

Constitutional and legal rights



Women in Matsatseng, Lesotho, demand their rights.

Photo: Malepota Mafeka

KEY POINTS

- Women and men gave their governments 67% and 65% respectively using the Citizen Score Card (CSC) that gauges citizen perceptions of progress made thus far. There is no SGDI score for this sector. South Africa scored highest and Swaziland lowest.
- Most SADC constitutions enshrine non-discrimination generally as well as non-discrimination based on sex.
- Ten SADC countries have undertaken constitutional reforms of one kind or the other that have a bearing on gender since the first Barometer in 2009. In 2013 Zimbabwe adopted a new constitution in which gender activists estimate they have achieved 75% of their demands.
- Twelve out of fifteen SADC countries now have affirmative action provisions in their constitutions, up from eight in 2009.
- Mauritius amended its constitution to make way for a quota for women

in the local elections held last year. This aspect opened the possibility of Mauritius signing the SADC Protocol on Gender and Development.

- Five SADC countries still have “claw back” clauses in their constitutions that undercut gender equality provisions. The recent constitutional Court ruling in Lesotho denying the daughter of a chief the right to succession underscores deeply entrenched patriarchal values.
- Abortion, sex work, marital rape and sexual minorities do not feature in the SADC Gender Protocol, but there is important progress on this front.
 - Leaders in Malawi and Mauritius have made progressive pronouncements on LGBTI rights.
 - Child marriage is an emerging issue which puts girls at the risk of violence and ill health much more than the boys.



TRENDS TABLE – CONSTITUTIONAL AND LEGAL RIGHTS

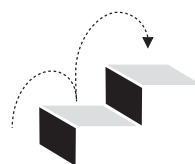
	2009	2010	2011	2012	2013	TARGET 2015
CONSTITUTIONAL REFORMS THAT HAVE A BEARING ON GENDER						
Countries undertaking constitutional reforms and review processes		Zambia Zimbabwe	Zambia Zimbabwe Mauritius	Zambia Zimbabwe Madagascar Seychelles Mozambique Namibia Tanzania	Angola DRC	The SADC Protocol on Gender and Development provides that by 2015, all countries shall endeavour to enshrine gender equality and equity in their Constitutions and ensure that these are not compromised by any provisions, laws or practices.
Constitution provides for affirmative action	8	9	9	10	13	15
Citizen Score Card	60%	60%	60%	58%	66%	100%

Ten SADC countries have undertaken constitutional reforms of one kind or the other that have a bearing on gender since the first Barometer in 2009. Thirteen out of fifteen SADC countries now have affirmative action provisions in their constitutions, up from eight in 2009. The major new additions, reported on extensively in successive barometers, are Madagascar, Mauritius, Zambia and Zimbabwe. Progressive provisions in constitutions are among the most important examples of the SADC Gender Protocol@work. As witnessed in Mauritius, amending the constitution to allow for affirmative action led to a fourfold increase in women's representation in local government in one election in December 2012. This marked a "point of no return" for the Indian Ocean Island.

On average, women and men gave their governments 67% and 65% respectively on constitutional and legal rights. This is an increase from 58%, the score both women and men gave in this category in 2012. For the most part citizens in all countries scored higher in this area in 2013 than in 2012, with South Africa increasing significantly to 79% for women and 78% for men compared to 2012 scores of 66% (women) and 67% (men). Citizens in DRC, Malawi, Namibia and Swaziland scored their countries at 60% or less – a change from last year when DRC, Mozambique, Swaziland and Tanzania sat in the bottom four.

Key contacts

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Next steps

- Bringing together the experiences of SADC countries in reviewing Constitutions and developing a model gender-aware Constitution for the SADC region.
- Advocacy and pressure to unify legal systems of formal and customary laws;
- The development of model constitutional provisions arising from this audit and the experiences of countries undergoing constitutional reviews;
- Increased pressure on member states to implement constitutional reforms in line with the SADC Protocol on Gender and Development;
- Increased civil society lobbying efforts on creating protections around difficult issues previously viewed as "at the far edge of the political agenda" such as abortion, sex work, marital rape and protection of LGBTI people.
- Institutions, programmes and mechanisms to enforce laws and policies on gender equality;
- Government action to tackle early childhood marriage;
- Specific measures to address harmful cultural and traditional practices; and
- Government action to address issues faced by widows as a specific group to protect them from discrimination and violations of their rights.

