

WOMEN, BUSINESS AND THE LAW 2016

GETTING TO EQUAL



COMMONWEALTH OF NATIONS

While Commonwealth countries have made great strides toward legal gender equality, many are held back by legacy legislation that discriminates against women. In particular, marital rape exemptions, gender-based job restrictions and unequal nationality laws continue to hinder women's economic participation across the organization.

89%

OF COMMONWEALTH COUNTRIES

HAVE AT LEAST ONE LAW THAT HINDERS WOMEN'S ABILITY TO WORK OR TO SET UP AND OPERATE A BUSINESS

GLOBAL FINDINGS

- ▶ Legal gender differences are widespread: 155 of the 173 economies (90%) covered have at least one law impeding women's economic opportunities.
- ▶ 27 of the economies covered (16%) exempt husbands from facing criminal charges for marital rape.
- ▶ In 100 economies (58%), women face gender-based job restrictions.
- ▶ In 46 economies (27%), married women cannot confer citizenship to non-national spouses in the same way as married men.
- ▶ Over the past 2 years, 65 economies carried out 94 reforms increasing women's economic opportunities.

SPOTLIGHT ON THE COMMONWEALTH

- ▶ 41 of the 46 Commonwealth countries covered (89%) have at least one law impeding women's economic opportunities. Canada, Malta, Namibia, New Zealand and South Africa have no legal differences between men and women in the areas measured.
- ▶ 35% of Commonwealth countries give husbands immunity from prosecution for marital rape.
- ▶ 43% of the Commonwealth countries covered have at least one restriction on women's employment.
- ▶ Women cannot confer citizenship to their non-national spouses in 37% of Commonwealth countries.
- ▶ Over the past 2 years, 16 Commonwealth countries carried out 23 reforms increasing women's economic opportunities.

HOW TO USE THIS DOCUMENT

This document aims to improve understanding of how legal and regulatory environments shape women's economic opportunities in Commonwealth economies. It also seeks to build awareness of gender differentiated laws and identify areas of reform in Commonwealth member states.

WOMEN, BUSINESS AND THE LAW

measures how laws, regulations and institutions differentiate between women and men in ways that affect women's ability to work or to set up and operate a business. It analyzes legal differences on the basis of gender in 173 economies, covering seven areas: accessing institutions, using property, getting a job, providing incentives to work, building credit, going to court and protecting women from violence.

THE MARITAL RAPE EXEMPTION

Marital rape and other forms of violence against women undermine women's economic empowerment by making it more difficult for women to get and keep jobs, affecting their performance at work and blocking access to other financial resources. However, 35% of Commonwealth countries have yet to remove marital rape exemptions from their laws, allowing husbands to escape criminal prosecution.

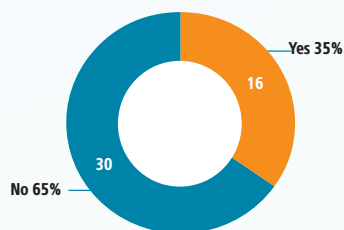
Women, Business and the Law finds that 35% of Commonwealth countries have the marital rape exemption codified in their laws, compared to only 9% of non-Commonwealth economies. Of the 16 Commonwealth countries that maintain the exemption, most exempt husbands from facing criminal charges except in very limited circumstances. In Antigua and Barbuda, Barbados, Dominica and Malaysia, for example, a spouse can only be prosecuted for rape when the couple is separated or divorced, where one of the spouses has filed for separation or divorce or where there is a protection order in place.

In several countries, marital rape is a crime only where the wife is of a certain age. India and Tanzania criminalized marital rape only where the wife is younger than 15; Bangladesh, Brunei Darussalam and Singapore only where she is younger than 13; and Sri Lanka where the wife is younger than 12.

Despite the prevalence of the marital rape exemption through the Commonwealth, progress is occurring. 16 Commonwealth countries have explicitly criminalized marital rape and 13 allow women to file criminal complaints against husbands for rape under general criminal law without excluding spouses from its application.

MARITAL RAPE IS STILL LEGAL IN 35% OF COMMONWEALTH COUNTRIES

Is the husband exempt from facing criminal penalties for rape?



In 2013 Tonga enacted a new law explicitly criminalizing marital rape, a reform other countries in the Commonwealth can follow to protect women from violence and enhance their economic opportunities

MARITAL RAPE LAWS ACROSS THE COMMONWEALTH

Marital rape is explicitly criminalized	Australia; Canada; Grenada; Guyana; Lesotho; Maldives; Malta; Mozambique; Namibia; New Zealand; Nigeria; Rwanda; Sierra Leone; South Africa; Tonga; Trinidad and Tobago
Marital rape is not explicitly criminalized, but a woman can file a complaint under general criminal law	Botswana; Cameroon; Fiji; Ghana; Mauritius; Pakistan; Papua New Guinea; Seychelles; St. Kitts and Nevis; St. Vincent and the Grenadines; Uganda; United Kingdom; Zambia
Husbands are exempt from facing criminal charges for marital rape (marital rape exemptions persist)	Antigua and Barbuda; The Bahamas; Bangladesh; Barbados; Belize; Brunei Darussalam; Dominica; India; Jamaica; Kenya; Malawi; Malaysia; Singapore; Sri Lanka; St. Lucia; Tanzania

THE ORIGIN OF THE MARITAL RAPE EXEMPTION

English jurist Matthew Hale's 1736 writings laid the foundation for the marital rape exemption in England. Hale believed that a woman consented to all future sexual intercourse upon marriage. Under his school of thought a husband raping his wife is a legal impossibility, as consent—the lack thereof a key element of the crime of rape—is assumed. This idea became part of common law in the United Kingdom and later known as the marital rape exemption, whereby husbands were exempt from ordinary rape laws and could not face criminal charges for the rape of their wives. Though it remained part of the law of England and Wales until 1991, the exemption lives on in many postcolonial Commonwealth countries to this day.

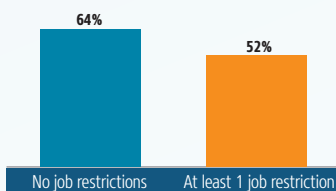
RESTRICTIONS ON WOMEN'S EMPLOYMENT

Almost half of the Commonwealth countries covered place legal restrictions on the jobs non-pregnant and non-nursing women can do. Such laws—though intended to protect women—hinder women's economic opportunities, reduce women's labor force participation, contribute to the gender wage gap and stunt economic growth.

REDUCING GENDER-BASED JOB RESTRICTIONS ALLOWS WOMEN TO CHOOSE THE OPPORTUNITIES WHICH ARE BEST FOR THEM, THEIR FAMILIES AND THEIR COMMUNITIES

THE WAGE GAP IS LIKELY TO BE SMALLER WHERE THERE ARE NO JOB RESTRICTIONS ON WOMEN'S WORK

Estimated earned income, female to male ratio



Source: *Women, Business and the Law* and World Development Indicators databases; World Economic Forum *Global Gender Gap Report 2014* (Table E3, p.66)

Note: The difference in the estimated earned income, female to male ratio (2014), in economies with no restrictions on women's work and economies with at least 1 restriction is statistically significant at the 1% level after controlling for 2014 GNI per capita. The regression analysis is based on 121 economies for which data are available. The regression results remain significant at the 5% level even after controlling for the proportion of seats held by women in national parliaments (2014) and the ratio of female to male enrollment in secondary education (2012). This statistical relationship should not be interpreted as causal.

IN 2014, JAMAICA REPEALED A RESTRICTION ON NIGHT WORK FOR WOMEN THAT HAD BEEN IN PLACE SINCE 1942

As the 19th century Industrial Revolution was underway in Great Britain, laws such as the 1844 Factories Act were passed to protect women from workplace abuse and dangers. Some laws limited the hours women could work while others prohibited women from doing certain jobs. Although intended to protect women, this type of legislation has hindered women's economic opportunities by keeping them out of more lucrative, male-dominated fields.

While many restrictions on women's employment have been removed throughout the Commonwealth, 20 countries still have at least one restriction in the areas covered by *Women, Business and the Law*. In Belize and Dominica, women are prohibited from working at night in certain sectors, such as mining, manufacturing, construction and transport. In Pakistan, women are prohibited from working in underground mines and near cotton-openers in factories. And in Mozambique, women are prohibited from working in jobs deemed "harmful to their health or reproductive function."

WHERE WOMEN FACE JOB RESTRICTIONS IN COMMONWEALTH COUNTRIES

Job	Economies	Number
Mining	Bangladesh; Belize; Cameroon; Dominica; Fiji; India; Lesotho; Malaysia; Nigeria; Pakistan; Papua New Guinea; Sierra Leone; Sri Lanka; St. Vincent and the Grenadines; Swaziland	15
Factories	Bangladesh; Belize; Cameroon; Dominica; Guyana; India; Jamaica; Malaysia; Nigeria; Pakistan; Sri Lanka; St. Vincent and the Grenadines; Swaziland	13
Construction	Belize; Cameroon; Dominica; Malaysia; Nigeria; St. Vincent and the Grenadines; Swaziland	7
Jobs deemed hazardous	Bangladesh; India; Mozambique; Pakistan	4
Jobs requiring lifting weights above a certain threshold	Cameroon; Guyana; India	3
Metalworking	Cameroon; India	2
Jobs deemed morally inappropriate	Cameroon; India	2
Jobs deemed arduous	Cameroon; Papua New Guinea	2

UNEQUAL NATIONALITY LAWS

Nationality laws that are discriminatory towards women are widespread: 37% of Commonwealth countries do not allow women to confer citizenship to their non-national spouses in the same way as men, compared to 23% of non-Commonwealth economies.

Many Commonwealth countries adopted colonial-era nationality laws that granted only men the ability to pass citizenship to their spouses. These provisions have since been repealed in the United Kingdom; however, *Women, Business and the Law* finds that today, more than one-third of economies with discriminatory nationality laws around the world are Commonwealth member states. This inability to pass on nationality can have severe economic consequences for women, including restricted access to employment or important social services such as education and healthcare.

Of the 17 Commonwealth countries where women cannot confer citizenship to their non-national spouses in the same way as men, *Women, Business and the Law* finds that most do not allow women to confer citizenship at all. In a few countries—such as St. Lucia and St. Vincent and the Grenadines—there are legal avenues for women to confer citizenship to their non-national spouses; however, they face additional legal hurdles or levels of scrutiny that men do not face when conferring citizenship to their non-national wives. In Ghana, for instance, a woman cannot confer citizenship to her non-national husband unless he permanently resides in Ghana and, if required by the authority, proves the marriage was entered into in good faith.

LEGAL REFORM IMPROVES WOMEN'S ECONOMIC OPPORTUNITIES

- ▶ Lower gender equality is associated with fewer girls attending secondary school relative to boys, fewer women working or running businesses and a wider gender wage gap
- ▶ Research has shown that laws that discriminate against women significantly decrease female labor force participation and undermine GDP growth
- ▶ Gender gaps in women's entrepreneurship and labor force participation account for estimated income losses of 27% in the Middle East and North Africa, 19% in South Asia, 14% in Latin America and the Caribbean and 10% in Europe

FOR MORE INFORMATION, VISIT:

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This analysis includes the 46 economies covered by Women, Business and the Law 2016: Getting to Equal that are also members of the Commonwealth of Nations: Antigua and Barbuda, Australia, Bahamas, Bangladesh, Barbados, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Dominica, Fiji, Ghana, Grenada, Guyana, India, Jamaica, Kenya, Lesotho, Malawi, Malaysia, Maldives, Malta, Mauritius, Mozambique, Namibia, New Zealand, Nigeria, Pakistan, Papua New Guinea, Rwanda, Seychelles, Sierra Leone, Singapore, South Africa, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Uganda, United Kingdom and Zambia. Data for Cyprus, Kiribati, Samoa, Solomon Islands and Vanuatu was added to the dataset after publication. No data is available for Nauru or Tuvalu.

