultural activities, such as share cropping and rent farming. In addition, a number of Africans owned farms, either collectively or individually, as there was abundant land available after the war (Bundy, 1988:208-212; Terreblanche,

2002:260). Pressure on labour supply for the mines gave the impetus for the formation of the South African Union, as it was to the advantage of the capitalists (the alliance of gold and maize) to create a state apparatus effective enough to command the African labour force (Terreblanche, 2002; Bundy, 1988).

In 1909 the British Parliament passed The South African Act of Westminster (The Constitution of the Union of SA), that honoured article 8 of the Peace of Vereeniging. It is argued by Legassick (1995), Wolpe (1995), Bernstein (1996) and Terreblanche (2002) that the passing of the Act of Westminster was the event that heralded the beginning of a unified segregationist policy in South Africa, and that segregation as state policy was instituted by the British although it was enforced and refined by the Afrikaner establishment.

#### ***2.4.1 The Union's legacy: Segregationist legislature institutionalised***

Thus we are now, in our summary of the history of South Africa's land and labour relations, on the eve of the passing of the most influential legislation ever to appear in the South African statute, the Natives Land Act of 1913. The situation in South Africa, prior to the passing of the Act, was that for the first time there existed a single state apparatus that could be wielded to satisfy the labour needs of both mining and agricultural elite. African farmers in the northern areas of the Union had been able to escape being sucked into the labour force, due to the availability of agricultural avenues. The situation in the Cape was somewhat different, where the dispossession of African peasantry had been far more advanced than that in the Northern provinces. The state and ruling elite were looking for a way to secure labour needs, and it was clear to them that the only way to force Africans into the labour force was to deprive them of land.

Thus was enacted the most significant piece of legislation to be passed in the Union of South Africa, The Natives Land Act of 1913 (Stadler, 1987; Terreblanche, 2002; Bundy, 1988; Bernstein, 1996; Wolpe, 1995; Marais, 1988 and Legassick, 1995). It is

safe to say that the Union of South Africa made a systematic legislative attack on all Africans, in- and outside of the labour force, as approximately eighty seven Bills and Acts related to land and labour were passed by the Parliament of the Union of South Africa (Terreblanche, 2002:263). For the purposes of this research study, not all of these acts will be discussed in detail, as it should be clear that this warrants an independent study. Attention will be given to those that the researcher feels are most relevant to land deprivation and other discriminatory practises relating to land.

The 1913 Natives Land Act divided South Africa geographically where Africans could own land inside a prescribed area amounting to a total of 8% of the area of South Africa, while 92% was allocated to whites. The Act instituted a legal separation between all whites and non whites in terms of ownership and residence. The areas assigned to Africans were known as reserves. Africans were allowed ownership of land, and to pursue agricultural activities within the reserve areas. It was believed by the Union government that Africans could pursue subsistence activities in the reserves through agricultural and pastoral activities. The areas were limited to ensure that there would never be enough land available to all for ownership and this would force Africans into the labour force to survive. It was envisioned that Africans would live in the reserves only for short periods during the year, and migrate to the urban areas or minefields in search of work during the other periods. The 1913 Act cemented the practice of a migrant labour system in South Africa that would ensure a stable workforce for the agriculture, mining and manufacturing sectors of the economy (Bernstein, 1996:5; Harley and Fotheringham, 1999:13; Bundy, 1988:213-215).

The act not only served the purpose of securing cheap labour, but also to quiet the fears of white farmers who were struggling to compete with successful African peasants in the northern provinces. Furthermore, it extinguished share-cropping and other forms of labour tenancy outside the reserve areas, rendering all activities illegal and allowing Africans to remain on white land only in the form of labour tenants (Bundy, 1988:214; Bernstein, 1996:5). The outcome of the 1913 Act, was that it turned a growing African peasantry [practised in many forms in the different areas of SA (Bundy, 1988)] into a landless, working class and caused the large scale movement of Africans off what became 'white land' and into the reserves and urban areas. This in turn, led to severe overcrowding in the reserves as well as the creation

of a permanent migrant labour system creating the problem of urban African slums, both issues that the Union government addressed with legislative measures.

The 1923 Native (Urban Areas) Act and the 1927 Native Administration Act were both geared towards dealing with the 'problem' of urbanised Africans. The migration of Africans to urban areas increased due to overcrowding in the reserves and due to disparities in wages between the mining, agricultural and manufacturing sectors. Wages in the manufacturing sector was far greater than in the other two, and this served to increase the volume of African urbanisation (Stadler, 1987:59). The Acts of 1923 and 1927 were aimed not only at controlling the number of Africans that were allowed to urbanise, but also regulated who would be afforded basic services such as housing and water in urban areas.

These legislative acts made it illegal for Africans to own urban land, curtailed the time allowed in urban areas, and also laid the foundation for controlling the movement of Africans into and out of urban areas. Furthermore, the Acts further institutionalised the practice of indirect rule, in that it recognised the legitimacy, albeit partial and based on clientalism, of Native administration, and of other native legislative bodies and their subjugation to the Native Affairs Department that was controlled by the central state (Stadler, 1987: 88-91, 119-121, 129; Terreblanche, 2002:255, 272-274, 313). These two legislative acts formed the basis of the Native Urban policy from their inception until the late 1980's. They were the basis upon which many non-white urban dwellers were evicted and forcible removed, and can be seen as the urban equivalent of the 1913 Land Act in that they stipulated where Africans could and could not live. The 1913 Act could not have been implemented with a great degree of effect without the creation of the 1923 and 1927 Acts relating to urban areas, African movements and indirect administrative control.

Other significant legislature includes the 1936 Native Trust Act. The 1936 Act increased the land available in the African reserves from 8% to 13% and placed an absolute limit on the amount of land that would be made available to Africans. It should be noted that this increase in size was never completed, and it is estimated that reserve size never surpassed that of 10% of total area of South Africa. Furthermore, the 1936 Act placed limitations on the amount of cattle allowed to graze and also

farming practises that would be followed in the reserves, seriously curtailing the freedom of African farmers. This, in turn, led to an increase in African urbanisation, as the pressure on the reserve lands only increased. The Act would also serve as the basis upon which forced rural removals would take place (Harley and Fotheringham, 1999:21; Stadler, 1987:42, 146; Terreblanche, 2002: 278).

These acts discussed above should be viewed as part of the larger process of African dispossession that was initiated in the late 17<sup>th</sup> century by the first freeburghers released from their VOC contracts. They are not more significant, in absolute terms, than the 1809 Hottentot Proclamation, the Master and Servant ordinances of the 1840's and 50's, or the Glen Gray Act of 1894, but they had a more significant impact due to bureaucratic capacity of the state. The Acts that were passed after the formation of the Union of South Africa were instituted across the whole geographic area of South Africa, and were far more rigorously applied by the Union and later Apartheid state machineries than by ruling powers in any preceding eras. Another important impact of the 1913 Land Act is the scale and the intensity of forced removals of Africans living on lands outside of the reserves. African share-croppers, tenant farmers and other forms of agriculturalists were turned into criminals at the stroke of a pen, and those not willing, or able, to stay on as labour tenants were forcibly removed and relocated to reserve areas (Harley and Fotheringham, 1999:20-28).

#### ***2.4.2 Birth of the liberation movement: The African National Congress***

On the 8<sup>th</sup> of January 1912 the South African Native National Congress (later to be known as the African National Congress, ANC) was formed. There is a widely held view amongst scholars that the creation of the ANC was spurred on by the initial inception of what was to become the Land Act of 1913 (Asmal, Chidester and Lubisi, 2005:35; Terreblanche, 2002:281 and McKinley, 1997:5). Limb (2003:13-16) argues that the initial actions by the ANC prior to the mid 1920's was greatly influenced by British ideas and had a subsequent impact on how the early ANC would fight the anti-

oppression struggle. The author argues that the alignment of the early ANC leaders with British ideals of peaceful protests, resulted in the ANC having very little organisational clout and liberation gusto. Furthermore, the ANC leaders were initially comprised of black petty bourgeois, and their whole value system was aligned closer to those of the British elites than to their poverty stricken African counterparts. It is postulated that the early ANC was meek in the manner in which it tried to battle the white-dominated state. Some of these actions included picketing, attempts at debating politicians, writing articles of protests in liberal minded newspapers and peaceful protests (Legassick, 2007:157-159). Suffice to say, the ANC in its embryonic stages of development did very little in terms of mass mobilisation against the white controlled state, as it did not want to be seen to be operating outside legal boundaries.

The legal barrage launched against Africans in terms of legislation discussed in the previous section, changed the tone of the liberation movement of the ANC. Most importantly were the effects of the 1913 Act and the 1923 Urban areas act in radicalising the ANC as an opposition movement (McKinley, 1997:7-10; Stadler, 1987: 16-18). The nature of the discriminatory laws gave the organisation a degree of impetus and a rationale along which they could mobilise the masses. The Organisation went through another lull in activities during the late 1920's and it is only after the Second World War and the passing of the 1936 Act, that the drive towards liberation took form. It is interesting to note the paradoxical effects of the successive legislative assaults on African freedoms sowed the seeds for the demise of the white-dominated state, albeit nearly 60 years later. A major contributing factor towards the rise of the ANC as a liberation movement came from the defeat of Nazism in the Second World War and the subsequent adoption of a universal form of human rights. The ANC as a movement took inspiration from the adoption of human rights by the victorious Allies, and saw in this a justification for mobilization and emancipation (Asmal, et.al, 2007:1-7). The role of land, and more pertinently the curtailing of African ownership, played a crucial role in the mobilization of the ANC. It is however, only during the 1950's that the ANC became an effective mass mobilisation movement with regards to combating the ruling white elites (McKinley, 1997:13-16; Legassick, 2007: 183-185).

## **2.5 The Apartheid state 1948-1990**

In 1948 the National Party won a closely fought election on the back of a numerically increasing impoverished Afrikaner working class. Mention has been made of the landless white Afrikaner, who had been increasing in size since the beginning of the century. It is with the help of this poor, white, landless class that the National Party took power in 1948, and instituted nearly 50 years of an Afrikaner dominated political system (Terreblanche, 2002: 298-300). The Afrikaner establishment added its own distinct racist feel to the state, by enacting a number of racist laws soon after it was elected to power. These included the Mixed Marriages Act, the Immorality Act and the Population Registration Act, to name but a few (McKinley, 1997:14). It must be noted that by the time the National Party (NP) took power in 1948 the character of urban and rural land division along racial lines was already firmly in place (Harley and Fotheringham, 1999:28). The foundation for a geographically and racially segregated society had been laid and the only noteworthy legislation, relating to land relations, was the Group Areas Act of 1950 that demarcated all land use according to race and resulted in the forced removal of thousands of people. This is not to say the NP was idle with regard to legislative measures, on the contrary, a plethora of laws and acts relating to African movement, urbanisation and settlements were passed, but by and large they were merely extensions, additions or alterations to the already existing land legislation.

The forced removal of millions of Africans, on the grounds of successive legislative acts was perhaps the single most important function relating to land that the apartheid state apparatus fulfilled. In the time spanning 1960 to 1983 the number of Africans removed from their homes and relocated under duress is estimated at 3, 5 million. Furthermore, 1, 4 million urbanised Africans were removed and 'returned' to the homelands from 1950-1990. During the period of 1950 to the mid-1980s 80 000 coloured families and 38 000 Indian families were forced to move (du Toit, 1995: 309).

The removal of Africans from urban and rural areas was the result of legislative measures adopted by the Apartheid regime, and apartheid state was responsible for

implementing these laws (Terreblanche, 2002: 387). Relocation or forced removal occurred in urban areas such as District Six and Sophiatown, and also in rural areas in what became known as 'black spots'. These black spots were simply areas on white farm land where Africans had managed to remain. Africans were moved under different acts and laws, but all for the same purpose, the creation of separate 'states' for African people (Harley and Fotheringham, 1999:36). It is not the purpose of this study to describe the removals, either in location and intensity or emotional anguish it caused, and that is why it is relegated to a mere paragraph in this study. This is not to undermine the importance of forced removals or relocations, it is simply a matter of practicality. For the purposes of this study, the single most important effect of enforcing apartheid laws was to crystallize opposition and the effect it had on the nature of the opposition. It should also be noted that the effective nature of the state apparatus, in the form of the Native Affairs Department, serves to further illustrate the role of the state in land relations in South Africa. The state, if adequately equipped, is the most powerful tool that can be utilised to influence land relations, and this remains true today.

It has previously been argued that the ANC was given serious boost in its battle for liberation during the 1950's (McKinley, 1997:17-23; Legassick, 2007: 193-203). This is attributed, amongst other things, to increased urbanisation of Africans; deteriorating conditions in the reserves; increased awareness amongst Africans of their marginalised situation; increased influx control measures and forced removals. The researcher is not arguing causality, but merely stating that land dispossession played a role in mobilising mass action and that the effects of dispossession should not be underestimated. The disenfranchisement of Africans, relating to land, played an important role in why the masses started serious rebellion against the apartheid state.

In conclusion, the era from 1948-1990 must be seen as an era of entrenching segregationist policies initiated at the turn of the 20<sup>th</sup> century. The apartheid state played a crucial role in providing the ANC, for the first time in South African history, with a clear and well defined enemy. This enemy was characterised by a very effective state apparatus, one that could not only enact laws but also implement them with unprecedented effectiveness.

## 2.6 Conclusion

This chapter attempted to summarise the historical nature of land dispossession in South Africa. It showed that dispossession at the hands of the Dutch, the English and Afrikaner establishments were carried out in order to ensure the profitability of the agricultural and later the mining and manufacturing sectors. All the while, this dispossession took place within South African and within global, capitalist development. Without the economic impetus, such large scale dispossession would never have been achieved and successive state machineries could not have been mobilised to ensure such a goal. The power bloc formed between agricultural and mining elite at the turn of the 20<sup>th</sup> century serves as an apt example. This chapter showed that the disowning of Africans was a deliberate process pursued by successive state apparatus in order to ensure the profitability of capitalist development. The dispossession of land and coercion of labour was justified through economic and social arguments that today seem absurd, as arguments such as segregation and apartheid fly in the face of basic human rights. It can, however, not be ignored that we have not moved out of a capitalist global order, and that subsequent changes relating to land and labour cannot be initiated while ignoring the global situation.

## Chapter 3: Conceptual framework

### 3.1 Introduction

This chapter will serve to illuminate the concepts that are central to understanding the main thrust of this dissertation. Some, such as the state, have already been extensively used and a definition is long overdue. Others have not gained prominence, and it is only when a discussion of contemporary South Africa commences that these concepts will be extensively used. This chapter serves as a theoretical exposition of some concepts, shedding light on the ambiguity surrounding them and illustrating their complex nature.

One of the basic premises of this dissertation is that South Africa is currently in a phase of transition. South Africa is a young democracy and there are still many unknowns in our future concerning the durability, sustainability and prospects for consolidating democracy (du Toit, 2001; du Toit 2003; Mattes, 2002; van Beek, 2006). It is the opinion of the researcher that a major obstacle or impediment to consolidating the South African democracy rests on differing interpretations of democracy held by the population and elites.

The general thrust of the chapter rests on the premise that, within the South African context, culture, the state, democracy, democratic consolidation, transformation and land reform all form part of the social fabric of South Africa. Furthermore, these aspects all have bearing on South Africa's prospects for consolidating the democratic regime and ensuring a stable future for the country. Most central to this debate are the divergent meanings linked to democracy, which are rooted in deep seated cultural differences amongst the parties responsible for South Africa's negotiated transition. And it is this inherent cultural tension amongst negotiating parties that has given rise to two diverging interpretations of democracy namely the *liberal* and *liberationist* models of democracy (Gagiano and du Toit, 1996).

In this chapter, an interpretive framework is created by the researcher for understanding the relationship between culture, the state, democracy, law and land

reform in South Africa. This model is based on Raymond Cohen's (1997) theory of differing cultural models. Cohen (1997) draws a distinction between *high-context* and *low-context* cultures. Concepts such as the state, democracy, law, transformation and land reform will be illuminated and grounded within Cohen's (1997) framework. Cohen (1997) does not specifically focus on notions such as the state, democracy and law, but does make some references to these concepts when highlighting the differences between *high-* and *low-context* cultures. The interpretive framework attempts to 'fill out' or supplement the original distinction and characteristics highlighted by Cohen (1997) and his distinction between *high-* and *low-context* cultures.

The chapter will begin by explaining this interpretive framework of understanding, or models of democracy as well as the concepts that are used therein. Thereafter, culture, democracy, transformation, the rule of law and land reform are explored. The aim of this chapter is to create a coherent theoretical model within which the South African situation can be better understood.

### ***3.2 An interpretive framework***

The theoretical framework that will be presented below rests on the premise that culture is a salient, pervasive and active agent in how all people perceive and interact with their social, economic and political environment. From this follows that all social interactions are not only influenced by culture but are, to a large extent, shaped by cultural orientations. Consequently, culture not only has a decisive role in how social, political and economic institutions are constructed, but also in creating standard meanings that are associated with these institutions. It will be argued that meanings associated with democracy, the state, law, transformation and land reform can be better understood when placing it within cultural perspectives.

It will be argued that there are competing, and sometimes contradictory, interpretations of what economic, political and social institution come to mean to the populace and elites in South Africa (Gagiano and du Toit, 1996). The main purpose of this theoretical exposition is to create an adequate framework or models of

democracy, in order to understand the nature of democracy within South Africa and the difficulties facing its consolidation. The model does not advocate causality, nor does it wish to explain ‘why’ there are differing meanings associated with these concepts — the model merely wishes to propose a way of understanding and interpreting the ambiguities surrounding normative meanings of democracy in South Africa.

The definition of culture that follows is limited, for the researcher echoes the views of Huntington (2007:15) who argues that “...if culture includes everything, it explains nothing.” Culture is therefore defined in limited terms and should be viewed as an explanatory variable of sorts. It merely assists the reader in understanding the relationship between the dependent and independent variables of this particular study and facilitates understanding the variances perceived in the quantitative section of the study.

### **3.2.1 Culture**

The language we speak, the customs we follow, our values and norms all form part of our cultural make-up and orientation. Our culture is not only determined by these aspects, it in turn, influences them. It influences how we view ourselves and others and influences rules, interactions and institutions in society. Above all, culture influences our frame of reference for all social interactions and all thought-processes. An individual’s cultural background shapes how one thinks, what one thinks and consequently how one will act not only as an individual, but as a society. This study holds that culture matters and that values constituting culture have a profound impact on how we organise our political, social and economic landscape<sup>1</sup>. Furthermore it is believed that our cultural orientation has significant affects on the type of institution that is created and the meanings associated with these institutions.

In his work, *Negotiating Across Cultures* Raymond Cohen defines culture as “... a property of information, a grammar for organising reality and for imparting meaning

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<sup>1</sup> For other works that argue cultural importance see Esmer and Pettersson 2007; Harrison and Huntington, 2000

to the world.” (1997: 12). Culture consists of patterned ways of acting and feeling, and at its core rests on historically derived and selected ideas and values. Culture rests on shared meanings, permitting members of a community to perceive and consequently act on reality (Cohen, 1997: 12). What makes Cohen’s framework of culture relevant not only to South Africa, but to many newly formed democracies, is that it is conceived entirely for the purposes of understanding the difficulties of negotiation. This is relevant in the South Africa context due to the nature of our negotiated transition to democracy. During the transition of the early 1990s everything was up for negotiation, and it was partly due to the nature of the transition period and the need to move negotiations forward, that certain incommensurables were ignored or at least ‘swept under the rug’. These include differences in the normative meaning that was assigned to the institution of democracy. It is a premise held by the author, that it is this difference in what democracy is believed to be that lies at the heart of difficulties for consolidating the South African democracy<sup>2</sup>.

In his work, Cohen (1997) elaborates extensively on how certain cultural orientations influence the process of negotiation. The author argues extensively that cultural differences influence not only the context of negotiation, but also the ‘*meaning*’ of ‘*what*’ is being negotiated. In numerous examples, it is argued by Cohen (1997) that American-individualistic cultures can be distinguished from communal based cultures. The author identifies two distinct cultural frameworks, one he labels the *high-context* (non-western) cultures and the other the *low-context* cultures, epitomised by the American culture. The basis for this distinction lies in the prominence or role that is ascribed to the individual within the specific cultural context.

*Low-context* cultures are dominated by the idea that the individual is of prominence, and holds that individual rights are more important than duty towards one’s family or community. In this framework, status is acquired and not inherited. Political authority is a function of office and can and should be questioned and challenged when individuals feel their rights are being impeded in any way. Conflicts are resolved through legal processes enshrined in law, where justice is an abstract notion that applies to all, where litigation is common and all parties are allowed to argue their

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<sup>2</sup> For other studies advocating such an hypothesis see also Gagiano and du Toit, 1996; du Toit, 2001 and du Toit, 2003

cases on equal basis. Equality before the law is the 'prevailing ethic' in such societies and the importance of contracts above custom cannot be overstated. The economic side of this framework is enshrined in the principles of the free market and the prevailing political system that is usually pursued is that of representative democracy (Cohen, 1997: 29-30).

In contrast, *high-context* cultures follow a communal ethos wherein the needs and freedoms of the individual are subordinated to the welfare of the group. The identity of an individual is derived from group affiliation and not personal choice and individual needs are defined in terms of communal interests. Face, an individual's standing in the eyes of the group, is paramount and dishonour is seen to be worse than death. Group identity is acquired by birth, is lifelong and bestows upon the individual a sense of duty to family and group that supersedes other obligations. The notion of duty towards an abstract entity such as the state is foreign, as all duty and obligation is towards the individual's group. Law with an abstract sense of justice is meaningless and law is rather viewed in the context of group affiliation and past favour. Contracts are subordinated to customs, and the idea of a disembodied contract applying to all is alien in this cultural framework. Authority is paternalistic and unquestionable in nature and roles are ascribed within the group and rests heavily on past hierarchies. Conflict is resolved by mechanisms of communal conciliation and not with an idea of an abstract universal law. Continuing group harmony is the paramount concern of conflict resolution and not with ensuring that contracts are adhered to irrespective of context (Cohen, 1997: 30-31).

The role of language, time and history are significant points of difference between the cultural contexts. For the *low-context* cultures, language is merely a means of communication and communication is viewed as a tool for relaying information. Language and communication are seen as performing an informational function. For *low-context* cultures, time is seen to be precious, and to waste time on frivolities when work could be done is meaningless and unfulfilling. This cultural orientation that highly values individual achievement, views time as a medium in which productive tasks must be completed in specific periods. In addition, time is viewed as monochronic, alluding to the idea that it is best to do one task at a time and, in a sense, this culture 'regiments time'. Consequently, this cultural perspective has a view

of the present that tends to underplay the importance of the past in shaping current context. History is mostly subordinated to dealing with more pressing and immediate concerns, and the preoccupation and fascination with the future leads to historical factors being underestimated in their significance of shaping the present (Cohen, 1997: 31-35).

Within *high-context* cultures, language and communication forms part of the total social fabric and in this cultural perspective language is not merely a way of communicating, but forms an integral part in maintaining face, group harmony and social cohesion (Cohen, 1997: 31-32). *High-context* cultures ascribe much less value to the division of time on the clock dial and are not as preoccupied with the future as their *low-context* counterparts. *High-context* cultures subordinate the importance of time to human interaction and adds value to the act of ‘doing’ rather than that of ‘getting things done’. Cohen (1997:34) captures this when he poses the following, “... in the overall scheme of things, where the individual counts for so little in the face of much greater, inexorable forces, what could be more futile than urgency?”. This sense of time has implications on the importance placed on the role of history in contemporary context.

*High-context* cultures tend to view what their *low-context* counterparts would perceive as ‘ancient, irrelevant’ history, as having a significant impact on creating the current social context (Cohen, 1997: 31-36). In a sense, for *low-context* cultures history is recreated in terminology of today, and is compartmentalised and viewed as distinct from other social forces. In contrast, *high-context* cultures view the present as part of a continuum of events. There is no division or segmentation of time, but rather a flowing continuum of social interactions that shape today and tomorrow, based on what happened yesterday — hence the label, *high-context*. For high-context cultures, the context dominates the details of the present. All social interactions and relationships are characterised by the context that they take place in, nothing is void of context and all interactions and relationships are based on context specific dealings.

One final aspect that is an important distinction between *high-* and *low-context* cultures is the idea of *good faith* as opposed to *goodwill*. The idea of good faith is important in *low-context* cultures. This is the notion that all parties will subscribed to

the agreed upon rules of a negotiation after the negotiation is complete. Negotiation is viewed as a finite process that culminates in the creation of a legally binding contract. For the *high-context* counterparts, this is not the case. *High-context* cultures view the creation of a legal contract as merely another stage in the process of an open-ended relationship. They operate on the basis of *goodwill*, the idea that all parties are working together in a co-operative way, and that non-compliance to, or changing of a contract is part of the relationship and does not in any way signify an offence or breaking of an agreement. This difference in *good faith* and *good will* is grounded in the contrasting views the two cultural orientations have on the role of law, contracts and time. Whereas *low-context* cultures view negotiation and contracts as being a function of a specific time, *high-context* cultures view it as part of the continuum of time, the never-ending always changing social reality that cannot be abstracted or subordinated to the ticking of a clock (Cohen, 1997:199-201).

In essence, the difference between *high-* and *low-context* cultures lies in the separation of meaning from context. For *low-context* cultures, events, actions, processes and relationships can be invested with meaning without bringing the entire context of relationships into the framework of understanding. To the contrary, by stripping the context away, by eliminating, discarding or ignoring the context of the relationship as 'irrelevant', even greater clarity, and therefore meaning can be established. It is held that context can clutter, obscure and confuse the understanding and functioning of relationships. *High-context* cultures argue the exact opposite of their *low-context* counterparts.

The cultural distinction of *high-* and *low-context* cultures will form the basis of the interpretive framework. It will be attempted to define the state, democracy, law, transformation and land reform in relation to *high-* and *low-context* cultures. This will hopefully also show that there is a high degree of divergence in the normative meanings associated with these concepts and that there is some correlation between value orientations within the differing cultural perspectives and meanings associated with these concepts.

## 3.2.2 Democracy

### 3.2.2.1 Ideal type democracy

Defining democracy is notoriously difficult, as it is a term that has as many meanings as it has states conforming to the principles thereof. How one chooses to define democracy is very much the choice of the author. Democracy in this study is viewed as a form of governance. It is viewed as a process, a constantly evolving system of government that, despite fluctuations and differences, remains true to a number of minimum requirements. It is the opinion of the author that democracy can be viewed as a political system that is influenced by societal (political, economic and social) and cultural forces.

As stated earlier, an underlying premise of this dissertation is that South Africa, although recognised as embodying a constitutional democracy, is in the process of consolidating the relatively young democratic regime. The definition of democracy must therefore be so inclined that it acknowledges the fact the democracy is as much a process as a definitive state. Robert Dahl (1971) in his seminal work *Polyarchy: Participation and Opposition*, investigates which factors permit opponents of government to organize and contest government in free and fair elections. The author argues that the transformation of a regime towards one in which opposition is allowed forms the cornerstone of a democratic system of government, which he labels a *polyarchy*. Dahl (1971:2) argues that there are three necessary conditions that allow for contestation and democratization, allowing a form of government to be labelled a *polyarchy* —citizens must have unimpaired opportunities to formulate their preferences, signify their preferences by individual or collective actions and lastly, have their preferences weighed equally regardless of content or source of set preferences. Although essential but by no means sufficient, these conditions are viewed as minimal requirements a political system must employ in order to be labelled a democracy.

In order for these three basic conditions of democracy to be met, societal institutions must provide at least eight guarantees to the population which are summarised in the table below.

**Table 3.1 Requirements of a democracy**

The opportunity to:	The following institutional guarantees are required:
I. Formulate preferences	<ol style="list-style-type: none"> <li>1. Freedom to form and join organizations</li> <li>2. Freedom of expression</li> <li>3. Right to vote</li> <li>4. Right of political leaders to compete for support</li> <li>5. Alternative sources of information</li> </ol>
II. Signify preferences	<ol style="list-style-type: none"> <li>1. Freedom to form and join organizations</li> <li>2. Freedom of expression</li> <li>3. Right to vote</li> <li>4. Eligibility for public office</li> <li>5. Right of political leaders to compete for support</li> <li>6. Alternative sources of information</li> <li>7. Free and fair elections</li> </ol>
III. Have Preferences weighed equally in government conduct	<ol style="list-style-type: none"> <li>1. Freedom to form and join organizations</li> <li>2. Freedom of expression</li> <li>3. Right to vote</li> <li>4. Eligibility for public office</li> <li>5. Right of political leaders to compete for support               <ol style="list-style-type: none"> <li>5a Right of political leaders to compete for votes</li> </ol> </li> <li>6. Alternative sources of information</li> <li>7. Free and fair elections</li> <li>8. Institutions for making government policies dependent on votes and other expressions of preference</li> </ol>

(Source: Dahl, 1971:3)

It is furthermore possible to order different political systems along a theoretical scale, based on their level of contestation and inclusiveness and in so doing gauge their level of democracy or degree of democratization (Dahl 1971:4). Although contestation and inclusiveness vary independently and are not mutually inclusive, it is argued that the higher their level, the greater the degree of democracy. *Polyarchies* then, are thought of as regimes that are highly inclusive and extensively open to public debate (Dahl, 1971: 6-8).

The significance of transforming a regime into a *polyarchy* from one with lesser degrees of public contestation and inclusiveness, has far reaching effects on the rights and freedoms enjoyed by individuals. Classic liberal freedoms such freedom of expression, association and organisation without government prosecution are associated with democratic regimes. Furthermore, universal suffrage, concurrent with political competition, increases the degree of representation for the population

amongst political leaders in parliament. Although the author acknowledges that the populace will never be equally represented in political leadership and parliament, a greater degree of representation results from broader inclusiveness. Broader representation in turn, has meaningful implications regarding the level of accountability that can be expected from, and assigned to, political leaders and parliament. The public generally feel a greater connection with their political leaders and more involved in the policy process, resulting in increased ease with which they feel they can engage in political life. This in turn, can lead to greater diversity of political preferences being expressed within the parliament and amongst political leaders (Dahl: 1971: 20-27).

It is also necessary to highlight the difference between the procedural and substantive notions of democracy, as put forward by Dahl (1971). The author implies this distinction when he argues that in order for citizens to be fairly represented in formulating, signifying and having their preferences weighed equally, a number of 'institutional guarantees' need to be adhered to. There is therefore an implied recognition that in order for a democracy to exist and become an inclusive *polyarchy*, there should be a clear separation of the procedural and substantive aspects of democracy (Dahl 1971: 3). It is the procedural norms, as adhered to by the state, which allows citizens the ability to fully realise the freedoms that are provided by a democratic dispensation. It is also implied in democratic theory that adherence to the rules are of paramount importance. A democracy cannot exist without adhering to the rules and it is out of 'institutional guarantees' (procedures) that citizens are able to enjoy the freedoms (substance) that a democratic system of government allows them.

The above then illustrates that democracy is viewed as a process, or form of government, that increases public contestation and inclusion. This results in the public forming a greater part of the political landscape and in turn, nurtures the feeling in the body politic that they form part of the democracy. The broader the interest groups that are represented in parliament and other forms of government, the greater the level of association felt by the public towards government. This theory of democracy also highlights the importance of political leaders, or elites, in ensuring that the public can benefit from a democratic system. Greater representation amongst political leaders in turn, increases the governments' legitimacy and also the belief of the populace in

democratic forms of governance. This explanation of democracy as put forward by Dahl (1971) emphasises the importance of the role of the public, their opinions and their ability to take part in creating and maintaining a system of government. It furthers the idea that government is not removed from the people, but is there solely to serve the needs of all people under its control equally.

The above can be viewed as an ideal type of democracy. Whether such a political system, that is completely or almost completely responsive to all citizens, exists, has existed or will ever exist is not what is of concern (Dahl, 1971:4). It is only a theoretical construct that allows social researchers to gauge the level of democracy within a specific country. It serves as a yardstick against which all democratic systems of government can be measured, in order to estimate whether they are merely democratic in facade, or whether they are truly democratic states. This definition advanced by Dahl (1971) highlights the minimum requirements a democratic system of government must adhere to in order to be labelled as such. This definition recognises the institutional constraints and formal boundaries that must be adhered to in order to allow citizens to be part of a democratic system. It also has as its point of departure, the ordinary citizen, the population, and specifies that certain criteria must be met in order for the individuals in society to enjoy a level of freedom associated with democratic forms of government.

### **3.2.2.2 Framing the democratic debate in South Africa**

Democracy in the South African context takes on a somewhat more substantive notion than the definition given above. It can be argued that democracy in South African is inexorably linked to the process of social transformation, and more specifically the process of black empowerment. “In a certain sense democratization is understood as a process of black empowerment. The [corollary of this] understanding is that any social, political or economic engagement in the new South Africa that blocks or impedes the process of black empowerment is essentially undemocratic.” (Gagiano and du Toit, 1996: 60).

Within the South African context, democracy and the consolidation of such a system, is inexorably linked to the idea of *transformation*. The two contrasting models of what constitute successful democratic consolidation discussed below, are in essence diverging with regards to how the differing paradigms conceptualise and envision *transformation* to manifest in society, and how to achieve a concrete manifestation of such a policy directive<sup>3</sup>.

Gagiano and du Toit (1996:48) identify “...two major diverging and adversarial notions of what could be regarded as the establishment of successful democracy...”. The authors argue that in the South African context, there are two diverging interpretations of what constitutes democracy and more pertinently, what strategies should be followed to foster democratic consolidation and the establishment of a successful democratic dispensation. The authors argue that the two distinct and conflicting paradigms surrounding normative ascriptions of democracy in South Africa can be labelled *liberal* and *liberationist* perspectives on democracy. The authors argue that although all the major political role players are to some extent or in some way concerned with consolidating the South African democracy, there is no agreement about the “...sort of normative or institutional order in society that will give concrete expression to the philosophical principles...” that underlie these two paradigms (1996:48-50). I will argue that these paradigms, or models of democracy, can be linked to the cultural framework described above through corresponding notions about the role of the individual, and more pertinently what importance is placed on the idea of individual autonomy and the maintenance of such a system by codifying it into law<sup>4</sup>.

The *liberal* view of democracy holds that the defining feature or most important function of democracy is to maximize individual freedom and autonomy. For *liberals*, inequalities in political, economic and social power threaten to expose the individual to economic, political and social repression (Gagiano and du Toit, 1996:50). According to this paradigm, the best way to ensure individual freedom and autonomy is to ensure the separation of the economic, political and social spheres of society

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<sup>3</sup> The two models do not only differ with respect to transformation, as will be shown in the following paragraphs. The diverging notions of transformation is however central to the thrust of this dissertation, as it is one of the concepts that is directly measured in the empirical component of the study.

<sup>4</sup> See also du Toit 2003, Gerber, 2004 and du Toit 2006.

through explicit expressions enshrined in law. *Liberals* hold that in order to maximize freedom and autonomy of the individual, democracy must ensure the separation of the political, economic and social spheres of society and prevent the creation of a power bloc with simultaneous influence in all these spheres. It is only when the separation of these spheres are complete that the individual is protected against a coercive state, repressive society and exploitative economic forces. Democracy for them requires the separation of these spheres; an autonomous state apparatus; robust civil society and a market economy (Gagiano and du Toit, 1996: 50-51).

The separation of these spheres ensures that the individual is free by ensuring that economic, social and political power is dispersed amongst power wielding elites. This separation gives rise to a societal condition that allows the individual greater freedom to pursue individual choice (Gagiano and du Toit, 1996: 51). It is argued that the ability of the individual to pursue personal choice is to a degree influenced by inequality constituted by the unequal distribution of resources<sup>5</sup>. Furthermore, the separation of these spheres is also crucial in curtailing, or at least, ensuring the transient nature of inequality, by dispersing power amongst individuals or groups within society. Consequently, “[A]ssociations that organize these spheres of power in society, and the elites at their apex, do not overlap to form a united power bloc capable of controlling society on its own terms. The hierarchies of wealth, status and power are controlled by different groups.” (Gagiano and du Toit, 1996: 52).

The *liberals* hold that democracy is undermined when there is a blurring of the boundaries between these societal realms (economic, political, and social). For them, democracy is only possible if there is a clear separation of the realm of politics from inequality in society (Gagiano and du Toit, 1996: 54). Democracy then is seen as the process of ensuring that the individual has the greatest scope to exercise individual choice with this being achieved by codifying these freedoms into law. The aim of democracy for *liberals* is “...the transformation of society into civil society.” Furthermore “...it entails the transformation of members of society into individuals.” (Gagiano and du Toit, 1996: 54). Within the *liberal* framework, transformation refers to creating a society that will increase individual autonomy. As this interpretation

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<sup>5</sup> Resources defined as “...material wealth, political power and societal influence...” (Gagiano and du Toit: 1996:51)

holds dearly the value of human choice, it equates equality and freedom to individuals being treated equally under the law and being free to pursue their own conception of the good life.

*Liberals* argue that in order to achieve successful democracy, the creation of an environment wherein the individual can pursue personal choice facilitated by institutional separation, requires a strong, autonomous state and the application of the principle of the *rule of law*. They hold that all people are equal before the law and that the law creates the framework, stipulating the rules that will allow the society to be democratic (Gagiano and du Toit, 1996: 56). In short, “Democracy, for them, is [was] about the rules that secure the boundaries of state, civil society and economy.” (du Toit, 2006:3).

In contrast to the above, there exists what Gagiano and du Toit (1996) label the *liberationist* perspective of democracy in South Africa. This school draws its support base from the large numbers of the population that were dispossessed, disenfranchised and disempowered under the partisan Apartheid state. For them democracy is not merely a process enshrined in law, but has a distinct emancipative goal. Democracy is seen as the next site for the liberation struggle — it is with democracy that the *liberationists* will gain freedom from economic, political and social repression. Democracy entails the breaking down of previously oppressive state structures and the “psychological empowerment” of those oppressed under the previous regime (Gagiano and du Toit, 1996: 59-60).

For the *liberationists*, inequality is perpetuated and increased by viewing democracy in the vein that the *liberals* do. Inequality is not seen as being dispersed throughout the separate spheres of society, but is rather viewed as being concentrated amongst a certain community. This school holds that within the *liberal* framework inequalities in society will only increase, since it functions to protect only a small portion of society, the middle class. “What *liberals* see as the remedy, the *liberationists* interpret as the problem.” (Gagiano and du Toit, 1996: 60-61).

At its core, the aim of democracy according to the *liberationist* perspective is to pursue the interest of the previously oppressed community. It is not individual choice

that is paramount, but rather emancipation of the previously oppressed community from material inequality. The *liberationist* wish to shape society in such a way that emancipation can be pursued on behalf of the community through a democratic system of government. This is achieved by the fusion of institutions in political, social and economic spheres so that a powerful ruling bloc can be created that will pursue the interests of the community. In contrast to the *liberals*, the aim of democracy is not to transform society into civil society that increases individual freedom, but rather to transform society in such a way that will facilitate the pursuit of the communal good (Gagiano and du Toit, 1996: 60-61). The *liberationists* view democracy as a process that transforms society through empowering the previously disenfranchised community. In summary, democracy for them can be equated to the process of black empowerment, and all forces that impede policies designed to foster such changes are essentially viewed as undemocratic (Gagiano and du Toit, 1996:60).

Transformation for the *liberationist* refers to transforming society in order to emancipate the majority from material suffering. The *liberationist* wishes to transform society in such a way that those individuals who were disempowered (in a political, economic and social sense) under the Apartheid regime, are given the necessary political, economic and social stimuli in order to uplift them from their current oppressed situation. The *liberationists* do not place an emphasis on individual autonomy, but rather on group emancipation. Consequently, it can be deduced that the *liberationists'* view of equality is not the same as that of the *liberals*. *Liberationists* hold that equality is not equated to individuals being equal to pursue their own conceptions of what is desirable in life. Rather, equality to the *liberationists* is more closely aligned to the idea of having equal access to material benefits of democracy.

From the presentation above, it should be evident that there exists a correlation between the cultural framework sketched as well as meanings associated with democracy. The *liberal* model with its emphasis on the individual, the rule of law and institutional separation geared towards enhancing individual freedom, is consistent with the *low-context* cultural value of individualism. Furthermore, corresponding interpretations of the rule of law and equality before law, is another corollary to the *low-context* perspective. The *liberationist* model fits aptly with the *high-context* perspective with its emphasis on the community and the merging of spheres of society

in order to achieve communal goals. The retrospective view of the *liberationists*, regarding their viewing of democracy as a vehicle for emancipation, ties it with the idea of the importance of history and subsequent significance associated with past events in forming current context, as is characteristic of *high-context* cultures.

### **3.2.2.3 Critiquing the dichotomy**

Creating a distinction between the different perceptions of democracy, as was done in the preceding paragraphs, serves as an example of how the debate surrounding democracy and democratic consolidation can be framed in the South African context. It is especially useful for the purposes of this dissertation due to the centrality of the role of *transformation* in both democratic models described. It must however also be noted that such a dichotomy on interpretations of democracy is open to a wide variety of critique.

Hudson (2003: 93-94) touches on the problems of creating a dichotomy on interpretations of democracy when the author discusses the nature of the South African transformation project. He notes that some authors describe the nature of South Africa's democracy through employing a conceptual distinction between 'liberation democracy', involving the permanent capture of state power and resources, and 'liberal democracy' characterised by neutrality, tolerance and pluralism. This distinction corresponds to the one used in this thesis. Hudson then continues to argue that creating such a dichotomy when discussing the nature of South Africa's democracy is inherently flawed due to its limited prescriptive nature. He argues that the principles such as freedom and equality that underlie the very nature of democracy "... cannot be caught by any distinction as coarse as that between 'liberal' and 'liberation democracy'." (Hudson, 2003: 94).

This is a duly noted criticism on creating a dichotomy for interpreting meanings associated with democracy in South Africa, and is one that is not lost on the researcher. This problem of limiting the debate to a mere conceptual distinction is hopefully overcome by the attention that is given to the very nature of freedom and equality that can be equated to specific models of democracy and subsequently

transformation. In the following sections, particular attention is paid to the strands of equality and freedom that underlie transformation, and in so doing show that it is possible to capture the underlying principles of democracy in South Africa in the distinction of '*liberal*' and '*liberationist*' democracy. What enables one to do this is the conception and justification of transformation by the ANC, as will be discussed in the following pages. Suffice to say that, although such a dichotomy does not capture all the relevant principles of democratic theory, it successfully captures the distinctions that can be drawn on approaches to facilitating transformation and democratic consolidation in the South African context.

Another way of critiquing such a dichotomy is through specific ideas concerning what constitutes liberal and liberationist paradigms on democracy. Krista Johnson (2002; 2003) and Dale McKinley (2001) both argue that the ANC displays significant amounts of what is known as liberal democratic theory, and that a distinction between two such paradigms does not explain much variance on what constitutes liberal democracy. Johnson (2002; 2003) frames the issue of democratic consolidation in the light of Gagiano and du Toit (1996) in that the author focuses on the issue of state and societal interactions. Johnson (2002:223-229) identifies roughly the same conceptual distinction as the one used in this dissertation, but labels them liberal and popular conceptions of democracy. For Johnson though, there are sufficient features of classic liberal democracy within the ANC's interpretation of democracy.

Johnson (2002:229-233) argues that the ANC employs a mixture of these models of democracy. In a sense, the ANC conforms to notions of liberal democracies concerning the functioning of the economy and the protection of fundamental individual rights. Although the ANC is aware of international pressure and has consequently reformulated economic policies relating to socio-economic outcomes, it rejects the notions of limited state and ideas of a robust and autonomous civil society. ANC leadership and liberalism have, however, diverged around the issue of balancing socio-economic and political rights. This is based around the issue of poverty and the pervasive nature of poverty amongst large segments of the population (Johnson, 2003: 337).

### 3.2.3 Transformation<sup>6</sup>

It is clear, from the discussion above, that the normative meaning associated with transformation can be dependent upon the view of democracy that is ascribed to. Regardless of normative ascriptions individuals might have towards democracy and transformation, transformation is seen as a long-term policy goal of the ruling ANC and forms a major part of the political landscape in South Africa. Transformation is cited as a goal of the National Democratic Revolution (NDR) which forms a key component of the ANC's overarching democratic goals (Netshitenzhe, 1996; Pretorius, 2006). Furthermore, the transformation project is used as justification for current policies of Affirmative Action and black Economic Empowerment (Hudson, 2000; Stacey, 2003).

Despite the importance of and regular reference to transformation, it has, to date, not been explicitly defined. Definitions include, amongst others, that transformation refers to achieving demographic representative composition within all institutions of society and gaining control of all sites of power, specifically state institutions (du Toit, 2006: 4). The objective of transformation refers to the establishment of a society characterised by proper racial balance and representivity throughout all sectors, classes and status orders (Hudson, 2000:96). The form of transformation espoused by the ANC has a distinct racial and therefore specific group character to it.

This section serves to illustrate the ideological canvas against which the current project of transformation, as advocated by the ANC, gains justification. This section also wishes to highlight associations between transformation, the *liberal* and *liberationist* models of democracy and the cultural framework adopted<sup>7</sup>. Hudson (2000) examines the role of liberal individualist and collectivist conceptions of the good in the politics of transformation in South Africa. The author finds that the current transformation process followed by the ANC follows a strong collectivist

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<sup>6</sup> This section serves as an introductory discussion on transformation, and how the concept relates to the theoretical framework of the thesis. This section ties closely with section 4.2, in which transformation is discussed with specific reference to the role it plays in ANC rhetoric and democracy in South Africa.

<sup>7</sup> In section 4.2 transformation is discussed in terms of specific ANC documents

strand and gains justification through specific conceptions of liberty and equality that allow for the good of the individual to be subordinated to that of the collective.

The individual theory of liberty under consideration rests on the premise of pluralistic negative liberty and a neutral state. This principle of liberty views individuals as moral agents, able to perform, revise and pursue individual conceptions of the good. This view allows for all conceptions of the good to be pursued, as long as the pursuit of set good by an individual does not hinder other individuals' ability to follow their own conception of the good. Excluded from this view are all those conceptions of the good that, if pursued, leads to a net decrease in conceptions of the good eventually sought by individuals throughout society. A plurality of reasonable conceptions of the good is allowed for under this principle, and individuals should enjoy the 'maximum degree of non-interference' (negative liberty) to pursue their conception of the good. In this view, society is "...best arranged when it is governed by principles that do not presuppose any particular conception of the good, for any other arrangement would fail to respect individuals [them] as moral persons capable of autonomously choosing and practising their conceptions of the good." (Hudson, 2000: 94-95).

The theory of negative liberty holds that equality supposes that political decisions must be independent of any particular conception of the good. Equality in this view consists of a distribution of negative liberty that is equal across all individuals and only societal configurations that do not abrogate any individuals' negative liberty can satisfy requirements of equality in society. What is of importance to this strand of liberalism is that the 'normative priority' of the individual to community remains intact (Hudson: 2000:95-96). In this view, the state is seen as a neutral entity that does not presuppose any particular conception of the good or implement policies designed to cater for the needs of a specific group. The state is seen as a neutral state, one that is guided by the goal of allowing an institutional order wherein all individuals are free to pursue their conception of the good and equality is held to be the equal distribution of negative liberty.

The goal of transformation, that of transforming the 'entire fabric of social life in South Africa' in order for society to reflect proper racial representation, implies a specific conception of the good and that achieving the goal set by this particular

conception of the good can only be reached through collective action. Society is thus envisioned as "...a collective unit of agency, acting upon itself to achieve a certain outcome or structure for itself." (Hudson, 2000: 96). Realising transformation therefore requires a collective action in the pursuit of a common good. More pertinently it is "...a common good of a specific sort, the goal held in common is not that of a society of autonomous liberal individuals each striving for her own good within a framework of state neutrality, but rather that of a society in which a specific conception of the good is pursued by the state..." (Hudson, 2000:96). The 'collective' referred to above, is seen as a 'transindividual' entity wherein individuals do not act separately based on choice, but rather act collectively to achieve the common good. Society envisioned in such a manner, acting as a collective unit, makes it possible to justify that the collective can rightfully determine the distribution of collectively and individually held rights. The good that is encapsulated by transformation is not acceptable within the liberal individual perspective, because the transformation project does not accept the "...ultimate normative priority of the individual over the collective." (Hudson, 2000: 97). Rather, it places emphasis on the collective and allows for the collective to decide what the public good is and how it is to be pursued.

Equality in this vein does not rest on individuals being able to freely pursue their own conception of the good life. Rather, equality refers to the idea that equal weight be attributed to individuals' inputs in determining the collective good. In the latter perspective, equality rests on equal inputs in determining the common good and collective decisions, and not on the individuals' ability to pursue differing interpretations of the good (Hudson, 2000: 98-99).

The transformation project subscribed to by the ANC gives the collective the right to decide what is in the interest of the individual. The normative priority is therefore placed on the collective, above the individual. It is on the basis of the priority of the collective over the individual, which gains justification through a specific conception of equality, that allows one to correlate the transformation project to the cultural framework adopted in this thesis. The transformation project followed by the ANC, with the community taking prominence over the individual, is more closely aligned to *high-context* cultural framework that favours collective well-being over individual

autonomy. Such a transformation project is alien to *low-context* cultures that gives priority to the individual over the community.

The normative priority of the collective over the individual found in the transformation project can also be associated with specific democratic orientations that were described earlier. It is argued that those subscribing to the *liberal* paradigm of democracy, equate transformation to "...the transformation of society into civil society." (Gagiano and du Toit, 1996: 54). Transformation must ensure that a society is created that can ensure and maximise individual choice. On the other hand, transformation for the *liberationists*, refers to the process of changing the current status quo in order to minimize inequality and redistribute resources. Transformation of society refers to the restructuring of society in such a way that past inequalities can be mitigated and remedied (Gagiano and du Toit, 1996: 60-61).

Transformation can therefore be seen as playing a central role in the democratic process for both the *liberal* and *liberationist* models of democracy. It should also be evident that the *liberationist* model of democracy aligns more closely to that of the conception of transformation described above, with its focus on past inequalities and mitigates these by placing the good of the community over that of the individual. The transformation project followed by the ANC is quite clearly unacceptable within a *liberal* perspective of democracy which favours the autonomy of the individual over that of the collective as well as equating transformation to an act that increases individual autonomy. The main difference is in how equality is conceived, with the *liberals* holding that all individuals must be free to pursue their conception of the good life, whilst *liberationists* equate equality to equal input in collective decision making.

The acceptability of the transformation project by society can therefore be seen to be dependent on the strand of democracy that is subscribed to. The current transformation project followed by the ANC is, as stated above, unacceptable to the *liberals*, for whom transformation of society aims to transform society into one with institutional separation, thus ensuring individual freedom. In contrast, the current transformation project espoused fits aptly within *liberationists* conceptions of democracy, as it is linked to a specific community (previously disenfranchised) and,

in essence, is what the democratisation project is all about. The goal of democracy for the *liberationists* entail that society is transformed into a new social order with strong racial preferences, rectifying the injustices of the Apartheid regime in South Africa.

The proposed goal of the transformation project enables one to further link views on democracy and transformation with the cultural framework. The idea that transformation is geared towards the benefit of the individual within the *liberal* perspective further strengthens the argument that it can be correlated to the *low-context* cultural perspective. In contrast to this is the idea that the goal of the transformation project is to improve the quality of life for a specific community, aligns the *liberationist* perspective on transformation with the *high-context* cultural perspective. It is the value orientation of prominence of the community, as apposed to the individual, that place it within a specific cultural framework.

### **3.2.4 Law and the principle of the ‘rule of law’**

Within the legal field there are many ways of viewing and interpreting the law. For the purposes of this study, only a select number of interpretations of the law will be focussed on. This is done to ensure conceptual clarity and also to ensure that the concept is workable and understandable. This section wishes to define law, explore the principle of rule of law as well as highlighting differing ideological interpretations of law.

#### **3.2.4.1 South African Common Law**

The term common law refers to the law that is common to a particular geographic region and/or group of people. The term is usually used to refer to a whole country or large region, as opposed to area specific laws of communities or small groups. More specifically, common law in essence refers to the law that is commonly interpreted and applied in the courts of a specific country (du Plessis, 1999: 18-19). The South African common law, as interpreted by the courts, has its roots in laws that were common to the Netherlands and Europe. The common law in these countries was, in turn, strongly influenced by Roman law. This legal system was subsequently

transplanted to South Africa by the colonial settlers from the Netherlands. The South African common law has evolved from of this milieu and, over time, to form an interpretation of law with strong influences from Western Europe (especially the Netherlands) and Roman law.

In South Africa, the Interpretations Act 33 of 1957 defines law as “...any proclamation, ordinance, Act of parliament or other enactment having the force of law.” (du Plessis, 2002:20). Law then refers to any positive or national law as laid down by the state with laws being merely rules laid down by an institution with the power and authority to do so. In South Africa, the Constitution of 1996 is viewed as the supreme document of law resulting in South Africa employing a constitutional system. Furthermore, it is enshrined in the Constitution that the principle of the rule of law is viewed as a founding provision of the Republic of South Africa (Constitution of RSA, 1996). Through stating this in the Constitution, it is stipulated that the South African society is guided by the principle of rule of law.

### **3.2.4.2 The rule of law**

Maravall and Przeworski (2003:1) assert that “...a normative conception of the rule of law is a figment of the imagination of jurists.”. Those discussing the principle often affirm that the point of rule of law is to institute a government of laws, not of men. Other phrases that are commonly linked to the term include the ‘sovereignty of law’, or the ‘supremacy of law’. “All this is empty rhetoric. The law being a human creation, must necessarily be subject to human will. In fact, the very term “rule of law” is in itself rhetorical. The law cannot rule. Ruling is an activity, and laws cannot act.” (Sánchez-Guenca, 2003: 62). Another term that is less ambiguous or rhetorical referring to the same principle, is that of the Rechtsstaat, as it is free of these metaphysical implications<sup>8</sup>.

Rhetorical questions and metaphysical considerations aside, the principle of the rule of law is one that is concerned with obligation, obedience or compliance (Maravall

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<sup>8</sup> For the purposes of this dissertation, the terms are either interchangeable or are held to represent the same principle.

and Przeworski, 2003:1). “The idea behind the rule of law is that of universal compliance with the rules that define the political system and regulate its functioning.” (Sánchez-Guenca, 2003: 63). The rule of law can therefore be viewed as being in effect when those with the authority to make, administer and apply the rules in official capacity, do so consistently and in accordance with the rules. A valuable effect of the rule of law is that it enables individual autonomy. Rule of law makes it possible for individuals to predict the consequences of their actions and therefore plan their lives accordingly (Maravall and Przeworski, 2003:2).

The rule of law also creates a framework that facilitates institutional stability. A stable system is characterised by the adherence to set laws and one wherein all conflicts are resolved according to rules (Sánchez-Guenca, 2003: 64). The rule of law therefore creates a regulatory framework that governs, guides and normalises all forms of interaction in society, at individual and institutional levels. The universality of the rule of law in that it regulates all human interaction on a personal and institutional level, creating a social configuration that is guided by pre-determined rules and norms, increases freedom by perpetuating stability and predictability of human interactions. People can plan their actions according to laws as they know which actions will solicit certain consequences. It is argued that people are free because of the predictability and stability that the rule of law creates in their daily interactions.

Thus far, only what is enabled or achieved through the rule of law has been discussed, not the principle of the rule of law as such. Sánchez-Guenca (2003:67-69) argues that the rule of law is a property of a political system. The rule of law only exists when there is compliance with the law and the law satisfies certain minimal requirements. The rule of law can be defined as compliance with the law when the law is general, public, prospective, clear, consistent, performable and stable (Sánchez-Guenca, 2003: 69; Maravall, 2003: 261). In essence, the rule of law refers to the idea that all interactions, on an individual and institutional level, must be conducted within legal constraints placed on them by the law. For the principle of rule of law to be valid, it must rest on a system of laws that are consistent with the above criteria.

If the above definition of the rule of law and law is accepted, it binds one to accepting that certain oppressive political configurations such as a dictatorship or a system such

as Apartheid, are totally acceptable under the principle of rule of law. There are those for whom such a conception of the law is appalling, whilst others might find this to be totally acceptable<sup>9</sup>. Sánchez-Guenca (2003: 70) argues that what is of concern here is the issue of compliance and that the sensibility of settling the issue lies in creating a distinction between two senses of the rule of law; one a weak and static, the other strong and dynamic. The differentiating element between the two lies in the distinction between obeying the law and being subject to the law. “The idea of obeying the law does not presuppose anything regarding the reasons that explain compliance.” It is possible that “...someone could obey the law simply because he makes the law at will. The idea of being subject to the law is more demanding: now rulers face constraints that limit their capacity to change the law.”. Contrasting to this, the weak sense of the rule of law does not include the issue of changing the rules. It is static, “...because it does not make any assumptions about the fate of the rules.” (Sánchez-Guenca, 2003: 71). As the author notes, the strong senses dynamism lies in the fact that the assumption is made that rulers face certain constraints with respect to changing laws.<sup>10</sup> The strong sense of the rule of law is therefore the one that we are concerned with, as it deals with the issue of compliance to the rules by the rulers.

Within South Africa, with its legacy of oppressive state institutions, the principle of rule of law has taken on a distinct rights-based hue. In the Republic, the rule of law implies “... the need for the state to be guided by fundamental rights, and for the government to respect the individual’s basic rights ... especially human dignity, equality, life and freedom. The concept of rule of law has both substantive and procedural aspects. The substantive aspect refers to its content, for example, the right to freedom of expression and precisely what this right entails. The procedural aspect refers to the way in which the protection of substantive rights is achieved. The rule of law requires a fair procedure to be followed when a human rights issue is decided in court. The rule of law requires that the law must be impartially enforced, by

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<sup>9</sup> “Some doctrines of rule of law, notably in Germany, were born without any democratic pedigree” (Sánchez-Guenca, 2003:70). Rule of law can therefore be in force without the political system being democratic.

<sup>10</sup> Robert Barros (2003: 188-190) also highlights the importance of this distinction. The author argues that there are two sense of the rule of law, one (instrumental or formal) is only concerned with formal characteristics necessary for laws to be seen as valid. The second implies the subjugation of lawmakers to the law and deals with the issue of compliance.

independent courts, in accordance with fair procedures that exclude arbitrary action by the courts.” (de Freitas, 2008: 246-247).<sup>11</sup>

The rule of law therefore refers to the idea that the law is supreme — it cannot be refuted and all individuals in a given country, including those with the power to change laws, are subject to it. The emphasis on the impartiality of law and the subscription of everyone to it, implies that the rule of law principle can be more closely linked to *low-context* cultures than *high-context* cultures. It is not a principle that is incompatible within *high-context* cultures per se, but rather the implications and meanings that are usually associated with the principle are more closely aligned with the view of the law of in *low-context* cultures.

The importance, impartiality and authority of the law in *low-context* cultures has the effect that the principle of rule of law is almost seen as the highest or most valued characteristic for maintaining social order in such societies. The principle has a lesser degree of significance to the *high-context* cultures due to the fact that authority is historically derived and strengthened and cannot merely take precedent without considering the entire fabric of social reality or the context of a situation (Cohen, 1997). Supporting such a notion, Hofstede found that for collectivist cultures “laws and rights differ by group according to tradition and religion” contrasted to individualistic cultures which hold that “laws and rights should be the same for all” (2001:251). It should be evident that the law and rule of law can have differing meanings to those cultures influenced by an individual or communal ethos.

### **3.2.4.3 Interpretations of the law**

A way in which to link the law and the rule of law more closely to the adopted cultural framework, is to investigate the ideological starting point of how the law, in a very general sense, is viewed. *Natural law* and positivism (*legal positivism*) are two main theories of law and are important ideologies that form the foundation of law. *Natural law* theorists subscribe to the idea of the existence of, not only, positive legal

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<sup>11</sup> More attention will be given to the substantive aspect of the South African laws in the following chapter.

systems (human structures and laws), but also to that of a 'deeper' or 'higher' order of legal authority. This theory holds that natural law is valid universally, without the intervention of any human legislator or legal procedures and accommodates *a system of values* against which a specific legal system, values and norms can be measured. Another important aspect of natural law thinkers is that it does not separate law from morality, but views the two as part of an inseparable reality. This in turn, leads to the fact that natural law subscribers tend to view the law as *it should be*, or *ought to be* (*lex ferenda*). There exists no single 'higher/deeper moral authoritative source' for natural law thinkers, with some grounding their ideas of the higher order of morality in religion, whilst others ground it in human rationality. The higher, or moral order, can also be constructed from historically derived notions of what is right or just (du Plessis, 1999: 35; Heywood, 2002:302; Meintjies-van der Walt, 2008: 17-18).

*Legal positivists* do not speculate about a higher or deeper moral authority against which laws must be tested for validity. Rather, these jurists argue that 'the law is the law', irrespective of moral standards and that the law consists of facts that can be traced to formal sources of law such as legislation. Furthermore, legal positivists argue that the law can be deduced from certain social phenomena or principles. Positivist do not preoccupy themselves with whether the law is just or morally acceptable, they place greater emphasis on the systematic organisation of legal rules, concepts and norms. *Legal positivists* make a clear and definitive distinction between law and morality and they are concerned with the law as it is (*lex lata*) and not as it should be (du Plessis, 1999: 36; Heywood, 2002:302; Meintjies-van der Walt, 2008: 19). It should also be noted that within the positivist interpretation, it is totally acceptable to uphold unjust laws. Under the Apartheid regime, discriminatory laws were deemed 'legal' and acceptable by legal positivists, due to the procedural and rule based nature of their creation.

From the above it should be evident that the interpretations of law can also be connected to Cohen's (1997) framework of culture. *Naturalist* interpretations of the law are more closely aligned to the *high-context* cultural perspective due to the fusion of law and morality. Morality can again be linked to the subjective notion of what is perceived to be just, right or morally acceptable. Also, the composition of 'moral acceptability' can be influenced by past experiences and an explicit notion of what

equality and justice mean, as they gain their significance from past occurrences, (highlighting the importance of history). In contrast to this, *the legal positivist* interpretation can be placed in the *low-context* cultural perspective that embodies the idea of the law as being applicable to all, irrespective of social context and includes the principle of ‘equality before the law’. The fact that morality and law are separated from each other, further ties it to the notion of the validity of an abstract notion of justice found in *low-context* cultures.

### 3.2.5 The state

The definition below by Martin van Creveld (1999) that describes the state in general terms is not exclusive and holds true for what the state is in an absolute sense. This definition of the state is also in accordance with how those within the *low-context* cultures tend to understand the term. The more specific definition of characteristics of the state is borrowed from Adrian Leftwich (2000) and his idea of a developmental state. The idea of a developmental state, it will be argued, can be more closely linked to those individuals who form part of the *high-context* cultures. It should be noted that these definitions are not mutually exclusive, they merely serve to illustrate the possible differing interpretations of the role of, and normative understandings associated with the *state*.

“The state, then, is an *abstract* entity which can neither be seen, nor heard, nor touched. This entity is neither identical with the rulers or the ruled; neither President Clinton, nor citizen Smith, nor even an assembly of all the citizens acting in common can claim that they *are* the state. On the other hand, it includes them both and claims to stand over them both. This is as much to say that the state, being separate from both its members and its rulers, is a corporation, just as universities, trade unions and churches *inter alia* are. Much like any corporation, it too has directors, employees and shareholders. Above all, it is a corporation in the sense that it possesses a legal *persona* of its own, which means that it has rights and duties and may engage in various activities *as if* it were a real flesh-and-blood, living individual. The points where the state differs from other corporations are, first, the fact that it authorizes them all but is itself authorized (recognized) solely by others of its kind; secondly,

that certain functions (known collectively as the attributes of sovereignty) are reserved for it alone; and, thirdly, that it exercises those functions over a certain territory inside which its jurisdiction is both exclusive and all-embracing.” (van Creveld, 1999:1).

This definition emphasises the notion that the state is an abstract entity that is not equated with any specific group in society and embodies the idea that the state exists independently of the type of regime in the country. The regime decides on the specific policy directives to be followed. The policy goals, or objectives, ultimately determine the characteristics of the state and define, more concretely, what the state *is* in a substantive sense. The idea that the state has a legal persona, but is not equated to any specific group in society, aligns it with the notion of abstract legal authority that is found in the *low-context* cultural framework.

A further definition of the state is put forth by Leftwich (2000:155) who argues that “...developmental states are those states whose politics have concentrated sufficient power, autonomy, capacity and legitimacy at the centre to shape, pursue and encourage the achievement of explicit developmental objectives, whether by establishing and promoting the conditions of economic growth (in the capitalist developmental states), by organizing it directly (in the ‘socialist’ variants), or a varying combination of both. Such states are not common.”

Furthermore, Leftwich (2000:160-7) identifies a number of characteristics that a state must possess in order to comply with his model of a developmental state. Firstly, the state requires developmental elite that have a developmental determination, commitment to economic growth and transformation and the capacity to follow through on their goals. This is also characterised by a core policy circle surrounding the leadership that is usually relatively small. Secondly, relative autonomy of elites and the institutions the state commands is required. Leftwich is referring to the autonomy of well developed bureaucracies that are embedded in a web of ties with state and non-state actors in order to define, re-define and implement developmental objectives. Thirdly, a powerful, competent and insulated bureaucracy that can implement and shape broad economic and social development goals, specifically focussing on industrial and economic policy is required. Leftwich argues that a factor

that increases the probability of achieving this is through electoral dominance of a single party (Leftwich, 2000:160-3).

The fourth factor cited by Leftwich (2000:163-4) is a relatively weak and subordinated civil society. He argues that the state could either be incepted prior to development of civil society, or could subsequently penetrate and bend civil society to its will. Fifthly is the capacity to effectively manage private economic interests and negate the importance of local and international capital. The state needs to develop capacity and place itself in a commanding position vis-à-vis private economic interests and command capital, and not be commanded by it.

The final two factors Leftwich (2000:165-167) describes as an uneasy mix of repression, poor human rights, legitimacy and performance. The author argues that these states are not particularly attractive in terms of their adherence to human rights by western-liberal or socialist standards. The state must not hesitate to undermine those institutions in civil society that challenge its developmental purposes, so that it can pursue its broader developmental goals and in so doing, undermines its character as a haven for the upholding of human rights. Finally, the state requires a sense of legitimacy that is gained through widespread support, despite what may seem as an unenviable human rights record (Leftwich, 2000:166-167).

The state as defined by Leftwich (2000), subscribes more directly with the *high-context* framework. This is due to the fact that the state is not an abstract entity that does not form a direct part in society, but is rather the major actor in society. The state, in this sense, is geared towards achieving certain developmental goals and pursuing the good of the community. This pursuit of addressing inequalities within the framework of pursuing a public good has the effect that the 'developmental state' aligns more closely with the *high-context* culture, whilst the abstract and universal nature of the state as defined by van Creveld (1999) has closer ties to that of *low-context* cultures, with the comparative emphasis on the role and universal application of the law. Also, the idea of a developmental state, with its focus on the attainment of hegemony by the ruling party, closely ties in to what Gagiano and du Toit (1996) view as a determining characteristic of the *liberationist* perspective on democracy. The developmental state theory, to some extent, calls for the subordination of civil

society to state needs, blurring the divide between political and economic elites in the pursuit of achieving a hegemonic power bloc capable of enforcing developmental objectives throughout society. Ultimately these objectives are geared towards a specific community and this further highlights the shared value of communal well-being as expressed by *high-context* cultures, *liberationist* democracy and the *developmental state* in the expression of the developmental goals.

### **3.2.6 Land reform**

The issue of land reform is one that straddles the political, social and economic spheres of society. Furthermore, land is an emotive issue in South Africa and has historical and cultural significance, independent of land reform. “Land reform is generally accepted to mean restitution, redistribution and/or confirmation of rights in land to the benefit of the poor or dispossessed. Land reform is therefore more than a mere land-claim driven process where ancestral land is claimed back to people who were dispossessed. Although it includes a land claim process, it is widened to refer also to the acquisition of land for distribution to the landless, as well as the changing and securing tenure to ensure protection for those who occupy it. In its broadest sense, land reform therefore entails a wide spectrum of options such as land claims, acquisition and distribution of land, access to land for certain purposes, land use planning, infrastructure development, farming and commercial support, resettlement programmes, security of tenure and training.” (de Villiers, 2003: 1-2).

Land reform is therefore seen as a process of altering or changing land ownership, configuration and distribution. Broadly speaking two approaches to land reform can be identified. The first approach to land reform favours the use of the market in achieving land reform and can be termed market-led agrarian reform (MLAR) whilst the second approach favours state-led or interventionist methods to ensure land reform (De Villiers, 2003:3; Breytenbach, 2004: 46; Lahiff, Saturnino and Kay, 2007:1418; Hall and Ntsebeza, 2007:17-19). These authors all argue that land reform can either be market driven, based on the idea of the willing-buyer-willing-seller (WBWS) and protected by individual property rights, or the state can take a more active role in land reform and redistribute land on the basis of an ideological drive to

ensure equal distribution of land or other developmental objectives are reached. It is argued that MLAR approaches uphold property rights and exclude the possibility of land expropriation, whilst approaches that advocate a more state-interventionist strategy endorse or implement land expropriations (Lahiff et al. 2007: 1422; De Villiers, 2003:3).

James, Ngonini and Nkadimeng (2005:828) argue that the distinction of the two approaches can be also be labelled a 'rights-based approach' as apposed to a 'property-based/economic' approach. The authors argue that the issue is whether more importance is given to 'land rights' or 'property rights'. The former referring to the basic human right of access to land enshrined in the Constitution with the latter drawing credibility from the neo-liberal economic approach, resting on the principle of securing individual property rights. Lahiff et al. (2007:1420) argues that the basis for this distinction hinges on whether land reform is driven by social equity or economic efficiency.

Regardless of how one chooses to draw the distinction between land reform programmes, MLAR vs. state led; equity vs. economic efficiency or land rights vs. property rights, the central theme is the same —there are those holding to the imperatives of the market and the individual right to private property and those favouring social equity. Usually one finds that land reform is a mixture of the two approaches, as is the case in South Africa (Lahiff et al 2007; Breytenbach, 2004; De Villiers, 2003). For the purposes of this study the defining feature of land reform centres around whether the land reform programme implemented is based on economic efficiency and market mechanisms, or whether it is driven by an ideological imperative of social equality.

What separates these approaches most clearly, is whether land is expropriated. This is due to the fact that if expropriation is used, the right of the individual to own property is subordinated to the right of the state to pursue social equality. If expropriation occurs, it shows that the 'will of the individual' is subjected to the 'will of the community'. The state expropriates land on the basis of, or in favour of, a community above the individual. Expropriation is the defining characteristic in determining whether land reform is compatible with the *high-context* or *low-context* cultural

perspectives. If expropriation occurs, then social equity is placed above or seen as more important to the individuals' right to own private property and can be linked to *high-context* cultures. If expropriation is not an option within the land reform programme, then it aligns more closely with *low-context* cultures and the prevailing ethic of individualism.

### 3.2.6.1 South African land reform programme

The South African Constitution sets out a specific legal basis for land reform, particularly in the Bill of Rights. Section 25<sup>12</sup> places a clear responsibility on the state to carry out land and related reforms, and allows for the expropriation of public property for a public purpose or in the public interest. The Constitution explicitly states that 'the public interest includes the nation's commitment to land reform, and reforms to bring about equitable access to all South Africa's natural resources' (Lahiff, 2007:1579).

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<sup>12</sup> 25. Property: (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application--

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including-

(a) the current use of the property; (b) the history of the acquisition and use of the property;

(c) the market value of the property; (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and (e) the purpose of the expropriation.

(4) For the purposes of this section-

(a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and (b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).

(9) Parliament must enact the legislation referred to in subsection (6) (Constitution of RSA, 1996).

Lahiff (2007:1577-1580) argues that since the transition to democracy, South Africa's land redistribution programme has fallen entirely within the parameters of MLAR. This is due to conservative forces within the country, international backing of MLAR, and the adoption of neo-liberal policies by the ANC. The author argues that although the concept of WBWS entered into policy discourse during the period of 1993-96, it was entirely absent in the 1994 Reconstruction and Development Programme (RDP) documents and from earlier ANC policy statements, such as the 1992 Ready to Govern document. Although South Africa's land reform programme is classified as a market led approach, it differs from standard MLAR programmes in that it is not seen as a single and coherent policy approach, but rather as an outcome of competing imperatives and contending political ideologies.

The Republic's land reform programme is more closely associated with MLAR, than other populist or state interventionist approaches to the problem. The land reform programme of the South African government is comprised of three specific policies: restitution (land restoration), redistribution and tenure reform. Each of these specific categories has accompanying legislation to guide the state in implementing the programme. Although there are constitutional provisions that provide for the expropriation of land, it has not been used by the state, due to constraints and prescription within this section of the Constitution. Expropriation of land under the current legal stipulations would not speed up land reform. It would actually slow the process down, due to the protection of landowner rights and their right to contest such matters in court. Expropriation cases would be held up in courts, further delaying the process of land reform (Hofstatter, 2009 (b)).

Land restitution aims to return land that was taken away from South Africans during apartheid or to compensate claimants for their land by financial means. Land claims can be instituted against expropriation that occurred after the enactment of the 1913 Native Land Act, or in any case where forced removals took place. Land claims are dealt with by the Land Claims Court and the Land Claims Commission (Bosman, 2007:5)

Redistribution attempts to increase black ownership of land by providing land to previously disadvantaged and poor individuals for residential and productive

agricultural purposes. The primary beneficiaries of this programme are the rural poor, farm workers, labour tenants and new participants in agriculture. Redistribution is primarily focused on rural beneficiaries, although it does include the urban poor (Bosman, 2007: 5).

Settlement Land Acquisition Grants (SLAG) of R16 000 cash was the original means of encouraging redistribution and was granted to successful redistribution applicants. In 2002, SLAG was replaced by Land Redistribution for Agricultural Development (LRAD). The most notable difference between the two programmes was that beneficiaries did not require a specific minimum income in order to qualify for LRAD. The SLAG grant was also increased to between R20 000 and R 100 000 for the LRAD programme. These programmes were designed in order to enable black South Africans to enter the agricultural sector in a successful manner (Bosman, 2007: 5; Lahiff, 2007:1580).

Land tenure reform is aimed at providing secure tenure for all South Africans. The aim of this programme is to provide security to tenants of communal property and homes, in order to prevent arbitrary evictions (Bosman, 2007: 6).

The legal framework within which the South African state attempts to address the land reform issue, through the above mentioned programmes, is that of a liberal-legal framework (James, 2007:17). Various legislative acts have been created to ensure the continued legal functioning of the land reform programme.

The 1994 Restitution of Land Rights Act provides for the restitution of rights in land to persons and communities disposed after 19 June 1913 or as a result of discriminatory practices. The Act also established the Commission on Restitution of Land Rights and the Land Claims Court. In 1996, the Communal Property Associations Act was created to enable groups to acquire, hold and manage property. The Land Reform Act (Labour Tenants Act) of 1996 safeguards the rights of labour tenants who had been remunerated for labour primarily by the right to occupy and use land. The 1996 Interim Protection of Informal Land Rights Act protected people with informal rights and interests from evictions, pending more comprehensive tenure legislation. In 1997 The Extension of Security of Tenure Act was created to give farm

occupants rights on private land, establishing a procedure that must be followed before evictions of such people can occur. In 2004, The Communal Land Rights Act was enacted to provide legal security of tenure by transferring communal land to communities and to provide for its democratic administration by them (James, 2007: 4).

The South African government employs a market related approach to land reform, which is guided and controlled by legislation. The state therefore operates within standard western-liberal conceptions of the rule of law regarding land reform. To date, expropriation has not yet become an officially pursued means of achieving land reform. The state relies on MLAR which operates within the legal framework described above. The current land reform programme can therefore be aligned to a *liberal* democratic perspective, due to its adherence to legal constraints.

### 3.2.7 Summary

Presented above is a cultural framework which provides a theoretical perspective with which one can attempt to understand the complexities of the democratic project of South Africa. The basis for the distinction is grounded on cultural perspectives of *high-* and *low-context* cultures. Presented below is a tabular summary of the entire framework that will show how differing cultural orientations understand the different concepts.

**Table 3.2 Theoretical Framework**

	<b>High-Context Cultures</b>	<b>Low-Context Cultures</b>
The State	Outcomes Based, Redistributive	Impartial, Rule based
Democracy	Liberationist, Community prominence	Liberal, Individual prominence
Law	Naturalist, Rule of law subjective	Positivist, Rule of law absolute
Transformation	Serves communal interest	Serves individual interests
Land Reform	State-led; Expropriation acceptable	MLAR; Expropriation unacceptable

### **3.3 Democratic consolidation**

The term democratic consolidation is as pervasive and ambiguous as the term democracy. It is a field of study wrought by conceptual elusiveness and equivocalness, and there is no academic or practical concurrence on the meaning of the term. Essentially the term refers to ensuring that democracy becomes the only conceivable way in which to govern or, more aptly, stated by Linz and Stepan (1996:15) “the only game in town”. More importantly it must be viewed as a continual *process* that occurs over a period of time and is dependent on many factors that are all case specific (Wnuk-Lipinski and Fuchs, 2006: 54-55). This implies that whatever consolidates the democracy in South Africa, will not necessarily hold true for consolidating democracies in other countries or regions of the world.

Schedler (1998:91) argues that the term was originally meant to describe the challenge of not slipping back into authoritarian rule or undemocratic regimes. It was intended to describe the challenges of securing new democracies and extending the life expectancy of the democracy. Schedler (1998:96-98) highlights the importance of an independent state apparatus (bureaucracy, legislators and judiciary) as being of utmost importance for consolidating a democracy.

Linz and Stepan (1996:14-18) make a more specific assessment of what is required to consolidate democracy. They identify civil society, political society, rule of law, independent state bureaucracy and an institutionalised economic society as the main requirements to consolidate democracy. The authors highlight the problem of simultaneously liberalizing the economy and political democratization as major threats to democratic consolidation (Linz and Stepan, 1996:23).

Przeworski, Alvarez, Cheibub and Limongi (1996:39) found that for a country to have a successful democratic regime, certain conditions must be present. These are affluence, growth with moderate inflation, declining inequality, a favourable international climate and parliamentary institutions. Once a country has become a democratic regime, the level of economic development has a strong effect on the probability of democratic survival (Przeworski et al., 1996:40-42). The authors also

highlight the importance of political institutions and argue that a parliamentary system is more conducive to consolidating democracy than a presidential system (Przeworski et al., 1996: 44).

Regardless of the widely held views on what the term means, there is some consensus surrounding democratic consolidation. Most prominently, that it is a process of entrenching the system of democracy where once other political systems reigned supreme and implying, as such, a time dimension. In the South African case, it is the transition from minority Apartheid rule to majority democratic rule. There are many other commonalities identified by authors on constraints towards, and conditions favouring, democratic consolidation. Economic development (affluence, reduction in income inequality), effective state bureaucracy and political institution, the rule of law and the importance of a vibrant civil society are some of the characteristics shared by authors (Schedler, 1998; Linz & Stepan, 1996; Przeworski et al, 2000; Leftwich, 2000). Ethnic, cultural and religious diversity make for a more difficult situation for democratic consolidation and pose a major threat to consolidating democracy (Linz & Stepan, 1996; Leftwich, 2000).

The problem of simultaneous economic liberalization and political democratization is sited by Leftwich (2000) and Przeworski et al. (1996) as a major constraint for democratic consolidation and Leftwich (2000:129-130) makes the argument that this is the single most difficult issue facing developing democracies. Leftwich (2000: 135) argues that a democracy can be seen to be consolidated when "...people, political parties and groups pursue their interests according to peaceful, rule-based competition, negotiation and cooperation, and where there is agreement that the succession of one government by another is decided by these means."

Leftwich (2000:136-145) argues that there are five main conditions for democratic consolidation. Firstly, the regime must be legitimate, which in a practical sense, is that it must be acceptable to the public. Legitimacy, it is argued, has three categories that Leftwich defines as geographical legitimacy in that the state governs a specific area; constitutional legitimacy that refers to the ascription to the constitution as the supreme document of law; and political legitimacy that refers to the extent to which the public feels the current government is entitled to being in power (Leftwich, 2000:136-8).

The second condition is what the author calls ‘adherence to the rules of the game’ and this is comprised of a sense of agreement about the rules and procedures of the democratic system. All parties within a multi-party system must subscribe to the same rules and adhere to them regardless of electoral outcomes. This can be seen as the subscription to the rule of law and the consequent institutionalization of democratic practises and procedures. Policy restraint by the winning parties is seen as the third condition to consolidating democracies and refers to the winners of the elections not changing the rules dramatically in order to stay in power or to, in any way, draw greater benefits from the system (Leftwich, 2000:138-142).

Poverty, as an obstacle to democratic consolidation, is identified as the fourth condition pertaining to consolidating the democracy. This includes that the economy must be healthy and show a reasonable growth rate, and also that the state must not be seen as a vehicle to procure wealth and power. Furthermore poverty implies that there are low literacy and education levels, both of which are not conducive to consolidating a democracy (Leftwich, 2000:142-3). Finally, Leftwich (2000: 143-5), identifies ethnic, cultural and religious cleavages, particularly when they align with material inequalities, as major constraints to democratic consolidation.

Parallel to these five highlighted, though essentially structural conditions, the author also argues that there are broader factors that enable democracies to consolidate. Firstly, the simple fact that the longer a democracy exists, the greater the chance of consolidating the democracy becomes. Furthermore, democracies have a higher probability of consolidation if the economy does not contract or stagnate and, concurrent to this, is the idea that material inequalities should diminish. Chances of consolidation decline when inequalities, in material terms, increase. The author also argues that parliamentary systems tend to have a greater chance of consolidation than presidential systems. Finally, a rich and pluralistic civil society greatly increases the chances of democratic consolidation (Leftwich, 2000:145-7).

### **3.4 Conclusion**

This chapter aimed to create an interpretive framework within which South Africa's prospects for consolidating democracy will be assessed. The chapter proposed a cultural framework within which to place concepts such as democracy, transformation, the state, the role of law and land reform. It was proposed throughout that the shared value that links differing understandings of these concepts to a specific cultural framework is whether the individual or community gains prominence.

*Low-context* cultures, with the emphasis on the role of the individual, align with the *liberal* model of democracy which argues democracy's goal is to enhance individual freedom and choice. *Transformation* for *low-context liberals* is the process of ensuring this freedom through the separation of institutional spheres of society (economic, social and political). *Law* is considered an abstract entity that holds all equal before it with the *rule of law* principle being crucial in maintaining *democracy* and *transformation*. The *state* is seen as a neutral referee acting on the behalf of all citizens to ensure that everyone under its jurisdiction enjoys the freedoms and rights associated with the law and democracy. It is believed within this framework that *land reform* should always honour the rights of the individual to private property and his/her willingness to partake in land reform.

*High-context* cultures place the emphasis on the community above the individual, and align closely to the *liberationist* model of democracy which argues that the emancipation of the oppressed community is the goal of democracy. *Transformation* for *high-context liberationist* is the process of ensuring the previously oppressed community is rescued from economic, social and political deprivation. *Law* is not seen as the ultimate important principle and is not void of context. The *state* in this view is seen as an active role player in realising the goals of a certain community. The *state* is not viewed as an abstract legal entity or referee, but rather as an active agent in the development of specific goals for the benefit of a specific group within society, and can be aligned to the idea of a *developmental state*. This cultural perspective does not necessarily hold to the principle that all are equal before the *law*. *Law* is rather viewed as another institution that can facilitate emancipation. *Land reform* is assumed

to be geared towards the needs of the previously disenfranchised community, and these needs supersede the individual right to private property.

## **Chapter 4: The South African democratic project**

### ***4.1 Introduction***

This chapter will build on the theoretical framework of the previous chapter. It serves to illustrate how democracy is understood within the South African context and more specifically, focuses on the ANC's definition of democracy and transformation. It will be the aim to place the ANC within the theoretical framework described, and investigate whether the ANC is in alignment with *liberationist* democracy or with the *liberal* perspective on democracy. Attention is also paid to the relevance of using culture in explaining variances in normative ascriptions of democracy. Contemporary issues surrounding land reform conclude the chapter.

### ***4.2 Democracy in South Africa***<sup>13</sup>

A discussion of democracy in South Africa is in part guided by two major factors. The first being the nature of the Republic's negotiated transition from Apartheid to a democracy. This process, however, with negotiation being completed, is still galvanizing the current democratic dispensation. Otherwise stated, South Africa is still in the process of deepening or consolidating its relatively young democracy. The assumption in this dissertation, that South Africa is in the process of achieving a stable democratic order, is one that is found throughout the literature on South African politics<sup>14</sup>. During the South African negotiation and transition period, the negotiating parties held different views of meanings, methods and goals of the negotiations. The priority was however on moving negotiations forward and, as a result, fundamental disagreements about issues such as the normative meanings associated with the Constitution and underlying principles were ignored at the expense of successfully completing the negotiations. These diverging opinions remain today and pose a serious threat to the durability of the democratic project (du Toit, 2003; du Toit, 2004).

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<sup>13</sup> This section and sections 3.2.2.2, and 3.2.3 from the previous chapter are complementary with relation to describing democracy in South Africa and are closely linked.

<sup>14</sup> Works that argue South Africa's democracy is still the process of consolidating include: R, Southall (ed), 2001; U, van Beek (ed.) 2005; Saul, 2005; Mangcu, 2008; F, Slabbert, 2006; Gumede, 2008.

The second factor to consider when discussing the nature of democracy in South Africa, is the dominance of the political sphere by the African National Congress. The ANC enjoys such an overwhelming electoral dominance and consequently representation in parliament, that some commentators have argued that the dominance of the party is one of the most defining features of the South African political system<sup>15</sup>. It is this dominance by the ANC and the fact that it was the major organisation responsible for negotiating the transition from Apartheid to democracy, which makes it the central player in our fledgling democracy. Therefore, any discussion of democracy in South Africa, is necessarily a discussion of ANC discourse and doctrine on democracy. The table below shows the number of seats parties held in the National Assembly and currently hold, highlighting ANC dominance.

**Table 4.1 Composition of the National Assembly**

	Party	Pre floor-crossing 2004-05	Post floor-crossing 2005-09	2009
1	African National Congress	279 (69.75%)	293 (73.25%)	264 (66%)
2	Democratic Alliance	50 (12.5%)	47 (11.75%)	67 (16.75%)
3	Congress of the People	-	-	30 (7.5%)
4	Inkatha Freedom Party	28 (7%)	23 (5.8%)	18 (5.75%)
5	United Democratic Movement	9 (2.25%)	6 (1.5%)	4 (1%)
6	Independent Democrats	7 (1.75%)	5 (1.25%)	4 (1%)
7	African Christian Democratic Party	7 (1.75%)	4 (1%)	3 (0.75%)
8	Freedom Front Plus	4 (1%)	4 (1%)	4 (1%)
9	United Christian Democratic Party	3 (0.75%)	3 (0.75%)	2 (0.5%)
10	Pan Africanist Congress of Azania	3 (0.75%)	3 (0.75%)	1 (0.25%)
11	Minority Front	2 (0.5%)	2 (0.5%)	1 (0.25%)
12	Azanian People's Organisation	1 (0.25%)	1 (0.25%)	1 (0.25%)
13	National Democratic Convention	-	4 (1%)	-
14	United independent Front	-	2 (0.5%)	-
15	United Party of South Africa	-	1 (0.25%)	-
16	Federation of Democrats	-	1 (0.25%)	-
17	Progressive Independent Movement	-	1 (0.25%)	-
18	New National Party	7 (1.75%)	-	-
19	African People's Convention	-	-	1 (0.25%)

Source: Parliament of the Republic of South Africa

<sup>15</sup> Mattes, (2002: 25); Butler, (2005: 735); Giliomee, Myburg and Schlemmer, 2001.

Another major aspect that requires mentioning, is the nature of the democratic project in South Africa, with specific reference to the transformation project. Terms such as transformation, black Economic Empowerment and Affirmative Action are inseparable from the democratic reality in South Africa. Transformation is also a central theme in this dissertation, as it serves as a link between the theoretical and empirical components of the study.

#### **4.2.1 The ANC's democracy and the role of the democratic state**

The following section must be viewed as a discussion of an interpretation of a conception of democracy and interrelated concepts, as held by the ANC. A discussion of democracy in South Africa includes concepts such as 'the people', 'the public or common good', 'equality', 'transformation' and 'the rule law'. It should be noted that all these concepts are interrelated, and in some senses are used to define one another, as will become evident when discussing an important aspect of ANC doctrine such as the National Democratic Revolution (NDR). The concepts will be discussed within the specific frame of ANC doctrine, as the political dominance by the organization leans itself towards hegemony and overarching guidance of the organs of the state.

Before we commence such a discussion, a few notes are important. Firstly, this section will lean heavily on the work of Louwrens Pretorius (2006), and it is necessary to state that while this discussion of democracy is meant to assert a specific interpretation of democracy, it is not as Pretorius (2006: 746) states "... intended to support a claim to some sort of 'objectively valid' understanding of 'how the ANC itself thinks, or what 'meaning' its leaders or members themselves attach to democracy.'". It merely serves as an exposition of what appears to be the ideological stance and normative definitions of democracy as purported by dominant ANC rhetoric, and serves as a "defensible interpretation" (Pretorius, 2006: 746).

In addition, it is necessary to acknowledge, albeit on a somewhat theoretical level, the distinction between the procedural and substantive nature of ideal type democracies as put forward in the previous chapter (Dahl, 1971). Mattes (2002: 23) touches on this distinction in his analysis of South Africa's democracy when he asserts that "...South

Africa's democracy in form appears to be relatively healthy, but in substance shows signs of early decay.”. The distinction between the ‘form’ and the ‘substance’ in the South African is not as clearly identifiable due to the definition of democracy adopted by the ANC and the nature of the Constitution of 1996. The merger of ‘substance’ and ‘procedure’ is articulated through practices such as Affirmative Action, the definition of equality, the goal of the transformation project, the Limitations of Rights clause and the inclusion of socio-economic rights enshrined in the Constitution of the Republic (Hudson, 2000; Stacey, 2003; Pretorius, 2006). Due to the nature of ANC ideology, the organisation's conception of democracy differs from standard western-liberal models. It is the nature of the ANC's ideological starting point that allows the organisation to merge procedural and substantive aspects of democracy, and thus prompts the researcher to treat the distinction between ‘procedure’ and ‘substance’ in the South Africa's case with some trepidation.

Pretorius (2006: 747) also notes this merger when he asserts that, although the ANC subscribes to what has become known as liberal-democracy, “... its conception entails much more than formal procedural denotations that are commonly stipulated for this type. In ANC ideology, *democracy* is also substantive. It entails not only the mechanisms for selection of leaders, but also commitment to a National Democratic Revolution – through peaceful and constitutional means”. The National Democratic Revolution (NDR) is defined as “...a process of struggle that seeks the transfer of power to the people. When we talk of power we mean political, social and economic control . . . The objectives of the NDR include the transformation of South Africa into a non-racial, non-sexist, democratic and united South Africa where all organs of the state are controlled by the people”. As a basic principle, the NDR looks at “...removing the barriers that have been set by apartheid in terms of black people and Africans' access to the economy and services.” (Netshitenzhe, 1996).

There are a few aspects of the above that warrant further explanation before moving on to the definition of democracy as adopted by the ANC. The first is the nature of ideological subscription followed by the ANC and the consequent merger of the procedural and substantive aspects of democracy within the ANC lexicon. The merger of the procedural and substantive aspects of democracy are clearly evident in the pursuit of the NDR, which promotes the transformation of society into a more equal

one, to control all organs of the state (hegemony) and to remove the barriers and inequalities created by Apartheid (Pretorius, 2006:747). This view on transformation, the pursuit of hegemony and addressing material hardships, places the ANC within the *liberationist* school on democracy, as discussed earlier. The blurring of the boundaries between party and state, and state and society is highlighted through the assertion that the state apparatus must be controlled by the people. Furthermore, the above does not stipulate what is meant by equality, whether it refers to the idea of equality of all or equality in communal decision making. One can however, postulate that the equality referred to has a distinct material connotation and group character to it, based on the focus of the transformation project towards righting past injustices that manifest in material inequality amongst a specific community or group, namely Africans.

Another important aspect is that of the role for the democratic state in achieving the goals set by the NDR. It shows the primacy of the transformation project for the ANC and the willingness of the organisation to use state apparatus to achieve transformation. The role of the state is described through the NDR as defending "...the aspirations of the majority who have been disadvantaged by the many decades of undemocratic rule. Its primary task is to work for the emancipation of the black majority, the working people, the urban poor, the rural poor, the women, the youth and the disabled. It is the task of this democratic state to champion the cause of these people in such a way that the most basic aspirations of this majority assumes the status of hegemony which informs and guides policy and practice of all the institutions of government and state" (ANC, 1996). The ANC furthermore argues that "[W]hile formal democracy may present opportunities for some blacks and women to advance, without a systematic national effort, led by the democratic government, to unravel the skewed distribution of wealth and income, the social reality of apartheid will remain." (ANC, 1997 a). It is clearly articulated in ANC documents, that the goal of democracy is to eradicate the legacies of unequal distribution of resources left by Apartheid. It is also expressed in the quotations above, that the pursuit of hegemony and the control of all organs of the state is an active goal of the NDR, and consequently the project of democracy, further highlighting the link between the ANC's conception of democracy and that of the *liberationists* perspective on democracy.

It is clear the ANC envisions a role for the state that cannot be equated to the neutral state, as defined in the previous chapter. ANC documents argue that the state should in fact champion the aspirations of the majority, in other words, a specific group of people. Pretorius (2006: 749-750) notes that there is a firm assertion by the ANC that the pursuit of hegemony is a task of the state. The ANC argues that the aspirations of the majority must be achieved through the pursuit of hegemony by not only the state, but also the movement as a whole. Pretorius (2006: 750) argues that hegemony in the ANC vernacular not only refers to the controlling of all organs of the state, but also to that which is labelled the “hegemony of ideas” (ANC, 1998). The dominance strived for is one where all institutions, including but not limited to, all organs of the state, the media, public debate, universities, research and policy institutes and culture must be controlled by the ANC and organs of the state. The merger of party and state and the pursuit of hegemony is a clear objective of the ANC<sup>16</sup>. The above clearly illustrates that the ANC wishes to merge the boundary between society and state. Such a strategy, decreases the possibility of the creation and maintenance of an effective and robust civil society, and decreasing population interaction and the basis to challenge and contest dominant ideas within society. This further places the ANC within the *liberationist* camp, as the project of hegemony pursued aims at blurring or merging the boundaries between political and social institutions, instead of fostering the separation of the spheres as the *liberals* advocate.

The ANC labels its interventionist state a developmental state. The organisation also rejects the notion of a neutral or referee state, and argues that the state machinery represents class interests and is an active role player in defining social relations (Pretorius, 2006: 760). The ANC’s version of the developmental state “...prioritises the interests of those who are in need of development – the poor and disadvantaged. It is therefore a state which should reflect, in its composition, doctrines and cultures, the classes and strata which stand to benefit from transformation. These forces should be in command of state power.” (ANC, 1998). It is therefore a specific type of developmental state and, as Hudson (2000: 99) notes, the state in South Africa

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<sup>16</sup> Not only is there a clear policy drive by the ANC to pursue hegemony, the party is beset by increasing levels of centralism and decreasing levels of internal democratic debate. The drive towards greater centralism has been noted by, amongst others, McKinley (2001:203) and Gumede (2008:263-264).

pursues and officially promotes a specific conception of the common good and consequently strives to achieve the goals set for a specific group of people.

The ANC's view that democracy is as much about a substantive outcome as it is about procedural norms is articulated through the role ascribed to the state, as described above. The organisation furthermore envisions democracy and the state as serving the aspirations of the majority. These ideas about the role of the state and the outcomes of democracy, serve as a good precursor to understanding the definition of democracy as put forward by the ANC. According to Pretorius (2006:748) the most concise definition of democracy within the corpus of ANC documents states that: "A fundamental condition for liberation is democracy and an abiding culture of human rights. All citizens should be guaranteed the right to elect a government of their choice, freedom of expression, freedom from discrimination, and other rights entrenched in the Constitution. They should have a government not only formally based on their will, but one that is open and transparent, and one that consults and continually involves the people in policy formulation and implementation. Consistent with these principles is the task of ensuring equality among the racial, ethnic, language, cultural and religious communities; and equality between women and men: to build a united nation of free individuals with the right to associate with whomever they wish on the basis of equality." (ANC, 1997 b).

#### **4.2.2 The ANC's definition of 'the people'**

An important aspect of the above definition of democracy and the preceding quotations, is the reference towards the 'people'. Who the people are, as conceived by the ANC, is a primary question for Pretorius (2006). The author notes that "...[B] both the procedural and the substantive dimensions of the ANC's conception of democracy have as their primary subjects the people." (Pretorius, 2006:479). He finds that the ANC has a specific criteria of whom the bill fits, and that the people are primarily thought to be "...the black majority and Africans in particular." (Pretorius, 2006:479). The ANC does, however, view itself as an inclusive multi-class organisation, and therefore allows for a variety of groups to be included under the ambit of the people. This is particularly the case in designations of the 'motive forces'

of the NDR that are defined as "...the African majority and blacks in general, democratic whites and in class terms . . . the unemployed and landless rural masses; unskilled and semi skilled workers; professionals, entrepreneurs and small business operators . . . black women, . . . African women, . . . the working class . . . the unemployed . . . women . . . the black middle class (also the middle strata and petty bourgeoisie) . . . black business/capitalists . . . the youth." (ANC, 2000a; see also Netshitenzhe, 1996 cited in Pretorius, 2006: 749). Despite the variability and relative comparative social pluralism, the primary motive forces of the NDR are the *African majority and blacks in general* (Pretorius, 2006: 749).

If the main motive force for the democratic project, as described by the NDR and consequently the transformation project is the African majority, what then of those people who do not fall under the ambit of the majority? Pretorius notes that the term *minority* has various references within ANC texts, with two being of special relevance. The first relates to the procedural aspect of democracy, through the recognition of rights of citizenship as enshrined in the Constitution. These include the right of association, freedom of speech and thought, freedom of political association and the right to partake in electoral practices. These rights are not abridged or harmed by specific conceptions of democracy, or the goal of transformation. These are however, related to rights that do not have bearing on the substantive nature of democratic practices and are viewed by some as fundamental rights. The primary significance of the use of the term minority, resides in its association with substantive conceptions of democracy — that is in its goal of emancipating the African majority (Pretorius, 2006: 750). In this regard, the salient category is usually the white minority and gains expression in statements dealing with "white minority rule" and "the national contradiction... between historically disadvantaged black majority (Africans, coloureds, Indian) and whites" (ANC, 2000a cited in Pretorius, 2006: 750).

The privileging of the majority over minority groups is expressed in the definition of the national question. "In the South African context, the national question is not principally about the rights of minorities or ethnically motivated grievances. It is, in fact, principally about the liberation of the African people. The main content of the present stage of the South African revolution is the liberation of the largest and most oppressed group - the African people. Hence, the main measure of the progress made

on the national question is the extent and depth of the liberation of African people in particular - and blacks in general. This point must not be lost as a result of the excessive discourse in the media about ‘minority fears’.” (ANC, 2005)<sup>17</sup>.

Pretorius finds that in its substantive meaning, the ANC’s conception of democracy is one that defines the people as ‘the black and African majority’. This is a contradictory conception because it both recognises the “...ultimate equality in rights of all citizens but simultaneously privileges the majority in terms of ... allocative functions of the state which are of material significance. The privileging is justified with reference to historical legacies of colonialism and apartheid.” (Pretorius, 2006:751).

The ANC clearly wishes to serve the needs of a specific group of people. They hold that the democratic project is in fact geared towards serving the needs of Africans and not about upholding the rights of all, irrespective of group affiliation. This strengthens the argument that the ANC subscribes to the *liberationist* model of democracy in its view that democracy is principally concerned with the development of a specific group. This also links the organisation to the described *high-context* cultural framework in that the favouring of a specific group of people in the ANC’s conception of democracy is justified with reference to historical injustices. In addition, the specific notions of the ‘public good’, ‘freedom’ and ‘equality’ that can be justified by positive liberty, link the ANC to a specific strand of liberal thought.

#### **4.2.3 Freedom, equality and the public good in ANC doctrine**

How can it be possible for the NDR to claim to pursue the goal of creating an equal society if the entire project of the NDR, that of transformation, is geared towards serving the interests of a specific group of people? How can it be that political scientist and authors label the South African democracy as embodying liberal democratic practises when such contradictions exist?<sup>18</sup> Hudson (2000: 96) argues that

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<sup>17</sup> “Comparison between the definitions of the NDR and the national question show that the terms are indeed similar.” (Pretorius, 2006: 751).

<sup>18</sup> Mckinley (2001:183) argues that the ANC has “...become the standard-bearer of liberal democracy in South Africa.”; Krista Johnson (2003) finds the ANC’s strand of rule to be compatible with that which has become known as standard liberal conceptions.

the transformation project can be accommodated by the theory of individual liberty, as described in the previous chapter, once certain conceptual adjustments are made. If liberals are willing to acknowledge that socio-economic conditions can prevent individuals from pursuing their right to negative liberty, it becomes possible to justify the transformation project on “impeccably liberal grounds”.<sup>19</sup> If negative liberty is viewed as a fundamental right and socio-economic conditions prevent individuals from pursuing that right, then the preferential treatment and redistribution encapsulated by the transformation project can be deemed justifiable on liberal grounds. The socio-economic impediment requires a more interventionist strategy by the state, in order for all to enjoy the basic rights associated with negative liberty.

Hudson (2000: 98-100) argues that what is at issue, with reference to the transformation project, are two qualitatively different and incommensurable conceptions of equality. The one prioritises individual freedom and views the equal distribution of such freedom as constituting equality. The other prioritises the collective freedom, giving the majority the right to represent the collective and views equality as consisting of equal weight attributed to individual inputs for collective decisions. Hudson (2000) argues that in the pursuit of the current transformation project, the state in South Africa officially promotes a specific conception of the good and that this notion of the good is one based on a communal interpretation of equality. The ANC actively pursues the transformation project based on such a collective interpretation of the good and freedom. Consequently, their view of equality is one that prioritises the equality of individuals in contributing to collective decision making, and not that of individual autonomy. It must however, be noted that although certain freedoms are subjected to those of the majority within the transformation project, it is done under the guise of a constitutional order. Even though a specific conception of the good is pursued, which in terms of the theory of negative liberty infringes upon the rights of the individual to pursue their own conception of the good, it is done under a constitutional framework which preserves the fundamental rights of all. These include the rights of freedom of association, thought and expression, which are not harmed by the transformation project.

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<sup>19</sup> The author notes that not all liberals are willing to make such a conceptual adjustment.

Stacey (2003:135-138) echoes the sentiments of Hudson (2000) regarding the ANC's conception of equality. The author finds that the ANC's view of equality consists of all individuals having an equal amount of influence in determining the public good (positive liberty). Individuals have an equal amount of influence in the determination of what constitutes the good life, and this 'equal input' constitutes equality. This is opposed to the idea of negative liberty, which holds that equality is comprised of all individuals being able to pursue their version of the good as long as it does not hinder others from pursuing their version of the good. Within the theory of negative liberty, equality is equated to individuals having equal freedom to pursue the good life. In contrast, the theory of positive liberty holds that equality consists of equal influence in determining the public good. The former therefore prioritises the needs of the individual above that of the collective in determining the good life. Stacey (2003) argues that affirmative action policies can be constructed along such lines that are acceptable within the ambit of negative liberty, but that the transformation project is only justifiable if the ANC's strand of positive liberty is employed. It can therefore be concluded that the conception of equality embodied in the Constitution, and accepted by South Africans, is not the same as the one adopted by the ANC in pursuing policies of Affirmative Action and black Economic Empowerment policies, which form a crucial part of the transformation project.

The idea of equality that is subscribed to by the ANC in the pursuit of the democratic project further places it within the *liberationist* school described in the previous chapter. The idea that the community is more important than the individual is clearly articulated through the conception of democracy, the people, the blurring of state/society boundaries and the ultimate goals of the democratic project. The idea that equality consists of all individuals enjoying equal rights to pursue their own life goals is aligned to the idea of increasing individual autonomy. This is what the *liberals* hold as being fundamental to achieving successful democracy. The *liberationists* and the ANC hold that the democratic project must promote a specific conception of what is good and desirable. The ANC subscribes to this vein of democracy due to the nature of equality and the importance of the community over the individual. The democratic project for the ANC is not equated to increasing individual freedom and autonomy, but rests rather on a more substantive notion of what must be achieved by the democratic project through policies such as

transformation. By equating equality to equal weight given to collective decision making, and the focus of the transformation project being the material emancipation of a specific group, places the ANC squarely within a *liberationist* model of democracy.

The preceding paragraphs enable one to place the ANC within the theoretical framework adopted. The views held by the ANC on the role of the state and democracy, places it within the *liberationist* model of democracy. This is due to the merging of the boundaries between party and state, as well as the pursuit of hegemony and the control, of not only all functions of state, but also of all institutions that may influence society. The ANC's democratic project is also geared towards serving the needs of a specific group of people, black Africans. It therefore has a distinct group-based character to it. Furthermore, the organisations' view of equality, as articulated through the transformation project, in placing the normative priority on the group above the individual, further strengthens the ties to the *liberationist* perspective on democracy and the *high-context* cultural framework. There is also a distinct retrospective character to many of these formulations, in that democracy is viewed as a means of righting past injustices, and not viewed as securing the creation of a stable rule-based order. All of these aspects align the ANC closer to the *liberationist* model of democracy and the *high-context* cultural orientation.

### ***4.3 The South African Constitution, the Limitations clause and Socio-economic rights***

What was described in the preceding paragraphs could be viewed as an interpretation of democracy and how to achieve the establishment of successful democracy (through transformation) as adopted by the ANC. Along with the term transformation, the other important component of this study is the principle of 'the rule of law'<sup>20</sup>. What will follow, investigates neither the weak nor the strong sense of the principle. Instead, the focus will be on specific inclusions in the Constitution. This will hopefully show that although the ANC does subscribe to a somewhat substantive notion of democracy that

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<sup>20</sup> Respondents are questioned about their views regarding the functioning of courts and the constitution, and therefore the principle of 'rule of law' in its practical sense.

has a distinct group character, it is still in line with particularities of our Constitution, in the sense that if the Constitution is viewed as the supreme document of law, it sets the precedent or dictates the norm for the nature of laws in South Africa. There are aspects of the Constitution that also have a distinct retrospective and material quality to them, with focus being placed on rectifying past injustices and the subordination of individual to communal rights.

Thus far attention has been paid to a possible interpretation the ruling party could have towards democracy, and how to achieve this project (though transformation) successfully. In doing so, the researcher showed that the current strand of democracy employed by the ANC is more closely associated with the *liberationist* perspective on democracy. The role of the law and the principle of the rule of law have thus far not been discussed with reference to the South African case. It was argued in the previous chapter, that the rule of law is a central principle in standard definitions of democracy, as it codifies the procedures of democracy in legal principles. It is held by the *liberals* as creating the very environment through which individual autonomy is increased and in a sense, is viewed as the most important institution that facilitates the functioning of a democratic society. It was also shown that the principle of rule of law centres around the issue of compliance with the law, and also that the law must adhere to minimum requirements in order to be deemed lawful.

To investigate the functioning of the principle of ‘rule of law’, one would therefore have to investigate the issue of compliance by the rulers and, in the South African case, the compliance by the ANC. This could be done by tracking constitutional development and changes throughout the last thirteen years, and by investigating the way in which laws are made and passed by parliament. In addition, one would also have to study all relevant cases involving the Constitutional Court, the judgements and the subsequent adherence to the judgments by the state. This would be a monumental task, and had the researcher decided to start down such a path, would lead to a different focus for the present study.<sup>21</sup>

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<sup>21</sup> I acknowledge that such an investigation will be the only way to successfully determine the type of normative legal order in South Africa as created by the Constitution and Constitutional case law.

It will instead be assumed that in South Africa the principle of rule of law remains intact, based on formal adherence to the changing and making of laws (compliance and formal characteristics) and also, taking as a given, that all are subject to the law<sup>22</sup>. The merits of the principle will not be investigated in the strong or the weak sense — attention will rather be paid to the type of normative legal order that is created by the Constitution. If the Constitution is the supreme document of law and all laws and actions must be consistent with it, then the Constitution can be seen as the legal canvas upon which all laws are enacted. Attention will be paid to the substantive nature or specific aspects of the Constitution. In the previous chapter, it was highlighted that in South African, the principle of ‘rule of law’ has taken a distinct rights-based flavour. This does not make it incompatible with normative associations of the principle in either a static or a dynamic sense. As long as rulers comply with laws, and laws are consistently formulated based on the principles of what defines a law, it can be argued that the rule of law is in force.

The researcher will argue, that although the ANC subscribes to a *liberationist* strand of democracy, it has retained a very important principle from the *liberals*, that of the *rule of law*. It is not that the rule of law is inconsistently applied in South Africa, but rather the very nature, the very substance of the law in the Republic allows the ANC to adopt such a communal interventionist strategy on transformation and democracy, and still be clothed in the guise of a Constitutional order. If we therefore view South Africa as a Constitutional democracy, the Constitution creates the ultimate legal framework for the functioning of all spheres of society. The unique character of the Constitution is articulated through the Limitations Clause and the inclusion of justiciable socio-economic rights. These sections in the Constitution set the precedent to legally adopt more interventionists and developmental strategies. It could be argued by defendants of the ANC’s transformation project that the project is consistent with the precedent set by the Constitution and the rule of law.

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<sup>22</sup> The researcher is well aware of the problems of such assumptions. It can be argued that the independence of the South African judiciary is indeed under threat, as examples of President Zuma’s prosecution, and the Judge Hlophe case illustrate. Furthermore, the parliamentary dominance of the ANC, and the party’s consequent ability to pass laws through parliament with little credible objection by opposition parties, does raise issues of compliance to the rule of law.

There are two aspects of the South Africa Constitution upon which there will be briefly elaborated to illustrate this point and defend such a stance. These are the inclusion of socio-economic rights in the Bill of Rights and the Limitations of Rights clause. As was argued in the previous chapter, the rule of law principle has no universal definition that can be ascribed to it. The principle is however, commonly associated with the adherence to the laws by not only ordinary citizens, but also by those with the powers to amend laws. The principle says nothing about the substantive nature of the laws, except that laws must adhere to a number of minimum requirements in order to be deemed a law. The principle says nothing about what the laws should, or should not encompass. The substantive aspects of what laws include or are meant to cover are therefore left undefined under normative associations with the principle of the *rule of law*.

These two aspects of the Constitution of 1996, highlight that the law in South Africa is not only geared towards serving the role of creating a stable institutional framework that governs all interactions according to laws, but has a distinct outcomes-based prerogative. The Limitations Clause makes it possible for the fundamental rights of citizens to be limited if such a limitation can be justified in terms of the clause itself. This shows that rights are not absolute and it is possible for state interests to trump that of the individual. The socio-economic rights included highlight that there are laws that mandate the state to deliver goods and services to the public. The regulatory framework created by the inclusion of socio-economic rights, forces the state in South Africa to be actively involved in realising the social and economic development of the people of South Africa. The inclusion of these rights goes beyond the scope of merely creating a legal framework that guides and regulates all actions of the state, as is delineated by standard conceptions of the rule of law and western conceptions of the Rechtsstaat.

The General Limitations Clause (section 36)<sup>23</sup> in the South African Constitution sets out specific criteria for the justification of the restrictions of rights enshrined in the

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<sup>23</sup> 36. Limitation of rights. -(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including -  
(a) the nature of the right;

Bill of Rights. This clause shows that constitutional rights are not absolute and fundamental rights can be infringed upon by state actions, if the restriction takes place in accordance with the criteria set out in section 36 (s36). The Limitations Clause does not however, mean that rights can be suspended on the basis of a simple cost-benefit analysis. Rights cannot be limited merely for the benefit of others or in the pursuit of a public interest at the expense of the person whose rights are being limited — the limitations must be justifiable and the reason for set limitation exceptionally strong (Currie and de Waal, 2005:164).

Limiting a right in the Bill of Rights through the Limitations Clause, forces the Constitutional Court to decide which right must be subjected to another. The Clause is therefore premised on the fact that one right will have to yield to another (Iles, 2007:79). In deciding on limitations of rights cases, the Constitutional Court follows a specific approach to rights adjudication, known as the two-stage approach. The Constitutional Court is therefore balancing different interests when deciding on s36 cases. In addition, s36 cases only come under consideration when an important state interest is taking precedent over an individual interest. The minimum requirement for the limitation of rights clause to be applicable is that there must be a state interest involved in the rights infringement case (Iles, 2007:82). The court has argued that “...the limitation of constitutional rights for a purpose that is reasonable and necessary in a democratic society involves the weighing up of competing values, and ultimately an assessment based on proportionality.” (Sweet and Mathews, 2008: 38). For this reason, adjudication on matters involving s36 is done on a case-by-case basis. There is no universal way of determining when rights may or should be infringed, nor is there any hierarchy of rights in the Bill of Rights, the Constitutional Court weighs the merits of each case based on proportionality and then applies the two-stage approach to rights disputes.

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- (b) the importance of the purpose of the limitation;
  - (c) the nature and extent of the limitation;
  - (d) the relation between the limitation and its purpose; and
  - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.  
(Constitution of RSA, 1996)

Briefly stated, the first stage involves defining the content and boundaries of the right. The right under scrutiny is determined and the scope of the right defined in order to determine whether the conduct falls within the scope of the protected activity. Once the boundaries and scope of the activity and the right are determined, the second stage commences. In the second stage, the courts progress to determining whether the infringing law under consideration is justified in terms of s36. The infringing law is tested against s36 (1) ss *a-e* in order to determine whether it is justifiable under the Limitations Clause (Iles, 2007: 74-75).

The relevance to this dissertation of the above lies in the second-stage of the adjudication process and the connection to the principle of *rule of law*. According to s36, rights may only be limited in terms of a *law of general application*<sup>24</sup> which is of interest as it arises from the principle of the *rule of law*. An interesting point with regard to this is that the Constitutional Court has not yet given a general description of a 'law of general application'. Statutory, common and customary law are all included under laws of general application. An example of what does not fall under law of general application would be specific employment practices by companies and unauthorised conduct by public officials (Currie and de Waal, 2005:169; Iles, 2007:76).

It is therefore possible for laws in South Africa to infringe upon the rights of individuals provided such incursions of rights fall under the stipulated formal constraints set out in s36. Furthermore s36 states that all limitations must be justifiable in an 'open and democratic society based on human dignity, equality and freedom' (Constitution of RSA, 1996). Limitations of rights must also involve important state interests and is always the case of the state versus other interests. It is possible to conceive a hypothetical scenario in which state interest trumps that of individual interest and individual rights are consequently limited. What is important is that such scenario can take place whilst fully complying with the principle of the *rule of law*, as it will be in compliance with criteria set out in s36. Laws that limit the right

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<sup>24</sup> All the criteria set out by s36 for limiting rights through applying the two-stage approach will not be discussed in relation to ss36 a-e as this falls outside the scope of the argument. For detailed explanation of the functioning of ss 36 a-e see: Iles, 2007: 80-86; Currie and de Waal, 2005: 175-185.

of the individual in order for a state interests to prevail, can be legally enacted and form part of the laws that make up the South African legal system.

The Constitutional Court is ultimately comprised of individual judges that decide on Constitutional matters. They are constrained not only to operate within the bounds of the Constitution, but also previous adjudications on matters pertaining to the judgement at hand. Earlier in the chapter, a description was given of differing ways of interpreting the notion of equality and the difference between what was termed positive and negative liberty. This illustrates that matters decided by the Constitutional Court will be subject to differing interpretations of notions such as equality and freedom, both of which form part of the cornerstone of the democratic dispensation as enshrined in our Constitution. It is not stipulated by the Constitution that specific notions of concepts such as equality and freedom must be used. There is therefore ample room for interpretations when considering whether rights can be limited in terms of a society based on equality and freedom, especially since the terms equality and freedom are not explicitly defined. A way to illustrate the complexities of the limitations of rights cases, is in considering how s36 applies to laws that are geared towards substantive goals. An example of this is the relationship between the Limitations of Rights clause and the socio-economic rights enshrined in the Bill of Rights, as they cover tangible outcomes of principles enshrined in the formal law. Before the relationship between sections 25, 26, 27 and 36 can be explored, the socio-economic rights included in the Bill of Rights must first be examined in their own right, as the inclusion of such rights in the Bill of Rights have implications for the functioning of a democratic society.

The South African Constitution of 1996 became the first constitution in the world to include entrenched and justiciable socio-economic rights along with the more conventional civil and political rights in the Bill of Rights (Iles, 2004: 449). Conventionally, a Bill of Rights only includes traditional liberal rights to equality, personal liberty, property, free speech, assembly and association. These rights are usually termed civil and political rights and are referred to as first-generation rights. These rights are thought of as 'negative rights' in that they take power away from the

state and impose a duty on the state not to act in a certain way.<sup>25</sup> Second-generation rights, such as socio-economic rights can be termed 'positive rights' in that they impose obligations on the state to act in a certain way and not merely to restrict state action (Currie and de Waal, 2005: 567). In South Africa, the government is constitutionally mandated to provide protection and access to property and land, health care, food, water, social security and housing to all citizens under sections 25, 26 and 27 of the Constitution of RSA of 1996, all of which, in order to realise, require the allocation of resources by the state (Constitution of RSA, 1996).<sup>26</sup>

The important distinction between negative and positive obligations placed on the state by certain rights lies in the implications they have for state actions. Negative rights restrict the state from infringing on certain rights held by individuals. Laws cannot be created that prohibit people from forming organisations, or impinge the right to free speech. Positive rights impose duties on the state in order for people to realise the rights that are afforded to them by the Constitution. The issue with the realisation of positive rights lies in the commanding of state resources. From a political and economic point of view, the implication of enforcing or ensuring that all people have access to the rights in Sections 25, 26 and 27 of the Constitution implies that resources must be allocated in a certain way to allow citizens to enjoy these rights (Currie and de Waal, 2005:567-568).

Currie and de Waal (2005:569) argue that the justiciability of socio-economic rights will require courts to direct and to a degree, determine the way in which the state allocates resources and is therefore beyond the scope of judicial function. The issue

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<sup>25</sup> The state is negatively limited in that, for example, the state may not prevent individuals from joining or forming political parties.

<sup>26</sup> 26. Housing: (1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

27. Health care, food, water and social security.-(1) Everyone has the right to have access to -

(a) health care services, including reproductive health care;(b) sufficient food and water; and  
(c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

(3) No one may be refused emergency medical treatment.

(Constitution of RSA, 1996)

here revolves around the separation of powers relating to the judiciary and the executive. The judiciary is an elite and undemocratically appointed branch of state. It therefore "...lacks the democratic legitimacy necessary to decide the essentially political question of how to apportion public resources among competing claims and between individuals, groups and communities in society." (Currie and de Waal, 2005:567-569). Conventionally it is thought of as legitimate for the judiciary to implement negative rights, in that it prevents the state from imposing particular duties or conditions on groups and individuals. When the judiciary enforces positive rights through socio-economic rights based grievances, it is commanding state resources to be allocated in a certain fashion. It is therefore an issue that deals with the relationship of the judiciary and the executive, and the very core of democracy.

The Constitutional Court discussed the inclusion of socio-economic rights and the issue of justiciability in the First Certification judgement. The inclusion of socio-economic rights was objected to on the basis that the application of these rights conflicted with the principle of separation of powers enshrined in the Constitution of 1996. The Constitutional Court acknowledged that the inclusion of socio-economic rights may result in courts making orders which have budgetary implications. The Court argued however that, when civil and political rights are enforced, the orders often have the same implications. The provisions of state benefits to those who were previously not beneficiaries under Apartheid, implies the allocation of state resources in a certain way in the South African context, in order for all citizens to realise their civil and political rights. The Court found that the inclusion of socio-economic rights does not breach the principle of the separation of powers, and argued that socio-economic rights would be included and be justiciable (Currie and de Waal, 2005:570-571).

The Constitutional Court stipulated that socio-economic rights must, at the very minimum, be negatively protected. Negative protection is a form of judicial protection conventionally given to civil and political rights. There is a negative obligation to not interfere with an individual who is doing something they have a constitutional right to do. The right to free speech would be infringed by a law prohibiting individuals from reporting negatively on government action. Applied to socio-economic rights, negative protection means that the Constitutional Court can prevent the state from

acting in ways that infringe upon socio-economic rights directly. Examples include forced evictions or the suspension of water supply due to outstanding bills (Currie and de Waal, 2005:572).

#### ***4.4 The ANC's democratic project: Justification through constitutional embodiment***

It is hoped that the preceding section, has shown that the *rule of law* in the South African context takes on a somewhat different nature than the standard normative associations of the principle. There are obligations placed on the state by the Constitution that to some extent determine how public resources be appropriated in order to ensure that all citizens can enjoy the rights awarded to them by the Constitution. The limitations clause furthermore creates a scenario where individual rights can be subordinated to particular state actions.<sup>27</sup> The legal order in the RSA, or perhaps more aptly labelled, the normative legal framework, is one that mandates the state to appropriate funds that allow South Africans tangible public goods.

The Limitations clause allows for individual interests to be subordinated to that of state interests, whilst complying with the principle of the *rule of law*. That a law exists which allows individual rights to be subordinated to that of the community, creates an association with the law whereby such actions are deemed legal. This has severe implications on what is understood to constitute normative legal functioning in the Republic.

If one then takes into account how the ANC views its role and function, with specific reference to the controlling of all state organs and how the organisation conceptualises democracy, it can be argued that the transformation project pursued by the ANC falls within the normative legal framework created by the Constitution of 1996. If the Constitution is taken as the ultimate 'yardstick' against which policies and practices such as the transformation project must be measured, then ideas and practises

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<sup>27</sup> The occurrence of such instances has been limited and do not frequently occur. The importance however, lies in the creation of a normative legal order that can allow such infringements of communal rights over that of the individual and allocation of state resources in a certain fashion. For detailed discussions see, Iles, 2004 and Iles 2007.

embodied by the ANC's transformation project are not completely out of touch with the normative legal framework created by the Constitution.<sup>28</sup> The idea that no rights are absolute and the individual can be subordinated to the community, finds resonance in the Constitutional and legal order of South Africa. What is important is that the Constitution creates a normative legal framework which allows for such particularities as is shown through the inclusion of justiciable socio-economic rights and the Limitations clause.

It must also be made clear that the researcher is by no means trying to justify or defend the ANC's strand of democracy or the transformation project. What can however not be ignored, is that the legal order in South Africa has a distinct rights-based and socio-economic character that allows for such a policy to be enacted, whilst still complying with the normative legal framework of South Africa as created by the Constitution. Whether such an interpretation of and subscription to democracy and the rule of law is conducive to consolidating the democratic regime is highly debatable. It is postulated that such an interpretation of democracy runs a grave risk of easily severing ties with other important aspects of democracy, such as the scope of civil society to function and the ability of all individuals to have equal access to and protection of rights enshrined in the Constitution. Even though it can be argued that the ANC's strand of democracy is compatible with the legal order in South Africa, and therefore the principle of rule of law, an important aspect in the consolidation of democracies, it is unclear whether such a path is conducive in creating sustainable democratic dispensation and consolidating our young democracy.

#### ***4.5 The relevance of culture***

This study holds that culture is an important conceptual component in understanding the nature, future and normative meanings associated with South Africa's fledgling democracy. Such a proposition subsumes the idea that culture, or a cultural orientation, does indeed influence the creation and maintenance of normative

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<sup>28</sup> There are authors that would disagree with such a finding. Notably Richard Stacey (2003) who finds inconsistencies with the particular strand of equality adopted by the transformation project and the one enshrined in the Constitution.

meanings associated with political, social and economic institutions. This stance should be investigated, and evidence provided from social science literature that culture does indeed play a role in constructing and maintaining normative meanings associated with these institutions. It must be reiterated that the researcher is not arguing for a causal relationship between culture and democracy, nor is the claim made that culture is the ultimate independent variable. The researcher is merely highlighting the importance of culture in understanding the creation and maintenance of normative meanings associated with, and future of democracy in the Republic of South Africa.

This section will therefore not only argue the importance of culture in studying democracy, but also the merits of the definition and distinctions adopted in this study. It is therefore necessary to elaborate on the merits of the cultural framework used in this study as proposed by Cohen (1997), and also place the relevance of culture when studying political institutions as a whole. This section will also highlight some of the criticism levelled against authors who view culture as a major contributing factor in democratic theory.

The basic premise behind Cohen's definition of culture, that of shared meaning derived from shared historical experience prevalent in a given society, is one that other authors share (Hofstede, 2007:1,9; Huntington and Harrison 2000; Licht, Goldschmidt and Schwartz, 2007: 662; Rubenstein, 1993:550; Greif, 1994: 915; Esmer and Pettersson, 2007:3; Schwartz, 2007:34-35). These authors all argue that culture influences the way in which human beings organise their societies, and more specifically institutions (economic, political or social) that are prevalent within these societies. Although there are subtle differences in their work regarding the casual relationship that can be attributed to culture and human development, and differences concerning the specific dimensions that constitute culture, there is an underlying agreement regarding the fundamental nature of what culture, in a minimal sense, is understood to be; that of shared meanings and beliefs derived from a community that has shared experiences. Although the authors cited above range from the field of psychology, modernization theory, economics, conflict studies and political studies, there is an implicit agreement that culture has an effect on all institutions, regardless of the area of focus of the specific author.

The second aspect of Cohen's (1997) framework that requires some elaboration is the dimensions used to draw a distinction between *high-context* and *low-context* cultures. As argued in the previous chapter, the main basis for the distinction between the two cultural frameworks is the role or the importance of the individual in society. All the specific differences between the cultural frameworks will not be repeated here. Other relevant authors who echo Cohen's identified dimensions of culture will be cited and will hopefully show the reader that the framework chosen in this thesis finds commonality with other authors in cultural studies.

Within the field of psychology, Geert Hofstede (2001) in his voluminous work on dimensions of culture identifies five main independent dimensions to culture. This is done by primarily relying on data from the IBM Corporation and its global and culturally diverse workforce, along with other international surveys. The two dimensions that echo those of Cohen are *individualism versus collectivism*, relating to the integration of individuals within groups and *long-term versus short-term*, relating to whether the present or the future is the focus of a society (Hofstede, 2001:29).

Although his work relates more specifically to the organizational culture of a corporation, the author successfully links this to what he labels 'national culture' and argues that there is a distinct link regarding the nature of national cultures between his work and those of other authors (Hofstede 2001:11-15; 373-391). Hofstede's work is also extensively referenced within modernization literature such as Inglehart and Schwartz (2007) and Inglehart and Welzel (2006) in their work which relies on the World Values Survey as primary data<sup>29</sup>.

As in the work of Cohen (1997), Hofstede (2001:209-212) argues that how a society views the role of the individual influences how such a society will structure societal institutions, from family structures through consumer behaviour to political systems. Primarily the distinction between individual and community orientated societies is how the individual views her/himself within society. In societies that are more

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<sup>29</sup> The authors themselves have argued extensively for similarities and robustness checks in their work and extensively reference each others' work, see: Inglehart and Welzel, 2006: 136-138; Esmer and Pettersson, 2007: 3-5; Schwartz, 2007: 34, 38-41, 45-49, Licht et al. 2007; Inglehart, 2007: 21-23; Hofstede, 2001: 11-15, 29-34, 219-225, 373-391.

orientated to the individual ethos, the individual is seen as an autonomous being, acting solely on his/her own personality. In such societies, the good of the individual is of prominence, and the greater good of the society is subordinated to the wishes, or the will, of the individual. In more communal societies, the individual hardly sees himself as being separate from the community. The individual defines himself purely in terms of his/her group affiliation and role. Personal gains and whims are therefore subordinated to the needs of the group, and within these societies the individual views what is good for the group, as being good for her/him-self. This correlates strongly, albeit on a theoretical level, with how Cohen (1997:29-31) draws the distinction between individual orientated *low-context* cultures and communally oriented *high-context* cultures.

Another point of correlation between the authors is the manner in which a given society views 'time'. Hofstede (2001:351-355) found that a distinction can be drawn between those societies that focus on the present and those with their focus on the long-term future. Although this does not strictly correlate with the distinction of time within *high-* and *low-context* cultural orientations as identified by Cohen (1997: 31-36), it does show that how a society views time and that the future is of consequence for how such a society organises itself. As in Cohen's work, there are those societies that are focused towards the future (*low-context*), and are always planning for the future, and those that choose to savour the present (*high-context*). Hofstede (2001) and Cohen (1997) therefore both share the view that how time is viewed (i.e. importance of either the present or future), and the role of the individual within society is of significance in determining the cultural makeup of a society.

A further body of work that extensively relies on the notion of dimensions of culture is that of The World Values Surveys (WVS). This is a research project that comprises a worldwide network of social scientists studying changing values and their impact on social and political life. The core assumption of the WVS studies is that culture matters. The surveys conducted in this research project covers 97 societies over roughly 90% of the world's population and is comprised of five rounds of surveys from 1981 to 2007 (World Values survey, 2008; Esmer and Pettersson, 2007:3). The WVS research holds that values constitute culture and that the two main dimensions or value dimensions of culture are *traditional vs. secular* values and *survival vs. self-*

*expression* values. The WVS research argues that these two dimensions explain more than 70% cross-national variance on key variables which include the type of political institutions within a given society (World Values Survey, 2008: 5-6).

It should be noted that the work by Inglehart and Welzel (2006), Inglehart (2000) and Esmer and Pettersson (2007) advocate a revised version of modernization theory and use the WVS data to test their hypothesis regarding this theoretical starting point. The core argument of these authors is that they interpret contemporary social change as a process of human development that is comprised of socioeconomic modernization, a cultural shift towards a rising emphasis on self expression values and greater tolerance and need of the individual for a responsive system of government, articulated through democracy. They argue that as socioeconomic development deepens and penetrates further into society, so to does the peoples' cultural orientation that leads to the process of democratization with an emphasis on political and civil liberties, equality and the maximization of human choice. Furthermore, as development progresses, the cultural emphasis shifts from the collective good to individual liberty, human choice and individual autonomy, all of which are values strongly associated with democratic systems of government. The authors argue that a shifting balance between modernization and tradition shapes human values, and that these affect political institutions, generating a human development sequence in which modernization gives rise to self-expression values that are more favourable to the maintenance of democratic institutions (Inglehart and Welzel, 2006: 2-5).

As has been noted above, these authors argue that almost 70 % variance on key variables can be attributed to just two dimensions of culture. The first, *traditional versus secular* emphasises orientations towards authority. Traditional societies highlight the importance of religion as a crucial aspect for maintaining social order. Emphasis is furthermore placed on the role of family ties and family allegiance in achieving social cohesion as opposed to the importance of individual achievement. Another important aspect is how authority is viewed. In traditional societies deference to authority is valued over challenging of authority as a lubricant for social cohesion which stands in contrast to challenging of authority, as this may give rise to conflict within the society. Traditional societies also tend to adopt an absolute moral standard which, as an impartial arbiter between 'right' and 'wrong', influences their views on

the role of the law. Secular societies place emphasis on the exact opposite to the above mentioned value dimensions of culture (Inglehart, 2000: 83-84; Inglehart, 2007: 14-18).

It should be evident that there are some major correlations between Cohen's (1997) *high-context* and *low-context* cultures and Inglehart (2000; 2007) *traditional* and *secular/rational* societies respectively. Corresponding views of deference to authority, the prominence or role of the individual and the idea of a moral standard, as opposed to the rule of impartial law, are apparent similarities for creating the above mentioned distinction. This illustrates further correlation between the cultural framework adopted in this study and those used by prominent authors in modernization theory.

What is relevant of this strand of modernization theory which relies heavily on culture, is that one of the two main dimensions identified (*traditional versus secular*) has a strong theoretical correlation to the *high-* and *low-context* cultural framework as espoused by Cohen (1997) regarding similar views on the role of the individual, relations to authority, the importance of maintaining group harmony and social cohesion and notions of time. These aspects are all used to draw a distinction between what Inglehart (200, 2007) labels *survival versus self expression* and Cohen's (1997) distinction between *high-* and *low-context* cultures.

Another author that has done extensive work on dimensions of culture is Shalom Schwartz. What distinguishes Schwartz theory from previous authors cited above, is that he arrives at his dimensions of culture from *a priori* theorising, and then tests these theoretical orientations to empirical data (Schwartz, 2007:34). Schwartz (2007:36-38) identifies three bipolar dimensions of culture that he labels *embeddedness versus autonomy*, *hierarchy versus egalitarianism* and *mastery versus harmony*.

*Embeddedness versus autonomy* concerns the desirable relationship between the individual and the group. "Embeddedness refers to a cultural emphasis on the person as embedded in the group and committed to maintaining the status quo, propriety, and restraint of actions or inclinations that might disrupt group solidarity or the traditional order. The opposite pole of autonomy describes cultures in which the person is

viewed as an autonomous, bounded entity who finds meaning in his or her own uniqueness.” (Licht et al. 2007: 662). Schwartz also draws a distinction between *intellectual autonomy* that refers to individuals pursuing their own ideas and intellectual directions independently and *affective autonomy* that refers to individuals pursuing positive experiences for themselves (Schwartz, 2007:36). The “... [H] *hierarchy versus egalitarianism* [This] dimension concerns the ideal way to elicit cooperative, productive activity in society. Hierarchy refers to a cultural emphasis on obeying role obligations within a legitimately unequal distribution of power, roles, and resources. Egalitarianism refers to an emphasis on transcendence of selfish interests in favour of voluntary commitment to promoting the welfare of others whom one sees as moral equals.” (Licht et al. 2007: 662).

Again, the likeness to Cohen’s (1997) theory can be attributed to the role of the individual within society, and the manner in which authority and compliance with group harmony is viewed. There is a correlation between *high-context* cultures and cultures leaning towards *embeddedness* based on the role of the individual. The same is true for the *autonomy* and *low-context* poles. The second dimension, that of *hierarchy versus egalitarianism*, is not as straight forward when correlating with *high- and low-context* cultural frameworks. Rather, one should focus on the aspect of this dimension, authority and the manner in which it is viewed, as underlying Cohen’s (1997) views on authority in his framework.

A final author that needs to be cited in defence of Cohen’s (1997) cultural distinction is Daniel Etounga-Manguelle (2000). Etounga-Manguelle is essentially trying to explain the lack of development in Africa by relying on culture as a major independent variable. The author argues that although there are many differing cultures in Africa, depending on how we choose to define culture, through language, geographical location or traditional ethnic groupings, a common African culture does in fact exist (2000:67). This common culture, it is argued, is characterised by a number of elements. The first is the manner in which hierarchy is viewed. It can either be seen as part of the natural order of being, not to be challenged and always accepted, or authority figures can be seen as equals, whose authority and power can be challenged. Africa, it is argued, belongs to the group that views hierarchy and authority as unchallengeable, and it is seen as the ‘nature of how things are’. Control

over uncertainty is another factor of importance. There are those societies that are geared towards conquering and mastering the future, and consequently institutions are orientated towards change and the limitations of risk. Other societies, of which Africa is one, accept the future and the uncertainties it holds rendering themselves powerless to change or influence it. Such societies tend to live on a day to day basis due to a belief that the deep rooted status quo cannot be altered (Etounga-Manguelle, 2000: 68).

Africans tend to exalt the past and live life while forever honouring and remembering the ancestors and forefathers. This view of time, does not allow for the preparation for the future with focus being placed solely on the past, and as the author argues, Africans tend to believe the past is only set to repeat itself, and preparation for the future therefore futile. The power of the community over the individual is the final point of commonality the researcher would like to emphasise. Etounga-Manguelle argues that in African societies, the individual is deeply rooted in family ties. The will of the community and the communal good takes precedence over individual autonomy and freedom of choice. Actions are taken that will advance the well-being of the community and often this communal good is defined by a single ruler. This however is of no consequence to African communities, as they believe wholly in the good of their group and individual identity is, to a large extent, derived from group affiliation (Etounga-Manguelle, 2000:69-72).

Once again, the parallels to Cohen (1997) can be clearly seen. The role of the individual within the group, the manner in which authority is viewed in terms of deference towards authority figures and the fact that the past is seen as more important as the future, correlates with the aspects used by Cohen (1997) to distinguish between *high-* and *low-context* cultures. It should be noted that Etounga-Manguelle (2000) is not arguing that these features of a common African culture can be applied universally or uniformly to all African societies. The author is merely stating that these are common elements in many African societies, which impede their development in terms of political, economic and social institutions that will enable them to emancipate themselves from material, psychological and political hardships.

This section hopefully showed that the distinctions drawn by Cohen (1997) between *high-* and *low-context* cultures has precedence in other social science disciplines and finds support in the literature as a whole. The role of the individual within society, deference to authority, maintaining the status quo, focussing on the past to the detriment of preparing for the future and the focus on group harmony and social cohesion, all of which form the basis of Cohen's *high-context low-context* distinction, are highlighted by other authors.

#### **4.5.1 Critiquing culture**

The above is a relatively extensive defence of Cohen's (1997) cultural dichotomy that is advocated in this study. Przerworkszi (2003:118) argues that a fundamental limitation in studies relying on culture in explaining the survival of democratic systems of government, is the issue of direction and the chain of causality. It is unclear whether material progress drives cultural and political institutions, or whether cultural transformations advance material progress and specific forms of government. Przerworkszi asserts that studies in the vein of new modernisation theories such as those by Inglehart, suffer from serious methodological shortcoming. Such surveys determining attitude on preferred systems of government do not advance any evidence that these attitudes do anything for the actual survival of democracy (2003: 119).

The aspect of religion is also frequently cited by culturalists as having an impact on the prospect of achieving and sustaining democracy. Przerworski however challenges this assertion, arguing that there are conflicting findings amongst scholars regarding cultural beliefs and the effect of religion on the survival of democratic systems. Conflicting views exist amongst scholars for whom cultural aspects are important and the implications that culture may have on democracy. Many culturalist scholars hold, for example, that Confucianism has anti-democratic elements which include a total lack of the idea of a civil society, individual rights or the rule of law. Yet Confucianism has deep traditions about the ideas of limited government, a key to democratic practices (2003: 125).

The most telling critique levelled against culturalists by Przeworski (2003: 128) is that of the lack of empirical evidence, as it is near impossible to test the importance of cultures in the survival of democracy. The author argues that for the three religions for which data exists, Catholicism, Protestantism and Islam, no link can be found between them and the durability of democracy. Cultures do not lend themselves to be easily classified, and as such, the opportunity for statistical analysis is limited. “But the evidence we do have does not support the claim that some cultures are incompatible with democracy. They seem to have no effect on whether democracy endures.” (Przeworski, 2003:129).

#### ***4.6 Land reform in South Africa***

As has been discussed previously, for the purposes of this study, the most important aspect of the land reform programme is whether it is guided by market and economic principles, or whether it is guided by a social equity imperative. This is most clearly expressed in the manner in which the government addresses land reform and, more specifically, whether the rights of the property owner are respected. Adherence to the WBWS principle can be seen as the proverbial litmus test when the normative priority is placed on individual property rights or social equity. If the principle is upheld, and the WBWS principle employed, it gives the property owner the ultimate and final word in whether the land must be sold or not. If this principle is disregarded and land is expropriated, the social and equality aspect of land reform is shown to take precedence over formal adherence to property rights.

Land reform has been an important issue for many South Africans for a long period of time. The importance of land reforms was emphasised by some exiled members during the period of ANC exile, with land issues having played a role in mobilising the liberation movement. During the early 1990’s, whilst a policy on land reform was being developed, the significance of the issue was highlighted in terms of the implications it may have on future government policies and as a means of ensuring social transformation. During the formulation period in the early 90’s, it became evident to those involved that the significance of the issue was largely due to the combination of moral and material concerns. Land reform had to address past wrongs

by restoring property and citizenship rights, and in so doing help solve the economic and social problems of poverty and social exclusion experienced by many Africans (James, et. Al. 2005: 827).

The importance of land reform in South Africa must be understood against the backdrop of a long history of institutionalised African dispossession of land. Land reform provides a way in which to address past injustices and constitutes an important part of South Africa's transition from an Apartheid to a constitutional state. Land is seen as playing a crucial role in restoring citizenship due to the fact that, under the apartheid regime, denial of land to many South Africans played a central role in casting Africans as second class citizens. Apartheid denied citizenship recasting Africans as second class citizens through a planned legal order controlling peoples' relation to space. Undoing such an institutionalised legacy of second rate citizenship, therefore requires the constitutional state to address the issue of ownership and land distribution (James, 2007:11).

Space and territory were central to the Apartheid regime's plans for segregation and the functioning of the apartheid state. "Land rights became indissolubly connected in the public mind, partly because of clashes which became increasingly fierce towards the end of the 1980s between the state and the people whose property, land and citizenship rights it was threatening to destroy." (James, 2007:12). Dispossession of land and citizenship through such practices left a deep imprint on the social consciousness of Africans, and the importance of the land reform programme to right these injustices must therefore not be neglected.

It is argued by Ntsebeza (2007: 109) that although the liberation struggle was not overtly fought around the land question, the expectation was always there amongst members of the struggle that the unravelling of centuries of land dispossession and oppression would be amongst the priorities of a democratic South Africa. Land reform is therefore an issue that is held very dearly by African's who were dispossessed thereof and denied access to land and subsequently forced to comply with the spatial restriction placed on them by the Apartheid state. It is an issue that forms part of the social reality from many poor and landless South Africans.

The ANC were saddled with the obligation of implementing far reaching land reforms when they achieved electoral victory in 1994 and assumed control of the government. It is against this background that the ANC set an initial target of transferring 30% of agricultural land within five years, in an environment where virtually all commercial land was owned by white South Africans (Williams, 1996:139). This figure has subsequently been revised numerous times due to the slow pace of land reform, and the current date set for reaching the 30% target is 2014. This is however, still a highly unrealistic goal, with just under 5% of agricultural land being redistributed by 2009 (Hall, 2009).

There are numerous reasons cited for the poor pace of land reform and the inability of the government to come close to the target of transferring 30% of agricultural land. Some of these include poor administrative management, vacant posts, inability to spend budgets, lack of capacity of Department of Land Affairs and insufficient budgets (Bosman, 2007: 39). Many reform projects that have been initiated are also struggling or have completely failed, and would require millions of Rands to revitalise so as to be termed successful (van Wyk, 2009). The capitulation of the Land Bank, and rampant corruption at the institution, is another example of administrative ineptness at an institution appointed to facilitate land reform (Hofstatter, 2009).

Despite the slow pace, land reform and redistribution have remained key ANC election promises in all past electoral victories. President Zuma is quoted as stating that in order for the land reform project to move forward, "...significant changes will have to be made to the willing buyer, willing seller model of land redistribution." (du Plessis, 2009). It is argued by some commentators that such rhetoric is nothing more than politicking and does not signal the state's intention to use large scale expropriation to speed up land reform. A policy document prepared for the presidency earlier in 2009, recommended that the state become the catalyst in developing a smallholder sector if it wants to increase the rate and success of land reform. This is in line with resolutions adopted at the 2007 ANC Polokwane conference, where it was decided to speed up land reform through different approaches, not necessarily large scale expropriation (Hofstatter, (b) 2009).

Land reform is frequently used as a means of mustering political support and mobilising voters prior to elections. Although it is an important and prominent issue within South African politics, compared to other pressing issues such as HIV/AIDS, unemployment and housing, it is understandable that land reform has been met with contesting and considerable ideological debate since the transition of democracy began in the early 1990s. Much of this debate has occurred on a relatively abstract, theoretical level, in which politicians and activists call for speedier land reform. In such rhetoric on the process of reform, landowners and the poor and landless are frequently treated as homogeneous abstract categories, with unclear and few identifiable boundaries between groups that could mobilize to acquire specific pieces of land for particular purposes. There is a general tendency for the issue to draw attention as a political headline issue of land acquisition, rather than as more mundane and practical components that will ensure success (Lahiff, 2007: 1583, 1591).

It is argued that the failure of MLAR and the WBWS principle does not necessarily hinge only upon the unwillingness of landowners to part with land, although this forms part of the problem. Other issues of the failed experiment include that the WBWS principle, although advanced as functioning within normal market parameters, does not comply with normal functioning of market trading. This is in part due to bureaucratic processes that include complexities in identifying beneficiaries and conservative and unrealistic planning models based on questionable assumptions about economic viability. The lack of credible information about beneficiaries, participants, size and scope of transfers, success and failures of transferred land and a general absence of information gathering by the government has further hindered the ability of analysts and policy makers to contribute meaningfully to the land reform programme. There is also a general lack of enthusiasm by the political and social forces within South Africa around the issue of land reform (Lahiff, 2007: 1591).

Not only has the government failed to reach ambitious targets, estimations place the amount of agricultural land transferred at less than 5% in the first 15 years. Concurrent to this, it is estimated that between 1994 and 2004, some 2.3 million farm dwellers, including farm tenants engaged in independent production, have been displaced. This figure exceeds that of those people who were displaced during the last

decade of Apartheid, with an estimated 1.8 million displacements from 1984-1993 (Wegerif, Russel and Grundling, 2005:7).

Against such a backdrop of government failure in the implementation of land reform, it is therefore not surprising that the WBWS principle has come under severe pressure of late. In late August 2008, the National Assembly was set to consider the Expropriation Bill, which would have allowed land to be expropriated in order to speed up the pace of land reform (Steward, 2008). The Bill was however shelved by Parliament's Public Works committee in August of the same year, amidst severe criticisms and pressure from public and private sectors of society. The committee cited insufficient consultation as the main reason for the shelving of the Bill. A spokesperson for the ANC, Kgotso Khumalo argued that the ANC felt too little deliberation and public contestation was allowed, and that the Bill would be reviewed and extensively debated before it would be tabled again (Donnelly, 2008).

The purpose of the proposed Expropriation Bill is to provide for the expropriation of property, including land, in the public interest and for public purposes, and include *all forms of property*. It strikes at the very heart of the negotiated accord through the threat it poses to the protection of property rights and the resultant implication on the rule of law (Steward, 2008). The provisions of the Bill are alarming, and include that:

- the Minister can expropriate property (which could include shares) on behalf of a "juristic person" (i.e. a private or public company) if it reasonably requires the property in the 'public interest' and has failed to reach agreement with the owner;
- the expropriating authority will determine the amount of compensation (that may, according to the Bill, be below market value), and the dates of expropriation, possession and payment;
- the courts cannot overturn compensation awarded by the expropriating authority but can simply refer it back for reconsideration. Thus, if property holders reject the offer of compensation and go to court, they might be deprived of their property and income for an indefinite period while the matter is referred to and fro between the court and the expropriating authority;

- courts involved in expropriation matters must be presided over by a judge from a special panel that will be appointed by the Chief Justice. If the Chief Justice is 'executive-minded' it is possible that judges involved might also share the government's broad views concerning the public interest (Steward, 2008).

The Bill finds resonance in the ANC's views of the redistribution of wealth and social and economic transformation as called for by the NDR. "A critical element of the programme for national emancipation should be the elimination of apartheid property relations. It requires the elimination of the legacy of apartheid super-exploitation and inequality, and the redistribution of wealth and income to benefit society as a whole, especially the poor - and in particular the de-racialisation of ownership and control of wealth, including land." (Steward, 2008).

Although the 2007 Polokwane conference was highly critical of current land reform progress, a call for large scale and immediate expropriation was not initiated. It did however mark a change in tone in ANC rhetoric concerning the land reform issue. Steward (2008) argues that the conference was highly critical of organised agriculture, which was described as the outcome of centuries of oppression and dispossession, and that a fundamental change was required in order to achieve the target of transferring 30% of agricultural land by 2014. The adopted resolution called for the need for the expropriation of property in the public interest and for public purposes, and that such measures must be in accordance with the Constitution, with special emphasis on equality, redress and social justice. It was proposed that MLAR be revived and the principle of WBWS come under scrutiny, together with the realignment of such practices with legislation relating to expropriation.

Steward (2008) notes that the authors of the Draft Policy on expropriation was in complete accord with the general tone of the NDR. The draft paper commences with the analysis of land dispossession dating back to the seizure of Khoi land in the 1650's. The role of the market was played down and support for departure from the WBWS approach and MLAR was evident, advocating that compensation for expropriated land need only occur after expropriation. The role of the Courts are to be

minimised in determining equitable balance between public interest and affected parties, whilst decision making authority was to be vested in the Minister.

Although the Bill was subsequently shelved, there is a tendency in ANC rhetoric for a shift in priorities where land reform is concerned. This entails that the priority is to be placed on social justice, transformation and the public good, at the expense of honouring private property rights. This is a fundamental departure from the terms of the negotiated transition to democracy, that holds dearly the values of private property and the supremacy of protecting of property rights through legal means. The departure from such a standpoint and the move towards the proposed expropriation, may have grave implications on the survival of the South African democracy.

## Chapter 5: Public opinion of the land reform project: Data presentation

### 5.1 Introduction

This chapter will present the survey results from Ipsos-Markinor public opinion surveys held in 2004, 2007 and an Elite survey conducted in 2007. The results enable one to gauge South Africans' opinion on land reform and its relationship with transformation and the rule of law. The chapter is guided by the main hypothesis of the study—that there is an identifiable correlation between the independent variables selected and the respondents' opinions on land reform, with specific groups tending to support land reform whilst other groups tend to reject it. The data presentation will be guided by the statements posed to respondents and their agreement or disagreement with the statements.

The four statements used are:

S1: All land whites own they stole from blacks

S2: Landowners who dispute land claims by going to court are racist

S3: Landowners who dispute land claims by going to court, are fairly using the rights awarded to them by the constitution

S4: Landowners who dispute land claims by going to court, are blocking transformation

It is proposed, that those respondents who support the governments' land reform programme, will have certain levels of agreement with the statements posed. It is proposed that the respondents who support the land reform programme will: **agree** with the statement that *landowners who dispute land claims by going to court are racist (S2)*; **disagree** with the *statement that landowners who dispute land claims by going to court are fairly using the rights awarded to them by the constitution (S3)*; and **agree** with the *statement that landowners who dispute land claims by going to court are blocking transformation (S4)*. This is due to the fact that such patterns of agreement identifies respondents as either placing the normative priority on the substantive effects of democracy (reforms in land ownership) or on the procedural

aspect of democracy through the impartial functioning of the rule of law where reforms in ownership must be guided by the law and the impartial functioning thereof, together with the protection of individual property rights. In addition, the response to the statement that *all land whites own they stole from blacks (S1)*, enables one to gauge whether there is a racial and group connotation to ownership and land acquisition in South Africa. This in turn, allows one to gauge the level of congruence with responses to the statements, and the theoretical framework described in the previous chapters.

## **5.2 Methodology**

Four items will be presented in this study, as was presented to respondents in 2004, 2007 and Elites in 2007. The items are all framed as statements to which respondents must list their level of agreement on a five-point Likert scale. The response categories are 'strongly agree', 'agree', 'neither agree nor disagree', 'disagree' and 'strongly disagree'. There were also 'don't know' and 'refused' categories. The data presented in figures 1-8 have been recoded into three categories of 'agree', 'neither agree nor disagree' and 'disagree'. This was done to facilitate the presentation and interpretation of results.

### **5.2.1 Public opinion surveys**

The public opinion surveys were conducted in 2004 and 2007 by Ipsos-Markinor, a private research company. The surveys consisted of 3500 nationally representative respondents from urban (2000) and rural (1500) populations. All respondents were over 16 years of age and data was acquired through personal interviews. Men and women are represented equally in the sample. The findings are weighted and projected onto the national demographic profile, on the basis of which they can be asserted to be nationally representative. What applies to the respondents, it can be assumed, applies with equal validity to the South African population as a whole. All sample surveys are subjected to statistical error and the results of these polls have to

be evaluated against this background. Depending on the response rate, the sample error for the polls as a whole is between 0.72% and 1.66% (du Toit, 2004 (c):13).

### 5.2.2 Elite survey data

Elites are defined as “...those people who fill top positions in the largest and most resource rich political, governmental, economic, professional, communications and cultural institutions in society.” (Kotze and Steenkamp 2009:12). The elite survey was conducted in 2007 by Iposo-Markinor for the Centre for International and Comparative Politics (CICP) using face to face interviews with a structured questionnaire. Furthermore, elite respondents are representative of five key sectors, as is shown in the table below (Kotze and Steenkamp, 2009:12).

**Table 5.1 Composition of elite respondents**

Sector	Composition of sample	No. of respondents	% of respondents
Parliament	Weighted to be representative of the National Assembly	95	31.88
Civil Servants	Senior officials in government departments	51	17.11
Churches	Senior church leaders from, amongst others, the South African Council of Churches and the National Religious Leaders' Association	50	16.79
Media	Managers, editors, senior journalists and parliamentary correspondents in the print and electronic media	51	17.11
Business	Chief executive officers and directors of top South African companies	51	17.11
<b>Total Survey</b>		298	100

Adapted from Kotze and Steenkamp (2009:13)

### 5.3 Discussion of dependent variables

The aim of this chapter is to present the data and test the main hypothesis of the study: *that there is an identifiable correlation between the independent variables selected and the respondents' opinions on land reform, with specific groups tending to support*

*land reform whilst other groups tend to reject it.* This will be done by presenting the level of agreement to specific statements. It is possible to link the level of agreement to statements *S1-S4* to the adopted cultural framework and the models of democracy as discussed in the previous chapters. As will be explained below, the specific racial connotation attached to ownership creates a dichotomy of groups. One group, who are in favour of the land reform programme, are predominantly of opinion that transformation and the rule of law in the land reform programme must be geared towards serving the needs of the landless and finds congruence with the *high-context* cultural framework that subscribes to the *liberationist* model of democracy. The other, who reject the government's land reform programme, favours the protection of property rights and the impartial functioning of the rule of law, can be inked to the *low-context* cultural framework and *liberal* perspective of democracy. Each statement will be discussed separately in relation to the theoretical framework.

### **5.3.1 Statement S1: “All land whites own they stole from blacks”**

The above is derived from a statement made by former ANC parliamentary chief whip, Tony Yingeni, who is reported to have stated that “Everything whites own, they stole from blacks.” Similarly, the Landless Peoples Movement have produced pamphlets with the slogan “Landlessness = racism. Give us our land now.” These statements define ownership in terms of race and theft and aim to nullify the importance of contractual title deeds (du Toit, 2003: 113). Statement *S1* defines ownership in terms of race and theft.

This sets a racial bias for the other statements, as statement *S1* is posed to respondents first. Statement *S1* sets a racial stage wherein there is an implicit assumption that landowners, under purview of statements *S1* through *S4* are white, and that landless people are black. Consequently, statement *S1* sets the tone for the following statements and covertly implies that all land reform policies are constructed along the racial dichotomy sketched by statement *S1*. As statement *S1* deals with the issue of property rights, it further implies that property rights are seen as protecting white

interests<sup>30</sup>. The statement implies group affiliation through race and ownership through unjust means of acquisition. The leading nature of the statement and its effect on the statements that follow should not be ignored, as it can be seen to have an influence on respondents' responses to the statements that follow, in that it creates a racial connotation between owners and non-owners. Even if respondents do not agree with the statement, it does not detract from the implication of whites being landowners and blacks being deprived of land through theft.

The level of agreement to statement *S1* refers to respondent's belief of whites being 'thieves'. The issue of ownership is already assumed and not being questioned. What is being questioned is the belief of respondents on how whites became owners of set land, and how blacks became landless (i.e. through theft). It therefore tests whether respondents believe that white landowners own property on *fair* and *just* terms, as the use of the word theft implies the abrogation of fairness and justice.

The issues of justice and fairness that are hinted at with the use of the word theft are echoed in respondents' views on *transformation*. The *transformation* project is grounded in specific notions of what constitutes justice, equity and fairness<sup>31</sup>. This does not mean that statement *S1* is in any way a means of verifying opinion regarding *transformation*, (that is dealt with by statement *S4*). It can, however, be seen as a statement that can find congruence in respondents' views on statement *S3* and statement *S4*. It is possible that those respondents who agree with statement *S1*, will be inclined to agree with statement *S2* and statement *S4* and disagree with statement *S3*, and will therefore be in support of the ANC's transformation project. Those with opposite views on the statements will oppose the transformation project with opposing levels of agreement to statements *S2*, *S3* and *S4*. The underlying justification of the transformation project through specific conceptions of equality and justice, further strengthens the connection between the empirical and theoretical components of the study and allows the researcher to establish congruence between respondents views of the rule of law and democracy and the adopted theoretical framework.

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<sup>30</sup> It is acknowledged that this view of land ownership and property rights may be the belief amongst respondents in South Africa had the statements been framed differently or had the statements been leading to a lesser degree.

<sup>31</sup> As was discussed in Chapters 3 and 4.

### 5.3.2 Discussion of statements S2-S4

The statements *S2* (landowners who dispute land claims by going to court are racist), *S3* (landowners who dispute land claims by going to court are fairly using the rights awarded to them by the constitution) and *S4* (landowners who dispute land claims by going to court are blocking transformation) have a number of shared assumptions that require some elaboration. These are that:

1. statements *S2-S4* hold the view that the courts are the highest authority in South Africa, and that their jurisdiction and power (authoritative rule) are incontestable. This is implied in the statements by asserting that “Landowners who dispute land claims by going to court...”. The statements assume that respondents have a shared normative ascription on the authority and sovereignty of courts in deciding matters of contestation in the public sphere. The respondents are not asked about their views on the court or the importance and role of the court, rather it is implied that the court is the supreme diviner of law. This statement therefore implies a belief in the ‘rule of law’ by respondents. The rule of law as a procedural aspect of democratic theory is expressed through the decisions of the courts. In other words, the rule of law as a procedure, gains substance when the courts deliver judgements.
2. the agreement\disagreement with statements *S2-S4* is not on the issue of people being able to dispute issues in court, but rather whether using the courts to contest land claims have significant impact on landowners being perceived as *racist*, *fairly using the constitution* or *blocking transformation*. The procedural aspect of democracy, (that of the rules applying to all), is therefore assumed as being credible. The respondents are not asked about their agreement\disagreement of the act of going to court, but rather on the effects on using the courts with relation to specific and different aspects of land reform (racism, constitutional supremacy and transformation).
3. the respondents’ views on statements *S2-S4* therefore gauges how they view the functioning of the principle of ‘rule of law’. The relevance of the principle

in conceptual terms is not questioned, it is assumed. What is questioned is how the principle (rule of law) should find expression in substantive terms. That is to say, whether it should be preferentially applied based on race and ownership, or whether it should be universally and impartially applied. The respondents' opinion on justifying preferential application of the rule of law places them in a specific paradigm on democracy (*liberal/liberationist*) and within a specific cultural orientation (*low-* and *high-context* cultures). The principle of 'rule of law' is seen as a fundamental condition in both procedural and substantive conceptions of democracy. It is only in how the principle is set to function that the distinction is created between preferential and universal application, and not in the principle being present in any set definition or conception of democracy. This allows one to gauge whether or not respondents place the normative priority on the impartial application of the rule of law, or on substantive gains facilitated by its application. If the rule of law is interpreted as serving all people, irrespective of group or ownership, it falls under the ambit of *liberal* democracy. If the principle can be interpreted as to represent the needs of a specific community or group, it can be closely aligned with *liberationist* views on democracy.

4. statements *S2-S4* assume the importance of property rights in that it implies that land claims can be contested in courts. Property rights are therefore taken as being a fundamental right that can be protected through the courts. The level of agreement enables one to gauge whether respondents place the normative priority on all being able to use the court, or that courts should protect only specific aspects of public life or serve the needs of a specific group.

Statement *S2* (landowners who dispute land claims by going to court are racist) tests how respondents view the application of the 'rule of law'. It tests whether respondents see landowners (defined as white per above explanation) are acting in a racist fashion by contesting land claims in court. It therefore tests whether respondents think the principle should be preferentially applied based on race and ownership, as being cast a racist is not an enviable characteristic. The greater the level of agreement with the statement, the greater the implied belief that the principle of 'rule of law' should serve

the interest of a *specific* group of people, and should be applied preferentially and not universally. By implication then, those respondents that agree with the statement can be grouped as subscribing to the *liberationist* perspective on democracy and the *high-context* cultural orientation and those opposing it to the *liberal* and *low-context* perspective.

Statements *S3* (landowners who dispute land claims by going to court are fairly using the rights awarded to them by the constitution) and *S4* (landowners who dispute land claims by going to court are blocking transformation) are seen by the researcher, to most directly create the dichotomy between groups. This is due to the fact that democracy, as an analytical construct, is viewed as being comprised of differing yet interrelated empirical processes. On the one hand there is democracy-as-process, with the parallel being democracy-as-substance. Statement *S3* has direct bearing on democracy-as-process, with statement *S4* referring to democracy-as-substance. This is due to statement *S3* referring not only to the implied importance of the rule of law (supremacy of courts), but also the importance of the supreme document of law, the Constitution. Statement *S4*'s relevance to democracy-as-substance is derived from the term *transformation*<sup>32</sup>.

Although it has already been argued that statements *S2-S4* deals with the implied subscription to the 'rule of law' principle, the principle (and therefore democracy-as-process) is most clearly articulated in statement *S3*. Statement *S3* can be seen as testing respondent's agreement on the normative priority of the rule of law in procedural terms. If respondents agree with this statement, it shows that they are of opinion that using the courts as an arena for contestation is a fundamental right that landowners (perceived as white) should have access to. Statement *S3* tests the respondents' belief on whether all are equally protected by the law, regardless of race or ownership.

It is also necessary to state that when statement *S3* refers to "rights awarded to them by the Constitution", it is not stipulated what rights are referred to. A possible reference could be to assume that the Constitutional rights that are referred to be those

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<sup>32</sup> The role of the transformation project as described in the previous chapters is conterminous with democracy in South Africa.

of Section 25 (Property rights) and Section 34 (Access to courts) (RSA Constitution, 1996). Both these rights are enshrined in the Bill of Rights, and are therefore rights awarded to all citizens of South Africa regardless of race or class. It is however, not stipulated that statement *S3* refers only to these rights, but as they have direct bearing to the statement, these rights seem to be those that the statement is referring to. Statement *S3* has reference to protection of property and the right to equal access to the judicial system, both of which are fundamental rights in the *liberal* approach to democracy.

It can therefore be deduced that agreement to this statement shows that respondents are of opinion that the rights enshrined in the Constitution, and their arena for contestation (courts), are open to all irrespective of race and ownership. Disagreement with the statement implies the exact opposite. Agreement to statement *S3* would therefore place the respondents in the *liberal* perspective on democracy and *low-context* cultural orientation, whilst those who disagree would fall in the *liberationist* camp of democracy and *high-context* cultural orientation.

Whereas statement *S3* refers to the procedural aspect of democratic systems, (the rule of law and supremacy of constitution), statement *S4* is squarely placed within the substantive conceptions of democracy due to its testing the rule of law principle with a clearly stated goal of democracy in South Africa, that of *transformation*. Those respondents that think using the courts blocks transformation can be grouped as *liberationist* and *high-context* cultural orientation as they are of opinion that the outcome of democracy (transformation) is more important than the procedures allowing democracy to exist (rule of law). The opposite is true for those who disagree with the statement and places them in the *liberal* perspective on democracy and *low-context* cultural orientation.

## ***5.4 Data presentation***

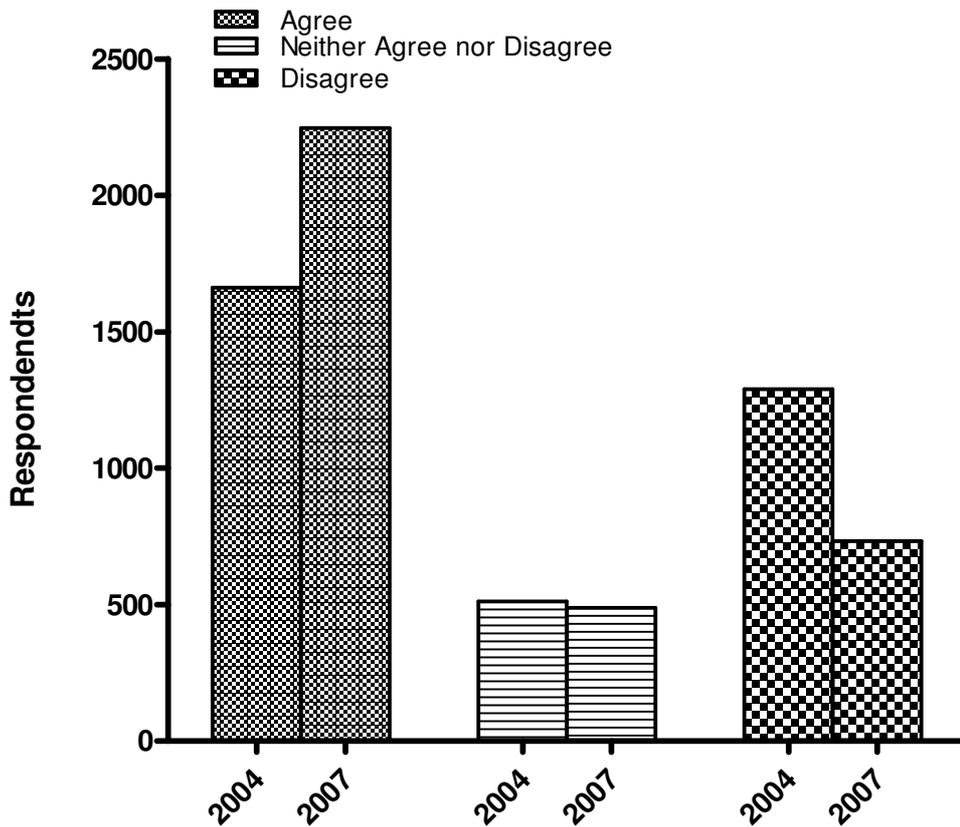
### **5.4.1 Responses to the statement “All land whites own they stole from blacks”**

The data presented below, obtained from three datasets illustrate the level of agreement across the general population and across elites in response to *S1*. The

categories for response were recoded from the five categories to three categories, for ease of representation. The broad level of responses illustrated below in Figure 1, and shows that there is a marked increase in level of agreement between the 2004 and 2007 in the public opinion datasets. In 2004, 47.6% of the sampled population ‘agreed’ with statement *SI*, 14.6% ‘neither agreed nor disagreed’, whilst 36.9 % ‘disagreed’. In 2007, 64.6% ‘agreed’, 14% ‘neither agreed nor disagreed’ while 21% ‘disagreed’ with the statement. There is a 16% increase in level of agreement with statement *SI* and a corresponding 16% decrease in level of disagreement with the statement.<sup>33</sup>

**Figure 1**

**Responses to: "All land whites own they stole from blacks",  
2004 and 2007**

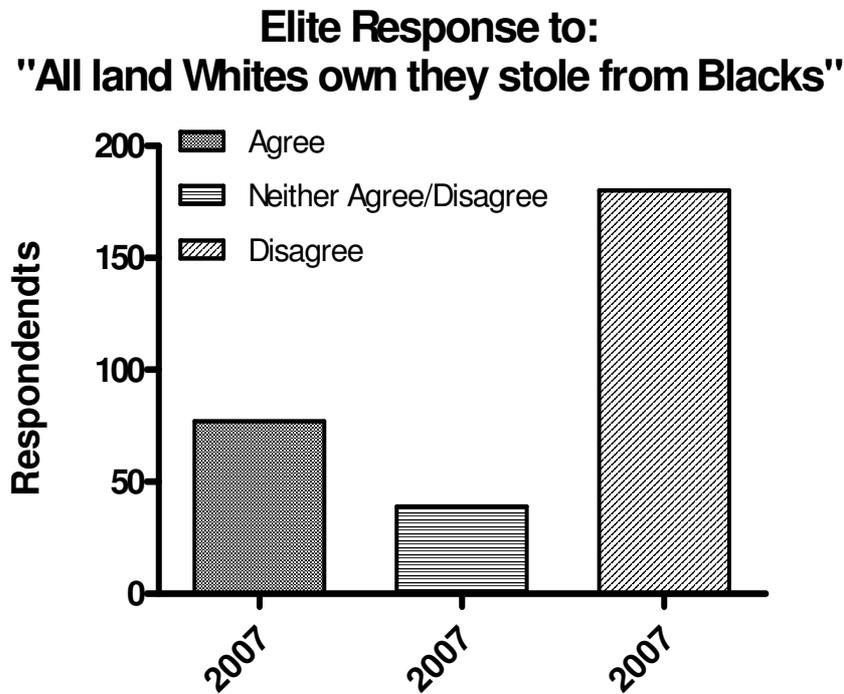


The picture for the elite group as shown in Figure 2 is markedly different. Amongst elites, 25.8% ‘agreed’ with the statement, 13.2% ‘neither agreed nor disagreed’ with 60.9% ‘disagreeing’ with the statement. The level of agreement is noticeably lower

<sup>33</sup> In both 2004 and 2007 less than 1% of respondents fell in the categories did not know or refused to answer clearly showing that most respondents do have an opinion about *SI*.

amongst elites than amongst the general population, as the bar graph below clearly illustrates.

Figure 2



In order to assess the level of agreement/disagreement across the general population and across elites for the three datasets, the influence of the independent variables, race, language and political orientation on responses to *SI* “All land whites own they stole from blacks” were determined using the five original categories which are tabulated and depicted below.

**5.4.1.1 The association of race with the response to the statement “All land whites own they stole from blacks”**

Datasets from 2004 and 2007 were analysed according to race, shown in Table 5.2, illustrating differences amongst the South African population groups and the changes in responses over this period with respondents in the “don’t know” category never exceeding 1%.

It is clear that blacks have the highest level of agreement with statement *SI* in both 2004 (74.5%) and 2007 (80%). Blacks are likely to have a greater tendency to ‘strongly agree’ with statement *SI* instead of falling in the category of ‘agree’.

Within all the racial categories, the level of agreement has increased from 2004 to 2007. Even for whites, who have the highest level of disagreement with statement *SI*, the level of agreement has increased dramatically. In 2004, only 3, 1% of whites ‘agree’ while in 2007 the corresponding figure is 9%. There is a 32.8% decrease in those white respondents that ‘strongly disagree’. This is counteracted by the fact that the ‘disagree’ category amongst whites has increased by 20.6%. The level of disagreement has therefore shifted somewhat amongst white respondents from primarily ‘strongly disagreeing’ in 2004, to just ‘disagreeing’ in 2007<sup>34</sup>.

**Table 5.2 Response to “All land whites own they stole from blacks” by Race**  
(column percentage)

	white		black		coloured		Indian	
	04	07	04	07	04	07	04	07
<b>Strongly disagree</b>	59.1	26.3	1.1	1.7	10.0	4.5	21.2	4.8
<b>Disagree</b>	29.7	50.3	6.8	6.0	38.7	36.3	43.5	31.5
<b>Neither agree nor disagree</b>	6.9	13.9	16.7	12.0	21.3	22.9	17.1	26.7
<b>Agree</b>	2.1	4.6	32.4	35.7	20.0	23.7	12.9	24.8
<b>Strongly agree</b>	1.0	4.4	42.1	44.3	9.2	12.6	4.7	11.5
<b>Don't know</b>	1.0	0.5	1.0	0.4	0.5	0.0	0.6	0.0

The level of agreement amongst coloured respondents has remained largely the same for 2004 and 2007. There is an interesting increase in the level of agreement in the Indian category, with both ‘agree’ and ‘strongly agree’ responses showing a twofold increase to 24.8% and 11.5% respectively. There is also a dramatic decrease amongst Indians who ‘strongly disagree’ with statement *SI* with the percentage changing from 21.2% to 4.8% in the ‘strongly disagree’ category and from 43.5% to 31.5% in the ‘disagree category’. It would appear from the data presented above, that the number of whites and Indians who agree with the statement have increased, and blacks and coloureds have remained at similar levels of agreement as shown in 2004. The responses are highly polarised with relation to racial categories.

<sup>34</sup> The racial categories employed are those used in the surveys that were conducted and their use is not the researcher’s classification of respondents into racial categories

### 5.4.1.2 The association of language with the response to the statement “All land whites own they stole from blacks”

The data depicted in Table 5.3 shows that Afrikaans and English respondents fall overwhelmingly into categories of disagreement with statement *SI*. Within Afrikaans speaking respondents, there has been a shift in views on statement *SI*. There is a substantial decrease, 45.4% in 2004 to 18.3% in 2007 amongst those who ‘strongly disagree’. This is offset by an increase amongst Afrikaans respondents in the ‘disagree’ and ‘neither disagree nor agree’ categories. There is also a substantial decrease amongst English respondents who ‘strongly disagree’ with the 37.4% in 2004 falling to 10% in 2007. Amongst Xhosa respondents, there has been an increase from 29.4% in 2004 to 45.3% in 2007 in the ‘agree’ category. The Venda and Swazi speaking respondents show an increase in level of agreement with statement *SI*, whilst the Ndebele speakers show a marked increase in disagreement with three fold increases in the ‘strongly disagree’ and ‘disagree’ categories.

**Table 5.3 Response to “All land whites own they stole from blacks” by Language**  
(row percentage)

	Strongly Disagree		Disagree		Neither Agree/ Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
English	37.4	10	35.4	39.8	13.4	22	9.3	18.2	3.8	9.5	0.7	0.2
Afrikaans	45.4	18.3	32.3	42.7	10.7	17.1	7.2	13.5	3.4	8.2	0.7	0.2
Zulu	0.7	1.5	5.1	5.1	16.2	11.7	34.3	30.5	43.1	51	0.6	0.3
Xhosa	1.4	1	7.3	3.9	22.1	10.1	29.4	45.3	38.8	39	0.9	0.8
N.Sotho	1.9	2	8	6	11.3	11.2	35.4	36.3	42.5	44.4	0.9	0
S.Sotho	0.8	2	9	8.1	15.5	11.8	31.8	35.8	41.6	41.9	1.2	0.3
Tswana	0.4	2	6.9	9.3	13.9	15	33.5	33.3	41.2	40.2	2	0
Tsonga	2.6	0	11.7	10.6	13	17.3	27.3	26.9	42.9	45.2	2.6	0
Venda	1.9	3.5	5.8	1.8	21.2	5.3	30.8	35.1	40.4	54.4	0	0
Swazi	0	3.2	4.4	3.2	8.9	24.2	24.4	33.9	62.2	35.5	0	0
Ndebele	0	3.8	4.5	15.4	18.2	11.5	31.8	19.2	45.5	50	0	0
Other	9.1	6.3	18.2	31.3	18.2	12.5	27.3	18.8	18.2	25	9.1	0

It must be noted that the linguistic groups mentioned last have a small number of speakers amongst the sampled population, and the results are therefore misleading as they are presented in a percentage format with a small number of respondents accounting for a large percentage change. There is a large degree of differentiation between Afrikaans and English speaking respondents and those respondents speaking a Bantu language<sup>35</sup>.

#### 5.4.1.3 The association of political orientation with the response to the statement “All land whites own they stole from blacks”

There is a strong level of differentiation amongst the respondents based on the political party they would vote for and their level of agreement towards statement *SI*, shown in Table 5.4.

**Table 5.4 Response to “All land whites own they stole from blacks” by Political Party affiliation (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
ANC	2.3	1.7	9.1	7.9	17.1	13	37.1	35.1	38.9	42.2	0.7	0.2
DA	50.9	19.6	29.9	42.2	8.5	15.3	5.3	12.4	4.6	10.8	0.7	0
IFP	7.1	2.8	11.6	2.8	17.9	10.1	23.3	30.3	40.2	54.1	0.9	0
ID	35.6	7.6	30.5	42.2	13.6	19.7	13.6	22.7	5.1	7.6	1.7	0
ACDP	37.9	8.8	33.3	17.6	16.7	8.8	6.1	26.5	4.5	35.3	1.5	2.9
UDM	8.1	0	10.8	7.1	10.8	7.1	35.1	57.1	32.4	28.6	2.1	0
FF+	63.2	30.8	26.3	53.3	5.3	7.7	2.6	7.7	2.6	0	0	0
PAC	12.5	0	16.7	14.3	16.7	14.3	12.5	38.1	41.7	33.3	0	0
UCDP	12.5	0	37.5	10	0	30	12.5	20	37.5	40	0	0
MF	0	0	66.7	60	16.7	10	16.7	30	00	0	0	0
Azapo	0	0	50	28.6	25	28.6	0	28.6	25	14.3	0	0
NNP	27.4	-	7.4	-	14	-	6.1	-	8.5	-	0	-
Don't Know	29.7	7.4	29.3	26	12.9	16.3	13.7	26.5	12.2	23.3	1.9	0

<sup>35</sup> Bantu languages referring to Zulu, Xhosa, North and South Sotho, Tswana, Tsonga, Venda, Swazi and Ndebele. The author acknowledges that there are numerous ways of classifying linguistic groups, with a more technically correct term for the language family spoken in South Africa being the Niger-Congo-South family. Bantu languages is a recognized family name for the languages spoken in the RSA (Lewis, 2009).

The ANC supporters overwhelmingly agree with statement *SI*, with more respondents voting for the ANC that fall in the ‘strongly agree’ than ‘agree’ categories in both 2004 and 2007. An interesting shift has occurred amongst those respondents who support the DA. Although most of the DA supporters still ‘disagree’ with statement *SI*, there was a change in their level of agreement. In 2004, 50.9% of DA voters ‘strongly disagreed’ and 29.9% ‘disagreed’. In 2007, the DA supporters have altered their level of agreement somewhat with only 19.6% ‘strongly disagreeing’, and 42.2% ‘disagreeing’. There is a shift from ‘strongly disagree’ to ‘agree’ amongst the parties whose supporters overwhelmingly disagree with statement *SI*, especially amongst DA and FF+ supporters.

#### **5.4.1.4 Elite responses to the statement “All land whites own they stole from blacks”**

As was seen in Figure 2, the elite sample has a distinctly different view on statement *SI* in comparison to the public opinion section of the survey. Table 5.5 shows the overall level of agreement amongst elites. It is possible to see that most members of the elite group are in disagreement with the statement, with more elite respondents ‘disagreeing’ than ‘strongly disagreeing’.

**Table 5.5 Response to “All land whites own they stole from blacks” by Elites**

	<b>Count</b>	<b>Percent</b>
Strongly Agree	35	11.7
Agree	42	14.1
Neither agree/disagree	39	13.2
Disagree	107	36.2
Strongly Disagree	73	24.7

Table 5.6 shows how respondents in the different sectors amongst the elite population responded to statement *SI*. It is evident that the groups with the highest levels of agreement are parliamentarians (39.9%) and civil servants (29.4%), whilst the statement is most vehemently opposed by the business sector (86.3%) followed by the media (64%) and the church sectors (62%).

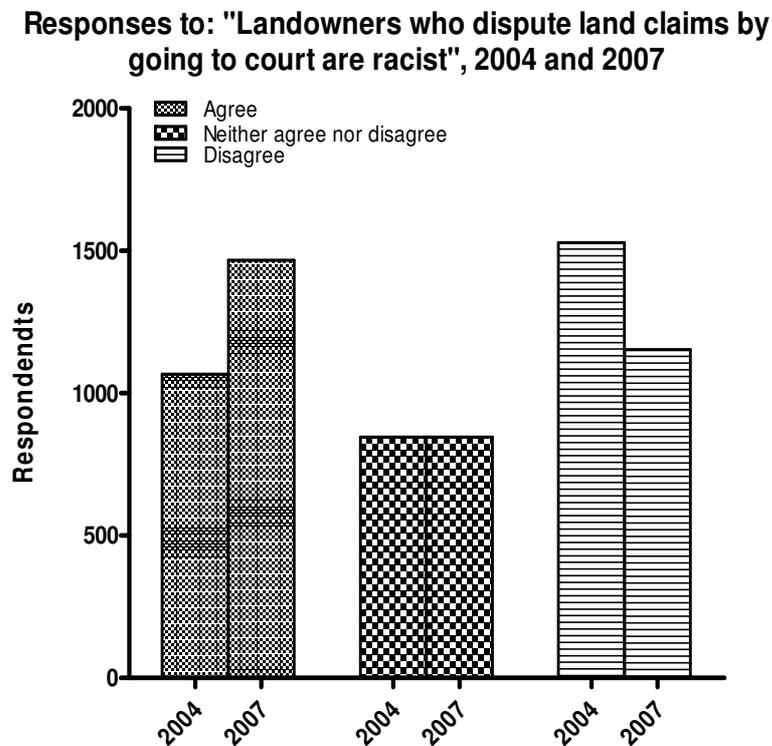
**Table 5.6 Response to “All land whites own they stole from blacks” by Elite sector (row percentage)**

	Parliament	Media	Civil Servant	Business	Church
Strongly Agree	14.7	6	17.6	5.9	12
Agree	25.2	16	11.8	-	8
Neither agree/disagree	15.1	14	9.8	7.8	18
Disagree	29.9	40	431	41.2	32
Strongly Disagree	15.1	24	17.6	45.1	30

### 5.4.2 Responses to the statement “Landowners who dispute land claims by going to court are racist”

The data presented, obtained from three datasets, depicts the level of agreement across the general population and across elites in response to S2. The categories for response were recoded from the five original categories to three categories, for ease of representation. Illustrated in Figure 3 below is the broad level of response amongst the general population and shows that in 2004 30.5% ‘agreed’, 24.2% ‘neither agreed nor disagreed’ and 43.8% ‘disagreed’.

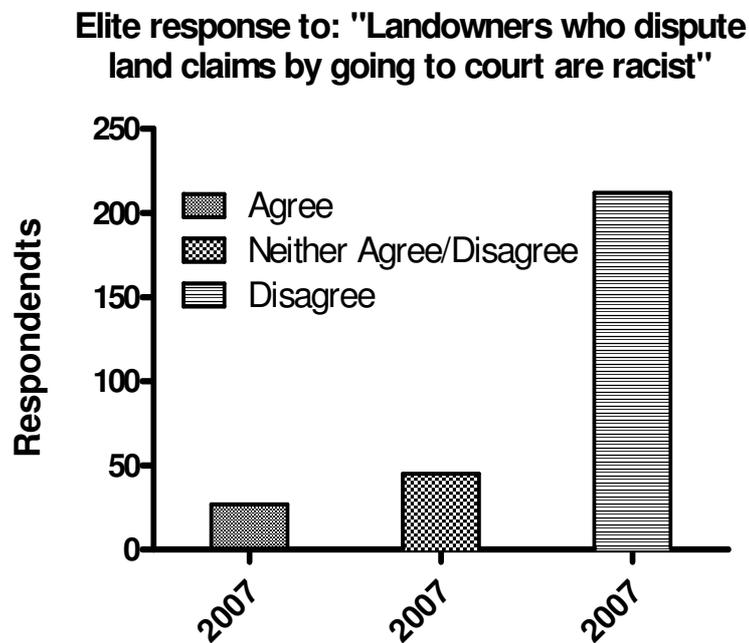
**Figure 3**



The corresponding percentages in 2007 were 42.1%, 24.3% and 33.1%. There is therefore an overall shift in agreement over this period, with the number of respondents agreeing with S2 showing an increase of 11.6% in 2007. Correspondingly, the level of disagreement has decreased by 10.7%.

Again, the picture for the elite population group (figure 4) is different from the general population. Amongst elites, 12.5% ‘agree’, 15.4% ‘neither agree nor disagree’ and 72.1% ‘disagree’ with the statement.

**Figure 4**



The data presented below shows the level of agreement/disagreement of responses to S2 “Landowners who dispute land claims by going to court are racist” which was assessed across the general population and across elites for the three datasets. The influence of the independent variables, race, language and political orientation on the responses were determined using the five original categories which are tabulated and depicted below.

#### 5.4.2.1 The association of race with the response to the statement “Landowners who dispute land claims by going to court are racist”

Data sets of responses to *S2* were subsequently analysed according to race with Table 5.7 showing how the different racial categories responded. The trend is roughly similar to that of found for statement *S1*.

**Table 5.7 Response to “Landowners who dispute land claims by going to court are racist” by Race (column percentage)**

	white		black		coloured		Indian	
	04	07	04	07	04	07	04	07
Strongly disagree	32	24	5.7	5.4	6.2	5	6.5	6.7
Disagree	40	48.3	22.3	18.3	43.6	42.7	52.9	37
Neither agree nor disagree	16.9	17.8	27.1	24.6	27.9	24.3	21.8	37.6
Agree	6.1	8.1	27.4	30.3	14.4	20.9	14.1	17
Strongly agree	2.3	1.4	16.7	21	4.6	6.4	4.7	1.8
Don't know	2.3	0.5	0.9	0.4	3.1	0.6	0	0

The statement is most vehemently opposed by the white group (72%) followed the Indian and then the coloured group. Amongst whites, there is a decrease in the amount of respondents who ‘strongly disagree’ from 32% to 24%. This is offset by an increase in white respondents who ‘disagree’ from 40% to 48.3%. There are increases amongst the black proportion in both categories of agreement. This is also the case amongst the coloured sector of the sample. The Indian sector also shows a decrease in those who ‘strongly agree’, and a relatively large increase amongst those who ‘neither agree nor disagree’.

#### 5.4.2.2 The association of language with the response to the statement “Landowners who dispute land claims by going to court are racist”

One is able to see that there is also a strong linguistic dimension to the level of agreement with statement *S2* as is evident from the data presented in table 5.8. Amongst the Afrikaans and English speaking respondents, there is a downward trend in the percentage of those who ‘strongly disagree’ with a concomitant increase in the ‘disagree’ category (1.8% and 1.3%, respectively). There is also an increase in the

‘agree’ category amongst Afrikaans speaking respondents of 6.8% and English speaking respondents of 4.1%.

The overall level of agreement is much higher amongst those speaking a Bantu language. There is an interesting shift amongst Zulu speakers with fewer respondents ‘disagreeing’ (31.5% in 2004 and 19.4% in 2007), and an increase in both categories of agreement (44.3% in 2004 and 55.9% in 2007). There is also a marked increase of 11.3% in the North Sotho speakers who ‘strongly agree’. The Tsonga language category also shows considerable increases in overall levels of agreement.

**Table 5.8 Response to “Landowners who dispute land claims by going to court are racist” by Language (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
English	20.9	11.1	43.2	44.5	21.4	28	9.5	13.6	3.3	2.7	1.6	0
Afrikaans	23.5	16.6	41.6	43.4	19.7	19.6	9	15.8	3.2	3.8	2.6	.8
Zulu	7.3	5.1	24.2	14.3	23.2	24.6	25.2	32.7	19.1	23.2	0.9	0.1
Xhosa	5.9	5.6	23.8	25	34.8	24.9	27.1	29.7	8.5	13.8	0	1
N.Sotho	6.6	4.7	21.7	10.5	23.6	26.8	27.4	27.8	18.9	30.2	1.9	0
S.Sotho	2.9	6.4	19.2	21.3	26.9	19.6	35.1	31.4	15.1	20.9	0.8	0.3
Tswana	4.9	4.5	20	20.3	26.9	22.8	29.8	32.5	16.3	19.5	2	0.4
Tsonga	3.9	5.8	23.4	11.5	37.7	28.8	18.2	28.8	15.6	25	1.3	0
Venda	3.8	8.8	11.5	33.3	26.9	17.5	30.8	19.3	26.9	21.1	0	0
Swazi	2.2	1.6	26.7	14.5	13.3	33.9	22.2	25.8	35.6	24.2	0	0
Ndebele	4.5	3.8	18.2	11.5	22.7	46.2	13.6	15.4	40.9	23.1	0	0
Other	0	0	27.3	31.3	18.2	31.3	36.4	6.3	9.1	25	9.1	6.3

#### **5.4.2.3 The association of political orientation with the response to the statement “Landowners who dispute land claims by going to court are racist”**

The difference between ANC supporters and DA supporters is evident when studying Table 5.9. Again, it is ANC supporters that show the highest level of agreement with

statement S2, while FF+ supporters show the highest level of disagreement. There is an increase amongst ANC supporters in the ‘agree’ category of 4.5% and ‘strongly agree’ by 3.8%. Amongst DA supporters, there is a decrease of those who ‘strongly disagree’ down from 28.3% to 17.9%, and a concurrent increase in the ‘disagree’ category from 38.2% to 45.2%. Despite the increased level of agreement amongst DA supporters, the polarisation between supporters of the ANC (agreement, 50.1%) and of the DA (disagreement, 63.1%) on the statement remains high.

**Table 5.9 Response to “Landowners who dispute land claims by going to court are racist” by Political Party affiliation (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
ANC	5.1	5.5	23.6	19.4	28.1	24.6	26.1	30.6	15.7	19.5	0.8	0.3
DA	28.3	17.9	38.2	45.2	18.1	19.8	8.5	13.4	4.9	3.7	1.5	0
IFP	8.9	5.5	32.1	13.8	29.5	29.4	18.8	23.9	8.9	27.5	1.8	0
ID	20.3	4.5	49.2	53	18.6	19.7	5.1	18.2	3.4	4.5	3.4	0
ACDP	15.2	11.8	45.5	23.5	21.2	17.6	12.1	23.5	4.5	23.5	1.5	0
UDM	10.8	0	48.6	42.9	10.8	7.1	21.6	50	8.1	0	0	0
FF+	36.8	23.1	44.7	61.5	15.8	15.4	2.6	0	0	0	0	0
PAC	8.3	4.8	29.2	28.6	29.2	28.6	16.7	19	16.7	19	0	0
UCDP	12.5	0	62.2	10	12.5	60	12.5	20	0	10	0	0
MF	16.7	10	833	50	0	10	0	20	0	10	0	0
Azapo	25	0	50	42.9	0	19.8	25	0	0	28.6	0	0.3
NNP	46.5	-	43.3	-	21.3	-	14	-	3	-	1.8	-
Don't Know	18.6	8.8	32.7	32.6	24	30.2	12.5	18.6	8	9.8	3.8	0

#### 5.4.2.4 Elite responses to the statement “Landowners who dispute land claims by going to court are racist”

From table 5.10 it is visible that more elites are in disagreement (72.1%) with statement S2 than are in agreement (12.5%) with the statement. Table 5.11 shows that the sectors amongst elites with the highest level of agreement to the statement are

parliamentarians (23.6%), followed by civil servants (15.6%). The sectors with the highest levels of disagreement are the business sector (84.4%) followed by the media (80.4%) followed by the church sector (75.5%).

**Table 5.10 Response to “Landowners who dispute land claims by going to court are racist” by Elites**

	Count	Percent
Strongly Agree	14	4.6
Agree	23	7.9
Neither agree/disagree	45	15.4
Disagree	153	52.1
Strongly Disagree	59	20

**Table 5.11 Response to “Landowners who dispute land claims by going to court” by Elite sector (row percentage)**

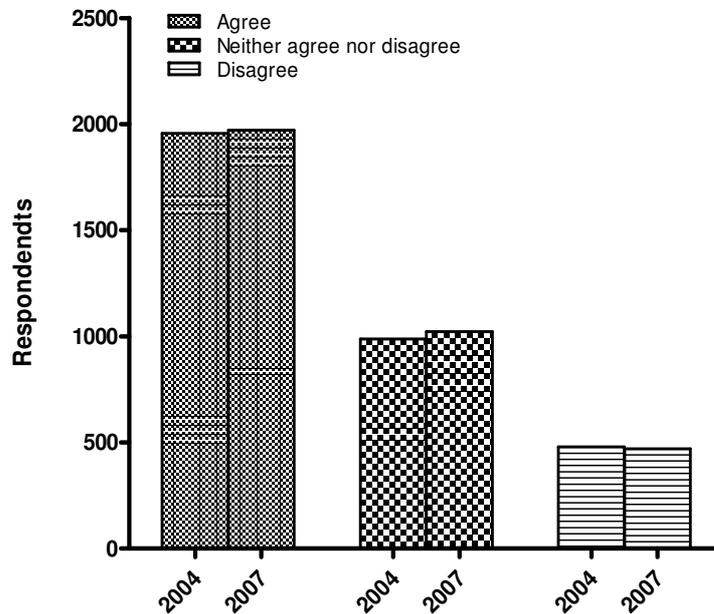
	Parliament	Media	Civil Servant	Business	Church
Strongly Agree	7.2	-	7.8	-	6.1
Agree	16.4	2	7.8	5.9	-
Neither agree/disagree	19.8	17.6	7.8	9.8	18.4
Disagree	43.8	64.7	58.8	47.1	53.1
Strongly Disagree	12.8	15.7	17.6	37.3	22.4

### **5.4.3 Responses to the statement “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution”**

The level of agreement across the general population and elites in response to S3 were analysed for the three sets of data, 2004 and 2007 and 2007 for the elites. The categories for response were recoded from five to three for ease of representation. Figure 5 below represents the overall level of agreement amongst the general population and figure 6 the elite responses to the statement. Amongst the general population, more than half of the respondents were in agreement with the statement, a response that did not change over the survey period — 56% ‘agreed’ with statement S3 in 2004 and 56.7% in 2007. The non-committant group of respondents remained constant with 28.3% ‘neither agreed nor disagreed’ in 2004, whilst the corresponding figure in 2007 was 29.4%. Only 14% of respondents ‘disagreed’ in 2004, with 13.6% ‘disagreeing’ in 2007.

**Figure 5**

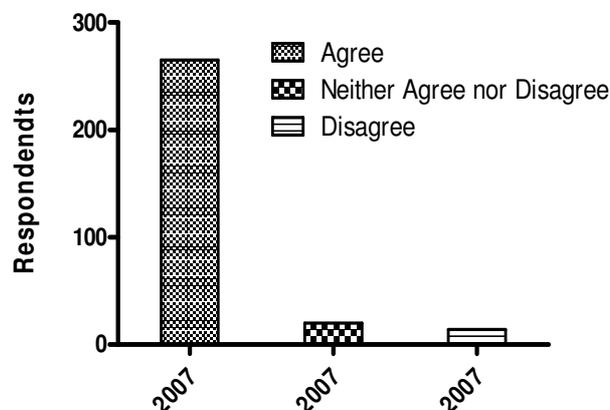
**Responses to: "Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution", 2004 and 2007**



Amongst the elite population, 88.7% were in agreement, 6.7% 'neither agreed nor disagreed', with only 4.6% disagreeing with the statement. Statement *S3* is the statement that has the highest level of agreement amongst elites, and the second highest level of agreement amongst the general population, second only to statement *S1*.

**Figure 6**

**Elite response to "Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution"**



Responses to S3 “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution” was assessed across the general population and across elites for the three datasets. The influence of the independent variables, race, language and political orientation on the level of agreement/disagreement of the responses were determined using the five original categories which are tabulated and depicted below.

#### 5.4.3.1 The association of race with the response to the statement “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution”

Table 5.12 presents the responses to statement S3 by racial category. Amongst all races, there is a high level of ‘agreement’ with the statement. Interestingly, more than half of respondents amongst the black, coloured and Indian sectors of the sample were in agreement with the statement in 2004 showing a 5% increase by 2007 with percentages ranging from 54.5%, 66.7% and 56.4% respectively. The white group, showed a decrease by 6.6% in the same category — 68% in 2004 and period to 61.4%. This group also shows the highest number of respondents who fall in the ‘disagree’ category (13.4% in 2007). Furthermore, the ‘neither agree/disagree’ category remained consistent except for the coloured group that has shown a 5% decrease to 24%.

**Table 5.12 Response to “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution” by Race (column percentage)**

	white		black		coloured		Indian	
	04	07	04	07	04	07	04	07
Strongly disagree	3.6	4.8	4.4	4.2	1.8	0.3	0.3	1.3
Disagree	6.1	13.4	12.7	9.7	6.2	7.8	11.2	5.5
Neither agree nor disagree	19.4	20.3	31.9	31.2	29	24	32.9	36.4
Agree	35.6	45.5	30.5	35.4	50	51.1	47.1	47.3
Strongly agree	32.4	15.9	19.4	19.1	9.5	15.6	5.9	9.1
Don't know	2.5	0	1.3	0.4	4.4	1.1	2.4	0.6

### 5.4.3.2 The association of language with the response to the statement “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution”

In Table 5.13 the category ‘disagree’ has show a decrease amongst Zulu and Xhosa speaking respondents with a greater decrease in disagreement amongst the Zulu (7.4%) than amongst the Xhosa respondents (3.9%). Interestingly, amongst Xhosa speaking respondents there are fewer respondents who fall in the ‘neither agree/disagree category’ (40% in 2004 and 30.7% in 2007), with an increase of 29.4% to 43.7% in the ‘agree’ category.

**5.13 Response to “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution” by Language (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
English	1.6	1.1	8.2	7.7	25.1	27.3	42.1	50.7	20.6	13	2.3	0.2
Afrikaans	3.2	3.6	5.7	11.4	22.3	22.7	39.5	45.9	25.6	15.6	3.4	0.8
Zulu	5.7	3.9	14.3	8.7	28	35.4	32.3	32.2	18.2	19.3	1.5	0.5
Xhosa	3.3	3.4	12	8	40	30.7	29.4	43.7	14.4	14	.9	0.3
N.Sotho	5.7	5.1	11.3	8.5	28.8	26.8	29.7	32.9	22.6	26.8	1.9	0
S.Sotho	4.5	5.1	11	10.5	31.8	29.1	28.6	35.1	23.7	19.6	.4	0.7
Tswana	2.4	4.5	15.5	16.7	33.1	27.6	28.6	32.1	18.4	19.1	2	0
Tsonga	1.3	2.9	5.2	10.6	29.9	28.8	40.3	28.8	22.1	28.8	1.3	0
Venda	3.8	5.3	1.9	3.5	32.7	24.6	34.6	29.8	26.9	36.8	0	0
Swazi	4.4	6.5	20	21	24.4	32.3	8.9	35.5	42.2	4.8	0	0
Ndebele	4.5	11.5	4.5	7.7	22.7	46.2	50	19.2	18.2	15.4	0	0
Other	0	6.3	27.3	12.5	36.4	25	36.4	37.5	0	12.5	0	6.3

Amongst both English and Afrikaans speaking respondents there is an increase in the ‘agree’ category and a decrease in the ‘strongly agree’ category. The number of English respondents in agreement remained constant (63%). The slight decrease in Afrikaans respondents (3.6%) in this category together with the 2.6 decrease in the ‘don’t know’ category accounts for the 5.7% increase in the disagree category amongst Afrikaans speaking respondents.

### 5.4.3.3 The association of political orientation with the response to the statement “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution”

Amongst ANC supporters, feelings towards statement S3 have remained relatively consistent, with a small increase in the ‘agree’ category and a decrease in the ‘disagree’ category (Table 5.14). There is a marked increase in the amount of DA supporters who ‘disagree’ with the statement, from 6.1% to 10.8%. There is also a decrease in the percentage of DA supporters who ‘strongly agree’, down from 28.8% to 15.3%. There is an overall increase in disagreement of 2.7% and a decrease in agreement of 4.5% in the DA group. It is interesting to note that a greater percentage of ANC supporters ‘strongly disagree’ (4%) than DA supporters (3.5%), and that there is a larger proportion of DA supporters who ‘disagree’ (10.8%) than their ANC counterparts (9.6%).

**Table 5.14 Response to “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution” by Political Party affiliation (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
ANC	3.5	4	12.2	9.6	31.9	30.4	32.3	36.4	18.9	19.3	1.2	0.2
DA	3.8	3.5	6.1	10.8	19.3	22	39.1	48.1	28.8	15.3	2.2	0.4
IFP	3.6	3.7	13.6	10.1	30.7	33.9	31.4	26.6	18.6	25.7	2.1	0
ID	0	0	3.4	12.1	24.1	18.2	41.4	53	27.6	16.7	3.4	0
ACDP	1.9	0	3.8	8.8	17	29.4	52.8	44.1	22.6	17.6	1.9	0
UDM	5	0	7.5	0	27.5	7.1	55	85.7	5	7.1	0	0
FF+	4.8	30.8	2.4	15.4	33.3	15.4	14.3	30.8	45.2	7.7	0	0
PAC	0	0	15.6	28.6	46.9	14.3	25	52.4	12.5	4.8	0	0
UCDP	0	10	22.2	0	11.1	40	55.6	30	11.1	20	0	0
MF	0	0	16.7	0	16.7	40	44.4	60	16.7	0	5.6	0
Azapo	20	14.3	0	0	20	14.3	60	71.4	0	0	0	0
NNP	2.7	-	6.6	-	26.4	-	48.4	-	14.3	-	1.6	-
Don't Know	4.7	2.8	8.8	11.2	28.5	36.7	31.8	35.3	21.9	13.5	4	0.5

#### 5.4.3.4 Elite responses to the statement “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution”

From the tables below it is clear that the overwhelming majority of elites are in agreement with statement S3. There is a very small percentage of elites who ‘strongly disagree’ with the statement, 0.7%, with 88.9% of the respondents being in agreement (Table 5.15). In Table 5.16 the sectors with the highest level of agreement with the statement are the media (94.1%), church (92%), parliamentarians (90.8%), civil servants (86.3%) and the business sector with 78.4%. Disagreement with the statement is low, with the parliamentarians and business sectors exhibiting the highest levels, 5.9%.

**Table 5.15 Response to “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution” by Elites**

	Count	Percent
Strongly Agree	93	31.3
Agree	172	57.6
Neither agree/disagree	20	6.7
Disagree	12	3.9
Strongly Disagree	2	0.7

**Table 5.16 Response to “Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution” by Elite sector (row percentage)**

	Parliament	Media	Civil Servant	Business	Church
Strongly Agree	33.3	21.6	33.3	41.2	24
Agree	57.5	72.5	45.1	45.1	68
Neither agree/disagree	3.2	2	17.6	7.8	6
Disagree	5.9	3.9	3.9	2	2
Strongly Disagree	-	-	-	3.9	-

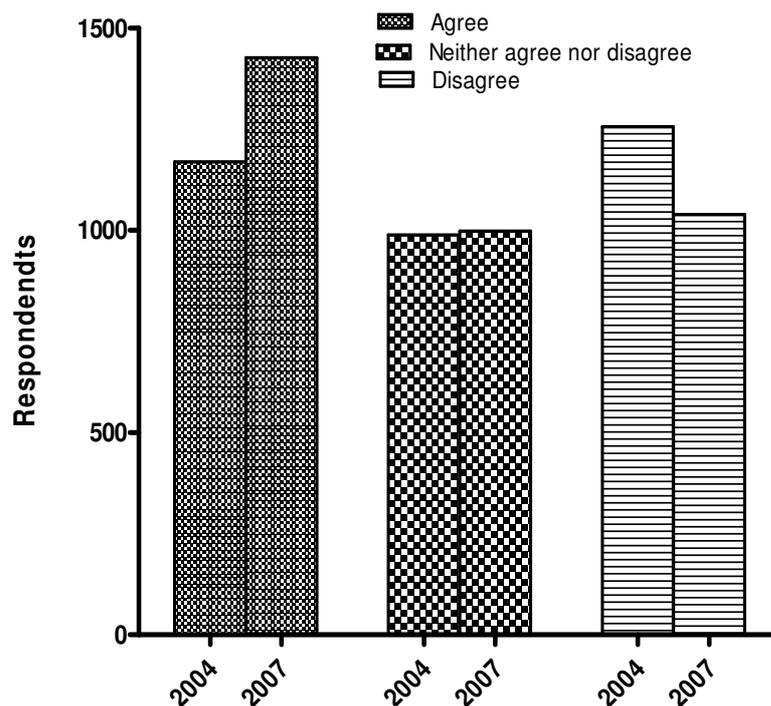
#### 5.4.4 Responses to the statement “Landowners who dispute land claims by going to court are blocking transformation”

The data presented below, obtained from three datasets, depicts the level of agreement across the general population in 2004 and in 2007, and across elites in 2007, in response to S4. The categories for response were recoded from the five original categories to three categories, for ease of representation. Figure 7, displaying

responses to statement *S4*, shows a different picture than that of responses to statements *S1* and *S3* and is similar to that of statement *S2*, in that the sampled population is dispersed amongst all the response categories. What is apparent is that there are substantial responses in each of the three categories. In 2004, 33.5% 'agreed', with the corresponding response in 2007 increasing to 41%. Those respondents who 'neither agree nor disagree' have remained largely unchanged at 28.3% in 2004 and 28.7% in 2007. In 2004, 36% of respondents 'disagreed' whilst in 2007 a decrease to 29.9% was recorded. The overall level of agreement has increased somewhat (7.5%) over the period under review, but at the smallest percentage of all the statements with a 6.1% decrease in the level of disagreement.

**Figure 7**

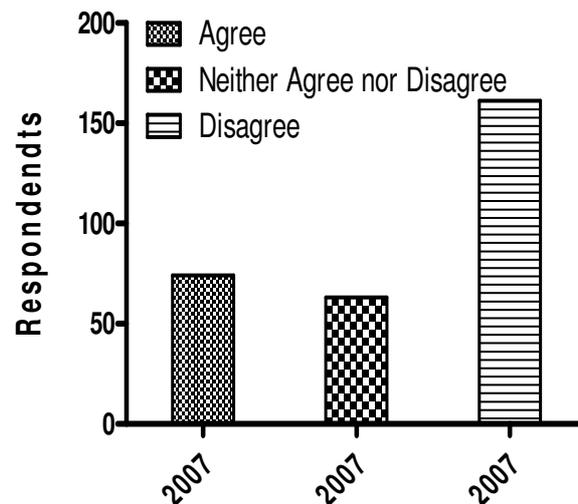
**Responses to: "Landowners who dispute land claims by going to court are blocking transformation", 2004 and 2007**



The response to *S4* by the elites, illustrated in Figure 8, shows 24.6% ‘agreed’, 21.1% ‘neither agreed nor disagreed’, whilst 54.2% ‘disagreed’.

**Figure 8**

**Elite response to: "Landowners who dispute land claims by going to court are blocking transformation"**



The level of agreement/disagreement of responses to *S4* “Landowners who dispute land claims by going to court are blocking transformation” was assessed across the general population and across elites for the three datasets. The influence of the independent variables, race, language and political orientation on the responses were determined using the five original categories which are tabulated and depicted below.

**5.4.4.1 The association of race with the response to the statement “Landowners who dispute land claims by going to court are blocking transformation”**

Table 5.17 shows that the lowest level of agreement to the statement can be found amongst white respondents at 9.3% in 2004 and 8.7% in 2007. There is a sharp decrease of 7.6% amongst white respondents who ‘strongly disagree’ with statement *S4*, whilst there has been an increase of 8.6% in the ‘disagree’ category. Amongst the Indian group, the proportion of respondents who ‘neither agree/disagree’ has increased by 10.8% as well as the number of respondents in this group who disagree

decreasing by 6.8%. Amongst the other segments the levels have remained relatively consistent.

**Table 5.17 Response to “Landowners who dispute land claims by going to court are blocking transformation” by Race (column percentage)**

	white		black		coloured		Indian	
	04	07	04	07	04	07	04	07
Strongly disagree	27	19.4	5.2	6.1	2.3	5.3	4.1	4.2
Disagree	37.4	46	16.3	15.6	37.2	37.4	36.5	29.7
Neither agree nor disagree	23.2	25.4	29.3	28	32.6	29.9	34.7	45.5
Agree	7.4	6.2	31.9	32.5	19.7	19.3	19.4	19.4
Strongly agree	1.9	2.5	15.8	17.5	3.3	6.7	2.9	1.2
Don't know	2.9	0.5	1.5	0.3	4.6	1.4	2.4	0.4

#### **5.4.4.2 The association of language with the response to the statement “Landowners who dispute land claims by going to court are blocking transformation”**

Amongst English and Afrikaans speaking groups there is a slight decline in the percentage of respondents that ‘strongly disagree’, and a slight increase in the category of ‘disagree’, shown in Table 5.18. Within the English and Afrikaans sectors, there are also slight increases in the overall level of agreement to the statement. Interestingly, while the English speaking group shows an increase of 1.6%, the Afrikaans speaking group showed an increase of 4.5%. Despite these changes, respondents who speak English and Afrikaans remain those who have the highest levels of disagreement to the statement, 49.1 and 53.4%, respectively. There is an increase amongst Zulu speaking respondents in the ‘strongly agree’ category of 4.4% and amongst North Sotho speaking respondents of 6.1%. Interestingly, Xhosa speaking respondents show increases in both the ‘strongly disagree’ (0.6%) and ‘disagree’ category (5.7%).

**5.18 Response to “Landowners who dispute land claims by going to court are blocking transformation” by Language (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
English	15.8	7.3	38.7	41.8	27.9	34.1	12.2	13.9	2.8	2.7	2.4	0.2
Afrikaans	19.6	14.7	35.9	38.7	26.4	27	11.7	13.3	2.2	5.1	3.9	1.1
Zulu	5.4	5.2	16.4	12.8	28.6	29.8	32.5	31.9	15.6	20	1.5	0.3
Xhosa	6.6	7.2	16	21.7	32.2	24.7	34.4	34.2	10.6	11.9	0.2	0.3
N.Sotho	8	4.7	18.4	10.8	25	31.5	29.7	30.8	15.6	21.7	3.3	0.3
S.Sotho	2.9	5.7	13.1	16.6	32.2	27.4	32.7	32.4	18.4	17.2	0.8	0.7
Tswana	2.4	7.3	18.4	15	29	26	30.2	35.8	17.6	15.9	2.4	0
Tsonga	13	7.7	19.5	5.8	22.1	26.9	24.7	40.4	16.9	19.2	3.9	0
Venda	0	12.3	9.9	29.8	36.5	21.1	28.8	22.8	25	14	0	0
Swazi	0	1.6	15.6	9.7	28.9	37.1	31.1	24.2	24.4	27.4	0	0
Ndebele	0	3.8	22.7	7.7	18.2	38.5	37.3	19.2	27.3	30.8	4.5	0
Other	0	12.5	36.4	25	9.1	37.5	36.4	12.5	18.2	6.3	0	6.3

**5.4.4.3 The association of political orientation with the response to the statement “Landowners who dispute land claims by going to court are blocking transformation”**

Table 5.19 presents the analysis of responses by political party affiliation. In 2007, the highest level of disagreement to statement *S4* were those of the DA (55.4%) and FF+ (69.2%) respondents. Amongst DA supporters, there is a shift in level of agreement, with a decline of 7.2% in ‘strongly disagree’ category and an increase of 3.6% in the ‘disagree’ category. There is also a small increase of 1.5% in those DA supporters who agree with the statement. Furthermore, a large number of DA supporters tend to be neither in agreement nor disagreement, with this category rising by 4.7% to 27.7% in 2007. Respondents affiliated to the ANC show the highest support for the statement (48.3%) which, since 2004, has increased by 1%. Amongst ANC supporters, the levels of disagreement have remained relatively consistent at 23%, and slightly lower than those neither agreeing nor disagreeing (28%). Amongst IFP supporters, there is a

substantial decrease in the ‘neither agree nor disagree’ category of 13.6% and an increase of 21.2% in the ‘strongly agree’ category.

**Table 5.19 Response to “Landowners who dispute land claims by going to court are blocking transformation” by Political Party affiliation (row percentage)**

	Strongly Disagree		Disagree		Neither Agree/Disagree		Agree		Strongly Agree		Don't Know	
	04	07	04	07	04	07	04	07	04	07	04	07
ANC	4.9	5.8	18.7	17.1	28.8	28.5	30.9	31.8	15.2	16.5	1.4	0.2
DA	23.5	16.3	35.5	39.1	23	27.7	11.3	12.8	3.8	3.5	2.6	0.6
IFP	8	6.4	16.1	18.3	38.4	24.8	28.6	23.9	5.4	26.6	3.6	0
ID	13.6	4.5	40.7	42.4	30.5	27.3	8.5	16.7	1.7	6.1	5.1	0
ACDP	12.1	5.9	33.3	20.6	36.4	20.6	13.6	38.2	3	14.7	1.5	0
UDM	13.5	14.3	21.6	21.4	16.2	7.1	29.7	50	18.9	7.1	0	0
FF+	28.9	15.4	50	53.8	15.8	15.4	5.3	7.7	0	7.7	0	0
PAC	4.2	4.8	12.5	13.3	20.8	33.3	54.2	33.3	8.3	14.3	0	0
UCDP	25	0	25	20	50	60	0	10	0	10	0	0
MF	0	10	33.3	20	33.3	30	16.7	40	16.7	0	0	0
Azapo	0	14.3	25	42.9	25	14.3	50	28.6	0	0	0	0
NNP	9.8	-	31.1	-	36.6	-	17.1	-	2.4	-	3	-
Don't Know	16	5.1	31.2	30.2	25.9	34.9	14.1	20.9	8	8.8	4.6	0

#### 5.4.4.4 Elite responses to the statement “Landowners who dispute land claims by going to court are blocking transformation”

Table 5.20 shows that the majority of the elites ‘disagree’ with statement *S4* at 54.2%. 24.6 % of elites ‘agree’ with the statement, a percentage that is slightly higher than those who ‘neither agree nor disagree’ at 21.1%.

**Table 5.20 Response to “Landowners who dispute land claims by going to court are blocking transformation” by Elites**

	Count	Percent
Strongly Agree	21	7
Agree	53	17.6
Neither agree/disagree	63	21.1
Disagree	132	44.4
Strongly Disagree	29	9.8

**Table 5.21 Response to “Landowners who dispute land claims by going to court are blocking transformation” by Elite sector (row percentage)**

	Parliament	Media	Civil Servant	Business	Church
Strongly Agree	14.7	2	7.8	-	4
Agree	29	15.7	15.7	7.8	10
Neither agree/disagree	16.9	23.5	23.5	13.7	32
Disagree	33	52.9	47.1	52.9	46
Strongly Disagree	6.4	5.9	5.9	25.5	8

A sectored breakdown of elite response (Table 5.21) shows that the highest level of agreement with statement *S4* is by the parliamentarians, 43.7%, followed by civil servants, of whom 23.5% agree. Amongst the media, 17.7% agree and the church sector shows a 14% level of agreement. The lowest level of agreement with the statement is seen in the business sector, 7.8%. It is also the latter group that shows the highest level of disagreement at 78.4%, followed by the media 58.8%, church 54%, civil servants 53% and parliamentarians at 39.4%. Interestingly, amongst the civil servants and parliamentarians who are in disagreement only 11% and 16%, respectively disagree strongly.

## **5.5 Data analysis**

### **5.5.1 Analysis of public opinion**

It is possible that public opinion on land reform forms distinct trends that can be associated with the selected independent variables of this study – demographic factors (race, language), party affiliation and social standing – and may correlate with respondents’ support or rejection of the government’s land reform policies.

Analysing and assessing whether these independent variables correlate with the level of agreement or disagreement to the government's land reform programme will allow the researcher to investigate trends in public opinion surrounding land reform and explore these avenues in terms of the role of the rule of law and transformation within this process.

As has been argued previously, land reform forms part of the larger process of transformation espoused by the ANC led government. It is held by the researcher that if a respondent is in favour of supporting the government's land reform programme, they will be more inclined to support the transformation project as a whole, and the current democratic project purported by the ANC. Support or rejection of land reform is therefore taken as a means of determining support or rejection of the democratic project espoused by the ANC. The level of agreement with land reform and democracy is in turn used to place respondents in specific models of democracy and cultural frameworks described in the previous chapters. As has been argued throughout, those who support the transformation project, as embodied in the land reform programme can be grouped as falling under the *liberationist* model of democracy and *high-context* cultural framework, whilst those opposed can be labelled as ascribing to the *liberal* model of democracy and the *low-context* cultural framework. Agreement with statements *S1*, *S2* and *S4* and disagreement with statement *S3*, identifies a respondent as supporting land reform and subscribing to the *liberationist* model of democracy and a *high-context* culture. Disagreement with statements *S1*, *S2* and *S4* and agreement with statement *S3*, places a respondent in the *liberal* model of democracy and the *low-context* category, as such respondents are not in favour of the land reform project.

#### **5.5.1.1 All land whites own they stole from blacks**

The influence of the race of the respondents on the level of agreement and disagreement with the statement, '*all land whites own they stole from blacks*' was analysed to determine a possible correlation between this independent variable and support or rejection of the government's land reform policies.

A positive link could be established with the black category having the greatest number of respondents who fall in category of agreement with the statement, while the white category showed the highest level of disagreement. In addition, black respondents have a tendency to ‘strongly agree’ with statement *SI*, instead of to simply ‘agree’. This could point to the fact that they feel strongly about the issue of ownership and means of acquisition of land. It points to a pertinent belief amongst blacks that white people are indeed thieves, and thus that ownership is defined in terms of race and theft.

Figure 1 also gives one the impression that the general level of agreement with the statement has increased from 2004 to 2007. There are a number of reasons that can account for such an increase. The first is the composition of the sample. In 2004, approximately 26% of the sample consisted of whites, whilst the corresponding figure in 2007 was 12%. As whites are the population group with the highest level of disagreement to *SI* in both the 2004 and 2007 surveys, the significant reduction in white representation could account for some of the increase in the overall level of agreement to statement *SI* as depicted in Figure 1. In addition, the overall level of disagreement also decreased by 12.5% in the white respondents. The representation of the black population group has also increased by 15% from 2004 to 2007. The black population group is the group with the highest level of agreement with the statement. This also contributes to the overall rise in level of agreement to statement *SI* as seen in Figure 1.

Although statement *SI* does not fall under the scope of the main hypothesis, it serves to illustrate the differing views on ownership of land in South Africa — whether respondents attach a racial connotation to ownership as well as a criminal element to acquisition. Figure 1 shows that the overall trend amongst the respondents is an increased level of agreement (17%) with the statement from 2004 to 2007. It is also the statement that shows the greatest degree of difference between racial groups, especially between white and black categories. It is the statement of which the response reflects the greatest degree of polarisation between the two groups, and the statement that has the lowest and constant response rate in the ‘neither agree nor disagree category’, 14.6% in 2004 and 14% in 2007. The low response rate in the category of ‘neither agree nor disagree’ highlights that most respondents do have an

opinion about the issue of ownership and means of acquisition. It is therefore an issue that invokes a strong response and shows the lowest level of indifference, highlighting that land and land ownership are indeed important issues to all South Africans, irrespective of race, language or party affiliation.

It is interesting to note, that even amongst those who are most vehemently opposed to statement *SI*, white respondents, there is a change in the level of agreement. More white respondents are now inclined to merely 'disagree', with the 29.7% in 2004 increasing to 50.3% in 2007, or to feel ambivalent towards the statement seen in the 7% increase in the 'neither agree nor disagree' category. This is in contrast to those white respondents 'strongly disagreeing' showing a decrease from 59.1% to 26.3% from 2004 to 2007. The coloured and Indian groups tend to overwhelmingly 'disagree' with *SI*, although not to such an acute extent as the white group. The change in white sentiment could show that whites have a greater degree of understanding and sympathy for the plight of landless Africans and their struggle to obtain land.

The analyses of the datasets to determine a possible relationship between the language spoken by the respondents and the level of agreement/disagreement with the statement, '*all land whites own they stole from blacks*' showed a correlation with the different language groups and specific responses. Afrikaans and English speaking respondents showed the highest level of disagreement, whilst respondents amongst the Bantu languages agreed overwhelmingly with the statement. Again, there is an interesting trend amongst Afrikaans and English speaking respondents, whose views have shifted from primarily 'strongly disagreeing' in 2004, to merely 'disagreeing' in 2007. In the 'strongly agree' category, both decreased by 27% with Afrikaans speaking respondents declining from 45.4% to 18.3% while the English speaking respondents declined from 37.4% in 2004 to 10% in 2007. In the category of 'agree' there is an increase amongst Afrikaans speaking respondents from 32.3% to 42.7% with English speaking respondents increasing from 35.4% to 39.8%. Despite this trend, English and Afrikaans respondents still overwhelmingly 'disagree' with the statement, whilst their Bantu speaking counterparts agree overwhelmingly. Language therefore does correlate with a respondents' level of agreement or disagreement with the statement.

The second independent variable analysed was that of the affiliation of the respondents to the different political parties in South Africa. Data generated supported a correlation with the level of agreement/disagreement with the statement, '*all land whites own they stole from blacks*' with respect to the preferred political party. The level of agreement amongst ANC supporters has remained relatively stable, with the majority of ANC supporters falling in a category of agreement with the statement (76.5). ANC supporters tend to 'strongly agree', a figure that has increased from 38.9% to 42.2%. The interesting change is amongst those respondents who do not support the ANC, shifting their responses from 'strongly disagreeing' in 2004 to 'disagree' in 2007. This is most clearly shown in the supporters of the DA, ID and FF+. The respondents who do not know for whom they will vote, amongst whom the intensity and level of disagreement has subsided, have to a lesser degree remained unsure with the majority boosting the ranks of those in agreement. A person's preferred political party does therefore correlate with the level of agreement or disagreement with the statement.

A Chi-square test of significance and a Cramer's V strength of association test were employed to verify trends of independent variables on statement *SI*. For race, language and party affiliation the null-hypothesis (that there is no relationship between statement *SI* and the independent variables) was rejected by the low values garnered when employing a Chi-square test, showing that in all cases there is a significant correlation between the independent variables and the statement in both the 2004 and 2007 surveys. The rejection of the null-hypothesis was reinforced by corresponding values of strong association found using Cramer's V test of association. The correlation between language (.303 and .250) and political party (.273 and .219) and statement *SI* varies between moderate and strong, pointing to a definite level of association between the dependent and independent variables. Correlation between race and statement *SI* garnered the highest values in both the 2004 and 2007 surveys, yielding values of .377 and .45, indicating a very strong level of association.

Analysis of these data therefore confirmed that demographic factors and party affiliation do correlate to the level of agreement with the statement that all '*land whites own they stole from blacks*'.

### 5.5.1.2 Landowners who dispute land claims by going to court are racist

The level of agreement and disagreement with the statement, that '*landowners who dispute land claims by going to court are racist*' was analysed in terms of the race of the respondents to determine a possible correlation between this independent variable and support or rejection of the government's land reform policies.

The results of responses to the statement show that there is an overall increase of 11.6% in agreement with the statement, as shown in Figure 3. Once again, there is a great degree of differentiation amongst racial groups, with the white sector disagreeing overwhelmingly (72%) and black respondents predominantly agreeing (51.3%). The Indian and coloured sectors show closer similarity to that of white respondents, but with a lower level of agreement, and higher response rates in the 'neither agree nor disagree' category. There is an increase in the number of respondents who are in agreement with the statement in the black (7.2%) and coloured (8.3%) sectors with the Indian respondents remaining constant. The interesting shift is again found amongst white respondents, who have shifted away from the 'strongly disagree' from 32% to 24% to be more inclined to merely 'disagree', up from 40% to 48.6%.

In the categories of disagreement there is a decrease among the black (3.3%), coloured (2.1%) and Indian (15.7%) sectors. This decrease, together with the decrease seen in the 'neither agree nor disagree' category of black and coloured respondents has led to increased levels of agreement with the statement. Although the majority of Indian respondents (37.6%) fall in the 'neither agree nor disagree' category, they nevertheless, together with the black and coloured sectors, show higher levels of agreement with the statement than white respondents, showing that these respondents feel that contesting a land claim in court labels one a racist. A respondent's race does therefore correlate with the level of agreement or disagreement with the statement.

The analysis of independent variable of language to determine a possible relationship between the respondents' language and the level of agreement/disagreement with statement S2, that '*landowners who dispute land claims by going to court are racist*', yielded similar results as that of race. The Bantu languages show the tendency to

'agree' overwhelmingly with statement S2, with the tendency amongst Bantu languages to show increases in both categories of agreement from 2004 to 2007. Amongst English and Afrikaans speaking respondents, a similar trend as seen amongst white respondents is also evident in the language categories. More English and Afrikaans speakers are inclined to 'disagree' as opposed to falling in the category of 'strongly disagree'. There is also an increase in the category of 'agree' for both languages, up from 9.5% to 13.6% for English, and from 9% to 15.8% for Afrikaans speaking respondents.

Despite the increase in agreement amongst English and Afrikaans speaking respondents, and a decrease in the 'strongly disagree' category (9.8% and 6.9%, respectively), these language categories still show overwhelming disagreement with the statement (55.6% and 60%, respectively). From the data presented, it is evident that the language of a respondent does indeed correspond to the level of agreement or disagreement with the statement. Afrikaans and English respondents tend to disagree, whilst their Bantu speaking counterparts tend to agree with the statement.

Analysis of the correlation between the political party affiliation and the level of agreement/disagreement with the statement that *'landowners who dispute land claims by going to court are racist'* yielded a trend similar to that found with the race and language variables. Amongst ANC supporters, agreement with the statement has increased from 2004 to 2007 by 4.5% in the category of 'agree' and 3.8% in the 'strongly agree' category. The DA and FF+, parties with an overwhelmingly white support base, show decreased levels in the category of 'strongly disagree' (10.4% and 13.7%, respectively) with an increase in the category 'disagree' (7% and 16.8%, respectively). There is therefore a downward trend amongst white English and Afrikaans speaking respondents who support opposition parties in the intensity of their level of disagreement. They no longer vehemently oppose the statement to such a strong degree, but rather tend to simply disagree. Taken together, a person's preferred political party does however show a correlation with the level of agreement with the statement. There are marked differences between ANC supporters and those of the opposition parties in agreement with the statement, with the former having 50.1% respondents in the agreement categories and the DA and FF+ having 63.1% and 84.6% respondents, respectively in die disagreement categories.

A Chi-square test for significance and a Cramer's V strength of association test were employed to verify trends of independent variables on statement S2. For race, language and party affiliation, the Chi-square test values enables one to reject the null-hypothesis in both the 2004 and 2007 surveys, showing that there is a significant relationship between the statement and the independent variables. The values obtained from the Chi-square test were confirmed by the Cramer's V strength of association test. For race, the Cramer's V test showed a moderately strong association with values of .284 and .240 in the 2004 and 2007 surveys respectively, pointing to a moderate to moderately strong level of association. Language association showed a weak level of association with minimally acceptable values of .188 and .185 in 2004 and 2007 respectively. Political party supported also shows a weak level of association, with values of 0.170 and 0.167 in 2004 and 2007 respectively.

Although these values are somewhat lower than those obtained for the same tests on statement S1, it reflects the higher percentage of respondents from all sectors whom 'neither agreed nor disagree' with the statement at 24.2% in 2004 and 24.3% in 2007. More respondents, in all categories, were ambivalent towards statement S2, than towards statement S1. This could show that many respondents are unsure as to whether disputing land claims in court identifies one a racist. It may also show that respondents do not attach such a specific and strong racial connotation to the use of the courts as is attached to the land ownership and acquisition statement (S1). The findings confirm the hypothesis and show that race, language and party affiliation do correlate with responses to statement S2.

### **5.5.1.3 Landowners who dispute land claims by going to court are fairly using the rights awarded to them by the constitution**

The response to the statement, '*landowners who dispute land claims by going to court are fairly using the rights awarded them by the constitution*', was subsequently analysed in terms of a respondents' race to ascertain a possible correlation between race and the level of agreement/disagreement.

There are a few interesting aspects about responses to this statement. The most notable of these, is the low levels of disagreement with the statement, regardless of the race of respondent. Black respondents show the second highest levels of 'neither agree nor disagree', surpassed only by the Indian sector in this category, both of which comprise approximately one third of the respondents. Interestingly, the black sector of respondents shows the highest level of 'strongly agree' in the 2007 survey, at 19.1%, negligibly lower than the 2004 figure of 19.4%. Blacks have the lowest percentage of respondents who 'agree' with the statement at 30.5% in 2004 and 35.4% in 2007. The tendency amongst black respondents shows that there is increased levels of agreement (4.6%) with the statement, and decreased levels of disagreement (3.2%). Despite the increase in agreement, they remain the group with the lowest overall level of agreement in the 2007 survey at 54.5%.

The Indian and coloured sectors also show increasing levels of agreement with the statement from 2004 to 2007. Coloured respondents are the response group with the highest percentage of agreement in 2007 at 66.7%, and have the greatest increase in this category of 7.2%. The second highest level of agreement is found amongst white respondents at 61.4%, followed by the Indian sector at 56.4%. Interestingly, both the coloured and Indian respondents increased in number in those strongly agreeing (6.1% and 3.2%, respectively) to the statement.

Amongst all the racial categories, except white, there is a net increase amongst the overall levels of agreement to statement S3 from 2004 to 2007. Blacks show an increase of 4.6%, coloureds 7.2% and Indians 3.4%. Whites are the only group of respondents that shows a net decrease of 6.6% in categories of agreement, from 68% to 61.4%, and have the highest percentage of respondents who 'disagree' with the statement at 13.4%. There is also an increase in the 'strongly disagree' category to 4.8% of white respondents, giving whites the highest level of disagreement amongst all racial categories. Despite this increase in disagreement, whites remained the population group with the lowest level of 'neither agree nor disagree' and the second highest level of agreement at 61.4%. They are however, the only racial group that shows a decrease in level of agreement and an increase in the level of disagreement.

The exploratory premise of whether race correlates to responses to statement S3, is therefore somewhat ambiguous, and cannot be as easily returned in the positive as the previous discussed variables. Race to some extent does still, to a certain degree, correlate with responses to the statement, with blacks showing lower levels of agreement than the other racial categories. There is however, a common trend amongst black, coloured and Indian respondents, who all show increased levels of agreement with the statement from 2004 to 2007. Whites are the only category that shows decreased levels of agreement to the statement. This result is anomalous to what was observed in statements S1 and S2 in relation to racial patterns.

The correlation between the language spoken by respondents and the level of agreement/disagreement with the statement, '*landowners who dispute land claims by going to court are fairly using the rights awarded them by the constitution*' was investigated and showed that the different language groups portrayed a somewhat different picture than the different racial groups. Afrikaans respondents show an increase in levels of disagreement, so do the Tswana, Tsonga, Venda, Swazi and Ndebele. English, Zulu, Xhosa, North- and South Sotho speaking respondents show a decrease in respondents who disagree with the statement. English and Afrikaans respondents however, remain the categories with the highest percentage of respondents that 'agree', 50.7% and 45.9%, respectively, followed closely by Xhosa speaking respondents, 43.7%. Furthermore, the language groups with the highest percentage of respondents whom 'strongly agree' are the Venda 36.8%, Tsonga 28.8%, North Sotho 26.8% and Zulu 19.3%. English and Afrikaans speaking respondents whom 'strongly disagree' amount to only 13% and 15.6% respectively. Among these six language categories, only Afrikaans and English show a decrease in respondents who 'strongly disagree'.

The correlation between language and the statement S3 must therefore be viewed in the negative, as there is no distinct pattern visible between the language spoken and level of agreement towards statement. There is no discernable pattern of increase or decrease amongst language groups, as there is great differentiation amongst the respondents speaking the Bantu languages and English and Afrikaans respondents in relation to change of sentiments towards the statement. It is, however, interesting to note that the number of respondents in all the language groups who fall in the 'neither

agree nor disagree' category remains high, ranging from 22.7% to 46.2% and increased by 1.3% over the period that was surveyed.

Analysis of the political party supported and the level of agreement/disagreement with the statement, '*landowners who dispute land claims by going to court are fairly using the rights awarded them by the constitution*' showed the correlation between party affiliation and respondents' views of statement S3 to also be somewhat ambiguous. The ANC supporters show increased levels of agreement in both 'agree' 4.1% and 'strongly agree' 0.4% categories. ANC supporters also show a net decrease in cumulative categories of disagreement. In contrast, DA supporters show a net increase in cumulative categories of disagreement (2.7%). DA supporters show a decrease amongst those who 'strongly agree' from 28.8% to 15.3% and an increase in those who 'agree' from 39.1% to 48.1%. In 2004, the cumulative percentage in the agreement categories for the ANC was 51.2% and in 2007 55.7%. For the DA supporters, the corresponding figures are 67.9% and 63.4. Whilst the ANC supporters show an increase in overall levels of agreement (4.5%), DA supporters show a decrease (4.5%). Despite this trend, more DA supporters are in agreement than their ANC counterparts. The FF+ provides some interesting responses, with disagreement increasing substantially (39%), and cumulative agreement decreasing substantially (21%).

When considering the effect of political party affiliation on the statement, the results echo those observed in the racial and language categories. Both the ANC and the DA supporters overwhelmingly 'agree' with the statement, but it is amongst ANC supporters that more respondents 'agree' in 2007 than in 2004, and fewer 'disagree', with opposite being evident amongst DA supporters. This finding therefore compels the correlation to also be returned in the negative, as there is no discernable pattern of agreement amongst political party supporters in relation to statement S3.

The somewhat surprising results are reinforced when the Chi-square significance test and the Cramer's V association test is preformed. The Chi-square test on all the independent variables confirms that a null hypothesis can be rejected. In other words, there is a statistically significant correlation between race, language and political party affiliation and agreement/disagreement with statement S3. The Chi-square tests does

however, not relate how strongly independent variables influence the dependent variables, only that a correlation exists.

It is the results of the Cramer's V strength of association tests that allows one to gauge whether there is a significant impact of the independent variables on the dependent variable. For race, the Cramer's V test returned values of .157 in 2004 and .096 in 2007. These results show that there is no discernable or negligible relationship between race and statement S3. For language, the 2004 survey yielded a value of .1 in 2004 and a value of .105 in 2007. These values also point to a relationship that is negligible, or can be viewed as a minimally acceptable correlation. For political party affiliation, the 2004 value is .101 and the 2007 value is 0.102. Both values can be classified as showing negligibly weak correlations. Statement S3 returned the highest values in the 'neither agree nor disagree' category, with the overall responses to this category at 28.3% in 2004 and 29.4% in 2007. Respondents are therefore not as sure about this statement as about the other statements, limiting the association between the dependent and independent variables. Furthermore, as was seen in Figure 5, the responses to this statement are those that have remained the most constant amongst all the statements from 2004 to 2007.

The significance tests performed therefore reinforces the rejection of demographic factors and party affiliation to relate with responses to the statement S3. Although it would appear that there is a very weak correlation between the independent variables employed and the responses to the statement there is no discernable pattern between racial and linguistic groups and political party affiliation. These results are indeed unexpected as for the previous two statements there was a strong correlation between the independent variables and level of agreement with the statements.

#### **5.5.1.4 Landowners who dispute land claims by going to court, are blocking transformation**

The influence of the race on the level of agreement and disagreement with the statement, *'landowners who dispute land claims by going to court are blocking*

*transformation*' was analysed and showed a distinct correlation between this independent variable and agreement of the statement. Although Figure 7 showed that there was an overall increase in level of agreement to statement *S4* from 2004 to 2007, it also highlighted the fact that responses to this statement are relatively dispersed amongst the response categories. The results do however have a strong racial dimension to them. Whites showed the highest level of disagreement at 64.4% in 2004 and 65.4% in 2007, followed by coloureds with 39.5% in 2004 and 42.7% in 2007 and Indians at 40.6% in 2004 and 33.9% in 2007. These are considerably higher levels of disagreement than in the black category that showed 21.5% in 2004 and 21.7% in 2007. Furthermore, there is a trend amongst white respondents to shift their level of disagreement from 'strongly disagree' to 'disagree', as was seen in responses to statements *S1* and *S2*. In 2007, 19.4% of whites 'strongly disagreed', a decrease of 8.6%, while 46% 'disagreed', an increase of 7.6%.

The black and coloured sectors of the population show the highest levels of agreement as well as a net increase with black respondents increasing by 2.3% to 50% and coloureds by 3% to 26 % in 2007. The Indian and white sectors show a decrease in levels of agreement with figures of 20.6% (1.7%) and 8.7% (0.6%) in 2007 respectively. Statement *S4* is second only to statement *S3* in the response category of 'neither agree nor disagree' in all racial groups, with white and Indian respondents increasing with 2.2% and 10.8% to 25.4% and 45.5% in 2007, respectively.

Race therefore does show a correlation to how respondents respond to statement *S4*, with whites disagreeing overwhelmingly and blacks agreeing. Coloured and Indian respondents are closer aligned to that of the white sector, with the coloured group showing levels of disagreement of 42.7% and the Indian group 33.9%. The latter two groups both showed lower levels of agreement than their black counterparts. There is a stronger level of polarisation between whites and blacks than between whites and the other racial groups. Whites also showed a tendency to shift disagreement from 'strongly disagree' to 'disagree', a trend that was evident in responses to statements *S1* and *S2*.

Analyses of language spoken by respondents to determine a correlation between this independent variable and the level of agreement/disagreement with the statement,

*'landowners who dispute land claims by going to court are blocking transformation'* showed that responses in terms of language proved to be somewhat more ambiguous than that of race. The only language categories that showed a net decrease in levels of agreement were the Venda, Ndebele and Swazi speaking respondents. All the other language categories showed a net increase in level of agreement. Amongst Afrikaans and English speaking respondents, there is a tendency to shift level of disagreement with declining responses in the 'strongly disagree' category and increases in the 'disagree' and 'agree' categories. This was also seen in responses to statements S1 and S2 amongst English and Afrikaans respondents. Interestingly, there is an increase amongst Xhosa respondents who 'disagree' with the statement from 16% to 21.7%. It is perhaps possible that since the number of respondents in the 'neither agree nor disagree' category lie between 21.1% and 37.1%, as well as showing an increase of 17.1% in this category, has made it more difficult to establish a definite trend using this parameter.

There is therefore no clear answer as to whether there is an identifiable trend amongst the language categories. There is no common trend amongst Bantu languages, nor among the Afrikaans and English speaking respondents in the study. One is therefore forced to return a negative answer to the suggestion of language having an identifiable correlation with responses to the statement.

The influence of respondents' affiliation to specific political parties was subsequently analysed in terms of correlating party affiliation to the level of agreement/disagreement with the statement, *'landowners who dispute land claims by going to court are blocking transformation'*.

Amongst ANC supporters, the general tendency was to fall into a category of agreement with the statement. Levels amongst ANC supports in all response categories do not show any substantial change from 2004 to 2007. For DA supporters there is a decrease in the category of 'strongly disagree' of 7.2% and an increase in the category 'disagree' of 3.6%. For the other response categories, DA supporters have remained relatively consistent in their opinions towards the statement. It would appear that political party to which respondents are affiliated does correlate with

agreement or disagreement with the statement, with ANC supporters remaining in agreement (48.3%) whilst the DA supports tend to be in disagreement (56.4%).

A Chi-square test revealed that the null-hypothesis can be rejected with relation to all the independent variables. There is therefore a statistical correlation between the independent and dependent variables. Interesting results were obtained with the Cramer's V association test. For race, the values of the Cramer's V were .281 in 2004 and .224 in 2007. The level of correlation can be described as a moderately strong in 2004 and a moderate in 2007. For language, the results of the 2004 survey was .179 and of the 2007 survey, .175. The level of association between the dependent and independent variable can be labelled as weak and minimally acceptable. For political party affiliation, the 2004 value is .170 and the 2007 value is .156. This can also be described as a weak, yet minimally acceptable level of association.

These results lead one to conclude that of all the independent variables, the relationship between a respondents' race is the only one with significant correlation to responses to statement S4. A person's race does therefore seem to correlate with the level of agreement to the statement, but in terms of the other independent variables, the results are not as clear. This compels one to reject the idea that language and political party affiliation has a meaningful correlation with responses to statement S4.

### **5.5.2 Elite responses to statements**

Analysing elite responses to the statements S1-S4, and correlating the level of agreement or disagreement to social standing as well as to specific professional categories will allow the researcher to investigate trends within this sector of the public.

In analysing social standing in terms of the level of agreement and disagreement with the statement, '*all land whites own they stole from blacks*' it was found that the elite response to the statement '*all land whites own they stole from blacks*' is significantly different from that of the general population, as is illustrated in Figure 2. Amongst elites, 25.8% 'agreed' with the statement, 13.2% 'neither agreed nor disagreed' with

60.9% 'disagreeing' with the statement. Among those disagreeing, 40.5% disagreed strongly. The data depicted in figure 2 is different to that of the general population in figure 1, and shows the greatest degree of congruence with the Indian and coloured sectors, as disagreement is not as vehement as amongst whites, and agreement is not as complete as amongst blacks. Social status does therefore correlate to a respondents' level of agreement/disagreement to the statement.

Within the elite sector, the highest level of agreement with the statement is shown by the parliamentarians (39.9%) and civil servants (29.4%). The level of agreement is lower amongst the media (22%), church (20%) and the business sector shows the lowest level of agreement at 5.9%. The sector with the highest level of disagreement is the business sector at 86.3%, followed by the media (64%), and the church (62%). Parliamentarians show the lowest level of disagreement at 45% followed by civil servants at 60.7%. The composition of parliament<sup>36</sup> shows that most MP's represent the ANC. The high level of agreement could possibly be accounted for through the party allegiances in these two sectors. As argued in the previous chapters, it is a goal of the ANC to control all organs of the state. This includes the appointment of civil servants and bureaucrats from amongst those who are loyal to the party. The high level of agreement with statement *S1* amongst these sectors in the elite population is therefore indicative with what is seen amongst the general population amongst those who support the ANC.

Social standing was subsequently analysed to determine if there was a correlation between elites and the levels of responses regarding agreement and disagreement with the statement, '*landowners who dispute land claims by going to court are racist*'.

Amongst elites, 12.5% 'agree', 15.4% 'neither agree nor disagree' and 72.1% 'disagree' with the statement. This value shares the greatest level of similarity with that of the white sector of the general population. Social standing does therefore correlate to agreement with statement *S2*, with elites tending to overwhelmingly 'disagree' with the statement.

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<sup>36</sup> Section 4.2

*Analyses of the elite sector showed that amongst elites, parliamentarians have the highest level of agreement with the statement at 25.6% followed by civil servants at 15.6%. The church, 6.1%, business, 5.9% and media, 2% show the lowest levels of agreement with the statement. With relation to disagreement to the statement, parliamentarians are the group showing the lowest response at 56.6%, followed by church, 75.5%, civil servants, 76.4%, the media, 80.4% and the business sector at 84.8%. Parliamentarians therefore are the sector that shows the greatest level of agreement to statement S2, with civil servants closely following suit. The same can thus be argued as for S1 with the strong representation of the ANC in parliament together the party allegiances of civil servants and bureaucrats.*

Elite responses were next analysed to determine whether social standing correlates with the level of agreement/disagreement to the statement that *'landowners who dispute land claims by going to court are fairly using the rights awarded to them by the constitution'*. Amongst the elite population, 88.7% were in agreement, 6.7% 'neither agreed nor disagreed', with only 4.6% disagreeing with the statement. In the latter category only 0.7% disagreed strongly. This is also the trend that is visible amongst the general population, which also shows high levels of agreement with the statement and low levels of disagreement, although not in such an exaggerated form as the elite respondents.

Within the elite sector, civil servants show lowest levels of agreement with 78.4%, and most respondents in the category of 'neither agree nor disagree' at 17.6%. They are followed by the business sector with 86.3%, parliament, 90.8%, church, 92% and the media with the highest level of agreement at 94.4%. The pattern seen in the previous statement, where parliamentarians and civil servants tend to overwhelmingly support the land reform programme, is not evident in responses to statement S3. It would appear that most respondents amongst elites, regardless of sector, are in agreement with the statement. This is also a trend seen in the general population with regards to responses to statement S3.

Finally, the correlation between social standing and the level of agreement/disagreement to the statement that *'landowners who dispute land claims by going to court are blocking transformation'* was investigated. Amongst elites, 24.6%

'agreed', 21.1% 'neither agreed nor disagreed', whilst 54.2% 'disagreed'. The elite sector shows the highest level of congruence with what is seen amongst coloured and Indian respondents. They do not agree as strongly as black respondents, nor do they disagree as vehemently as white respondents. Furthermore, the overall trend amongst elites is to disagree with the statement.

In the response of the elite sector to the statement, the parliamentarians showed the highest level of agreement at 43.7%, followed by civil servant, 23.5%, media, 17.8%, church, 14% and business, 7.8%. Interestingly, half of the respondents who are in agreement amongst parliamentarians and civil servants agree strongly. Among the different sectors, parliamentarians show the lowest level of disagreement at 39.4%, followed by civil servants at 53%, church 54%, media 78.8% and business at 78.4%. It is evident that parliamentarians and civil servants are the groups that have the highest levels of agreement and the lowest levels of disagreement with statement *S4*. This trend shows, that they are the most likely sector in the elite population to agree with the governments land reform programme.

## ***5.6 Interpretation of the analysis***

The above analysis shows that there is indeed a correlation between the independent variables and the support or the rejection of the governments land reform programme. It was postulated that agreement with statements *S2* and *S4* along with disagreement with statement *S3* identifies a respondent as supporting land reform programme of the government. This is because such patterns of agreement highlight that the normative priority of a respondent will be placed on the substantive aspect of democracy, as expressed through the outcomes of the land reform programme and as opposed to the procedural norm of the impartial functioning of the rule of law. It was also stated that respondents who agree with statement *S1* define ownership and acquisition of land in terms of race and theft.

It was furthermore postulated that, based on levels of agreement, one could identify respondents as falling either in the *liberal* democratic model and *low-context* culture or in the *liberationist* model and the *high-context* culture. Respondents who support

land reform fall in the latter category, whilst those opposed are placed in the former. It must be stressed that the conceptual inferences made above are not confirmed or disproved by the data. The data only shows what respondents think about the statements that were posed to them and indirectly indicates their views on land ownership and acquisition, the rule of law and transformation. It is their views on these underlying concepts of democracy that allow for the inferences above to be made and to have a degree of validity.

When posed with the main hypothesis of the study that *demographic factors (race, language), party affiliation and social standing correlate with respondents' opinions on land reform together with their support or rejection of the government's land reform policies*, one is inclined to return an answer in the affirmative. Demographic factors, party affiliation and social status do correlate with respondents' support or rejection of the government's land reform policies. The support and rejection is however not as clearly visible as was hypothesised. It was postulated that those respondents who oppose land reform policies, would disagree with statements *S1*, *S2* and *S4* and agree with statement *S3*. The inverse would hold that support for the land reform programme would have respondents leaning towards agreeing with statements *S1*, *S2*, *S4* and disagreeing with statement *S3*.

The results do however not follow these trends of agreement proposed above. The largest anomaly was found with respect to responses to the statement that *landowners who dispute land claims by going to court, are fairly using the constitution (S3)*. Regardless of race, language, party affiliation or social status, there is overwhelming agreement with the statement. If the meaning of statement *S3*, as described in section 5.3 is accepted, it would mean that most respondents attach a high value to the impartial and universal functioning of the law through the importance attached to the Constitution. In agreeing with the statement, respondents show that they place a priority on all being able to access courts and enjoy constitutional protection, even in instances when such protection could impede a specific groups' ability to achieve substantive gains from land reform. Even though this result to some extent refutes the proposed claim by the researcher, it does not necessarily refute the claim by the researcher that respondents hold diverging views on normative ascriptions to democracy. On the contrary, it is the opinion of the researcher, that the result found in

responses to statement S3, reinforces the argument that different groups in South Africa attach different meanings to concepts crucial for the consolidation of democracy.

The level of agreement or disagreement to the statement *'landowners who dispute land claims by going to court are fairly using the rights awarded to them by the Constitution'*, does not tell one anything about what meanings are associated with the Constitution. The mere fact that most respondents agree with the statement (regardless of race, language, party affiliation and social status), says nothing about the normative ascriptions assigned to the Constitution. How respondents responded to the statements in totality, enables one to theorise on possible meanings respondents associate with the Constitution. It is probable that respondents, who have diverging views on all the statements except statement S3, possibly do not attach the same meaning to the role or to the importance of the Constitution in our democracy. It is surely possible that respondents, who feel landowners who dispute land claims by going to court are racist and are blocking transformation, do not attach the same normative meanings to the Constitution as do those respondents who feel that using the courts to dispute land claims does not label one a racist or as being apposed to transformation.

This result probably serves only reinforces the hypothesis of the research project and that South Africans attach different values to a normative ascription of democracy. It is highly unlikely that black and white respondents with completely diverging opinions on all the statements, bar statement S3, attach the same meaning to the Constitution. It is the opinion of the researcher that this is evidence, albeit indirect, that, in our democracy, there are definite diverging and possible conflicting interpretations and beliefs of the role and the meaning of the Constitution. The results obtained display a lack of internal consistency, which reinforces such a view. Respondents within the same group in the population show conflicting responses with regards to statements relevant to the principle of the rule of law. This poses a most dire threat to our democratic dispensation, and the prospect of consolidating our democracy. For if the rule of law is seen as a cornerstone in ensuring democratic consolidation, then diverging opinions on the supreme document of law surely poses a threat to consolidating our democracy.

Results obtained from responses to statements *S1*, *S2* and *S4* do paint a stark picture of racial polarisation amongst the respondents, reinforcing the above argument. White and black South Africans tend to have a high degree of differences in their opinions with these two groups have diverging views of all the statements assessed, with blacks showing a predisposition to supporting the government's land reform programme. In contrast, white citizens follow a pattern of disagreement to the statements that allows one to classify them as being opposed to the government's land reform policies.

Concurrent to the above, the elite sample of the population also shows diverging views on the land reform programme. The general tendency amongst elites is to oppose the government's land reform programme. A sectoral analysis however, shows that within the elite population, parliamentarians and civil servants show the highest level of support for the government's land reform programme. There exists a large degree of polarisation between the parliamentarians and civil servants on the one hand, and the media, business and church on the other.

## **5.7 Summary**

From the data presented above, the following is evident:

- There is strong racial polarisation to statements *S1*, *S2* and *S4*, with blacks and whites showing contrasting levels of agreement with these statements
- Within all the statements posed, there is a tendency amongst white respondents to move closer to that of the other racial sectors. Although the intensity of disagreement towards statements *S1*, *S2* and *S4* has decreased, the white group remains the group most opposed to these statements.
- Most respondents agreed with statement *S3*, regardless of race, language, party affiliation or social status
- whites tend to oppose the land reform programme, with blacks supporting the land reform programme. Coloured and Indian respondents fall between the two extremes of black and white responses
- coloured and Indian responses to *S2*, *S3* and *S4* are more closely aligned with those of white respondents, with a high proportion of Indian respondents being noncommittal

- General tendency amongst elites shows disagreement with land reform policies
- Amongst elites, the parliamentarians and civil servants show a greater inclination to agree with the land reform policies, whilst other sectors show overwhelming levels of disagreement
- The greatest degree of congruence amongst the general population and elites, is between parliamentarians, civil servant, and black South Africans. Elite business, media and church responses show a greater degree of congruence with that of the white, coloured and Indian segments of the general population

### ***5.8 Placing public opinion on land reform within the democratic debate***

The preceding paragraphs enable one to place the public within the adopted theoretical framework, based on their level of agreement/disagreement towards the statements. The aim is to determine whether one can classify the general population as either subscribing to *liberal* democracy and *low-context* culture, or to *liberationist* democracy and *high-context* culture.

In applying the theoretical framework to the survey results, the dichotomous nature of the theoretical framework implies that there should be a distinct grouping amongst the respondents. Previously in the chapter, it was proposed that agreement with statements *S1*, *S2* and *S4*, and disagreement with statement *S3*, identifies respondent as falling in the *liberationist* model of democracy and the *high-context* cultural perspective. The opposite response to the statements aligns a respondent to the *liberal* model of democracy and the *low-context* cultural framework.

The proposed results were confirmed to some extent in that the trend did emerge in the responses. Black respondents who overwhelmingly support the ANC and speak a Bantu-language, tend to agree with statements *S1*, *S2* and *S4*, whilst white Afrikaans and English respondents who support an opposition party have opposing views. Coloured and Indian respondents tend to fall somewhere in between these two extremes.

The overwhelming agreement to statement S3 should not be taken as refuting or laying waste the idea that respondents can be placed within this theoretical framework. As was argued in the preceding paragraphs, if anything, it only reinforces the argument. Black respondents who support the ANC and speak a Bantu language can be classified as viewing democracy from the *liberationist* perspective and *high-context* cultural framework. White respondents, who speak Afrikaans and English and support an opposition party, fall in the *liberal* democratic model and the *low-context* cultural framework. Coloured and Indian respondents, who overwhelmingly support an opposition party and speak Afrikaans and English can be seen as occupying the middle ground. They show a greater tendency to be aligned closer to that of the white segment, and would probably be defined as *quasi-liberals* and *low-context* cultural perspective.

The overwhelming tendency amongst elites is to follow patterns of agreement that is seen amongst white respondents. There is however a high degree of differentiation amongst elites, with parliamentarians and civil servants showing different views to the views of other elite sectors in response to *S1*, *S2* and *S4*. This could be accounted for by the party allegiances that could be attached to parliamentarians and civil servants. There is an interesting anomaly amongst the business sector in which 5.9 % of the business sector are in agreement with *S1* and *S2*, 5.9% are in disagreement with *S3*, and an even higher number, 7.8%, are in agreement with *S4*. These responses within the business sector tend to align with the trend seen amongst parliamentarians and civil servants in their response to the statements. Although it is an anomalous result within the business sector, it is not so within the South African context as a whole. It is possible that this group of business elites, which shows convergence with parliamentarians and civil servants, represent the emerging black business elite in South Africa. There is no substantial evidence for such a claim, other than the statistical numbers presented above representing a possible trend. It is the opinion of the researcher that this group could represent the opinion of those black business people who have benefited from policies such as black Economic Empowerment (BEE) and Affirmative Action or who rose to the pinnacle of the business sector within the last 15 years.

## Chapter 6: Conclusion

Throughout this dissertation, the argument has been advanced that a major impediment to consolidating the democratic system in South Africa, centres around diverging interpretations of the principles that constitute our democratic order. It was argued in chapter three and four, that two diverging views on democracy are prevalent in South Africa, one the *liberal* model of democracy, the other the *liberationist* model. It was furthermore advocated that these paradigms to democracy can be placed within a larger cultural framework, strengthening the idea that those on either side of the debate surrounding democracy, are informed by deeper and fundamental cultural orientations, the *high-context* and *low-context* cultural frameworks.

The argument was also advanced that the ruling ANC falls within the *liberationist* model of democracy, due to the organisation's conception of the people, equality, the role of the state and the very goal of the democratic project. This claim is supported by the idea that democracy is geared towards serving the needs of a specific group and that the complete control of state apparatus is acceptable for such a pursuit, along with the normative priority of a specific community as opposed to all individuals within society.

Chapter one showed that the process of land dispossession was long and protracted, and largely facilitated through successive legislative assaults on African land ownership. This long process of dispossession, created a lasting imprint on the social consciousness of Africans. Being classified as second class citizens and denied fundamental rights such as land ownership had an influence in how Africans view the very nature and process of democracy.

It was further proposed, that during the period of South Africa's transition and subsequent negotiations, negotiations were moved forward at the expense of issues such as what constitutes democracy and meanings associated with the Constitution — these fundamental differences were largely ignored (du Toit, 2003; du Toit, 2006). 'Social rifts' are clearly visible in the public's opinion of land reform (du Toit, 2004 (b)). The result from the previous chapter show that there are indeed diverging views

amongst the populace, and to some extent the elites, on the governments land reform programme. It was shown that amongst the different racial groups, there is strong polarisation concerning support for the government's land reform programme, with black respondents showing strong support for land reform whilst whites are opposed to land reform, with coloured and Indian respondents tending to take a moderate stance.

### **6.1 Diverging interpretations**

In a country where the overwhelming majority of the population attach substantive and instrumental connotations to democracy (Bratton and Mattes, 2001), mobilising the public around issues relating to material quality of life becomes a political lever that can have severe ramifications on the consolidation of democracy. Bratton and Mattes (2001:454-459) argue that Africans in South Africa attach material improvements in living standard to the meaning of democracy. For many South Africans, democracy is viewed as a means of improving their material well-being, it is seen as the next cite of the liberation struggle — democracy is more about substantive goals than about procedural norms. The findings of this research study echo the findings of Bratton and Mattes (2001), with the overwhelming majority of black South Africans surveyed supporting the government's land reform programme. If socio-economic considerations are paramount in the meaning associated with democracy, then these same meanings can be attached to what is hoped land reform will achieve. The Africans view of democracy is as much about social transformation as it is about political rights, a view that is echoed in the findings of this research study.

Through the views of respondents on land reform, the researcher was able to place them within the theoretical debate on normative subscriptions to democracy. It was found that most black South Africans subscribe to the *liberationist* model of democracy. This view holds that the transformation project is geared towards serving the needs of the majority of black South Africans, who view democracy primarily as a means of improving their quality of life. The *liberationists* also hold specific views on how to achieve such transformation, and are willing to curtail individual freedoms and

rights in order to achieve the goals of democracy. Furthermore, the views of the black respondents in the general population survey find resonance in the manner in which the parliamentarians and civil servants view the same issues. The *liberationist* democratic project favours the advancement of substantive ends rather than the procedural norms which would ensure democratic survival and consolidation.

## **6.2 Dangers posed by the liberationist project**

Gagliano and du Toit (1996) warn that the *liberationist* project runs the risk of degenerating into a corrupt system of government because public and parochial interests are not separated. Based on the data presented in this study, this is a very real possibility due to the congruence observed amongst black South Africans and some sectors in the elite population. If elites (parliamentarians and civil servants) can enact policies and programmes to satisfy the needs of the majority at the expense of the minorities and abrogate their rights, the democratic system runs the risk of becoming what Zakaria (1997) has labelled an illiberal democracy. For the elites (parliamentarians and civil servants) would be able to enact, pass and implement policies and programmes that discriminate against minorities and abrogate their rights under the guise of a democratic order.

It is conceivable that land reform policies such as expropriation without fair compensation or deliberation could become a reality. Supported by the majority of black South Africans, this can have grave implications on the democratic project, as is illustrated by the Zimbabwean case. The erosion of minority rights would not be viewed as anti-democratic, as democracy is equated to improving the lives of the African majority. The danger is not to the continuation of democracy, but to constitutional liberalism which holds dear the principles of the protection of property rights and the rule of law (Zakaria, 1997: 25).

This is a very real prospect, considering diverging views held by South Africans on an issue as fundamental as the meaning of our Constitution and democracy. The results of the survey suggest that it is highly likely that white and black South Africans do not attach the same meaning to democracy and to our Constitution. The results of the

survey compel the researcher to echo the views of du Toit (2003:113) who argues that “...the chasm of meaning about South Africa’s transition remains.”. It is unlikely that we will be able to consolidate democracy if we continue to hold diverging and conflicting views on concepts such as democracy and the very meaning of the Constitution. The ambiguities of the negotiated settlement and the meanings of the constitution need to be revisited, and all ambiguities spelled out in order for the democratic project to be successful (du Toit, 2003:114).

The nature of the rule of law in South Africa, and more pertinently, the inclusion of justiciable socio-economic rights and the limitations of rights clause, creates a unique character to the normative legal framework in South Africa. The Constitution allows for redistributive policies and for the creation of an equal society. The vagaries surrounding normative meanings associated with concepts such as freedom, liberty and equality, can allow for the implementation of laws that abrogate the rights of the individual, and steer the country down a questionable path with respect to the consolidation of democracy. It is possible that laws can be created which disregard the fundamental principles of our Constitution and the democratic project. The land reform programme provides a good example of this. If the issue is not addressed with more earnest, increasingly restrictive and proscriptive laws can be created that will transfer ownership of land to Africans while disregarding the rights of the property owner, at the expense of procedural norms of democracy. Once such a process is initiated, it will be difficult to stop, for if minority property rights can be subjected, subjugating political and civil liberties of minorities within a legal framework is not such an unrealistic prospect.

It is argued that the ruling ANC is aligned to the *liberationist* model of democracy, that in turn finds resonance in the *high-context* cultural framework which has further implications for the functioning of the ‘rule of law’. For *high-context* cultures, contracts are not fixed and do not need to remain as they were negotiated initially. It is a real possibility that the laws governing the protection of property rights and expropriation could be changed in order to accelerate land reform. These changes would tend to favour the community over the individual, further placing strain on individual property rights and the impartial functioning of the ‘rule of law’.

### ***6.3 Consolidating the South African democratic project***

Land reform provides the government of South Africa with a golden opportunity of fostering democratic consolidation. It is an issue that straddles the economic, social and political divide, and successful land reform through legal MLAR and adherence to constitutional prescriptions could provide proof to the majority of South Africans that not only does democracy preserve the civil and political rights of all, it can offer a better life to those who are impoverished, landless and bereft of hope. It will, however, require a far greater degree of political will, administrative effectiveness and willingness by all parties involved to make it work. Although the results of the survey suggest stark polarisation of South Africans on the issue of land reform, it was seen amongst white respondents that opinions regarding emotive issues are not cast in stone and can change over time. The apparent willingness amongst whites to curtail their vehement opposition to land reform can be viewed as a sign of hope. For if white South Africans can change their views, black South Africans can do the same. It will be necessary however, to provide the majority of black South Africans with a belief in democracy, trust that it can bring them a better life, one that is less oppressed and wherein economic hardships are not as severely felt. That democracy can provide a way of life that can undo some of the injustices brought about by oppressive white rule and the harsh realities of the capitalist system.

Although there is scant evidence of the government being able to successfully implement land reform amongst severe economic constraints, administrative deficiencies and general distrust by landowners of the land reform programme, it is by no means an impossibility. For, if all South Africans, irrespective of race, cultural orientation, social status or language, are willing to believe, not only in themselves, but in our country and in all that has been achieved, I have no doubt that we will overcome the difficulties of consolidating our democracy. It is, however, a hopeful assessment and the reality is that if the millions of impoverished South Africans do not experience tangible improvements in their lives, the democratic project runs the risk of falling short of a consolidated democracy. It cannot be expected of the impoverished masses to continue supporting a system that leaves them bereft of hope and promised material improvements. It is expected that the call for increased

interventionist strategies by the state to alleviate poverty and inequality will only increase, thus placing greater strain on the functioning of the rule of law and consequently, democratic consolidation.

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