

## 2 Thematic analysis

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This chapter presents an overview of women’s discrimination in the four key dimensions of the Social Institutions and Gender Index (SIGI): “Discrimination in the family”, “Restricted physical integrity”, “Restricted access to productive and financial resources, and “Restricted civil liberties” in Southeast Asian countries. It examines discriminatory social institutions – formal and informal laws, social norms and practices – that limit women’s and girls’ rights and empowerment over their life course. The chapter also seeks to provide policy makers with the necessary tools and evidence to design effective gender-responsive policies to tackle gender inequality in the four dimensions of the SIGI.

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## Introduction

The Social Institutions and Gender Index (SIGI), which measures gender-based discrimination in social institutions, covers four dimensions spanning major socio-economic areas that affect women's and girls' entire lifetimes. The "Discrimination in the family" dimension captures social institutions that limit women's decision-making power and undervalue their status in the household and the family. The "Restricted physical integrity" dimension focuses on social institutions that increase women's and girls' vulnerability to multiple forms of violence and limit their control over their bodies and reproductive autonomy. The "Restricted access to productive and financial resources" dimension concentrates on women's restricted access to and control over essential productive and economic resources and assets. The "Restricted civil liberties" dimension looks at restrictions on women's access to, and participation and voice in, the public and political spheres. Each dimension builds on four indicators that provide a combined assessment of gender-based discrimination in laws, practices and attitudes.

This chapter is divided into four sections that cover each dimension of the SIGI. For each dimension's indicators, the chapter provides a detailed analysis of the current state of discrimination faced by women and girls, the progress achieved since the last edition of the SIGI in 2014, and the challenges that remain in Southeast Asian countries.

## Discrimination in the family is the most challenging issue in the Southeast Asian region

Gender equality in the private and family spheres is paramount in order to achieve women's empowerment in other key areas. However, discriminatory social institutions in particular challenge women's capacity to contribute as equal actors in the domestic and public spheres. For example, traditional gender stereotypes restrict women and girls to household tasks and caring responsibilities, which prevents them from pursuing professional careers, entering the job market, or assuming leadership roles in the community or society in general. Rigid gender norms within the family result in girls marrying before the age of 18 years, having an inferior status and less decision-making power at home, being economically dependent on men, and enduring violence and harassment in the private sphere. Traditional gender stereotypes do not remain confined to the home and are frequently replicated at the community level, as well as across other institutions such as schools, the workplace and other governance systems more broadly.

"Discrimination in the family" is the most challenging dimension of the SIGI in the Southeast Asian region. The region has a medium level of discrimination in this dimension, with a SIGI score of 47; this is in line with the global average of 44, but is 21 points above the Organisation for Economic Co-operation and Development (OECD) average. The 11 Southeast Asian countries scored in this dimension exhibit values ranging from low to high levels of discrimination. Viet Nam is the region's best performer in this dimension, with a score of 23, thanks to a strong legal framework granting women the same rights as men in the family sphere. In the Southeast Asian region, responsibility for household tasks and caregiving is the most pervasive and acute form of discrimination against women in the family sphere. The region's average score in this indicator is 57, exceeding the average score of 49 for OECD member countries.

## Policy options to address discrimination in the family

- Establish 18 years as the minimum legal age for marriage for girls and boys, without any legal exceptions, in order to comply with international and regional legal frameworks aimed at eliminating the harmful practice of child marriage.

*In 2019, the Constitutional Court of **Indonesia** amended the Marriage Act and raised the minimum legal age for marriage to 19 years for women (Government of Indonesia, 2020<sup>[1]</sup>).*

- Adopt comprehensive strategies at the national and/or subnational levels to eliminate child marriage, and mainstream child marriage prevention programmes into other government initiatives, particularly in the areas of education, health and employment.

*In 2018, the **Cambodian** government officially launched the Provincial Action Plan to Prevent Child Marriage and Teenage Pregnancy in Ratanak Kiri Province 2017-2021 to address child marriage and teenage pregnancy in a province with high prevalence rates of both issues (Government of Cambodia, 2019<sup>[2]</sup>).*

- Stipulate legal provisions recognising women's equal right to be the head of the household, and guarantee equal parental authority.
- Provide better access to childcare facilities and care for the elderly, which will reduce the time that women spend on these activities, resulting in an increase in women's economic empowerment, leadership and leisure time.

*The **Malaysian** government has introduced financial incentives to encourage employers to grant on-site childcare facilities for employees' children. For instance, in 2018, the government established 50 childcare centres, while private sector employers can receive a double tax deduction which will cover costs related to the provision and maintenance of childcare facilities in the workplace (Government of Malaysia, 2019<sup>[3]</sup>).*

- Harmonise civil, family, customary and religious laws to ensure that women have the same rights as men to initiate and finalise a divorce or annulment and be the legal guardians of their children after divorce.

*In **Malaysia**, the government amended the Law Reform (Marriage and Divorce) Act in 2017. The amendment incorporates the right of a spouse who has converted to Islam the converting spouse to file a petition for divorce to dissolve the civil marriage (Government of Malaysia, 2019<sup>[3]</sup>).*

- Repeal discriminatory laws that prevent women from remarrying for a specified period of time after divorce.
- Prohibit discrimination against widows and daughters in inheritance laws. Legal frameworks should explicitly allow women to inherit land and non-land assets on an equal basis with men.
- Strengthen protection mechanisms by prohibiting disinheritance of the surviving spouse and criminalising dispossession or "inheritance grabbing".

### **Greater efforts are needed to end the practice of child marriage in Southeast Asian countries by 2030**

Child marriage is a harmful practice and a serious violation of a child's human rights, with multiple human development consequences. This discriminatory practice has disproportionate, immediate and long-term effects on girls' education, physical integrity, health and emotional development. The international community has stressed the importance of ending this harmful practice in numerous international

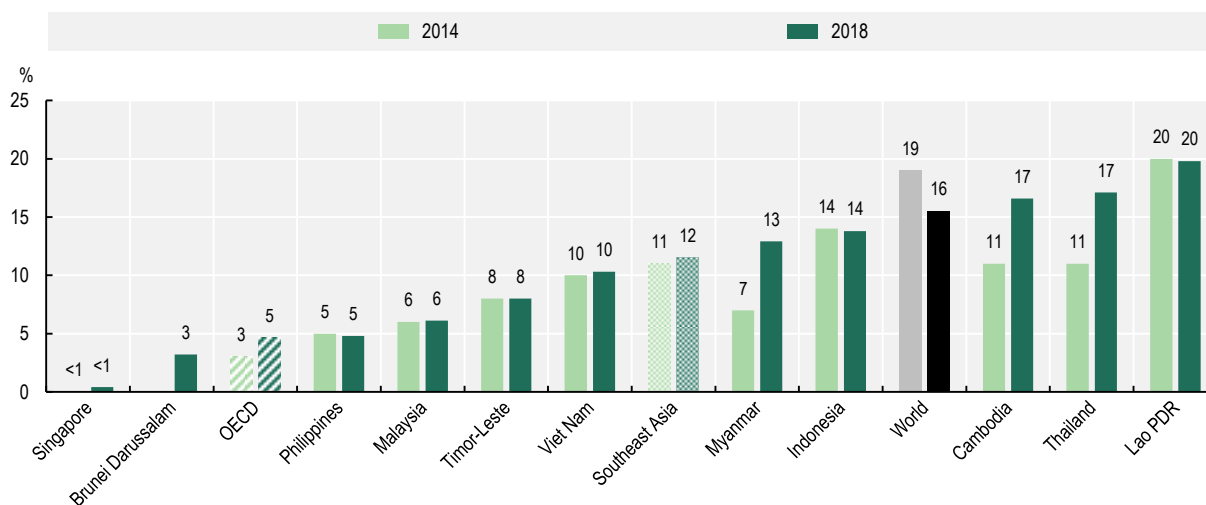
frameworks. For instance, the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages establishes that all States Parties should take “legislative action to specify a minimum age of marriage” (Arts. 1, 2 and 3) (United Nations, 1962<sup>[4]</sup>). Furthermore, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) states “the betrothal and the marriage of a child shall have no legal effect” (Art. 16 (2)) (United Nations, 1979<sup>[5]</sup>). More recently, the 2030 Agenda for Sustainable Development aims to “eliminate all harmful practices, such as child, early and forced marriage” under Sustainable Development Goal (SDG) target 5.3 (United Nations, 2016<sup>[6]</sup>). In addition, Association of Southeast Asian Nations (ASEAN) countries have committed to the 2013 Declaration on the Elimination of Violence against Women and Elimination of Violence against Children in ASEAN, which recognises the importance of reinforcing regional efforts to protect children from all forms of violence, including child marriage (ASEAN, 2013<sup>[7]</sup>).

Southeast Asian governments have made progress towards ending child marriage. In 2019, ASEAN governments took a strong stance against child, early and forced marriage by organising a regional forum with the United Nations Children’s Fund (UNICEF), the United Nations Population Fund (UNFPA), and Plan International to recognise the multiple challenges of tackling this discriminatory practice and mobilise various stakeholders to accelerate actions towards its elimination by 2030 (ASEAN, 2019<sup>[8]</sup>). Child marriage is prohibited in six countries<sup>1</sup> in the Southeast Asian region. Since the last edition of the SIGI in 2014, Indonesia reformed the Marriage Act in 2019; this raised the minimum legal age for marriage to 19 years for girls, with parental consent. Prior to this amendment, the Marriage Act allowed girls to legally marry at the age of 16 years and boys to legally marry at the age of 19 years, with parental consent (Government of Indonesia, 2020<sup>[11]</sup>). Furthermore, five countries<sup>2</sup> have implemented public measures to generate social support for the enforcement of laws on the minimum legal age for marriage. In Lao PDR, for instance, the 2016-2020 National Plan of Action on Mothers and Children aims to curb child marriage, including by training individuals to disseminate information on child marriage at the district and provincial levels (CRC, 2017<sup>[9]</sup>). In addition, four countries<sup>3</sup> stipulate legal sanctions for those facilitating the marriage of boys and girls who are under the minimum legal age for marriage. In Singapore, a special marriage licence is required for those wishing to marry under the age of 18 years, and they are required to attend a mandatory marriage preparation programme. Individuals who enter themselves or their children into marriage are convicted and punished, with no more than three years’ imprisonment and a fine not exceeding SGD 5 000 (Singapore dollars). The same punishment is valid for any Registrar who issues a marriage licence outside the laws laid down in the Women’s Charter (Government of Singapore, 2009<sup>[10]</sup>).

The Southeast Asian region has relatively low levels of child marriage compared to the global average and other developing regions. On average, 11.6% of women in the region between the ages of 15 and 19 years are married, divorced or widowed, compared with 16% globally and 23% in Southern Asia. At the regional level, this ranges from less than 1% in Singapore to 20% in Lao PDR (Figure 2.1). Between 2014 and 2018, the proportion of child marriage among girls increased slightly, from 10.6% to 11.6%.

## Figure 2.1. Girl child marriage in Southeast Asia remains relatively low compared with the rest of the world

Share of women aged 15-19 years who have been or are still married, divorced, widowed or in an informal union, 2014 and 2018



Source: (OECD Development Centre/OECD, 2019<sup>[11]</sup>), *Gender, Institutions and Development Database*, <https://doi.org/10.1787/ba5dbd30-en>.

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Legal loopholes still undermine positive advances in efforts to protect girls' rights and end child marriage by 2030. In five countries,<sup>4</sup> girls may still marry under the age of 18 years in exceptional cases. In Cambodia, for instance, if one of the parties has attained the age of majority of 18 years and the other party is a minor who is at least 16 years of age, the parties may marry with parental or judicial consent (Government of Cambodia, 2007<sup>[12]</sup>). The legal frameworks of Timor-Leste and Thailand allow girls to marry under the age of 18 years, which translates into high levels of discrimination in this indicator. In Timor-Leste, the minimum legal age for marriage is set at 16 years for both sexes and for all groups of persons, despite the age of majority being set at 17 years (Government of Timor-Leste, 2011<sup>[13]</sup>). In Malaysia, either civil or sharia law can determine the minimum legal age for marriage. Under sharia law, the minimum legal age for marriage is 16 years for females and 18 years for males, with an exception that permits Muslim girls and boys under these ages to marry with the permission of the Sharia Court (Government of Malaysia, 2006<sup>[14]</sup>).

The persistence of discriminatory practices and customary laws in the Southeast Asian region compromises the region's efforts to eradicate child marriage. In all Southeast Asian countries, customary laws and traditional practices allow and encourage child marriage. In Indonesia, for instance, the practice of child marriage is largely influenced by socio-economic and cultural factors such as poverty, economic dependency, financial incentives and dowry practices, as well as a lack of access to education and health services (UNICEF, 2016<sup>[15]</sup>). Similarly, in Thailand, the "bride price" practice is common and pressures women and their families into accepting early and child marriages (Laiphrakpam and Aroonsrimorakot, 2016<sup>[16]</sup>). In Malaysia, a high number of Muslim teenagers are reported to marry just before reaching the minimum legal age for marriage. This is often due to early unintended pregnancies and religious taboos around sex outside of marriage, whereas in poorer communities, many girls often get married at a young age to ensure their families' economic survival (Girls Not Brides, n.d.<sup>[17]</sup>).

### ***Legislation on equal household responsibilities should be strengthened to foster gender equality in the home***

Gender equality in the family sphere is a fundamental stepping stone to foster women's empowerment in other areas and plays a key role in the well-being of families and societies. Women's and men's equal rights and responsibilities in the family sphere are enshrined in international treaties and benefit from a wide international consensus. The CEDAW affirms women's and men's equal rights and responsibilities as parents (Art. 16 (c)) and acknowledges that women have the same rights and responsibilities as men concerning guardianship, wardship and trusteeship of children (Art. 16 (g)) (United Nations, 1979<sup>[5]</sup>). In addition, the Beijing Declaration and Platform for Action promotes men and women sharing equal responsibility for the family and considers equality's critical role in their well-being and in that of their families (Art. 15) (Fourth World Conference on Women, 1995<sup>[18]</sup>). SDG target 5.4 advocates "the promotion of shared responsibility within the household and the family" and highlights the need to "recognize and value unpaid care and domestic work" (United Nations, 2016<sup>[6]</sup>). Furthermore, regional commitments include the adherence of ASEAN countries to the 2010 Ha Noi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children. Governments specifically aim to strengthen "family resilience – as the basic units of society – and the capacity of families in meeting new challenges arising from rapid social economic and environmental/climate changes through the establishment of an ASEAN network for family development" (ASEAN, 2010<sup>[19]</sup>).

The majority of Southeast Asian countries have comprehensive legal frameworks that address women's rights regarding parental authority. Eight countries<sup>5</sup> grant wives and husbands equal parental authority and the same rights and responsibilities with regard to their children during marriage. In Viet Nam, the 2014 Law on Marriage and Family proclaims equal rights and obligations between husbands and wives, as well as between parents. In this respect, married couples must share family work and jointly agree on their domicile. Both parents share the obligation to meet their family's essential needs, to jointly care for and raise their children and to act as their legal guardians regardless of their marital status (Government of Viet Nam, 2014<sup>[20]</sup>). Similarly, in Timor-Leste, parental authority belongs to both parents, whether married or not, and either can be granted the right to be the legal guardian of their children (Government of Timor-Leste, 2011<sup>[13]</sup>). In other countries, plural legal systems complicate the application of equal parental authority for mothers and fathers where customary or religious laws contradict civil law and discriminate against women.

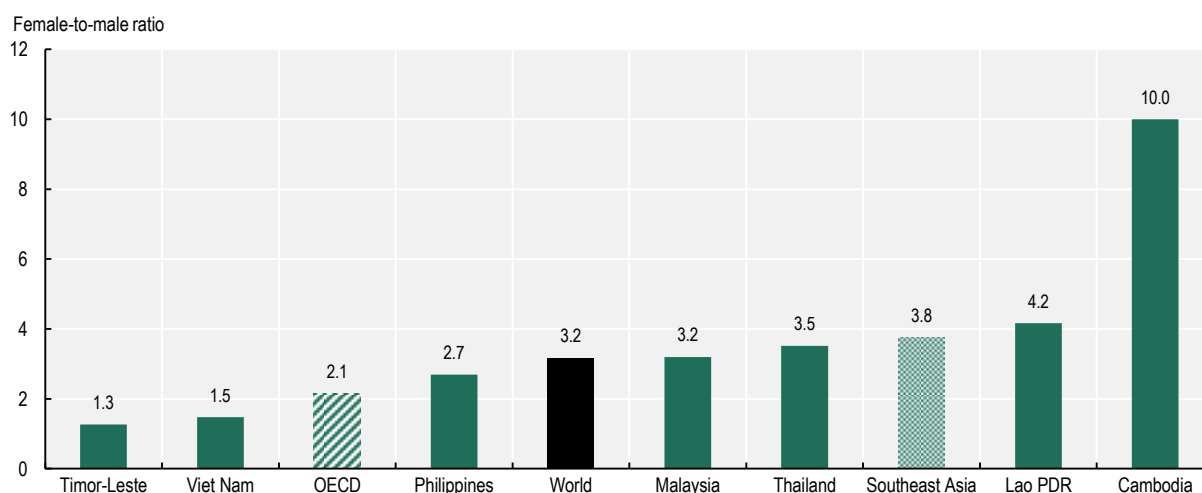
There are only three Southeast Asian countries where the law does not recognise women's equal status in the family sphere. Women's status in the private sphere remains subordinate to their husband's authority in Brunei Darussalam, Indonesia and Malaysia. In these countries, the man is solely recognised as the head of household, and/or women are required by law to obey their husbands. For instance, Indonesia's Civil Code explicitly establishes that men are the heads of households, and women must obey their husbands and are obliged to live wherever their husbands deem fit (Government of Indonesia, 1847<sup>[21]</sup>). Furthermore, in Brunei Darussalam, there are legal consequences if a wife disobeys her husband. Therefore, a wife will lose her husband's financial support if she unreasonably refuses to obey his lawful wishes or commands – for instance, if she refuses sexual relations with her husband, if she leaves her husband's home against his wishes, or if she refuses to move with her husband to another home or place without any valid reason (OECD Development Centre, 2019<sup>[22]</sup>). In Malaysia, women who wilfully disobey any order lawfully given by their husbands commit an offence and are punished with a fine (Government of Malaysia, 1984<sup>[23]</sup>).

Women in the Southeast Asian region continue to assume the bulk of unpaid care and domestic work. In 2014, women spent, on average, 2.9 times more time on unpaid care and domestic work than men did, including raising children, caring for sick or elderly family members, and managing household tasks. Since the third edition of the SIGI in 2014, little progress has been made in reducing the disparity between women's and men's care responsibilities. In 2018, women spent, on average, 3.8 times as long as men on

unpaid care and domestic work in the seven countries<sup>6</sup> for which data are available. This gap is largest in Cambodia, where women spend approximately three hours on this work for every 18 minutes spent by men (Figure 2.2). The gender gap in time spent on domestic work reflects traditional societal views about women's roles in the family sphere, which translate into the roles that society accepts for women in the public sphere. Indeed, in four Southeast Asian countries<sup>7</sup> for which data are available, 45% of the respondents declare that children will suffer when a mother works for pay outside the home.

## Figure 2.2. The distribution of unpaid care and domestic work between women and men remains unequal across Southeast Asian countries

Female-to-male ratio of unpaid care and domestic work, 2018



Note: Data are missing for Brunei Darussalam, Indonesia, Myanmar and Singapore. Global, OECD and subregional averages are calculated on the sample of countries for which data are available.

Source: (OECD Development Centre/OECD, 2019<sup>[11]</sup>), *Gender, Institutions and Development Database*, <https://doi.org/10.1787/ba5dbd30-en>.

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Discriminatory practices within the household are prevalent across some Southeast Asian countries, thus limiting women's ability to exercise their parental authority. In practice, social expectations of the division of responsibilities within the family show a strong preference for traditional gender roles. Men are expected to be the main breadwinners, whereas women are primarily expected to take care of the family home and to look after their children. In Cambodia, for instance, discriminatory social norms consider women to be less competent than men in regard to family finances and decision making, and thus they have less power than men to make decisions about their family (STAR Kampuchea and ILC, 2013<sup>[24]</sup>). Similarly, in Viet Nam, patriarchal attitudes persist in practice, with husbands being heads of households and wives being responsible for housework and childcare under the subordination of their husbands (Jones et al., 2014<sup>[25]</sup>).

### ***Divorce rights are guaranteed in the majority of Southeast Asian countries, but child custody practices offer a mixed picture***

Ensuring women's right to divorce contributes to their empowerment and especially to their ability to evade violent partners without having their parental authority threatened. Although women's entitlement to equality on and after divorce is not considered a human right, international frameworks have acknowledged

it. For instance, the CEDAW calls on States Parties to eliminate discrimination against women at the inception of and during marriage, and at its dissolution by divorce (Art. 16 (1)) (United Nations, 1979<sup>[5]</sup>).

The majority of countries in the Southeast Asian region grant women and men equal rights to initiate divorce. Divorce laws in eight Southeast Asian countries<sup>8</sup> put women on an equal footing with men. For example, in Viet Nam, the 2014 Law on Marriage and Family proclaims equal rights for husbands and wives to file for divorce and allows for filing by mutual consent or at the request of one spouse. In addition, domestic violence is considered valid grounds for divorce (Government of Viet Nam, 2014<sup>[20]</sup>). Decree No. 126/2014/ND-CP further protects women by stipulating that the practice of forcing children to live with their father after a divorce, or forcing the mother to return wedding gifts to her ex-husband's family, are prohibited (Government of Viet Nam, 2014<sup>[26]</sup>). In Thailand, previously, only husbands could divorce their wives for adultery, but the Civil and Commercial Code has been amended to give both spouses equal rights when it comes to the right to divorce (Government of Thailand, 1925<sup>[27]</sup>).

Women and men continue to share legal parental guardianship after divorce in the majority of countries<sup>9</sup> in the Southeast Asian region. In Cambodia, in instances of divorce, the spouses may agree on custody of their child or children and if an agreement cannot be reached, a court will decide custody as part of the divorce proceedings (Government of Cambodia, 2007<sup>[12]</sup>). Similarly, in Thailand, both spouses are expected to contribute to the maintenance of their children, and women and men have equal rights to guardianship following divorce (Government of Thailand, 1925<sup>[27]</sup>). In Lao PDR, parental rights continue after divorce, in which case child custody is jointly determined by both parents or is awarded to either parent by the court if an agreement cannot be reached between them (OECD Development Centre, 2019<sup>[28]</sup>).

However, obstacles remain concerning women's ability to exercise their right to file for divorce. In particular, women's right to divorce is weakened by restrictions that limit when they can legally file for divorce. For example, the law may prohibit women from filing for divorce when they are pregnant,<sup>10</sup> or only allow women to demand a legal separation or petition the nullity of a marriage under certain circumstances.<sup>11</sup> In the Philippines, infidelity, physical abuse and abandonment are grounds for legal separation, but do not constitute causes for annulment of a marriage (Government of the Philippines, 1987<sup>[29]</sup>). This means that if a woman's husband has committed one of these acts, she must remain legally married to him. A bill to legalise divorce on the grounds of "irreparable breakdown of the marriage and total non-performance of marital obligations" failed to pass in the 15th (2010-13) and 16th (2013-16) Congress. The Philippine Commission on Women (PCW) lobbied for a divorce law to be passed in the 17th Congress (2016-19). However, progress was made in 2020 as the Committee on Population and Family Relations of the Philippine House of Representatives approved the Marriage Dissolution Bill (Library of Congress, n.d.<sup>[30]</sup>). In other countries,<sup>12</sup> the legal frameworks prohibit women from remarrying within a specified period after divorce. In Cambodia, under current legislation, a divorced woman may not remarry until 120 days have elapsed since the date of the dissolution or annulment of her previous marriage. The passing of the Civil Code in 2007 reduced the number of days from 300 to 120 (Government of Cambodia, 2007<sup>[12]</sup>).

Pervasive customary and religious practices continue to hinder women's right to file for divorce in only a few countries. In some Southeast Asian countries, civil legal frameworks may be subject to personal laws based on religious jurisprudence that sometimes contain discriminatory provisions against women and stipulate different divorce requirements for women and men. For instance, in some countries, men have the unilateral right to divorce repudiation without resorting to legal proceedings (*talaq*), whereas women are required to seek legal recourse and justify their decision in a court of law. In Singapore, while men have the right to divorce by pronouncing *talaq*, women can only obtain a divorce through breach of marriage or against specific grounds, such as if her husband has been imprisoned, is impotent, is insane, treats his wife with cruelty, or has more than one wife and did not receive approval for this (Government of Singapore, 1996<sup>[31]</sup>). In Malaysia, under the civil law, women have the same rights as men to initiate divorce. The 1976 Law Reform (Marriage and Divorce) Act provides that couples may seek a divorce and determine the terms of the divorce by mutual consent (Government of Malaysia, 2006<sup>[14]</sup>). However, under



the Islamic Family Law (Federal Territories) Act, the Sharia Court can order a divorce and permit a husband to pronounce a *talaq* in court. Conversely, women can only divorce their husbands on grounds based on the prescribed *ta'lik*,<sup>13</sup> including failure to provide financial maintenance, absence of the husband for a period exceeding four months, or on the grounds of violence against the wife (Government of Malaysia, 1984<sub>[23]</sub>).

Child custody practices offer a mixed picture across Southeast Asian countries. In countries where Islamic law is applied, the Sharia Court typically grants the mother the care and custody of children under a certain age. For instance, in Brunei Darussalam, the mother is vested with the custody of her children who are not *mumayyiz* (a child who has attained the age of being capable to differentiate a matter) upon divorce. While the law does not specify the age of children who are *mumayyiz*, it is defined as a child who is capable of forming his or her own views on a matter. However, a woman will lose custody of her children under the following circumstances: if she marries another man, if she exhibits bad behaviour, if she changes her place of residence with the intention of preventing the father from exercising the necessary supervision of the child, if she becomes an apostate, or if she neglects or abuses her children (Government of Brunei Darussalam, 2000<sub>[32]</sub>). In other countries, such as Thailand and Timor-Leste, male judges often give child custody to the father, whereas in practice the mother ends up being responsible for taking care of the child. Unlike other countries, Cambodia does not provide for the possibility of joint custody after divorce. Based on domestic jurisprudence, custody is generally granted to the mother. The parent who loses custody rights, however, maintains the right to be consulted on matters relating to the child's or children's well-being, including in relation to education and possible change of residency (OECD Development Centre, 2019<sub>[33]</sub>).

### ***The enforcement of inheritance rights is key to women's economic empowerment in Southeast Asian countries***

Equal inheritance rights are a key precondition for women's economic independence and empowerment. Women's equal inheritance rights are also closely linked with asset ownership and financial inclusion. Restricted inheritance rights, together with discriminatory practices, may result in an increase in the incidence of poverty among widows and daughters. The international community has acknowledged the importance of guaranteeing equal inheritance rights in various international declarations. For instance, the Beijing Declaration and Platform for Action calls on governments to undertake legislative and administrative reforms to give women and girls full rights to the inheritance of land and other property (para. 60 (f)), and to review national inheritance tax systems in order to eliminate any existing bias against women (para. 165 (f)) (Fourth World Conference on Women, 1995<sub>[18]</sub>). In addition, the General recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution) establishes the principle of equal treatment of surviving females and males, and prohibits the disinheritance of the surviving spouse (para. 53) (United Nations, 2013<sub>[34]</sub>). More recently, SDG target 5.A calls on all governments to “undertake reforms to give women equal rights to [...] inheritance” (United Nations, 2016<sub>[6]</sub>).

Women's and girls' inheritance rights are guaranteed by legislative frameworks, but the enforcement of these rights could be further strengthened. Nine countries<sup>14</sup> in the Southeast Asian region give female surviving spouses and daughters the same rights as their male counterparts to inherit land and non-land assets. Furthermore, almost all Southeast Asian countries<sup>15</sup> ensure that women have the same rights as men to make a will. However, the lack of properly enforced inheritance rights can have negative economic consequences for women. In the Southeast Asian region, only four countries<sup>16</sup> prohibit disinheritance of the surviving spouse and, among these countries, only Lao PDR and Viet Nam criminalise property dispossession or “inheritance grabbing”. For instance, in Viet Nam, disinheritance of surviving spouses is explicitly prohibited, including after remarriage, and property dispossession is criminalised in its many forms. Moreover, Decree No. 126/2014/ND-CP stipulates that the practice of dispossessing surviving

wives of their inheritance or of their wedding presents should be eliminated (Government of Viet Nam, 2014<sup>[26]</sup>).

Customary, religious or traditional practices or laws affect women's inheritance rights in multiple ways, thus limiting women's economic prospects given the region's large farming and agriculture sector. In 9 out of 11 countries<sup>17</sup> in the region, women and daughters face discrimination concerning inheritance rights. This is due in part to the legal recognition of customary laws concerning the family code, which in Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore and Thailand include discriminatory provisions against women's and girls' rights to inherit equal shares as men and boys. For example, in Brunei Darussalam, according to sharia law, daughters are awarded one-half of what sons are awarded in the distribution of family inheritance. Additionally, a female surviving spouse will inherit one-quarter of her deceased husband's property if there are no children and one-eighth if there are children (Government of Brunei Darussalam, 2011<sup>[35]</sup>). Even where the legal code does not discriminate, discriminatory practices such as son preference in some countries mean that women and girls may receive a smaller share of the inheritance than their male relatives, or none at all. For example, in Lao PDR, in patrilineal ethnic groups – such as the *Hmong*, *Khmu*, *Phounoy*, *Makong*, *Mien* and *Lolo* – sons inherit the land and parental home, and the son caring for the parents until their death receives a larger share of the inheritance, as well as the house. *Khmu* daughters are altogether excluded from inheritance if they have married and left the house, and *Makong* widows are also excluded from any inheritance because all rights are passed on to their children (Ministry of Justice Law Research; International Cooperation Institute; UNDP, 2011<sup>[36]</sup>).

In practice, women's right to inheritance is also affected by the low rate of registration of customary marriages and by the habitual transmission of property to the eldest surviving male heir in the case of customary marriages, if the surviving spouse is a woman. Moreover, the traditional inheritance system regulated by matrilineal and patrilineal lines is still dominant across Southeast Asian countries, especially in rural areas. The practice of widow inheritance, a custom dictating that a man's widow should be cared for by her brother-in-law, continues to be prevalent in some countries. This custom has been criticised for objectifying women as property to be inherited, rather than beneficiaries capable of inheriting from the estates of their husbands.

## Restricted physical integrity is the dimension in which the Southeast Asian region scores the best

Women's control over their own bodies plays a significant role in increasing their agency and empowerment. In the Southeast Asian region, various issues limit women's right to physical integrity, including the numerous forms of violence against women and the legal frameworks that limit women's reproductive autonomy. Restrictions on physical integrity prevent women from pursuing their goals in the public and private spheres, such as through education and employment.

"Restricted physical integrity" is the dimension in which the Southeast Asian region scores the best among the four dimensions of the SIGI, with a relatively low level of discrimination. The average SIGI score in this dimension is 24 across nine countries<sup>18</sup> for which data are available, compared with an average of 12 for OECD member countries and a global average of 22. Cambodia is the region's best performer in this dimension, with a score of 14. The "Violence against women" indicator is the most significant issue within the "Restricted physical integrity" dimension in the Southeast Asian region. The region's average score in this indicator reaches 46, compared with 29 in OECD member countries and 40 at the global level.

## Policy options to guarantee women's physical integrity

- Provide all women with legal protection from all forms of gender-based violence – notably new forms of violence such as online harassment and stalking – in all places, such as public spaces and schools.

*In Lao PDR, in 2015, the National Assembly passed the Law on Preventing and Combatting Cyber Crime. The law establishes legal provisions to protect women and girls from being victims of cyber pornography (Government of Lao PDR, 2019<sup>[37]</sup>).*

- Ensure the effective enforcement of the law. Ensure that women can seek legal redress under the formal justice system and that this right cannot be taken away by customary, religious or traditional practices or laws. Ensure that protection and support services are available for victims of gender-based violence and facilitate women's access to the law enforcement and justice systems.

*In Viet Nam, the Criminal Procedure Code was amended in 2015 to provide adequate protection mechanisms to victims and survivors of gender-based violence as well as other persons involved in legal actions. The amendments aim to put in place mechanisms to guarantee the security of the denunciator, witnesses and victims in order to protect them against further harm (Government of Viet Nam, 2019<sup>[38]</sup>).*

- Policies and interventions must adopt a multisectoral approach to ending violence against women. For example, supporting women's access to economic empowerment opportunities can enhance their status within the household or increase their ability to leave abusive relationships.

*In 2017, the Government of Timor-Leste approved the second phase of the National Action Plan Towards Gender-Based Violence. The National Action Plan aims to strengthen the multisectoral approach, which was established during the first stage of the implementation of the National Action Plan, and it also aims to reinforce the continued joint efforts between civil society organisations (CSOs) and the government to eliminate violence against women. For instance, the government, in partnership with CSOs, has set up "Safe Rooms" to provide a secure place and specialised support services to victims and survivors of gender-based violence (Government of Timor-Leste, 2019<sup>[39]</sup>).*

- Include female genital mutilation modules in national surveys systematically, in order to monitor its use or prevalence.

*In Indonesia in 2013, the National Institute of Health Research and Development of the Ministry of Health carried out the first nationally representative household survey on the prevalence of female genital mutilation and cutting. The survey on female genital mutilation and cutting was incorporated into the Basic Health and Research Survey conducted in 33 provinces and 497 cities across the country (UNICEF, 2013<sup>[40]</sup>).*

- Criminalise the practice of female genital mutilation and establish penalties for all perpetrators, including parents and medical practitioners.
- Adopt comprehensive strategies to help shift son-biased social norms. Enact non-discriminatory legislation to address the root causes of son preference: grant women and men the same legal status, rights and responsibilities in the family and society, particularly in areas such as marriage, inheritance, dowries, family headship or parental authority.
- Adopt a human rights-based approach to sexual and reproductive health and rights that safeguards the reproductive autonomy of women and acknowledges that women's decisions about their own bodies are personal and private. Enable women who wish to do so to obtain legal abortions within defined gestational periods.

- Ensure that all women have affordable and secure access to high-quality and culturally accepted family planning and health information and services. Public/private partnerships can broaden access through, for example, subsidised family planning service delivery by private entities and publicly funded voucher programmes or information campaigns.

### ***Violence against women still represents a significant challenge in the Southeast Asian region***

Violence against women constitutes a grave violation of human rights and restricts women's ability to maintain political, economic, social and cultural rights and freedoms on an equal basis with men. Violence against women is widely recognised as a fundamental human rights violation. This was formalised in the CEDAW General recommendation No. 19: Violence against women, which obliges States Parties to “ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity”, and to provide “appropriate protective and support services” to victims (United Nations, 1992<sup>[41]</sup>). In addition, ASEAN countries have also accelerated actions to guarantee putting an end to violence against women. The 2013 Declaration on the Elimination of Violence against Women and the Elimination of Violence against Children in ASEAN calls on ASEAN governments to “strengthen and, where necessary, enact or amend national legislations for the elimination of violence against women and violence against children, and to enhance the protection, services, rehabilitation, education and training, recovery and reintegration of victims/survivors” (ASEAN, 2013<sup>[7]</sup>). In addition, the 2016-25 ASEAN Regional Plan of Action on the Elimination of Violence against Women is aimed at institutionalising elimination of violence against women policies and sustained support across pillars and sectors. It urges ASEAN Member States to endorse the following strategies: “devising effective coordinated strategies to prevent violence; protecting victims/survivors of violence; developing and strengthening legal framework; strengthening capacity of individuals and institutions; collecting data and monitoring the efforts through periodic review” (ASEAN, 2016<sup>[42]</sup>).

Southeast Asian countries are increasingly making efforts to promote the elimination of violence against women. Seven Southeast Asian countries<sup>19</sup> have established a national action plan or policy to support the implementation of legislation addressing violence against women. For instance, the second National Action Plan to Prevent Violence Against Women 2014-2018 is the pivotal policy framework to eliminate violence against women and girls in Cambodia. This plan identified three priority issues: domestic violence, rape and sexual violence, and violence against women with increased risk (Government of Cambodia, 2014<sup>[43]</sup>). However, the prohibition of mediation in all cases of violence against women is largely missing in Southeast Asia, while the Philippines prohibits particular local governments officials or judges from directing the victim or survivor of domestic violence and offender to alternate modes of dispute resolution such as conciliation or mediation (Government of the Philippines, 2004<sup>[44]</sup>). Furthermore, six countries<sup>20</sup> have legal exceptions in the form of customary, religious or traditional practices or laws that reduce penalties for domestic violence. Since the last edition of the SIGI in 2014, five Southeast Asian countries<sup>21</sup> have amended laws or established new legislation addressing violence against women. For instance, in December 2014, Lao PDR passed a law on the prevention and elimination of violence against women and children, which encompasses domestic and public violence, including in educational institutions, workplaces and alternative care settings. The law specifies that no custom, tradition or belief can be invoked to justify this type of violence and highlights the multifaceted nature of violent acts (physical, sexual, psychological and economic), listing polygamy and unequal wages as forms of psychological and economic violence against women, respectively (Government of Lao PDR, 2014<sup>[45]</sup>).

Legislation on domestic violence protects women in the Southeast Asian region. Domestic violence is criminalised in nine Southeast Asian countries,<sup>22</sup> and the legal frameworks of six countries<sup>23</sup> protect women from physical, sexual, psychological and economic violence, and cover abuse from family

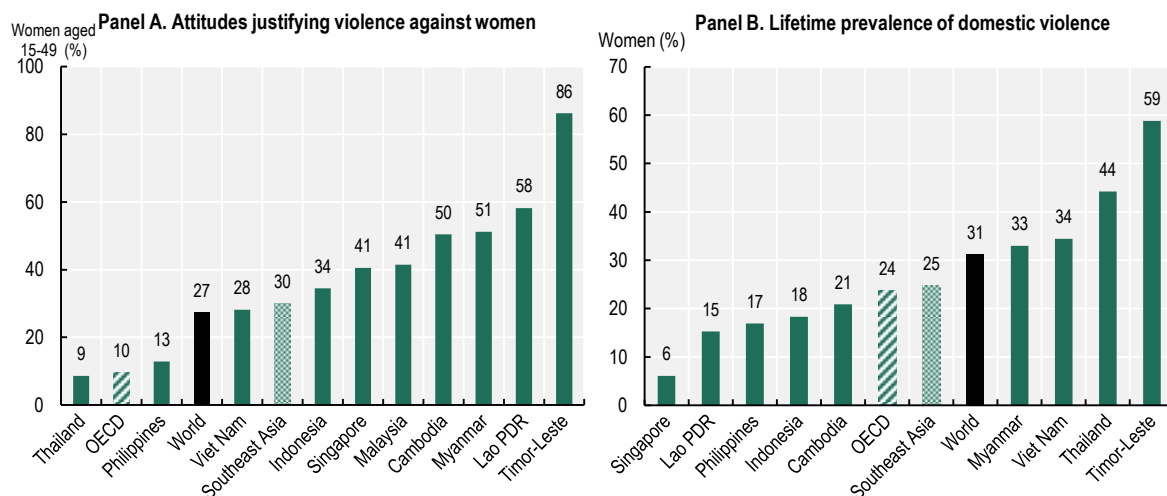
members. In addition, the legislation on domestic violence in nine countries<sup>24</sup> contains specific provisions for the investigation, prosecution and punishment of perpetrators. For instance, in Cambodia, the law requires that authorities in charge of intervening in cases of domestic violence offer the appropriate assistance to victims of violence, including temporary shelters and urgent medical assistance (OECD Development Centre, 2019<sup>[33]</sup>). Furthermore, more than one-half of Southeast Asian countries<sup>25</sup> have endorsed a policy or national action plan addressing domestic violence.

Legislation on rape and sexual harassment remains inconsistent across the region. All Southeast Asian countries, with the exception of Brunei Darussalam, have endorsed legislation addressing sexual violence and have criminalised rape. However, six countries<sup>26</sup> in the Southeast Asian region do not include marital rape in the legal definition of rape. Meanwhile, in the Philippines, the law allows perpetrators to escape prosecution if they marry the victim. All Southeast Asian countries except for Indonesia provide legal protection from sexual harassment, but only seven countries<sup>27</sup> in the region criminalise sexual harassment.

Domestic violence continues to be a serious problem in the region. On average, 25% of women have suffered physical and/or sexual violence from an intimate partner at least once in their lifetime in the nine countries<sup>28</sup> for which data are available. Although this is lower than the global average (31%), it varies across the region, ranging from 6% of women in Singapore to 59% in Timor-Leste (Figure 2.3, Panel B). Since the last edition of the SIGI in 2014, the percentage of ever-partnered women who suffered violence from an intimate partner at least once in their lifetime decreased from 30% in 2014 to 25% in 2018.

### Figure 2.3. Prevalence of domestic violence and attitudes justifying it remain high in the Southeast Asian region

Share of women aged 15-49 years justifying the use of domestic violence, and share of women who suffered domestic violence during their lifetime, 2018



Note: Panel A presents the share of women aged 15-49 years who consider a husband to be justified in hitting or beating his wife for at least one of the following specified reasons: if his wife burns food, argues with him, goes out without telling him, neglects the children, or refuses to engage in sexual intercourse with him. Data for Panel A are missing for Brunei Darussalam.

Panel B presents the share of women who suffered intimate partner physical and/or sexual violence during their lifetime. Data for Panel B are missing for Brunei Darussalam and Malaysia.

For both panels, global, OECD and subregional averages are calculated based on the sample of countries for which data are available.

Source: (OECD Development Centre/OECD, 2019<sup>[11]</sup>), *Gender, Institutions and Development Database*, <https://doi.org/10.1787/ba5dbd30-en>; and (World Values Surveys, 2017<sup>[46]</sup>), *World Values Survey*, <http://www.worldvaluessurvey.org/wvs.jsp>.

However, the current estimates of domestic violence rates underestimate the reality. In the Southeast Asian region, widespread perceptions that domestic violence is a private matter and should be resolved within the family prevent women from reporting crimes. Furthermore, the lack of public trust in the justice system and the negative attitudes of judicial officers and law enforcement personnel towards female victims of violence continue to impede the effective prosecution of cases of violence against women. For instance, in Indonesia, a CEDAW report notes that women seeking to use the law to obtain justice in cases of domestic violence have found the process to be lengthy, complicated and ultimately ineffective (CEDAW, 2016<sup>[47]</sup>).

In addition, the effects of the COVID-19 epidemic may exacerbate the risks of violence against women and set back the progress made in this area in the Southeast Asian region. Recent reports highlight a spike in the cases of domestic violence in some Southeast Asian countries. In Malaysia, the crisis helpline, *Talian Kasih*, registered a 57% increase in calls from women after the lockdown measures were enforced; during this time domestic violence was one of the major concerns. Similarly, in Indonesia, the Legal Aid Foundation of the Indonesian Women's Association for Justice recorded a threefold increase in the total number of reported domestic violence cases two weeks after the introduction of the teleworking and stay-at-home measures (Australian Institute of International Affairs, 2020<sup>[48]</sup>).

Discriminatory social norms fuel domestic violence. Across the ten countries with available data<sup>29</sup>, 30% of women and girls believe that a husband can be justified in hitting or beating his wife under certain circumstances: if she burns food, argues with him, goes out without telling him, neglects the children, or refuses sexual relations (Figure 2.3, Panel A). While women in Timor-Leste are particularly likely to condone domestic violence (86%), only 9% of women in Thailand hold these discriminatory attitudes.

Furthermore, human trafficking is one of the worst forms of violence against women and girls and remains a concern in the region. In Southeast Asia, trafficked women and girls encounter high rates of sexual, psychological and physical abuse, including rape, forced abortions and torture. They are usually trafficked for the purposes of sexual and economic exploitation (United States Department of State, 2020<sup>[49]</sup>) (see Box 2.1).

### Box 2.1. Southeast Asian countries remain a hub for human trafficking

Southeast Asian governments have made great strides to strengthen their legal frameworks to combat all forms of human trafficking. Currently, four Southeast Asian countries<sup>30</sup> are signatories of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. At the regional level, the ASEAN Member States<sup>31</sup> recognised that trafficking in persons represents a violation of human rights and an offence to the dignity of human beings as stated in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in 2017 (ASEAN, 2017<sup>[50]</sup>). The ASEAN Member States also established the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, which aims to eliminate and punish all forms of trafficking in persons and work towards a comprehensive and co-ordinated regional approach to accomplish these objectives (ASEAN, 2017<sup>[50]</sup>).

At the national level, countries have enhanced their legislation on human trafficking, and on sexual and labour exploitation. All Southeast Asian countries have criminalised both sex trafficking and labour trafficking, and have prescribed penalties ranging from fines to imprisonment or both. Since the third edition of the SIGI in 2014, four Southeast Asian countries<sup>32</sup> have enacted legislation and made legislative reforms to prevent and combat trafficking in persons (United States Department of State, 2020<sup>[49]</sup>). For instance, Singapore passed the Prevention of Human Trafficking Act, criminalising sex, labour and organ trafficking, which came into force in 2015. This is in addition to the Inter-Agency Taskforce on Trafficking in Persons, which was established in 2012 to co-ordinate actions and align

policies between agencies (CEDAW, 2017<sup>[51]</sup>). Similarly, in 2017, the government of Timor-Leste approved Law No. 3/2017 on the Prevention and Elimination of Human Trafficking (Government of Timor-Leste, 2019<sup>[39]</sup>).

Despite the adoption of national action plans or strategies to fight against human trafficking and meet international standards, implementation and prosecution remain weak across Southeast Asian countries. Since the last edition of the SIGI in 2014, more than one-half of Southeast Asian countries<sup>33</sup> have adopted national action plans. In 2019, the government of Cambodia formulated and launched the 2019-2023 national action plan to address emerging forms of human trafficking predominantly affecting women and girls, such as surrogacy and sex trafficking at nightclubs (United States Department of State, 2020<sup>[49]</sup>). However, only five Southeast Asian countries<sup>34</sup> have put in place measures and programmes aimed at providing medical, physiological and counselling services, as well as protection measures, for female victims and survivors of human trafficking. Across the region, there is an increasing number of girl victims and low conviction rates, a lack of effective mechanisms for the referral of victims to rehabilitation and reintegration services, and the continued stigmatisation and administrative penalties applied to women and girls in prostitution, who are treated as perpetrators rather than as victims (United States Department of State, 2020<sup>[49]</sup>).

### ***More data are required to estimate the prevalence of female genital mutilation in some Southeast Asian countries***

The practice of female genital mutilation poses a serious threat to women's physical integrity, health and overall well-being, and encompasses "all procedures that involve partial or total removal of the external female genitalia, or other injuries to the female genital organs for non-medical reasons" (WHO, 2018<sup>[52]</sup>). Female genital mutilation is internationally recognised as a harmful practice and a violation of women's and girls' human rights. For instance, the CEDAW, in particular General recommendation No. 14: Female circumcision calls on States Parties to "take appropriate and effective measures with a view to eradicating the practice of female circumcision" (United Nations, 1990<sup>[53]</sup>). Most recently, the international community has played a crucial role in bringing attention to the harmful consequences of female genital mutilation and advocating for campaigns to end it. SDG target 5.3 explicitly aims to "eliminate all harmful practices, such as female genital mutilation" (United Nations, 2016<sup>[6]</sup>).

The lack of available data suggests that female genital mutilation is not a concern in most Southeast Asian countries, with the exception of Indonesia. No country in the region has passed a law to specifically criminalise female genital mutilation. Since the third edition of the SIGI in 2014, the Indonesian government has affirmed through the Ministry of Health Regulation No. 6/2014 that female circumcision has no medical benefit. However, Article 2 of this regulation gives the Council for Health and Religious Consideration the mandate to publish guidelines regarding the facilitation of "female circumcision which guarantees the safety and health of the females who are circumcised and does not mutilate the genitals of the female", thus effectively legitimising the practice (CCPR, 2015<sup>[54]</sup>). In the absence of clear regulations and legislation related to female genital mutilation, 49% of girls aged 0-14 years have undergone female genital mutilation in Indonesia (as reported by their mothers), compared with 83% in Mali and 51% in Mauritania (UNICEF, 2019<sup>[55]</sup>).

Evidence suggests that female genital mutilation is prevalent among certain religious groups in a few Southeast Asian countries. In four countries,<sup>35</sup> customary, religious or traditional practices or laws allow and encourage this harmful practice. For instance, in Brunei Darussalam, the Committee on the Rights of the Child reports on the persistence of female genital mutilation, which is legally defined in Brunei Darussalam as female circumcision. The Ministry of Religious Affairs reportedly recognises female circumcision as a religious rite (OECD Development Centre, 2019<sup>[22]</sup>). Similarly, in 2009, Malaysia's National Fatwa Committee declared a series of fatwas or religious edicts focusing on limiting women's right

to physical integrity. In particular, a fatwa made it obligatory for girls to undergo circumcision during childhood. Even though it did not carry the weight of law, this fatwa deeply influenced the behaviours of the Muslim community in Malaysia (OECD Development Centre, 2019<sup>[56]</sup>).

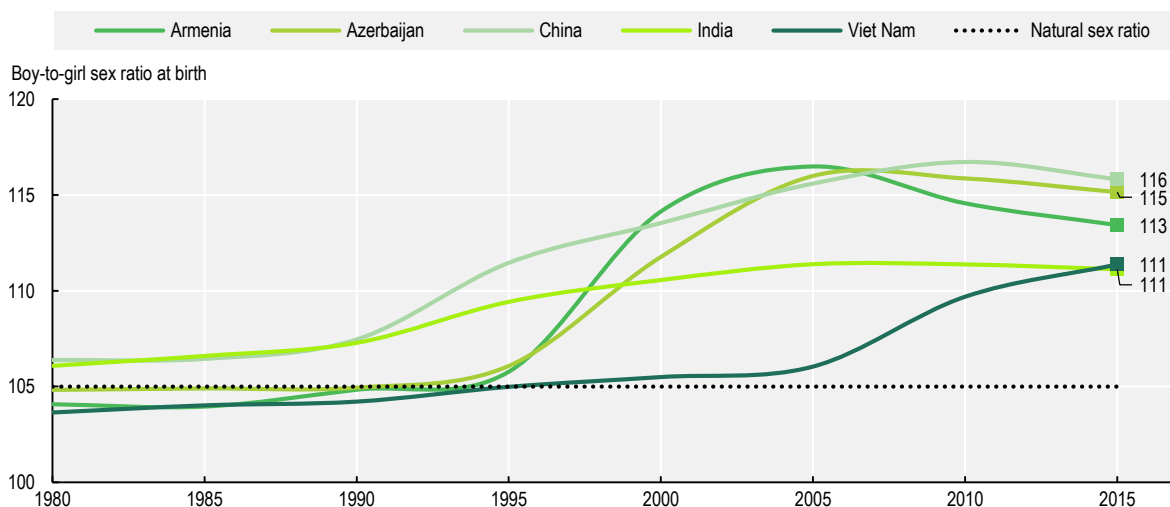
### **Missing women is an area of concern in Viet Nam**

“Missing women” was a concept coined by Amartya Sen, who postulated in 1990 that more than 100 million women were missing due to excess female mortality in some developing countries. This phenomenon is the result of a systematic undervaluation of female children, and results from neglect and higher female infant mortality (Sen, 1990<sup>[57]</sup>). States have an obligation to eliminate discriminatory practices leading to the phenomenon of missing women. The 1979 CEDAW (Art. 5) requires States Parties to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or superiority of either of the sexes” (United Nations, 1979<sup>[5]</sup>).

The missing women phenomenon is a concern in Viet Nam, where the sex ratios are unbalanced when compared with the natural sex ratio. The natural sex ratio among children aged 0-4 years is around 105 boys per 100 girls (ranging from around 103 to 107 boys per 100 girls). It is slightly above what would be expected naturally in Singapore (106.8) and Malaysia (106.9). However, in most Southeast Asian countries with evidence of discrimination in this indicator, there has been a slight to moderate decrease in the sex ratio for children aged 0-4 years between 2010 and 2020. The exception has been Viet Nam, where the sex ratio for children aged 0-4 years increased from 106 in 2005 to 111 in 2015 (Figure 2.4). The imbalanced sex ratio at birth is partly due to the gradually increasing access to affordable sex determination and sex selection technology, which has permitted couples to pursue their desire for one or more sons. In addition, discriminatory social norms foster bias towards sons and undervalue daughters. In Viet Nam, only 11% of the population declared that they would prefer to have a daughter (UNFPA, 2018<sup>[58]</sup>).

### **Figure 2.4. Sex imbalances at birth in Viet Nam have spiked since 2005**

Sex ratios at birth between boys and girls aged 0-4 years in Viet Nam and selected countries, 1980-2015



Note: Sex ratio between boys and girls aged 0-4 years is defined as the average number of boys per 100 girls.

Source: (United Nations, 2017<sup>[59]</sup>), *World Population Prospects: the 2017 Revision*, <https://population.un.org/wpp/Publications/>.

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The Vietnamese government has taken action at the regional and national levels to reverse unequal sex ratios at birth. The government has issued various regulations and laws prohibiting gender-based sex selection and sex identification of foetuses in any form. In 2013, Decree 176 included penalties for medical practitioners and any other actors performing sex-selective abortions. In addition, the Decree imposes fines for informing parents of the foetus's sex by means of an ultrasound or medical test (Government of Viet Nam, 2013<sup>[60]</sup>). Outlawing sex-selective abortions and ultrasounds is a key first step to tackling these issues, but it does not address the underlying reasons why the women are missing, or for parents' gender preference. Against this backdrop, Viet Nam has used media campaigns to tackle discriminatory social norms and gender stereotypes that undervalue daughters. More recently, the Ministry of Health has established a national strategy entitled Controlling the Imbalance of Sex Ratio at Birth (SRB) for 2016-2025 (UNFPA, 2019<sup>[61]</sup>).

### ***Women's reproductive autonomy rights are limited and often threatened by discriminatory laws across Southeast Asian countries***

Guaranteeing women's right to make autonomous decisions about their bodies and their reproductive autonomy is considered an enabling factor in women's empowerment. Women's sexual and reproductive health and rights are enshrined in international agreements. The 1979 CEDAW calls on States Parties to ensure, on an equal basis between men and women, "the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (Art. 16), and to take all "appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis of equality of men and women, access to healthcare services, including those related to family planning" (Art. 12) (United Nations, 1979<sup>[5]</sup>).

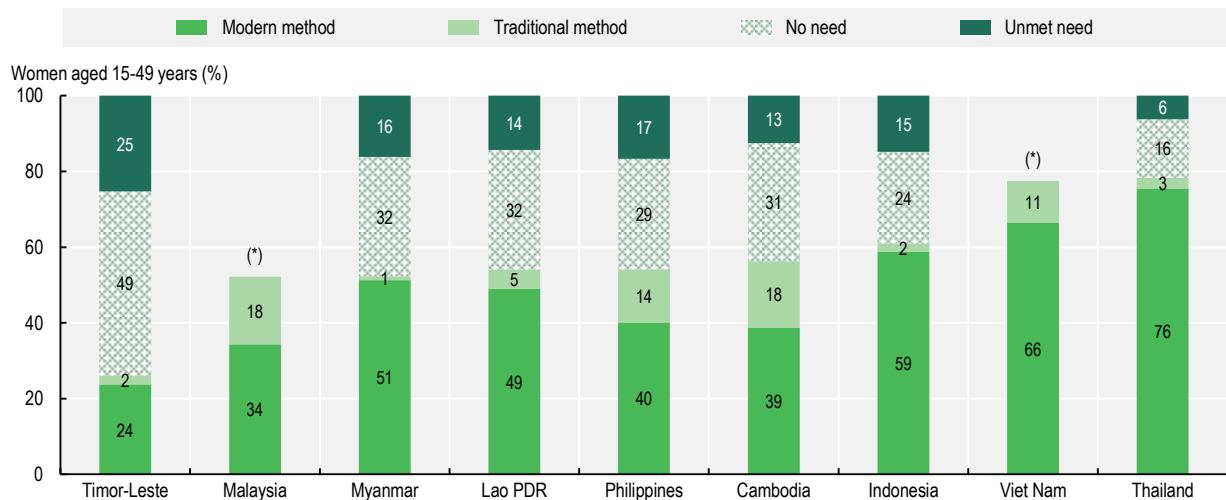
Restrictive legal frameworks often threaten women's reproductive autonomy rights in the case of unintended pregnancy. Abortion on demand is legal in Cambodia, Singapore and Viet Nam within a 6-12- or 24-week gestational limit and at a later stage of the pregnancy under specific circumstances. For instance, in Cambodia, abortion can be sought up to 12 weeks and after this period is permitted in specified circumstances, including in cases of foetal unviability and if the pregnancy is the result of a rape. The most commonly legally accepted justification for an abortion is a serious threat to the woman's life. In seven of the remaining Southeast Asian countries,<sup>36</sup> abortion is illegal unless it is performed to save a woman's life. In Timor-Leste, through an amendment to Article 141 of the Criminal Code introduced on 15 July 2009, abortion constitutes a crime unless it is the only means to save the life of the pregnant woman. The procedure should be authorised by a medical panel or by a physician or health professional in a public health institution, through a medical certificate written and signed by three doctors, and providing the pregnant woman and/or her spouse's consent (OECD Development Centre, 2019<sup>[62]</sup>). In Indonesia, abortion is only legal in the case of a medical emergency detected in the early stage of pregnancy threatening the life of the mother, or in the case of a pregnancy resulting from rape. The determination of a medical emergency requires a team consisting of at least two healthcare workers and chaired by a physician who has competence and authority (OECD Development Centre, 2019<sup>[63]</sup>). In Malaysia, under the Penal Code, one doctor can make the decision to carry out a termination, and if the patient is a Muslim woman, the consent of her husband is also required (Government of Malaysia, 1976<sup>[64]</sup>).

No country in the Southeast Asian region guarantees universal access to contraception and little progress has been made in this area since 2014. Some 13.2% of women of reproductive age (15-49 years) report having an unmet need for family planning. This regional average has increased slightly since 2012 (11%) and 2014 (12.5%). The gap between women's reproductive intentions and their contraceptive behaviour ranges from 6% in Thailand to 25% in Timor-Leste (Figure 2.5). Women's low reproductive autonomy in the Southeast Asian region is linked to a lack of adequate health service infrastructure, a lack of information and awareness, and discriminatory social institutions that restrict women's control over their bodies. Furthermore, adolescent pregnancy remains a concern in some Southeast Asian countries. The region

reports 43 births per 1 000 girls aged 15-19 years, which is in line with the global rate of 42 births per 1 000 girls aged 15-19 years in 2018. However, in Cambodia, Lao PDR, and the Philippines, adolescent fertility is eight points above the global rate.

### Figure 2.5. The majority of women in the Southeast Asian region use some method of contraception

Contraceptive prevalence by method and unmet need for family planning for married and in-union women aged 15-49 years, various years



Note: Data cover different years depending on the country, as follows: Indonesia, Lao PDR and the Philippines (2017); Myanmar, Thailand, Timor-Leste and Viet Nam (2016); Cambodia and Malaysia (2014). Data are missing for Brunei Darussalam. Latest available data for Singapore are excluded because they are too old (1997). Countries are ordered by shares of women using any contraception method (modern or traditional).

(\*) Latest surveys used in Malaysia and Viet Nam do not collect data on unmet need for family planning or absence of need for contraception.

Source: (United Nations, 2020<sup>[65]</sup>), *World Contraceptive Use 2020*.

<https://www.un.org/en/development/desa/population/publications/dataset/contraception/wcu2020.asp>.

StatLink  <https://doi.org/10.1787/888934229977>

## Restricted access to productive and financial resources

Access to productive and financial resources is essential in order for women to gain economic and productive power. Equal access also entails equality between men and women in the labour market, whether in terms of equal remuneration, attitudes towards women's labour participation or women's representation in managerial positions. Throughout the world, it is an essential precondition for achieving women's economic empowerment. SDG target 5.A calls on all governments to: "Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws" (United Nations, 2016<sup>[6]</sup>).

Yet, numerous factors restrict women's rights and ability to fully participate in their respective countries' economies. Legal and normative barriers that prevent women from entering the labour market and thriving in their jobs preclude women from achieving their full economic potential. These direct factors, which include restrictions on access to economic assets or gender discrimination in the workplace, perpetuate the economic subordination of women. Such restrictions often stem from norms related to masculinities

and the deeply socially entrenched traditional narrative that men should be the breadwinners and control household decisions, including those related to their families' economic tools and assets. These norms also underpin important indirect factors, such as unequal power dynamics within the household or discriminatory inheritance and divorce laws and practices (OECD, 2021<sup>[66]</sup>). For instance, social norms and practices opposing women working in paid employment are strongly intertwined with the traditional role of women as unpaid caregivers within the household. Meanwhile, inheritance practices can deprive women from owning assets, which has direct implications for their ability to accumulate capital and to seek credit.

The Southeast Asian region displays a medium level of discrimination in the “Restricted access to productive and financial resources” dimension. The region scores 32 in this dimension, compared with a global average of 27 and an average of 13 for OECD member countries. Within this dimension, restrictions on workplace rights constitute the most pervasive form of discrimination. In this particular indicator, the Southeast Asian region scores 47, compared with a global average of 45 and an average of 27 for OECD member countries. Moreover, important discrepancies exist across the eight countries<sup>37</sup> in the Southeast Asian region scored in this dimension, with scores ranging from 12 in Singapore to 67 in the Philippines. Singapore's low level of discrimination in this dimension primarily stems from laws that guarantee women equal rights to access land and non-land assets as well as any type of financial services.

## Policy options to address discrimination in access to productive and financial resources

- Continue to develop land titling and strengthen the administrative mechanisms that allow women to claim land titles. In particular, develop the use of joint land titling and implement mechanisms that allow women to add their name to the title of jointly owned land.

*In Viet Nam, the Marriage and Family Law of 2000 and the Land Law of 2001 strengthened joint land titling. The laws mandate that the names of both husband and wife must be recorded on titles of land obtained during the marriage and that any plot under the common ownership of husband and wife by law must be registered under the names of both of them. In 2014, Decree No. 43/2014/ND-CP, detailing a number of articles of the new 2013 Land Law, allowed a spouse whose name is not on the land title to request a competent agency to issue a new title containing both spouses' names (Government of Viet Nam, 2014<sup>[67]</sup>).*

- Develop integrated financial consumer protection and strengthen financial education frameworks that focus on the needs of specific vulnerable groups.

*Almost all of the countries in the Southeast Asian region have developed education initiatives on consumer rights and responsibilities (OECD, 2018<sup>[68]</sup>). Among others, Singapore has established MoneySense under the supervision of the Monetary Authority of Singapore and the Ministry of Manpower, which aims to enhance the basic financial literacy of consumers. The programme covers the three tiers of financial literacy: Tier 1 focuses on basic money management such as skills in budgeting and saving, and responsible use of credit; Tier 2 focuses on financial planning to plan for long-term financial needs; and Tier 3 covers investment know-how which aims to increase knowledge about different investment products and skills for investing (MoneySENSE, n.d.<sup>[69]</sup>).*

- Remove legal provisions that prevent women from accessing certain professions or performing certain tasks.
- Extend the length of maternity leave to the International Labour Organization (ILO)-recommended minimum of 14 weeks and provide beneficiaries with 100% salary coverage. Develop ad hoc mechanisms such as cash transfers to extend maternity schemes to the informal sector.

*In Lao PDR, the 2014 Social Security Law allows informal sector workers to join the National Social Security Fund. The coverage provided by this fund includes access to maternity benefits, based on a contribution rate of 9% of the worker's chosen reference wage (Addati, Behrendt and Wagenhäuser, 2016<sup>[70]</sup>).*

*Similarly, in 2018, under the 105-Day Expanded Maternity Leave Law, the Philippines extended maternity leave to 15 weeks, with 100% salary coverage. The law also extended the coverage of maternity benefits to female informal workers, provided that they have remitted to the social security system at least three monthly contributions in the 12-month period preceding the birth of the child (Government of the Philippines, 2018<sup>[71]</sup>).*

- Develop paternity leave schemes across all Southeast Asian countries and progressively align them with maternity schemes in order to encourage an equal redistribution of unpaid care duties. Ensure as much as possible that paternity leave entitlements are non-transferable to spouse or partner.

*In 2018, the Philippines enacted the 105-Day Expanded Maternity Leave Law, which allows a female worker who is entitled to maternity leave to transfer up to 7 of the 105 days of her paid leave to the child's father, regardless of whether they are married or not. The scheme brings the period of eligible paid paternity leave to 14 days (Government of the Philippines, 2018<sup>[71]</sup>).*

### **Laws guarantee women's access to land and non-land assets, yet exclude some groups of women**

Access to land and non-land assets is fundamental to ensuring women's economic empowerment, independence and control over means of production. Women's equal access to, use of, and control over assets and property is grounded in core international human rights instruments. Among others, Article 2 of the 1948 Universal Declaration of Human Rights recognises the right to property for all individuals (United Nations, 1948<sup>[72]</sup>). Article 14.2 of the 1979 CEDAW calls for the elimination of discrimination against women in rural areas, and Article 16.1 explicitly calls on States Parties to take all appropriate measures to ensure "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property" (United Nations, 1979<sup>[51]</sup>). The CEDAW Committee further considers "women's rights to land, natural resources, as well as fisheries as fundamental human rights" (CEDAW, 2016<sup>[73]</sup>). The 1995 Beijing Declaration and Platform for Action reiterated the call on governments to "ensure women's equal access to economic resources, including land", and "to formulate and implement policies and programmes that provide access to and control of land" (para. 58(n)) (Fourth World Conference on Women, 1995<sup>[18]</sup>).

Almost all legal frameworks in Southeast Asia protect women's rights regarding ownership of, access to, and use of land and non-land assets. In this regard, Brunei Darussalam, Lao PDR and Singapore exhibit no discrimination against women in terms of ownership, control, and use of assets and properties. In Cambodia, Thailand and Viet Nam, only *de facto* discrimination can be found, indicating that legal frameworks protecting women's rights to access land and non-land assets are in place.

Some countries in the Southeast Asian region continue to display legal frameworks that discriminate against women regarding ownership and administration of productive assets. In the Philippines, Articles 96 and 124 of the Family Code grant administrative rights over a couple's assets – including land – to the husband in cases of disagreements between spouses (Government of the Philippines, 1987<sup>[29]</sup>). In Malaysia, the coexistence of civil law and sharia law under the country's dual legal system translates into legal discrimination against certain women's rights to own and inherit land and property. Although under the Constitution of Malaysia men and women share the same rights to own, acquire, manage and dispose of assets, it does not extend this principle to the private sphere of Muslim communities, where sharia law – coupled with traditional practices – does not always support women's full enjoyment or

exercise of their rights (FAO, 2020<sup>[74]</sup>). Likewise, in indigenous communities or certain states in Malaysia – and particularly in Sabah and Sarawak – marriages and divorces continue to be governed by native customary law or aboriginal custom, which favours the husband's ownership of assets. Meanwhile, Timor-Leste's legal framework lacks specific laws regulating women's access to land assets in cases of divorce or separation. Similarly, in Myanmar, women retain equal rights under the 2008 Constitution to enter into land tenure contracts and to administer property, but there is no guidance on how women can, in practical cases, defend their rights on the divorce or death of their husband (ADB et al., 2016<sup>[75]</sup>).

Land titling is a central and controversial issue in Southeast Asia that carries many risks for women. Historically, in the context of Southeast Asia's matriarchal social structures – such as the Cham people in Cambodia and Viet Nam, or the Minangkabau people in Indonesia and Malaysia – women benefited from relatively expansive access to land through communal, traditional and customary occupation of land (Hirsch, 2011<sup>[76]</sup>). This phenomenon was further magnified by women's significant involvement in the agricultural workforce. However, since the 1980s, Southeast Asian countries have engaged in large-scale land titling campaigns to formalise the ownership, use and control of land. These processes of formalisation and titling can yield many benefits for women (Box 2.2), providing them rights, but existing practices can subvert these processes and carry important risks for vulnerable groups – particularly women. For instance, titling can formalise inequality by fixing land distributions where they were previously negotiable (Hirsch, 2011<sup>[76]</sup>). Moreover, when formal land titles are issued, traditional practices tend to ignore multiple interests and to favour sole registration under the name of the husband, effectively depriving women of control over land they previously enjoyed in practice (Liamzon, Arevalo and Naungayan, 2015<sup>[77]</sup>; Rao, 2011<sup>[78]</sup>). Even in countries with advanced titling legislation, such as Viet Nam, the issuance of joint land titling guaranteeing women's legal ownership of land within the household remains very scarce. In practice, male-only certificates are often issued and mediation of disputes tends to favour men over women (Menon, Rodgers and Kennedy, 2017<sup>[79]</sup>; CEDAW, 2015<sup>[80]</sup>). Finally, the process of mapping, registration and titling of land puts many women who have traditionally occupied land at risk of eviction, particularly when occupancy is opposed by powerful interests. In the context of the transformation of Southeast Asia's agricultural sector and the transition from subsistence agriculture to cash crop farming, which is associated with potential land-grabbing practices, this latest point becomes even more critical (Borras and Franco, 2011<sup>[81]</sup>; Hutchison, 2008<sup>[82]</sup>).

In this regard, the existing *de facto* forms of discrimination – discriminatory customary, religious or traditional practices – that hinder women's access to productive assets are at risk of increasing. In Cambodia, Indonesia and Timor-Leste, evidence show the existence of customary and religious practices that discriminate against women with respect to the ownership and inheritance of land assets, particularly in the cases of indigenous women (CEDAW, 2019<sup>[83]</sup>; CEDAW, 2015<sup>[84]</sup>; CEDAW, 2012<sup>[85]</sup>). In Thailand, many decisions in remote rural communities regarding the distribution and use of productive assets continue to be made based on customary practices that can severely disadvantage women (FAO, 2020<sup>[86]</sup>). In Viet Nam, although inheritance laws guarantee equality between sons and daughters, patrilineal inheritance customs, combined with local gender attitudes in some ethnic groups, participate in restricting women's access to agricultural land (Hoang et al., 2013<sup>[87]</sup>). Against this backdrop, ongoing titling processes in Southeast Asia could increase the discriminatory practices faced by women if no corrective measures are implemented to guarantee that women will not only benefit from the formalisation of land ownership, but will also be represented in the decision-making bodies.

## Box 2.2. Land titling in Southeast Asia: Risks, challenges and opportunities for women

### Since the 1980s, Southeast Asia has experienced large-scale land titling campaigns

Historically, land title registration has been well established in Brunei Darussalam, Malaysia and Singapore – although some issues remain regarding the titling of communal land (Jones, 2010<sup>[88]</sup>).

In other Southeast Asian countries, systematic, large-scale titling campaigns started as early as the 1950s, but accelerated as of the 1980s. Following earlier incomplete attempts, Thailand, the Philippines (with the Comprehensive Agrarian Reform Program) and Indonesia (with the Land Administration Project) all initiated comprehensive, systematic land titling programmes in 1985, 1988 and 1995, respectively. Communist Southeast Asian countries initiated their own titling programmes in the 1990s, in the wake of the introduction of market reforms. In Viet Nam, the Land Laws of 1988 and 1993 introduced formal land titles. Lao PDR followed with the start of the Land Titling Project in 1997. Finally, Cambodia converted occupancy and usage rights into ownership rights under the 2001 Land Law (Jones, 2010<sup>[88]</sup>). Most recently, in 2017, Timor-Leste enacted the Special Regime for the Definition of Ownership of Immovable Property, also known as the Land Law (Government of Timor-Leste, 2017<sup>[89]</sup>).

### Land titling can represent an opportunity for women to improve their tenure security, increase their decision-making power and develop their access to institutional credit

The central question is whether this process of land registration benefits women and enhances their secured access to land. Conceptually, land titling represents an opportunity to advance women's economic empowerment. It provides:

- **Tenure security:** By recognising and formalising existing rights, land titling provides tenure assurance. In this regard, it provides the legal landowner with legal protection against land-grabbing practices or unlawful claims.
- **Incentives for investment:** Land titling encourages productive investment by guaranteeing that the legal landowner reaps the benefits of the resources invested.
- **Access to institutional credit:** Formalising landownership provides the landowner with the necessary legal rights to engage the land as collateral and to successfully seek credit.

As a result of legal reforms setting the framework for land registration, Southeast Asian countries have issued millions of land titles. In some countries, women have largely benefited from these campaigns. For instance, between 2013 and 2019, Cambodia issued more than 2.3 million land title certificates, with 18% of them issued to married and single women and 60% issued to spousal common properties, compared with 13% attributed to married and single men (CEDAW, 2019<sup>[90]</sup>).

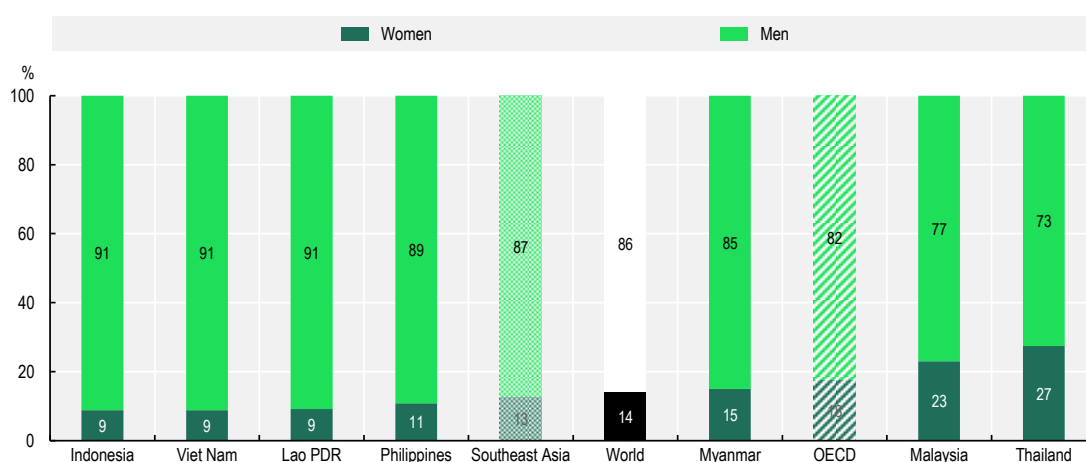
The benefits of land titling are particularly relevant to women and can constitute a tool for women's economic empowerment, but only if the implementation of land titling programmes take women into account. This requires making women equal partners in terms of land inheritance and ownership, paying special attention to marital property through joint titling; informing women about their rights to claim legal ownership of land; and developing support mechanisms to help women claim their rights.

Such discriminatory practices translate into women's limited ownership of agricultural land and houses compared with men. Although lack of data and informal practices make it challenging to produce precise estimates, women represent only 13% of landowners in Southeast Asia – whereas they account for 39% of the agricultural workers across the region (ILO, 2020<sup>[91]</sup>). The proportion of women in Southeast Asia owning agricultural land is lower than the global average (14%) and is also lower than the average for OECD member countries (18%). It ranges from 9% in Indonesia – where women account for 36% of the agricultural workforce – to 27% in Thailand, where they make up 41% of the agricultural workforce

(Figure 2.6). Likewise, although data on homeownership remain scarce and incomplete, men continue to disproportionately own and control these assets compared with women. Only four countries<sup>38</sup> in the Southeast Asian region have sex-disaggregated data on homeownership, which constrains the analysis and constitutes a major barrier for policy makers in general. In Timor-Leste and Myanmar, 43% and 37% of homeowners are women, respectively. In Indonesia, the share of women among homeowners is 29%. Conversely, the rate is 69% in Cambodia (OECD Development Centre/OECD, 2019<sup>[11]</sup>). Overall, women's limited access to land and non-land assets has far-reaching negative implications that limit their economic empowerment. For instance, the absence of formal land titles proving the ownership of land prevent women from seeking credit. In the absence of collateral, banks are reluctant to lend money, which in turn limits women's ability to start businesses.

### Figure 2.6. Men legally own the vast majority of agricultural land in Southeast Asia

Share of women and men among owners of agricultural land in Southeast Asia, 2018



Note: Data are missing for Brunei Darussalam, Cambodia, Singapore and Timor-Leste. The Southeast Asian average is calculated for the sample of countries for which data are available. The global average is calculated for the 97 countries for which data are available.

Source: (OECD Development Centre/OECD, 2019<sup>[11]</sup>), *Gender, Institutions and Development Database*, <https://doi.org/10.1787/ba5dbd30-en>.

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### Women's access to financial services has made great strides

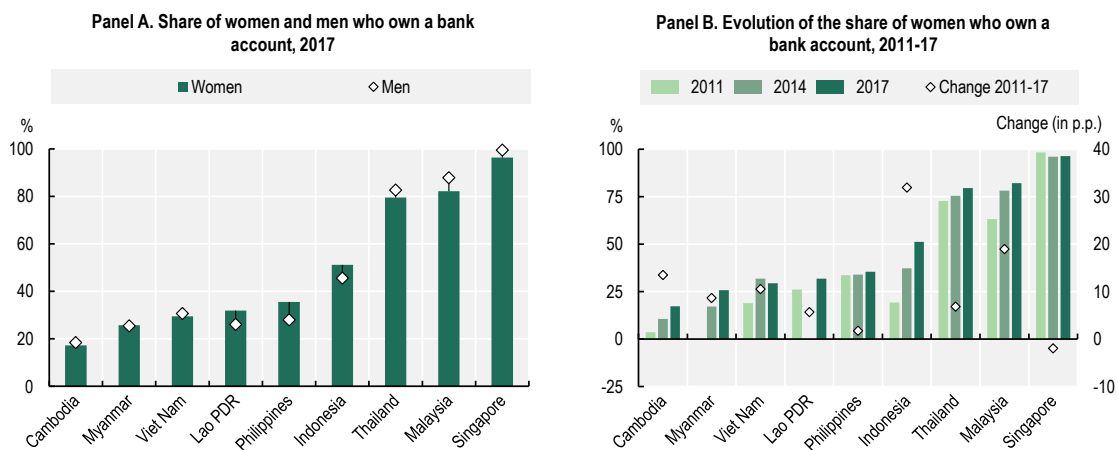
Full, equal and unhindered access to financial services – including owning a bank account – is critical for empowering women with the essential tools for their economic independence and strengthening women's entrepreneurship. Numerous international instruments establish the legal basis for women's right to benefit from equal access to financial services, including Article 13 of the CEDAW (United Nations, 1979<sup>[5]</sup>), further amended and expanded in 2004 by the CEDAW Committee's General recommendation No. 25 (United Nations, 2004<sup>[92]</sup>). The Beijing Declaration and Platform for Action also acknowledges the need to promote and support women's employment, access to credit and capital, and entrepreneurship (Fourth World Conference on Women, 1995<sup>[18]</sup>).

All Southeast Asian countries have eliminated all forms of legal discrimination preventing women from accessing financial services – that is, opening a bank account or obtaining credit. Recent progress includes the Philippines, for example, where the Republic Act No. 10963 – also known as the Tax Reform for Acceleration and Inclusion Act – was signed into law in 2017 and amended the National Internal Revenue Code (Government of the Philippines, 2017<sup>[93]</sup>). The new law eliminated some paragraphs referring to the

husband and wife, clearing the legal framework of discriminatory provisions. Overall, six Southeast Asian countries<sup>39</sup> do not show evidence of any customary or traditional practices that could constrain women's access to financial services. In the remaining five countries in the region, customary practices continue to prevent some groups of women from accessing certain financial services. In most cases, these discriminatory customary practices stem from the belief that men constitute the head of the household and are in charge of the household's finances, implying that women must obtain the prior consent of their husband before obtaining credit. In a similar fashion, in rural areas, the absence of women's names on land titles often prevents them from directly seeking credit – because of the lack of adequate collateral – and forces them to obtain it through their husband.

The region's comprehensive and gender-equal legal frameworks translate into equal access to finance for both women and men. Data from the *Global Findex Database* show that the shares of men and women owning a bank account at a financial institution are on par across most countries in the Southeast Asian region (World Bank, 2017<sup>[94]</sup>). The largest gender gap (seven percentage points) is found in the Philippines, but it is in favour of women, as 35% of women own an account at a financial institution compared with 28% of men. The largest gender gap in favour of men is found in Malaysia, where it reaches six percentage points (Figure 2.7, Panel A).

**Figure 2.7. Access to bank accounts remains a challenge for both men and women in Southeast Asia, although progress was made between 2011 and 2017**



Note: Panel A presents the respective rates of women's and men's account ownership at a financial institution (as per the definition in the *Global Findex Database*). The gender gap is the difference, in percentage points, between men's ownership rate and women's ownership rate. Data are missing for Brunei Darussalam and Timor-Leste.

Panel B presents the evolution of the rate of women's account ownership. Data are missing for Brunei Darussalam and Timor-Leste. Data for 2011 are missing for Myanmar; data for 2014 are missing for Lao PDR. Change over the period 2011-17 is calculated between 2014 and 2017 for Lao PDR.

Source: (World Bank, 2017<sup>[94]</sup>), *Global Findex database*, <https://globalfindex.worldbank.org>.

StatLink  <https://doi.org/10.1787/888934230015>

Marked progress has been recorded between 2011 and 2017. Over this period, the share of women owning an account at a financial institution has systematically increased in all Southeast Asian countries except for Singapore, where it dropped slightly by two percentage points. In Indonesia, the proportion of women owning an account at a financial institution increased by 32 percentage points, while it increased by 19 and 14 percentage points in Malaysia and Cambodia, respectively (Figure 2.7, Panel B).



Yet, in more than one-half of Southeast Asian countries, the proportion of both men and women owning a bank account remains low, underscoring the low level of financial literacy in certain countries among both men and women. Despite the progress that has been made, the share of both men and women owning a bank account remains below 50% in five Southeast Asian countries.<sup>40</sup> In Cambodia, for instance, only 17% and 18% of women and men, respectively, have a bank account at a financial institution (Figure 2.7, Panel A). The underlying factors exist at both the country level and individual level and, depending on the country, include low economic and financial development, low gross domestic product, low per capita income, unsupportive regulatory environment, lack of product offerings/banking infrastructure, and low levels of financial literacy. Recent studies in the Southeast Asian region show that financial literacy – and, more particularly, financial knowledge – is low compared with OECD member countries. In some Southeast Asian countries, such as Lao PDR and Myanmar, the regulatory frameworks for consumer protection remain weak, which hampers the financial inclusion of the poorest and the most disadvantaged groups (OECD, 2018<sup>[68]</sup>). OECD's *Economic Outlook for Southeast Asia, China and India 2019: Towards Smart Urban Transportation* also pinpoints adults' limited financial literacy and awareness in Indonesia as a major impediment to the development of mobile banking and to bridging the financial inclusion gap (OECD, 2018<sup>[95]</sup>).

### ***Deeply entrenched social norms and specific legal restrictions hamper women's workplace rights***

The protection of women's rights in the workplace is paramount in order to ensure gender-balanced labour participation, economic empowerment and equal remuneration. Many international instruments lay the foundations for the recognition of women's workplace rights, including the CEDAW, which calls for the elimination of all discrimination related to employment, remuneration and choice of profession (United Nations, 1979<sup>[5]</sup>). National legislation is guided by core ILO conventions that establish key labour standards and promote effective employment equality between women and men. These conventions notably include the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Workers with Family Responsibilities Convention, 1981 (No. 156); the Maternity Protection Convention, 2000 (No. 183); and the Domestic Workers Convention, 2011 (No. 189) (ILO, 2011<sup>[96]</sup>; ILO, 2000<sup>[97]</sup>; ILO, 1981<sup>[98]</sup>; ILO, 1958<sup>[99]</sup>; ILO, 1951<sup>[100]</sup>).

In one-third of Southeast Asian countries, women continue to face high levels of legal discrimination that bar them from accessing certain professions or working on an equal footing with men. In four Southeast Asian countries,<sup>41</sup> the law prohibits women from entering certain professions. Moreover, in three of them – namely Lao PDR, Malaysia and Viet Nam – the law contains provisions that limit women's right to work the same hours during the night as men. For instance, in Malaysia, section 35 of the Employment Act 1955 stipulates that women cannot work underground, while section 34 of the Act prohibits women from undertaking night work (Government of Malaysia, 1955<sup>[101]</sup>). In Lao PDR, Articles 96 and 97 of the Labour Law introduces limitations related to pregnancy. It bars pregnant women from certain types of jobs, forbidding them from undertaking activities deemed hazardous or physically challenging and working at night (Government of Lao PDR, 2013<sup>[102]</sup>). In Viet Nam, similar work restrictions related to pregnancy are contained in Article 155 of the Labour Code. For instance, overtime and night work are prohibited for women who are more than seven months pregnant or who are nursing an infant (Government of Viet Nam, 2012<sup>[103]</sup>). Myanmar's Factories Act 1951 introduced extensive restrictions on jobs and tasks women are allowed to perform. It also grants power to the Factory and General Labour Laws Inspection Department to prohibit women from undertaking any type of activity that the department deems dangerous (ILO, 2017<sup>[104]</sup>; Government of Myanmar, 1951<sup>[105]</sup>). Finally, in the Philippines, although under the Labour Code women are free to choose whatever profession they wish to pursue, limitations continue to exist for Muslim women who may face opposition from their husband under Article 36 of the Code of Muslim Personal Laws of the Philippines (Government of the Philippines, 1977<sup>[106]</sup>).

In some Southeast Asian countries, the law also fails to adequately protect women regarding non-discrimination in employment. In Brunei Darussalam, Indonesia, Myanmar and Singapore, the law fails to mandate non-discrimination in employment on the basis of sex. In these countries, the law does mandate non-discrimination in employment in general, but does not specify sex- or gender-based discrimination. Conversely, the other seven countries in the region have clearly inscribed in their legal frameworks the prohibition on discrimination against women in all employment-related aspects. For instance, in the Philippines, the Labour Code explicitly indicates that “It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex” (Government of the Philippines, 1974<sub>[107]</sub>).

A large majority of Southeast Asian countries have successfully updated their laws to align with the principle of equal remuneration for work of equal value. All Southeast Asian countries, with the exception of Brunei Darussalam and Myanmar, have ratified the ILO’s Equal Remuneration Convention, 1951 (No. 100), Article 2, which states that “each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all men and women workers of the principle of equal remuneration for work of equal value” (ILO, 1951<sub>[100]</sub>). Yet, this recognition of the principle of equal remuneration for work of equal value (Box 2.3) has not yet been incorporated into the domestic legal frameworks of all Southeast Asian countries. Eight countries<sup>42</sup> in the region specifically mandate equal remuneration for work of equal value in their laws. Most recently, in 2015, Indonesia issued and enacted Government Regulation No. 78, of which Article 11 mandates that every worker is entitled to receive the same wages for work of the same value (Government of Indonesia, 2015<sub>[108]</sub>). Conversely, Brunei Darussalam, Malaysia and Singapore’s laws fail to do so.

### Box 2.3. The different concepts of equal remuneration

The principle of equal remuneration for work of equal value, as set out in the Preamble to the ILO Constitution (ILO, 1919<sub>[109]</sub>), is not the same as equal remuneration for equal work.

#### Equal remuneration for equal work

The concept of equal remuneration for equal work means that similarly qualified women and men will be paid equally when they perform the same or virtually the same work in equivalent conditions. Therefore, the definition limits the application of the equal pay principle to work undertaken by women and men in the same area of activity and in the same enterprise (ILO, n.d.<sub>[110]</sub>).

#### Equal remuneration for work of equal value

The concept of equal remuneration for work of equal value is broader than the concept of equal remuneration for equal work. It encompasses cases where men and women do different work. The concept is based on the idea that when men and women perform work that is different in content, involves different responsibilities, requires different skills or qualifications, and is performed under different conditions, but is overall of equal value, they should receive equal remuneration (Oelz, Olney and Tomei, 2013<sub>[111]</sub>). Consequently, it requires a means of measuring and comparing different jobs on the basis of objective criteria such as skills, working conditions, responsibilities and effort. In order to determine whether different types of work have the same value, they can be assessed through a job evaluation method.

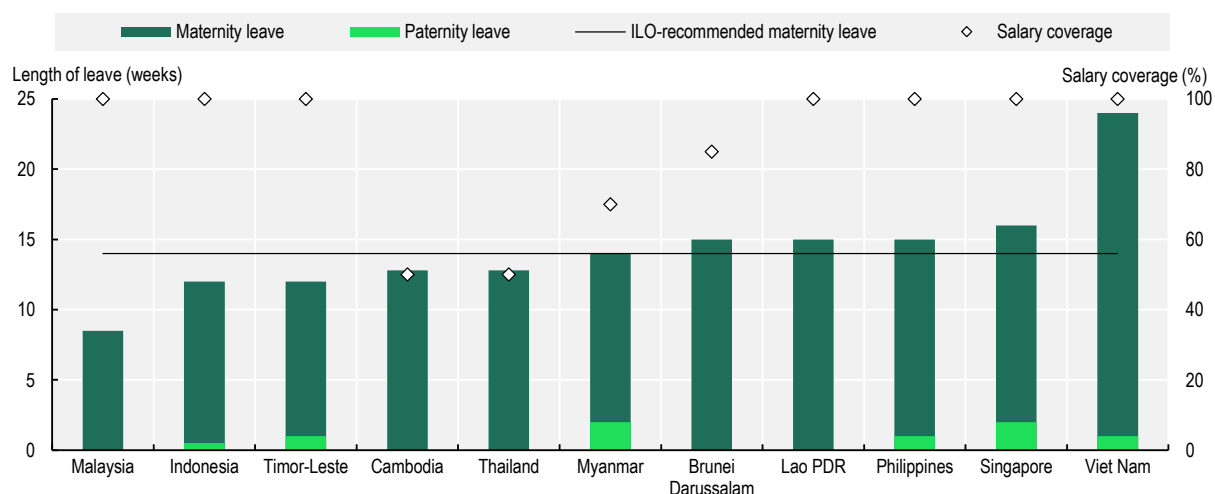
Examples of jobs that have been compared in the context of evaluating equal pay for work of equal value include: caterers and cleaners (mostly women) with gardeners and drivers (mostly men); social affairs managers (mostly women) with engineers (mostly men); and flight attendants (mostly women) with pilots and mechanics (mostly men).

All Southeast Asian countries mandate maternity leave, but length and salary coverage vary greatly between countries. Across Southeast Asia, all countries legally mandate compulsory maternity leave. However, in six Southeast Asian countries,<sup>43</sup> the compulsory length of maternity leave is shorter than the ILO-recommended length of 14 weeks (Figure 2.8). For instance, whereas in Viet Nam the law mandates 24 weeks of maternity leave, the length of the mandatory maternity leave is only 60 days (around 8.5 weeks) in Malaysia (Government of Malaysia, 1955<sub>[101]</sub>; Government of Viet Nam, 2014<sub>[112]</sub>; Government of Viet Nam, 2012<sub>[103]</sub>). Salary coverage also varies across the region. In seven Southeast Asian countries,<sup>44</sup> laws mandate that 100% of the salary should be covered during the woman's period of absence (Figure 2.8). Conversely, in Cambodia and Thailand, the compulsory salary coverage for maternity leave drops to 50%.

Moreover, women's entitlement to maternity leave schemes remains heavily dependent on their formal employment status. In many instances, schemes mandated by the law are mandatory under certain conditions, such as participation in the social security system or a minimum period of formal employment. For instance, according to Article 183 of Cambodia's Labour Law, wage benefits associated with maternity leave are only granted to women who have a minimum of one year of uninterrupted service in the enterprise that employs them (Government of Cambodia, 1997<sub>[113]</sub>). Conversely, some Southeast Asian countries have begun to address the exclusion of female informal workers from maternity leave schemes. In Lao PDR, the 2014 Social Security Law allowed informal sector workers to join the National Social Security Fund, the coverage of which include access to maternity benefits, based on a contribution rate of 9% of the worker's chosen reference wage (Addati, Behrendt and Wagenhäuser, 2016<sub>[70]</sub>). Likewise, in 2018, under the 105-Day Expanded Maternity Leave Law, the Philippines extended maternity leave to 15 weeks with 100% salary coverage. The law also extended the coverage of maternity benefits to female informal workers, provided that they had remitted to the social security system at least three monthly contributions in the 12-month period preceding the birth of the child (Government of the Philippines, 2018<sub>[71]</sub>).

**Figure 2.8. Maternity leave is common in Southeast Asia, unlike paternity leave, but length and entitlement vary**

Length of maternity and paternity leave and legal salary coverage



Source: (OECD Development Centre, 2019<sub>[114]</sub>), *SIGI Country Profiles*, <https://www.genderindex.org>; (ILO, 2020<sub>[115]</sub>), *Working Conditions Laws Database*, <https://www.ilo.org/dyn/travail>; and national legislation.

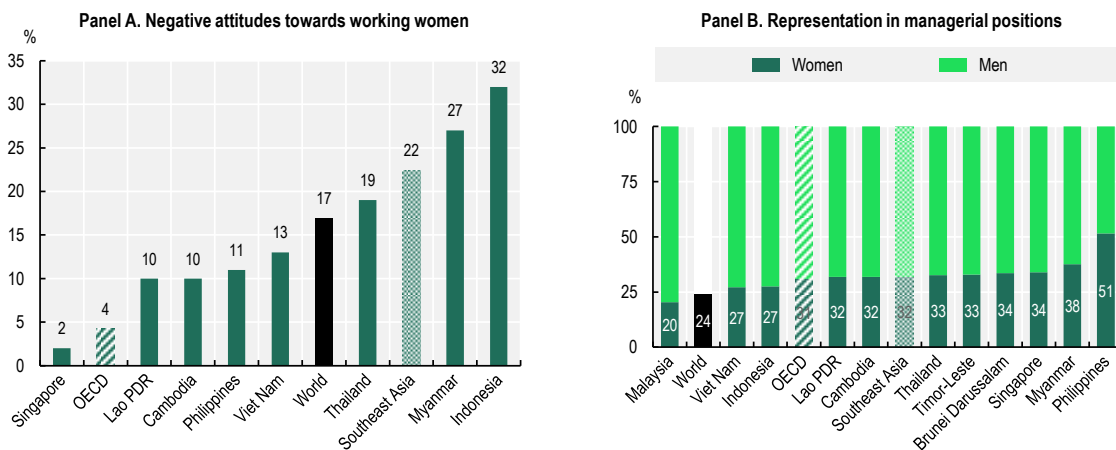
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Meanwhile, paternity leave entitlements remain scarce, limited in duration and restricted to formal employees. Six countries<sup>45</sup> in Southeast Asia mandate paternity leave, whereas the remaining five countries do not have any legal provisions granting such schemes. Compared with maternity leave, legally mandated paternity leave is much shorter in duration, ranging from two days in Indonesia to two weeks in Myanmar and Singapore (Government of Myanmar, 2012<sup>[116]</sup>; Government of Indonesia, 2003<sup>[117]</sup>; Government of Singapore, 2002<sup>[118]</sup>) (Figure 2.8). These differences send a strong message regarding the role of men and women in parenthood and uphold unequal divisions of unpaid care labour when it comes to children. Nevertheless, in recent years, some changes have emerged. In 2017, for example, Singapore successfully amended the law to increase the duration of paternity leave to two weeks. As with maternity leave, entitlement to paternity leave heavily depends on the labour status of workers, most notably their participation in the formal sector and in social security schemes. For instance, in Viet Nam, the Social Insurance Law mandates paternity leave for male employees who are paying social insurance premiums (Government of Viet Nam, 2014<sup>[112]</sup>).

The legal limitations faced by Southeast Asian women in terms of choice of profession or rights to equality in the workplace are magnified by negative attitudes towards working women. In all Southeast Asian countries except for Lao PDR and Singapore, there is evidence of discriminatory customary and traditional practices undermining legal frameworks and restricting women's work-related rights. Moreover, across the region, 22% of the population holds negative attitudes towards working women and believes it is not acceptable for a woman to have a paid job outside the home if she wants one (OECD Development Centre/OECD, 2019<sup>[111]</sup>). In comparison, 17% of the global population, and only 4% of the population in OECD member countries, holds such negative views of women's right to work for pay. Large discrepancies exist across the Southeast Asian region, as negative attitudes towards working women in the region range from 2% in Singapore to 32% in Indonesia (Figure 2.9, Panel A).

**Figure 2.9. In Southeast Asia, negative attitudes towards working women are common, while women continue to be underrepresented in positions of economic power**

Share of the Southeast Asian population disagreeing with women having a paid job, and share of women and men in managerial positions



Note: Panel A presents the percentage of the population aged over 18 years that disagrees or disagrees strongly with the statement: "It is perfectly acceptable for any woman in your family to have a paid job outside the home if she wants to". Data are missing for Brunei Darussalam, Malaysia and Timor-Leste. Global, OECD and subregional averages are calculated on the sample of countries for which data are available.

Source: (OECD Development Centre/OECD, 2019<sup>[111]</sup>), *Gender, Institutions and Development Database*, <https://doi.org/10.1787/ba5dbd30-en>; and (World Values Surveys, 2017<sup>[46]</sup>), *World Values Survey*, <http://www.worldvaluessurvey.org/wvs.jsp>.

In practice, discriminatory legal frameworks and customary practices translate into a lower representation of women in managerial positions compared with men. At the regional level, only 32% of managers in Southeast Asia are women (OECD Development Centre/OECD, 2019<sup>[11]</sup>). Although women's representation in managerial positions is better in Southeast Asia than at both the global level and the OECD level, it remains far from equality. In some Southeast Asian countries, though, great progress has been achieved. In the Philippines, for instance, data show that women are more represented than men in managerial positions, underscoring the country's many advances achieved in updating its legal framework in terms of workplace rights; in 2018, 51% of managers in the Philippines were women (Figure 2.9, Panel B).

## Restricted civil liberties

Civil liberties are the basic freedoms citizens are entitled to from their governments. As established under SDG target 5.5, civil liberties are a precondition for “women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life” (United Nations, 2016<sup>[6]</sup>). While women's participation in wider social life demonstrates the significant change that has unfolded throughout the 20<sup>th</sup> century in Southeast Asia, women continue to see their civil liberties constrained by discriminatory laws and social norms. Legal restrictions on women's civil liberties can take various forms, from restrictions on married women's ability to confer their nationality on their spouse to gender-differentiated procedures for obtaining passports. Moreover, women from minority ethnic groups face tremendous discrimination in terms of their access to citizenship, political engagement and justice, and there are numerous examples in the Southeast Asian region of grave human rights abuses.

The “Restricted civil liberties” dimension of the SIGI encompasses citizenship rights, political voice, freedom of movement and access to justice. The Southeast Asian region scores 41 in the “Restricted civil liberties” dimension, denoting a medium level of discrimination against women in this area. Southeast Asia's score in this dimension is considerably higher than the global average score of 29 and the average score of 17 in OECD member countries. Among the eight Southeast Asian countries<sup>46</sup> with SIGI scores in this dimension, there is tremendous variation, from 14 in Viet Nam – denoting a very low level of discrimination – all the way to 57 in Thailand, which indicates a very high level of discrimination against women in this dimension. Viet Nam's success in this dimension is due in large part to the fact that its laws ensure women's rights, regardless of their marital status, to acquire, change and retain their nationality and confer their nationality on their children and spouse.

## Policy options to protect and enhance women's civil liberties

- Ensure adequate and specialised legal aid for women and girls, especially those who are from low-income backgrounds or have been victims of violence.

*In Malaysia, the Department of Women's Development has created legal clinics to provide information to the public. These clinics aim to help women by enhancing their knowledge of their rights and available means of legal redress. In addition to the clinics, low-cost legal services are available through various channels, including the Legal Aid Bureau (Government of Malaysia, 2019<sup>[3]</sup>).*

- Guarantee women's access to the formal justice system by providing mobile court services in rural areas that can accommodate diverse linguistic needs.

*In Timor-Leste, mobile courts have been established and make rounds to different locations (Cummins, 2018<sup>[119]</sup>). Moreover, Decree No. 11/2017 recognised Tetum as an official language in the judicial sector, thus improving the accessibility of the formal justice system (Government of Timor-Leste, 2019<sup>[39]</sup>).*

- Provide training for law enforcement and court officials on understanding and responding to gender-based discrimination and violence, as well as intersectional discrimination.

*In Cambodia, the Ministry of Women's Affairs trained judicial police officers in legal procedures and reconciliation processes related to women's rights and domestic violence (Government of Cambodia, 2019<sup>[2]</sup>).*

- Encourage women's political participation through specialised training and temporary special measures such as quotas and incentives as appropriate.

*In Indonesia, ahead of the 2019 elections, the Ministry of Women's Empowerment and Child Protection provided a module to support women candidates. The training covered the meaning of representation, the electoral system, vote calculations, mapping voter networks and competitors' support, as well as winning strategies. Furthermore, the module provided capital in order to enable female candidates to mount competitive campaigns (Government of Indonesia, 2020<sup>[11]</sup>).*

- Promote women's capabilities of being effective leaders and decision makers through campaigns to change social norms.

*In the Philippines, the PCW launched the #AgendaNiJuana (Juana's Agenda) campaign ahead of the 2019 elections to call for gender balance in leadership and promote women's political participation and representation (Government of the Philippines, 2019<sup>[120]</sup>).*

- Pass legislation to provide married women with the same rights as married men to confer their nationality on their children and spouse.

*In Lao PDR, the 2004 Law on Lao Nationality makes no distinctions between men and women and provides equal citizenship rights to both. Specifically, men and women have the same rights to retain their nationality and to confer it on their children (Arts. 10 and 11) and spouses (Arts. 14 and 15) (Lao People's Democratic Republic, 2004<sup>[121]</sup>).*

### **Nationality laws uphold gender inequality in citizenship rights**

Citizenship or nationality rights are essential to the realisation of other fundamental rights, such as education, social security, employment and political participation. Women's equality with men in this area is enshrined in a number of international agreements, including the 1948 Universal Declaration of Human Rights (Art. 15), the 1957 Convention on the Nationality of Married Women (Art. 1), the 1979 CEDAW (Art. 9) and Resolution 32/7 adopted by the UN Human Rights Council (2016) (para. 3) (United Nations, 1948<sup>[72]</sup>; United Nations, 1957<sup>[122]</sup>; United Nations, 1979<sup>[5]</sup>; United Nations, 2016<sup>[123]</sup>). Despite these agreements, however, at the regional level, Southeast Asia's score reveals a medium level of discrimination, indicating the continued existence of both legal and non-legal discrimination against women's citizenship rights.

All of the Southeast Asian countries guarantee women's rights to acquire, change and retain their nationality. Women enjoy equal legal status with men regardless of their civil status. Nevertheless, customary, religious or traditional practices or laws infringe on these rights in some countries, namely in Cambodia and Myanmar. For example, in Myanmar, difficulties obtaining government documents are a significant issue, with census data revealing that "almost a third of the population of Myanmar do not have a form of identity document, [and] 54% of those who do not have identity cards are women" (UNHCR; UN

Women, 2018<sup>[124]</sup>). Underlying these data are insufficiencies in administrative services in rural areas and processing fees that constitute barriers to obtaining identity cards.

In the Southeast Asian region, most legal discrimination pertains to women's ability to confer their nationality on their spouse or children. These laws reflect the view that women gain legal status by having a relationship with a man. In four Southeast Asian countries,<sup>47</sup> women do not share the same legal rights as men to confer their nationality on their spouse. For example, in Thailand, the non-Thai spouses of Thai men have the right to choose their nationality, while the non-Thai spouses of Thai women do not have this right and can only officially acquire Thai nationality by requesting a change (Government of Thailand, 1965<sup>[125]</sup>). Thailand tried to remedy this in a 2009 amendment by lowering the requirements for the non-Thai spouses of Thai women to apply for Thai nationality (Government of Thailand, 2008<sup>[126]</sup>). With regard to conferring nationality on children, neither Brunei Darussalam nor Malaysia guarantee women the same rights as men regardless of marital status. While Malaysia allows Malaysian men to confer their nationality on their children born outside of Malaysia, women are not legally entitled to do so in the same manner (United Nations, 2018<sup>[127]</sup>).

Discrimination on the grounds of ethnicity also prevents women from minority groups from obtaining citizenship and the basic rights and services this legal status entails. In Cambodia, the ethnically Vietnamese *Khmer Krom* – despite being recently registered as permanent residents of Cambodia – lack citizenship rights, leading to their denial of other basic rights, protections and services (United Nations, 2020<sup>[128]</sup>). In Myanmar, since the 2017 attacks on border posts in northern Rakhine State, Rohingya women and girls have not only been the targets of violence, but also account for the majority of internally displaced persons in Myanmar. Despite the fact that these women and children have remained in Myanmar, they continue to face the systematic denial of their citizenship by the government (United Nations, 2019<sup>[129]</sup>); (United Nations, 2019<sup>[130]</sup>).

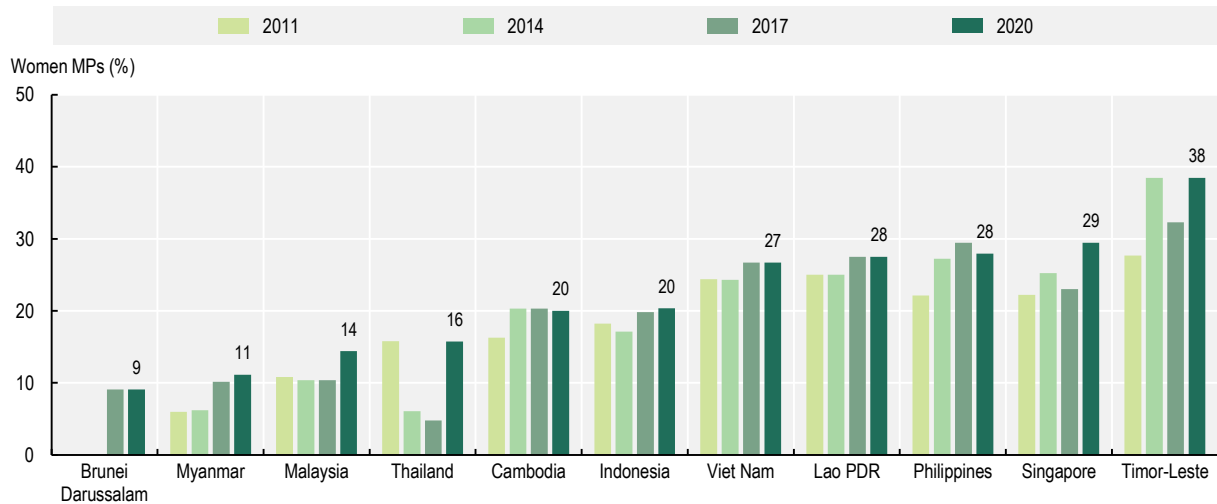
### ***Women's political voice has improved at the national level since 2017***

Women's right to participate actively in politics is fundamental to their empowerment and the health of societies. Numerous international agreements have highlighted the importance of women's political voice, including the 1995 Beijing Declaration and Platform for Action and the CEDAW (Art. 7). Furthermore, SDG target 5.5 calls on States to “ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life” (United Nations, 2016<sup>[6]</sup>). Women's political voice is also a regional priority for Southeast Asia, as the ASEAN Socio-Cultural Community Blueprint 2025 establishes a strategic measure to “[e]nsure inclusive participatory and representative decision making at all levels with special attention to the needs of those in disadvantaged situations including ethnic minority groups, children, youths, women, persons with disabilities, and elderly/older persons” (B.2.9) (ACWC, 2018<sup>[131]</sup>). Moreover, the ASEAN Committee on Women's *Work Plan 2016-2020* includes the objective to “[i]ncrease the proportion of women in leadership...particularly in appointed and elected positions in the public and private sectors” (ASEAN, n.d.<sup>[132]</sup>).

All countries in the Southeast Asian region provide women with the same legal rights as men to vote and hold public office in the legislative and executive branches of government. However, women remain underrepresented as political decision makers. When the data for the fourth edition of the SIGI in 2019 were calculated in 2017, women accounted for just 19% of the representatives in the lower or single houses of parliament in the Southeast Asian region. However, this figure conceals variation between countries, where women's representation as members of parliament (MPs) ranged from 29% in Timor-Leste to 5% in Thailand. In 2020, Southeast Asian women's political representation has improved, with women accounting for 21% of MPs. This increase is largely due to tremendous gains made by women in Thailand, where the percentage of female MPs increased from 5% in 2017 to 16% in 2020. Despite these gains, this level of representation remains insufficient considering that women constitute approximately one-half of the population (Figure 2.10).

## Figure 2.10. Women’s representation as political decision makers in Southeast Asia has improved but remains low

Share of women MPs in lower or single houses of parliament, 2011-20



Note: Data for Brunei Darussalam are missing for 2011 and 2014. Countries are ranked by increasing share of female MPs in 2020.

Source: (Inter-Parliamentary Union, 2020<sup>[133]</sup>), *IPU Parline*, <https://data.ipu.org>.

StatLink  <https://doi.org/10.1787/888934230072>

While the social, historical and institutional characteristics of the political systems throughout Southeast Asia vary tremendously, gender-based stereotypes and discriminatory practices are two of the factors that constrain women’s ability to be leaders in politics. On average, 57% of the population in the six countries<sup>48</sup> with available data agrees with the statement: “On the whole, men make better political leaders than women do”. Yet, in some places, these negative attitudes regarding women’s political leadership are even stronger – such as Malaysia, where 70% of the population reportedly agrees with this statement. In addition to negative attitudes, evidence from six Southeast Asian countries<sup>49</sup> shows that women face non-legal, social discrimination in terms of their right to hold public office. This takes various forms, from practices that drive down women’s rates of educational attainment, to political violence against ethnic and religious minorities, to the time burden of unpaid care and domestic work that also prevents women from participating in the labour force.

Quota systems can help promote women’s political leadership; however, in Southeast Asia, these measures have yielded mixed results. Four countries<sup>50</sup> in the region have quotas at the local and/or national level. Timor-Leste leads in the region, with its quota mandating that one in every three candidates be a woman, which has led to women holding 38.5% of seats in the upper house (Government of Timor Leste, 2011<sup>[134]</sup>; Inter-Parliamentary Union, 2020<sup>[135]</sup>). However, similar national-level quotas, such as those in Indonesia (Government of Indonesia, 2012<sup>[136]</sup>) and Viet Nam (Government of Viet Nam, 2015<sup>[137]</sup>), have not yet led to the same levels of representation. While candidate quotas such as these can ensure representation on ballots, they do not always lead to better representation of women in elected positions. At the local level, Timor-Leste’s quotas have also been impactful, with the Suco Law (09/2016) requiring at least one female candidate for the election of the village and hamlet chief, which led to a near doubling in the number of female chiefs between 2009 and 2016 (International Women’s Development Agency, 2016<sup>[138]</sup>). The Philippines has quotas at the local level, and other bodies – including development councils and planning bodies – are required to include at least 40% women (Republic of the Philippines, 2008<sup>[139]</sup>).



Special measures other than quotas are also promising avenues for increasing women's political voice. In the Philippines, political parties have financial incentives to include women, and at least two parties have voluntarily instituted their own quotas (International IDEA, 2020<sup>[140]</sup>). In Indonesia, Thailand and Timor-Leste training is offered to promote women's political voice (OECD Development Centre, 2019<sup>[114]</sup>; UNDP, n.d.<sup>[141]</sup>; UN Women, n.d.<sup>[142]</sup>). For example, in 2017, Timor-Leste, allocated USD 24 000 of the state's budget to offer municipal-level gender mainstreaming and community-level women's leadership training (OECD Development Centre, 2019<sup>[114]</sup>).

### ***While legal frameworks generally protect women's freedom of movement, social practices continue to limit women's mobility***

Women's freedom of movement is vital for their ability to exercise their civil liberties, access public services and take advantage of opportunities in the public sphere. Freedom of movement is recognised as a universal human right in the Universal Declaration of Human Rights (1948) (Art. 13) and the International Covenant on Civil and Political Rights (1966) (Art. 12). Moreover, the CEDAW calls on States Parties to "accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile" (Art. 15) (United Nations, 1979<sup>[5]</sup>). Despite wide recognition of the right to freedom of movement, countries' legal frameworks fail to guarantee this right to women on an equal basis with men, and social norms and practices continue to constrain women's liberties in this regard.

Most Southeast Asian countries guarantee women's equal access to identity documents and passports, and the ability to travel outside the country. In Southeast Asia, eight countries<sup>51</sup> have legal frameworks that guarantee women's freedom of movement, meaning that women's access to identity documents and passports and their ability to travel outside the country are protected on an equal footing with men regardless of civil status. In the remaining three countries, aspects of their legal frameworks impose constraints specifically on married women. For example, in Myanmar, the law does not give married women the same rights as married men to apply for passports. In Brunei Darussalam, the Islamic Family Law restricts women's mobility by outlawing women from leaving their husbands' homes without permission (Government of Brunei Darussalam, 2000<sup>[32]</sup>). Based on traditional beliefs of women's subordination to men within marriage, these laws position men as having authority over their spouses.

Discriminatory customary, religious or traditional practices or laws also serve to discriminate against women's right to apply for identity cards and passports in three Southeast Asian countries.<sup>52</sup> In Myanmar, rural women face barriers to obtaining identity documents due to a lack of accessible administrative services (Gender Equality Network, 2013<sup>[143]</sup>). This is a particularly important issue, as women who lack identity documents face restricted freedom of movement and are unable to register the birth of their children, which impedes their children's access to rights, services and education (United Nations, 2019<sup>[129]</sup>; UNHCR; UN Women, 2018<sup>[124]</sup>). In Cambodia, members of the *Khmer Krom* ethnic group struggle to obtain birth certificates and identity documents (United Nations, 2017<sup>[144]</sup>). In Indonesia, identity card applications require information on religion, but limit applicants to selecting one of the six officially recognised religions (Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism). As a result, members of minority religions, such as the Ahmadiyah, are effectively barred from obtaining identity cards, thus preventing them from registering marriages or receiving medical care at hospitals (Human Rights Watch, 2017<sup>[145]</sup>).

Public safety is a key aspect of ensuring women's freedom of movement within their cities, regions and countries. SIGI data consistently show that women feel less safe in public than men, both globally and within the Southeast Asian region. Globally, and within OECD member countries, 65% of those declaring that they feel unsafe walking alone at night in the city or area where they live are women. In Southeast Asia, this figure grows to 73%, reflecting even stronger gendered dynamics when it comes to public safety. Nevertheless, this figure varies at the country level. In the Philippines and Singapore, women account for

61% of the respondents who report feeling unsafe, while this figure grows to 81% in Indonesia. Urgent action is required in order to ensure that women feel safe in their communities and thus empowered to participate actively in public life. One promising initiative is the UN Women’s Safe Cities and Safe Public Spaces Global Flagship Programme Initiative, in which Quezon City, Philippines and Ho Chi Minh City, Viet Nam are participating cities (UN Women, 2019<sup>[146]</sup>). This global initiative aims to shed light on the challenges women face in public space such as sexual harassment and other forms of violence against women, and assist in developing, implementing and evaluating innovative measures to make public spaces safer for women and girls (UN Women, 2019<sup>[146]</sup>).

### ***Legal pluralism continues to hamper women’s access to justice***

Women’s ability to access justice encompasses redress for rights violations, bringing cases in front of judicial authorities, benefiting from legal aid, accessing courts, obtaining a fair trial with an effective remedy, and providing testimony. Women’s equal rights with men to access justice and to a fair trial is guaranteed in the 1979 CEDAW (Art. 15) and its General Recommendation No. 33 (2015), as well as SDG target 16.3, which aims “to promote the rule of law at the national and international levels and ensure equal access to justice for all” (United Nations, 1979<sup>[5]</sup>; United Nations, n.d.<sup>[147]</sup>). The ASCC Blueprint 2025 includes a strategic measure to “[p]romote regional inter-sectoral mechanisms towards a holistic, multi-disciplinary approach in enhancing...gender equality, human rights, social justice, and fundamental freedoms of all, especially the vulnerable groups...” (B.3.1) (ACWC, 2018<sup>[131]</sup>). Despite these commitments, women continue to face barriers due to legal discrimination; customary, religious or traditional practices or laws; and their own lack of confidence in their countries’ justice systems.

Nearly all Southeast Asian countries have legal frameworks that guarantee women’s access to justice on an equal footing with men. All Southeast Asian countries, with the exception of Indonesia, have legal frameworks that protect women’s rights to sue, hold public or political office in the judiciary, and have their testimony carry the same weight as men’s in civil, criminal, and family courts and tribunals. In Indonesia, the law does not allow married women to conclude “specific agreements” (Government of Indonesia, 1847<sup>[21]</sup>). Despite overall strong legal frameworks, discrimination remains a significant issue in customary and religious courts.

In practice, discrimination against women’s rights to provide testimony and sue is common in customary and religious courts and tribunals in the Southeast Asian region. In six Southeast Asian countries,<sup>53</sup> women’s testimony does not carry the same weight as men’s testimony in customary and religious courts and tribunals. This issue highlights the difficulties associated with legal pluralism, or the coexistence of multiple legal systems. The use of customary and religious courts, as well as alternative dispute resolution mechanisms, is common in the Southeast Asian region; however, in the absence of enforcement mechanisms and structures of accountability, they are a site of discrimination against women. In Indonesia, for example, sharia courts and the formal justice system coexist, but the outcomes, especially for women, can vary dramatically, as Islamic laws do not always guarantee women equal rights and treatment as men, especially in inheritance cases (Hussain, 2011<sup>[148]</sup>). Moreover, in rural Lao PDR, customary judicial mechanisms coexist with the formal legal system at the village level, where Councils of Elders or clan leaders decide cases and resolve disputes. While these informal systems vary across locations and ethnic groups, in general, it seems that decision-making roles are reserved for men (Ministry of Justice Law Research; International Cooperation Institute; UNDP, 2011<sup>[36]</sup>).

While alternative dispute resolution (ADR) mechanisms are an accessible means of pursuing justice, without clear policies and accountability they put women at risk of discrimination. In the absence of accessible fixed courts or mobile courts, women – especially those in rural areas – often turn to ADR mechanisms, such as mediation with a community leader. ADR is often more convenient and less expensive than formal justice proceedings; however, ADR processes can reinforce unequal gender power dynamics and limit women’s agency as parties in disputes, thus limiting the potential for just outcomes

(Cummins, 2018<sup>[119]</sup>). This issue has been widely recognised, however, with countries like Timor-Leste creating mobile courts and planning to harmonise existing formal and customary dispute resolution mechanisms (Cummins, 2018<sup>[119]</sup>). Furthermore, efforts to provide legal aid aim to make formal justice systems more accessible for women and are becoming increasingly common in the region (Box 2.4).

### Box 2.4. Good practice: Legal aid provisions

#### Countries throughout Southeast Asia are recognising the role legal aid can play in facilitating women's access to justice

Financial constraints can prevent women from pursuing justice, especially in cases of domestic violence. In an effort to eliminate this obstacle, numerous Southeast Asian countries have created mechanisms to provide legal aid, especially to low-income women. Between 2014 and 2019, Cambodia increased the budget allocated for justice services and legal aid for low-income women, and in 2019, sought the collaboration of the Bar Association of the Kingdom of Cambodia in providing pro bono legal services to victims of gender-based violence (United Nations, 2019<sup>[149]</sup>). Moreover, in 2017, both Malaysia (Legal Aid (Amendment) Bill 2017) and Viet Nam (2017 Law on Legal Aid) passed legislation to facilitate access to legal aid services (United Nations, 2018<sup>[127]</sup>). In Viet Nam, the 2017 Law on Legal Aid pays special attention to victims of domestic violence (Viet Nam, 2018<sup>[150]</sup>). Moreover, in Malaysia, the creation of legal clinics by the Department of Women's Development has facilitated women's access to information about their rights and forms of legal redress (Government of Malaysia, 2019<sup>[3]</sup>).

Women's lack of confidence in the judicial system also prevents them from seeking legal redress for rights violations, including gender-based violence and employment discrimination. Globally, women represent about one-half (51%) of the persons who do not trust the justice system. In OECD member countries and Asia as a whole, this figure drops to 50%. In Southeast Asia, however, women account for 53% of the persons who do not trust the justice system, which at the country level ranges from 42% in Lao PDR to 58% in Myanmar.

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## Notes

<sup>1</sup> Brunei Darussalam, Cambodia, Indonesia, the Philippines, Singapore and Viet Nam.

<sup>2</sup> Cambodia, Lao People's Democratic Republic (hereafter: Lao PDR), Singapore, Timor-Leste and Viet Nam.

<sup>3</sup> Indonesia, Lao PDR, Singapore and Viet Nam.

<sup>4</sup> Brunei Darussalam, Cambodia, Myanmar, the Philippines and Singapore.

<sup>5</sup> Cambodia, Indonesia, Lao PDR, Myanmar, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>6</sup> Cambodia, Lao PDR, Malaysia, the Philippines, Thailand, Timor-Leste and Viet Nam.

<sup>7</sup> Malaysia, the Philippines, Singapore and Thailand.

<sup>8</sup> Cambodia, Indonesia, Lao PDR, Malaysia, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>9</sup> Cambodia, Indonesia, Lao PDR, Myanmar, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>10</sup> Lao PDR and Myanmar.

<sup>11</sup> The Philippines.

<sup>12</sup> Brunei Darussalam, Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Timor-Leste.

<sup>13</sup> It is a type of agreement between husbands and wives.

<sup>14</sup> Cambodia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>15</sup> Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>16</sup> Cambodia, Lao PDR, Timor-Leste and Viet Nam.

<sup>17</sup> Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Timor-Leste and Viet Nam.

<sup>18</sup> Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>19</sup> Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand and Timor-Leste.

<sup>20</sup> Brunei Darussalam, Cambodia, Indonesia, Thailand, Timor-Leste and Viet Nam.

<sup>21</sup> Lao PDR, Malaysia, Myanmar, Thailand and Viet Nam.

<sup>22</sup> Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>23</sup> Cambodia, Indonesia, Lao PDR, the Philippines, Timor-Leste and Viet Nam.

<sup>24</sup> Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Thailand, Timor-Leste and Viet Nam.

<sup>25</sup> Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Timor-Leste and Viet Nam.

<sup>26</sup> Cambodia, Indonesia, Malaysia, Myanmar, Singapore and Timor-Leste.

<sup>27</sup> Brunei Darussalam, Cambodia, Lao PDR, Myanmar, the Philippines, Singapore and Timor-Leste.

<sup>28</sup> Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>29</sup> Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Timor-Leste and Viet Nam.

<sup>30</sup> Cambodia, Indonesia, the Philippines and Thailand.

<sup>31</sup> Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

<sup>32</sup> Brunei Darussalam, Lao PDR, Singapore and Timor-Leste.

<sup>33</sup> Cambodia, Lao PDR, Malaysia, the Philippines, Singapore and Viet Nam.

<sup>34</sup> Cambodia, Malaysia, the Philippines, Singapore and Viet Nam.

<sup>35</sup> Brunei Darussalam, Indonesia, Malaysia and Singapore.

<sup>36</sup> Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, Thailand and Timor-Leste.

<sup>37</sup> Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

<sup>38</sup> Cambodia, Indonesia, Myanmar and Timor-Leste.

<sup>39</sup> Brunei Darussalam, Malaysia, Myanmar, the Philippines, Singapore and Thailand.

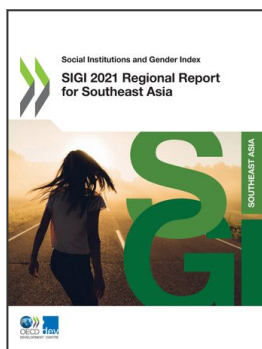
<sup>40</sup> Cambodia, Lao PDR, Myanmar, the Philippines and Viet Nam.

<sup>41</sup> Lao PDR, Malaysia, Myanmar and Viet Nam.



- <sup>42</sup> Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, Timor-Leste and Viet Nam.
- <sup>43</sup> Cambodia, Indonesia, Malaysia, the Philippines, Thailand and Timor-Leste.
- <sup>44</sup> Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Timor-Leste and Viet Nam.
- <sup>45</sup> Indonesia, Myanmar, the Philippines, Singapore, Timor-Leste and Viet Nam.
- <sup>46</sup> Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.
- <sup>47</sup> Brunei Darussalam, Malaysia, the Philippines and Thailand.
- <sup>48</sup> Indonesia, Malaysia, the Philippines, Singapore, Thailand and Viet Nam.
- <sup>49</sup> Brunei Darussalam, Cambodia, Indonesia, Malaysia, Thailand and Timor-Leste.
- <sup>50</sup> Indonesia, the Philippines (at local level only), Timor-Leste and Viet Nam.
- <sup>51</sup> Cambodia, Indonesia, Lao PDR, Malaysia, Singapore, Thailand, Timor-Leste and Viet Nam.
- <sup>52</sup> Cambodia, Indonesia and Myanmar.
- <sup>53</sup> Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, and Timor-Leste.





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