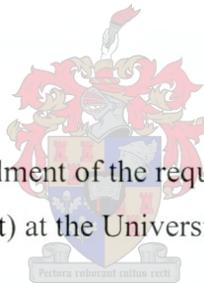


**A golden midway for a divided society?
The South African land reform project and its relationship
with the rule of law and transformation**

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Declaration

I, the undersigned, hereby declare that the work contained in this assignment is my own original work and that I have not previously in its entirety or in part submitted it at any university for a degree.

Abstract

South Africa's history led to an unequal distribution in land ownership, which is not conducive to democratic consolidation. Land reform is the means to address this problem. However, land reform, part of the larger process of transformation, is a potentially dangerous process: it can have negative implications on the rule of law. The objective of this study is to provide an analysis of the dynamic relationship between land reform, the rule of law and transformation in South Africa, within the debate on democratic consolidation.

One can distinguish two paradigms regarding democracy: the liberal paradigm and the liberationist paradigm. These two paradigms have divergent views on the way land reform and transformation should be implemented, and what the goal of these two processes is. The liberal paradigm would seem to be more favourable for democratic consolidation, while the liberationist paradigm is a breeding ground for populist transformation.

Furthermore, the negotiated constitutional settlement has left land reform with an ambiguity. On the one hand the constitution forces the government to address land reform, but on the other hand it firmly entrenches the private property rights by enforcing the 'willing buyer, willing seller' principle, which makes the process more costly and time consuming.

The main hypothesis of this study is: Demographic indicators (race, party affiliation and provincial setting) influence support or rejection of the land reform policies of the South African government. The dependent variable is 'support or rejection of the government's land reform policies'. Support for the government's land reform policies is indicative of the liberal paradigm and rejection of the government's policies is indicative of the liberationist paradigm.

It is found that the majority of South Africans reject the government's land reform policies. However, strong divisions are evident. Respondents differ along racial, party affiliation and provincial lines. Thus, the liberationist paradigm dominates, but the liberal paradigm has a strong presence, creating an ideologically divided society.

This means that the legitimacy of South Africa's land reform project, as well as the legitimacy of the constitution, is under stress. This does not bode well for democratic consolidation, as the rule of law is under severe threat. Thus, one can conclude that land reform is not going to make a positive contribution to the consolidation of South Africa's democracy, if a substantial financial injection is not found to increase the efficiency of the process.

Opsomming

Suid-Afrika se geskiedenis het aanleiding gegee tot 'n ongelyke verspreiding van grondeienaarskap. Dit is nie gunstig vir demokratiese konsolidasie nie. Grondhervorming is die manier waarmee die probleem aangespreek kan word. Grondhervorming, deel van die groter proses van transformasie, is egter 'n potensieel gevaarlike proses: dit kan negatiewe implikasies vir regsoewereiniteit hê. Die doel van hierdie tesis is om 'n analise van die dinamiese wisselwerking tussen grondhervorming, regsoewereiniteit en transformasie te verskaf, binne die debat oor demokratiese konsolidasie.

Daar kan aangaande demokrasie tussen twee paradigmas onderskei word: die liberale paradigma en die bevrydings (*liberationist*) paradigma. Hierdie twee paradigmas het teenstrydige perspektiewe oor die manier waarop grondhervorming, sowel as transformasie, geïmplementeer behoort te word, sowel as wat die doel van hierdie twee prosesse is. Die liberale paradigma is meer geskik vir demokratiese konsolidasie, terwyl die bevrydings paradigma 'n teelaarde vir populistiese transformasie is.

Verder het die onderhandelde grondwetlike skikking grondhervorming in 'n teenstrydigheid geplaas. Aan die een kant vereis die grondwet dat die regering grondhervorming moet aanspreek, maar aan die anderkant bied dit 'n ferm onderskraging van private eiedomsreg deur op die 'gewillige koper, gewillige verkoper' beginsel aan te dring. Dit maak die grondhervormings proses langer en duurder.

Die hoof hipotese van die studie is: Demografiese indikatore (ras, party affiliasie en provinsie) beïnvloed ondersteuning of verwerping van die regering se grondhervormingsbeleid. Die afhanklike veranderlike is 'ondersteuning of verwerping van die regering se grondhervormingsbeleid'. Ondersteuning van die regering se grondhervormingsbeleid dui op die liberale paradigma, en die verwerping daarvan dui op die bevrydings paradigma.

Daar word bevind dat die meerderheid Suid-Afrikaners die regering se grondhervormingsbeleid verwerp. Daar is egter sterk skeidslyne sigbaar. Respondente verskil volgens ras, party affiliasie en provinsie. Dus, die bevrydings paradigma domineer, maar die liberale paradigma het ook 'n sterk teenwoordigheid. Dit sorg vir 'n ideologies verdeelde samelewing.

Dit beteken dat die legitimiteit van Suid-Afrika se grondhervormings projek, sowel as die legitimiteit van die grondwet, in gedrang is. Dit is nie 'n goeie teken vir demokratiese konsolidasie nie, aangesien dit regsoewereiniteit in die gedrang bring. Daarom kan daar tot die gevolg gekom word dat grondhervorming nie 'n positiewe bydrae ten opsigte van die konsolidasie van Suid-Afrikaanse demokrasie sal maak nie, tensy daar 'n beduidende finansiële inspuiting gevind kan word.

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List of Acronyms

AgriBEE	Black Economic Empowerment in Agriculture
ANC	African National Congress
BEE	Black Economic Empowerment
CLRB	Communal Land Rights Bill
CODESA	Congress on Democratic Change in South Africa
COSATU	Confederation of South African Trade Unions
CRLR	Commission on the Restitution of Land Rights
DA	Democratic Alliance
DLA	Department of Land Affairs
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
IFP	Inkatha Freedom Party
LPM	Landless People's Movement
MTEF	Medium Term Expenditure Framework
NLM	National Liberation Movement
NP	National Party
PAC	Pan Africanist Congress
PTO	Permission to Occupy
SACP	South African Communist Party
SADT	South African Development Trust
SLAG	Settlement/Land Acquisition Grants
USA	United States of America
VOC	<i>Vereenigde Oost-Indische Compagnie</i>

Chapter One

Introduction

South Africa's young democracy is facing many challenges on its road to a truly established democratic system. In a society where social divisions abound as the result of a troubled history, one of the most pressing issues is land reform. As the political situation in South Africa's northern neighbour, Zimbabwe, would indicate, a flawed land reform programme could have dire effects on a democratic system. However, there is also evidence that suggests that land reform could make a positive contribution to the entrenchment of democracy. Thus, one could say that the land reform question is a "make or break" case for South African democracy.

1.1 Political Problem

South Africa's colonial and apartheid legacy left many people without the opportunity of having a piece of land they could call their own. Keeping land in the hands of a minority group did indeed form part of the oppression of the masses. At the time of South Africa's democratic transition, Claassens tells us that "the entire system of private property [was] build on racial dispossession and racial exclusion; the primacy of race over contractual considerations has been asserted by the state in a blatant and unashamed way for centuries (1991: 50)".

Since the first colonising settlers set foot on South African soil, land ownership was steadily withheld from the majority of South Africa's inhabitants. This spread to the South African interior along with missionaries and the Great Trek and the subsequent Boer Republics. In 1913 the Union of South Africa passed the Land Act. This act made it illegal for Africans to acquire land apart from the 7% set aside for them at the time (Claassens, 1991: 47-48). The Apartheid state infamously forcefully removed people from the land they inhabited. They were also responsible for the establishment of "homelands," or "Bantustans", where land was owned by the state, either the South African government or the government of the homelands. Thus, the majority of South Africans, that is, non-whites, were incapable of owning land by the time the latter part of the twentieth century arrived.

This unequal distribution of land is illustrated by the following: Between 60% and 70% of land in South Africa have white owners. Compare this with Zimbabwe, where only 23% of land was in the hands of whites (SABC, 2003). Also keep in mind that whites form only 9.6% of the South African population (Government Online, 2004). Thus, it should be quite clear that land ownership is distributed very unequally in South Africa.

Land ownership is not the only feature where there is a disparity between race groups. Mattes and Thiel (1998: 101) mentions the legacy of apartheid that led to a “racially segmented and ranked society with different levels of democratic influence, different rights, and different levels of repression.” One should also add income inequality to the equation.

In 1994 a democratic regime was instituted in South Africa, and with that, promises of addressing the inequalities of the past. *Transformation* is the word most often linked with addressing these inequalities. Land reform entered the fray in addressing the unequal distribution of land. Also keep in mind that South Africa’s constitution entrenches ownership rights, as the settlement negotiations stipulated.

Parallel to the task of addressing inequality, is the challenge of democratic consolidation. Even though addressing inequality, especially income inequality, forms part of the democratic consolidation agenda, it is questionable whether democratic consolidation and transformation are necessarily reconcilable. Furthermore, there are several other factors that challenge the longevity of democracy as well as the viability of transformation.

Land reform is situated within a divided political context: on the one hand people expect economic “goods” from the young democratic regime, while the other expects political “goods”, arising from differing perceptions of democracy (Garcia-Rivero, Kotzé & Du Toit, 2002: 169). Add to this the problem of incommensurables left in the wake of South Africa’s bargained transition (Du Toit, 2003: 110-111), and the task of land reform in a manner perceived by all as just and equitable becomes a very difficult task. Also keep limitations of state capacity in mind in this regard.

One of the key ingredients of democratic consolidation is the upholding of the rule of law. It is also very relevant concerning land reform. The constitution and legislation are the rules with which land reform should be played, and the referees are the courts. For the land reform game to be fair, the courts must act just, and the rules must be accepted and upheld by all the players. This aspect is vividly illustrated by the Zimbabwean situation. So-called war veterans invaded farms in Zimbabwe, showing little respect for the rule of law, without the state enforcing the law. Furthermore, the Mugabe government ignored court decisions. Democracy was dealt a lethal blow with these, and other actions, in Zimbabwe, who subsequently plunged into an economic and humanitarian crisis.

This is a stark reminder that land reform has to be managed carefully, within the rule of law. However, one needs to be very aware of the political context surrounding land reform, since these factors could place strain on the rule of law.

Thus, one could summarise the political problem as follows: South Africa's past led to an unequal society, with access to land as one of these inequalities. The programme to address this unequal access to land, land reform, is a potentially explosive policy issue. It is set in a precarious political context, and a balance between the protection of private property and addressing unequal access to land should be found, within constitutional bounds, if democratic consolidation is to succeed, and the rule of law is to prevail.

1.2 Research Problem

From the political problem described above it should be clear that land reform, transformation, the rule of law and democratic consolidation are in a complex relationship, set within a complex political context. The first research problem is therefore the complexity of this relationship, which needs clarification.

The political problem should also make it clear that these issues have a real impact on the lives of South Africans. Therefore the need arises to gauge the views of South Africans regarding this matter. This will provide further clarity to the problem

mentioned above. Furthermore, the implications of the relationship between land reform, transformation, the rule of law and democratic consolidation, as political phenomena, need to be assessed, together with the implications of the attitudes of South Africans regarding these issues.

1.3 Research Objectives & Questions

The objective of this study is to provide an analysis of the dynamic relationship between land reform, the rule of law and transformation in South Africa. The study will be set within the debate on democratic consolidation. Perceptions regarding certain aspects of land reform will be gauged. It will also be examined whether transformation is reconcilable with democratic consolidation. A theoretical framework will be developed to place public perceptions on the dispute of land claims in court, as well as perceptions on the legitimacy of land ownership, in paradigmatic terms.

This will shed light on people's views regarding land reform, the rule of law and transformation, as well as the relationship between these phenomena. From this, one could gain an understanding of the different points of view regarding land reform and transformation, which will lead one to venture a prediction on the South African populace's maturity for democratic consolidation. Furthermore, when one looks at how the government handles these issues, one could get an even clearer picture of prospects for democratic consolidation.

The following research questions will help guide the study:

- How is the concept of *transformation* understood by analysts, political actors and the public?
- How do the demographic indicators of race, party allegiance and provincial setting affect public attitudes regarding land reform, transformation and the rule of law? Are there any significant divisions according to these demographic indicators?
- How is the government addressing the land question?
- What are the implications for democratic consolidation?

1.4 Research Design

1.4.1 Nature of the study

This study will be a case study, focusing on issues of land reform in contemporary South Africa. However, when relevant, examples from other countries, most notably Zimbabwe, will be used as a comparative illustration.

Considering the data used for this study, one can say that it is qualitative and quantitative in nature. Academic journal articles, government publications (white papers & acts) and news reports will be used as qualitative research for illuminating the quantitative findings produced by the Markinor Opinion Survey data.

The study will largely be descriptive in nature. The findings will provide a description of the attitudes of South Africans regarding the rule of law and transformation with land reform in mind. It will be indicated how South Africans differ on these issues according to race, party allegiance, and the province where a person comes from.

1.4.2 Data source

The data used for this study comes from a nation-wide, representative Markinor opinion survey, conducted during February and March 2004. The sample consisted of 3500 ordinary South Africans, 2000 respondents from urban areas and 1500 from rural areas. All of the respondents were sixteen years of age and older and men and women are equally represented in the sample. The survey was conducted through personal interviews (Du Toit, 2004b: 13).

The findings can be affirmed as nationally representative, as the findings are weighted and projected onto the national demographic profile. One can therefore assume that what applies to the respondents, applies with equal validity to the South African population as a whole. As is the case for all sample surveys, this survey is subject to statistical error. The sample error for the poll is between 0,72% and 1,66%. The survey's potential accuracy is indicated by the results of the polling question, which predicted that the African National Congress would gain 68,6% of the vote in the

2004 national election, and were proved to be correct within one percentage point (Du Toit, 2004b: 13).

1.4.3 Theoretical perspective

The study will be from the theoretical perspective of democratic consolidation. This perspective is quite relevant in an emerging democracy, such as South Africa, where it is still to be established whether the regime will sustain democracy.

A reasonably large body of work on democratic consolidation exists. Schedler (1998) and O'Donnell (1996) clarify conceptual issues surrounding democratic consolidation. Przeworski and his colleagues (1996) determined the economic conditions most conducive to democratic longevity through extensive research. Linz and Stepan (1996), in a very useful article, present five conditions they regard as essential for the consolidation of democracy. These are: civil society, political parties, rule of law, an efficient state bureaucracy and what they call the "economic society" (the interaction between state and market). Their section dealing with the rule of law is especially useful for this study. Their definition for democratic consolidation will also be used for the conceptualisation of this study.

The authors above did not deal with the question of land explicitly. Terry Lynn Karl (2000) made a useful contribution in this regard by describing how the differences in land ownership patterns since colonisation in North and South America led to different regime types on these two continents.

1.4.4 Conceptualisation

In the following paragraphs the key concepts for this paper will be clarified. These concepts are: democratic consolidation, the rule of law, land reform and transformation.

Democratic consolidation

A consolidated democracy refers to a political regime where the complicated web of rules, institutions, principles and norms characteristic of democracy are accepted, by the state and society, as the only alternative in the country, or as Linz and Stepan put

it, “the only game in town” (1996: 15). Thus, a democracy is consolidated when the majority of the country’s people, even when things are not going as well as they would have liked, share the opinion that democratic institutions and procedures are the desired way to govern the country. Furthermore, a democracy is consolidated when governmental as well as non-governmental forces are subservient to the resolution of conflict within the bounds of democratic laws, procedures and norms (Linz and Stepan, 1996: 16).

The Rule of Law

Heywood describes the rule of law as “[t]he principle that law should ‘rule in the sense that it establishes a framework within which all conduct or behaviour takes place’” (1997:412). This applies equally to all members of society, private citizens as well as government officials.

The rule of law is an integral part of a consolidated democracy. According to Linz and Stepan “the more that all the institutions of the state function according to the principle of the state of the law, the higher the quality of democracy and the better the society” (1996: 19). All of the main role-players, especially the government and the state apparatus must be held accountable to the rule of law. Civil society and political parties must contribute in an attitude of strong consensus regarding the constitution and a commitment to act in an appropriate way (Linz and Stepan, 1996: 18-19).

Land reform

Land reform can be described as the process of creating an equitable distribution of land ownership, embodied in legislation and policy outputs. In South Africa this has a racial dimension, so one could say land reform is the process of creating a more racially representative group of landowners. In practice this means establishing black and coloured people as landowners.

Land reform in South Africa encompasses three components: land restitution, land redistribution, and land tenure reform. Land restitution involves the return of land, or compensation, to people who were dispossessed of land since 19 June 1913 because of racially discriminatory laws without just and equitable compensation (Mgoqi, 2001:

76). Land redistribution aims to transfer large portions of land from the historically privileged minority to the historically disadvantaged. This is done because neither land restitution nor land tenure reform is capable of addressing the imbalance in landholding in South Africa on its own (Lahiff, 2001: 4). Land tenure reform has it as its aim to provide people with secure tenure where they live, and in doing so, prohibiting arbitrary evictions.

Transformation

The concept of transformation is a difficult concept to clarify, since the meanings people attach to transformation differs substantially, and the word tends to be used in many contexts. Gagliano and Du Toit (1996) found two paradigms of democracy, the liberal and liberationist paradigms. This leads to rival conceptions of transformation, which will be explored in the following chapter. For the moment, a more generic conceptualisation of transformation will suffice.

Singh (1992: 48) says that transformation is “a term used as a goal as well as a process and sometimes as a hazy combination of the two”. Considering this, it might be wise to describe the objective as well as the means with which it is achieved. According to President Mbeki, quoted by Hudson (2000: 96), the objective of transformation is “the establishment of a society characterised by the ‘equality of the national groups’ by a proper ‘racial balance or representativity’ throughout all its sectors, classes and status orders”. The attainment of this entails “transforming the entire fabric of social life in South Africa, and requires - under current circumstances - the policies of preferential treatment for black citizens” (Hudson, 2000: 96). Thus, land reform, affirmative action and black economic empowerment fit this transformation paradigm.

It must be said that this definition of transformation is rather vague. It should also be brought to attention again that what ordinary South Africans consider to be transformation might differ from the above mentioned perspective, which is at a more abstract level. One would expect ordinary citizens to focus more on a change in their immediate circumstances.

Following from the distinctions between the liberal and liberationist conceptions of democracy, one can distinguish two conflicting paradigms which include opposing aspects of democracy, transformation and land reform. This will be used to place the government's land reform project and the views of the population, within a paradigmatic framework, either the liberal paradigm or the liberationist paradigm. This will be explored further in paragraph 2.3 of the next chapter.

1.4.5 Hypotheses

The main hypothesis of this study is: Demographic indicators (race, party affiliation and provincial setting) influences support or rejection of the land reform policies of the South African government. The dependent variable is 'support or rejection of the government's land reform policies'. This hypothesis will be explored with the hypotheses described in the following paragraphs, derived from three statements. Each of these statements aims to measure aspects of the liberal or liberationist paradigms, as will be elaborated on in the fourth chapter.

The dependent variables for this study will be attitudes towards whether "all the land whites own, they stole from the blacks", "landowners who dispute land claims by going to court, are building democracy" and "landowners who dispute land claims by going to court, are blocking transformation". The independent variables will be of a demographic nature. These are: race, party allegiance, and the province where a person comes from.

By combining each of the dependent variables with each of the independent variables one can derive the following hypotheses:

Statement 1: "All the land whites own, they stole from the blacks."

- I.I. A person's race correlates with the extent of agreement/disagreement with the statement that "all the land whites own, they stole from the blacks."
- I.II. Party allegiance correlates with the extent of agreement/disagreement with the statement that "all the land whites own, they stole from the blacks."

I.III. The province where a person comes from correlates with agreement/disagreement with the statement that “all the land whites own, they stole from the blacks.”

Statement 2: “Landowners who dispute land claims by going to court, are blocking transformation.”

II.I. A person’s race correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are blocking transformation.”

II.II. A person’s party allegiance correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are blocking transformation.”

II.III. The province where a person comes from correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are blocking transformation.”

Statement 3: “Landowners who dispute land claims by going to court, are misusing the constitution.”

III.I. A person’s race correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are misusing the constitution.”

III.II. A person’s party allegiance correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are misusing the constitution.”

III.III. The province where a person comes from correlates with the extent of agreement with the statement that “landowners who dispute land claims by going to court, are misusing the constitution.”

1.4.6 Limitations

The limitation of this study is the fact that the survey, from which the data used stems, has not been designed specifically for this study. Therefore, the survey questions were not tailor made for the purposes of this study, which means the data is not totally tuned for the nuances of this particular study. The primary dependent variable that

will be used, namely liberal/ liberationist perspectives on democracy, are only measured partially.

1.4.7 Delimitations

As indicated earlier, the survey was conducted during February and March 2004, rendering the data very current. This gives the study a degree of 'freshness' and puts it in a position to provide a somewhat unique perspective. However, it only produces a "snapshot" of what public attitudes were at the time of the survey.

1.5 Chapter Outline

The thesis will be divided into four chapters, excluding the current. Chapter two will deal with the theoretical setting of the study. This chapter will contain theoretical discussions of democratic consolidation, the rule of law, transformation and land reform. It will also be shown that from each of these topics two divergent perspectives exists. These differing perspectives of each topic will be divided into two groups in the last part of chapter two.

The following chapter will deal with the political context within which land reform is situated, as well as focusing more specifically on land reform.

Chapter four of this thesis will present the qualitative data, as well as a discussion of these findings. It will therefore address what it seems the South African citizens expect regarding land reform, transformation and the rule of law, derived from the data and two groups that emerged from part one. This would lead to an attempt at predicting prospects for democratic consolidation as a conclusion is reached.

Chapter Two

Theoretical perspective

The purpose of this chapter is to provide a brief description of the theoretical setting of this study, in order to lay a foundation for coming chapters. The aim is to connect transformation and land reform to the theory of democracy and democratic consolidation. Furthermore, two groups of opposing ideas will be presented. By creating this framework, a way to connect public opinion and government action to the theory will be rendered.

2.1 Democratic consolidation

A consolidated democracy refers to a political regime where the complicated web of rules, institutions, principals and norms characteristic of democracy are accepted, by the state and society, as the only alternative in the country, or as Linz and Stepan put it, “the only game in town” (1996: 15). Thus, a democracy is consolidated when the majority of the country’s people, even when things are not going as well as they would have liked, share the opinion that democratic institutions and procedures are the best way to govern the country. Furthermore, a democracy is consolidated when governmental as well as non-governmental forces are compliant to the resolution of conflict within the bounds of democratic laws, procedures and norms (Linz and Stepan, 1996: 16).

Scholars have found several conditions that need to exist in a country for democratic consolidation. One can discern three spheres that provide conditions for democratic consolidation. These are: economy, institutions and society. Adam Przeworski and his colleagues found that high per capita income (more than US\$1000 for democracy to be relatively safe; US\$ 6000 for democracy to be secure), economic growth of 5% or more, and declining economic inequality are economic conditions highly favourable for democratic consolidation (Przeworski, *et al.* 1996). Social conditions for democratic consolidation are a middle class, a thriving independent civil society and a homogenous ethnic structure (Breytenbach, 1997: 20-25). Institutions necessary for democratic consolidation are: institutions facilitating participation and contestation (elections and parties) (Breytenbach, 1997: 17), the rule of law, and a neutral and

functioning bureaucracy (Linz & Stepan, 1996: 18-21). Przeworski and colleagues also found that parliamentary systems survive longer than presidential systems, and are therefore better suited for democratic consolidation (1996: 47).

For the purposes of this study, the rule of law is the only one of the above mentioned conditions that will be discussed in more depth in the following paragraphs. However, the above mentioned conditions should be kept in mind, as some of them will be relevant to some of the topics that will arise out of the discussions on land reform and other contextual South African issues that will be discussed in the following chapter. It should also be kept in mind that successful democratic consolidation is dependent on a combination of these conditions and not on one alone, for instance the rule of law. Still, one can determine if the rule of law in a country is conducive to democratic consolidation.

2.1.1 Democratic consolidation and the rule of law

In every state, everyone is always subject to authority. In other words, “the freedom of all will be restricted by the authority imposed upon them.” This authority is codified in law. The ‘rule of law’ means that these laws will be obeyed by all public institutions and functionaries, that no citizen is above the law and that no office-bearers have privileges other than that provided for in the law (Cloete, 1993: 13-14).

The rule of law is an integral part of consolidating democracy. According to Linz and Stepan “the more that all the institutions of the state function according to the principle of the state of law, the higher the quality of democracy and the better the society (1996: 19)”. All of the main role-players, especially the government and the state apparatus must be held accountable to the rule of law. Civil society and political parties must contribute in an attitude of strong consensus regarding the constitution and a commitment to act in an appropriate way (Linz and Stepan, 1996: 18-19).

The rule of law implies constitutionalism, an independent judiciary, respect for human rights and accountability (Breytenbach, 1997: 18). Defined narrowly, constitutionalism “is the practice of limited government ensured by the existence of a constitution (Heywood, 1997: 279).” This means that government actions and

political processes are directed and effectively constrained by constitutional rules. In a broader sense, constitutionalism is also a “set of political values and aspirations that reflect the desire to protect liberty through the establishment of internal and external checks on government power (Heywood, 1997: 279).” An independent judiciary refers to a “strict separation between the judiciary and the other branches of government (Heywood, 1997: 286).”

Linz and Stepan (1996: 19) see the establishment of a *Rechtsstaat* as an important step in the direction of a consolidated democracy. They explain:

“A *Rechtsstaat* meant that the government and the state apparatus would be subject to the law, that areas of discretionary power would be defined and increasingly limited, and that citizens could turn to the courts to defend themselves against the state and its officials.”

From this one can gather that to be meaningful in terms of consolidation, land reform must be executed subject to the law and the constitution. Furthermore, disputes arising from land reform, between the state and citizens, or among citizens, must be resolved within the rule of law.

2.1.2 Democratic consolidation and the distribution of land

Terry Lynn Karl (2000) found the connections between patterns of land ownership, inequality and the longevity of democracy. Even though these findings come from a comparative study of patterns of settlement in North and South America, these findings seem very relevant to South Africa’s case.

Karl argues that the different patterns of property ownership produced a vicious cycle of inequality and democratic failure in Latin America, while the United States of America is a consolidated democracy, and a more equal society. This difference has its origin in colonial times. In the United States material equality produced democratic beliefs. This led to equal citizenship, in other words, a universally recognised right of individuals to participate equally in the making of political decisions (2000: 151,152).

The structure of property ownership was the main contributing factor to these developments. Land was available to more people. The connection between families and the preservation of landed estates were thus broken, as it prevailed in Europe. This did not create the platform to form a new landed elite. Furthermore, the colonisers were highly educated and had the right to form a political society and govern themselves under the protection of England. Education was also readily available to everyone. Therefore people's circumstances were the same; they had equal political rights, similar levels of education, and equal property rights. Property and power were thus divided and distributed among the people, and a basis for the growth of a democratic culture was laid (Karl, 2000: 151).

The same could not be said of Latin America. The colonisers were not after religious freedom, as was the case in Northern America, but were after the riches South America had to offer. The settlers gained control of large portions of land and, with force, superimposed themselves at the top of social structures. This led to the establishment of hierarchical political structures. The web of land ownership, family, centralised power and wealth formed the basis for an elite, or a new form of aristocracy (Karl, 2000: 151, 152).

In South America a dualistic society has been created: A rich, landed political elite, and the poor. A huge social distance between the two groups was established. The rich built their own schools, churches and the like. The similar circumstances, as prevalent in the USA, are thus not applicable in Latin America, and therefore the formation of a democratic culture never happened, and therefore Latin America's troubled relationship with democracy (Karl, 2000: 152, 153).

The connection between land, equality and democratic values should be clear from this. Equal access to land leads to an equal society, which in turn leads to universal democratic values, and therefore to a stable democratic regime. Conversely, unequal access to land leads to a divided society, undermining democratic values and the absence of stability and democracy. It should also be clear, to anyone with even the slightest knowledge of South Africa's history, that South Africa's development has a lot in common with that of Latin America. That is why land reform is of such great

importance to South Africa, because from the above, it should be clear that a pattern of land ownership leading to inequality needs changing if a consolidated democracy is desired.

2.2 Land Reform

Andreas Schedler (1998) provides us with the notions of *positive* and *negative* consolidation. In short, negative consolidation refers to preventing democratic erosion and breakdown. In other words it involves moving the regime “beyond democratic fragility, instability, uncertainty, reversibility, or the threat of breakdown (Schedler, 1998:95-96).” Positive consolidation refers to “improvements in the quality of democracy or with democratic deepening (Schedler, 1998: 104).”

One could say that land reform can make a contribution to democratic consolidation according to the negative notion of consolidation. The dramatic collapse of democracy in Zimbabwe had a reckless land reform process at its core. According to Breytenbach (2000: 46 & 2003: 47) land has historically been a source of conflict, as their war of liberation was fought about land. The issue has never been resolved, and under electoral pressure, Zimbabwean president Robert Mugabe allowed the conflict to reach a situation where so-called “war-veterans” invaded white-owned commercial farms. The rule of law collapsed, the economy crashed, discrepancies in the 2002 election were found (Johnson, 2002), and reports of human rights violations and intimidation are abundant in the media. It would currently be hard to make a case for describing Zimbabwe as a democracy. It seems a fair assumption that a rational land reform policy, keeping democratic principles intact, could have gone a long way in reducing conflict, and preventing the eventual breakdown of democracy.

Thus, it has been indicated that land reform can make a contribution with regards to negative consolidation in avoiding conflict. It can also play a part, albeit less directly and of a rather small scale, with the positive notion of consolidation. For instance, if more people gain access to land, material inequality can be curtailed. However, this is dependent on the agriculture’s percentage as part of national production. The bigger the percentage, the better the possibility of playing a role in curbing inequality. Furthermore, if formerly useless land is turned into viable economic enterprises, a

contribution towards economic growth can be made. However, the two examples above are largely conjecture and dependent on the nature and implementation of a particular land reform policy, as well as the part agriculture plays in the national economy.

This leads us to two approaches of land reform. These approaches are the market-driven approach and the equity approach. The market-driven approach relies on the “willing buyer, willing seller” principle, in other words, market-driven acquisition. The equity approach features state policies to nationalise all land or dispossess land, which will be allocated to African claimants or landless people (Breytenbach, 2003: 46).

It seems fair to suggest that the market-driven approach belongs to the liberal-democratic ideology, while the equity approach is more along the lines of socialism and even populism. It should be said that it is not necessarily a clear cut distinction, as a land reform programme might have characteristics of both.

Sobhan (1993: 1-2) provides two conceptions describing the purpose of land reform. His focus is more on agrarian reform, i.e., his focus is on rural land reform. Sobhan found that land reform projects are either developmental or socialist in nature, as far as their purpose goes. The developmental approach has as its purpose the establishment of a capitalist agricultural dispensation. Meanwhile, the socialist approach’s goal is removing the ruling elite. This form of land reform has been seen in parts of Latin America, the Middle East and South East Asia. The agents of these reforms have differed: revolutionary upsurges, high-minded post-colonial elites, nationalistic military juntas and the lower land-owning classes have all played a part in socialist land reform (Sobhan, 1993: 1-2).

Once again a distinction between a liberal-democratic ideology and the socialist ideology presents itself. The capitalist purpose fits the liberal-democratic bill and, as the name suggests, the socialist purpose the socialist/populist ideology. It is therefore reasonable to group the market-driven process of land reform and the capitalist purpose together, while the equity approach goes with the socialist purpose.

2.3 Transformation

Transformation is a rather hard concept to pin down, but as stated in the previous chapter, transformation entails a change in “the entire fabric of social life in South Africa” (Hudson, 2000: 96). Patterns of land ownership obviously form part of the “fabric of social life,” and therefore land reform forms part of the transformation project. What the process and goal of transformation looks like, and its implications for democracy, might well be dependent on the interpretation of democracy, and the ensuing perspective of transformation.

Two interpretations of democracy have been identified by Gagiano and Du Toit (1996). These interpretations are the liberal and liberationist interpretations. The liberal interpretation of democracy depends upon the argument that democracy is dependent on the separation of the spheres of politics, economy and society. Therefore, the inequality that exists in every society is “best mediated by the institutional separation of democratic politics from the system of inequality in the economy and the civil society” (Gagiano & Du Toit, 1996: 47). Hudson (2000: 93) prescribes that the nature of the state, according to the liberal democratic paradigm, involves neutrality, tolerance and pluralism as the base principles of a democratic system. The implication for transformation and land reform is that it is best left to free market forces and civil society, rather than the state.

By contrast, the liberationist interpretation, which has strong ties to nationalism and socialism, focuses on the “redressing of historical inequality” (Gagiano & Du Toit, 1996: 47). Liberationists therefore have a different role for democracy, in the sense that the essence of democracy is determined by the aspirations of the previously disadvantaged majority. Therefore the “essence of the liberationist project is the *fusion of the spheres* of politics, economy and society” (Gagiano & Du Toit, 1996: 2), or as Hudson puts it the “permanent capture of state power and resources in the name of the ‘people’ (2000: 93). Thus, the state should be the agent of transformation in a society, and these transformational principles are superior to liberal democratic principles.

One could make a strong argument that the liberal interpretation of democracy would view democratic consolidation as a form of transformation, in that it changes the fabric of society to mirror the principles of democracy. The idea of transformation might not include democratic consolidation as part of the transformation project, according to liberationists, as the so-called 'will of the people' is superior to the rules of liberal democracy. Hudson (2000) argues that the South African government follows the liberation view. Gagliano and Du Toit (1996: 48) warn against the dangers of the liberation ideology: "[T]he liberationist perspective does not clearly distinguish between public and parochial interests, and thus runs the risk of degenerating into corruption." This is a clear indication that the liberationist perspective might not be conducive to democratic consolidation. The case of Zimbabwe could be used to illustrate this point.

In the preceding paragraphs a clear theme has evolved: conflicting paradigms. On the one hand there are the liberal ideas on democracy, transformation, the goal and purpose of land reform, and on the other the socialist or collectivist ideas, which fit the liberationist bill. This might have its roots in a cultural divide. The liberationist paradigm corresponds to a "high-context" culture and the liberal paradigm to a "low-context" culture.

Du Toit (2003: 105-106) relates the distinction Raymond Cohen observed between a "high-context" culture and a "low-context" culture. In the "high-context" culture the context of communication is of supreme importance. In this culture individual autonomy is largely of secondary importance, relationships are entrenched in a wider, communal framework. The principal need in this type of culture is the sustainment of relationships, solidarity and cohesion. In high-context cultures maintaining 'face' is very important. In the high-context culture functional aspects of communication include courtesy, respect, deference and an aversion to hostile confrontations. Current events are also viewed from a "broader historical setting." The Anglo-American society exemplifies the low-context culture. In this type of culture communication is more about the transfer of information and obtainment of results than the fostering of relationships. Contextual issues are of lesser importance and facts tend to overrule sentiment.

It is important to note the different meanings each paradigm assigns to rules and constitutions. According to the high-context culture, rules “must reflect changing power relationships, not shape them” (Du Toit, 2003: 112). The low-context culture holds an opposite view. Rules define the power relationships.

These differing views had implications on the negotiation of the South African transition and subsequent constitutions, and the meaning attached to the constitution. For the high-context culture, the negotiation process were seen as a part of the longstanding relationship between the negotiating parties. It was also seen as part of the larger process of liberation (Du Toit, 2001: 102, 104). The resultant negotiated agreement (the constitution), is “no definitive, set, codification of the relationship” (Du Toit, 2001: 102), it is merely “an episode within the larger ongoing process,” capturing the relationship at that particular time. For those subscribing to the high-context culture, revisions to the rules are not seen as a violation of a social understanding (Du Toit, 2003: 112), but is “subject to re-negotiation, to reinterpretation, and is as fluid as the ongoing relationship is indeterminate” (Du Toit, 2001: 102).

This sets the alarm bells going for those of a low-context cultural persuasion, as it poses a threat to the rule of law and the collapse of constitutionalism. For, in the low-context culture, a negotiated contract (constitution) has binding status. According to Du Toit (2002: 102) it represents a “fixed point of reference, cementing the relationship between parties, and is both stable and static until it is revisited by both parties, by mutual agreement.” The negotiated agreement is thus both a legal and social contract. Its outcome is the creation of a *rechtsstaat*, “the epitome of a constitutional contract” (Du Toit, 2001: 104).

From this one can deduce that the liberal paradigm sees rules and the constitution as fixed documents, paving the way towards a *rechtsstaat*, while the liberationist paradigm views rules and the constitution as a flexible map, free to be interpreted, leading to liberation.

As indicated earlier, the liberal paradigm would seem to be more favourable for democratic consolidation, while the liberationist paradigm is a breeding ground for populist transformation. The two paradigms will be summarised in the following table:

Table 2.1 Conflicting paradigms: Liberal vs. Liberationist

	Liberal	Liberationist
Culture	Low-context	High-context
Perspective on democracy	Liberal democratic	Populist
Purpose of land reform	Capitalist	Socialist
Process of land reform	Market-driven	Equity
Parameters	Law, Rule of law	Popular needs
Purpose of change	<i>Rechtsstaat</i>	Populist hegemony/ liberation

The two lines of thought should not be seen in absolute terms. The divisions between these ideas might not always be as clear-cut as the table would suggest. For instance, the process of land reform might be guided by both the market-driven and equity approach, because of the broad scope and complexity of land reform (as will be indicated in the following chapter). However, this classification does provide the means to map government and state thinking, and later, that of the public.

2.4 Conclusion

This chapter has illustrated that an unequal distribution of land can have a negative impact on democratic longevity, and therefore, land reform can play a role in terms of negative consolidation. It can also play a role in positive consolidation, but this is more dependent on contextual factors than negative consolidation (not that negative consolidation is not dependent on contextual factors).

It has also been indicated that democratic consolidation and transformation can be viewed as opposing forces, with transformation falling in the liberationist paradigm, focusing on the fusion of the spheres of politics, economy and society, and thus state involvement and a possible lack of neutrality. The liberal view focuses on the

separation of state, economy and society, which is more conducive to democratic consolidation, because of the inherent safeguard against abuses of power.

Chapter Three

The South African Land Reform Project

This chapter will discuss South Africa's land reform project. First a historical overview of the land question in South Africa will be rendered. Thereafter the political context in which land reform is situated will be explored. These two topics should provide sufficient background information for an assessment of government land reform policy and its implementation and effects, which will follow. This will be then measured against the theoretical framework of paradigms outlined in the previous chapter.

3.1 An historical overview of the land question in South Africa

Land ownership has always been a key ingredient of South Africa's troubled past. Drimie (2003: 39) goes as far as saying that "South African history can be seen in terms of a continual process of land dispossession." This process started with the first European settlement in the Cape in 1652, through to the racial policies under colonialism and apartheid (Drimie, 2003: 39).

The colonial conquest intended to incorporate South Africa into the capitalist economic system, developing out of Western Europe (Matlhabe & Münz: 1991: 1). The ownership of private property is part and parcel of the capitalist economic system. With the ownership of private property came documents like title deeds. In other words, the systematic state sanctioned legalistic administration of land. This was, of course, not the way land ownership was managed by the indigenous people of Southern Africa at the time Jan van Riebeeck first set foot on African soil.

3.1.1 Land distribution during colonisation (1652-1910)

According to Aninka Claassens (1991: 45) and Maureen Tong (2003: 1) it is not disputed that most of South Africa's arable land was occupied by indigenous people before the first colonisers arrived. When Van Riebeeck and his party, under the auspices of the *Vereenigde Oost-Indische Compagnie* (VOC), arrived in the Cape in 1652 they encountered the Khoekhoe (also known as Khoikhoi) and the San (collectively known as the Khoesan), who were at the time the inhabitants of the

southernmost part of Africa. The San were hunter-gatherers. The Khoekhoe were pastoralists, meaning they used a different piece of land at different times of the year to graze their cattle. Therefore pieces of land could appear to be uninhabited, while the Khoekhoe had every intention to return to it at a later time. Furthermore, the Khoekhoe did not ascribe to the notion of individual ownership of land, in other words, private property (Tong, 2003: 1, 3).

The settlers therefore did not regard the Khoekhoe as having property rights of a legal nature. The mere occupation of land by colonisers from 1652 and onwards was seen as enough proof of sovereignty over the land. Van Riebeeck and those after him asserted authority over the land and took on the right to dispose of the land (Tong, 2003: 1).

Under the VOC's administration in the Cape, from 1652 until 1795, "wars of dispossession were fought against the indigenous population in the Cape Colony," resulting in the conquer of the San and Khoekhoe, according to Lee (2003: 4-5). The Khoekhoe, lacking a sophisticated social infrastructure and military organisation, were unable to defend themselves and their land (Tong, 2003: 5). Thus, the initial 'transfer' of land from the indigenous people to the white settlers entailed obtaining the land by force, with or without treaties to record the new boundaries and settler control. In other instances governors and illiterate chiefs entered into detailed and complicated legal contracts of transfer or sale (Claassens, 1991: 45). This situation was evidently to the advantage of the settler, and left the indigenous people open to exploitation.

The colony expanded further, into Xhosa territory. This resulted in the first of the wars with the Xhosas in 1780. This led to 100 years of conflict between Xhosa and settler, as the last Xhosa war ended in 1880. The Xhosas offered much stronger opposition to the settlers than the Khoekhoe, as they had a much better developed social infrastructure and more military sophistication. Importantly, they also viewed the land as their property in a much stronger sense than the Khoekhoe (Tong, 2003: 9-10).

From 1795 until 1803 the British occupied the Cape Colony, for the first time, and from 1806 onwards for the second time. The British policy on land issues differed during the first and second occupations. During the first occupation they were sympathetic towards the Xhosas, but during the second they preferred military take over and control (Tong, 2003: 10). As Lee (2003: 5) states: "When the British reconquered the Cape Colony in 1806, the European invaders expanded further into the interior of South Africa. For the first time, the invaders were able to defeat the Xhosa in battle." For instance, the British removed 20 000 Xhosas through military means from a district known as the Zuurveld in order to settle white families on the land, between 1811 and 1812 (Tong, 2003: 10).

By the 1830's the Boers had grown disenchanted with British rule. This led to the 'Great Trek'. According to Giliomee (2003: 144-145) the causes for this movement was a lack of land, labour and security, as well as a prevalent sense of marginalization. Giliomee goes on to describe the 'Great Trek' as "a bold and dramatic response to a survival crisis that had engulfed the eastern and northeastern districts of the Cape Colony from the mid-1820's to the end of the 1830's."

A land shortage had long been a problem, but the situation got worse between 1812 and the mid-1830's. In 1813 the loan farm system was abolished by the British authorities, and replaced by a system of perpetual quitrent tenure. This meant that farms had to be surveyed properly, and the costs for this system was also substantially higher for the farmers than for the loan farm system. Title deeds were also not issued promptly, sometimes they were still outstanding ten or twenty years after the land was surveyed and the fees paid. Crown land was not available for cheap purchase, and the market price of established farms rose (Giliomee, 2003: 144-145).

Furthermore, the Dutch system of inheritance practised by the Boers led to landlessness among Boers. The Dutch system of inheritance encouraged unsustainable subdivisions of land, as all the children were entitled to an equal share of the land at their parents' death (Tong, 2003: 12). This meant that land had to be sold and subsequently larger farms were consolidated.

Land ownership was an essential part of status, wealth and prestige in the settler community. Subsequently the landless Boers and other landless European descendants saw the 'Great Trek' as an opportunity to acquire land (Tong, 2003: 12). Giliomee (2003: 145) also contends that the Boers considered leaving the colony to obtain "abundant land" to continue their subsistence farming according to their tradition.

Thus, as the Boers were essentially pastoralists, the trek could be seen as a continuation of this. Once in the interior, the *Voortrekkers* (the Boers who participated in the 'Great Trek') continued to use this system. They looked to establish themselves on or near land already inhabited by Africans, as this land would be best suited for these forms of land use. Conflict with the Africans was therefore inevitable (Tong, 2003; 12).

As said earlier, the reasons for the Boers' embarkment on the 'Great Trek' had not only to do with land. A crucial issue was also labour. Many farmers did not pay their labourers well and wealthy Afrikaner farmers tried to retain labourers by displaying a "benign paternalism," allowing servants to keep some stock. But, the growing pressure on the land meant that few farmers could provide them with enough land for their own stock. Furthermore, Ordinance 50 of 1828 gave the Khoekhoe freedom of movement, and they began moving away from the farms in large numbers. The Boer community were severely affected by the loss of authority over slaves and servants (Giliomee, 2003: 146-147).

Another reason for the trek was insecurity on the frontier. Khoesan bands stole cattle. In 1832, large numbers of 'Mantatees', who fled from enemies beyond the border, harassed the farmers as they roamed from farm to farm in search of food. The problems the Xhosa posed to the frontier farmers was more complex. Giliomee (2003: 148) says that the Sixth Frontier War (1834-1835) "was a profound shock to all the frontier colonists." Up to that point they believed that a Xhosa invasion was impossible. The colony's counter-attack did not bring stability as a few months later marauding Xhosa gangs were squatting on land and plundering and stealing cattle (Giliomee, 2003: 148-149).

The sense of marginalization and disempowerment amongst the Boers was another cause of the trek. They did not feel at home in their own country. They felt that they were treated with indifference and as inferiors by the British authorities. They also suffered from a very critical English press. They objected to the notion of being subjects (Giliomee, 2003: 149-152).

The importance of the 'Great Trek' with regards to the land question is that it stretched the reach of white settlements in Southern Africa. In other words, it was the means by which white settlers gained control of the land in the South African interior.

Thus, throughout the 19th century South Africa saw many wars of dispossession against the different African chiefdoms. By the turn of the century Europeans were in control of most of the land. Small reserves were created in various parts of the country, but most Africans were forced to live on farmland owned by whites as full-time workers (Lee, 2003: 6).

The land that would later become South Africa was divided in four parts: two British colonies, named the Cape Colony and Natal, and two Boer/Afrikaner Republics, the Orange Free State and Transvaal. The Afrikaner Republics were committed to remain independent from the British Crown (Lee, 2003: 6).

In the nineteenth century laws were in place that put severe restrictions on the right of black people to own land. The Cape Colony allowed black ownership. Natal and the Transvaal favoured forms of trusteeship long before the other provinces. The Boer Republic of the Orange Free State prohibited black ownership, except in exceptional circumstances. Their lawbook was a particularly explicit articulation of how property rights were subordinate to racial classification (Claassens, 1991: 46-47).

As whites spread to inland South Africa, missionaries, who held land in possession in the name of communities, and mineral concessions were also used to dispossess whole nations. Once land had been acquired by the colonial state or the colonial company, it was granted to whites. Subsequently, grants, quitrents and loan farms were converted into private property (Claassens, 1991: 45-46).

The discovery of diamonds in Griqualand West in 1867 and gold in Transvaal in 1886 transformed the political economy of South Africa. Both Afrikaner Republics, as well as the Tswana and Griqua chiefdoms claimed sovereignty over the Griqualand West diamond fields. But, eventually the British incorporated Griqualand West into the Cape colony in 1880 (Lee, 2003: 6). The Anglo-Boer War of 1899 until 1902 was essentially fought over the rich gold-producing areas in the Afrikaner Republics. Both republics were defeated and became British colonies (Lee, 2003: 7).

3.1.2 The Union of South Africa (1910-1948)

According to Lee (2003: 7) “the Afrikaners and the English-speaking whites consolidated their power and formed the Union of South Africa, a dominion of Britain” in 1910. The Union of South Africa consisted of the former British colonies of the Cape and Natal and the former Boer Republics of Transvaal and the Orange Free State. Lee (2003; 7) goes on to say that the English-speaking whites and the Afrikaners “needed to put aside their differences in order to maintain control over the virtually landless and politically impotent African majority.”

The Land Act of 1913 is probably the defining moment of black people’s dispossession of land in South Africa. This piece of legislation “formed the basis on which South Africa was and is divided” (Harley & Fotheringham, 1999: 12). It prohibited all purchase of land by black people, apart from the seven percent that were set aside for them at the time (Claassens, 1991: 47-48).

Conquest, dispossession and the rejection of their property rights in 1913 did not deter Africans from being “successful competitors in the land market” (Claassens, 1991: 48). In the old Transvaal they managed, through collective efforts, to raise more money to buy the land of farmers ruined by the war than Europeans. However, as Claassens (1991: 48) tells us, “successive commissions resulting in successive amendments to successive laws did finally manage to make African land purchase all but impossible.”

Just as Africans adapted to the original legislation by entering into their conquerors’ terms of buying back their land, they reacted to the new restrictions by entering into

lease and share-cropping arrangements with the owners of the land. In the early part of the 20th century African occupation of the land was extensive and profitable on these contractual agreements. The white farmers were not impressed with this state of affairs, as their exclusive ownership only secured them half of the produce of the Africans who farmed on their land (Claassens, 1991: 48-49).

In 1936 the Development Trust and Land Act extended the African reserves to approximately 13% of the country. A system of compulsory registration of labour tenants was put into place, as well as the means to control them. The Act also made provision for the forcible eviction of Africans if their numbers exceeded the numbers that were allocated by the labour tenants control board (Lee, 2003: 8).

This resulted in poverty in the black reserves and the collapse of black agricultural production. This, coupled with the taxes imposed by central, provincial and municipal governments, meant that blacks had to urbanise in order to find employment. This preserved the system of migrant labour that was established by the mining industry, albeit with severe restrictions imposed on blacks' movements in white areas through the infamous and complex pass laws (Lee, 2003: 8).

3.1.3 The Apartheid state (1948-1994)

In 1948 the National Party (NP) came to power and officially introduced apartheid, meaning that they separated the races through legislation (Lee, 2003: 9). Tong (2003: 52) identifies three apartheid policies pertaining to land rights in South Africa. These policies are the homelands policy, the influx control policy and forced removals.

The homelands

According to Maureen Tong (2003: 52) “[t]he homelands policy converted African reserves that had been established into the so-called ‘homelands’ or ‘Bantustans’.” This led to the establishment of four homelands called Transkei, Ciskei, Bophuthatswana, and Venda, as well as six ‘self-governing territories’ by the names of Gazankulu, Kangwane, Lebowa, Kwandabele, Qwaqwa and KwaZulu. South Africans of Asian descent were never confined to any territory, although their presence in the Orange Free State province was closely controlled (Tong, 2003: 52).

The apartheid government proposed that the rationale of the homeland system was separate development, and to give political rights to African and national groups in their own homelands. The idea was also to enable them to become economically independent. It is questionable whether this was truly their conviction (Harley & Fotheringham, 1999: 31-33). Tong (2003: 52) proposes that these territories “were established to justify the exclusion of Africans from holding and leasing farmland, consolidate a base for migrant labour system as well as to underpin segregation.”

For the purposes of this study it is important to note that the homeland system made it practically impossible for blacks to own land, in terms of private property. Most of the land in the homelands was nationalised. There were only a few exceptional land owners. Most of the land in and adjacent to the homelands was owned by either the South African Development Trust (SADT) or directly by the state, be that the Republic of South Africa (South Africa became a republic in 1961) or the particular homeland authority (Claassens, 1991: 55).

The South African Development Trust “consolidated all the pieces of land which had been ‘held in trust’ for natives by the various provinces and pre-union governments” (Claassens, 1991: 55). This was because these governments did not deem it appropriate for Africans to own land; they believed it was “more beneficial that white governments administer blacks’ land rights for them” (Claassens, 1991: 55).

The influx control policy

The foundation for this policy has been laid in legislation from years preceding the NP’s rise to power. The legislation in question is the *Native (Urban) Areas Act 21* of 1923 and the *Bantu (Urban Areas) Consolidation Act of 25* of 1945. According to Maureen Tong (2003: 53) the aim of this policy was to give “the government control over urban Africans, thus leading to the formulation of an urban native policy that was premised on the provision of abundant cheap African labour for the mines as well as to ensure white security.” The legislation also disallowed Africans procuring land, except from other Africans, and in so doing the existing land ownership and occupation patterns was sustained (Tong, 2003: 53).

Forced removals

Between the years 1960 and 1983 more than 3,5 million people were removed from the land on which they were living with force (Harley & Fotheringham, 1999: 36). The implementation of the forced removals policy was largely initiated by the *Group Areas Act 41* of 1956, which subsequently became *Act 36* of 1966. The *Group Areas Act* was amended at least 12 times in a period of 22 years (Tong, 2003: 53).

Anne Harley and Romy Fotheringham (1999: 36-80) identified two main forms of removals, the so-called black spot removals and labour tenant removals. People were also removed for other reasons, such as conservation reasons, strategic, or military, reasons and the consolidation of the homelands policy (Harley & Fotheringham, 1999: 43).

The state declared certain areas to be 'white areas', even if these areas were already occupied by blacks who held title. These areas were usually good farming land or in close proximity to favourable facilities and amenities (Tong, 2003: 53). Black spots is the term that was used for African freehold land outside the scheduled and released areas of the Land Acts. The NP was determined to do away with all black spots when they came to power (Harley & Fotheringham, 1999: 39).

Owners of black spot land often had tenants. Furthermore, many of these black spots had also become refuge for people evicted from farms, and therefore overcrowded and difficult to farm. Black spots were primarily removed during the 1960's, when 97 000 people were removed between 1960 and 1970 (Harley & Fotheringham, 1999: 39-40).

There were only a few instances where land was expropriated with compensation offered. Not everyone in the black spots held title, though. Many Africans did not have registered title to the land but were beneficial occupiers, long-terms tenants or held land in customary tenure. Expropriation was thus not legally necessary in these instances. Most of this land was sold to white farmers at less than market value (Tong, 2003: 54).

A great deal of the outrage expressed over forced removals revolved around the black spots. Harley & Fotheringham (1999: 40) suggests that this was because “of an emphasis on property rights,” as black spots were areas where some Africans held title.

Labour tenancy was already under siege from the *Native Land and Trust Act* of 1936, but the National Party government extended this. In 1956 the above mentioned act was amended to “tighten control.” It was an attempt by the government to abolish labour tenancy (Harley & Fotheringham, 1999: 40).

This led to increasing numbers of evictions of tenants, together with the removal of ‘squatters’ (people living on land they did not own whether or not they had the owner’s permission) from farms (Harley & Fotheringham, 1999: 41-42; Tong, 2003: 53).

It is estimated that 340 000 labour tenants and 753 000 squatters were removed between 1960 and 1970, and a further 400 000 labour tenants between 1970 and 1974. As labour tenancy was abolished by 1973, these large state sponsored evictions were followed by smaller scale evictions by private landowners (Harley & Fotheringham, 1999: 42).

3.1.4 Land distribution at the dawn of a new era

At the start of the 1990’s, according to Claassens (1991: 43), over 80% of the population were prohibited from owning or leasing land in more than 80% of the country. It should be obvious by now that those who owned land were white, and that those who were prohibited from owning land were black. This meant that 12 million people occupied approximately 17 million hectares of land, while 60 000 farms occupied approximately 86 million hectares of land. This went together with severe rural poverty (Lebert, 2001: 1).

In 1993, according to Thami Ka Plaatjie (2003: 289-290), white South Africans and the government’s share of land constituted 86%, while the homelands were accommodated in the remaining 14%. The homelands accommodated 44% of the indigenous African population. Approximately 55% of the rural households were

small-scale farmers with an average one hectare for subsistence farming. About 30% of African families were landless in the rural areas in 1993. State owned land made up 12% of the total land. This land was used for forestry, defence, conservation and tourism, water affairs and educational facilities (Ka Plaatjie, 2003: 289-290).

3.1.5 Transition

On the February 2 1990 former president FW de Klerk made his famous speech that signified the first steps in the abolishment of apartheid. Negotiations with the NP's formerly banned adversaries were set to begin, as well as the amendment of apartheid laws. Four years later, on the 27th of April, 1994 South Africa saw its first democratic elections. But between these two dates arduous negotiations established the bedrock of a constitution for the new dispensation, in the form of CODESA (Congress on Democratic Change in South Africa).

During the negotiations for a political settlement the government started to reconsider its land policy. In 1991 the government released a White Paper on Land Reform, which rejected the notion of restitution and only offered limited redistribution, through the market (Harley & Fotheringham, 1999: 116). Tong (2003: 56) reasons that the NP government "perhaps seeing land reform as 'undesirable' to its policies and yet a completely unavoidable reality, passed the White Paper on Land Reform in 1991."

Also in 1991 Parliament passed the Abolition of Racially Based Land Measures Act, which repealed, amongst others, the 1913 and 1936 Land Acts. This act meant land could be freely acquired and sold, with no consideration to the race of the buyer and seller. But it made no impact on tribal land. The act did not meet the enormous expectations about land reparations, leading to increased frustration in communities who desired to reclaim their land (Harley & Fotheringham, 1999: 116-117).

One of the struggle's slogans was: "The land shall be shared among those who work it!" as codified by the Freedom Charter (Harley & Fotheringham, 1999: 60). It was thus no surprise that the land question was also one of the key features in the negotiations leading to a constitution for the anticipated democracy.

The decision whether or not to adopt a property rights clause in the interim constitution, and what form this clause should take, was a highly contentious issue in the deliberations. Part of the debate focused on the fear that adopting a property rights clause could lead to a constitutional crisis, where land reform could be deemed unconstitutional. This happened in India and North America. The other part of the debate focused on the question of financial compensation for the dispossession of land rights (Tong, 2003: 61).

In the end it was decided that the government would only be able to acquire land for redistribution on the 'willing buyer, willing seller' principle, at market price (Lee, 2003: 19). In other words, the principle of private property was confirmed. Thus, the negotiations concerning land resulted in a compromise regarding redistribution. However, the ANC's policy on restitution succeeded (Harley & Fotheringham, 1999: 117). Furthermore, CODESA took a political compromise decision to set the cut-off date for qualifying for restitution at 19 June 1913, the date on which the 1913 Land Act came into operation (Tong, 2003: 62).

3.1.6 The 1993 Interim Constitution and the 1996 Constitution

A property rights clause was included in the interim Constitution of 1993, in the form of section 28. According to Maureen Tong (2003: 61) the apartheid government's segregation policies and legislation led to the "denial of the right to equality on the grounds of race and gender." Therefore it is not surprising that the right to equality is a recurring theme in both the interim Constitution of 1993 and the 1996 Constitution. The interim Constitution dealt with the issue of affirmative action and the right to claim restitution in a similar manner. The right to equality and equal protection of the law is protected, whilst the interim constitution also incorporates affirmative action and insulates it from constitutional challenge (Tong, 2003: 61). The 1993 interim constitution introduced a new phase in land ownership in South Africa; for the first time the right to have land restored was recognised as a constitutional right (De Villiers, 2003: 47).

Section 25 of the Constitution of South Africa of 1996 deals with land reform. The provisions for land restitution in the 1993 interim Constitution have been largely

incorporated in Section 25(7) of the 1996 Constitution. Sections 25(5) and 25(6) deals with redistribution and tenure reform programmes. The first clauses of section 25 deals with the issue of private property and expropriation (Tong, 2003: 62). These will be dealt with in more detail when the government's land reform policy is discussed.

Section 25(1) is a 'deprivation clause'. According to Tong (2003: 62) "[i]t refers to state interference with property rights that is merely regulatory in nature and is therefore not conditional on the payment of compensation." An example of this is zoning legislation (Tong, 2003: 62).

Section 25(2) is an expropriation clause. It states:

'Property may be expropriated only in terms of a law of general application-

- (a) for a public purpose or public interest; and*
- (b) subject to compensation, the amount of which and time and manner of payment of which have either been agreed to by those affected or decided or approved by a court'* (South Africa, 1996: 25(2)).

Section 25(3) deals with the conditions for expropriation, specifically the determination of the amount and manner of payment. The list of factors that should be taken into consideration for the amount of compensation payable is:

- (a) '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.'* (South Africa, Act 108 of 1996, 25(3)).

Section 25(4) addresses the question of whether land reform is 'public purpose' or 'public interest'. Tong (2003: 62) speculates that this might have been done to "insulat[e] land reform legislation and policies against possible constitutional challenge." Section 25(4) states the following:

'For the purposes of this section-

- (a) *public interest includes the nation's commitment to land reform and reforms to bring about equitable access to South Africa's natural resources; and*
- (b) *property is not limited to land'* (South Africa, Act 108 of 1996, 25(4)).

The point that should be taken from these subsections is that the government is compelled to institute land reform, while private property and market values (the 'willing buyer, willing seller' principle) are entrenched.

3.1.7 Concluding remarks on the history of the land question in South Africa

The preceding paragraphs have briefly chronicled a long history of systematic estrangement of blacks from land ownership in South Africa. First, land was conquered, and thereafter legal measures were put in place to uphold this highly unequal and racial pattern of land distribution. One can say that upholding the rule of law entailed expelling people from land. Furthermore, it is safe to say that capitalism, and therefore the notions of private property and the free market, have been entrenched as the mode of production.

The negotiated settlement produced an ambiguous remedy for this pattern of land distribution. On the one hand property rights and the market principle will be protected by the constitution through the inclusion of the 'willing buyer, willing seller' principle. But on the other hand, the constitution also obligates the state to create a more equal distribution of land, which was also one of the motivations for the struggle in the first place. If the equality of land ownership is not addressed, social strife might be instigated by the landless. If the private ownership of land is not respected, the rule of law will break down, and the economy will suffer. In both circumstances democracy will be severely compromised.

Zimbabwe is an example of both the scenarios sketched above. For approximately twenty years since Zimbabwe gained independence not much was done concerning land reform, until, at the turn of the century, disenchanted 'war veterans' invaded farms. Private property was seized, with the approval of the Zimbabwean

government. Zimbabwe is currently facing an economic, political and humanitarian crisis. There have already been indications of discontent with the slow progress of land reform in South Africa, through threats by the Landless People's Movement (LPM) (Grobler, 2003), amongst others.

This ambiguity in the constitution might be explained by Pierre du Toit (2003: 108). He states that "[n]either the constitution of 1993 nor that of 1996 was premised on a consensus among the major participants about their negotiation's substance or goal." He also asks the following question: "Was [the negotiations] to create a procedural democracy guaranteed by a written contract, or was it to start a program of sweeping redistribution subject to perpetual reinterpretation and revision?" This lack of consensus not only led to the ambiguous provisions for land reform in the constitution, but it also "sustain a certain ambiguity about the exact meaning and purpose of the new democracy (Du Toit, 2003: 109)."

3.2 The political context post-1994

Land reform is not taking place in a political vacuum. It forms part of the larger process of transformation, which is intertwined with democracy and the prospects for democratic consolidation in South Africa. Some issues regarding South African democracy and transformation will be discussed in the ensuing paragraphs, as pertaining to land reform.

According to Robert Mattes (2002: 23) "South Africa's democracy in form appears to be relatively healthy, but in substance shows signs of early decay." The signs of decay identified by Mattes are the lacklustre performance of the economy, especially regarding unemployment and inequality and the poor performance of crucial government institutions, due to crime, corruption and the HIV/AIDS epidemic. Furthermore, the constitutional order seems shaky, as there is scepticism about the electoral system, the autonomy of constitutional watchdogs, the separation of powers the party system, as well as the ruling ANC's ever growing centralisation (Du Toit, 2003: 104; Mattes, 2002).

One of the challenges for South African democracy Du Toit (2003: 109 - 111) foresees is the problem of incommensurables. This is also applicable to the land issue. This problem emanates when parties trade items that are difficult or impossible to measure or compare. The deal's legitimacy is cast in doubt because a common scale to weigh the fairness of the deal is non-existent. Problems of incommensurables accumulates gradually as "one party gains something tangible that yields quick benefits, while the other party gains an item that is harder to measure and, takes longer time to produce observable benefits, and may not even be equally beneficial to all stakeholders on that side of the bargain (Du Toit, 2003: 109)."

According to Du Toit (2003: 111), "the problem of incommensurables looms large" in contemporary South Africa. Nowhere is this truer than in the case of land reform. White landowners gained something tangible with quick benefits: the confirmation of their property rights, and if they would agree to, or a court would decide upon expropriation, equitable monetary compensation would be paid to them. Meanwhile, the black landless people gained something that is harder to measure: only the *right* to own land, i.e. not necessarily land itself. It is not to say that every landless person will receive land, and not all will benefit equally from land reform. Furthermore, land reform has been a very slow process, as will be indicated later. Thus, the ambiguity in Section 25 of the 1996 constitution comes back to haunt us once again; it might even put the legitimacy of the negotiations leading to its conception in doubt.

The ANC government might have what they believe to be a remedy for the problem of incommensurables (not only for the land question, but on a larger, societal level). They call it *transformation*. Is transformation a panacea or a placebo? And more importantly, will it have negative side effects, for instance an abrasion of democracy's vigour?

According to the ANC (2002) the objective of transformation is the "creation of a non-racial, non-sexist, and democratic society." They go on to say that this "is about the liberation of the Africans in particular, and black people in general from political and economic bondage, and uplifting the quality of life of all South Africans, the majority of whom are African and female." To the uninitiated, this might, once again,

seem like a contradiction. On the one hand the ANC is saying they want to create a “non-racial” society, but they are focusing on race by emphasising the upliftment of blacks, or Africans. The heart of the matter is that the poor are currently by and large black, albeit that a black middle-class has emerged since 1994. So the argument is that in order to create a non-racial society, blacks must be uplifted.

Giliomee, Myburgh & Schlemmer (2001: 168) presents an analysis of the ANC’s transformation strategy. They acknowledge that the “ANC leadership have generally referred to transformation, either explicitly or implicitly, in racial terms.” According to their policy of ‘demographic representivity’ all societal institutions must be ‘transformed’ at all levels until they reflect the precise racial composition of South Africa as a whole. According to Giliomee and colleagues (2001: 168) the “ANC argues that as a product of apartheid and colonialism the existing racial imbalances are immoral.” Therefore they feel justified in taking all the necessary steps to achieve an equality of outcomes. This includes reintroducing race classification and racial discrimination.

The previous chapter should have made it clear that a more equal society, which the ANC proposes as transformation’s aim, will be beneficial for democratic consolidation. However, if the way in which transformation is implemented does not comply with democratic principles, for instance the rule of law, it can have adverse effects for democracy. The same could be said if transformation is regarded as superior to democracy.

This is where the ANC’s transformation policies come under fire. Giliomee, Myburgh & Schlemmer (2001: 168) quote the following from an observer at the ANC’s 1997 Mafeking conference with regards to the ANC’s position on transformation: “Essentially, present liberty is traded off against the prospects of a future Utopia.”

Giliomee and colleagues (2001: 169) believe that the ANC government sees transformation as the extension of party control. They quote an ANC document (‘The State, Property Relations and Social Transformation’ from *Umrabulo*, No 5, third

quarter, 1998) which reads that “transformation of the state entails, first and foremost, extending the power of the NLM (National Liberation Movement) over all levers of power: the army, the police, the bureaucracy, intelligence structures, the judiciary, parastatals, and agencies such as regulatory bodies, the public broadcaster, the central bank and so on.” This clearly illustrates Giliomee and his colleagues’ contention.

One can sum up the transformation policy by saying that the ANC contends that it needs to strengthen its grip on the levers of power. Therefore racial criteria have facilitated and legitimised the appointment of ANC members to key positions in the state. Furthermore, the implementation of representivity is not only a yardstick for measuring transformation, but also a way of reducing the dominance of a white minority, believed to be hostile and opposed to change in institutions (Giliomee, Myburgh & Schlemmer, 2001: 169).

How does land reform fit into the South African transformation paradigm? The goal of land reform is clearly to bring about a change in the pattern of land ownership by increasing the percentage of land owned by blacks. It thus forms part of the larger societal change the ANC wants to bring about through the transformation process. One could therefore say that land reform is one of the ingredients in the transformation stew, just like Black Economic Empowerment (BEE), transforming blacks’ level of involvement in the business world, and affirmative action, transforming the representivity of the workplace.

To put the context in which land reform finds itself in brief, one could say that the South African democracy is facing problems, one of which is the problem of incommensurables. This is particularly relevant to the land reform case. Therein lies a dilemma: the transformation process, which should ensure that the formerly disenfranchised ‘gain’ something from the new bargained dispensation, might “erode liberty”, but if it is not done, the legitimacy of the bargain might face strain and this could lead to instability, also not conducive to democratic consolidation. Thus, land reform is walking a thin line.

3.3 The Land Reform Policy

The new democratically elected government of 1994 was quite ambitious with its original plans for land reform. They wanted to redistribute 30% of agricultural land within five years (Lahiff, 2001: 1). This milestone has now been extended to 2015. Meanwhile, social and political stability has to be maintained, as well as “the sustainability of land reform products and services” (Didiza, 2004: 6). It still remains an ambitious plan.

In the paragraphs that follow this plan will be discussed in further detail. The topic will be broken down into its three components namely land redistribution, land restitution and tenure reform. The legislation dealing with each component will be looked at, before the process and its effects are explored. The relationship between land reform and the rule of law will also receive attention.

3.3.1 Land restitution

This component of land reform involves the return of land, or equitable compensation, to people who were dispossessed of land since 19 June 1913 because of racially discriminatory laws without just and equitable compensation (Mgoqi, 2001: 76).

Land restitution’s legal basis was first formed by the interim constitution of 1993, thereafter Section 25 (7) of the 1996 Constitution, and the Restitution of Land Rights Act 22 of 1994, which was amended in 1997. This Act made provision for the establishment of a Commission on the Restitution of Land Rights (CRLR) and a Land Claims Court (Lahiff, 2001: 3, Tong, 2003: 63).

The CRLR was initially intended as an independent organisation, but falls under the Department of Land Affairs (DLA), depending on them for funds, research expertise and policy direction (Lahiff, 2001: 3). The relationship between the DLA and the CRLR has been strained at times, because of administrative delays, motivation of officials, inefficiency and overlap and a conflict of responsibilities (Brown, et al., 1998: 1).

The Land Claims Court was established in 1996 to aid in the settlement of land claims (Lahiff, 2001: 3). It is a specialist court, only hearing cases arising from the following laws: Restitution of Land Rights Act 22 of 1994, the Land Reform (Labour Tenants) Act 3 of 1996 and the Extension of Security of Tenure Act 62 of 1997 (the latter two laws are land tenure reform laws). The Land Claims Court has the same status as South Africa's High Court. Appeals are made to the Supreme Court of Appeal, and when appropriate, to the Constitutional Court. Certain aspects of the Court's proceedings and jurisdiction are particular to the role it performs at a specific time. For instance, it may convene hearings in any part of the country (Land Claims Court, 2003).

The 1997 amendment of the Restitution of Land Rights Act made direct access to the Land Claims Court by claimants possible, and gave the Minister of Land Affairs greater powers in negotiating settlements. These changes resulted in a closer integrated DLA and CRLR, and acceleration in the settlement of claims (Lahiff, 2001: 3).

The Restitution of Land Rights Act 22 of 1994 makes provision for three ways to settle a claim: financial compensation, restoration of claimed land, and granting of alternative land. All claims are made against the state, not against current land owners (Lahiff, 2001: 3).

The restitution process involves six phases:

- Lodgement and registration of claim
- Screening and Categorisation
- Determination of qualification in terms of Section 2 of the Restitution Act
- Negotiations
- Settlement
- Implementation of settlement (Department of Land Affairs, 2003).

The revised cut of date for filing claims was December 31, 1998. At this time 63 455 claims had been lodged. In some cases more than one claim was represented on a

single form, leading to a total of 68 878 claims lodged (Lahiff, 2001: 3). In June 1999 only 41 claims had been dealt with. As Thoko Didiza took over as Minister of Land Affairs in June 1999, the process gathered momentum. This progress is illustrated in Table 3.1. This meant that by the end of December 2003 a total of 810 292 hectares of land had been delivered since the program's inception (Mayende, 2004: 7).

Table 3.1 Progress in the settlement of land restitution claims

Date	Number of Claims Settled
June 1999	41
March 2001	12 149
March 2003	36 488
December 2003	46 727
(Mqoqi, 2001: 75; Department of Land Affairs, 2003; Mayende, 2004: 7)	

An interesting aspect surrounding the claims is that approximately 80% of claims are urban, leaving only 20% for rural claims. The rural claims, however, involve approximately 3, 6 million people, and the urban claims approximately 300 000 people. Rural claims also involve much larger portions of land. This is explained by the fact the urban claims have largely been made by individual households, and to lesser extent communities, while the rural claims have largely been made by communities dispossessed of land (Mqoqi, 2001: 81). It has been estimated that rural claims represent 90% of the people claiming land (Lahiff, 2001: 3).

Many of the urban claims settled involve financial compensation. Some urban claims have been settled by the provision of serviced land and housing subsidies. Most of these urban claims are the result of forced removals in Johannesburg, Cape Town, Port Elizabeth and East London (Lahiff, 2001: 3). The focus has shifted to settling the rural claims first, since more people will benefit from this sooner. More households, a larger number of beneficiaries and the largest number of hectares will be transferred sooner. The Director-General of the Department of Land Affairs, Dr Gilingwe Mayende (2004: 7) states that the department has shifted its focus to the rural claims, and illustrates this by the fact that between March 2003 and December 2003, 230 000 hectares had been delivered out of the 810 292 hectares delivered since the program

began to be implemented. This means the gap between black and white ownership of land will be narrowed at a faster rate (Mgoqi, 2001: 81-82).

It should be noted that this process is progressing slowly, and that large amounts of money is need for this process. President Mbeki announced December 2005 as the deadline for the restitution process. Although much progress has been made with regards to the urban claims, most of the complex and expensive rural claims are still to be addressed. The government has budgeted R4 billion for the current three-year Medium Term Expenditure Framework (MTEF), but the Commission estimates that a further R9 billion will be needed for this (Groenewald, 2004). Compounding the financial strains on the budget, is the possibility of corruption. There have been reports that there has been speculation with the prices of farms earmarked for restitution to the Ndwandwa community of about 30 000 people, in the Mpumalanga province. This makes it impossible to keep to the budget approved for the specific project. The national government ordered a forensic investigation into the matter on 9 September 2004 (Arenstein & Groenewald, 2004; Arenstein, 2004). At the time of writing the investigation was still taking place.

Another challenge for restitution is to create sustainable livelihoods for beneficiaries. There is a lack of adequate infrastructure, poor service provision, and unrealistic business planning (Lahiff, 2001: 4). The Department of Land Affairs is aware of this problem and claims to be helping the beneficiaries by establishing strategic partnerships between beneficiary communities and private companies that are experienced in managing these problems (Mayende, 2004: 7).

3.3.2 Land redistribution

The redistribution programme aims to transfer large portions of land from the privileged minority to the historically disadvantaged. This is done because neither land restitution nor land tenure reform is capable of addressing the imbalance in landholding in South Africa on its own (Lahiff, 2001: 4). In 2000 the aim of land redistribution was extended to include assistance for black agricultural entrepreneurs to “become profitable farmers and to develop a black commercial farming class (Lebert, 2001: 4).

Thus, land redistribution provides people with access to land and provides rights to land for residential and productive purposes. It is hoped that this will improve their income and quality of life. It aims to assist the poor, new entrants to agriculture, farm workers, labour tenants and women. It will also increase the ownership of commercial farms by blacks (Department of Land Affairs, 2003).

Land redistribution is provided for in section 25(5) of the constitution, which states that 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 (South Africa, ACT 108 of 1996: 25(5)).” The constitution only prescribes that land redistribution must be instituted through legislation and policy, but leaves a broad scope to the state concerning the content of this legislation and policy.

The land redistribution programme is carried out through the Provision of Land and Assistance Act, 1993 (Act 126 of 1993). This act makes it possible to provide financial assistance to beneficiaries to obtain land, to secure tenure rights and to provide for matters connected therewith. The programme involves close collaboration with the Departments of Housing and Agriculture, as well as other spheres of government and financial institutions, like Landbank (Department of Land Affairs, 2003).

Initially redistribution involved the provision of Settlement/Land Acquisition Grants (SLAG) of R 16 000, equal to the basic housing grant (Lahiff, 2001: 4). To be considered for these grants the household had to earn less than R1 500 per month. The system relied upon people applying for the grants (Nkuzi, 2003; Sibanda, 2001: 5). Between 1995 and March 2000 roughly 60 000 households received these grants for land acquisition. By March 1999 approximately 650 000 hectares were approved for redistribution. This is less than 1 % of the country’s commercial farmland (Lahiff, 2001: 4).

A grant of R 16 000 is in most cases not enough to buy land, and land is generally not available in small grant-sized parcels, many households who benefited from the grants pooled their money to buy formerly white-owned farmland for commercial agriculture on the 'willing buyer, willing seller' principle, which is applicable for all land redistribution. Groups of farm workers also used the grants to buy equity shares in existing farming enterprises, commonage schemes and on-farm settlements. Grants have also been made available for municipalities wishing to provide communal land for the urban or rural poor. This grant is called the Grant for the Acquisition of Municipal Commonage (Lahiff, 2001: 4; Lebert, 2001: 3; Nkuzi, 2003).

In 1998 the DLA began reviewing certain aspects of the redistribution policy, particularly the following aspects: the variable quality of the projects, the excessive size of some of the groups of beneficiaries, and the unsuitability of the projects for people wanting to farm commercially (Lahiff, 2001: 4).

According to Lebert (2001: 6) a "recurring issue in land reform policy is whether the purpose of land redistribution should be to provide land for the landless poor, or to those who can use it profitably and for a productive purpose." The latter option makes more economic sense, but will it truly aid in the formation of a new pattern of land distribution? One might reason that it will merely alter the racial composition of a rural elite, without much benefit to landless poor. It seems that the government has chosen the latter option.

As Thoko Didiza took over the Land Affairs portfolio in June 1999, she made some changes to the redistribution programme. She wanted to broaden the programme to make it more suitable for those wanting to become full-time medium to large-scale commercial farmers. A moratorium on new projects was imposed in early 2000. It was lifted a year later, but few new projects were introduced in the meantime (Lahiff, 2001: 4).

The new programme for redistribution was launched in 2001, called the Land Redistribution for Agricultural Development programme. This programme is a noticeable shift in government thinking. It is a move from land to the poor to the

creation of a class of full-time black commercial farmers. The income ceiling of R1 500 per month has been replaced by a minimum contribution of R5 000 that needs to be made by the applicant, to qualify for the minimum grant of R20 000. The maximum for a grant to purchase land is R100 000. This programme was designed by the World Bank, with minimal input from the DLA and civil society, drawing on experiences in Brazil, Columbia and the Philippines (Lahiff, 2001: 5; Lebert, 2001: 4; Nkuzi, 2003).

This programme will benefit a black farming elite, who already have assets, and will achieve little in the alleviation of the plight of the poor, who will struggle to meet the requirements to qualify for this programme. In doing so, the landless poor will largely be left out of the redistribution programme (Lahiff, 2001: 5). According to the Director-General of the Department of Land Affairs only 32,6% of the beneficiaries of land redistribution in the 2002/2003 financial year were from “the marginalised groups that include labour tenants and farm workers (Mayende, 2004: 7).”

The latest effort to accelerate change in the agricultural sector without disrupting production is the Black Economic Empowerment in Agriculture (AgriBEE) charter, which was published in July 2004 by the Department of Agriculture and Land Affairs. The charter presents key targets that should be met in the agricultural sector. One of these has been mentioned earlier, as it formed part of the original discourse of the South African land reform project: blacks must own 30% of agricultural land by 2014. Other targets are that blacks must hold 50% percent of senior management positions by 2008 and that the agricultural sector must also make 20% of “existing high potential and unique agricultural land” available for leasing to black South Africans by 2014. Organisations representing landowners as well as the landless are unhappy with the charter. It is also highly unlikely that these targets will be achieved (Groenewald, 2004). This charter reeks of the ANC’s conception of transformation described earlier.

From the previous paragraphs it would seem that the current land redistribution programme is failing in its original purpose, i.e. to provide access to land for the poor. Many of the landless will thus stay landless, unless a new programme is designed. It

therefore remains questionable to what extent land redistribution is capable of changing the skewed pattern of land ownership within the specified time, if ever.

3.3.3 Land tenure reform

Land tenure reform is probably the most complex component of land reform. Several issues are at stake, and it addresses practices that are as old as South Africa itself. It is also the component of land reform that receives the least amount of exhaustive scholarly attention.

Section 25(6) of South Africa's 1996 constitution provides as follows:

"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 secure or to comparable redress (South Africa, Act 108 of 1996: 25(6))."

Thus, tenure reform aims to provide people with secure tenure where they live, and in doing so, prohibiting arbitrary evictions. Lebert (2001: 2-3) recommends the accommodation of diverse forms of tenure, which would include communal tenure. This is in light of the constitutional requirement that all South Africans have legally secure tenure on land.

Tong (2003: 63) lists the seven pieces of relevant legislation:

1. The Communal Properties Association Act 28 of 1996;
2. The Distribution and Transfer of Certain State Land Act 119 of 1993;
3. The Interim Protection of Informal Land Rights Act 31 of 1996;
4. The Land Titles Adjustment Act 111 of 1993;
5. The Transformation of Certain Rural Areas Act 94 of 1998;
6. The Land Reform (Labour Tenants) Act 3 of 1996; and
7. The Extension of Security of Tenure Act 62 of 1997.

There are two components to tenure reform. There is the tenure reform considering the tenure arrangements in the communal areas, largely of the former homelands, to protect the inhabitants against corrupt chiefs abusing their land rights, as well as

administrative measures for property developers who do not consult the occupants of the affected land. The other focuses on tenure issues arising from farm residents largely on commercial farms, who despite living there for generations, face threats on their security of tenure (Nkuzi, 2003: 2; Sibanda, 2001: 3).

Most of the land in the former homelands is still legally owned by the state. Years and years of discrimination and forced removals resulted in crowded areas where there still are disputes where rights to land overlap. During the apartheid era, the administration and management of land in these areas were largely under the jurisdiction of tribal authorities, who thus acted as an extended function of the state. This resulted in the absence of a clear distinction between land ownership, administration and management. To complicate matters further, there is uncertainty regarding the validity of crucial documents, like Permission to Occupy (PTO) certificates, which leads to problems with the legality of transferring rights to own or occupy land (Lahiff, 2001: 1).

The main problem with tenure in these former homelands is the individuals' insecurity of tenure under tribal leadership. Although the state owns the land in question in legal terms, it is held in trust for certain tribal communities. Chiefs allocate land to people living under their jurisdiction. The popular belief is that the land is owned by the community, or the chief. In the communal tenure system in South Africa, an individual's entitlement stems from his/her affiliation to a particular socio-political community, like a tribe or village (Lahiff, 2000: 47-49).

Land for arable or residential purposes is usually allocated from the available land, by the tribal chief, or the village headman, acting on the chief's behalf. The piece of allocated land is usually reserved for the occupying household and unallocated land is used by the community as a commonage. Those who obtain land have the right to use it for their own benefit, but may not sell it, and can only transfer it to other family members with the chief's permission. Chiefs and tribal authorities can repossess land (Lahiff, 2000: 49-50). Individuals' tenure rights are thus very insecure and depend on the discretion of the chief; the individuals have no property rights on the land they are occupying.

Poverty and underdevelopment are huge problems in the former homelands. Tenure reform will not solve this, but it is an important link in the chain. To achieve this tenure reform must proceed in conjunction with land redistribution and land restitution. The government still needs to provide for effective legislation dealing with tenure rights in the homelands. The way not to go is to transfer the land from the state to the tribal authorities. This does not address individuals' tenure security or accountable administration (Lahiff, 2001: 2).

Labour tenants are usually black tenants on white-owned farms, who pay for the use of agricultural land with their labour (as opposed to cash) to the owner. This has always been an insecure form of land tenure. Despite the new legislation, illegal evictions of tenants are still being reported. The Land Reform (Labour Tenants) Act No.3 of 1996 proposes to protect labour tenants from eviction. It also aims to help them obtain the land they live and farm on. Claims can be adjudicated by the court, or the DLA can help to negotiate settlements (Lahiff, 2001: 3).

This matter has in some cases soured relationships between farm-owners and labour tenants. Some farm-owners do not approve of the law, and seem unwilling to let go of the land they believe they own. Labour tenants, in some cases, seem resentful of this attitude, and they seem impatient to secure their tenure. Both sides accuse the other of not being co-operative. There have also been allegations of intimidation, from both sides. It must be said the situation has not evolved to a state of complete lawlessness, and that these attitudes seem to be the exception rather than the norm (Goodenough, 2003: 1-5).

The process to secure labour tenants' tenure has been very slow. The DLA have severe capacity constraints, among other problems. It seems as if the DLA's strategy has now shifted to prioritising resolution of labour tenant claims at district level with the help of municipalities (Lahiff, 2001: 3). However, the DLA contends that a "number of critical problem areas were resolved" during the 2002/2003 financial year (Mayende, 2004: 8).

The DLA has also kept themselves busy on the policy formulation front by the drafting of a new bill, the Communal Land Rights Bill (CLR), which is aimed at “securing tenure and unlocking opportunities for development” for approximately 2,4 million households that presently live in former homelands (Mayende, 2004: 8).

3.3.4 Land reform’s relationship with the rule of law

It seems as if the state is committed to abiding to the constitution and the laws of the country. They have drafted considerable legislation concerning land reform and established a Land Claims Court to hear restitution cases. This suggests a high level of respect for the rule of law. This is a positive aspect regarding land reform’s contribution to democratic consolidation. An illustration is the fact that land reform is not dependent on racial discrimination, since recently white farmers received compensation from the restitution programme (Greyling, 2003).

There have been a few illegal land invasions, but the state has dealt with it constitutionally and lawfully (Sibanda, 2001: 1). The land invasion in Bredell in 2001, as well as the ANC’s firm stance on the Landless People’s Movement’s land grab threats before 2004 election (SABC News, 2004a) can be used as an illustration.

There is one exception, and the matter is not fully settled yet. A farmer from Benoni, Abraham Duvenhage, obtained a court eviction order to remove approximately 4000 illegal squatters from his land, called Modderklip. The sheriff of the court required a deposit of R1, 8 million from Duvenhage to hire a security company to handle the eviction. Duvenhage then brought an application against the President of South Africa and some cabinet ministers to give effect to the court order. The Pretoria High Court ruled that the government failed in its duty to assist the court in executing its judgement. The state was ordered to come up with a comprehensive plan on how to handle the situation. They will have to find alternative lodgings for the squatters. The state has appealed against this decision, which is their right, of course. They claim that by complying with the court’s decision they will create a precedent where illegal squatters “jump the queue” to get in line for government housing. (MacRobert Inc Attorneys, 2003: 2-3). On May 27, 2004 the Appeal Court ordered the state to restore

the property rights of Mr Duvenhage. The state must also make land available for alternative housing to occupiers (SABC News, 2004b).

It does not seem as if this case is a matter of the state being unwilling to co-operate with the law, but rather a case of a lack of capacity. A positive aspect is the fact that the court ruled against the state more than once, showing a clear separation of powers and judicial independence. There has also been other land reform related cases, like that of the Richtersveld and Lohatla claims where rulings have been made against the state. This is clearly a positive sign for democratic consolidation, with the courts holding the state subject to the rule of law.

However, this good relationship the rule of law has thus far enjoyed with land reform might soon become strained. It has been indicated that the deadline for the settlement of all land restitution claims is unlikely to be met. The establishment of black farmers on 30% of the country's agricultural land also seems highly unlikely. Ruth Hall and Edward Lahiff of the Programme for Land and Agrarian Studies at the University of the Western Cape believes the "deadline can only be met short-circuiting the commission's own established procedures or by leaving the bulk of the work of implementation to whichever institution is to take over its work (Groenewald, 2004). Could this mean that the constitutional measures for land reform is under threat? Will the courts be pressurised into rulings favouring the state? Will populist land grabs ensue? The future will answer these questions, but the point is that failure to reach their deadlines might put the institutions for land reform under pressure 'to bend the rules'.

3.4 Putting the land reform project in the theoretical framework

When one applies the framework of the two conflicting paradigms to the South African land reform project, the ANC government is hard to pin down to either the liberal or liberationist paradigm. They seem to fall in a sort of midway position. Each of the three categories in the classification will be applied to the land reform project in the following paragraphs.

3.4.1 Perspective on democracy

The only time one can make a definite classification is with their perspective on democracy. It shows clear signs of the liberationist perspective. The ANC were, first and foremost, the major agent in South Africa's liberation from apartheid. Secondly, it has been shown that they have the tendency to extend their reach to all state institutions, thereby striving for fusion of the spheres of politics, economy and society, another characteristic of the liberationist perspective. Furthermore, the land reform policy is geared towards the redressing of the historical inequality of land ownership. Thus, quite clearly, the South African land reform project indicates that the ANC government looks at democracy with liberationist eyes.

3.4.2 Purpose of land reform

The government's purpose for land reform is not as clear-cut as their perspective on democracy. The land redistribution programme follows the capitalist approach as it aims to establish a capitalist class of black agricultural entrepreneurs. It does aim to alter the racial composition of the landed elite, but not to remove the ruling elite as the socialist perspective would suggest.

The tenure reform and land redistribution programs are not clear-cut cases of either the capitalist or the socialist approach. The purpose is once again not to remove the elite, but it is also not the establishment of a capitalist rural class. However, as these programmes aim to correct historical social injustices, one might argue that they slant more to the socialist purpose of land reform than the capitalist.

3.4.3 Process of land reform

The land reform's emphasis on the 'willing buyer, willing seller' principle puts it firmly in the market-driven approach to the process of land reform. However, an element of the equity approach is discernable. While the state cannot dispossess land, they can expropriate land in accordance with a court order, but with equitable compensation to the owner, before the land is given to the claimants.

Thus, while the ANC seems to subscribe to the liberationist view of democracy, their land reform policy, in its purpose and process, seems to veer to the market-driven

capitalist approach. This is probably because of the ambiguity of the settlement and the subsequent constitutions. The following question arises: Is the nature of land reform acceptable to the majority of the population? This question will be explored in the following chapter.

Chapter Four

Public opinion regarding land reform, transformation and the rule of law

This chapter will present the survey results used for this study, enabling the gauging of the South African public's opinions towards land reform and its relationships with the rule of law and transformation. This will be done through the exploration of the hypotheses presented in the first chapter. The trends that emerge from these results will then be offered. The way some of these attitudes manifest itself in public will also be explored, particularly by looking at the Landless People's Movement (LPM). Thereafter conclusions will be drawn, which will be measured against the theoretical framework devised in the second chapter.

The data presented here was assimilated by a Markinor survey, conducted during February and March 2004. A representative sample of 3500 ordinary South Africans was used. Three of the items that formed part of the survey are paramount to this study. The extent of agreement with three statements was measured in these items.

The first statement, "all the land whites own, they stole from the blacks," is derived from a remark by Tony Yengeni (former ANC chief whip), who, according to Du Toit (2003: 113) is reported to have said that "Everything whites own, they stole from the blacks." Ownership is defined in terms of a relationship (theft and racism) in this statement, which also aims to invalidate the status of contract (title deeds). It is also antagonistic to property rights, which are entrenched in the negotiated constitution (Du Toit, 2003: 113). It is an expression that can be placed within the high context culture, within the liberationist paradigm. This statement intends to measure the extent to which a person agrees/disagrees with private property rights, and whether a person agrees/disagrees that land ownership is defined in terms of a relationship with racial overtones.

The second statement is: "Landowners who dispute land claims in court, are blocking transformation." Landowners' right to dispute land claims in court is entrenched in legislation. If a person was to agree that a landowner who disputes a land claim in

court is blocking transformation, it would seem as if this person holds transformation as more important than the law. This is also indicative of the liberationist paradigm. Thus, what this statement intends to measure, is whether a person holds the view that transformation is more important than the rule of law.

The third statement is: “Landowners who dispute land claims in court, are misusing the constitution.” Once again, a landowner’s right to dispute land claims in court is entrenched in the constitution. In other words, it is a procedure accepted by the constitution. Thus, if a person holds the view that a landowner who disputes land claims by going to court is misusing the constitution, it would imply that this person do not see the constitution as document outlining legal procedures and norms, but as a document with another purpose, most probably transformation. This is indicative of the liberationist paradigm. This statement intends to measure the extent to which people view the constitution as a legal document, versus a document with another purpose.

Agreement with each of the statements is indicative of an endorsement of the liberationist paradigm, while disagreement is an endorsement of the liberal paradigm. One would expect that race, party affiliation and the province where a person comes from plays a role in determining whether a person holds the liberationist or liberal view. Therefore, it is expected that the statements would yield similar results for the different demographic indicators used.

4.1 Presentation of the survey results

The data will be presented graphically according to the three statements to which the respondents reacted.

Table 4.1.1.1 should make it clear that the large majority of the respondents agree or agree strongly with the above statement. More people agreed strongly with the statement (33%) than did disagree or disagree strongly. Thus, one could say it is something the majority have quite intense feelings about.

4.1.1 “All the land whites own, they stole from the blacks”

Table 4.1.1.1 “All the land whites own, they stole from the blacks”

	%	N
Strongly disagree	10.2	650
Disagree	13.4	639
Neither agree nor disagree	17.5	511
Agree	25.1	768
Strongly agree	32.7	894
Don't know	1.1	32
Refused	.0	3

Hypothesis I.I: A person’s race correlates with the extent of agreement/disagreement with the statement that “all the land whites own, they stole from the blacks.”

Table 4.1.1.2 “All the land whites own, they stole from the blacks” by race

	White	African	Coloured	Indian
Strongly disagree	58.7%	1.2%	8.3%	18.2%
Disagree	30.0%	6.5%	39.4%	43.1%
Neither agree nor disagree	6.9%	18.9%	21.3%	18.4%
Agree	2.4%	30.1%	20.7%	14.6%
Strongly agree	1.0%	42.0%	8.9%	5.1%
Don't know	.8%	1.2%	1.1%	.7%
Refused	.2%	.0%	.3%	.0%
N	937	2000	390	170

Table 4.1.1.2 shows that race correlates with agreement with the statement. Africans mostly agreed strongly with the statement (42%), while whites mostly disagreed strongly (58,7%). This indicates a strong polarisation between whites and Africans on this issue. Whites also have a much lower response rate for the ‘Neither agree nor disagree’ category, which indicates a low level of indifference towards the issue. Coloureds and Indians mostly disagreed, although not as intensely as whites, but overall their pattern is similar to that of whites. One can say that whites respond stronger to statement than coloureds and Indians, and there might be more indifference in the coloured and Indian communities towards the statement. Thus, African people’s response to this statement is opposite to that of the other races, especially that of whites, which confirms the hypothesis.

Hypothesis I.II: Party allegiance correlates with the extent of agreement/disagreement with the statement that “all the land whites own, they stole from the blacks.”

Table 4.1.1.3 indicates that the ANC (39.9%) and IFP (45.2%) supporters mostly ‘strongly agree’ with the statement, while the DA’s supporters largely ‘strongly disagree’ with the statement (46.5%). The DA also shows a much lower response rate in the ‘neither agree nor disagree’ category. This, coupled with the high response rates in the ‘disagree’ and ‘strongly disagree’ categories, indicates that this is something the DA supporters feel strongly about. Thus, the hypothesis is confirmed, as Table 4.1.1.3 indicates that party allegiance impacts on agreement with the statement that “all the land whites own, they stole from the blacks.”

Table 4.1.1.3 “All the land whites own, they stole from the blacks” by party

	ANC	DA	IFP
Strongly disagree	1.7%	46.5%	2.1%
Disagree	8.0%	29.5%	8.8%
Neither agree nor disagree	19.6%	8.9%	16.8%
Agree	30.0%	6.4%	25.9%
Strongly agree	39.9%	7.4%	45.2%
Don't know	.9%	1.2%	1.2%
Refused	.0%	.1%	.0%
N	1761	586	112

Hypothesis I.III: The province where a person comes from correlates with agreement/disagreement with the statement that “all the land whites own, they stole from the blacks.”

Table 4.1.1.4 shows the same trends in six of the nine provinces. The Western Cape, Gauteng and the Eastern Cape are exceptions. The Western Cape is the only province where the people that ‘disagree’ (32.3%) and ‘strongly disagree’ (20.6%) with the statement are more than those who ‘agree’ and ‘strongly agree’.

Table 4.1.1.4 “All the land whites own, they stole from blacks” by province

	Western Cape	Northern Cape	Free State	Eastern Cape	KwaZulu/Natal	Mpumalanga	Limpopo	Gauteng	North West
Strongly disagree	20.6%	4.0%	12.4%	7.1%	8.7%	5.4%	4.8%	15.7%	4.5%
Disagree	32.3%	16.4%	7.8%	12.1%	12.8%	2.8%	8.7%	15.5%	8.6%
Neither agree nor disagree	13.8%	15.6%	13.8%	32.1%	15.0%	12.9%	10.6%	15.9%	20.7%
Agree	17.4%	27.3%	22.3%	20.3%	25.5%	27.8%	33.0%	24.5%	33.3%
Strongly agree	14.7%	36.6%	43.4%	26.9%	36.9%	51.1%	41.3%	27.7%	29.7%
Don't know	1.1%	.0%	.2%	1.4%	1.1%	.0%	1.5%	.6%	3.2%
Refused	.2%	.0%	.0%	.1%	.0%	.0%	.0%	.1%	.0%
N	473	100	286	418	716	136	230	938	200

The Eastern Cape shows lower levels of agreement with the statement, probably brought on by the large percentage of people who ‘neither agree nor disagree’ (32.1%). But, this province also shows a substantial plurality of people who ‘agree’ or ‘strongly agree’ with the statement compared to those who ‘disagree’ or ‘strongly disagree’.

Gauteng also shows lower levels of agreement (24.5% for ‘agree’ and 27.7% for ‘strongly agree’) with the statement than the other provinces, and higher disagreement (15.5% for ‘disagree’ and 15.7% for ‘strongly disagree’). The ‘neither agree nor disagree’ category obtained 15.9%. Thus, Gauteng holds a moderate opinion on the sentiment that “all the land the whites own, they stole from the blacks,” but still the majority of people opted for the ‘agree’ or ‘strongly agree’ categories for this statement.

Mpumalanga shows the highest level of agreement with the statement (51.1% ‘strongly agree’). Limpopo and the Free State also show high levels in the ‘strongly agree’ category. In both cases the 40% mark is breached.

The data for this statement indicates that there are large divisions in opinions based on race and party affiliation: whites and those supporting the DA disagree and Africans and ANC and IFP supporters agree. Coloureds and Indians also follow the pattern of whites, albeit with more moderation and a higher level of indifference. When the data is analysed by looking at the provinces from which the respondents came, it is

clear that the Western Cape is an exception, as it is the only province where more people disagreed than not, while Gauteng is much more moderate than the other provinces. All the hypotheses for this statement have been confirmed.

4.1.2 “Landowners who dispute land claims by going to court, are blocking transformation”

Table 4.1.2.1 shows that a large percentage of South Africans either ‘agree’ or ‘strongly agree’ (combined 40.9%) with the statement. A large percentage has no opinion (28.4%) and only 28.3% ‘disagree’ or ‘strongly disagree’, almost the same percentage that agree with the statement. Thus, the percentage of people who agree with the statement is larger than the percentage of who people who disagree with the statement.

Table 4.1.2.1 “Landowners who dispute land claims by going to court, are blocking transformation”

	%	N
Strongly disagree	7.8	373
Disagree	20.5	883
Neither agree nor disagree	28.4	989
Agree	28.2	817
Strongly agree	12.7	352
Don't know	2.3	79
Refused	.1	4

Hypothesis II.I: A person’s race correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are blocking transformation.”

Table 4.1.2.2 shows a clear racial cleavage in agreement with the statement. Africans tend to ‘agree’ (33.2%) or ‘strongly agree’ (15.9%) with the statement, while coloureds, Indians and whites tend to ‘disagree’ or ‘strongly disagree’. A much higher percentage of whites opted for ‘strongly disagree’ response category (25.9%) for the statement than coloureds (1.9%) and Indians (3.4%), of whom larger percentages tend to ‘neither agree nor disagree’. Whites therefore feel stronger about the issue than coloureds and Indians. Thus, race plays a part in the concurrence that landowners

who go to court to dispute land claims are blocking transformation. Therefore the hypothesis is confirmed.

Table 4.1.2.2 “Landowners who dispute land claims by going to court, are blocking transformation” by race

	White	Africans	Coloured	Indian
Strongly disagree	25.9%	5.3%	1.9%	3.4%
Disagree	37.9%	15.0%	37.3%	35.1%
Neither agree nor disagree	23.1%	28.9%	31.1%	34.3%
Agree	7.9%	33.2%	19.1%	21.5%
Strongly agree	2.2%	15.9%	3.7%	3.4%
Don't know	2.7%	1.7%	6.6%	2.3%
Refused	.3%	.0%	.3%	.0%
N	937	2000	390	170

Hypothesis II.II: A person’s party allegiance correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are blocking transformation.”

Table 4.1.2.3 “Landowners who dispute land claims by going to court, are blocking transformation” by party

	ANC	DA	IFP
Strongly disagree	4.8%	20.7%	8.1%
Disagree	16.5%	33.6%	11.9%
Neither agree nor disagree	28.5%	24.5%	39.2%
Agree	32.5%	12.7%	31.6%
Strongly agree	16.2%	5.0%	6.4%
Don't know	1.6%	3.0%	2.8%
Refused	.0%	.3%	.0%
N	1761	586	112

Table 4.1.2.3 shows that party allegiance plays a part in determining concurrence that landowners who dispute land claims by going to court are blocking transformation and therefore confirms the hypothesis. The ANC supporters largely agree (32.5%) and agree strongly (16.2%). This is echoed by the IFP, of whom 31.6% of supporters agreed and 6.4% of supporters strongly agreed. The IFP has a higher percentage of supporters who do not agree or disagree (39.2%). Meanwhile 33.6% of DA supporters

‘disagree’ and 20.7% of their supporters ‘strongly disagree’. Since more supporters of each party ‘agree’ or ‘disagree’ than ‘strongly agree’ or ‘strongly disagree’, one can say that feelings regarding this issue are not of high intensity.

Hypothesis II.III: The province where a person comes from correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are blocking transformation.”

Once again the Western Cape is the obvious exception. It is the only province where the ‘disagree’ (40.2%) or ‘strongly disagree’ (8.3%) response categories attracted more people than the ‘agree’ (16.5%) or ‘strongly agree’ (6.2%) categories. Gauteng again shows percentages that are closer to each other when compared to most of the other provinces. The Northern Cape also shows a small difference, but the ‘neither agree nor disagree’ category obtained a large percentage (45.2%). Mpumalanga shows the highest percentage in the ‘agree’ (35.3%) and ‘strongly agree’ (23%) categories. The Free State, Limpopo and KwaZulu Natal also show high levels of concurrence. Thus, the province in which a person is situated has an impact with agreement on the statement, with Western Cape being the province that does not support the claim. The hypothesis is confirmed.

Table 4.1.2.4 “Landowners who dispute land claims by going to court, are blocking transformation” by province

	Western Cape	Northern Cape	Free State	Eastern Cape	KwaZulu/ Natal	Mpumalanga	Limpopo	Gauteng	North West
Strongly disagree	8.3%	1.8%	12.1%	7.6%	8.2%	2.6%	10.2%	8.9%	3.3%
Disagree	40.2%	21.0%	15.1%	15.1%	20.0%	16.6%	19.1%	22.9%	12.4%
Neither agree nor disagree	22.9%	45.2%	21.5%	35.4%	26.5%	21.5%	22.0%	31.8%	34.7%
Agree	16.5%	21.8%	34.7%	35.2%	30.7%	35.3%	26.0%	23.7%	26.9%
Strongly agree	6.2%	9.3%	16.2%	6.1%	12.9%	23.0%	18.6%	11.3%	17.4%
Don't know	5.7%	.8%	.5%	.5%	1.8%	.9%	4.1%	1.3%	5.2%
Refused	.2%	.0%	.0%	.1%	.0%	.0%	.0%	.2%	.0%
N	473	100	286	418	716	136	230	938	200

All of the hypotheses are confirmed for this indicator, therefore it seems safe to say that race, party allegiance and the province from which a person comes affects

opinions on whether or not landowners who use the court to dispute land claims are blocking transformation.

4.1.3 “Landowners who dispute land claims by going to court, are misusing the constitution”

Table 4.1.3.1 “Landowners who dispute land claims by going to court, are misusing the constitution”

	%	N
Strongly disagree	8.8	410
Disagree	22.5	984
Neither agree nor disagree	27.6	917
Agree	26.8	779
Strongly agree	12.2	325
Don't know	2.0	78
Refused	.1	4

Table 4.1.3.1 indicates that there are more South Africans who feel that landowners who go to court to dispute land claims are misusing the constitution than otherwise. The ‘agree’ and ‘strongly agree’ categories combined produce a figure of 39%, while the ‘disagree’ and ‘strongly disagree’ categories provides a figure of 31.3%. There were 27.6% of the respondents who opted for the ‘neither agree nor disagree’ category.

Hypothesis III.I: A person’s race correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are misusing the constitution.”

Table 4.1.3.2 indicates that race plays a part in shaping opinions on whether or not landowners who dispute land claims by going to court are misusing the constitution, and therefore confirms the hypothesis. The majority of white respondents ‘strongly disagree’ (26.4%) or ‘disagree’ (40.2%), while more Africans responded in the ‘agree’ (31.6%) or ‘strongly agree’ (15.3%) categories. A large percentage of Africans also opted for the ‘neither agree nor disagree’ category (28.8%). Coloureds and Indians’ response pattern is similar to that of whites, but a much smaller percentage responded in the ‘strongly disagree’ category, while much larger percentages in the ‘neither agree

nor disagree' category were obtained. They therefore do not feel as strongly about the issue as whites.

Table 4.1.3.2 “Landowners who dispute land claims by going to court, are misusing the constitution” by race

	White	Africans	Coloured	Indian
Strongly disagree	26.4%	6.3%	4.0%	4.8%
Disagree	40.2%	16.6%	43.3%	34.8%
Neither agree nor disagree	19.5%	28.8%	27.8%	35.4%
Agree	8.0%	31.6%	15.8%	19.4%
Strongly agree	2.8%	15.3%	2.3%	3.0%
Don't know	2.7%	1.4%	6.6%	2.5%
Refused	.3%	.0%	.3%	.0%
N	937	2000	390	170

Hypothesis III.II: A person's party allegiance correlates with the extent of agreement/disagreement with the statement that “landowners who dispute land claims by going to court, are misusing the constitution.”

Table 4.1.3.3 “Landowners who dispute land claims by going to court, are misusing the constitution” by party

	ANC	DA	IFP
Strongly disagree	5.5%	21.1%	11.7%
Disagree	17.9%	37.0%	20.1%
Neither agree nor disagree	29.4%	20.0%	21.7%
Agree	30.7%	12.0%	33.7%
Strongly agree	15.1%	6.3%	10.4%
Don't know	1.3%	3.4%	2.4%
Refused	.0%	.3%	.0%
N	1761	586	112

Table 4.1.3.3 shows that party allegiance is a determining factor for concurrence with the statement that landowners who dispute land claims by going to court are misusing the constitution. The majority of the DA's supporters either opted for the 'disagree' (37%) or 'strongly disagree' (21.1%) category. The ANC and IFP supporters seem to share the same sentiment with regard to this issue. More supporters of these two parties 'agree' or 'strongly agree' with this statement than otherwise. Thus, the DA

supporters' view opposes that of the ANC and IFP supporters, which confirms the hypothesis.

Hypothesis III.III: The province where a person comes from correlates with the extent of agreement with the statement that “landowners who dispute land claims by going to court, are misusing the constitution.”

In this table the Western Cape and Gauteng are the only provinces where the ‘strongly disagree’ or ‘disagree’ categories yielded higher results than the ‘agree’ and ‘strongly agree’ categories. The Northern Cape (39.7%) and the Eastern Cape (44.6%) both boast high percentages in the ‘neither agree nor disagree’ category, suggesting a feeling of indifference towards the matter. Mpumalanga and the Free State show the strongest agreement with the statement. These provinces have the highest percentages in the ‘strongly agree’ category. They also have the lowest percentages in the ‘neither agree nor disagree’ category. Thus, the hypothesis is confirmed; the province in which people live influence agreement with the idea that landowners who dispute land claims by going to court are misusing the constitution.

Table 4.1.3.4 “Landowners who dispute land claims by going to court, are misusing the constitution” by province

	Western Cape	Northern Cape	Free State	Eastern Cape	KwaZulu/Natal	Mpumalanga	Limpopo	Gauteng	North West
Strongly disagree	10.2%	2.2%	12.5%	6.7%	9.1%	15.4%	6.0%	10.5%	3.3%
Disagree	45.4%	24.0%	13.2%	17.1%	23.3%	10.9%	19.8%	26.8%	14.0%
Neither agree nor disagree	22.4%	39.7%	15.2%	44.6%	23.8%	13.2%	25.8%	27.0%	34.7%
Agree	11.0%	26.4%	31.0%	28.2%	31.2%	33.5%	29.3%	24.9%	24.1%
Strongly agree	5.0%	6.9%	27.9%	2.1%	11.4%	26.1%	16.5%	9.4%	18.9%
Don't know	5.7%	.8%	.2%	1.2%	1.2%	.9%	2.6%	1.2%	5.0%
Refused	.2%	.0%	.0%	.1%	.0%	.0%	.0%	.2%	.0%
N	473	100	286	418	716	136	230	938	200

The three hypotheses above have confirmed that race, party allegiance and provincial setting affects concurrence with the sentiment that landowners who dispute land claims in court are misusing the constitution. It has been shown that whites and Africans hold opposite views regarding this matter. Also the DA's view opposes the ANC and IFP supporters' opinion. Lastly, the Western Cape and Gauteng were the

only two provinces who disagreed with the statement, while Mpumalanga and the Free State agreed most vehemently.

4.2 Analysis

From the results described above one can deduct several trends. First, the views of African and white South Africans differ substantially for every indicator. The views of coloureds and Indians are much more moderate than those of the whites and Africans. The second trend that emerges is related to this. The DA supporters' opinions are strongly opposed with those of the ANC and IFP. This relates to the racial division. As, Table 4.2.1 indicates, the DA's support base is by and large white, while the ANC and IFP largely have African support bases.

Table 4.2.1 Party affiliation by race

	White	African	Coloured	Indian
ANC	6.0%	91.8%	66.3%	35.0%
DA	91.7%	1.6%	32.8%	62.5%
IFP	2.3%	6.7%	.9%	2.4%
N	937	2000	390	170

The third trend that emerged is that the Western Cape seems to be an enclave opposing the majority view. Contrastingly, Mpumalanga, Limpopo and the Free State hold strong views contrary to that of the Western Cape. Gauteng was also consistently much more moderate than the other provinces. It is interesting to note that the Western Cape and Gauteng are the more urbanised and affluent provinces, with a larger white population, while the provinces with the high agreement to the statement are poorer, much less urbanised, and with much more African people. This is illustrated by tables 4.2.2, 4.2.3 and 4.2.4. The Eastern Cape's relative low agreement with the statement is a bit surprising in this regard, as it also shows low levels of income and urbanisation. The Eastern Cape consistently showed high response rates in the 'neither agree nor disagree' category, indicating a degree of indifference to the issue, or reticence in answering the question.

Table 4.2.2 Provincial setting by race

	Western Cape	Northern Cape	Free State	Eastern Cape	KwaZulu/ Natal	Mpumalanga	Limpopo	Gauteng	North West
White	27.5%	15.5%	13.6%	7.6%	8.4%	10.1%	3.2%	27.1%	7.6%
African	17.0%	33.3%	86.4%	85.8%	80.6%	89.9%	96.8%	67.3%	92.4%
Coloured	55.5%	51.2%	.0%	6.7%	.9%	.0%	.0%	3.5%	.0%
Indian	.0%	.0%	.0%	.0%	10.1%	.0%	.0%	2.1%	.0%
N	473	100	286	418	716	136	230	938	200

Table 4.2.3 Provincial setting by urbanisation

	Western Cape	Northern Cape	Free State	Eastern Cape	KwaZulu/ Natal	Mpumalanga	Limpopo	Gauteng	North West
Metro	64.5%	.0%	13.7%	25.9%	33.3%	.0%	.0%	96.7%	7.3%
City	1.6%	22.2%	15.8%	.0%	4.7%	7.4%	.0%	.0%	12.2%
Large Town	9.4%	3.0%	18.6%	6.1%	1.3%	12.5%	2.3%	.0%	6.3%
Small Town	8.5%	33.7%	22.1%	9.5%	5.8%	17.8%	9.3%	.5%	14.0%
Rural	9.7%	23.4%	25.4%	55.2%	52.1%	58.0%	85.5%	2.8%	57.4%
N	473	100	286	418	716	136	230	938	200

Table 4.2.4 Provincial setting by income

	Western Cape	Northern Cape	Free State	Eastern Cape	KwaZulu/ Natal	Mpumalanga	Limpopo	Gauteng	North West
R 16 000 +	11.5%	.0%	3.0%	2.8%	1.7%	1.1%	.4%	11.8%	1.1%
R 12 000 - R 15 999	5.0%	1.7%	1.0%	1.4%	2.4%	2.6%	.5%	4.6%	1.7%
R 8 000 - R 11 999	5.9%	7.4%	4.1%	2.0%	3.4%	6.0%	1.1%	7.9%	1.8%
R 4 000 - R 7 999	22.6%	8.1%	6.3%	6.1%	12.5%	7.5%	4.2%	13.4%	3.7%
R 0 - R 3999	54.9%	82.9%	85.6%	87.7%	80.0%	82.8%	93.8%	62.4%	91.7%
N	473	100	286	418	716	136	230	938	200

Thus, South Africans are divided on land reform and its relationship with the rule of law and transformation on race and party lines, as well as geographic lines. One could argue that the racial division stems from the history of land ownership in South Africa, which led to a situation where whites own land, and have legal protection of ownership, while blacks did not own land and the current land reform programmes have to change this situation, within the constitutional restraints described in the previous chapter.

From the results of the survey and the trends that have emerged from it, one can deduce that the majority of South Africans hold the transformative aspect of land reform in higher regard than the rule of law. The first indicator, agreement with the

statement that “all the land whites own, they stole from the blacks,” is indicative of this. The majority of the respondents agreed, as did most of the African respondents and ANC and IFP supporters. The intensity of this sentiment was also quite high. Agreement with this statement is a clear rejection of the legitimacy of private property, as entrenched in the constitution. It also shows a strong sense of historical injustice. Furthermore, whites feel just as strongly to the contrary.

This pattern follows for the other indicators, albeit less vehemently. Thus, the majority of South Africans feel that disputing land claims in court is blocking transformation and is a misuse of the constitution. Disputing land claims in court is entrenched in the constitution, which leaves one with the impression that the majority does not see the rule of law, as codified in the constitution, as paramount. Their agreement that disputing land claims in court is a misuse of the constitution might indicate that they do not see the constitution as the legal and procedural backbone of the country. Do they see it as a document for transformation? This might well be the case. The position of whites, and Indians and coloureds to a lesser extent, is the opposite. Thus, there seems to be disagreement to what exactly the constitution’s role is in South Africa. Supporting evidence for this is provided by Garcia-Rivero, Kotzé and Du Toit (2002: 169), who have found that many South Africans does not see democracy as “a form of rule, ” but rather “as a means of dealing with economic deprivation,” in this case deprivation of access to land.

4.3 The people’s response to the land reform project

The government’s attempts to address the land issue have not managed to appease those who seek land in the first ten years of democracy. The pace at which the changes to the pattern of land ownership are taking place seems to be the major grievance. The ‘willing buyer, willing seller’ principle is one of the reasons why the process is making slow progress, as it is the seller’s prerogative to set the wheels in motion (in the case of land redistribution), and there might not be anything that encourage sellers to sell their land speedily. Furthermore, the wheels of justice turn notoriously slowly, which leads to pressure on the rule of law.

The Landless People's Movement (LPM) has probably been the government's most vociferous critics with regards to land reform. In the run-up to South Africa's 2004 general elections, the LPM threatened to invade land if the government does not speed up land reform. This did not happen, as the government made it clear that land invasion would not be tolerated. The LPM has also warned the government that South Africa's landless would "act destructively" if the government does not achieve greater success in its land reform programme. They also called for the expropriation of land (News24, 2004a).

The LPM is a "national movement of landless people in South Africa (Landless Peoples Movement, 2001)," established in 2001. They have a slogan which reads: "Landlessness = Racism End Racism! Give us our land now!" One of the declarations they make in their founding statements and resolutions document, reads as follows: "Government must scrap the property rights clause and replace it with a "social obligations" clause on land ownership to make land that is under utilised, unused or unproductive, or owned by absentee landlords available for land reform (Landless Peoples Movement, 2001)." They also invited Robert Mugabe, the Zimbabwean president, to "share ideas on land reform in South Africa" in the same document, and also stated the following: "We also support the gallant actions of Zimbabwean President Robert Mugabe to return stolen land to the people of Africa (Landless People's Movement, 2001)." One wonders if they also support the erosion of democracy that Zimbabwe has seen in the past few years since Mugabe's "gallant actions".

The above should make it clear that they have scant regard for the rule of law, and one gets the impression that they see the alteration of land ownership as superior to building democracy. Furthermore, there is a racial dynamic to their view of the land question. A News24 (2004b) report quotes the LPM as follows:

"The LPM believes there is a war in the South African countryside, but it is a one-sided war waged by unrepentant, abusive white farmers against poor and defenceless black farm dwellers whose only recourse is to a rural criminal injustice system dominated by the interests and alliances of white farmers."

The LPM is not the only organisation critical of the government's land reform project. The South African Communist Party (SACP) also expressed concern over the pace of land reform. They planned a mobilisation campaign for October 2004, billed the Red October campaign with the theme "Mawubuye Umhlaba: Land, Food and Jobs!" aiming "to add impetus to the commitment of speeding up the process (of land reform) (IOL, 2004)". They will question the 'willing buyer, willing seller' principle, as well as the question whether or not the government is spending enough on the process. They will also focus on effective infrastructure, agricultural extension programmes and ongoing assistance. Indications are that the SACP look at land reform as a means to uplift the poor, as one of the thematic pillars of their campaign are "access to and ownership of productive land for the poor." The other two thematic pillars are "access to basic services and rights for farm workers and their families; and a National Land Summit (IOL, 2004)."

What makes the SACP's position interesting is the fact that they are part of the tripartite alliance with the ANC and COSATU. In other words, they are part of the ruling alliance. This is not to say that the SACP will have considerable influence on the ANC's land reform policy, as they have been at loggerheads with their alliance partner, most infamously on the issue of privatisation.

But what have the farming community to say? White farmers place law and order at a high premium with regards to land reform. They also ask for patience with the land reform programme (Pienaar, 2004). News24 (2004c) reports on a Markinor study which have found that 54% of farmers supports land reform and are willing to sell their properties and support black farmers. A further 75% accepted that land reform is inevitable. However, there have been rumours of farmers inflating land prices, which are undermining the land reform process, and some farmers have not always been co-operative.

The problem is, as Pienaar (2004) points out, that land reform is progressing too slowly for the landless, and too fast for the farmers, of whom some fear land invasions and expropriation. One can say that the slow legal process of land reform is making the rule of law less attractive for the landless. Also, it has been shown that law was a

means of dispossession in the previous dispensation, which could possibly make the landless weary of the rule of law. Contrastingly, the rule of law is the protection of property rights, which would increase its standing among landowners.

4.4 Conclusion

It has been shown that South Africans are divided on the relationship between land reform, the rule of law and transformation. Furthermore, the majority of South Africans hold a view of land reform that is not consistent with the conventional liberal democratic view of the relationship between the rule of law, the constitution and democracy. One can discern a majority view, based on the responses of the majority of the survey's respondents, the African respondents the ANC and IFP supporters and residents of most of the provinces, as well as the LPM and the SACP. One can also discern a minority view, based on the responses of whites, DA supporters, the Western Cape residents, and the landowning farming community. In the following paragraphs the way South Africans look at these matters will be applied to the framework of ideologies designed in the second chapter of this thesis.

4.4.1 Perspective on democracy

The majority view seems to fall in the liberationist paradigm. There seems to be a sense of historical injustice, as indicated by the survey results as well as the views expressed by the Landless People's Movement. The South African Communist Party, also fits the liberationist bill, as it is a communist party, and played an active role during the liberation struggle. Furthermore, transformation seems to overrule the rule of the law and the constitution. This is indicated by the LPM's willingness to undergo illegal actions if their demands are not met, as well as their, and the SACP's, questioning of the 'willing buyer, willing seller' principle entrenched in the constitution and the survey results.

The minority view seems to apply to the liberal model. The DA would call itself a liberal democratic party. The survey results show that whites and DA supporters consistently harbour opinions sympathetic to the rule of law. Also, it has been indicated that farmers call for the maintenance of law and order and patience with the land reform process, thereby asking to let the constitutional process run its course.

4.4.2 Purpose of land reform

The majority view favours the liberationist purpose of land reform. The SACP wants land reform to uplift the poor. The survey results, particularly the results on the statement that “all the land whites own, they stole from the blacks,” and the LPM’s statements suggest that historical injustices should be addressed, thereby removing the landed elite. By insisting on the rule of law, the minority view wants the maintenance of the *status quo*, which also slants to the liberationist approach, but with capitalist characteristics, as indicated in the previous chapter.

4.4.3 Process of land reform

By questioning the ‘willing buyer, willing seller’ principle, and questioning the legitimacy of private ownership, the majority view renounces the market-driven process of land reform. Their focus seems to be that of the equity approach. The minority view clearly favours the ‘willing-buyer, willing seller’ principle, as indicated by their affinity for the constitution and the rule of law. Thus, they support the market-driven process of land reform.

Thus, one can clearly see that the majority view follows the liberationist ideology, favouring a form of populist transformation of the pattern of land ownership in South Africa. The government is not following the same school of thought, and therefore the landless people’s discontent with the land reform project thus far. How does this impact on democratic consolidation? The next and final chapter will address this question.

Chapter Five

Conclusion

In chapter two it has been shown that an unequal pattern of land ownership is not conducive to the entrenchment of a democratic society. The rule of law is also paramount to democratic consolidation. The crucial concern is: Can the rule of law be upheld in the creation of an equitable pattern of land distribution?

In addition, this thesis has shown that, since European settlement at the foot of Africa, land ownership has been a contentious issue. Centuries of colonial and apartheid rule have led to a highly unequal distribution of land ownership, based on race. Importantly, the notion of private property has been firmly entrenched. This meant that by the time South Africa made its transition to democracy, the white minority owned the large majority of South Africa's land, while the black majority occupied a much smaller share of the country's land, owned by the state or held in a trust.

The settlement and the subsequent constitutions, which were to be the cornerstone of South African democracy, hold an ambiguity concerning land reform. On the one hand the constitution obliges the government to have a land reform programme, but on the other it requires compliance with the 'willing buyer, willing seller' principle, which severely affects the pace and costs of land reform.

It also seems as if the government's ideological approach towards land reform differs from that of the majority of the people's. The majority paradigm also differs from that of the white minority. There is therefore racial differentiation concerning the ideology affecting the process of land reform, as there is differentiation in the distribution of land ownership.

It is within this context that the South African democracy must consolidate. This chapter will assess the prospects of democratic consolidation within the milieu of land reform, with its peculiarities described above.

5.1 Clashing paradigms

The government's paradigm differs from that of the majority of South Africans. Furthermore, one detects a divergence between the views of blacks and the other race groups, as well between supporters of the ANC and IFP and DA supporters. The majority, black South Africans and supporters of the ANC and IFP follow the liberationist paradigm. The whites (and coloureds and Indians) and DA supporters seem to follow the liberal paradigm, and seems to correspond more to the government's approach, albeit that the governing ANC has a liberationist paradigm on democracy.

This means that there are fundamental differences on what the purpose of land reform is, as well as the process that should be followed. These differences are based on race and party allegiance, and along the province in which a person is situated. One can say that this clash of paradigms leads to a threat to the perceived legitimacy of the constitution.

5.2 Threats to the legitimacy of the constitution

The ambiguity inherent to the constitution lends itself to questions of the legitimacy of the constitution itself and even the settlement. As noted in the third chapter, the constitutional provisions regarding land reform were based on a compromise: land reform will take place, but according to the market principle.

However, it seems as if there is a strong rejection of the market principle. The survey results have shown that the majority of South Africans reject the notion of property rights in agreeing that "all the land whites own, they stole from the blacks." Furthermore, it seems as if transformation is regarded as superior to the rule of law and that the constitution is not equated to landowners' right to dispute land claims in court.

The Landless People's Movement (LPM) has publicly asked for the abolishment of the 'willing buyer, willing seller' principle and the South African Communist Party (SACP), which is part of the governing tripartite alliance, also questions this principle.

They are not the only people who carry this sentiment. The Pan Africanist Congress (PAC) is another party at odds with the government regarding land reform. Thami Ka Plaatjie (2003: 308-309), the PAC's Secretary General, writes the following as a rejection of the 'willing buyer, willing seller principle':

"It must be noted that all the land that has been robbed from the indigenous African population was taken by force. So it would be foolhardy for any sane person to expect that land which was dispossessed will be returned willingly. No thief would be so generous as to give back the loot with a smile. The fact that he/she stole your land in the first place means that he/she needs to eke out a livelihood at your expense. The willing buyer, willing seller option must be jettisoned as defective and tantamount to selling out."

Ka Plaatjie's claim is highly contestable on many aspects, but what is important is what it tells us about the views of some people. It echoes the survey results and the opinions of the LPM in rejecting the legal basis for land ownership in the strongest possible sense. It also shows a high level of intolerance towards landowners. Furthermore, by stating that the inclusion of the 'willing buyer, willing seller' principle in the constitution is "selling out," Ka Plaatjie is insinuating that by compromising to include the market principle, the government has let down the majority. The constitution's legitimacy is thus questioned on the premise that it does not reflect the ideals of the struggle. One can say that according to this view the constitution is seen as a document for transformation.

If the constitution should be amended, one can imagine that it would be challenged on the grounds that it is against the grain of the settlement which laid the groundwork for South Africa's democracy. According to this view the constitution is the procedural rules for societal conduct in South Africa. Du Toit (2004a) illustrates this in the following words:

"The liberal interpretation of our democratic transition is that these constitutional and other rules hold sway over other concerns. Issues of transformation have to be dealt within this framework, and cannot override it. Great historical wrongs even as understood as theft, pillage and plunder, must be settled within these rules."

Thus, there is the view that the constitution should be subservient to transformation, and another, that transformation should be subservient to the constitution. This means that there is what Du Toit (2003: 113) would call a “chasm of meaning about South Africa’s transition.”

5.3 Threats to the rule of law

The view that questions the legitimacy of the constitutional provisions regarding land reform seems to be conducive to a breakdown in the rule of law. Not only does it dispute the legal framework, there also is a strong sense of historical injustice that seemingly yearns to be remedied, if the LPM and Thami Ka Plaatjie’s views are anything to go by. Add to this the impatience shown over the slow progress made regarding land reform, and illegal land invasions can become a ticking time-bomb. There therefore is a genuine threat to the rule of law.

The government’s response to land invasions can also be telling with regards to the robustness of the rule of law in South Africa from the side of the government. There are a range of options for government action one can foresee in the situation of land invasions. The Zimbabwe route could be followed: the government, buckling under pressure, could endorse land invasions by scrapping legislative and constitutional measures protecting private property. Any semblance of what is termed, in the democratic paradigm, the rule of law will in all probability be nothing more than a mirage.

In another scenario the state might suppress the land invaders to such an extent that their human rights come under attack. In this case the state will be operating outside the rule of law, which could also lead to the erosion of democracy.

As described earlier, the state has mostly dealt with land invasions as required, with the exception of Abraham Duvenhage’s land. However, a court ruling obliges them to make work of this matter. As stated in the third chapter, up to date the government has by and large been careful to play the land reform game within the bounds of the law, and as several news reports would have us believe, they are intent on keeping this up.

5.4 Prospects for democratic consolidation

It is clear that South Africa is a divided society on many levels, not only regarding the land question, but also with regards to the role the constitution should play in this programme. Race, party allegiance and provincial setting are all dividing lines. The question is: “Is South Africa’s land reform policy a golden midway that will lead a divided society out of the wilderness of uncertain democratic prospects?”

The answer is: “At the moment, probably not.” A somewhat distressing feature is the divergence on opinion regarding the role of the constitution. Just as it seems difficult to build a house if there is uncertainty on where the foundation is, it seems hard to build a stable democracy if the meaning of its constitution is contested. This is the result of the discord between the liberationist and liberal paradigms. Furthermore, the threat of land invasions is an immediate threat to one of democratic consolidation’s pillars: the rule of law. The several dividing factors, particularly race, might mean that these issues are very emotive and therefore prone to create instability.

At the time of writing, extensive talks including all the stakeholders on the issue of land reform are in the pipeline. But as Du Toit (2003: 114) points out, the ambiguities of the initial constitutional settlement of 1993/1996 must be cleared up first, so as to create a basis for founding principles publicly endorsed by all of the major stakeholders, before redistributive policies like land reform are launched.

The only way in which land reform can make an immediate impact on democratic consolidation is if the process could be sped up without disrupting the rule of law. This will cost a very large sum of money, as well as a large amount of time and effort. It seems highly unlikely that the government will find the required finances to send the project into turbo-drive, and whether the capacity exists to deliver this high output, also seems unlikely.

Thus, rather than building a bridge over a deep canyon, South African land reform is walking a thin line over this canyon. Unless a substantial financial injection is found, it seems unlikely that South Africa’s land reform project will make a huge

contribution to democratic consolidation. It actually seems that the land reform project will be hard pressed not to be the cause of democratic erosion.

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