



Commission for Gender Equality
A society free from gender oppression and inequality

ROYALTY AND WOMEN'S EMPOWERMENT:



Assessing Gender Mainstreaming through Houses of Traditional Leaders

2017

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Foreword & Acknowledgements

This report is the first in a two-year project intended to last for two years, exploring the role of women's representation, participation and their role in leadership in institutions of traditional leadership, particularly the Houses of Traditional Leaders in South Africa. The overall aim of this study is to assess progress and obstacles in the pursuance of gender equality and women's empowerment within the traditional leadership sector in South Africa, in compliance with current constitutional imperatives and legislative frameworks promoting gender equality and transformation.

This first report is based on the assessment of selected Provincial Houses of Traditional Leaders, with the aim of examining and understanding current efforts, if any, aimed at promoting women's empowerment, equal participation and representation in the work and operations of these houses. It is within the Commission's legislative and constitutional mandate to assess, monitor and evaluate the work of public, private and civil society institutions to determine the level of compliance with legislative imperatives to promote gender equality, women's empowerment and gender transformation. For this current financial year (2017/18), the project focussed attention on four Provincial Houses of Traditional Leaders: namely, North West, Eastern Cape, KwaZulu-Natal and Mpumalanga.

The project examined a number of key themes relating to the promotion of gender mainstreaming and women's empowerment, including their role in the leadership and operations of the selected Provincial Houses of Traditional Leadership. Among these themes were the numerical representation women (i.e. female traditional leaders) as ordinary members as well as their occupation of positions of leadership in the Provincial Houses of Traditional Leaders, relevant programmes and activities aimed at promoting gender equality, including budgetary and resource allocations.

The findings of the study are insightful in that they reveal, broadly, the limited if not lack of progress in promoting gender mainstreaming and women's empowerment within the selected Provincial Houses of Traditional Leaders. In addition, the lack of knowledge and willingness to address the issue of gender equality and transformation was undeniable, despite all the current policy and legislative frameworks to this effect. The widespread lack of interest, including in some cases unwillingness by some of the key role players to even acknowledge the importance and relevance of the issue of gender equality and transformation within the sector was intense.

This report is therefore being released to the public with the hope that it would spark interest in public debates about not only gender equality and transformation within Provincial Houses of

Traditional Leaders, but also within the institution of traditional leadership in general. It is also hoped that the report will bring to the attention of policy makers and other key stakeholders the need to pursue with vigour the constitutional imperative to promote gender equality and transformation within the institution of traditional leadership as provided for within relevant sections of the Traditional Leadership and Governance Framework Act, No. 41 of 2003.

The Commission's research team encountered a great deal of resistance, apprehension and lack of cooperation from some of the officials during the fieldwork phase of the study, particularly regarding requests for copies of official documents relating to the operations/ programme and activities of these institutions. The CGE is, nonetheless, grateful and wishes to express gratitude to the offices of the Chairpersons of the four Provincial Houses of Traditional Leaders covered in this report, including those senior managers and other officials who cooperated with the Commission's research team by providing useful information and insights into the operations and activities of these houses.

The CGE is also obliged to the traditional leaders, especially female traditional leaders, who made time and participated in interviews with the Research Team regarding their experiences, insights and understanding of the work of these institutions.

Finally, the CGE is indebted to the staff members from our Provincial Offices, who provided assistance to the research team when such assistance was sought. The CGE appreciates the work carried out by the research team comprising Thubelihle Zitha, Lieketseng Mohlakoana-Motopi, Naledi Selebano and Luvisa Bazola who compiled the report. The report was finalised and edited by Thabo Rapoo, Director for the Commission's Research Department.

Abbreviations & Acronyms

BPA	Beijing Platform for Action
CATA	Culture Arts and Traditional Affairs
CoGTA	Cooperative Governance and Traditional Affairs
CGE	Commission for Gender Equality
EC	Eastern Cape
ECHTL	Eastern Cape House of Traditional Leaders
GBV	Gender Based Violence
KZN	KwaZulu-Natal
KZNHTL	KwaZulu-Natal House of Traditional Leaders
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LHTL	Local House of Traditional Leaders
MOU	Memorandum of Understanding
MP	Mpumalanga Province
MPHTL	Mpumalanga House of Traditional Leaders
NPA	National Prosecuting Authority's
NW	North West
NWHTL	North West House of Traditional Leaders
PHTL	Provincial House of Traditional Leader
SALGA	South African Local Government Association
SAPS	South African Police Service
SPLUMA	Spatial Planning and Land Use Management Act

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1. Introduction

The institution of traditional leadership represents an early form of societal organisation. It embodies the preservation of culture, traditions, customs and values.¹ In the pre-colonial era, traditional leaders and traditional authorities were important institutions which gave effect to traditional life and played an essential role in the day-to-day administration of their areas and the lives of traditional people². Traditional leadership and traditional authorities were accountable to the people they were leading. Ever since the inception of traditional leaders and traditional authorities' men have always been at the helm. In most cases, succession to such leadership is based on the principle of male primogeniture in terms of which only the eldest male child is supposed to succeed the senior traditional leader. This was applicable even when the senior traditional leader had a daughter as his first child. Women were expected to get married and were not trusted with the leadership role.

Although, some progress has been made by South Africa in addressing gender inequality in various sectors of society, this success has not been reflected especially in the traditional sector. The traditional sector is one of the sectors, still lagging-behind in terms of promoting gender equality and mainstreaming in South Africa. It can be argued that this is due to the patriarchal nature of tradition in our society, which has shaped and perpetuated gender inequality to the extent of allowing male domination and female subordination³. Subsequently, wide disparities persist in the traditional sector such as poor women representation in the House of Traditional Leaders and their exclusion from leadership positions. Men make up the overwhelming majority of key decision-makers in the traditional houses. Moreover, wide variations remain in relation to parity for women representation in senior positions in the traditional sector particularly in becoming a senior traditional leader despite several pieces of legislations and policies being crafted and made available to address gender inequality in the sector. Thus, an assessment undertaken by the Commission for Gender Equality (CGE) seeks to understand why the sector is failing to comply with the existing pieces of legislation and policies that seek to promote gender mainstreaming in South Africa.

The objective of the study was to assess the extent of gender mainstreaming by examining or assessing programmes and plans of Provincial Houses of traditional leaders. This was done in line with the provisions of the existing pieces of legislation that seek to promote gender equality in the work place. Moreover, the study interrogated the roles played by women and men in the operations of the houses and lastly, we gauged the level of gender representation within structures of Provincial Houses of Traditional Leaders.

¹ Khunou, S.F. (2011). Traditional Leadership and Governance: Legislative Environment and Policy Development in a Democratic South Africa. *International Journal of Humanities and Social Sciences*, Vol. 1 No. 9.

² Ibid

³ Kambarani, M (2006) *Femininity, Sexuality and Culture: Patriarchy & Female Subordination in Zimbabwe*. University of Fort Hare Press.

2. Methodology/Research Approach

The purpose of this study was to assess the extent of gender mainstreaming in the traditional leadership sector. The study adopted a qualitative research approach as it allows for detailed examination and analysis of experiences, ideas and knowledge of research participants⁴. The approach was thus suitable for this study as the CGE sought to conduct an in-depth review of programmes, systems and activities of Provincial Houses of Traditional Leaders to determine their efforts and progress made towards gender mainstreaming and gender transformation.

The study was fieldwork based and four (4) Provincial Houses of Traditional Leaders were selected as case studies, namely: Mpumalanga, Eastern Cape, KwaZulu-Natal and North West. It was not possible for the CGE to sample all six (6) existing Provincial Houses in the country, given our limited resources and time constraints⁵. Prior to the commencement of the data collection process, the research team embarked on trips to the four (4) selected Provincial Houses to familiarise the team with their systems and structures and to appreciate the dynamic nature and uniqueness of each Provincial House. The specific objectives of the preliminary meetings were as follows:

- To observe how the Houses of Traditional Leaders in the four (4) selected provinces operate.
- To determine the role, participation and representation of women in the operations of the Houses of Traditional Leaders, including positions of leadership.
- To determine the programmes, activities and projects aimed at promoting gender equality/gender mainstreaming in Provincial Houses.

The information that emerged from the preliminary meetings gave us a better understanding of the structures and operations of the Houses, and therefore, helped us select an appropriate methodological framework for the study, i.e. methods of data collection, the sample, sample size, and data analysis.

Individual semi-structured interviews were conducted with senior traditional leaders, with emphasis placed on those who were members of the Provincial Houses in the previous term of office (from year 2012 to 2017). This sampling criterion assumed that members of the outgoing Houses would be best experienced to answer multifaceted questions relating to the Houses given that they had institutional memory. We also interviewed officials who felt comfortable

⁴ de Vos, A.S., Strydom, H., Fouche, C.B. & Delpot, C. S. L. (2001). *Research at grass roots: for the social sciences and human service professions* 4th Ed (Pretoria: Van Schaik Publishers).

⁵ The study was carried out over a period of less than a year.

participating in the study from the relevant provincial departments. The below table provides details of the 4 case studies and respondents.

Table 1: Case Studies: Provincial House of Traditional Leaders.

Provincial Houses of Traditional Leaders	Number of Senior Traditional Leaders interviewed	Number of Government Officials interviewed
• Mpumalanga	4	5
• Eastern Cape	0	5
• KwaZulu-Natal	5	1
• North West	5	2
Total	14	13

An interview guide was developed and used as a data collection tool for interviews with both senior traditional leaders and government officials. We had envisaged to sample an equal representation of female and male senior traditional leaders in each province, but this was not possible because of logistical challenges and refusal by some of the members of the Houses to participate in the study. In fact, in the Eastern Cape, we could not interview any of the members of the Provincial House, as countless efforts by the researchers to do so yielded no results. Similar challenges were encountered with government officials from the KwaZulu-Natal province, hence only one (1) official ended up being interviewed. Nonetheless, as the table shows, a total number of fourteen (14) senior traditional leaders were interviewed and 13 government officials from the Department of Cooperative Governance and Traditional Affairs (CoGTA) and CATA. In addition to individual interviews, relevant documents and publications such as sectoral legislation, policies, annual plans, annual reports and rules of the Houses were obtained and used as sources of information.

The data collection phase of this study coincided with electoral processes of the KwaZulu-Natal Provincial House. The researchers were thus able to observe the selection and swearing in of the Chairperson, Deputy Chairperson, Executive Committee, and three (3) members who would represent the province at the National House. Insights from the KwaZulu-Natal elections will be discussed in the findings section of the KZNHTL of the report. We were not able to observe elections in other provinces given the resistances we encountered and due to clashing schedules in other instances.

The team had initially decided to focus only on the work of two (2) House Committees in each province. This was so that we could limit our scope to conduct a thorough and more detailed examinations of the gender mainstreaming programmes and activities of those committees.

However, due to some practical challenges that were encountered, the team subsequently decided to focus on the work of all House Committees. Examples of the problems we encountered are that (1) some of the selected committees were not operational at the time the study was conducted and (2) Members of the selected committees were not available for interviews. The initial selection was as follows:

Mpumalanga

1. Target group
2. Traditional leaders and land disputes

Eastern Cape

1. Traditional, Culture, customs, and Education Committee
2. Agriculture, economic, development and land Committee

KwaZulu-Natal

1. Gender, Youth and People with Disabilities Committee
2. Heritage, Culture and Customs Committee

North West

1. Planning and Cooperative Governance Committee
2. Social Development & Health Committee

2.1. Limitations of the study

Like any other research project, this study faced a number of limitations.

Firstly, a major limitation was that there was refusal by members of the Eastern Cape Provincial House to participate in the interviews. This is despite countless emails and phone calls made to the Chairperson of the House to request permission to engage with the House on issues relating to the objectives of the study. The CGE did not receive any concrete justification for the lack of cooperation by the Provincial House. The lack of cooperation has implications for the rigorousness of findings presented under the Eastern Cape section of the report, as it lacks the richness and authenticity of the opinions and experiences of critical key informants. In a similar fashion, there was lack of cooperation from some government officials.

Secondly, there appeared to be great reluctance about being interviewed for this study amongst departmental officials. One of the concerns raised was that of the fear of suffering negative personal or professional consequences in cases whereby unfavourable information disclosed to the CGE is held against them. This feeling was persistent despite constant reassurance from the researchers that ethical principles of confidentiality and anonymity would be strictly adhered to.

A third limitation was that the team faced reluctance from participants to submit supporting documents that would enable them to conduct a comprehensive analysis of findings. For example, the Eastern Cape House Rules could not be obtained by the team of researchers. There appeared to be a lack of transparency from some of the participants of the study. Finally, the decentralised nature of the locations of senior traditional leaders became a serious logistical challenge. Some of the senior traditional leaders that had agreed to participate in the interviews were based in remote villages that were very far in terms of travelling distances. The team was thus forced to conduct telephone interviews with them. While there are time and cost benefits to telephone interviews⁶, a few challenges emerged. The researchers struggled to create and maintain rapport in telephone interviews compared to face to face interviews. Telephone interviews also negatively impacted the communication process in the interviews, often resulting in misunderstandings and confusions.

⁶ Farooq, M. B., Qualitative telephone interviews: Strategies for success. Conference paper.

3. Overview/Context of Gender Inequality in the Traditional Sector

During the colonial and apartheid eras, respect for the dignity of individuals and their rights to access resources and services were largely determined along racial lines. Gender designation also played a major role within all the racial groups, with women considered inferior to men. It can be argued though that black women were doubly discriminated against, along both racial and gender lines as compared to their male counterparts. The Black Administration Act of 1927 considered black women, regardless of age, marital status and ability, as minors. Women were not allowed to own property, sue or be sued in court, or exercise the power of contract. They could not negotiate or terminate their marriages and could not have legal custody of their children⁷. Besides their status as minors, black women were kept out of urban areas, while black men were recruited to work in the industrial centres, especially the mines. Black women's rights and freedom of movement were eventually controlled and restricted by the Native (Black) Urban Areas Act no. 21 of 1923, which extended the existing pass system so that domestic workers were the only black women allowed to live in urban areas⁸.

With the advent of democracy, the Constitution of South Africa intended to right the inequality and injustices imposed in the colonial and apartheid eras. Hence, the founding values of the South African state, in Chapter 1 of the Constitution, include the right to human dignity, the achievement of equality and the advancement of human rights and freedoms; non-racialism and non-sexism, among others⁹. Chapter 2 of the Constitution of the Republic of South Africa: The Bill of Rights elaborates all the rights and freedoms that South Africans can expect to enjoy. Paramount among these is the right to equality before the law and the right to equal protection and benefit of the law; prohibition of unfair discrimination: directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth¹⁰. However, in addition to these, Chapter 12, 211(1) of the Constitution recognises the institution, status and role of traditional leadership, according to customary law, which can often come into conflict with other rights such as gender equality rights. This is especially the case in instances where the institution of traditional leadership is also called upon, in terms of the constitution, to ensure the promotion of non-sexism and gender equality in areas under its jurisdiction. The

⁷ Customary Marriage Act – 1, Ghost Digest, 24 July 2008, <http://www.ghostdigest.co.za>

⁸ Boddy-Evans, A., 'Women's anti-pass law campaigns in South Africa', About.com, <http://africanhistory.about.com>.

⁹ The Constitution of the Republic of South Africa no. 108 of 1996, Republic of South Africa,

¹⁰ *ibid*

constitution provides several measures aimed at protecting women, their rights and the pursuit of equality. For instance, Section 9(3) of the Constitution obligates the state to take practical measures to deal with discrimination and inequality. The Constitution makes further provisions to enhance the protection of women's rights and attainment of equality, particularly in the work place. A gender policy and legislative framework currently exists to guarantee that all people, irrespective of gender, enjoy equal rights. Among these legislative frameworks is the Promotion of Equality and Prevention of Unfair Discrimination Act no. 4 of 2000, which seeks to strengthen and support the equality provisions of Section 9 of the Constitution.¹¹ In addition, relevant institutions such as the Commission for Gender Equality and the Human Rights Commission were established in Chapter 9 of the Constitution to support the country's democracy by promoting some of the values such as gender equality and equal rights as entrenched in the Constitution. These institutions have the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning rights to equality, including gender equality.¹² The CGE participates and strengthens the efforts of attaining gender equality and justice for all.

One of the key national policy frameworks to guide the country's efforts to promote gender equality is the National Policy Framework for Women's Empowerment 2000.¹³ It provides a set of principles and guidelines for government departments to achieve gender equality. With respect to rural women in traditional societies, the Gender Policy Framework document mentions under a discussion on poverty, that one of the challenges facing South Africa is "the systematic and socially engineered location of women in rural areas... [which] coupled with repressive customs and traditions, disempowered women."¹⁴ The Principles and Guidelines contained in the document make it clear that customary, cultural and religious practices cannot supersede the right to equality,¹⁵ including gender equality.

It is clear that the system of traditional leadership is highly patriarchal in nature, and therefore tends to ensure the continued subordination of women within the system, particularly in the rural areas, where customs and tradition continue to underpin strong patriarchal forms of authority. In this patriarchal context women are considered subordinate to men not only within the household but also within broader communal, cultural and social relations.

¹¹ Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, Republic of South Africa, <http://www.justice.gov.za>.

¹² The Constitution of the Republic of South Africa no. 108 of 1996, Republic of South Africa, <http://www.info.gov.za>.

¹³ South Africa's National Policy Framework for Women's Empowerment, 2000, Republic of South Africa: The Office of the Status of Women.

¹⁴ *ibid*

¹⁵ *ibid*

At the dawn of its democracy, South Africa recognised the importance of the inclusion of the institution of Traditional Leadership within its democracy dispensation through provisions in the Constitutional Act 108 of 1996. Chapter twelve (12) Sections 211 and 212 of the Constitution provides for the recognition and the role of traditional leaders respectively. Section 211(1) gives recognition to the institution, status and role of traditional leadership according to customary law, subject to the Constitution.¹⁶ Section 212 of the Constitution deals with the role of traditional leadership at both national and provincial levels. It uses permissive and not mandatory language. Section 212(1) provides that national legislation may provide for the role of traditional leadership as an institution at local level on matters affecting local communities. Therefore, the promulgation of relevant national legislation, especially the Traditional Leadership and Governance Framework Act 41 of 2003, was important in terms of enabling the adoption of provincial legislations that are customised to the cultural diversity of the South African society.

The Act stipulates in no uncertain terms that the Constitution recognizes the institution of traditional leadership, status and role of traditional leaders taking into consideration the customary law and traditional authorities that observe the system and practice of customary law. The Act also obliges the State to respect, protect and promote the institution of traditional leadership in accordance with the principles of democracy in South Africa. It further states that the institution of traditional leadership must be transformed to be in harmony with the Constitution and Bill of Rights. The state should recognize the need to provide appropriate support and capacity building to the institution of traditional leadership.

The Provincial Houses of Traditional Leaders are therefore established under respective provincial legislations crafted in line with the provisions of Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003). The members of the Provincial Houses are drawn from the Local Houses of Traditional Leaders (LHTL) established throughout Provinces. The Local Houses are situated in District municipalities or Metropolitan Municipalities¹⁷ where there are more than five Senior Traditional Leaders. The same Act also provides for the Khoi San Traditional Leadership (referred to as the Indigenous Group). The membership of the Traditional Councils consists of 60% members from the Traditional Royal Families and 40% elected by community members in line with relevant provisions of the Traditional Leadership and Governance Framework Amendment Act 2009. The Act provides for at least one third minimum representation of women as members of Traditional councils. Furthermore, it ensures the inclusion of 'sufficient number of women', but does not specify the one third (1/3) quota representation within the Provincial Houses. Section 17 (a) and (b) provide that women should be represented in the Provincial Houses of traditional leaders. The Act also provides for women to be elected as representatives at the National House of Traditional Leaders. This is important as it serves to ensure that Traditional Councils comply with some of the country's gender legislations, including the Promotion of Equality and Prevention of

¹⁶ Constitutional Principle XIII captured in the wording of Sections 211 and 212 of the Constitution of the Republic of South Africa, 1996. Section 211(1)

¹⁷ Traditional Leadership and Governance Framework Act 41 of 2003

Unfair Discrimination Act. The Traditional Leadership and Governance Framework Act further provides for relevant measures to be put in place to deal with Traditional Councils reflecting an insufficient number of women.¹⁸ It is therefore reasonable to argue that the Traditional Leadership and Governance Framework Amendment Act 2009 does pay attention to the issue of gender equality and gender transformation.

However, the relevant provincial legislations from the selected Provincial Houses of Traditional Leaders dealing with the issue of gender equality and representation are inconsistent, particularly in relation to quota issue. In other words, there is no uniformity in the provisions contained in the various provincial Acts regarding the quota of women to be represented in the memberships of these Provincial Houses. Because of this legislative inconsistency at provincial level, the four Provincial Houses reflect different numbers of women within their memberships. For instance, the Mpumalanga Provincial House currently has only four women members (with the fourth one representing the Provincial House at the National House) out of 21. This is way below the one third quota as provided for within the Traditional Leadership and Governance Framework Act. The Eastern Cape Provincial House makes provision for only one female member if there is a woman qualifying for the position of senior traditional leader, despite the Eastern Cape Provincial Act itself being silent on the issue of women's representation both at provincial and national levels.

For the Kwazulu-Natal Provincial House, the provincial Act is silent about women's representation. In practice though, available information shows that out of 53, there were only six female members of the Provincial House at the time of the study. The North West Provincial legislation on traditional leaders appears to comply fully with the provisions of the national Framework Act (i.e. on the third quota women membership). Yet in practice the North West Provincial House of Traditional Leaders has only 4 members out of 24.

3.1. The Roles of the Traditional Leaders

The role of the traditional leaders in South Africa has been debated by different scholars since the advent of colonialism and the introduction of the apartheid system in the country. The issue of gender equality is always an important factor in debates about traditional leadership, marriage and family law as well as succession and inheritance. In general, the issue of succession in matters of traditional leadership is based on the principle of male primogeniture in terms of which only the eldest male child is supposed to succeed the father, even if succession is legally/procedurally subject to appointment by the head of state.¹⁹

Traditional leadership is inherited, based on the notion of preservation of culture through the male genealogy.²⁰ The bases for the male primogeniture in traditional leadership is that the eldest son was believed to present better prospects for preserving continuity of the

¹⁸ *ibid*

¹⁹ Olivier NJJ, Bekker JC and Olivier (1995), *Indigenous Law*, p162

²⁰ Bennett, TW (2014) *Customary Law in South Africa*

family name from the father down the line, whereas the daughter was believed less likely to preserve the family name and continuity, because marriage culminates in the change of family name. This is just one among many factors used historically to marginalise and exclude women from positions of authority and leadership in systems of traditional leadership. Colonial systems often exacerbated the situation for women by introducing laws that reinforced the patriarchal systems of traditional authority, and subordinating women to the leadership of men.²¹ However, modern systems of constitutionally entrenched rights to gender equality and human rights guarantee that both sons and daughters have the same rights to inheritance and succession.²²

3.2. The Roles of CoGTA and Provincial Government

The National and Provincial Houses of Traditional Leaders fall under the auspices of the Department of Cooperative Governance and Traditional Affairs. The Department provides the Houses with infrastructure, finances, human resources, skills and development programmes as well as administrative systems. The Premiers of Provinces, along with House of Traditional Leaders, are entrusted with the responsibility of ensuring that vacancies in positions of traditional leadership are filled, through liaising with the Royal Houses which are tasked with the identification and nomination of persons who qualify in terms of applicable laws, culture and tradition. The Premier is further tasked with ensuring that traditional practices and customs are compliant with the provisions of national policy and legislative frameworks, including the Constitution. In other words, provincial Premiers are important role players in ensuring that traditional leaders, related institutions and cultural practices are compliant with the country's laws.²³

²¹ Houston, G and Fikeni, S. (1996). "Constitutional development and the issue of traditional leadership in rural local government in South Africa". In Konrad Adenauer Stiftung (ed.), Aspects of the debate on the draft of the new South African Constitution Dated 22 April 1996. Johannesburg: Konrad Adenauer Stiftung.

²² Dlamini CRM (2002), Speculum Juris, p38

²³ Traditional Leadership and Governance Framework Act 41 of 2003 and 2009 as Amended

4. Research Findings

4.1. Mpumalanga Provincial House of Traditional Leaders

4.1.1. Introduction and Brief Background on the House

The Mpumalanga House of Traditional Leaders (MPHTL) is located on Son Joy Boulevard, Corner Riverside Park in Mbombela, the capital of Mpumalanga province. The province is bordering Swaziland and Mozambique and shares borders with other South African provinces namely Limpopo (to the north), Gauteng (to the west), Free State (to the southwest) and KwaZulu-Natal (to the south). The province contributes to 6.5% of the country's land area and extensive mining and farming activities prevalent in the province contribute to South Africa's economy²⁴. The principal languages spoken in the province are siSwati, isiZulu, Xitsonga, isiNdebele and northern Sotho.

The MPHTL was established in term of chapter 3, section 17 of the Mpumalanga Provincial House and Local Houses of Traditional Leaders Act number 6 of 2005. The House exists to ensure an integrated transformation of the institution of traditional leadership by monitoring the functioning of Traditional Councils and service delivery programmes within traditional communities. Based on that, the House advises government of matters relating to customary law, traditions and culture. It is the duty of the provincial government to provide support in the form of infrastructure, finances, human resources, skills development programmes and administrative systems to strengthen the capacity of the MPHTL to fulfil its functions²⁵.

The Constitution of the Republic of South Africa in chapter 12 sections 211 and 212 recognizes the institution of traditional leadership and protects it. In section 30 and 31, the Constitution provides for all citizens of the Republic of South Africa to have the right to practice their cultures and follow their respective traditions as South African society is heterogeneous in terms of ethnic identities, culture, traditions, norms, values and principles. In general, the objectives of the House entails building the capacity of the Provincial House of Traditional Leaders to perform oversight, co-ordination, and monitoring and evaluation of government's implementation of government policies, programmes as well as service delivery. The house is also responsible for the implementation of its strategic programmes. In addition to the Provincial House, there are also three Local Houses of Traditional Leadership located in the district municipalities of Ehlanzeni, Nkangala and Gert Sibande, reporting to the Provincial House.²⁶

²⁴ Global Africa network (2017). An economic overview of Mpumalanga province. Available at <https://www.globalafricanetwork.com/2017/11/14/company-news/economic-overview-of-mpumalanga-province/>

²⁵ Mpumalanga Provincial House and Local Houses of Traditional Leaders Act 2005 (Act no 6 of 2005)

²⁶ South African Institution of traditional leadership at the core of building an inclusive information society. Published by the department of communications (Undated)

The MPHTL consists of 21 members elected in terms of prescribed legislation governing the functioning of the House. They are drawn from Ehlanzeni, Nkangala and Gert Sibande local houses. The election of seven representatives per local house takes place after the elections of members of the LHTL. The MPHTL does not use any specific formula to determine the number of representatives to the Provincial House, but nominates an equal number of representatives from all the three local houses in the three district municipalities of the province. The House has seven Committees with specific responsibilities, which are established in terms of rule 59 of the Provincial House Rules and Orders (2010). The Committees are divided into two groups: Five committees are operational committees, while two are executive committees.

This project coincided with elections for the new term (starting from year 2017 and ending in 2022) of office, of members of the Mpumalanga Provincial House Executive, which took place on the 2nd of August 2017. The MPHTL is led by Inkosi Sandile Ngomane as Chairperson, and Inkosi Cecil Mahlangu as Deputy Chairperson. Both were part of the outgoing (from year 2012 to 2017) term where Inkosi Sandile Ngomane served as the deputy chairperson. In terms of the Provincial Act dealing with traditional leadership matters, the Chairperson and Deputy Chairperson of the Provincial House of Traditional Leaders are full time elected executive incumbents. The Act also establishes the LHTL in the three districts of the Province.

The provincial department of CoGTA has a 'House of Traditional Leaders Programme' that provides for the overall management of the Provincial House and Local Houses of Traditional Leaders. The management provided by the provincial department includes: administrative support to the offices of the Chairperson and the Deputy Chairperson (both full time) of the Houses of Traditional Leaders; coordinates the development of policies related to the Houses of Traditional Leaders and provides overall management of the institution; ensures comprehensive support to the members of the Houses of Traditional Leaders and all sections of the institution of traditional leadership; coordinates research, policy development and planning for the Houses of Traditional Leaders; and provides legal services and support to the Provincial House and Local Houses and Committees.²⁷

4.1.2. Internal policies and processes for gender mainstreaming

As indicated already, the MPHTL falls under the auspices of the provincial Department of CoGTA. With 21 Municipalities and 60 Traditional Leaders in Mpumalanga, the department's role is to monitor and support the municipalities and the institution of traditional leaders to discharge their mandate and responsibilities. The department is responsible for strengthening cooperative governance in the province as well as to improve the development of capacity of the institution of traditional leaders. It also ensures that the institution of traditional leaders is transformed in order to play the role of partnering with government to accelerate development.²⁸

²⁷ <http://cgta.mpg.gov.za/programmes4.html>

²⁸ <http://cgta.mpg.gov.za/background.html>

According to one of the respondents,²⁹ the Provincial House of Traditional Leaders does not have authority to hire staff on its own, and that employment of staff is the responsibility of the provincial Department of CoGTA (Human Resource Management section). This appears to be in line with the Traditional Leadership and Governance Framework Act.³⁰ However this statement is contradicted by the report released by the national Department of Communications published in 2009, which appears to state that the Provincial House of Traditional Leaders does have authority, in line with its approved post establishment structure, to hire its own staff thus ensuring that gender issues and gender parity for the appointment of staff were taken into consideration.

During the interviews, officials from the house were unable to elaborate on how the house was ensuring that gender mainstreaming was a priority for the house.³¹ When asked about gender mainstreaming within the Provincial House, some of the informants interviewed for this study could not provide answers. Others pointed a finger to the power granted to the Royal Houses to deal with succession issues as the reason for the shortage of female traditional leaders in the Provincial House. While the current Traditional Leadership and Governance Framework Act refers to gender equality in the appointment of traditional leaders by the Royal Houses, it does not provide clues as to how this should be done.

In addition, it would appear that the provincial Department of CoGTA is not providing any leadership and guidance in this regard, especially within its legislative role of providing administrative, technical, financial and policy support to the house.

As indicated already, recruitment is the responsibility of provincial Department of CoGTA³² and the department has a gender policy. However, the policy is applicable only to the administrative component of the Provincial House of Traditional Leaders, and not the members of the House themselves. The Provincial House did not have its own gender mainstreaming policy. While the Provincial House had four senior female traditional leaders, this was not the outcome of any gender mainstreaming strategy by the House as it did not have such a strategy. This was exacerbated by the fact that the responsibility to appoint traditional leaders was vested with the Royal Houses, which also did not adhere to any gender mainstreaming policies or strategies to fulfil this responsibility. The outcome has been a very limited number of female traditional leaders taking part in the Houses of Traditional Leaders in the province. The current Mpumalanga Provincial House and Local Houses of Traditional Leaders Act, 2005 (Act No. 6 of 2005) appears to set a numerical target of only two (2) women for the Provincial House.

At the time this study was carried out, the MPHTL had a membership of 21, of which only four (19.04%) were women and 17 (80.95%) men. Among the four (4) female senior traditional leaders who are members of the Provincial House, one is part of the executive committee

²⁹ Interviews held with officials from COGTA and members of the Mpumalanga House of Traditional Leaders, Nelspruit. September 2017

³⁰ Traditional Leadership and Governance Framework Amendment Act 23 of 2009

³¹ 'The South African Institution of Traditional Leadership at the core of building an inclusive information society,

³² National House of Traditional Leaders Act 22 of 2009

and chairs one of the internal House Committees (i.e. Target Committee). Two others are members of other internal House Committees while the last one represents the Provincial House at the National House of Traditional Leaders (NHTL) in Cape Town. This is in accordance with the Mpumalanga Provincial House and Local Houses of Traditional Leaders Act, 2005 (Act No. 6 of 2005) and the National house of Traditional Leaders act, 2009 which stipulates that three members of the Provincial House who represent the Provincial House in the national House must consist of at least one woman.

Although the Traditional Leadership and Governance Framework Act 38 of 2009 is unclear on the gender representation target at provincial level, this should not be used as justification to avoid fulfilling the country's constitutional obligation to ensure gender equality in the representation and participation of women in Provincial Houses of Traditional Leadership. The framework Act states that provincial legislation must provide for mechanisms or procedures that would allow for a sufficient number of women to be represented in the Provincial Houses of Traditional leaders concerned, and to be elected as representatives of Provincial Houses of Traditional leaders at the National House of Traditional Leaders.

The gender representation target appears to apply only to the NHTL and for the Local Houses of Traditional Leaders. The Act states that at least a third of the members of a traditional council must be women and where it has been proved that there is an insufficient number of women available to meet the quota as prescribed, the Premier concerned may, in accordance with a procedure provided for in provincial legislation, determine a lower threshold for the particular traditional council than the one required.³³ Furthermore, the Traditional Leadership and Governance Framework Act 38 of 2009 states that both kingship/queenship and principal traditional community must transform and adapt customary law and customs relevant to the application of the act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by preventing unfair discrimination, promoting equality and seeking to progressively advance gender representation in the succession to traditional leadership positions.

Traditional Leaders in Mpumalanga are appointed in terms of the Traditional Leadership and Governance Framework Act, 2003 read together with the Mpumalanga Traditional Leadership and Governance Act, 2005. Both Acts provide for a comprehensive process which must be followed when identifying and recognizing traditional leaders. Traditional leaders include the king, queen, principal traditional leader, senior traditional leader and headmen or headwomen.³⁴ The recognition of traditional leaders is the sole responsibility of the Royal Houses. This legislative framework provides for women's representation, and states that each district in the province must be represented in the Provincial House by not more than three elected members consisting of at least two women, to the extent that there are women who are eligible for election to the Provincial House at the date of election of members of the Provincial House.³⁵

³³ The Traditional Leadership and Governance Framework Act, 41 of 2003

³⁴ <http://www.mpumalanga.gov.za/media/statements/cogta/28082012.htm>

³⁵ Mpumalanga provincial House and Local houses of Traditional Leaders Act, 2005 (Act No.6 of 2005)

The provisions of the above-mentioned legislation provide that whenever the position of any of the above-mentioned traditional leaders must be filled, the Royal Family in line with its customary law of succession must identify a person who qualifies to fill the position. It should be noted that the first requirement is that the position must be vacant (due to death or removal), and secondly the royal family must identify a person who qualifies to assume the position of the traditional leader concerned. In other words, it is the prerogative of the royal family, as per local customs, to identify and approve successions to positions of traditional leadership.

The law further provides that after the Royal Family concerned has identified the person who qualifies, it must inform the Premier of the province, who must then recognize the person identified by the Royal Family, through a notice in the Provincial Gazette, and issue a certificate of recognition. The Premier must also inform the Provincial House of Traditional Leaders about the details of the identified person. It should be noted that the Premier may refuse to issue the certificate of recognition only if the identification was done contrary to customary law and the applicable legislation. It would appear that failure to adhere to gender equality legislative and constitutional imperatives does not constitute one of the grounds on which the Premier could refuse to issue a certificate

4.1.3. Programmes, Projects and Services for Gender mainstreaming

At the time of the study, the MPHTL had seven (7) internal committees established under rule 59 of its internal House Rules. Each Committee consists of five members, the Chairperson and the Deputy and three members. The functions and duties of committees differ. It is worth mentioning that there is no specification for gender representation in the internal House Rules dealing with the composition of committees. The committees are scheduled to meet four times a year, but open for extra ordinary sessions when the need arises.

All committees are aligned to the work of different provincial government departments.³⁶ The monthly joint sittings of all committees allow every committee to report on their activities. It is worth mentioning that while the secretariat emphasised the issues of insufficient budget to carry out the work of committees, according to a newspaper article it shows that the provincial department of CoGTA had made budget allocations in 2016 for purchasing 60 luxury vehicles cars for traditional leaders in the province.³⁷ Although the Provincial House had indicated that during the 2012-2017 period all its committees were operational and functional, it would appear that in practice these committees are not able to carry out much of their planned activities due to lack of resources. In many instances it seems that the House relies on partnerships with other institutions and government departments to fulfil its mandate.

³⁶ Mpumalanga Provincial House of traditional leaders. Rules and Orders 2010. Rule 73, Page 33. This was also revealed during the Workshop on the roles and responsibilities of committees of the house of traditional leaders 2017

³⁷ Phila Essop (2016). King loses out as state gives 60 traditional leaders new cars and cows. City Press 16 March 2016

a. The Executive Committee

The House elects members to the Executive Committee, with the Chairperson of the House serving as the Chairperson of the Executive Committee, and the Deputy Chairperson of the House serving as Deputy Chairperson of the Executive Committee. The Executive Committee is made of 5 members, of which one is a female. It should be noted thought that the internal Rules and Orders of the House do not specify or insist on gender parity as a consideration in the composition of the Executive Committee.

If gender equality or gender transformation were a priority for the House, it would be expected that the internal Rules and Orders of the House would specify this requirement as a consideration for the composition of the membership of all internal structures, including the highest decision-making committee responsible for the day to day running of the institution. The fact that this was not the case could be seen as an indication that gender mainstreaming is clearly not a priority for the institution as required by some of the country's existing policy and legislative frameworks, including some of the global gender promoting instruments such as the Beijing Platform for Action (BPA). At the time of the study, both the Chairperson and Deputy Chairperson of the House, who also serve in the same capacities in the House's Executive Committee, were males.

The Executive Committee oversees the operations of the institutions, including receiving reports and consolidated recommendations from operational committees. It submits the recommendations to the secretariat for consolidation into a report for parliament. The Executive Committee also meets with different stakeholders as part of making inputs and discharging the oversight responsibilities of the House. The House itself convenes four (4) ordinary sittings during the year where it deals with quarterly reports, and convenes two (2) special sittings where it considers reports made by its committees.³⁸

b. The Tradition, Culture and Customs Committee

It would appear the MPHTL aims to utilise culture as a medium to play a role in promoting education, indigenous knowledge and economic development across local communities. The Traditional, Culture and Customs Committee seeks to ensure appreciation of cultural diversity in the province through partnerships with relevant stakeholders, particularly by supporting cultural events (i.e. *umemo*) in local communities. Among the relevant stakeholders are the Department of Home Affairs, Department of Health, Department of Basic Education and Department of Social Development. Their role is usually to inform local communities and raise awareness about the services that they render to community members throughout the province.

According to an interview conducted with a traditional leader, the House has made resources available to enable all the 60 traditional leaders in the province to promote and

³⁸ The research team was provided with evidence of meetings taking place, in the form of attendance registers for meetings during the period 2013-2017.

celebrate their cultural events. Based on the information obtained from the interview, Kings are allocated an amount of R500, 000 while Senior Traditional Leaders are allocated R 200,000 for cultural events in their communities. However, this could not be confirmed as no supporting documents were made available. Clearly this committee gets directly involved in these events to celebrate cultural diversity across communities in the province, and seeks to take advantage of such events to promote values such as appreciation and respect for cultural diversity while also raising awareness and gathering information on cultural heritage sites (dormant or operational) in communities across the province. It was indicated that the Committee also addresses current challenges such as chronic illnesses and diseases affecting communities.

During the interviews conducted for this study, it became clear that the Committee can address a number of social and cultural issues of concern for the House. For instance, the Committee pays attention to the issue of the social and financial welfare of traditional leaders in the province, including advising many traditional leaders on drafting of wills, life insurance policies, child maintenance and the wellbeing of wives and children in polygamous marriages. This latter issue is apparently a very sensitive issue currently under discussion.³⁹ It's not clear whether the Committee was also able or willing to address other current challenges related to gender equality, women's empowerment and women abuse which are also relevant. The Committee can report to the House on these issues, including bringing them to the attention of relevant provincial government departments.

c. The Traditional Leaders Claims and Dispute Committee

The Traditional and Leaders Claims and Dispute Committee is governed by the Traditional Leadership and Governance Framework, 2003 (Act 41 of 2003) and Mpumalanga Provincial House and Local Houses of Traditional Leaders Act, 2005 (Act No. 6 of 2005). This committee deals with disputes in the house regarding matters of traditional leadership. In terms of the Mpumalanga Provincial House and local houses of Traditional Leaders Act, 2005 (Act No. 6 of 2005), it is responsibility of the Royal Family to identify a person to be recognised as Inkosi or Inkosana. If the issue of succession within a royal house results in disputes and conflict arises, it is the responsibility of the Provincial House of Traditional Leaders, through this Committee, to intervene and write a recommendation to the Office of Premier. The Premier will comment and give feedback to the House. In the event that the Office of the Premier accepts the recommendation from the Committee, the Premier issues a certificate for the new traditional leader.

It emerged during interviews that all the four-female senior traditional leaders serving as members of the MPHTL challenged their initial exclusion and embarked on legal action for recognition as traditional leaders.⁴⁰ It would appear that the House, including this Committee and even the Office of the Premier or the provincial Department of CoGTA, did not provide any support for the legal action undertaken by the four female traditional leaders for their

³⁹ Interview with one of the Traditional Leaders from the Mpumalanga House of Traditional Leaders

⁴⁰ Interviews held with officials from COGTA and members of the Mpumalanga House of Traditional Leaders, Nelspruit, September 2017

recognition as traditional leaders. This shows that although the Traditional Leadership and Governance Framework Act 41 of 2003 has made provision for women participation, the process of recognising or appointing a traditional leader by the Royal Houses remains beyond the reach of the legislative and policy requirement to promote gender mainstreaming.

d. Committee on Justice and Land Affairs

The Committee on Justice and Land Affairs considers all legislative issues including the amendment of the internal Rules and Orders. All national and provincial bills (from the national and provincial legislatures or national House of Traditional Leaders) with a possible impact on traditional communities must be referred to the House. The Provincial House of Traditional Leaders can re-visit the proposed Bills by requesting and consolidating inputs from local Houses of Traditional Leaders. This Committee also has to inform the House of new legislative developments likely to affect matters of traditional leadership and the operations of the House.

One of the key challenges faced by the Committee is illegal land occupations. During interviews it was revealed that a Memorandum of understanding (MOU) that was signed in 2013 between the House, municipalities, the South African Local Government Association (SALGA), provincial Department of CoGTA and the South African Police Service (SAPS) collapsed. Apparently, the reason for this was the promulgation of the Spatial Planning and Land Use Management (SPLUMA) Act no 16 of 2013. This Act provides a planning framework that obligates each municipality to develop and define their own municipal planning by-laws, and it applies to the whole of South Africa (including urban and rural areas). It also governs informal and traditional land use development processes which were previously excluded from the scope of such government planning systems.⁴¹ The consequence of the collapse of the MOU between the different stakeholders resulted in some local traditional leaders selling land illegally.

While some of the officials who were interviewed for the study vowed that the committee was operational, no evidence could be found to substantiate this. No evidence of its impact could be found in resolving issues relating to illegal land occupations. It was also not clear if the Committee was able to address other controversial issues such as women's equitable access to, control of and ownership of land in areas under the jurisdictions of traditional leaders in the province. In other words, it was not clear if this Committee was empowered to promote issues of gender equality and gender justice in relation to access to land. The issue of women's equitable access to land, including control and ownership of land is increasingly becoming the focus of attention for civil society organisations and women's groups concerned with the right to equality in the ownership of property, including land. It seems that this Committee would be relevant to deal with such an issue, although it is not clear if this matter has ever been placed on the agenda of this Committee.

⁴¹ Spatial Planning and Land Use Management Act No 16 Of 2013 with Focus on the City of Johannesburg Metropolitan Municipality: Municipal Planning By-Law 2016. Available at <http://www.schindlers.co.za/2017/spatialplanninglandusemanagementact/>

e. The Social Development Committee

The Social Development Committee looks at issues of service deliveries, thus placing it in the same area of responsibility as Municipalities in the province. It would appear that the Committee can embark on community needs assessments, including direct consultations with local communities, although it is not clear the extent to which it can carry out these functions and its capacity, including the resources, to do this effectively given claims of lack of resources. The MPHTL (through this Committee and the Justice Committees) is a partner in the National Prosecuting Authority's (NPA) Project Ndabezitha (with the Department of Justice & Constitutional Development, CGE and SAPS). Project Ndabezitha seeks to fight domestic violence in rural communities by, among others, training traditional leaders, prosecutors and court clerks on domestic violence matters in rural areas. This is an important vehicle to get the MPHTL to engage directly with local communities on issues of women's empowerment and gender equality. It is not clear however, if the House would see its participation in this project in the same light.

According to one respondent, The Amakhozi are being trained on dealing with domestic violence. The training will capacitate them to understand the difference between cases falling under their jurisdiction and those cases (e.g. rape, murders) they must refer to the police. The training seems to be the only area the committee contributed towards gender mainstreaming. There was no clarity as to how the committee seeks to contribute to the broader issue of redressing gender inequalities, eliminate gender discrimination, enhancing women's empowerment through facilitating their participation into senior decision-making structures of the House of Traditional Leaders.

It also emerged during the interviews that traditional leaders in the province are beneficiaries of a project called Masibuyele Esibayeni, which is an animal production programme initiated by the provincial department of agriculture, rural development, land and environmental affairs. The aim was to reintroduce the Nguni cattle breed in large numbers into the province.⁴² Each traditional leader was given a tractor (and training for the tractor driver), one bull and 4 cows, cattle grazing land, seed and food for livestock.⁴³ The project has many challenges particularly the refusal by traditional leaders to provide more food for livestock, poor maintenance, death of livestock and issues of uncontrolled cows and theft. Importantly though no indication was given as to the number of women traditional leaders that are included in the project. It appears that this is a project by government that appears to reinforce the exclusion of women from such beneficiation. Land, especially in areas of jurisdiction under traditional leaders, is historically and currently under the control of men. Therefore, it appears that this project (Masibuyele Esibayeni) does not seek to challenge the existing unequal gender relations among traditional leaders in the ownership of land and beneficiation in terms of the reintroduction of the Nguni livestock through traditional leaders in the province.

⁴² Parliament monitoring group (2016). Fetsa tala food production initiative and conditional grants: provincial departments reporting day 1. Available at <https://pmg.org.za/committee-meeting/23331/>

⁴³ Interviews held with officials from COGTA and members of the Mpumalanga House of Traditional Leaders, Nelspruit. September 2017

f. The Target Group Committee

According to the interviews conducted with the officials and traditional leaders from the MHTL, the Target Group Committee benchmarked its work on the Eastern Cape House of Traditional Leaders organisation called the imbumba wa makhosikazi.⁴⁴ The Committee was also planning to benchmark its work against the North West House of Traditional Leaders on the issue of mining, against Zimbabwe on small cooperatives (relating to income generation) and also against Swaziland and Lesotho in general.

The Target Group Committee was previously dealing with previously disadvantaged women, children and disabled people working closely with home based care organisations. Its role was to identify gaps in service delivery within this group and consult relevant stakeholders to address the gaps. However, due to a lack of financial support, it was revealed that the Committee has been unable to perform its work effectively.

In 2016, the CGE intervened to address issues raised by the wives of traditional leaders (i.e. amakhosikazi). Most of the issues raised concerned matters such as lack of financial resources, social wellbeing, recognition of their status and their welfare as individuals within their relationships with their husbands, and as a group. Many of the issues raised did not have any direct bearing on gender equality, transformation and challenging the unequal relations between men and women within the institution of traditional leadership in general.

Based on the outcome of the meeting between the wives of chiefs and the CGE, the Commission served a subpoena on the provincial Department of CoGTA to demand that the department account formally on the issues raised, including the need for promoting gender equality and gender mainstreaming. Subsequently, the issues raised by the amakhosikazi, including the issue of gender mainstreaming, are taken seriously by the provincial Department of CoGTA, including the Target Group Committee of the Mpumalanga House of Traditional Leaders, which developed an internal structure to handle issues relating to amakhosikazi.

It is clear here that the involvement of the CGE was a catalysing factor that resulted in the House developing the necessary internal mechanism to handle issues raised by the women of royalty. It appears that there was a clear reluctance on the part of the provincial Department of CoGTA and the House to attend to these issues, or even to entertain matters relating to gender equality and transformation, and there is reason to believe that this would have continued unabated if the CGE had not made an intervention. It is worth mentioning that at the time of this study, the House was planning to launch the amakhosikazi structure at district and provincial level. Among the issues to be addressed by the amakhosikazi structure are the following:

3. The issue of widows being Regents
4. Women's requests to be allowed to be part of traditional courts
5. Government to ensure maintenance of the widows of senior traditional leaders
6. Transformation within traditional leadership

⁴⁴ An organization formed by women in traditional leadership

4.2. Eastern Cape Provincial House of Traditional Leaders

4.2.1. Introduction and Brief Background on the House

The Eastern Cape House of Traditional Leaders (ECHTL) was established in line with relevant provisions of the Constitution under Chapter 12, and operates within the ambit of the provisions of the Eastern Cape and Traditional Leadership and Governance Act 2017, (Act no 1 of 2017). The latter is also in line with the Traditional Leadership and Governance Framework Act 41 of 2003 as amended. The Eastern Cape House of Traditional leaders is located in the town of Bisho, operating from its new state of the art premises.⁴⁵ Originally, the House used to be accommodated at the Eastern Cape Provincial Legislature building before relocating to its new premises in 2010. The House appears well resourced, with its own library that contains significant amounts of materials including exhibitions on the history of the Eastern Cape and its evolution over time.

The information made available to this study shows that the system of traditional leadership consists of six Kingdoms and 218 Senior Traditional Leadership positions, even though currently only 210 of these positions are filled. There are also 1207 headmen positions, with eighty-five vacancies. Currently, the members of the Eastern Cape Provincial House are drawn from the Local Houses of Traditional Leadership from all the districts in the province.

Currently, the EHCTL has a total of 38 members drawn from the LHTL, based in fourteen (14) constituencies including rural communities across the province. These constituencies include Alice, Bizana, Dalindyebo, Emboland, Fingoland, Gcaleka, Maluti, Mt. Ayliff, Nyandeni, Qamata, Qaukeni, Sterkspruit, Whittlesea, and Mngqeshe. According to the ECHTL's 20 Year Review Report published in 2016, the house is composed of 32 members representing these constituencies, and the six representatives of the kingdoms of Rharhabe, Qaukeni, Nyandeni, Dalindyebo, Western Thembuland and Gcaleka. EHCTL uses a formula to determine the total number of its members.

For instance, each local house is required to elect Senior Traditional leaders as representatives to the Provincial House, in accordance with the formula determined by the Premier and published in the provincial gazette. At least one of the representatives from each local House must be a woman, and where it has been proven that there is an insufficient number of female Senior Traditional Leaders, the Premier may, after consultation with the members of a relevant local house, determine a lower threshold for such a local house other than that required.⁴⁶ Therefore the members are drawn from the total of 271 Senior Traditional Leaders in the province. The elections of members of the Local Houses of Traditional Leaders (LHTL) is followed by the nomination of the thirty-eight (38) members to serve in the EHCTL.

⁴⁵ Eastern Cape House of Traditional Leaders 20 years report: 1996-2016

⁴⁶ The Eastern Cape and Traditional Leadership and Governance Act 2017, act no 1 of 2017

4.2.2. Internal policies and processes for gender mainstreaming

At the time when the study was undertaken, the current term of office (2012 to 2017) of the members of the EC Provincial House had come to an end and the House was engaged in the process of electing new members for the new term (2017-2022). The elections took place on 26th September 2017, when Nkosi Mwelo Nonkonyana was elected as the new Chairperson of the ECHTL, with Nkosi Langa Mavuso elected as Deputy Chairperson. It is worth mentioning that Nkosi Mwelo Nonkonyana was the first ever Chairperson of the House during the first term of office (1997 – 2002) after it came into existence. Although the Eastern Cape Traditional Leadership and Governance Act, 2017 sets a target for women's participation at local and national levels, the act is silent on the quota or numerical target for women's representation in the Provincial House. The research team was unable to verify the number of women currently represented in the membership of the Provincial House as officials refused to provide the necessary information of the House Membership during the term of office ending in 2017.

According to the ECHTL's 20 Year Review Report, the House has achieved the following:

- Vision of developing people-centred, effective and efficient traditional leadership institutions that are premised on integrated rural development strategies;
- Strengthening the mode of service delivery excellence that permeated and resonated with all spheres of traditional leadership institutions
- Striving to be a 'premier par excellence performing traditional leadership institution' that serves as a model for the Republic and rural people;
- Excelling in the preservation of traditional norms, heritage and culture practiced in Eastern Cape.

The report also claims that the Houses has enhanced the observation of human rights, equality for all, moral regeneration and upholding the rule of law, allocating targeted financial (capita) resources as well as ensuring tailor-made and dynamic human capital solutions including a user-friendly environment for all its people. It is significant to note that issues relating to gender equality, women's empowerment and gender transformation are not referred to in this list of achievements.

The administration of the ECHTL is the responsibility of the Secretariat component, which currently vests with the Eastern Cape department of Cooperative Governance and Traditional Affairs (ECCOGTA). The ECCOGTA provides what it calls a 'hands-on' support to municipalities and traditional leadership Institutions to deliver on their respective mandates.

According to interviews conducted with the officials from the House's Secretariat, the administration plays a critical role in the formation of partnerships with other organs of state and NGOs and that through these partnerships the House has managed to realise its goals.⁴⁷ The interviews also revealed that the House works in partnership with various government departments such as Home Affairs, Health (which assisted with reducing the high number of

⁴⁷ Interviews held with ECHTL and COGTA officials, Bisho, September 2017

deaths among initiates from 32 in 2016 to 8 in 2017), Social Development (which assists with poverty alleviation strategies and projects), Rural Development as well as the SAPS Crime Prevention Unit.⁴⁸

One of the respondents mentioned that the key administrative challenge for the House is underfunding, which leads to tensions between members of the House who agitate for their favoured projects to be funded while the administration must be cautious in the light of limited budgetary resources. The official argued that the House often has to resort to fund raising activities to supplement its limited resources in order to support some of the initiatives promoted by the House in local communities. However, it was not obvious as to the success and impact of these fundraising activities as information to this effect was not made available.

It is worth noting that despite numerous attempts by the CGE to obtain information (i.e. documents, reports, etc.) relating to the internal structures, its internal rules, composition and gender profiles of members of its committees as well as its activities and programmes of action for the period under review (2016-17), the CGE research team was unable to obtain this information from the ECHTL. In addition, repeated requests for interviews with some of the traditional leaders and members of the House committees were declined.

However, during interviews with officials from the ECHTL, informants insisted that gender mainstreaming was being enforced by the LHTLs where the inclusion of gender representation was a requirement. At the same time, the informants also pointed out that culturally the system of traditional leadership was a patriarchal, male dominated system. They did acknowledge that while there were female senior traditional leaders in the province, they are largely not visible in the Provincial House, presumably due to the highly patriarchal, male dominated nature of the system.

In striving to deal with the escalation of initiation related deaths, the Eastern Cape Application of Health Standards in Traditional Male Circumcision Act of 2001, which previously governed initiation in the province and focused on health standards, was repealed. In its place the Eastern Cape Customary Male Initiation Practice Act 2016, Act no 5 of 2016 was introduced. This Act aims to:

- Regulate the practice of customary male initiations in the province, provide for the coordinating structures of male initiation monitoring programmes;
- Provide for key role players in male initiation monitoring programmes; and
- For the issuing of permits to perform circumcision and to conduct male initiation schools.

The legislation is explicit in terms of who qualifies to be traditional surgeon, nurse and the establishment of traditional clinics. It also clarifies the responsibilities and duties of the traditional leaders to ensure safe traditional circumcisions. The ECGOGTA had hosted the

⁴⁸ *ibid*

Manhood Summit in the OR Tambo District Municipality,⁴⁹ which served as a platform for the exchange of ideas between young people, parents, traditional leaders, traditional surgeons and nurses on the meaning of ubudoda (manhood). In the wake of this Summit, Initiation Forums were established at all levels in the province. It is clear though that this issue was not being addressed as part of a strategy on gender mainstreaming and gender transformation.

4.2.3. Programmes, Projects and Services for Gender mainstreaming

As indicated above already, the CGE encountered a lack of cooperation from the ECHTL regarding requests for information on the work, activities and composition and internal operational rules of the House, including the reluctance of some of the Traditional Leaders to be interviewed for this study. As a result, the Commission was unable to make the necessary assessments and draw conclusions on progress or lack thereof by the House in terms of promoting gender mainstreaming and gender transformation. The information obtained from some of the interviews conducted with officials from the House Secretariat, and from some of the limited documents obtained independently was inadequate to determine the effectiveness of the House in promoting gender equality, transformation and women's empowerment through its internal processes, structures, programmes of action and other related mechanisms.

4.3. KwaZulu-Natal Provincial House of Traditional Leaders

4.3.1. Introduction and Brief Background on the House

Section 183 of the 1996 Constitution (Act 108 of 1996) provides for the establishment of Houses of Traditional Leaders in various provinces⁵⁰ and one of these is the KwaZulu-Natal House of Traditional Leaders (KZNHTL). The KZNHTL can be viewed as an association of traditional leaders, which addresses matters that affect them and their communities. Its powers, duties and functions are, among others, advising the provincial legislatures on matters dealing with traditional authorities, indigenous law and the customs and traditions of communities.⁵¹ The KZNHTL was launched in 1997 and is made of senior traditional leaders who are appointees from different local houses across the province. A minimum of three and a maximum of seven members elected from each Local House are the ones who are ultimately sent to the Provincial House to represent their local constituencies. Consequently, the KZNHTL is composed of 53 senior traditional leaders of which 47 are men and 6 women. King Goodwill Zwelithini Zulu also sends one representative to represent him in the Provincial House.

The Provincial House is run by the Executive Committee which comprises the Chairperson, Deputy Chairperson and eight (8) additional members. The term of office of members of the Provincial House is five years. The Provincial House must meet at least four times a year and

⁴⁹ SA: Fikile Xasa: Address by MEC of the Department of cooperative governance and traditional affairs, at the traditional initiation summit, at Dans lodge country lodge, OR Tambo District municipality (29/10/2014)

⁵⁰ S 183, Principle XIII, Constitution of the Republic of South Africa, 1996 (hereafter the 1996 Constitution)

⁵¹ Ibid

thereafter as often as necessary.⁵² Moreover, the seat of the Provincial House is Ulundi, which is in the northern part of KwaZulu-Natal. The House has seven various committees to help it achieve its purpose. The committees are:

- Committee of Chairpersons;
- Planning and Co-operative Governance Committee;
- Heritage, Culture and Customs Committee;
- Social Development Committee;
- Land, Agriculture, Rural Development and Tourism Committee;
- Gender, Youth and People with Disability Committee;
- Justice, Crime Prevention and Security Committee.

Each committee comprises of a convener and about ten members or more. It is the duty of the executive to appoint the convener and his or her team. Furthermore, committees of the house are aligned with the committees at the NHTL and government departments. This was done to ensure that there is a working relationship between the Houses and government. Government departments such as Ministry of Cooperative Governance (CoGTA), Traditional Affairs and the Office of the Premier rally around to support the House of Traditional Leaders by providing skills development, administration or any other area in which support is required⁵³. The Department of CoGTA is responsible for upholding this constitutional mandate. As alluded to earlier, the Premier of the province also has a role to play in support of traditional structures.

4.3.2. Internal Policies and Processes for Gender Mainstreaming

This sub-section focuses on internal policies and processes for gender mainstreaming within the KZN HTL. Policies and processes for gender mainstreaming are the most important components that guide the House in ensuring that the issues of gender mainstreaming are taken very seriously. For this to be achieved there are legislations that are guiding the Houses of traditional leaders namely: The Traditional Leadership and Governance Framework Act No. 25 of 2003; Traditional Leadership and Governance Framework Act No. 23 of 2009; National House of Traditional Leaders Act No. 22 of 2009 and the KwaZulu-Natal Traditional Leadership and Governance Act No. 5 of 2005. Consequently, all policies enacted by the House should be in line with these pieces of legislation. However, based on our engagements with the members of the House and officials from the Secretariat through interviews we learned that the KZNHTL had not yet put in place any internal policies to promote gender equality and gender mainstreaming.

Evidence suggests that the provincial and local houses are often characterised by unequal gender relations. Interviews indicate that this challenge is rife in the former relative to the latter. Patriarchal cultural systems and hegemonic masculine constructs of male traditional

⁵² S 33(3) of the KwaZulu-Natal Traditional Leadership and Governance Act No. 5 of 2005.

⁵³ S 28(c) of the KwaZulu-Natal Traditional Leadership and Governance Act No. 5 of 2005.

leaders are often dominant in the House and strongly influence the nature of the institution.⁵⁴ It can be argued that influential traditional systems significantly reduce the space within which women can participate⁵⁵ during house meetings compared to their male counterparts. Women's participation is customarily denied in traditional male-dominated decision-making structures such as this one. Consequently, female traditional leaders feel that they are highly constrained in what they can do as leaders in the House. Furthermore, the majority of female respondents highlighted that a "culture" of 'men speak first and women will follow' has become the order of the day during the house meetings and this ideological burden of subordination and inferiority also hinders women's participation. Some of the respondents argued that this was common practise deliberately perpetuated by male senior traditional leaders in the house. As a result, this leaves the female traditional leaders with no choice but to share their thoughts and ideas with those whom they feel most comfortable engaging with outside the 'boardroom'.⁵⁶

One informant mentioned that female traditional leaders feel discriminated against, undermined and that their views are not (always) adequately captured because of being either female regents, 'Iziphakanyiswa'⁵⁷ or their level of education being lower compared to that of their male counterparts.⁵⁸ This happens despite the recognition of regents and Iziphakanyiswa by law, which affords them the same powers and functions as those of permanent senior traditional leaders. It would appear therefore that the presence of the Regents or Iziphakanyiswa in the KZNHTL is considered less valuable compared to their male counterparts. It is worth noting that these perceived discriminatory practices often happen in spite of the Conveners and other members of the committees with the responsibility to ensure the observance of gender related pieces of legislation and policies. Moreover, respondents mentioned that the committee charged with the task of dealing with gender related matters has been largely ineffective in its activities both inside and outside the House.⁵⁹ Informants also argued that female senior traditional leaders felt that they derived little or no support from CoGTA and the House in championing women's empowerment.

Chapter 4 of the Traditional and Governance Framework Amendment Act clearly stipulates that provincial legislation must provide for mechanisms or procedures that would allow a sufficient number of women to be present in the Provincial House.⁶⁰ Section 3(4) of the National House of Traditional Leaders Act No.32 of 2010 states that at least a third of the members of the house must consist of women.⁶¹ In case the House does not meet the expected quota of female senior traditional leaders' which is often the case in the province of KwaZulu-Natal, the Premier of the province and the Provincial House can determine a lower threshold.⁶²

⁵⁴ Williamson, A & Sithole P, Decentralising voice: women's participation in Integrated Development Planning processes in KwaZulu-Natal, South Africa

⁵⁵ Interview held with Members of the KwaZulu-Natal House of Traditional Leaders, Durban, September 2017.

⁵⁶ Interview conducted with one informant from the KZN House of Traditional Leaders

⁵⁷ Iziphakanyiswa - Inkosi who holds office by virtue of an electoral procedure or appointment as opposed to hereditary succession.

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ S 16 of Traditional Leadership and Governance Framework Act 9 of 2003

⁶¹ S 3(3) of the National House of Traditional Leaders Act No 32 of 2010.

⁶² Ibid

However, based on the Commission's observation, this revision of the quota has not yet happened. In the wake of the elections that were held in September 2017 for the new term of office (2017-2022) of the House, only one female senior traditional leader was appointed as a member of the Executive Committee of the House. No women were elected to be part of the three-member delegation to represent the Provincial House at the NHTL in Cape Town. It should be noted though that for the first time in the history of KZNHTL, a woman was appointed Deputy Chairperson of the House.

This, however, could not be celebrated as a significant achievement as the other five women who are members of the house were not nominated to any positions of leadership in the House. Consequently, men make up the overwhelming majority of key decision-makers in the KZNHTL. Female representation in the new term of office of the House has remained unchanged compared to the previous term of office. Therefore, the KZN HTL is clearly not making considerable progress in terms of complying with the legal and constitutional imperatives to promote greater gender representation and empowerment of women. One of the key factors in this regard is that the Traditional Leadership and Governance Framework Act itself does not give specific provisions on how the 'sufficient' number of women in the house could be achieved.

It is also worth noting that the provincial Department of CoGTA was clearly not playing its role of providing skills development as prescribed by the KwaZulu-Natal Traditional Leadership and Governance Act No. 5 of 2005 and advising the House in terms of fulfilling some of the key legislative and constitutional imperatives, such as gender equality and transformation. In the Commission's view, skills development should include capacity building on gender mainstreaming and alignment of the House internal practises to the provisions of Chapter 2 of the Constitution of the Republic of South Africa (which contains the Bill of Rights).

When the provincial Department of CoGTA officials were asked about what has transpired during the recent elections for the local and Provincial Houses of Traditional Leaders, they strongly argued that the department could not have done anything to ensure the observance of the one-third ($\frac{1}{3}$) quota for women's representation, given the small number of senior female traditional leaders. The respondent further stated that for women to be part of the House depends entirely on decisions made by the Royal Families responsible for appointing Senior Traditional Leaders or designating Regents in cases where the principal senior traditional leader dies and the successor to the position of *Inkosi* is still a minor. It is then the discretion of the Royal House to appoint or not to appoint a female to be a Regent.

It can be argued that despite gender equality and empowerment legislative and constitutional imperatives, the household unit has a traditional structure that continues to ensure the dominance of men over women within the system of traditional authority.⁶³ CGE was also reminded that most women who are members of the House are either Regents or

⁶³ Hartmann, H. (2010). Capitalism, patriarchy and job segregation by sex. In J. Goodman (Ed.), *Global perspectives on gender and work: Readings and interpretations*, (pp. 54–62). Plymouth: Rowman & Littlefield Publishers Inc. PMID:20189258

Iziphakanyiswa waiting for the successor (usually a son) to the position to come of age.⁶⁴ It is therefore clear that significant levels of discrimination against women occurs within the system as men are favoured via the patriarchy that underpins matters of inheritance – the primogeniture that is practiced in succession.⁶⁵ There is however, no doubt that in light of the constitution the eldest daughter may challenge such succession⁶⁶ if they believe that they are the rightful heir to the throne. Example of successful cases of such court challenges have taken place in provinces such as Mpumalanga.

Despite CGE's research team trying numerous times to obtain supporting documents from the House and not receiving them, participants still expressed their concerns about certain clauses to be strictly monitored and evaluated by the House together with the Premier of the province. For example, S13(2)(c) regarding the recognition of a Regent should be reviewed by the Premier at least every three years.⁶⁷

Evidence suggests that there are no other clauses or policies that are closely monitored like the one cited above. The House does not have any effective internal policy and/or process for gender mainstreaming. It can be argued that this has never been the priority of the House. This was also not an issue during the appointment and inauguration of new members of the House Executive Committee in September 2017. It can be argued further that the KZNHTL has not developed practices that are consistent with both provincial and national legislation on gender mainstreaming.

4.3.3. Programmes, Projects and Services for Gender Mainstreaming

The 1996 Constitution dealt with matters of traditional leadership in Chapter XII which has two provisions (i.e. Sections 211 and 212) that deal with the traditional leadership sector. Section 211 (1) gives recognition to the institution, status and role of traditional leadership according to customary law, and this is subject to the constitution.⁶⁸ This means that the institution of traditional leadership must exist within the context of the Constitution, and therefore must observe applicable constitutional values and applicable legislative frameworks.⁶⁹ Section 212(2)(a) of the Constitution provides that national or provincial legislation may provide for the establishment of Houses of Traditional Leaders to deal with matters relating to traditional leadership.⁷⁰ In line with this section the Provincial House has established various committees to help it discharge its responsibilities and fulfil its mandate.

As already mentioned, each committee has a Convener and memberships drawn from the ranks of senior traditional leaders and members of the House. Suffice to say that these committees are the actual implementers of the house plans and programmes. Respondents mentioned that committee meetings should be held at least once a quarter and as often as

⁶⁴ Interview Held with Officials from CoGTA, KwaZulu-Natal, September 2017.

⁶⁵ Sithole, P & Mbhele, T. (2008) Fifteen Year Review on Traditional Leadership a Research Paper.

⁶⁶ Dlamini CRM (2002), *Speculum Juris*, p38.

⁶⁷ S 13 (2) (C) of Traditional Leadership and Governance Framework Act 9 of 2003

⁶⁸ Constitutional Principle XII captured in the wording of Sections 211 and 212 of the Constitution of the Republic of South Africa, 1996

⁶⁹ *Ibid*

⁷⁰ Bizana-Tutu (2008), *Traditional Leaders in South Africa: Yesterday, Today and Tomorrow*

necessary should the need arise.⁷¹ At the time the study was carried out, only two women were Conveners of Committees. One woman was Convener for the Social Development, Health and Education Committee while the other was Convener for the Gender, Youth and People with Disability Committee. However, these committees were regarded as 'soft' committees, 'suitable' to be led by a woman, thus pandering to the gender stereotypes about women and their ability to lead.

As indicated already the KZNHTL relies on the provincial department of CoGTA not only for administrative and financial support but also for capacity building and skills development to fulfil its functions. Such support includes provision of finances, infrastructure, human resources, etc. However, there seem to be considerable challenges as far as funding for the house is concerned. The issues of budgetary and funding constraints were some of the reasons that appear to have led to some of the Committees of the house unable to function effectively. Informants interviewed for this study for instance raised serious concerns about insufficient funding from the provincial Department of CoGTA, arguing that this limits the House from achieving its mandate.⁷²

With a limited budget allocated to the House, the budget becomes a critical factor when it comes to deciding which projects, programmes and services to pursue. Interviews with key officials and other role players revealed that most Committees in the House are ineffective due to budgetary constraints. The informants mentioned that some committees could not report to the House as expected because there was nothing to report on. It was argued that in some cases the five-year term of office would lapse without some committees undertaking any activity.⁷³ The interviews also revealed that a substantial proportion of the budget allocated to the House was consumed largely by the salaries of the senior traditional leaders, including the salaries of members of the Secretariat, Headmen including other related expenses.

Despite these colossal challenges faced by the KZN HTL, the Heritage, Culture and Customs Committee was considered the most active of all the committees. This committee is responsible for preserving the culture and traditions of the Zulu nation. The informants interviewed stated that cultural practises like virginity testing required too little or no financial resources at all from the House. As a result, many traditional leaders were willing to rely on their own resources to fulfil the programme work of this Committee. Several informants argued that male senior traditional leaders took it upon themselves to organise some of the cultural events like Umkhosi we Lembe⁷⁴ which this year marks 201 years of the unification of the Zulu nation. It is worth noting that these cultural programmes or practices mentioned above are not in any way related to or advancing gender mainstreaming.

⁷¹ Interview held with Members of the KwaZulu-Natal House of Traditional Leaders, Durban, September 2017.

⁷² Interview held with Members of the KwaZulu-Natal House of Traditional Leaders, Durban, September 2017.

⁷³ Interview held with Members of the KwaZulu-Natal House of Traditional Leaders, Durban, September 2017.

⁷⁴ This day is to commemorate the legacy left behind by King Shaka Zulu, the King that created the Zulu kingdom.

4.4. North West Provincial House of Traditional Leaders

4.4.1. Introduction and Brief Background on the House

The North West Provincial House of Traditional Leaders (NWHTL) was established in 1997. The House receives its operational budget and secretarial support from the provincial Department of Culture, Arts and Traditional Affairs (CATA). This differs from the practices of other Provincial Houses that receive administrative and financial support directly from provincial departments of CoGTA. The Traditional Affairs Chief Directorate⁷⁵ was amalgamated with the Arts, Culture and Libraries Chief Directorate during the restructuring of the North West Provincial government under the 5th provincial administration in 2015. At the national level however, the national Department of CoGTA remains responsible for providing institutional support and oversight over the North West Traditional Affairs Chief Directorate.

The Chief Directorate was made up of three (3) directorates, i.e. Traditional Leadership Support, Anthropological Services and Research, and the House of Traditional Leaders. All three directorates were responsible for providing support to the House. The Traditional Leadership Support Directorate was responsible for:

- The disbursement of grants;
- Procurement of stationery, furniture and equipment for traditional councils;
- Processing sittings and travelling allowances for traditional council members;
- Providing staff to traditional council offices; and
- Facilitating the training of traditional leaders and support staff.

The Anthropological Services and Research Directorate was on the other hand responsible for:

- Compiling genealogies of traditional leaders;
- Conducting research on history, traditions and customs of traditional communities;
- Handling succession issues;
- The constitution and composition of traditional councils;
- Facilitating the recognition of traditional leaders; and
- Handling initiation schools and other related matters.

The third Directorate, the Traditional House Directorate, was responsible for:

- Providing direct strategic and technical support to the Provincial House of Traditional Leaders in the form of:
 - Performing logistical duties;
 - Secretarial functions;
 - Interpretation of policies and guidelines; and
 - Providing advice on legislation.⁷⁶

⁷⁵ The Chief Directorate Traditional Affairs seeks to provide strategic support to the institution of traditional leadership to improve governance, performance and accountability, building capacity of the institution, reviewing and strengthening the policy and regulatory framework of the institution; supporting and monitoring performance of institutions of traditional leadership and resolving disputes. Department of Culture, Arts and Traditional Affairs, CATA Overview, <http://www.nwpg.gov.za/dcata/Traditional%20Affairs-1.htm> (January 2018)

⁷⁶ Ibid

The membership of the NWHTL comprises twenty-four (24) senior traditional leaders, three (3) of whom are women and twenty-one (21) men. The twenty-four (24) members were drawn proportionally from the three (3) Local Houses located in the three district municipalities of Bojanala District, Ngaka Modiri Molema District and Dr Ruth Segomotsi Mompati District. The largest district therefore had the highest number of representation in the Provincial House, while the smallest district had the lowest representation. Informants⁷⁷ revealed that a proportional representation formula was determined by the Premier of the province. Based on this formula, the Bojanala District had a total number of thirty-one (31) senior traditional leaders and was therefore represented by fourteen (14) members in the Provincial House. The Ngaka Modiri Molema District had a total of nineteen (19) senior traditional leaders, with a total representation of eight (8) members in the Provincial House, while the Dr Ruth Segomotsi Mompati District had a total of four (4) senior traditional leaders and a representation of two (2) members in the Provincial House. There was a total number of fifty-four (54) senior traditional leaders in the province. However, three (3) positions were vacant at the time of the study, and only four (4) were occupied by women.

The structures established by the House to fulfil its legislative mandate and to discharge its functions were the Executive Committee and four other operational committees. The Executive Committee comprised the Chairperson, the Deputy Chairperson and three (3) additional members; all five (5) members of the Executive Committee were men in both the outgoing (2012 to 2017) and in the newly constituted House for the new (2017 to 2022) term of office. The four (4) other committees identified by the respondents were 1. Planning and Cooperative Governance Committee 2. Land and Agriculture and Tourism Committee 3. Social Development Committee, and 4. Traditions, Customs and Culture Committee. The document containing the Rules of the House⁷⁸ however, includes two (2) additional committees, which are the Justice, Crime Prevention and Security Committee and the Gender, Youth, Children, Aged and People with Disabilities Committee. It appears that the two committees which have a direct bearing on women's issues were discontinued by the House. The Justice, Crime Prevention and Security Committee would have dealt with issues pertaining to the prevention of violence against women, as well as with programmes relating to the protection of the rights of victims of gender based violence (GBV) amongst other things. The committee on Gender, Youth, Children, Aged and People with Disabilities would have similarly dealt with issues pertinent to the lives of women. Nonetheless, the four (4) existing committees were chaired by the four (4) members of the Executive Committee as the Chairperson presided over the Executive Committee.

In principle, the NWHTL was supposed to convene four (4) ordinary meetings in a year which would constitute one (1) meeting per quarter. The same was true for the Executive Committee which according to the Rules of the House, is supposed to "meet as regularly as necessary as determined by the Chairperson: provided that it shall meet no less than once every three

⁷⁷ Interviews held with officials from CATA, Mahikeng, September & November 2017.

⁷⁸ North West House of Traditional Leaders, Rules of procedure of the provincial house of traditional leaders, (no date), 18-24.

months in any calendar year".⁷⁹ The meetings were held at the House Chambers in Mahikeng. However, there were pertinent issues concerning the actual convening of meetings. These challenges will be dealt with in the sub-sections that follow.

4.4.2. Internal policies and processes for gender mainstreaming

Based on the information provided to the research team, the NWHTL complies with the 1/3 quota for women's representation of delegates elected by the province to the National House of Traditional Leaders. Informants⁸⁰ revealed that it was because the National House of Traditional Leaders Act No. 22 of 2009 was specific in its provision that "at least a third of the members of the House must consist of women: provided that if the Minister is satisfied that if there is an insufficient number of women to participate in the House, the Minister must, after consultation with the Premier of the province in question and the Provincial House concerned, determine a lower threshold".⁸¹ Therefore, during the elections, the focus would first be on electing the one (1) woman who would be part of the three (3) representatives to serve in the National House. Although the Act does not set a limit on the number of women representatives to the National House, it does determine that at least a third should be women. The informants interviewed⁸² however revealed that only one (1) position has always been reserved for a woman, and that this was done for purposes of compliance with legislation. The previous NWHTL (2012 to 2017) also had only (1) woman representative who was sent to serve in the National House.

It was alleged that all four (4) female senior traditional leaders in the province were automatically assigned to the NWHTL, but that one (1) declined the position for reasons not disclosed.⁸³ The automatic assignment of women to the Provincial House was based on the provisions of the North West House of Traditional Leaders Act of 2009⁸⁴, which states that "A third of the members of the Provincial House must consist of women: Provided that if the Premier is satisfied that there is an insufficient number of women to participate in the Provincial House the Premier may determine a lower threshold". There were much fewer (4) female senior traditional leaders in the province, hence their representation in the House could not meet the required 1/3 quota.

Although the representation of women in the newly constituted House (2018 to 2022) had increased to three (3) from one (1) in the previous House (2012 to 2017), the number of women remained significantly low. This is despite the Traditional Leadership and Governance Framework Amendment Act of 2003, 16 (3)⁸⁵ stating that "Provincial legislation must provide for mechanisms or procedures that would allow a sufficient number of women (a) to be represented in the Provincial House of traditional leaders concerned". Numerous respondents⁸⁶

⁷⁹ Ibid, 18.

⁸⁰ Interviews held with officials from CATA and members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

⁸¹ National House of Traditional Leaders Act No. 22 of 2009.

⁸² Interviews held with officials from CATA, Mahikeng, September & November 2017.

⁸³ Interviews held with officials from CATA and members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

⁸⁴ North West House of Traditional Leaders Act No. 3 of 2009.

⁸⁵ Traditional Leadership and Governance Framework Amendment Act No. 41 of 2003.

⁸⁶ Interviews held with officials from CATA and members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

argued that the low representation of female senior traditional leaders was because of sectoral legislation that conferred the power to regulate traditional leadership succession on royal families without providing clear guidance on the achievement of gender parity in terms of representation.

As it is widely known, customary practices are characteristically patriarchal and historically traditional leadership was the sole inheritance of men. It is thus true that clear legislation that provides guidelines on gender mainstreaming is ideal as it will serve as a concrete referral point for the prioritisation of gender equality. At the same time, unclear legislation cannot be used as a scapegoat for gender discrimination given that gender equality is a fundamental principle of the constitution of the country. South Africa has also acceded to a plethora of international frameworks that seek to promote gender equality in all sectors of society. It is therefore expected that the assignment of public office bearers such as senior traditional leaders would be done in a gender-sensitive manner.

According to the Traditional Leadership and Governance Framework Amendment Act of 2009,⁸⁷ "A kingship or queenship must transform and adapt customary law and customs relevant to the application of this Act to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by (a) preventing unfair discrimination (b) promoting equality; and (c) seeking to progressively advance gender representation in the succession to leadership positions". The North West province currently does not have a King or Queen, and the Act does not provide direction for cases such as this. The same powers are however equally afforded to the NHTL,⁸⁸ even though the informants⁸⁹ seemed to distance the institution away from the responsibility of transforming the sector by arguing that succession to traditional leadership is an exclusive privilege of Royal Families. The National House is either not aware of its legislative authority or is simply being passive and deliberately turning a blind eye to the issue of poor representation of women in traditional leadership structures of the North West. The role of the Provincial Department (CATA) also came into question, as the Provincial Act⁹⁰ gives it a broader mandate to provide skills development to the members of the Provincial House. In the view of the CGE, skills development should include capacity building on gender mainstreaming, as well as on aligning the House to the prescripts of the Constitution and the Bill of Rights. The analysis however, shows that the Department was keen to limit the scope of its role to administrative and financial support functions, while ignoring its wider role to advise the House on policy formulation and issues including gender equality and transformation.

None of the women represented in the NWHTL were featured in senior positions such as Chairperson, Deputy Chairperson and membership of the Executive Committee. This was because the Provincial House had failed to put measures in place to ensure that women

⁸⁷ Traditional Leadership and Governance Framework Amendment Act No. 38 of 2009.

⁸⁸ National House of Traditional Leaders Act No. 22 of 2009.

⁸⁹ Interviews held with officials from CATA, Mahikeng, September & November 2017.

⁹⁰ North West House of Traditional Leaders Act No. 3 of 2009.

were represented in high level decision-making structures. The internal rules of the Provincial House did not provide any guidelines on how gender parity could be attained in leadership positions of the Provincial House. The three (3) women represented in the Provincial House were allocated to serve in the following committees: Planning and Cooperative Governance; Social Development; and Land and Agriculture and Tourism respectively. It was revealed by one of the informants⁹¹ that the Executive Committee had initially planned to place all three (3) women in the Social Development Committee. The decision was however overturned because of the realisation that it was biased. The allocation of women to 'soft portfolios' such as social development is a common practice and a result of negative gender stereotypes about women. The female senior traditional leaders were subsequently assigned to committees based on their skills and competencies. In the previous Provincial House (2012 to 2017), the only woman represented served in the Planning and Cooperative Governance Committee.

Two (2) of the three (3) women represented in the Provincial House were Regents, while one (1) was a permanent senior traditional leader. The law recognises Regents and affords them the same powers and functions as those of permanent senior traditional leaders; this is so until such time that the rightful successor⁹² reaches a suitable age to take over. The appointment of women as Regents can however be seen as a double-edged sword, in that on the positive side, it affords women the opportunity to participate in the male dominated sphere of traditional leadership. The unfortunate consequence of this is that men eventually replace women, given that all female Regents are temporary stand-ins for their sons who are in line to the position of traditional leader based on the cultural practice of male succession.

Furthermore, based on the interviews, female Regents felt discouraged to meaningfully participate in the activities of the House as they would eventually relinquish their positions as traditional leaders. Thus, while it appeared to most respondents that women lacked the drive and confidence to actively participate in the operations of the House, women on the other hand felt that they were being discouraged by the temporary status of their positions as Regents.⁹³

Beyond the Provincial House structure, female senior traditional leaders suffered greater gender discrimination at the hands of the communities they led.⁹⁴ It was a common feeling amongst those interviewed that their legitimacy as traditional leaders became questionable to their communities. As a result, women felt that they had to work harder than their male counterparts to prove that they were capable of leading. One of the male participants⁹⁵ admitted that patriarchy was widespread and deeply rooted in traditional communities. He added that the subservient position of women in social institutions such as family, religious organisations, schools and others, deterred communities from welcoming the idea of women

⁹¹ Interview held with an official from CATA, Teleconference, November 2017.

⁹² According to the Traditional Leadership and Governance Framework Act No. 41 of 2003, the rightful successor is identified by the royal family under the guidance of customary law. In the case where a regent is appointed it means that the successor is still a minor.

⁹³ Interviews held with officials from CATA and members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

⁹⁴ Interviews held with members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

⁹⁵ Interview held with a member of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

as senior traditional leaders. It appears that the plight of women in the provincial traditional leadership sector was exacerbated both in terms of their numerical representation, as well as in their daily lives as they discharge their functions.

4.4.3. Programmes, Projects and Services for Gender mainstreaming

As already mentioned in the above sections, the Provincial House had established committees to steer the operations, projects and programmes of the House. The rules of the House state that these committees should be aligned to those of the National House, but this was not the case since some committees (Justice, Crime Prevention and Security Committee and the Gender, Youth, Children, Aged and People with disabilities Committee) had been disbanded by the Provincial House. We had initially intended to only assess two (2) committees (Social Development committee and the Planning and Cooperative Governance committee) in the province, but because of the systemic issues that were uncovered and seemed to be prevalent across most committees, the research team decided to examine the work of all committees of the House.

Our findings indicate that the Traditions, Customs and Culture Committee was the only one that was functional, while the rest of the committees were redundant for the past five (5) years of the operations of the Provincial House. The Traditions, Customs and Culture Committee was said to have focused predominantly on issues of traditional male circumcision and initiation schools. The research team speculates that the focus on initiation schools could be the result of the regular and intensive mass media attention in relation to the mushrooming of bogus initiation schools in the country and that as gatekeepers of customs and traditions, the Provincial House felt compelled to intervene. Besides these interventions, the interviewees⁹⁶ also revealed that the committee sent its representatives to various ceremonies that were convened to celebrate successful initiates. The practice appeared to be biased towards male initiates, while the female ones were side-lined.

Although, the practice of female initiation is scarce in the province, it was reported to still take place in a few villages. The committee also missed out on an opportunity to use their platform to tackle issues of male dominance, gender stereotypes and discriminatory practices that prevail against women and LGBTI persons in traditional communities. As research⁹⁷ points out, gender inequality is often perpetuated and maintained by cultural beliefs in such communities.⁹⁸ It can be observed however, that the lack of gender mainstreaming in the work of this committee may be attributed to the decision by the House to disband the committee on Gender, Youth, Children, Aged and People with Disabilities. The Committee would have been responsible for ensuring that the "House through its committees pays attention to gender issues when it conducts its activities; and ensures that the concerns of women are adequately taken into account in the public participation programmes of the House".⁹⁹

⁹⁶ Interviews held with officials from CATA and members of the North West Provincial House of Traditional Leaders, Mahikeng, September & November 2017.

⁹⁷ Williamson, A. & Sithole, P. Decentralising voice: Women's participation in integrated development planning processes in KwaZulu-Natal, South Africa.

⁹⁸ According to the North West Provincial House of Traditional Leaders' Rules of procedure of the provincial house of traditional, the Traditions, Customs and Culture committee "Must promote modification of those customs, which are likely to face extinction or tend to give a negative image of the institution", 23.

⁹⁹ Ibid, 22.

The CGE research team was informed that other committees of the Provincial House had not carried out any activities during the five-year period due mainly to a lack of funding.¹⁰⁰ The Provincial House relied on funding from the Traditional Affairs Chief Directorate and it was revealed that requests for funding were made on a project by project basis. The informants¹⁰¹ insisted that the committees never had adequate resources to carry out their functions due to the limited availability of funds from CATA. It was expected that the Provincial House, like any other state funded institution, would receive an annual operational budget based on its annual plan of action. This was however, not the case. Issues of poor funding appeared not only to be affecting the work of Provincial House committees, as informants also insisted that the House of Traditional Leaders Directorate was also affected by poor funding. The building in which the Directorate staff were situated for example, lacked simple amenities such as water and working toilets. Staff members were crammed into poorly furnished offices, and it was also revealed that the Directorate was severely under-staffed.

Although officials refused to provide information on budget allocations to the Provincial House, the team could surmise, based on interviews with key informants, that the CATA had adequate funds to pay for the salaries of key Office Bearers such as the Chairperson and the Deputy Chairperson, as well as the monthly stipends of the members of the House. According to one of the informants interviewed for this study,¹⁰² meetings of the house hardly ever took place, let alone the four (4) compulsory scheduled annual meetings. The members were paid their monthly sitting allowances on time and without fail. The CGE requested a copy of written policy on payments for sitting allowances without success.

Furthermore, the research team could observe a procurement process relating to acquisition of office furniture and other expenditures that appeared to show evidence of adequate funding. In addition to this, some of the informants pointed to the purchasing of expensive vehicles for senior Office Bearers and all other members of the house as evidence of the availability of adequate funding despite indications to the contrary. Based on this information, it is plausible to argue that CATA did not have a funding problem, but rather faced the challenge of determining important priorities in the face of limited resources.

¹⁰⁰ Interviews held with officials from CATA and members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

¹⁰¹ Interviews held with members of the North West Provincial House of Traditional Leaders, Mahikeng, September 2017.

¹⁰² Interview with an official from CATA, Mafikeng, September 2017.

5. Overview of Key Findings and Conclusions

Based on the discussion and analysis of the findings contained in this report, a number of conclusions were reached as outlined in this section. While the information relating to the ECHTL was limited, and therefore prevented the study from generating comprehensive findings, we believe that the recommendations outlined in this section will largely be relevant and therefore useful for the Provincial House as well.

Firstly, we conclude that in general all the Provincial Houses of Traditional Leaders covered in this study have failed to make progress in promoting gender equality, transformation and the empowerment of women in line with the provisions of various relevant pieces of national and provincial legislation. In some instances, the Provincial Houses have also failed to review their own enabling legislation to ensure that these were in line with the provisions of relevant national legislations. For example, the KwaZulu-Natal Traditional Leadership and Governance Act, 2005, does not contain any specific provisions for women's representation in the local and Provincial Houses. While the Mpumalanga Traditional Leadership and Governance Act, 2005 and the Eastern Cape Traditional Leadership and Governance Act, 2017 do contain such provisions, these apply only to the local Houses of Traditional Leaders, and not the Provincial Houses, which were the focus/subjects of this report. The North West Provincial House is the only exception in this regard, as its enabling legislation contains provisions for a one-third (i.e. $\frac{1}{3}$) quota women's representation not only for the Provincial House, but also for the local Houses.

Secondly, the research team has noticed an inconsistency in the application of the relevant laws, including lack of consistency in adherence to key provisions of the relevant national legislations relating to the HLTCs. For instance, while in general all the key provisions relating to aspects such as compositions of the memberships, elections of members and appointments of Office Bearers are observed, provisions relating to promotion of gender equality/transformation and representation of women are largely ignored, or implemented only half-heartedly by the Provincial Houses of Traditional Leaders.

In addition, the legislative provision that requires provincial Premiers to revise the one-third quota for women's representation, provided that the number of women traditional leaders in the province is proved to be lower, has not been reviewed in any of the four provinces covered in this study. This is despite available evidence showing that the review of this quota is necessary and over-due for all the Provincial Houses of Traditional Leaders covered in this

study. Moreover, in instances where provisions related to gender equality and transformation have clearly been ignored, no mechanism or process has been put in place or invoked to ensure that the Houses of Traditional Leaders account either to the NHTL, or to CoGTA. It could therefore be surmised that this inconsistency in the application of the provisions of relevant legislation is due largely to the absence of effective co-ordination, supervision and oversight by a national institution such as the NHTL or even the national department of CoGTA.

Thirdly, based on the assessment of the gender profiles of the Provincial Houses covered in this study, women's participation and representation as senior traditional leaders was lower than that of their male counterparts. In all the Provincial Houses for which information in this regard was obtained, the number of women traditional leaders participating in these institutions was considerably below the one-third quota/target as set out in national legislation. This was the case across the board.

The MPHTL had 19.04% women representation; the NWHTL with 12.5% and KZNHTL with 11.32% for women's representation. As indicated, information on the Eastern Cape was not provided. In all these instances, the explanation was that the power to decide on matters of succession and the appointment of senior traditional Leaders resided with the Royal Houses, and that the Provincial Houses of Traditional Leaders, the department of CoGTA as well as the NHTL do not have any power or authority to influence the choices and decisions made by the Royal Houses on matters of succession.

However, the National Traditional Leadership and Governance Framework Act contain provisions that allow the national House to exercise guidance over the appointments of traditional leaders with the purposes of ensuring gender transformation. We conclude therefore that this is an important aspect of legislation provisions on gender transformation that has not received proper attention.

Fourthly, the research team concluded that the role played by the relevant provincial government departments (i.e. CoGTA and CATA) that are mandated by the Constitution to provide support to houses of Traditional Leaders needs further clarification. It was clear, based on the findings of this study, that these departments could have done better in providing support and guidance to the Provincial Houses of Traditional Leaders around issues relating to gender equality and related legislative and policy obligations. The mandates of these government departments, as currently stated in relevant pieces of legislation, do not prevent them from providing such guidance to the Houses of Traditional Leaders in respect of gender mainstreaming. Areas where such guidance is necessary include internal processes such as elections of members of the local and Provincial Houses to ensure fair representation of women. Furthermore, the departments' responsibility to assist these Houses with skills development also does not exclude capacity building in relation to gender mainstreaming, as provided for in the Constitution and other relevant national legislation to promote gender equality and transformation.

Finally, it is also concluded that while the issue of lack of funding/resources, especially for the operations of the Houses and their committees is pertinent, it was equally important to identify the issue of proper planning and prioritisation as an area that needs attention by policy makers. The conclusion is that some of the Houses were experiencing funding shortages as a possible consequence of poor planning and priority setting, which plausibly leads to considerable financial resources being allocated inefficiently, thus leaving crucial House programmes and Committee work without adequate funding. This, in turn, often led to the Houses unnecessarily failing to achieve their planned activities.

6. Recommendations

Based on the discussions and analysis of the findings contained in this report, the following broad recommendations were formulated to apply to all the institutions covered in this study:

- The findings contained in this report showed that there is fragmentation in terms of Provincial Houses of Traditional Leaders complying with the provisions of the Constitution and national legislation relating to the issue of gender equality and women's participation as members of these Houses. It is therefore recommended that the NHTL, together with the national department of CoGTA, design an intervention strategy, including an effective mechanism for enforcing compliance by the Provincial Houses with relevant provisions of national and provincial legislative frameworks regarding the representation of women and the promotion of gender equality.
- Secondly, it is recommended that the NHTL takes steps to fulfil its legislative mandate to transform and adapt the system of customary law and customs to comply with the principles contained in the Constitution (including the Bill of Rights) and other national laws relating to the prevention of unfair discrimination, promoting gender equality and advancing gender representation. This should be applied to various processes including the appointment of senior traditional leaders by Royal Houses, as well as fulfilling the one-third numerical quota for women's representation as members of the Provincial Houses of Traditional Leaders.
- Thirdly, the Commission recommends that the national department of CoGTA, working closely with other key institutions such as the CGE, develops clear national programmes of action and related strategies to raise awareness within institutions of traditional leadership, including the Royal Houses, on the need to comply with the gender transformation regulatory frameworks in the country. Provincial Houses of Traditional Leaders, and their Office Bearers, should be part of these awareness raising campaigns and where necessary, be provided with the skills to lead such processes in local communities in their respective provinces.
- Fourthly, it is recommended that provincial Premiers undertake a review of the one-third quota requirement for the representation of women in the membership of Provincial Houses of Traditional Leaders as outlined in relevant provisions of the National Traditional Leadership and Governance Framework Act 2009 as amended to ensure that the Houses comply with the need for adequate women's representation.

- Finally, it is recommended that the provincial departments (i.e. CoGTA and CATA) with the responsibility to provide support to the Provincial Houses of Traditional Leaders should be subjected to clear accountability measures through the national Department of CoGTA to ensure that they provide the necessary and relevant capacity building to the Provincial Houses of Traditional Leaders on gender transformation and women's empowerment.

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