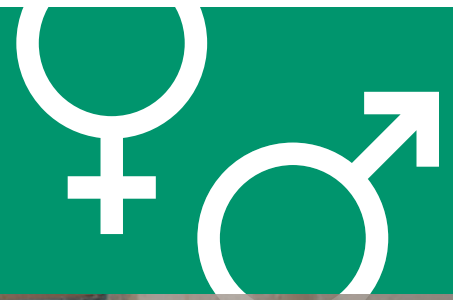




# Knowledge Briefs on **Gender** and **CRVS**



Brief 3, Paper 2



## From Cradle to Grave: Documenting the Footprints of Vulnerable Women Through Life

Photo: Peter Kapuscinski / World Bank

### KEY MESSAGES

- **Vulnerable women and girls often face multiple forms of discrimination as a result of their sex, gender, ethnicity, race, religion, disability, financial status, or other unique circumstances. Civil registration and vital statistics (CRVS) systems do not always account for this.** Services underpinned by CRVS systems that may be empowering to one group of women can be disempowering to others, such as when marriage certificates for consenting adult women are used to legitimize child or forced marriage within particular subsets of a population.
- **CRVS systems and services should underpin and be underpinned by human rights.** CRVS systems are foundational to the exercise of human rights, as they operationalize every human being's right to be visible before the law. It is therefore critical that the systems themselves be designed with human rights in mind. This means recognizing that while CRVS services can be empowering for women and girls, they can be equally discriminatory or disempowering if they fail to account for the possible harms to women and girls.
- **There is sometimes a tension between different human rights frameworks, and this is reflected in how CRVS services are administered.** Women's rights frameworks and best practices are founded on the rights of each individual woman and girl, while other frameworks are designed to bestow collective rights on a particular group, such as Indigenous rights. These approaches do not always align, which can result in certain practices that are harmful to women and girls, including polygamy or child marriage being legitimated and registrable through civil registration services. This adverse impact is often lost in subsequent vital statistics. Empowering women and girls within affected communities, and listening to their needs and wishes, can help strike the fine balance between competing rights frameworks.

- **Adopting a lifecycle approach to the development of CRVS systems is key to overcoming discrimination and ensuring an adaptable human rights based approach.** The World Health Organization (WHO) has long recognized that promoting good health across the life course is critical to improving a population's health, using an integrated, multisectoral response with particular attention to gender, equity, and human rights (WHO 2019). A similar stance can be adopted to improve CRVS systems, based on the view that registration rates should be examined in relation to factors over the life course.
- **When designing human rights and lifecycle based CRVS systems, it is important to carefully consider the role of national identification.** National identification, like many civil registration documents, can either be empowering or disempowering. Requiring that applicants produce a national identification document when registering a marriage, for instance, can help the state ensure that the bride is of legal age. On the other hand, services that require women to show identification can leave women and girls powerless before the law if they do not have proper identification, such as stateless women seeking to register the birth of a child or file for divorce.

## INTRODUCTION

There are not enough sex-disaggregated data available globally to form a clear picture of the intricacies and nuances of gender inequality and how they play out over the course of women's and girls' lives. Reports such as Open Data Watch (ODW) and Data2X's *Bridging the Gap: Mapping Gender Data Availability in Africa* (ODW & Data2X 2019) are reminders of how much remains to be done to ensure that women and girls are counted, and their needs recognized and addressed by the state.

### The importance of a complete picture

Counting people – especially vulnerable women and girls – is complex. For those lucky enough to have access to civil registration services, their existence is captured in quantitative data. This is made possible simply by completing CRVS documents to register and update the characteristics of their legal identities over the course of their lives. These forms, notices, certificates, and surveys record key life events such as births, marriages, divorces, and deaths.

However, these documents often exclude significant parts of the narratives that make up their lives. Other qualitative and contextual data are an important part of the picture for policymakers. This information is key to tackling the highly complex issues that result in certain groups of women and girls being left behind in national development endeavours. These narratives provide context to the important role of CRVS systems. When placed in context, CRVS datasets do more than simply offer quantitative data from forms and notices. They provide evidence of the milestones of life; documents that are often fought for and obtained despite multiple hardships.

## Documents essential for human rights

Given this significance, CRVS documents are naturally intertwined with their holders' human rights. In fact, they are arguably foundational to the exercise of all human rights. Article 6 of the Universal Declaration of Human Rights, for instance, bestows a right for all people to be recognized before the law. In the right circumstances, CRVS documents can provide legal certainty and empower their holders to claim rights they might otherwise forgo, willingly or otherwise.

However, CRVS datasets can sometimes sit at the heart of conflicts between competing classes of human rights – for instance between collective rights recognized within Indigenous rights discourse and individual human rights. In these situations, and depending on the context, CRVS documents can either empower women and girls or further embed discrimination and prejudice against them. Although many challenges are not always gender-specific, many of the briefs in this Knowledge Series highlight that barriers are significantly higher for women and girls.

## Issues affecting the vulnerability of women and girls

This brief seeks to shine a spotlight on how women and girls in certain marginalized population groups struggle to navigate CRVS systems due to special circumstances that often amplify their vulnerability. The brief delves into some of the interrelated CRVS policy, human rights, and practical issues inherent to this area of study. The issues themselves are broad, highly complex, and context- and fact-specific. They cannot be described holistically in a short document such as this.

To illustrate some of the main points and highlight the complexity and depth of the challenges that vulnerable women and girls face around the world, this brief presents two fictional profiles of women in Kenya and the Philippines. It relies primarily on empirical and anecdotal evidence collected through key informant interviews in each country, supplemented by desk research. It is important to clarify at the outset that the assertions made in this brief are merely indicative and are intended to help policymakers reflect on the deeper issues and challenges that underpin the development of effective CRVS systems.

## KENYA: STRUGGLING TO BE COUNTED WHILE STATELESS<sup>1</sup>

With 67 living languages, Kenya is an ethnically and linguistically rich country ([Ethnologue 2019](#)). While the proportion of people living in extreme poverty has declined significantly in the past decade, around 36 percent of the population in 2015–2016 still lived on less than US\$1.50 a day, with the highest poverty rates located in rural areas in the northeast of the country ([World Bank 2018](#)).



Photo: Flore de Preneuf / World Bank

<sup>1</sup> Information set out in this example is drawn from an interview with Diana Gichengo, Programme Manager for Identity and Inclusion, Kenyan Human Rights Commission, except where referenced otherwise.

According to the latest available UNICEF data (UNICEF 2013),

- approximately 26 percent of the Kenyan population marries before the age of 18;
- 60 percent of births are registered; and
- 44 percent of men and over 52 percent of women believe that wife-beating is justified in certain circumstances.

The UN Committee on the Elimination of Discrimination Against Women (CEDAW) has expressed concern about the discrimination in Kenyan law that women in Muslim and customary or traditional marriages face through their explicit exemption from constitutional equality provisions (CEDAW 2017).

Within Kenya's rich cultural and ethnic tapestry, there is a small number of groups that remain unrecognized as Kenyan citizens, primarily for historical reasons. Some of these communities, such as the Makonde and Nubian peoples, have recently been granted identity cards and title deeds by the state, while others such as the

Pemba, Warundi, and Shona<sup>2</sup> groups remain stateless, unable to gain formal identification (CEDAW 2017). While these groups are some of the most left behind in the country, it should be noted that the current government is making efforts to formalize their status (UNHCR 2019).

If we were to imagine the life of a teenage girl in one of these groups through a CRVS lens, what would it look like? We'll call her 'Anaishe' from the Shona language.

### Birth registration

Let's consider what the process would have been for Anaishe's stateless parents to register her birth. Kenya does not yet have a legal mechanism for determining who is a citizen or not. Historically, this has created a significant degree of discretion in birth registration, with cases of officials denying registration to people they suspected of not being citizens. Following constitutional reform in 2010, birth registration became legally universal. In practice, for stateless communities, if parents register their child within six months of birth, they do not need to show identification documents to complete the registration. If, however, parents wish to register their child after the six-month timeframe, they must show identification. If her stateless parents were unable to register her in time, it is unlikely that Anaishe could ever be registered, thus perpetuating intergenerational statelessness and its associated uncertainties.

As in many countries, the cost of late registration and the availability of registrars are also barriers to registration in Kenya. Registering a child within the six-month timeframe is free. After that period, parents must pay approximately US\$1.50, which is a substantial amount for an impoverished family. Moreover, if Anaishe's mother were unmarried or single, she would still be legally entitled to register the birth, but she



Photo: Dominic Chavez / World Bank

2 The Kenyan Government recently issued 500 birth certificates to Shona children following a campaign by rights groups and UNHCR.



would likely face substantial pressure from her community to avoid registering without adding a father's name, due to the stigma that children born out of wedlock are illegitimate children. In such situations, it is not unheard of for single mothers to 'adopt' parents, essentially asking other married couples to register the birth of her children to protect against social stigma.

### **Marriage and divorce registration**

Kenya operates two parallel legal systems for marriage and divorce – a 'judicial' one and an extra-judicial 'customary' one, which also includes Muslim traditions for those who adhere to the Islamic faith. If Anaishe married through the judicial system, she would have to be at least 18 years of age and possess an identity card to be entitled to the safeguards pertaining to gender equality as set out in the 2010 Constitution. If, due to her statelessness, Anaishe was unable to provide an identity card, she could not legally register her marriage.

If Anaishe married extra-judicially through a customary, traditional ceremony, she would not need to produce an identity card. However, she would not be protected by the Constitution's safeguards, even though customary marriages are recognized in Kenyan law and are registrable, albeit subject to substantial bureaucracy. Registering a customary marriage would also require Anaishe to provide an identity card.

Anaishe may not be able to register a marriage – judicial or otherwise – if her parents were stateless, even with her own Kenyan identification number, as marriage notification forms require details of Anaishe's parents, including their identification numbers. A further obstacle to formalizing marriages is cost. The cost of getting a wedding certificate in Kenya ranges between US\$6 and \$8, and the ceremony itself can cost between US\$30 and \$160. These costs are prohibitive for many Kenyans.

Although most marriages in Kenya are customary, these weddings provide women with very little protection overall. They are sometimes polygamous, meaning men can take multiple wives. The weddings are usually subject to a 'bride price,' and they are perceived as being binding for life, with separation and divorce frowned upon. As they are not subject to constitutional safeguards, customary marriages are also chosen for child and forced marriage. Although child and forced marriage are illegal in Kenya, once a bride turns 18, customary marriages can be registered as if they have just taken place. The registration process for customary marriages does not appear to include checks to identify whether an 18-year-old bride might already have children, or whether she is entering the marriage of her own free will. Without these protections, marriage registration becomes an oppressive moment that further constrains the fundamental human rights of girls like Anaishe.

In Kenya, divorces, or dissolutions of marriage, operate along judicial and customary lines similar to the marriage process. While Anaishe would be entitled to initiate a divorce with proper identification documents, both judicial and customary processes require that there be a reason for the divorce. Judicially, no-fault divorces do not exist, as is the case in many former English common law jurisdictions. If Anaishe did not have an identification number as a member of a stateless community, she could not initiate a judicial divorce.

Judicial divorces in Kenya are extremely expensive. They require that parties hire a lawyer and can result in drawn-out legal battles. Moreover, divorces are heavily stigmatized and can have serious implications for women. By getting a divorce, Anaishe could risk being ejected from her community or religious congregation, or face discrimination, when making employment or other applications,

which often ask for a marital status. The stigma of divorce may even transfer to any children that Anaishe might have, resulting in their isolation too.

The grounds for customary divorces in Kenya are highly discriminatory and prejudicial to women. In divorce proceedings, Anaishe's husband may legitimately cite grounds that include a refusal to have sexual relations or even witchcraft ([Kenya Legal Resources 2019](#)). References to witchcraft as grounds for divorce even appear within judicial cases – as opposed to customary law – in the country ([Kenya Law 2019](#)). Moreover, Anaishe's statelessness could be used as a reason for marital annulment in and of itself, should her husband decide to publicly state that her identity and precise age are unknown. This would further disempower Anaishe.

In light of these issues, it becomes clear that marriage and divorce registration are not always empowering experiences. It is hard to imagine what the societal repercussions must be for women who are divorced on the basis of witchcraft, for instance, and for this ground to be permanently recorded in state legal records.

### Death registration

Death registration in Kenya is extremely rare. It is even rarer for poor, rural women, because deaths are usually recorded for succession purposes. As men are more commonly the legal holders of land and other assets, they are more likely to have their deaths registered. Moreover, death registration is likely to be undertaken by the deceased's sons or other male family members to claim inheritance rights, which locks a widow out of the legal claim and renders her financially dependent on the male members of her, or of her former husband's, family. As a stateless woman, Anaishe would have no legally recognized succession rights following her husband's death.

Ultimately, it is practically impossible for people who are stateless such as Anaishe to have their own death registered, because registering a death in Kenya requires that the deceased's identification card be surrendered. Anaishe's status as a stateless girl would therefore have a profound impact on her rights throughout her life. It is likely that she would remain formally invisible to the state from the moment of her birth until well past her death.

## THE PHILIPPINES: BALANCING INDIGENOUS CULTURE WITH THE MODERN STATE<sup>3</sup>

The Philippines is a vast country with a population of over 100 million people dispersed over thousands of islands. It straddles the Asian and Australian continents and its ethnic and cultural composition reflects this diversity. According to World Bank data, extreme poverty in the Philippines has fallen in recent decades and currently stands at around 21 percent. The poorest communities are those that are dependent on agriculture as their main source of income and reside in hard-to-reach rural localities ([World Bank 2018](#)). Despite one-fifth of the population still living in extreme poverty, the Filipino economy is on an upward trajectory, and the country is poised to progress from a lower-middle income country to an upper-middle income country in the near future ([World Bank 2019](#)).

While UNICEF data based on the 2010 census indicates that birth registration in children under age 5 is at 90 percent, the remaining 10 percent of unregistered children live in some of the hardest-to-reach parts of the country ([UNICEF 2018](#)). CEDAW has lauded the country for passing a *Magna Carta of Women (Republic Act No. 9710 of 2009)*, but expresses concern at the

3 Information set out in this example is drawn from an interview with Bernadeth Bonachita, Chief Administrative Officer, Philippine Statistics Authority (Caraga), except where referenced otherwise.

exemption of Indigenous and Muslim women from its protections, which can “result in unequal relations between husband and wife, including harmful practices such as polygamy and child and forced marriage, as well as unequal practices with respect to inheritance” (CEDAW 2016). These are all issues for which identification and legal proof of civil status are crucial.

CEDAW also acknowledges that “discriminatory gender stereotypes, stigmatization and the lack of adequate support systems all pose barriers to justice and to effective remedies for women, in particular those facing multiple forms of discrimination, such as women in poverty, women with disabilities, Indigenous and Muslim women, women living in geographically inaccessible areas, and lesbian, bisexual, and transgender women” (CEDAW 2016).

Numerous Indigenous groups live throughout the country, and it is estimated that between 10 and 20 percent of the population is Indigenous (IWGIA 2019). Indigenous populations in the mountains of the north of the country are collectively referred to as *Igorot*, and those in the south as *Lumad*. Each of these general groups is composed of dozens of individual tribes and population groups that have their own traditions, cultures, languages, and dialects. Within the Lumad group in the south of the country live the Manobo people, an Indigenous agriculturalist population who occupy a stretch of territory called the Pangasananan (ICCA 2019). The Manobo, like many other Indigenous groups, continuously perform a balancing act between preserving their unique traditions and way of life, while also participating as full citizens in a rapidly developing economy.

Similar to the Kenyan example, the interplay between CRVS systems, human rights, traditional lifestyles, and development is complex. What would life look like through a CRVS lens for a young woman – let us call her Diwita – growing up in the Manobo community?



Photo: Wikimedia Commons

## Birth registration

All Filipinos, including Indigenous people like Diwita, are entitled to Filipino citizenship and birth registration services. If Diwita's birth was registered within 30 days, it would be free. Thereafter, it would be at the local civil registrar's discretion as to whether to apply a charge. If Diwita were born in a hospital or another health facility, her birth could be registered by medical staff there. If she were born at home, a family member or other trusted member of the community could register it.

While the process is the same for Indigenous and non-Indigenous Filipinos, Indigenous communities face particular challenges to registering births. Indigenous groups such as the Manobo often live in hard-to-reach areas, which can be a barrier to timely birth registration.

It can often cost families up to US\$20 to travel to their nearest registration point, a sum that is prohibitive. Moreover, families like Diwita's are more likely to give birth at home than in health facilities, further reducing the probability that births will be registered. This also contributes to a heightened risk of death or serious injury during childbirth for Indigenous women.

Despite these barriers, in some parts of the country, local civil registrars travel to secluded Indigenous communities to undertake registration activities. Moreover, health officers encourage Indigenous women to give birth at health facilities to mitigate against the risks associated with home delivery and facilitate birth registration.

Indigenous communities also experience obstacles that relate to language and education levels when registering births. Like all CRVS documents, birth certificates are written in English in the Philippines – a language that Diwita and her parents likely do not understand. While they can get assistance in filling in CRVS documents from local civil registrars, low levels of formal education can sometimes make it difficult to convey the importance of registration.

Moreover, because of language differences, communities such as the Manobo will provide a name to the state that differs from the name they use within their own communities. This can result in families forgetting what names they have provided to officials, making it particularly challenging to later retrieve birth certificates. Identifying the place of birth and address can also be an obstacle for communities such as Diwita's, as the names of locations used by the state and local Indigenous communities can differ. This can make it hard to determine exactly where a person was born, particularly in homebirth situations. This confusion can be compounded in cases of late registration when parents do not precisely recall where a birth took place.

Birth registration in the Philippines is closely tied to marriage status. Part of the birth registration process requires parents to provide the date and place of their marriage to establish whether their child is legitimate. While Diwita's mother would be legally entitled to register her birth regardless of her marital status – and she could opt to leave the father's name blank on the certificate – this would be looked down upon by her local community, who place great emphasis on recognizing forefathers' names on birth registration documents.

## Marriage and divorce

The Philippines has separate laws for Indigenous peoples that take into account their unique status and traditions. The *Indigenous People's Rights Act of 1997* is the foundational document that safeguards traditional Indigenous culture, including the right to hold traditional marriage ceremonies. As a result, if Diwita were to marry in a traditional ceremony, her marriage could be registered and recognized by the state.

Notwithstanding this, the balance between Indigenous rights and gender rights can be a fine one and can be contradictory, as exemplified in CEDAW's comments on the Philippines' last Periodic Reports ([CEDAW 2017](#)). For instance, while the age of consent and marriage for non-Indigenous Filipinos is 18, Filipino law recognizes that for Indigenous people it is often when puberty begins. Child marriage and polygamy are common in communities such as Diwita's, and it is likely that she would be married at a young age.

Indigenous people who wish to register their marriages do not need to obtain a marriage licence prior to their wedding. They are entitled to the same marriage certificate as non-Indigenous Filipinos, but also have to submit a separate form indicating whether their marriage ceremony was traditional, and whether the marriage in question was the male's first, second, third, etc., legally recognizing polygamy.



Similar to birth registration, marriage registration is free, but municipalities may impose a fee if the marriage is not registered with the Solemnizing Officer within 15 days. In communities such as Diwita's, the community chief would be recognized as the Solemnizing Officer.

Filipino law recognizes 'dissolution of marriage,' rather than divorce for Indigenous people. Dissolution of marriage is governed primarily by traditional customs and processes and can include counselling with the community chief. Anecdotally, it is unclear how prevalent such dissolutions are and what rights, if any, women such as Diwita are afforded during these processes.

### Death registration

Death registration levels within Indigenous communities are very low. Similar to the Kenyan example, deaths are usually registered for succession purposes. As a result, men with assets are more likely to have their deaths recorded than women like Diwita. The implications for inheritance for widows are also bleak, keeping in mind CEDAW's comments on this issue as set out above.

While Indigenous women such as Diwita have rights recognized in law and can access CRVS services in principle, they face both practical and identity-related obstacles. Practical obstacles relating to cost, language, and access are difficult and expensive to address, but not impossible to overcome.

The contradictions between the collective right to an Indigenous identity and individual fundamental rights are more subtle and harder to remedy. Empowering Indigenous women and girls such as Diwita is key to finding this balance. This requires more available data and statistics on the numbers and circumstances of Indigenous births, the occurrence of harmful practices such as child marriage and polygamy,

the prevalence of marriage breakups and details on how assets are divided, and an increase in the number of death registrations of women.

## CONCLUSIONS

This brief has sought to shine a spotlight on how women and girls in certain marginalized population groups struggle to navigate CRVS systems due to special circumstances that often render them more vulnerable than other parts of the population. This is a complex and convoluted area of research that includes numerous factors at any given time. The examples from Kenya and the Philippines highlight that CRVS documents and processes are more than just quantitative data. They can be empowering tools for vulnerable women and girls, but only if their issuance takes into account contextual circumstances.

While some barriers such as cost, language, and difficulty accessing CRVS services due to distance can be difficult to overcome, they can be addressed through investments in services. Other obstacles are more subtle and relate to the multiple forms of discrimination that vulnerable women and girls face, an absence of human rights and lifecycle approaches to the development of CRVS systems, or a failure to adequately consider what effects particular CRVS policies might have on certain groups.

To account for these considerations, policymakers, academics, civil society activists, and others involved in developing CRVS systems should consider the following questions within their design processes:

- What are the various types of discrimination, disempowerment, and exclusion that various groups of women and girls face? Are there multiple overlapping forms of discrimination that need to be understood through a CRVS lens?

- Are any new proposed CRVS processes compliant with international human rights standards? Do CRVS processes take into account the possible harms that could occur to vulnerable women and girls from their implementation? Is there enough organizational flexibility and adaptability to ensure that CRVS processes protect vulnerable women and girls?
- Are CRVS systems being designed with a lifecycle approach in mind? Do they consider the different types of issues that vulnerable women and girls may face at different junctures in their lives – from birth through to death? Do the various parts of the CRVS systems talk to each other and join up?
- Are CRVS services contingent on presenting national identification? In what circumstances is this appropriate and empowering, or a barrier and hindrance to empowerment? What alternative measures are feasible?

- Overall, are there processes in place to monitor and evaluate CRVS processes on a regular basis to capture what is working, what is not, and where improvements need to be made? Are there indicators and metrics that relate to marginalized and vulnerable groups of women and girls within standardized monitoring and evaluation processes and gender-related results frameworks?



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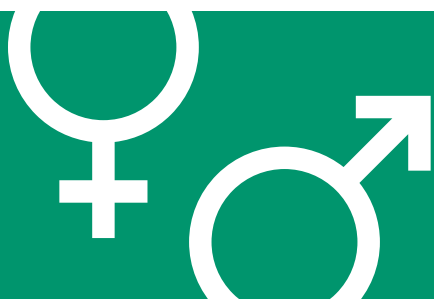
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