

Strengthening Women's Citizenship in the context of State-building: The Experience of Sierra Leone



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Introduction

There is currently great interest in citizenship within development discourse and practice. The development community has come to see citizenship both as a key element of democracy and accountability, and as an important framework to understand “the extent to which poor people are able to participate in the decision-making structures which shape events and outcomes in their own lives”.¹ Feminist scholars have made the case that citizenship is also a useful framework to understand and support women’s struggles for equality, as it reveals how women can influence the institutions, policies and structures that shape their lives. While there are many different definitions of citizenship, one that is perhaps most useful in the context of development and gender equality is that citizenship is made up of access to rights and participation in governance. This is the definition used in this paper.²

Following the end of the devastating internal conflict, there is now a process of state-building underway in Sierra Leone. Within this process new institutions are being created and old ones reformed, and the boundaries of authority between the formal state and customary authorities are being redrawn. This process has profound implications for women’s rights and participation in relation to the formal state, to customary authorities and to their communities, and has the potential to significantly reshape women’s experience of citizenship.

This paper explores how state-building processes in Sierra Leone can offer opportunities to strengthen women’s citizenship and influence over the decision-making structures which affect their lives. It will look at the forms of citizenship currently available to women in Sierra Leone, the challenges women face in

claiming their rights and participating in governance, and the changes that are being brought about by the strengthening of the formal state. It will also make recommendations for how women’s citizenship can be placed more centrally within the state-building process.

The paper is based on field research undertaken by FRIDE and the Campaign for Good Governance in Sierra Leone in June 2008. Research was conducted in Freetown and Moyamba, Kono and Koinadugu districts.

Citizenship frameworks for women in Sierra Leone

Liberal theories have traditionally conceived of citizenship as a relationship between the individual and the state in which all citizens are equal, and which is unaffected by the individual’s social identity or group membership. This conception of citizenship informs much of the research and programming on citizenship in development contexts. However, this definition has been challenged by feminist scholars and those working from Southern perspectives, who argue that it does not capture the citizenship experiences of women and other marginalised groups, or of many people in non-Western societies.³

In recent years a broader approach has been developed that views citizenship as the relationship of the individual to the state *and* to society.⁴ In this conception, citizenship operates at multiple levels. Individuals experience different forms of citizenship within the different social collectives of which they are members (such as ethnic and religious groups, local communities, or even families), and their relationship

¹ Sweetman, Editorial, “Gender and Development”, 2003.

² For an analysis and critique of development discourses on citizenship, see Robins (et al.), “Rethinking ‘Citizenship’ in the Postcolony”, *Third World Quarterly*, 2008.

³ See for example Kabeer (ed.), “Inclusive Citizenship: Meanings and Expressions”, 2005.

⁴ This approach was originally proposed by Marshall in the 1950s. It has more recently been developed by scholars working on the citizenship of women and excluded groups.

to the state is shaped by their membership of these social collectives.⁵ Such an approach is useful in revealing the roles of social identity, power and inequality in shaping individuals' experiences of citizenship, as well as revealing the ways in which people draw on a range of different identities, discourses and relationships to claim rights or participate in decision-making.⁶

It is often at the community or domestic level that women access rights and participate in governance, and therefore traditional conceptions of citizenship as solely a relationship between the individual and state can obscure the citizenship experiences and activities of women. A broader, multi-level approach enables an understanding of how women operate as citizens within the social groups of which they are members, as well as how women's relationship to the state is shaped by their social identity and mediated through their community membership – for example where decisions over women's lives are delegated to community level, or women are "represented" in dealings with the state by male community leaders. However, while broadening the concept of citizenship to include a focus on the community level is useful in understanding women's citizenship experiences, it is important that being a citizen at community level is not presented as sufficient. As it is the ultimately the state that sets the formal structures that determine the allocation of rights, resources and power at all levels of society, it is vital that women can also act independently as citizens in relation to the state.

In Sierra Leone there are two distinct governance frameworks, within which rights are defined and accessed and decisions are made. These are the framework of the customary chieftom, within which citizenship is based on social identity, group membership, and locality; and that of the formal, democratic state, within which citizenship is based on nationality and legal rights. It is the relationship and

distribution of power between these two frameworks that provides the context within which women can claim rights and participate in decision-making, and shapes Sierra Leonean women's experience of citizenship. The changes that are currently taking place in this relationship, in the context of the state-building processes that are underway in Sierra Leone, provide some important opportunities to strengthen women's citizenship.

Women's citizenship in relation to customary authorities

Sierra Leoneans' most important social identity is their membership of a family, which is embedded within a customary community and has historical ties to local land. It is through such community membership that basic rights are accessed, such as land, justice and family rights, and it is the chief and elders who govern this community. The current system of chieftom governance was established during colonial rule and, like many customary governance systems in Africa, it is to some extent a colonial creation that reified local power structures and customs in a way that has reinforced the subordination of women in the name of "tradition". Customary governance was seriously disrupted during the conflict, as many chiefs were targeted for violence and fled their chiefdoms. However, the Sierra Leone government and international donors moved to quickly re-establish the chieftaincy structures following the end of the conflict in order to ensure some form of local governance.⁷ This was despite the fact that consultations and a DFID-commissioned evaluation had shown widespread dissatisfaction among the population at the power and abuses of chiefs. Although the government is currently making some efforts to reform customary governance structures, these remain highly patriarchal and exclusionary.⁸

⁵ For greater elaboration of these more "inclusive" approaches to citizenship, see Kabear, Yuval-Davis and Sweetman, among others.

⁶ For discussion of the multiple ways in which people act as citizens, see Robins (et al.), "Rethinking 'Citizenship' in the Postcolony", 2008.

⁷ When the DFID-funded Governance Reform Secretariat was established in 1999 one of its first priorities was the re-establishment of paramount chiefs in areas under government control. For more on this see Thomson, "Sierra Leone: Reform or Relapse? Conflict and Governance Reform", 2007.

⁸ Exclusion of youth within chieftom structures is recognised as one of the causes of the conflict in Sierra Leone.

Until recently, customary authorities have had responsibility for all decision-making over domestic and community matters, and therefore over those issues most relevant to women's lives, such as marriage, inheritance, property, land and family rights. As Yuval-Davis points out, the state itself constructs the boundaries between the "public" and "private" sphere by delineating those areas which it seeks to regulate and those it leaves to community and domestic regulation.⁹ The fact that the state in Sierra Leone has traditionally relegated those issues of most importance to women to the "private" sphere and the control of customary authorities has had profound implications for women's rights and participation in governance.

While there is significant variance across the country, the customary rules which govern women's lives are often highly discriminatory and in contradiction to women's constitutional and human rights.¹⁰ Until recently there have been no effective mechanisms for women to participate in setting these rules or to challenge them. In addition, the delegation of control over women's concerns to customary authorities has meant that women's participation in governance has been limited to community level, where it is highly circumscribed by patriarchal and undemocratic structures and norms. As a result, women have had little interaction with the formal state and have been unable to hold the formal state accountable for their rights. However, despite the gender discrimination within customary governance, and the frustration expressed by women activists at this, it is important to remember that many women value and respect the customary norms, structures and authorities that shape their lives, which often have more cultural relevance to them than distant, formal, state structures.

As part of current efforts to rebuild and strengthen state institutions, and to expand their authority, it appears the Sierra Leonean state is increasingly taking away responsibility for regulation of the domestic

sphere from the customary authorities. This can be most clearly seen in the three "Gender Bills" passed by parliament in 2007 which provide women with greater rights and legal redress in the areas of marriage and divorce, inheritance, and domestic violence – areas all previously regulated by customary law. While implementation of these laws is still a challenge and there is some resistance from customary authorities, this legal change has the potential to strengthen women's citizenship within the formal state framework.

Women's citizenship in relation to the formal state

The Sierra Leonean state is in the process of rebuilding its institutions and strengthening democracy and the rule of law following the widespread destruction of the civil war, with extensive donor support. This state-building effort has included strengthening parliamentary democracy, re-establishing democratically elected local government (abolished in 1972) and creating institutions for accountability and oversight, including an independent judiciary, ombudsman, Anti-Corruption Commission and National Human Rights Commission. This democratisation and decentralisation process has created new structures through which people can exercise citizenship - participating in decision-making and holding the state accountable for their rights. However, the extent to which these structures function effectively and are accessible to women and the poor is mixed, as capacity and funding remain extremely limited and corruption is widespread. Moreover, as Robins (et al) point out, new democratic institutions are "etched with the traces of existing relationships of power"¹¹ and it is inevitable that these new state institutions in Sierra Leone reflect the gender inequality and discrimination of wider society.

Most national level state institutions operate in English and are based in Freetown with little or no

⁹ Yuval-Davis, "Women, Citizenship and Difference", 1997.

¹⁰ Including CEDAW, which Sierra Leone signed and ratified in 1988.

¹¹ Robins (et al), "Rethinking 'Citizenship' in the Postcolony", 2008.

outreach to the provinces and very limited funds and human capacity. This makes them inaccessible to the majority of the population and particularly to women from the districts who lack the financial resources, mobility, autonomy and education to access these institutions. Local informants also report that these state structures have little meaning for many people, who do not understand what they do and see them as distant and irrelevant to their lives. However, if these institutions were to be “fleshed out” with human capacity, funds and district level outreach – as well as with the knowledge and political will to act on gender issues – they do have the mandate and potential to become useful routes for women to engage in national decision-making, claim their rights and hold the state accountable.

The process of decentralisation has perhaps created the most important new opportunities to strengthen women’s citizenship within formal state structures. Local elections in 2004 established local councils, whose mandate is to provide local development. These councils are located at district headquarters level and are connected to the population through a system of Ward Committees operating at the most local level. The establishment of local government has made the formal state more accessible to women, by bringing it physically closer to them, giving it a mandate to address some of the development issues of relevance to women’s daily lives, operating in the local language, and providing opportunities for women’s political participation. However, like central level state institutions, local government also faces serious challenges related to capacity, funding and corruption, and in many cases is failing to meet the high initial expectations of the population.

The changing boundaries of customary and state authority

Through its processes of state-building (particularly democratisation, decentralisation and strengthening the rule of law) the Sierra Leonean state has effectively been extending the boundaries of its

authority, and thereby reducing – or at the least challenging – the authority of customary governance structures. The new possibilities this creates for women’s citizenship can be most clearly seen in the decentralisation of governance, which is enabling greater participation by women in formal decision-making processes, and the “Gender Bills”, which provide new rights for women and transfer responsibility for upholding these to the state.

However, this extension of state power into the customary domain is not unproblematic or uncontested. There appears to be significant conflict between chieftom and local government authorities across the country, particularly over issues of revenue collection. Chiefs are responsible for collecting certain forms of local tax and are supposed to share some of this revenue with councils. However, council officials complain that chiefs do not share this revenue, while chiefs maintain that they now do not have enough funds for their own administration.¹² There is also tension between local courts and magistrates, with magistrates complaining that local courts overstep the boundaries of their jurisdiction. While the fact that the boundaries between state and customary authority are shifting and blurred can provide opportunities for women, it also means that women have to understand and negotiate these changing structures and can make it more difficult for them to identify duty bearers and hold them accountable.

Women’s citizenship in a fragile state

Theories of citizenship are generally based on the idea of a capable state that is able to determine the boundaries of its authority, uphold that authority, and effectively implement its policies and laws. However, Sierra Leone is a fragile, post-conflict state where the

¹² The rivalry between chiefs and local councils is partly due to the confusing division of responsibilities between these different forms of local government, which was established in the 2004 Local Government Act. For analysis of the role of chiefs and their relation to local councils see Thomson, “Sierra Leone: Reform or Relapse? Conflict and Governance Reform”, 2007 and Fanthorpe, “Chieftaincy and the Politics of Post-War Reconstruction in Sierra Leone” (unpublished).

capacity of state institutions to implement government policy and uphold state authority is very limited. This means that in many cases the state is simply unable to deliver the new rights and opportunities for participation it has formally provided to women because of limited capacity, corruption and lack of political commitment to women's rights within its institutions. In such cases women's strengthened citizenship in relation to the state is notional and community membership remains the only route for women to access rights and participate in decision-making.

Another important factor affecting the citizenship of women and men in Sierra Leone is the power of international actors. International aid makes up almost half the national budget and donors have huge influence over government policy.¹³ Some foreign-owned companies, particularly those investing in mining, also have significant influence on particular areas of government policy. The fact that Sierra Leone is a weak state strongly influenced by international actors – who the population cannot access or hold accountable – inevitably limits the ability of citizens to meaningfully participate in governance and hold the state accountable.

Having sketched how women's citizenship is positioned in relation to the customary and formal governance systems, the remainder of this paper will focus on the two main elements that make up citizenship – women's participation in governance and women's rights, particularly as accessed through the justice system. It will also outline how women in Sierra Leone are mobilising to demand rights and participation. Finally the paper will propose some measures by which donors can support a strengthening of women's citizenship in the state-building process.

¹³ Sierra Leone has a limited number of donors compared to similar countries, with the European Commission being the largest and DFID the most influential. For a discussion of the impact of donors on government accountability in Sierra Leone, see EURODAD and Campaign for Good Governance, "Square Pegs in Round Holes: Aid and Accountability in Sierra Leone", 2007.

Women's participation in governance and decision-making

Women's participation in customary governance

As previously mentioned, decisions over the issues of most importance to Sierra Leonean women's lives have traditionally been made by customary authorities, based on values of custom and tradition. While practices vary significantly across the country, in general women's participation in customary governance is limited. In the north, women are almost entirely excluded from customary power structures and chiefdom elections are often controlled by male secret societies, while in the south, women can have a greater role in customary governance and can even become paramount chiefs,¹⁴ although this is not the norm. As the individual's relationship with customary authorities is based on their family or community membership, these authorities rarely consult directly with women or young people, who are instead "represented" in consultations by male family heads and elders. For example, women's activists in Kono district complained that local chiefs refuse even to meet with them and that consultations on development projects are "orchestrated" by chiefs and male elders so that their own interests are represented.

However, it is important to remember that, although they are highly subordinated within customary governance systems, women are not simply passive subjects of these systems. Women do in fact participate in community decision-making in a number of ways, including as "mammy queens",¹⁵ through women's

¹⁴ Paramount chiefs are the most senior chiefs within their area and have some basic linkages to the formal state.

¹⁵ Senior women who play leadership roles within the community.

secret societies and through family connections and other informal relationships. In addition, the patriarchal norms of customary governance authorities have been challenged by the social upheaval of conflict. Many women were displaced from rural to urban areas during the war, exposing them to greater possibilities for autonomy and participation. The conflict also left many female-headed households, which provided a challenge to the notion that men are always the family providers and representatives.

Women's participation in local government

As part of post-war efforts to rebuild the state and develop stronger and more accountable institutions, there has been a process of decentralisation in which democratically-elected councils have been re-established.¹⁶ These operate alongside customary governance structures, with some minimal formal linkages between the two systems. While under this new dual local governance structure, many of the domestic and resource allocation issues that are of greatest concern for women (including land access) remain the domain of the customary authorities, and the council is responsible for development and therefore for areas such as infrastructure and services, which are also of great importance in women's lives.

There is no doubt that local councils offer women an important new forum to participate in local decision-making and to have a direct relationship with the formal state, as well as access to a different kind of citizenship – one based on ideas of equality and democracy, rather than community membership and social identity. However, women's participation in local government has so far been quite limited. While ward level committees are by law constituted of five men and five women, elected local councils are overwhelmingly male dominated.

Some of the major barriers that limit women's participation in local government are lack of education and self-confidence, lack of financial and political resources, heavy domestic workloads and limited mobility. Cultural attitudes that women's participation in public life is unfeminine and threatens tradition, and that women are not capable of holding public office, also make it difficult for women to gain support – including from other women – when running for local government. Women activists report that some women have been deliberately intimidated, in order to prevent them from standing in council elections, by male candidates who see women's candidature as a threat to their power, and by male community leaders who view women's political participation as a challenge to traditional gender hierarchies. For example, in Koidu town, Kono district, paramount chiefs reportedly pressured women candidates to withdraw their candidatures for the July 2008 local elections, including by threatening them with violence.

Despite these challenges women do stand as councillors, turn out in large numbers to vote in local elections, and use council mechanisms to raise their concerns. There has been a lot of work by women's organisations to build the capacity of women to run for local office and the local elections in July 2008 showed a positive trend, with more women running for office than in the 2004 elections. For example, in Koinadugu district, where no women had stood for council in 2004, 14 women participated as candidates in 2008.¹⁷

In terms of council responsiveness to women's needs, women's groups report that councils consult with them and listen to their concerns, but rarely act on these concerns. This is partly because serious financial and human capacity constraints mean that councils are struggling to live up to the high expectations of the population, leaving little spare capacity to meaningfully address what are often viewed as "minority" issues. There may also be a lack of political

¹⁶ The new councils were established through local elections in 2004 and a second local election was held on 5 July 2008.

¹⁷ Campaign for Good Governance, "July 5 2008 Local Council Elections Report", 2008.

will within the local government to genuinely promote women's rights and participation. State institutions are inevitably infused by the patriarchal attitudes and relationships of the private sphere, and the men running local government in Sierra Leone are also members of communities where their own social identity and power is based on traditional patriarchal values and relationships.¹⁸ Despite these challenges, however, the new local government structures do appear to offer an important opportunity for Sierra Leonean women to participate in decision-making at a level which is accessible and relevant to their lives, and to experience a form of citizenship different to that found in the customary system.

Women's participation in national government

Women are extremely under-represented in Sierra Leone's national parliament, with just 16 women MPs out of a total of 124. The Truth and Reconciliation Commission, established following the end of the conflict, recommended a 30 percent quota for women in parliament and women's groups lobbied extensively for this. However, this was seen as a threat by the male-dominated political parties and was not adopted.

The barriers faced by women running for national parliament are similar to those faced by women running for local government. These include financial constraints, cultural attitudes that women should not participate in politics, lack of political capital and connections, and lack of education – this last issue is particularly important as the national parliament is conducted in English. The fact that education and poverty are such significant barriers clearly demonstrates the indivisibility of civil and political rights from economic, social and cultural rights and the importance of building an enabling economic and social environment for women to exercise their political rights.

¹⁸ For a discussion of this issue, see Goetz, "Gender Justice, Citizenship and Entitlements", 2007.

There is some evidence that women are taken seriously as a constituency by central government and that their voices are listened to. For example civil society organisations report that the previous president championed the "Gender Bills" because they were seen as important in capturing the female vote. In terms of government gender machinery there is a Ministry of Social Welfare, Gender and Children's Affairs, which does consult with women's civil society organisations. However, this ministry has very limited capacity and was described by one donor official as "completely dysfunctional".

The impact of international donors on women's participation in decision-making

Almost half of Sierra Leone's national budget comes from development assistance, with DFID, the European Commission and the World Bank providing the vast majority. Given this high level of donor funding and the limited capacity of the Sierra Leone government, it is inevitable that government policies and actions are highly influenced by donors, with serious implications for citizens' influence over policy making and their ability to hold government to account.¹⁹ For example, strengthening women's opportunities to participate in formal government in order to have greater influence over their own lives is obviously of limited value where government is not entirely in control of its own policy agenda.

While it is beyond the scope of this paper to explore the complex and contradictory influence of donors on citizenship and the accountability of the state, there are a couple of points of particular relevance to women's citizenship in Sierra Leone that are worth mentioning. Firstly, there is very little information on donor activities available to citizens outside the capital or in local languages, and donor consultations are usually conducted in Freetown and in English. This makes it

¹⁹ Many civil society activists complain that donors, and particularly DFID, are effectively dictating the government agenda.

almost impossible for women outside Freetown or with limited education to be informed or engaged on donor policies.²⁰ Secondly, although donors have provided some funding for civil society activities aimed at strengthening gender equality, much of this funding has been provided to a select group of national level NGOs to implement projects that match donors' agendas, rather than to support the growth of an organic women's movement with its own priorities. There is, in fact, widespread criticism by national NGOs of the way that donors are "projectising" Sierra Leonean civil society.²¹ In addition, women's organisations are concerned that donors do not give gender equality a sufficiently high priority in their policy dialogue with government.

Women's access to rights through the justice system

Like many African countries, Sierra Leone has a dual legal system. Customary law is set at chiefdom level and is administered by "local courts" and local police, whose officials are chosen by the paramount chief.²² In general, local courts have jurisdiction over petty crime, community and domestic issues, including land, inheritance, divorce, maintenance, and minor debt – issues of great relevance to women's daily lives. The formal legal system of national police, local magistrate's courts and high courts has jurisdiction over more serious crimes and responsibility to uphold national laws.

²⁰ Many civil society organisations express concern that donor consultations are not a genuine dialogue but a means to get a "rubber stamp" from civil society on programmes that have already been decided.

²¹ For a discussion of the impact of donor support on civil society in Sierra Leone see EURODAD and Campaign for Good Governance, "Square Pegs in Round Holes: Aid and Accountability in Sierra Leone", 2007.

²² The paramount chief recommends a Local Court Chairman, who is then formally appointed by the Ministry of Internal Affairs, Local Government and Rural Affairs.

This dual system means that people must use different types of identities and claims, in different contexts, to access their rights. In the customary courts people make claims as members of a community and justice decisions are based on community norms and the social identity of litigants. In the formal legal system people make claims as individual citizens who are equal before the law, although social identities and community membership still play an important role in determining access and outcome. In both these systems women face significant challenges in accessing their rights.

Women's rights in the customary justice system

The vast majority of Sierra Leoneans seek justice at local level, making claims as community members either through the local courts or through entirely informal justice resolution mechanisms managed by chiefs and elders. While the local courts have some integration into the state structure and accountability to formal state authorities (they are regulated by the Local Court Act and report to the Ministry of Internal Affairs, Local Government and Rural Affairs), informal mechanisms are entirely unaccountable and are described by many Sierra Leoneans as "kangaroo courts". As elsewhere in sub-Saharan Africa, local courts and informal mechanisms are widely used because they are physically close to people; are based on cultural norms and therefore appear relevant and understandable; place an emphasis on mediation; operate in local languages; are swift in dispensing justice; and are perceived as cheaper than formal courts (although the widespread levying of exorbitant and illegal fines by these courts makes this questionable).

Women are particularly dependent on local courts to access their rights. This is both because these courts have jurisdiction over the domestic and community spheres that are most relevant to women and because women's access to formal justice is even more restricted than that of men. Women tend to be poorer, less educated, more restricted in movement, and have

a heavier work burden than men. This makes the knowledge, language and cultural barriers, as well as the money, time and travel involved in accessing formal courts, a greater challenge for women.

There is significant local variation in the way in which customary law is set and administered and the participation of women in these processes. In particular there is a marked difference between the north, where women are almost entirely excluded from involvement in customary justice, and the south where they can play a (usually subordinate) role.²³ Chiefs and customary court officials can choose whether to consult or inform civil society or citizens on new laws, and in many cases do not do this. For example, court officials in Kono district reported that they do not carry out any consultations or provide information about new laws and that “you only know the law when you commit a crime”, although they believe that, despite this, much of the population are aware of local laws. Women’s activists expressed concern that customary laws are only known by the male elders who administer them and that women do not know what legal frameworks apply to them, making it almost impossible for them to claim their rights.

Customary law is administered by a local court chairman and four court members. These are usually men, although in some cases women act as court members or play an advisory role within the court. Informal justice dispute mechanisms are reported to exclude women even more than customary courts. In particular, disputes may be settled by male “secret societies” to which women have no access.

A major challenge for Sierra Leonean women in accessing their rights is the fact that much customary law explicitly discriminates against women and is in contradiction to women’s constitutional rights and Sierra Leone’s international human rights commitments, including CEDAW. This means that

²³ Differences observed during research were particularly extreme because the research province in the south, Moyamba, is the pilot site for a Justice Sector Development Programme which has promoted the inclusion of rights-based approaches in the customary justice system, as well as strengthened formal justice institutions.

women are effectively prevented from enjoying their constitutional and human rights because of the state’s acceptance that the domestic and community spheres should be regulated by customary authorities through laws based on tradition and accessed as members of a community rather than as equal citizens of a state.²⁴

Civil society organisations and the DFID-sponsored Justice Sector Development Programme (JSDP)²⁵ are working with customary authorities to strengthen the human rights compliance of customary law. They report a mixed response to these initiatives, with some chiefs and local court officials reacting positively and others responding that customary laws are tradition and cannot be changed. One woman activist reported that when she raised women’s rights issues with a local chief, he dismissed these saying “this is not America”. This is a clear example of how women’s subordination is so often constructed as a vital element of indigenous culture and tradition and women’s rights rejected as “foreign” and threatening. Even in Moyamba district, where the JSDP has worked extensively with customary justice authorities, civil society activists report that community leaders feel too many rights have been given to women and this is threatening traditional society.

As mentioned in the previous sections, through its 2007 “Gender Bills” the state has provided women with new rights and brought some key domestic issues under the jurisdiction of the formal courts and the state. However, implementing this expansion of state authority over the domestic sphere is problematic because of lack of awareness or actual resistance by local court authorities. Magistrates, lawyers, police and civil society activists all expressed concern that that many local courts continue to adjudicate cases such as divorce, inheritance or domestic violence on the

²⁴ While it is theoretically possible for customary provisions that are in violation of the constitution to be challenged in formal courts, senior representatives of the judiciary indicate that this has never been done.

²⁵ The JSDP is a DFID-funded programme, managed by the British Council, that supports justice sector reform and strengthening. It is planned that this programme will eventually become entirely absorbed into the Ministry of Justice and will receive basket funding from a number of donors.

basis of customary laws and in contradiction to women's rights. They also reported that local courts often hear serious cases such as rape that are outside their jurisdiction, rather than referring these to the formal courts. It appears that women continue to bring such serious cases to local courts because they see these courts as accessible, relevant and less costly, and because they are nervous of formal justice mechanisms and lack knowledge about the law and their rights. Civil society organisations are working to overcome these challenges by providing information to local courts and to women about the new "Gender Bills" and women's rights.

Women's rights in the formal justice system

The formal justice system is comprised of national police with a presence across the country, magistrate's courts in the district headquarters and high courts based in Freetown which visit the capitals of each province. All these justice institutions face challenges in terms of lack of human capacity, infrastructure and funds, which result in long delays to the justice process. This means that many petitioners eventually give up on their cases because they cannot afford to keep attending court, and that defendants spend long periods in custody on remand. There is also serious corruption within the justice institutions, and particularly the police, with many human rights organisations reporting that the police ask for bribes to take action on cases or to drop investigations. The costs for litigants of taking cases to court are very high in terms of travel to courts, time spent away from work, the costs of bringing witnesses to court and bribes.²⁶ While these costs make the formal legal system inaccessible for the majority of the population, this is particularly the case for women who tend to be poorer and less mobile and to have less financial autonomy.

There is no free legal representation available, apart from in the most serious cases, and there are no private

²⁶ Parties to the case must bear the cost of bringing witnesses to court as there are no public funds available for this.

lawyers operating outside Freetown, meaning that the vast majority of defendants must represent themselves. This obviously presents a serious challenge for uneducated people, of whom women are the majority. The language of the court is English with translation provided into Krio where needed. However, most stakeholders interviewed, including magistrates, admitted that ordinary people appearing in court have very little understanding of the proceedings. Given these constraints, it is unsurprising that people are reluctant to use the formal justice system, as they see this as expensive, time consuming, incomprehensible and culturally alien to them, and as a system where justice usually goes to those who can pay the most.

Despite the serious failings of the formal justice system, it remains the main channel available for women to claim their constitutional and human rights, as well as to appeal against injustices in the local courts.²⁷ There is significant support being provided by donors to strengthen the formal justice system - although much more is needed - and this is beginning to show some impact. For example, in Moyamba district, where the JSDP is supporting a circuit magistrate's court, this has resulted in much speedier justice and more people bringing cases to the magistrate's court. For women, whose mobility is particularly limited, such measures to bring justice closer to local communities can have a big impact on their ability to use the formal justice system to claim their rights.

Seeking justice for gender-based violence

An examination of women's ability to get justice for gender-based violence provides an insight into the challenges faced by women in accessing their rights through both formal and customary justice systems, and the changes that are taking place in women's

²⁷ It is possible to appeal local court rulings to the magistrate's court. However, these appeal mechanisms are not used often due to cost, and when they are used it is mostly to appeal excessive fines imposed by local courts.

rights in the context of state-building and legal and justice sector reform.

Local courts have authority to address some aspects of gender-based violence, but it is reported that they regularly overstep this authority and adjudicate on cases that are outside their jurisdiction. In dealing with domestic violence cases the local courts' emphasis is on mediation and maintaining the status quo and the courts response is often to tell the woman to accept the abuse and obey her husband for the sake of her family. Likewise, when cases of rape or unlawful carnal knowledge come before local courts, they often order the perpetrator to marry the victim, instead of referring cases on to the magistrates' courts as they are required to do. In this way, local courts regularly deny women the rights provided to them by the Domestic Violence Act of 2007 (one of the three "Gender Bills"). However, it is important to note that this is not always the case and there are instances where local courts refer women reporting serious violence to the police and magistrates court so that they can claim their rights in the formal legal system.

As part of the strengthened response of the formal justice system to gender-based violence, Family Support Units (FSU) specifically mandated to deal with gender-based violence have recently been established in all district headquarters police stations. While most FSUs are seriously understaffed, they are in very high demand. For example, in Koidu police district the FSU has six officers out of a total of 200, but sends the highest number of cases to court. There has been a lot of information provided to communities about FSU and the fact that they are so highly used shows a growing awareness among women of their rights and a desire to seek justice as citizens within the formal justice system. However, despite the FSU initiative, there continue to be serious problems with the police response to gender-based violence. Human rights organisations report that women are often told that domestic violence is not a matter for the police and are referred back to the customary authorities, and that police sometimes drop charges against those accused of rape in exchange for a bribe.

Cases of rape are supposed to be referred from the magistrate's court to the High Court. However, capacity constraints mean that there are serious delays and continual adjournments in both these courts, resulting in high costs for the victim in terms of attending court and bringing witnesses. In addition, the state does not pay for any medical examination or for a doctor to testify in court, although in some places NGOs fund this. It is reported that, in some cases, perpetrators pay magistrates to continually delay the case and that repeated delays can result in the case being dropped.

Civil society organisations report that lack of knowledge and negative social attitudes prevent women from seeking justice for gender-based violence, and particularly domestic violence. Many women, especially in rural areas, do not know their rights, are unaware that domestic violence is a crime, and have no knowledge of how the justice system functions. In addition, the community often stigmatises women who bring cases against male family members as "hard hearted" or "a bad woman". Bringing domestic violence cases to court can lead to the woman being abandoned by her family and ostracised from the community – this constitutes a major social and economic risk in a context where family and community networks are the primary route for women to access resources. Likewise, many women do not take rape cases to court because of the high levels of stigma faced by rape victims and the serious consequences this can have for their prospects of marriage.

Barriers women face in claiming rights

All informants stated that the greatest practical barrier preventing women from accessing justice is the high financial cost of participating in both the local and formal justice systems. The second greatest barrier appeared to be women's lack of education and awareness about rights and justice. As was seen in relation to women's political participation, this clearly demonstrates how civil and political rights for women

are meaningless without the social and economic rights which enable them to access these.

It appears that the most serious structural obstacle to women's rights in Sierra Leone is the fact that the informal justice mechanisms and local courts to which women have greatest access do not respect their human rights, while the formal courts which have a duty to uphold women's rights (although in practice do not always do this) are inaccessible for most women.

While both customary and formal legal systems remain deeply inadequate as channels for women to make claims for rights and hold the state to account, the current legal reform efforts – particularly the "Gender Bills", establishment of the FSUs, and expansion of state jurisdiction over elements of the domestic sphere – have the potential to provide new opportunities for women to claim rights directly from the state as citizens before the law. In addition, the fact that women now have two channels - customary *and* formal - through which they can seek justice in relation to some domestic issues could eventually enable them to challenge the customary system where it fails to respect their rights, perhaps leading to greater reform of this system. However, in order for this to become a reality the current serious economic, social and capacity barriers will have to be overcome.

Women mobilising for rights and participation

A small but growing civil society has emerged in Sierra Leone following the end of the conflict, with a range of organisations representing different constituencies and working on different topics. There is a strong focus within civil society on governance issues and, according to one United Nations official, Sierra Leonean civil society has strongly taken on norms of democracy and accountability and is pressuring the government on these issues.

Within this context, there are a range of women's civil society organisations working to promote women's rights and participation. These organisations are primarily engaged in raising awareness at community level, building women's capacity to participate in politics and decision-making, undertaking policy advocacy with government authorities, and drawing the attention of state institutions to women's rights.

The capacity of civil society organisations in Sierra Leone is comparatively strong compared to that of government and other sections of society and this is also true of the women's movement. However, many women's organisations are suffering from a serious shortage of funding – particularly at local level – and most felt that there should be increased donor funding available for civil society work on women's empowerment.

The women's movement in Sierra Leone has had some significant successes in strengthening women's rights and participation. Advocacy for the adoption of the "Gender Bills", providing support for women to run for central and local government, and calling for non-violent elections have been issues on which women's organisations have mobilised and collaborated, with good results. There appear to be quite strong links

between local, national and regional level women's organisations and women activists report that joint advocacy, at local and national level, has proved an effective strategy.

There are inevitably questions about the representativeness and authority of women's organisations and activists to speak on behalf of Sierra Leone's women. As women's education levels are very low in Sierra Leone and power – including within civil society – is largely accessed through kinship networks, it is perhaps unavoidable that many women activists are members of an educated, English-speaking elite. However, there are also women's membership networks that have genuine grassroots membership and can mobilise significant numbers of volunteers at local level. All women activists interviewed reported that their biggest challenge is to reach women in remote areas, who remain unaware and unaffected by the progress in women's rights and participation.

Conclusion

The case of Sierra Leone provides a clear illustration of how women's citizenship is often shaped by the boundaries and tensions between formal and customary governance systems. As in many African contexts, Sierra Leonean women's ability to claim their rights and participate in governance has been severely constrained by the relegation of domestic and community issues to the customary sphere and by women's limited access to the formal state.

However, the experience of Sierra Leone also demonstrates how post-conflict state-building processes can provide an opportunity to reshape and strengthen women's citizenship – giving women new and stronger relationships to the formal state, and reforming customary governance structures to ensure greater rights and participation for women. The evidence from Sierra Leone suggests that state-building processes have the potential to strengthen women's citizenship in the following specific ways:

- As the state extends the boundaries of its authority, this can include increasing state authority over the domestic and community level issues of most importance to women's lives, thereby creating new rights and opportunities for women to make claims in relation to these issues.
- As new institutions are developed and the capacity and outreach of existing institutions is expanded (including through decentralisation processes), this can make the previously remote formal state more accessible to women.
- Initiatives to strengthen the rule of law can provide an opportunity to enhance women's rights, including through legal reform and increasing women's access to the justice system and ability to claim their rights.
- Democratisation and the development of mechanisms for citizens to participate in decision-making and hold the state accountable can offer new opportunities for women to have their voices heard by policy-makers and to influence decisions that affect their lives.
- Institutional reform processes can provide an opportunity to question and reform the institutions, structures and policies – within both formal and customary governance systems – that discriminate against women.

In order to realise these potential benefits to women's citizenship from the state-building process, it is important that strengthening women's rights and participation are explicit aims built into all governance policies and strategies from the initial stages of peace-building, through to democratisation and institution-building and strengthening.²⁸ It is also important that state-building processes fully engage with customary governance structures – which are central to most women's lives – rather than construct a formal state that lies "on top" of unreformed customary governance structures which continue to determine people's daily lives.

²⁸ In Sierra Leone the new opportunities for women's citizenship appear in some cases to be more "by-products" of gender-blind state-building processes rather than designed outcomes, particularly in relation to local governance.

Drawing on the findings from this research in Sierra Leone, it is recommended that donors working in similar post-conflict settings support the strengthening of women's citizenship within state-building processes by:

- Ensuring that their support for state-building, democratisation and institution strengthening includes, as an explicit aim, the strengthening of women's rights and participation in governance;
- Engaging with, understanding, and supporting reform of the customary governance structures that are central to women's lives, rather than working only with formal governance structures with which donors are comfortable;
- Ensuring that reforms to strengthen women's civil and political rights are accompanied by support to create the enabling social and economic environment required for women to access these rights;
- Providing institutional support to women's civil society organisations at national and local level to foster a strong, independent women's movement that can meaningfully represent the interests of women across the country;
- Supporting the development of evidence and knowledge on how state-building processes affect women and can be used as opportunities to strengthen women's citizenship. This could be generated through comparative research in similar contexts.

In conclusion, it is clear that in Sierra Leone, huge challenges remain for women's rights and participation. However, it also appears that there is positive change underway and that women are increasingly taking advantage of the new opportunities for citizenship available to them, as well as mobilising to challenge existing gender discrimination within formal and customary governance structures.

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There is currently great interest in citizenship within the development community. Strong citizenship has come to be seen as a vital ingredient for good governance and development, and strengthening the citizenship of poor people is viewed as a way to ensure their rights and participation in governance.

However, one of the biggest challenges is how to strengthen citizenship for women in developing countries. In many African countries women have little contact with the formal state and their lives are governed by customary governance systems that seriously limit their rights and opportunities for political participation. This is particularly true for women in fragile states, where the formal state is weak and inaccessible.

Based on field research in Sierra Leone, this Working Paper examines how processes of post-conflict state-building have redrawn the boundaries of authority between the formal state and customary governance systems, and thereby provided new citizenship opportunities for women. The paper explores the changes that are taking place in women's rights, women's political participation and women's mobilisation in Sierra Leone, in the context of state-building. It also makes recommendations for how donors can support the strengthening of women's citizenship within their support for state-building in Africa.

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