

## **Annexure C: Legitimacy of particular chiefs**

A key question relating to legitimacy that arises frequently in the context of land claims and related issues is who is to be regarded as the legitimate traditional authority in a particular area for a particular group of people. The historical review makes it plain that even in the pre-colonial period, this issue could be contested notwithstanding the abstract model of chiefly succession. The extent of manipulation and distortion under the successive colonial and apartheid regimes however has greatly expanded the grounds for contestation. Over these periods, appointment and recognition of chiefs was made subject to political interests that were substantially removed from the local community affected, and that were antagonistic to the genuine will of the people. Chiefs had to be compliant instruments serving the colonial, then apartheid and kwaZulu projects. Those chiefs who were considered problematic or rebellious were likely not to be recognised or were removed and replaced by tamer, more loyal, lackeys at the whim on their ultimate political masters. It has been noted these developments undermined the legitimacy of traditional authorities in general. But their impacts are also specific and local, laying the ground for popular dislike (at the local community level) of particular incumbents and for rival claimants who might stake their claims to rightful leadership in contrast with state appointed incumbents. Within local 'traditional' communities such feelings and split allegiances may remain relatively hidden for long periods as people are fearful of the consequences of open discussion, contestation and even conflict. However, old wounds and contested histories at the local level have tended to be mobilised again and the conflicts made more visible especially in the post-apartheid period when land reform offers the promise of rewarding legitimate claims for land. Such developments bedevil the claims process itself and also indicate great instability in the particular traditional authority raising questions about the viability of a land claiming community's prospects going forward<sup>53</sup>.

There are indications that national government's approach to this matter would be to finalise a listing of 'legitimate' chiefs (based on genealogical and succession grounds) as distinct from government appointed ones. On the other hand, development practitioners point out that the determination of the legitimacy of a particular incumbent inkosi is rather more complex – some 'appointed' chiefs have built substantial credibility by their performance at the local level for their communities.

This again points to the importance and necessity of the democratic involvement of affected groups in the determination of such matters<sup>54</sup> – and the need to create a culture and context of open and informed discussion based on a full set of available and viable alternatives.

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<sup>53</sup> For a good discussion based on case studies see MXA 1998 (a) and (b).

<sup>54</sup> This is not to suggest that democratic selection is the only principle which applies because it makes no sense to have open, democratic elections for traditional authorities – indeed, should that be the preferred route for a particular community, then they are effectively no longer a 'traditional community' in terms of their governance preferences. Thus the process would need to be conducted within a broader set of guidelines which ensured traditional continuity too – especially regarding selection from among candidates who can make legitimate claims to chiefly succession and which takes into account that community's historical and genealogical characteristics.