

Chapter 2

Normative Frameworks

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Key points

- There are at least 16 international, African and subregional commitments on gender equality in decision-making.
- The target in these instruments has progressed from 30 per cent to 50 per cent.
- More than half of Commonwealth African countries have made efforts to domesticate these provisions through constitutional or legislative measures, although these have not always been followed.
- The domestic instruments have also generally shied away from the 50 per cent target and are biased towards local rather than national politics.
- Embedding commitments in national gender policies in enforceable legislation can be a 'game changer'.



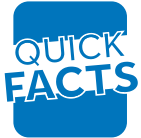
The case for having women and men represented in decision-making no longer needs to be made. It is now etched in national constitutions, legislation and policies in many Commonwealth African countries, as this chapter will illustrate.

Across Commonwealth Africa, national governments have signed, ratified and agreed to several international, continental and regional instruments that promote women's political participation. In some cases, these have been incorporated in national legislation and other mechanisms and measures, reflecting a positive trend of growing support for improving women's full and effective participation in democratic processes.

Every Commonwealth African country has ratified CEDAW, which requires member states to take concrete measures, including legislation and 'temporary special measures' (TSMs) to secure women's equal participation in political and public life, and in elections. Contextualised with the Commonwealth Charter's acknowledgment of women's empowerment as an essential component of basic human rights and human development, and the elevation of these in the Sustainable Development Goals (SDGs), Commonwealth African member states now need to build on their progress if they are to achieve gender parity by 2030. The importance of these

normative frameworks is highlighted in the contributions made by top African women decision-makers to this handbook.

Some of the commitments that Commonwealth Africa has subscribed to at the national, regional, continental, Commonwealth and global levels, and the status of adherence to these obligations, are captured in the Table 2.1. The table shows that:



- There are at least eight global, three Commonwealth, two African and three subregional instruments (16 instruments in total) that commit Commonwealth African countries to achieving gender equality in political decision-making.
- Nine of these provide for affirmative action of some kind.
- Eight of these include specific targets. These targets have evolved from 30 per cent women in decision-making (for example in UN Economic and Social Resolution 1990/15 and the Commonwealth Plan of Action for Gender Equality 2005–2015) to equal participation (SDGs; the two African instruments; the Southern Africa Development Community (SADC) Protocol on Gender and Development; and the East Africa Gender Bill).

2.1 National instruments on gender

Although most Commonwealth countries are signatories to the relevant international human rights instruments, many of the protections contained in these instruments are not available to women in practice. An important step in rectifying this situation is for such instruments to be incorporated into national law and applied practically.

As part of its election observation methodology, Commonwealth observers assess how member countries are implementing their national gender commitments, and the impact on women's representation in the elections, in drawing conclusions about the inclusiveness of the process. Commonwealth African countries have a mix of constitutional commitments, specific legislation and national gender policies.

The adoption of a national gender policy allows governments to outline cross-sectoral strategies and guidelines that mainstream gender in institutions, private or public, that would address the barriers to women's participation. This approach also enables governments to sensitise citizens, create opportunities for engaging with civil society organisations on the issues and builds political will and momentum for legislation on gender to be considered. However, as national gender policies are persuasive non-binding national instruments, they are limited in their ability to affect sustainable change.

Table 2.1 International, African and subregional Instruments for women's participation in decision-making in 2017

Instrument	Year adopted	How applicable to Commonwealth Africa	General provisions	Affirmative action	Specific targets	Timeframes
UNITED NATIONS						
The Universal Declaration of Human Rights 1948	1948	All Commonwealth Africa countries adopted	Article 21(1) stipulates that: 'Everyone has the right to take part in the government of his country directly or through freely chosen representation' and has universal applicability. The Commonwealth's election observation methodology uses this as one of the standards of assessing the inclusivity of a country's election. Link to International Covenant on Civil and Political Rights (ICCPR).	No	No	Not time bound
The Convention on the Elimination of all forms of Discrimination against Women (CEDAW)	1979	All Commonwealth Africa countries have ratified	Article 7 states that 'States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies.'	No	No	Not time bound
The UN Economic and Social Council Resolution 1990/15	1990	Applicable to all Commonwealth Africa countries	Calls on governments, political parties, trade unions, and professional and other representative groups to adopt a 30 per cent minimum proportion of women in leadership positions, with a view to achieving equal representation.	Yes	30%	Not time bound
The Beijing Declaration and Platform for Action	1995	Applicable to all	Outlines 12 strategic objectives and critical areas of action, including 'Women in Power and Decision-making'. Among the critical areas of insufficient progress identified in Beijing + Twenty is the 'participation of women in power and decision-making at all levels'.	No	No	Not time bound
The 2003 UN General Assembly Resolution on Women's Political Participation (A/RES/58/142)	2003	Applicable to all Commonwealth Africa countries	Article 1(e) : 'To promote the goal of gender balance in all public positions and to take all appropriate measures to encourage political parties to ensure that women have a fair and equal opportunity to compete for all elective and non-elective public positions.'	Yes	Equal participation	Not time bound

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Table 2.1 International, African and subregional instruments for women's participation in decision-making in 2017 (Continued)

Instrument	Year adopted	How applicable to Commonwealth Africa	General provisions	Affirmative action	Specific targets	Timeframes
The 2011 UN General Assembly Resolution on Women's Political Participation (A/RES/66/130)	2011	Applicable to all Commonwealth Africa countries	Article 4 calls upon states in situations of political transition to take effective steps to ensure the participation of women on equal terms with men in all phases of political reform, from decisions on whether to call for reforms in existing institutions, to decisions regarding transitional governments, to the formulation of government policy, to the means of electing new democratic governments.	Yes	Equal participation	
The Millennium Development Goals (MDGs) (2000–2015)	2000	Applicable to all Commonwealth Africa countries	MDG 3 called for the promotion of gender equality and women's empowerment. All member countries in Commonwealth Africa subscribed to the 15-year commitments. The 2015 <i>Progress Report on MDGs</i> noted that <i>Women have gained ground in parliamentary representation in nearly 90 per cent of the 174 countries with data over the past 20 years. The average proportion of women in parliament has nearly doubled during the same period. Yet still only one in five members are women</i> (United Nations 2015).	No	No	Expired in 2015
The 2030 Sustainable Development Goals (SDGs)	2015	Applicable to all Commonwealth Africa countries	SDG 5 underscores women's full and effective participation and equal opportunities for leadership at all levels of decision-making. It picks up from where MDG 3 left off, calling for the gender equality and empowerment of women and girls. Women's political participation is identified as a main indicator.	Yes	Equal participation	2030
COMMONWEALTH						
The Port of Spain Affirmation of Commonwealth Values and Principles 1999	1999	Applicable to all Commonwealth Africa countries	Upon the 60th anniversary of the modern Commonwealth, Heads of Government affirmed their strong and abiding commitment to Commonwealth values. Gender equality and empowerment of women were identified as one of the fundamental principles of effective and sustainable development.	No	No	Not time bound

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Table 2.1 International, African and subregional Instruments for women’s participation in decision-making in 2017 (Continued)

Instrument	Year adopted	How applicable to Commonwealth Africa	General provisions	Affirmative action	Specific targets	Timeframes
COMMONWEALTH						
The Commonwealth Plan of Action for Gender Equality (2005–2015)	2005	Applicable to all Commonwealth Africa countries	Provides a framework for Commonwealth member states to advance gender equality and women’s empowerment. One of the plan’s main objectives was to achieve 30% or more female representation in decision-making spheres by 2015.	Yes	30% participation	Not time bound
The Charter of the Commonwealth (2013)	2013	Applicable to all Commonwealth Africa countries	The charter expresses the commitment of the Heads of Government to the Commonwealth founding principles including democracy, human rights and the rule of law. Gender equality and women’s empowerment are identified as essential components of human development and basic human rights.	No	No	Not time bound
AFRICAN						
The African Charter for Democracy, Elections and Governance	2007	Botswana, Cameroon, Malawi, Tanzania and Seychelles have not signed	This charter establishes the African Union’s standards and norms on elections, democracy and governance.	No	Equal participation	
The African Charter on Human and Peoples Rights (ACHPR) on the Rights of Women in Africa (‘the Maputo Protocol’)	2003	Botswana is the only Commonwealth African country that has not signed the protocol, which contains specific obligations on elections	This protocol was adopted to complement and strengthen the African Charter by prompting women’s rights. Article 9.1 calls on state parties ‘to take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation and other measures to ensure that women participate without any discrimination in all elections; and women are represented equally at all levels with men in all electoral processes.’ State parties are urged to go beyond numbers by ensuring ‘increased and effective representation and participation of women at all levels of decision-making.’	Yes	Equal participation	

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Table 2.1 International, African and subregional Instruments for women's participation in decision-making in 2017 (Continued)

Instrument	Year adopted	How applicable to Commonwealth Africa	General provisions	Affirmative action	Specific targets	Timeframes
REGIONAL						
The Southern Africa Development Community (SADC) Protocol on Gender and Development	2008	All but Mauritius in Commonwealth Southern Africa have signed the updated protocol	Article 12 requires all state parties to endeavour to have at least 50 per cent of decision-making positions in both the private and public sectors occupied by women by 2015. Article 13 goes further and advocates that state parties 'use special/legislative measures to enable women to have equal opportunities with men to participate in all electoral processes including the administration of elections and voting'.	Yes	Equal participation	Not time bound, but aligned to SDGs. African Union Agenda 2063 and Beijing+20
The Economic Community of West African States (ECOWAS) Gender Policy 2004	2004	Applicable to all ECOWAS Commonwealth countries	The policy was adopted in 2004 by the Council of Ministers from the 15 ECOWAS member states. Under this policy, member states are urged to expand and promote the gender parity principle, to strengthen institutional frameworks for the promotion and protection of all human rights for women and girls, and to actively promote the implementation of legislation to guarantee women's rights. A new regional instrument on gender and development was adopted by ECOWAS Heads of State and Government in May 2015 titled the Supplementary Act on Equality of Rights between Women and Men for Sustainable Development in the ECOWAS Region.	Yes	No	Not time bound
East Africa Gender Bill	2016	Bill has been passed in the East Africa Legislative Assembly; EAC countries are yet to pass it in their respective parliaments	Respect for gender parity in power and decision-making by 50:50 ratio.	Yes	Equal participation	Not time bound

In the 2014 *Malawian Tripartite Election* COG report, Commonwealth observers noted that, while Malawi had adopted a national gender policy and subscribed to other international commitments, ‘women were still under-represented in political leadership’ (Commonwealth Observer Group 2014, p.12). The 2011 *Nigeria General Election* COG report also highlighted the lack of implementation of the Nigeria’s national gender policy adopted in 2006. This provides for a 35 per cent quota for women in all decision-making positions, yet women’s representation in Nigeria’s National Assembly had decreased since this policy was adopted (from 6.9 per cent in 2006 to 5.9 per cent after the 2015 general elections).

While national gender policies can increase awareness of gender issues within institutions and communities, by themselves they have not been effective in overcoming the cultural, political and socioeconomic barriers to women’s political participation. Embedding these in enforceable legislation is the game changer.

Table 2.2 shows that:

- More than half of Commonwealth African countries (11 out of 18) have specific constitutional and/or legislative provisions for enhancing women’s participation in decision-making.
- The seven countries that have no constitutional or legal provisions for advancing women’s participation in decision-making are: Botswana, Ghana, Malawi, Mozambique, Nigeria, Seychelles and Zambia.
- Five countries have constitutional provisions for advancing women’s equal participation. Three (Rwanda, Uganda and Tanzania) have effectively implemented these, while two (Kenya and Swaziland) have not.
- Six countries have legislative provisions for increasing women’s participation in decision-making. In two countries, these cover national and local elections (Lesotho and Cameroon). In four of the countries that have legislative provisions for women in decision-making (Mauritius, Namibia, South Africa and Sierra Leone), these concern local government only. This reflects the general reluctance by governments to legislate TSMs at the national level.
- In 11 instances, the specific target set is 30 per cent. There is only one legislative reference to parity (in Sierra Leone). The South African Local Government Act says that parties must strive to ensure 50 per cent representation of women, but does not make this a requirement.

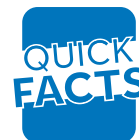


Table 2.2 National constitutional and legal Instruments for women in decision-making in Commonwealth Africa (2016/17)

Country	Instrument	Provision	Affirmative action	Level	Quota
Constitutional provisions that have been domesticated					
Rwanda	Constitution	<i>'The State of Rwanda commits itself that women are granted at least 30 per cent of posts in decision-making organs' (Constitution, Article 9 [4]). The 80 members of the Chamber of Deputies are elected as follows: 53 members elected by direct universal suffrage through a secret ballot using closed list proportional representation, of which at least 30 per cent must be seats reserved for women; 24 women (two elected from each province and from the city of Kigali by an electoral college with a women-only ballot); two members elected by the National Youth Council; and one member elected by the Federation of the Associations of the Disabled (Constitution, Article 76).</i>	Yes	All levels	30%
Uganda	Constitution	Article 78(1) of the constitution states that the parliament shall consist of one woman representative for every district. There are 112 districts in Uganda. Article 180(2.b) of the 1995 constitution states that one-third of the membership of each local government council shall be reserved for women.	Yes	National	30%
	Electoral law	The parliament of Uganda is formed in the following way: there are 238 constituency representatives; 112 district women representatives directly elected by all voters on a special ballot in each district (for women candidates only); ten representatives of the Uganda People's Defence Forces, of whom two must be women; five youth representatives, of whom one must be a woman; five representatives of persons with disabilities, of whom one must be a woman; and five representatives of workers, of whom one must be a woman (Article 8 of the Parliamentary Elections Act, 2005).	Yes	National and local	30%
Tanzania	Constitution	Women members must not make up less than 30 per cent in the National Assembly. The special seats for women are distributed among the political parties in proportion to the number of seats awarded to them in parliament (Constitution, Articles 66(1.b) and 78 (1)).	Yes	All levels	30%
	Electoral law	Women councillors are elected from special constituencies. <i>'The population quota for demarcation of electoral areas for women representatives shall be determined by the requirement of women constituting one-third of any local council being considered'</i> (Article 108(3) of the Local Governments Act, 1997).	Yes	Local	30%
	Electoral law	The National Assembly consists of 350 members. Of these, 102 are reserved for women, 239 members are elected in single member constituencies, seven are appointed by the president, five represent Zanzibar (two of whom are women) and one mandate belongs to the attorney general: <i>'Every Political Party which contests Parliamentary elections may propose and submit the Commission names of eligible women candidates for nomination of Members of Parliament for Women Special Seats'</i> (Elections Regulations 2010, Article 86A(2)).	Yes	National	30%

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Table 2.2 National constitutional and legal instruments for women in decision-making in Commonwealth Africa (2016/17) (Continued)

Country	Instrument	Provision	Affirmative action	Level	Quota
Constitutional provisions that have not been domesticated					
Kenya	Constitution Article 36(2) of the Elections Act 2011)	Article 27(8) of the 2010 Constitution states that the 'State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender'. Furthermore, Article 81(b) stipulates that the electoral system shall comply with the principle that 'not more than two-thirds of the members of elective public bodies shall be of the same gender'. The constitution reserves 47 seats in the National Assembly for women deputies elected from 47 counties, with each county constituting a single-mandate constituency. These seats are to be contested only by women candidates nominated by political parties in these counties. In addition, the National Assembly will have 290 elected members, each elected by voters of single-mandate constituencies, and 12 members nominated by political parties to represent special interests, including the youth, persons with disabilities and workers, with the relevant list to be composed of alternating male and female candidates (Article 97 of the Constitution of Kenya, adopted August 2010).	Yes	All levels	30%
Swaziland	Constitution	The constitution requires that women should constitute 30 per cent of the parliament: '[T]he House of Assembly shall consist of not more than seventy-six members [including] four female members specially elected from the four Regions' (Constitution 2005, Article 95, para.1c). 'The nominated members of the House shall be appointed by the King [...] so that at least half of them are female' (Constitution 2005, Article 95, para.2a). 'Where at the first meeting of the House after any general election it appears that female members of Parliament will not constitute at least thirty per cent of the total membership of Parliament, then, and only then, the provisions of this section shall apply. [...] For the purposes of this section, the House shall form itself into an electoral college and elect not more than four women on a regional basis to the House in accordance with the provisions of section 95(3)' (Constitution 2005, Article 86, paras 1, 2).	Yes	National	30%
Legislative provisions – local and national					
Cameroon	Election code	Elections in Cameroon are now governed by Law No. 2012/001 of the 19 April 2002 Election Code. The code lays down the provisions for the governance of elections for members of the National Assembly and municipal councillors. Political parties were expected to demonstrate 'evidence of gender considerations' in drawing up their respective candidates list.	Yes	Local and national	Not specific

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Table 2.2 National constitutional and legal instruments for women in decision-making in Commonwealth Africa (2016/17) (Continued)

Country	Instrument	Provision	Affirmative action	Level	Quota
Lesotho	Electoral law	According to the Local Government Elections Act, as amended in 2011, 30 per cent of the total number of seats in municipal, urban and community councils are reserved for women and are distributed proportionally among the parties. The National Assembly has 120 seats. Its members are elected using the mixed member proportional system; 80 in single-member constituencies using the first-past-the-post system and 40 from one national constituency using party-list proportional representation. Proportional representation seats are allocated to compensate parties for the discrepancy between percentage of votes obtained and percentage of constituency seats won. Section 47 (2:b and c) of the National Assembly Election Amendment Act of 2011 introduced the rule for the proportional contest, whereby a political party shall <i>arrange the candidates in order of preference from top to bottom, with a female or male candidate immediately followed by a candidate of the opposite sex; and include equal numbers of women and men</i> .	Yes	Local level and national	30%
Legislative provisions, local only					
Mauritius	Electoral law	<i>Three councillors of a Municipal City Council or Municipal Town Council shall be elected from each electoral ward under the simple majority system. Any group presenting more than two candidates in an electoral ward [for elections of councillors to Municipal City Council or Municipal Town Council] shall ensure that the candidates are not all of the same sex' (Local Government Act 2011, Article 11.6) and 'any group presenting more than two candidates at a Village council election shall ensure that not more than two-thirds of the group's candidates are of the same sex' (Local Government Act 2011, Article 12.6). In addition, a list of reserve candidates for the election of municipal city councillors, municipal town councillors or village councillors, for the purpose of filling any vacancy which may occur between two elections, shall not comprise 'more than two-thirds of persons of the same sex and ... not more than two consecutive candidates on the list shall be of the same sex' (Article 18.5b).</i>	Yes	Local level	30%
Namibia	Electoral law	In the election of any local authority council with ten or fewer members, party lists must include at least three female persons; in the case of a municipal council or town council consisting of 11 or more members, party lists must include the names of at least five female persons (Local Authorities Act, Article 6 (4)).	Yes	Local level	30%

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Table 2.2 National constitutional and legal instruments for women in decision-making in Commonwealth Africa (2016/17) (Continued)

Country	Instrument	Provision	Affirmative action	Level	Quota
Legislative provisions, local only					
Sierra Leone	Electoral law and Local Government Act	The 2004 Local Government Act created new local councils. Women's groups had advocated for special seats in the local councils, but the proposal failed. However, equal representation for women was granted at the lower level, for the Ward Development Committees, elected at town meetings: out of ten members, five must be women (Article 95 (2.c) of the 2004 Local Government Act).	Yes	Local level	Equal
South Africa	Local Government Act	In the elections for local councils, parties must seek to ensure that 50 per cent of the candidates on the party list are women (Local Government Act, Schedule 1, Section 11 [3]; Schedule 2, Sections 5 [3] and 17 [5]).	Yes	Local	50% (but not mandatory)
No constitutional or legislative provisions					
Botswana	None	None	N/A	N/A	N/A
Ghana	None	None	N/A	N/A	N/A
Malawi	None	None	N/A	N/A	N/A
Mozambique	None	None	N/A	N/A	N/A
Nigeria	None	None	N/A	N/A	N/A
Seychelles	None	None	N/A	N/A	N/A
Zambia	None	None	N/A	N/A	N/A
Source: Commonwealth Secretariat (2017), with source information from Commonwealth Africa constitutions					



2.2 Checklists

International, regional, subregional frameworks

- ✓ What international, regional and subregional instruments and protocols on women's political participation has the country ratified?
- ✓ What provisions do these make for women's representation and effective participation in the political process?
- ✓ Have these instruments and protocols been domesticated?

Constitution, national laws and policies on gender

- ✓ Does the national constitution explicitly promote gender equality?
- ✓ Is there a conflict or potential conflict between customary and/or religious laws and the constitution?
- ✓ Does the constitution provide for affirmative action for women in political decision-making?
- ✓ Does the constitution allow for independent candidates?
- ✓ Does the constitution provide for an independent body/bodies to promote gender equality? What role do these play in the conduct of elections?
- ✓ Has the country adopted a national gender policy? How effective has this been in mainstreaming gender?

References

- Commonwealth Observer Group (2014), *Malawian Tripartite Elections*, Commonwealth Secretariat, London.
- United Nations (2015), Millennium Development Goals Report 2015, available at: [http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf) (accessed January 2018).