

2024

Royalty Without a Crown:
A review of the implementation
of the CGE recommendations
relating to its 2016/2017 study
on assessing gender
mainstreaming through
Houses of Traditional
and Khoi-San Leaders.



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



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Publisher: Commission for Gender Equality.

Design, Layout & Printing: Shereno Printers cc

Title of Publication: Royalty Without a Crown: A review of the implementation of the CGE recommendations relating to its 2016/2017 study on assessing gender mainstreaming through Houses of Traditional and Khoi-San Leaders 2024

ISBN: 978-0-621-52069-9

Foreword and acknowledgements

This report by the Commission for Gender Equality (CGE) discusses the progress and obstacles to mainstreaming gender through Houses of Traditional Leaders in South Africa. The report is a follow-up assessment of the responses to CGE recommendations from its 2016/2017 research report. The study found that Provincial Houses of Traditional Leaders have failed to make progress in promoting gender equality and empowering women in line with relevant national and provincial legislation. The report covers the five years since the release of the 2016/2017 report.

The report uncovered that none of the entities implicated in the recommendations of the CGE 2016/2017 report had made strides to address findings and to implement the recommendations of the report. The findings point to a general lack of understanding of important provincial and national legislations, as well as the roles of key institutions such as the National House of Traditional and Khoi-San Leaders (NHTKL) and the Department of Cooperative Governance and Traditional Affairs (CoGTA) to transform Provincial Houses from a gender perspective, as well as to promote gender mainstreaming.

The review assessment focused on four provinces that were covered in the 2016/2017 report, they are Mpumalanga, Eastern Cape, North West, and KwaZulu-Natal. The report is one of the three of the CGE in the 2023/2024 financial year that assesses the implementation of the CGE research recommendations by entities covered in past CGE research reports.

The report would not have been possible without the reflections, views, and insights of officials from the National Department CoGTA, Provincial Offices of the Premier, the NHTKL, and a representative from the CGE. The CGE is also grateful to its researchers who formed part of the project. They are: Gontse Prince Motaung (Project Leader) and Mpelo Princess Malebye.

The report was edited and finalised by the Acting Head of the Department of the Policy and Research Unit, Naledi Selebano.

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Abbreviations and Acronyms

BPA	Beijing Platform for Action
CATA	Culture Arts and Traditional Affairs
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CGE	Commission for Gender Equality
CoGTA	Cooperative Governance and Traditional Affairs
EC	Eastern Cape
ECHTL	Eastern Cape House of Traditional Leaders
GBVF	Gender-based violence and femicide
KZN	KwaZulu-Natal
KZNHTL	KwaZulu-Natal House of Traditional Leaders
LGBTQIA+	Lesbian, gay, bisexual, trans, queer, intersex, and asexual
MOU	Memorandum of understanding
MP	Mpumalanga province
MPHTL	Mpumalanga House of Traditional Leaders
NHTL	National House of Traditional Leaders
NHTKL	National House of Traditional and Khoi-San Leaders
NPA	National Prosecuting Authority
NW	North West
NWHTL	North West House of Traditional Leaders
PHTL	Provincial House of Traditional Leader

1. Introduction

The Commission for Gender Equality (CGE), in the 2016/2017 financial year, undertook the first of its two-year research project to explore women's representation, participation, and their role in leadership in institutions of traditional leadership, particularly the Houses of Traditional Leaders. The overall aim of the study was 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 existing constitutional imperatives and legislative frameworks promoting gender equality and transformation.

Embedded in the CGE mandate is the function to conduct periodic assessments of the work of the State, private sector, civil society institutions (CSOs), and other sectors of society to promote and advance gender equality and transformation in South Africa. The CGE has complied with this provision by adopting a programme of reviews and assessments of steps taken by entities covered in its past research projects to address recommendations made in its monitoring and evaluation reports. This project falls under the scope of this programme. It aims to monitor and review progress made in the implementation of the recommendations contained in the research report titled *Royalty and Women's Empowerment: Assessing Gender Mainstreaming through Houses of Traditional Leaders*.¹ The assessment covers the five years (2016/2017 to 2022/2023) since the release and publication of the 2016/2017 report.

2. Background

The study was carried out in four provinces: Mpumalanga, Eastern Cape, KwaZulu-Natal, and the North West, by conducting interviews with members of Provincial Houses and officials from the Departments of Cooperative Governance and Traditional Affairs (CoGTA) and Culture Arts and Traditional Affairs (CATA).

In 2019, the NHTL underwent some changes through the promulgation of the Traditional and Khoi-San Leadership Act of 2019 to provide for the recognition of traditional and Khoi-San communities' leadership positions and the withdrawal of such recognition, to provide for the functions and roles of traditional and Khoi-San leaders, and to provide for the recognition, establishment, functions, roles, and administration of kingship or queenship councils. As such, the NHTL name was changed to the National House of Traditional and Khoi-San Leaders (NHTKL), with similar changes introduced at the level of Provincial Houses.

¹ *Royalty and Empowerment of Women: Assessing Gender Mainstreaming Through House of Traditional Leadership*. 2017. Commission for Gender Equality.

2.1 Findings of 2016/2017 the study

Firstly, the study found that the Provincial Houses covered in the report had generally failed to make progress in promoting gender equality, transformation, and the empowerment of women in line with the provisions of various relevant national and provincial legislation.² In some instances, the Provincial Houses also failed to review their own enabling legislation to ensure that these were in line with the provisions of relevant national legislation. For example, the KwaZulu-Natal Traditional Leadership and Governance Act of 2005 did not contain any specific provisions for women's representation in the Local and Provincial Houses.³ The Mpumalanga Traditional Leadership and Governance Act of 2005 and the Eastern Cape Traditional Leadership and Governance Act of 2017 contained such provisions. The provisions, however, applied only to the Local Houses and not the Provincial Houses, which were the focus/subjects of the study. In the case of the North West Provincial House, its enabling legislation contained provisions for a one-third quota of women's representation not only for the Local Houses but also for the Provincial House.⁴

Secondly, the study revealed inconsistencies in the application of the relevant laws, including a lack of consistency in adherence to key provisions of the relevant national legislation relating to the Houses. 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 were observed, provisions relating to the promotion of gender equality/transformation and representation of women were largely ignored or implemented only half-heartedly by the Provincial Houses.

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, had not been reviewed in any of the four provinces covered in the study. This missing review is despite available evidence showing that the review of this quota was necessary and overdue for all the Provincial Houses covered in the study. Moreover, in instances where provisions related to gender equality and transformation had clearly been ignored, no mechanism or process was put in place or invoked to ensure that the Houses account either to the National House of Traditional Leaders (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.⁵

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

Thirdly, based on the assessment of the gender profiles of the Provincial Houses, 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 failure to achieve the requisite one-third quota was the case across the board.⁶

The percentages of representation of women in the Provincial Houses are: Mpumalanga (19.04%), North West (12.5%), and KwaZulu-Natal (11.32%). Moreover, 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, the Department of CoGTA, and the NHTL do not have any power or authority to influence the choices and decisions made by the royal houses/royal families on matters of succession. However, the National Traditional Leadership and Governance Framework Act contains provisions that allow the National House to exercise guidance over the appointments of traditional leaders with the purpose of ensuring gender transformation.⁷

Fourthly, the study findings pointed out that further clarification was needed on the role played by the relevant provincial government departments (CoGTA and CATA) that the Constitution mandates to provide support to Houses. It was clear, based on the findings of the study, that these departments could have done better in providing support and guidance to the Provincial Houses around issues relating to gender equality and related legislative and policy obligations.⁸ The mandates of these government departments, as stated at the time in relevant legislation, did not prevent them from providing such guidance to the Houses regarding gender mainstreaming. Areas where such guidance was necessary included internal processes such as elections of members of the Local and Provincial Houses to ensure fair representation of women. Furthermore, the department's responsibility to assist these Houses with skills development also did 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.⁹

Finally, the study concluded that while the issue of lack of funding and resources was pertinent, especially for the operations of the Houses and their committees, it was equally important to identify the issue of proper planning and prioritisation as an area that requires the attention of policymakers. The conclusion was that some of the Houses were experiencing funding shortages as a possible consequence of

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

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.¹⁰

2.2 Recommendations

The following recommendations were made in light of the findings and conclusions of the study:

- The findings contained in the report showed that there was fragmentation in terms of Provincial Houses 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 Provincial Houses. It was 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 was 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 recommended 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 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 was recommended that provincial Premiers undertake a review of the one-third quota requirement for the representation of women in the membership of Provincial Houses as outlined in relevant provisions of the National Traditional Leadership and Governance Framework Act of 2009 as amended to ensure that Provincial Houses comply with the need for adequate women's representation.

¹⁰ Ibid.

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- Finally, it was recommended that the provincial departments (CoGTA and CATA) with the responsibility to provide support to the Provincial Houses 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 on gender transformation and women's empowerment.

3. Legislative frameworks

South Africa is a signatory to several regional and international frameworks that promote women's rights and gender transformation. Domestically, the country has also promulgated legislation that addresses gender discrimination in the sphere of traditional leadership. This section briefly outlines some of the legislative frameworks relevant to this study.

3.1 International frameworks

3.1.1 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

Often described as an international bill of rights for women, CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field”. Article 3 obligates State Parties to take all appropriate measures, in all fields, in particular in the political, social, economic, and cultural fields, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.¹¹

3.1.2 Beijing Platform for Action (BPA)

The BPA recognises the importance of intensifying efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of factors such as their race, age, language, ethnicity, culture, religion, or disability, or because they are Indigenous people.¹²

¹¹ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations.

¹² Beijing Declaration and Platform for Action .1995. The Fourth World Conference on Women.

3.1.3 United Nations Sustainable Development Goals (SDGs)

SDG 5 focuses on achieving gender equality through actions to end discrimination and violence, including harmful cultural practices, recognising the value of paid and unpaid work for women, and promoting and ensuring women's sexual and reproductive rights, amongst other actions. SDG 5 further strives to secure women's full and meaningful participation in the economy and in decision-making positions.

3.2 Regional frameworks

3.2.1 Maputo Protocol

Article 2 of the Maputo Protocol speaks to the “elimination of discrimination against women” and obligates State Parties to take concrete steps to ensure that in the Constitution, the highest law of the land, and all other laws of the State Party. The treaty clearly stipulates that women and men are equal. They have the same rights. This rule should be observed and applied by everyone. Article 2 of the treaty also obligates State Parties to commit themselves to change (through public education, adult education, and mass communication) all cultural and traditional practices deemed harmful to the health of women or their welfare or anything that may cause women to be considered inferior to men or which causes certain roles to be considered as being for men and others for women in society or within the family.¹³

3.2.2 SADC Protocol on Gender and Development

The SADC Protocol provides for the empowerment of women, the elimination of discrimination, and the promotion of gender equality and equity. The protocol aims to integrate and mainstream gender issues into the SADC Programme of Action and Community Building initiatives. The protocol calls for gender-responsive legislation, policies, programmes, and projects to promote sustainable development in the SADC region.¹⁴

¹³ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa: Maputo Protocol. African Union, 2003

¹⁴ SADC Protocol on Gender and Development, 2008.

3.3 National legislation

3.3.1 Constitution of the Republic of South Africa¹⁵

Chapter 2 of the Constitution, the Bill of Rights guarantees everyone the right to equality, human dignity, freedom of religion, belief, opinion, and expression, as well as the right to cultural, religious, and linguistic communities. Chapter 12 of the Constitution speaks to the recognition and role of traditional leaders. The values of human dignity, equality, non-sexism, human rights, and freedoms are the cornerstones of South Africa's democracy. The values are reflected in the Bill of Rights to enable the recognition and realisation of basic human rights and freedoms of all citizens, irrespective of their gender identity. Section 9(3) of the Constitution of the Republic of South Africa of 1996, prohibits the State or any other person from unfairly discriminating, either directly or indirectly, against anyone on one or more grounds, including on the grounds of gender.

3.3.2 Promotion of Equality and the Prevention of Unfair Discrimination Act (PEPUDA) (Act 4 of 2000)

PEPUDA prohibits discrimination by the State or private institutions and individuals on several grounds, including gender, sex, pregnancy, or marital status.¹⁶

3.3.3 Traditional Leadership and Governance Framework Amendment Act 38 of 2009¹⁷

The Traditional Leadership and Governance Framework Amendment Act 38 of 2009 provides for the recognition of:

- Traditional communities
- Kingships or queenships, and those councils
- Traditional councils
- Traditional leadership positions (such as principal and senior traditional leaders, as well as headmen and headwomen).

The Act provides for at least one-third minimum representation of women as members of traditional councils. Furthermore, it ensures the inclusion of a "sufficient number of women" but does not specify a gender quota within the Provincial Houses. Section 17(a) and (b) provide that women should be represented in the Provincial Houses.

¹⁵ Constitution of the Republic of South Africa, 1996.

¹⁶ Promotion of Equality and the Prevention of Unfair Discrimination Act (PEPUDA) (Act 4 of 2000), 2000.

¹⁷ Traditional Leadership and Governance Framework Amendment Act 38, 2009.

The Act also provides for women to be elected as representatives at the National House. This provision for women's election is important as it serves to ensure that traditional structures comply with some of the country's legislations that promote gender. The Traditional and Khoi-San Leadership Act further provides for relevant measures to be put in place to deal with traditional councils reflecting an insufficient number of women.¹⁸

3.3.4 Provincial Houses Legislation

The 2016/2017 report covered the Provincial Houses in the following provinces: Mpumalanga, Eastern Cape, North West, and KwaZulu-Natal. These Provincial Houses have their own provincial legislation: Mpumalanga Provincial House and Local Houses of Traditional Leaders Act 6 of 2005 (which appears to set a numerical target of only two women for the Provincial House), Eastern Cape Traditional Leadership and Governance Act 1 of 2017 (which makes provision for only one female member if there is a woman qualifying for the position of senior traditional leader), North-West House of Traditional Leaders Act No. 3 of 2009 (which makes provision for a third of women's representation in the Provincial House), and the KwaZulu-Natal Traditional Leadership and Governance Act 5 of 2005 (which is silent on issues of gender representation).

4. Aim and objective of the study

The main aim and objective of this project was to review and assess the extent to which entities implicated in the recommendations of the CGE monitoring report have taken steps to address those recommendations in the five years (2016/2017 to 2022/2023) since the publication of the report.

5. Methodology

This review and assessment took the form of a compliance monitoring exercise to determine the progress and status of the implementation of the CGE recommendations by entities covered in the 2016/2017 report. The study employed a qualitative approach and adopted semi-structured interviews as the method of data collection. Interview guides were used as research instruments.

¹⁸ Traditional and Khoi-San Leadership Act 3. 2019

Individual in-depth interviews were conducted as follows:

Entity	Total
Commission for Gender Equality	1
Department of Cooperative Governance and Traditional Affairs	2
National House of Traditional and Khoi-San Leaders	2
Eastern Cape Province Premier's Office	2
KwaZulu-Natal Province Premier's Office	2
Mpumalanga Province Premier's Office	2
North West Province Premier's Office	2
Total	13

The interviews lasted for approximately one hour and were conducted either in person or virtually based on the availability and preference of the participants.

In addition to the interviews, secondary sources of data that were obtained from the study participants to corroborate data unearthed from interviews were used, as well as other official documents that are published and unpublished, parliamentary minutes, and other publicly available documents.

6. Ethical commitments of the study

6.1 Informed consent

Before the commencement of interviews, participants were informed about the study, its goals and objectives, and a letter with the above information was provided. Participants were also afforded the opportunity to ask questions or seek clarification on any aspect of the study that may be unclear.

6.2 Confidentiality and anonymity

Participants were informed that the study would culminate in a research report and that their names would not be mentioned in any documentation or presentations regarding the research.

6.3 Beneficence

The right of participants to be free from harm, uneasiness, and mistreatment was respected. Since this research involves human participants, it seeks to contribute positively to the human condition because should it not aspire to do this, it runs the risk of being unethical.

7. Constraints and limitations

The following constraints and limitations were encountered:

- The unwillingness to cooperate with the CGE team of researchers by officials from the North West Province Premier's Office has led to insufficient data being collected.
- The nomination of officials who were uninformed about the subject matter to form part of the interviews by the Mpumalanga Premier's Office negatively affected the outcomes of the data collection process.
- Claims of recommendations being implemented without the necessary supporting documentation to corroborate those claims, therefore affecting the veracity of the information provided by participants.

8. Findings

8.1 Compliance with relevant legislative frameworks on women's representation and prevention of unfair gender discrimination

The findings of the CGE 2016/2017 study showed that there was fragmentation in terms of Provincial Houses complying with the provisions of the Constitution and national legislation relating to the issue of gender equality and women's participation as members of Provincial Houses. Thus, the CGE recommended that the NHTL and the National Department of CoGTA design an intervention strategy to enforce 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. The CGE further recommended that the NHTL must take 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. The CGE also expected that the latter would be applied to various processes, including the appointment of senior traditional leaders by royal houses, as well as in fulfilling the one-third numerical quota for women's representation as members of the Provincial Houses.

The findings of the current review reveal that the recommendations of the CGE have not been fulfilled as Provincial Houses were viewed as independent entities that could not be subjected to influence from NHTKL and CoGTA¹⁹ despite both entities being conferred with responsibilities and duties by existing legislation to discharge significant functions over Provincial Houses. Firstly, Sections 13 and 15 of the National House of Traditional Leaders Act No. 22 of 2009 establish a relationship between the NHTKL and Provincial Houses by stating that the NHTKL must investigate matters referred to it by provincial houses and make recommendations, and that the NHTKL must give administrative advice to provincial houses, among other statements. Secondly, and more specifically, the Act contains provisions that empower the NHTKL to ensure that gender transformation becomes an integral part of the business of Provincial Houses and to ensure that Provincial Houses respect and operate within the framework of the Bill of Rights by preventing unfair discrimination, promoting equality, and ensuring that gender representation in the succession of traditional leadership positions is progressively advanced. These provisions of the Act thus contradict the views of officials interviewed as part of this assessment that there was no clear legal mandate for accountability by Provincial Houses to the NHTKL on issues of gender transformation.²⁰ It is the view of the CGE that these prescripts provide the NHTKL with the necessary authority to oversee the process of ensuring that Provincial Houses comply with relevant legislation on gender equality.

The NHTKL further carried an important mandate to ensure “the transformation and adaptation of customary law and customs so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by (aa) preventing unfair discrimination; (bb) promoting equality; and (cc) seeking to progressively advance gender representation in succession to traditional leadership positions”.²¹ The findings of this review, however, show that similar to the 2016/2017 study, the NHTKL was failing to exercise its legislative powers in this regard, while royal families received full blame for the lack of gender transformation in the traditional leadership positions of the provincial houses. Participants attributed the slow progress to pressures applied to royal families by traditional communities to sustain the male primogeniture rule and to succession into traditional leadership.²²

Given that CoGTA is the government department entrusted with the responsibility to provide administrative, technical, and financial support to the NHTKL, the CGE expected that the department would assist the NHTKL with the necessary capacity-building and skills training to develop a clear understanding of its legislative functions, as well as with the capacity to develop clear measures to enforce compliance with the relevant national and provincial frameworks regarding the representation

19 Interviews with CoGTA and NHTKL Senior Officials, 2024.

20 *ibid*

21 National House of Traditional Leaders Act No. 22, 2009

22 Interview with CoGTA and NHTKL officials, 2024.

of women in houses of traditional leaders and the promotion of gender equality. The findings, however, reveal that understanding of the role of CoGTA in relation to NHTKL was confined to administrative functions, even though the department had a much bigger role to play in view of the provisions of the National House of Traditional Leaders Act No. 22 of 2009. The Act prescribes that the department must offer support to the NHTKL in the form of infrastructure, finances, human resources, skills development programmes, and administrative systems.

Notably, the NHTKL had developed a document dealing with cultural practices considered to be infringing on the human rights of individuals. The document, however, only deals with issues of harmful cultural practices associated with initiation, ukuthwala (the abduction of women and girls into forced marriage), ukungena (wife inheritance), ukuhlolwa kwentombi (virginity inspection), and cultural practices relating to mourning, with the view of having such practices reviewed by communities.²³ The document, however, does not address the challenge of lack of transformation within traditional leadership structures.

8.2 Awareness raising on gender transformation regulatory frameworks

In light of awareness raising on gender transformation regulatory frameworks, the CGE had recommended that the National Department of CoGTA, working closely with other key institutions such as the CGE, develop clear national programmes of action and related strategies to raise awareness within institutions of traditional leadership, including the Royal Families/Houses, on the need to comply with the gender transformation regulatory frameworks in the country. The CGE had further recommended that Provincial Houses and their office bearers form 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. These recommendations were put forward because of findings that indicated a lack of awareness of regulatory frameworks relating to gender transformation and the need for traditional leadership institutions to comply with the frameworks.

The current review indicates that even though evidence of sustained national programmes of action and strategies to raise awareness within institutions of traditional leadership on the need to comply with gender transformation regulatory frameworks is scanty, the CGE has implemented several initiatives with Provincial Departments of CoGTA to raise awareness about the Constitutional imperative of gender equality.²⁴

²³ Ibid.

²⁴ Written Response from the CGE, 2024.

In 2023, the CGE provincial offices signed memorandums of understanding (MOUs) with the newly elected provincial executive committees that urged Provincial Houses to prioritise issues of gender equality in their work. In addition to this, the CGE has raised awareness about the relevance of adopting a gender lens and a human rights framework in the work of the social development committees of the Provincial Houses, as well as in the handling of complaints related to traditional leadership succession, women's access to land, the discrimination of widows on the grounds of culture, and other complaints.

8.3 Review of the one-third quota requirement for women's representation

The 2016/2017 study found that quotas for women's representation in the various Provincial Houses had not been reviewed since the promulgation of the respective provincial legislations of the Provincial Houses. While the existence of quotas could be viewed in a positive light, particularly given the overall patriarchal nature of the traditional leadership institution in the country, two challenges were realised. First, the quotas fell below the desired equal representation of women and men in all spheres of leadership as articulated by various international legislative frameworks that South Africa is signatory to, and secondly, minimal efforts were noted to enhance women's representation as senior traditional leaders at ground level. On the other hand, provisions for women's quotas were usually followed by prescripts that called for the lowering of the quota upon realisation of the insufficiency of women senior traditional leaders by either the Minister in the case of the NHTKL, or provincial Premiers in the case of Provincial Houses. As such, these clauses weakened the already minuscule quotas, rendering them inefficient in effectively raising women's numerical representation in the Houses.

The CGE thus recommended that provincial Premiers undertake a review of the one-third quota requirement for the representation of women in the membership of Provincial Houses as outlined in relevant provisions of the National Traditional Leadership and Governance Framework Act of 2009 as amended to ensure that the Houses comply with the need for adequate women's representation.

The interviews conducted for the current review revealed that gender quotas had not been reviewed across the board and that even though Provincial Premiers exercised the power to lower targets during the composition of Provincial Houses, they did not view themselves as the relevant structures to review and revise quotas set in the respective Provincial House Legislations. Officials interviewed from the Mpumalanga Office of the Premier, however, committed to undertake the review process as part of their 2024/2025 financial year plans.

The table below depicts the gender composition of the four Provincial Houses during the 2016/2017 and 2023/2024 financial years:²⁵

Province	2016/2017		2023/2024	
	Men	Women	Men	Women
Eastern Cape	Information not provided	Information not provided	31	7
KwaZulu-Natal	47	6	44	3
Mpumalanga	17	4	18	3
North West	21	3	22	2

The table illustrates a regression in women's representation across the provinces between the two financial years, with numbers falling significantly below 50% and Provincial Houses failing to at least meet the one-third quota. The participants of the study attributed these losses to failures by Local Houses to appoint sufficient women for representation to the Provincial Houses and to the lack of mechanisms to transform the appointment of senior traditional leaders by royal families: two challenges that are, to a certain degree, addressed by existing legislation as already mentioned in other parts of the report.

Furthermore, the development and review of numerical gender targets remained crucial as study participants from provinces such as KwaZulu-Natal blamed the lack of clear targets for women's representation in the Provincial Act as the causal factor leading to the low numbers of women in the Provincial House. The Provincial House lacked the necessary mechanisms to ensure adequate representation of women in the Provincial House despite the National Traditional Leadership and Governance Framework Act stating clearly that provincial legislation must provide mechanisms or procedures that would allow for enough women to be represented in the Provincial Houses. In cases where clear targets existed, such as in the North West, the Provincial House still fell short of the one-third quota, elucidating the negative impact of legislative provisions that allow for the lowering of targets for women's representation.

8.4 Accountability measures for Provincial Departments of CoGTA

The CGE had recommended that the Provincial Departments (CoGTA and CATA) with the responsibility to provide support to the Provincial Houses 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 on gender transformation and women's empowerment.

²⁵ Figures were provided by the officials interviewed for the study in the respective provinces.

Based on the findings of this review, just as was the case in the 2016/2017 study, the roles of the Provincial Departments of CoGTA in providing capacity for gender transformation and women's empowerment to the Provincial Houses remained arbitrary and murky. The situation was exacerbated by the failure of the National Department of CoGTA to address the CGE's recommendation to establish clear accountability measures to ensure that provincial departments comply.

The view that provincial departments ought not to get involved with the affairs of Provincial Houses even when legislation clearly identifies the role of provincial departments in providing support to the Provincial Houses remained intact and widespread. On the contrary, however, irrespective of the latter, the Provincial Departments of CoGTA had arranged for the capacity building of the members of the Provincial Houses through the CGE provincial offices covering subjects on gender mainstreaming and gender-based violence and femicide (GBVF). In the Eastern Cape, for example, the Provincial House had been taken through capacity-building programmes on gender mainstreaming, while in other provinces such as the North West and Mpumalanga, there had been training on gender sensitisation, PEPUDA, laws regarding succession and Inheritance, and other important subjects.

9. Overview of key findings and conclusions

In assessing the extent to which the recommendations contained in the 2016/2017 report of the CGE titled *Royalty and Empowerment of Women: Assessing Gender Mainstreaming Through House of Traditional Leadership* have been implemented, the findings identify that progress has not been made in the aspects of promoting gender equality, transformation, and the empowerment of women in line with the provisions of various relevant pieces of national and provincial legislation within the Provincial Houses. The NHTKL and National Department of CoGTA, together with Provincial Houses and Provincial Departments of CoGTA, failed to adhere to the CGE recommendations to use their powers and functions as provided for in legislation to prioritise gender transformation and women's empowerment in the provincial institutions of traditional leadership.

The assessment found that the provincial legislations of the respective Provincial Houses remained unchanged despite CGE's call for the review of women's quotas as contained in these legislations. Existing provisions set lower targets for women's representation while concurrently enabling election presiding officers (provincial Premiers) to lower targets instead of emphasising the imperative for Provincial Houses to adhere to the provisions of the *Traditional Leadership and Governance Framework Amendment Act (No. 23 of 2009)* to promote gender representation within the Houses. The KwaZulu-Natal Provincial Act, more specifically, makes no provisions for numerical quotas or any other measures aimed at increasing women's representation in the absence of numerical targets.

Similar to the findings of the previous study, the NHTKL claimed to not influence the running and operations of Provincial Houses even though the mandate of the NHTKL, as stated in current legislation, does not prevent it from providing guidance to the Provincial Houses in respect of gender mainstreaming. It is a fact that Provincial Houses are independent structures with enabling legislations of their own. However, the NHTKL Act does empower the NHTKL to play an active role in ensuring that gender transformation and women's empowerment become integral components of the business of Provincial Houses.

Finally, the CGE had recommended that the National Department of CoGTA establish a strategy to subject the provincial government departments (CoGTA and CATA) to accountability measures on their role to provide the relevant and necessary capacity building to the Provincial Houses on issues of gender transformation and women's empowerment. The findings of this review revealed that CoGTA had failed to implement the CGE recommendations in this regard.

Based on the summary of key findings, the CGE concludes that there was an overall failure by all implicated entities (National and Provincial Departments of CoGTA, Provincial Offices of the Premier, the NHTKL and Provincial Houses in the four selected provinces) to implement the recommendations of its 2016/2017 report, and thus recommends that these entities must address the findings of both the current and the previous assessments and that they urgently attend to the recommendations of the 2016/2017 CGE report.



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A society free from gender oppression and inequality

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