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# REPORT ON CITIZENSHIP LAW: SIERRA LEONE

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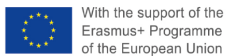
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# Report on Citizenship Law

## Sierra Leone

*Amadu Wurie Khan*

### 1. Introduction

Sierra Leone's history, like that of other colonised African countries, has shaped the country's citizenship laws in particular ways. The transatlantic slave trade, inward migration by Africans and non-Africans, and the fight for self-rule and decolonisation predicated on a pan-African nationalist ideology are constitutive of these experiences. Sierra Leone's internecine war during the 1990s and the post-war efforts at resettlement, reconciliation and development continue to form the backdrop of current debates. Membership of international institutions such as ECOWAS, the UN and the African Union also continue to influence its citizenship regime. Consequently, Sierra Leone's current citizenship laws, which shared a lot of commonalities at independence, have gradually diverged from other Anglophone colonial territories of West Africa – Nigeria, Ghana (formerly the Gold Coast), and the Gambia.

This analysis explores the continuities and divergencies of Sierra Leone's citizenship regime comparative to other African countries. It highlights the dynamics of race and ethnicity, entrepreneurial and forced migration, gender, post-civil war reconciliation and development, and international laws in shaping modes of citizenship: *ius sanguinis*, *ius soli*, *ius domicili*, *ius matrimonii*, and dual citizenship. The analysis also considers how citizenship modes of acquisition and loss, which were once modelled along the British colonial power at the time of independence, have evolved over time.

The analysis, therefore, speaks to the main trends in Sierra Leone's citizenship law under significant political epochs – circa independence as a young democracy or new state, a one-party republic, and the current post-war period. The main principles of the citizenship laws are:

- From independence right through to date, there are three ways of citizenship acquisition, namely, by automatic right of birth, the right to acquire citizenship by registration, and by naturalisation as a discretionary power. Sierra Leone, therefore, has a *ius soli*, *ius sanguinis* and *ius domicili* mix in its citizenship framework.
- Discriminatory elements still exist – the possibility for women to pass citizenship to a foreign spouse continues to be absent; and in contrast to 'natural' mothers, 'adoptive' mothers are excluded from extending citizenship to their 'adopted' children born in and outside of Sierra Leone.
- The automatic right to Sierra Leone citizenship is based on a person's 'negro African descent'.

- Whilst dual citizenship is recognised, dual citizens are precluded from holding elected office including contesting presidential elections.
- The deprivation of citizenship is still a matter of executive prerogative, even though there are safeguards for individuals to seek an independent review to challenge the decision of a minister to deprive them of Sierra Leone citizenship.

The rest of this account will now explore in detail the ways these trends in Sierra Leone's citizenship laws have evolved from independence to the current post-war Republic.

## 2. Historical Background

To understand the evolution of the first citizenship laws of Sierra Leone at the time of independence, we need to look at the historical and political contexts of the time. Sierra Leone like other African countries has experienced inward migration and settler communities from Islamic scholars, traders and warrior-invaders. These groups were mostly from the West Africa sub-region and North Africa and the Sudan. The country also experienced inward migration from slave traders, Christian evangelism and British colonial conquest. Britain founded Freetown as a resettlement site for freed slaves after the abolition of the Atlantic slave trade in the latter part of the 18<sup>th</sup> century. Sierra Leone's socio-political reality therefore constituted settler-communities of 'strangers' or 'incomers' of freed slaves, African and European traders, Christians, and colonialists.<sup>1</sup>

After the Berlin conference of 1884-1885, the British administration in the Western area of Freetown expanded from the existing 'Colony' to establish a 'protectorate' in the rural regions.<sup>2</sup> This colonial appropriation of territory and governance of the hinterland is another important political context that shapes the evolution of citizenship in Sierra Leone. By extending to the Protectorate, rural populations were transformed into British Protected Persons (BPPs) whilst those in the Colony (including freed slaves) were British subjects. Until 1948, the status of British subject was the highest in British law and one shared with persons of British ancestry in the UK.<sup>3</sup>

The freed slaves, later to be referred to as Krios, came to enjoy Westernized professional, political, and cultural elite status; like their counterparts located across the Anglophone colonial territories of West Africa, namely, Nigeria, the Gold Coast, and the Gambia.<sup>4</sup> The Krios considered themselves to be 'civilized Negroes'<sup>5</sup> and distinguished themselves from the African 'aboriginals' that hosted them in Freetown and in the hinterland

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<sup>1</sup>G.E. Brooks, 1993, *Landlords and Strangers: Ecology, Society and Trade in Western Africa, 1000–1630* (Boulder, CO: Westview Press); Annie Wilkinson, and James Fairhead, 2016, 'Comparison of Social Resistance to Ebola Response in Sierra Leone and Guinea Suggests Explanations Lie in Political Configurations Not Culture', *Critical Public Health* 1596: 1–14. <https://doi.org/10.1080/09581596.2016.1252034>

<sup>2</sup> I. P. X. Malki, 2017, 'The competing ontologies of belonging: race, class, citizenship, and Sierra Leone's "Lebanese Question",' *Dialectical Anthropology* (2017) 41:343–366; R.O. Collins, ed. 1969. *The Partition of Africa: Illusion or Necessity* (New York: J. Wiley).

<sup>3</sup> Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging* (London: Hart Publishing).

<sup>4</sup> I. P. X. Malki, 2017, 'The competing ontologies of belonging: race, class, citizenship, and Sierra Leone's "Lebanese Question",' *Dialectical Anthropology* (2017) 41:347; K. Appiah, 1992, *In my Father's House; Africa in the philosophy of culture*, (Oxford: Oxford University Press): 3-27; J.A. Langley, 1975, *Pan-Africanism and nationalism in West Africa, 1900-1945*, (Oxford: Oxford University Press).

<sup>5</sup> Henceforth, "negro", "negro African", "Afro-Lebanese", "civilised negroes", "full -blooded" and other racially-loaded terms are used as cited in legal documents such as constitutions of Sierra Leone.

of the country. The Krios' privileged status was facilitated and sustained by the British colonialists who classified the Krios as 'African non-natives' for census and other administrative purposes.<sup>6</sup>

Although mainly a form of indirect rule by a foreign colonial power, this extension of a colonialist political sovereignty heightened political tensions between the colonial administration and their protégé Krio community in Freetown, and the indigenous chieftaincies and their subjects in the Protectorate. The Hut Tax war of 1896, which was led by Paramount Chief Bai Bureh of Kasseh Chiefdom, was the first visible attempt at asserting political sovereignty by an indigenous political authority. Bai Bureh's Hut Tax War was predicated upon conceptions of who is a citizen and a 'stranger', and who had the political authority to draw these demarcations of membership and the attendant obligations and rights, especially the regulation of taxation and property ownership in Sierra Leonean territory. It is an autochthonous rationale that the 'sons of the soil' by virtue of their chieftaincy status had the right to assert political authority by determining taxation policy for their 'subjects'. Bai Bureh's insurrection was, therefore, a contestation of boundaries of governance and citizenship as well as an assertion of political sovereignty by the 'protectorate' chieftains.

There was another migratory dynamic to the evolution of Sierra Leone's citizenship laws, which is the arrival of Syrian and Lebanese traders into Sierra Leone as early as 1893.<sup>7</sup> These 'non-African' migrants into Sierra Leone constitute a significant group of economic migrants that were migrating into other parts of Africa during the 18<sup>th</sup> and 19<sup>th</sup> centuries. Like the Krios, the non-African 'strangers' occupied a privileged social and economic class and held the attendant political clout. The Krios perceived the Syrian Lebanese traders as a threat to their economic domination and the privileged status the Krios enjoyed among the colonial administration. The Syrian Lebanese were equally perceived by other African and Sierra Leonean traders and elites as exerting too much economic and political influence. They gradually came to be perceived by Sierra Leoneans as racially 'white'.<sup>8</sup> The antipathy towards the Syrian Lebanese non-African 'stranger' culminated in the Anti-Syrian Riots of 1919, which saw Syrian Lebanese and property and businesses sacked.<sup>9</sup> Yet, by the 1930s, Syrian Lebanese were able to peacefully co-exist with the Krio elite and traditional rulers in the Protectorate. They presented indigenes with opportunities for mutual benefits through inter-racial marriages and gifts of land holdings. These tensions and kinship formations played a considerable role in shaping Sierra Leone's citizenship laws after independence.

Before independence, Sierra Leone's citizenship laws were enshrined in the British Nationality Act 1948. The Act established the status of 'citizen of the UK and colonies' (CUKC) to replace the previous status of 'British subject', with effect from 1 January 1949. The CUKC status was extended to persons in the Sierra Leone Colony, including the Krios, who had been 'British subjects'; whilst those in the Protectorate remained British Protected

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<sup>6</sup> Sierra Leone, Report of Census for the Year 1931 (Freetown: Government Printer, 1931) cited in I. P. X. Malki, 2017, 'The competing ontologies of belonging: race, class, citizenship, and Sierra Leone's "Lebanese Question",' *Dialectical Anthropology* (2017) 41: 347.

<sup>7</sup> N.O. Leighton, 1979, 'The political economy of a stranger population: The Lebanese of Sierra Leone', In *Strangers in African Societies*, ed. W. Shack and E. Skinner, 85–103 (Berkeley: University of California Press).

<sup>8</sup> Lina Beydoun, 2013, *The Complexities of Citizenship among Lebanese Immigrants in Sierra Leone African Conflict and Peacebuilding Review*, Vol. 3, No. 1 (Spring 2013), pp. 112- 143 - URL: <https://www.jstor.org/stable/10.2979/africonfpeacerevi.3.1.112>.

<sup>9</sup> I. P. X. Malki, 2017, 'The competing ontologies of belonging: race, class, citizenship, and Sierra Leone's "Lebanese Question",' *Dialectical Anthropology* (2017) 41: 343; Martin H.Y. Kaniki, 1973, 'Attitudes and Reactions towards the Lebanese in Sierra Leone during the Colonial Period', *The Canadian Journal of African Studies* 7: 97–113.

Persons (BPP).<sup>10</sup> The status of CUKC was granted on *ius soli* basis to persons born in the UK or one of the colonies. The 1948 BNA also made provisions for ‘aliens’ to naturalise as CUKCs in any colony as well as the UK. Additionally, CUKCs had free movement throughout the British Empire, whilst the movement of non-Europeans, including Asians and people of African descent, was restricted.<sup>11</sup> By bestowing British citizenship on former colonised British subjects, the 1948 BNA was, therefore, a political attempt by a crumbling British colonialism to facilitate a Commonwealth citizenship framework under a pan-British post-independence realm.<sup>12</sup> The Act created the umbrella status of ‘British subjects’ (with a different meaning from the pre-1948 status) for the citizens of what were referred to as ‘independent Commonwealth countries’, which included the citizens of the ‘dominions’ and former colonies as they gained independence from Britain.<sup>13</sup>

BPPs, the term used to designate persons born in the protectorate who were not CUKCs, had restricted rights and were considered to be ‘aliens’ in British law, barred from challenging state Acts in courts, who were rather ‘subjects’ of local rulers or chieftains in the protected states.<sup>14</sup> The differentiation of citizenship rights and attendant privileges between CUKCs (from the Colony) and BPPs (from the Protectorate) of Sierra Leone was to further fuel antipathy against the Krios.

The fight for decolonisation and independence by educated African elites across the African continent also contributed to the evolution of the idea of citizenship as not just a legal status but also a set of political rights. After the Second World War, this fight became even more urgent, and educated Sierra Leonean political elites join their counterparts in other African colonies to articulate self-governance and self-determination. The nationalist movement prioritised the African identity and nationalistic version of ‘Africanness’ that is based on the racial identity of ‘blackness’ for most countries in Africa south of the Sahara. The ideologies of *négritude*, or blackness, and pan-Africanism and its ‘Africa for Africans’ became the mantra of self-rule for the liberation struggles.<sup>15</sup> This universalist nationalist project advocated for the extending of political membership across the continent and the Africa Diaspora in the Americas.<sup>16</sup> The ‘black’ – ‘non-black’ binary that fuelled the nationalism and self-rule debate became a key socio-political dynamic that helped to define the terms of citizenship and nationality laws in post-independent Sierra Leone, as the next section explores.

### 3. Citizenship in the independence constitution of 1961

Sierra Leone, like other West African countries under colonial rule, adopted citizenship laws that were modelled along those of their coloniser countries of Great Britain, France and Portugal. The only exception was Liberia, which although under US imperial benefaction and had US influence in its 1956 and 1973 citizenship laws, never became a truly colonized

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<sup>10</sup> For a detailed account, see Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging* (London: Hart Publishing); Laurie Fransman, Adrian Berry & Alison Harvey, 2011, *Sierra Leone, Fransman British Nationality Law* (Bloomsbury, Professional 3rd Edition, 2011).

<sup>11</sup> Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging* (London: Hart Publishing).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> A. Hale, and F. M’Cormack-Hale, 2018, ‘Statelessness, Nationality, and Citizenship in Sierra Leone’, *Journal of Global South Studies*, Volume 35, Number 2, Fall 2018, pp. 311-345.

<sup>16</sup> F. Cooper, 2014, *Citizenship between empire and nation; remaking France and French West Africa, 1945–1960*, (Princeton: Princeton University Press).

territory. As already stated, at pre-independence, Sierra Leone's nationality laws like others under British colonial rule were codified in the British Nationality Act of 1948. This citizenship regime was to remain unchanged until the protectorates became independent.

Sierra Leone's first citizenship regime was enshrined in the independence constitution, enacted by the Sierra Leone (Constitution) Order in Council Act 1961.<sup>17</sup> For those born before independence, the constitution stated that:

Every person who, having been born in the former Colony or Protectorate of Sierra Leone, was on the twenty-sixth day of April, 1961, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Sierra Leone on the twenty-seventh day of April, 1961:

Provided that a person shall not become a citizen of Sierra Leone by virtue of this subsection if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Sierra Leone.

These transitional provisions therefore gave automatic citizenship to those persons born in the country before independence who were CUKCs or BPPs, if a parent or grandparent was also born there. Persons born outside Sierra Leone whose father became a citizen at independence were also granted citizenship.<sup>18</sup> Other provisions relating to loss of British CUKC or BPP status or acquisition of Sierra Leonean citizenship included:

- BPPs who became citizens of Sierra Leone ceased to be BPPs
- A person ceased to be a CUKC if on 27 April 1961 he became a Sierra Leone citizen, and if he, his father or paternal grandfather was born in the Colony or the Protectorate
- No woman ceased to be a CUKC on 27 April 1961 unless her CUKC husband did; however, the registration entitlement of women contained in BNA 1948 was withdrawn from women whose husbands ceased to be CUKCs on 27 April 1961
- Certain categories of people who failed to acquire citizenship by operation of the law were able to register. This included women married to those who were attributed citizenship under the transitional rules, and those born in the country whose parents were both or whose grandparents were all born outside the country, as well as other CUKCs and BPPs who were ordinarily resident in the country
- Others who met the set conditions could naturalise as citizens

For those born after independence, the 1961 Independence Constitution extended a *ius soli* right to citizenship to all those born in the country, except for children of a father who was a diplomat of another country or an enemy alien, and unless their mother was a citizen. Citizenship by descent or *ius sanguinis* was extended to persons born outside the country, if the father was a citizen at the time of birth, albeit limited to one generation.<sup>19</sup> In short, there was a defined path to acquiring Sierra Leone citizenship both at independence and thereafter, through birth in the country, descent, registration, naturalisation and marriage.

The legal entitlements to Sierra Leone citizenship based on two generations born in the country at independence (and based on simple birth in the territory after independence) extended citizenship to people of minority ethnic groups with 'black' and 'non-black' racial

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<sup>17</sup> A. Hale, and F. M'Cormack-Hale, 2018, 'Statelessness, Nationality, and Citizenship in Sierra Leone', *Journal of Global South Studies*, Volume 35, Number 2, Fall 2018, pp. 311-345.

<sup>18</sup> Bronwen Manby, 2016, *Citizenship Law in Africa: A Comparative Study*, 3rd edition <http://citizenshiprightsafrika.org/citizenship-law-in-africa-3rd-edition/>, p. 8.

Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging* (London: Hart Publishing).

<sup>19</sup> Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging* (London: Hart Publishing).



identity, or African and non-African descent, that had resided in Sierra Leone for several decades. The citizenship requirement particularly aimed at assuaging the fears of minority communities of African descent such as Fulani and Mandingo ethnic groups who were born to at least one parent or grandparent born in the territory and had settled in Sierra Leone from neighbouring countries. It also guaranteed legal rights to citizenship to the Afro-Lebanese community who had settled in Sierra Leone as far back as 1893 as well as other individuals of European and non-African descent.<sup>20</sup> These categories of settler community included traders, officials serving under the colonial government, and religious evangelists (Christianity and Islam). There was a fear by the departing colonial administration that denying these individuals the right to citizenship could subject them to expulsion, given that many have never had any links to the countries where they and their ancestry came from. It would also render them stateless.<sup>21</sup> The 1961 constitution was, therefore, aimed at ensuring that these groups were not precluded from the citizenship settlement.

#### 4. Post-independence amendments

The fear of British colonialists that the post-independence political elites would base membership of the political community and access to political power on the racial identity of ‘blackness’ was not unfounded. Within a year of independence, Sierra Leone citizenship laws were amended to reflect the nationalistic bent of post-independent politics to restrict the citizenship right of ‘non-negro’ Sierra Leoneans, particularly of Syrian Lebanese ancestry, to seek elected office.

Under the first elected post-independent government of Prime Minister Sir Milton Margai of the Sierra Leone’s People Party (SLPP), parliament used its majority to amend the 1961 Constitution retroactively to thwart the efforts of John Akar, a prominent and politically astute Sierra Leonean Lebanese, to contest elected office in the Sierra Leonean House of Parliament.<sup>22</sup> Though John Akar’s mother was Sierra Leonean and of ‘negro-African descent’, the new law defined a ‘person of Negro African descent’ by ancestry, as a person whose father and paternal grandfather were Negroes of African origin.<sup>23</sup>

The significant constitutional amendments to Sierra Leone’s citizenship laws were:<sup>24</sup>

- The removal of transitional provisions of the constitution providing for non-discretionary registration of those excluded from automatic acquisition of citizenship for lack of a parent or grandparent born in the country

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<sup>20</sup> N.O. Leighton, 1979, ‘The political economy of a stranger population: The Lebanese of Sierra Leone’, In *Strangers in African Societies*, ed. W. Shack and E. Skinner, 85–103. (Berkeley: University of California Press).

<sup>21</sup> A. Hale, and F. M’Cormack-Hale, 2018, ‘Statelessness, Nationality, and Citizenship in Sierra Leone’, *Journal of Global South Studies*, Volume 35, Number 2, Fall 2018, pp. 311-345.

<sup>22</sup> A. Hale, and F. M’Cormack-Hale, 2018, ‘Statelessness, Nationality, and Citizenship in Sierra Leone’, *Journal of Global South Studies*, Volume 35, Number 2, Fall 2018, pp. 311-345; Lina Beydoun, 2013, ‘The Complexities of Citizenship among Lebanese Immigrants in Sierra Leone’, *African Conflict and Peacebuilding Review*, Vol. 3, No. 1 (Spring 2013), pp. 112- 14.

<sup>23</sup> Milner, Tuboku-Metzger, and Marcus-Jones 1975: 56–57 cited in Lina Beydoun, 2013, ‘The Complexities of Citizenship among Lebanese Immigrants in Sierra Leone’, *African Conflict and Peacebuilding Review*, Vol. 3, No. 1 (Spring 2013), pp. 112- 14.

<sup>24</sup> For a more detailed account refer to Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging*, (London: Hart Publishing).

- The introduction of ‘negro African descent’ and its retroactive application as a requirement for the right to automatic citizenship at independence and those born in the territory after independence
- The lifting of the restriction of *ius soli* citizenship for a person of ‘negro African descent’ whose father held diplomatic status or was an enemy alien
- The stripping of Sierra Leone citizenship from persons not of ‘negro African descent’ who had acquired or opt for citizenship under the 1961 Constitution after less than a year
- A person born in Sierra Leone of ‘negro African’ mother could not qualify for citizenship by birth if that person’s father or grandfather were not of ‘negro-African descent’; however, a person with a ‘negro African’ mother could apply to register as a citizen on a discretionary basis
- A registered citizen did not qualify to hold elected office include being an MP unless he or she had been resident or served in the army for 25 years

In summary, the amendments restricted *ius soli* acquisition both at and after independence, by with the requirement that the person’s father and grandfather had to be of ‘negro African descent’. They also introduced restrictions for the registration and naturalisation of those not of ‘negro African descent’, so that persons of mixed race like Akar could only apply to acquire citizenship by naturalisation, a discretionary process and not a right, contingent upon a minimum residency status and other conditions; and a preclusion for naturalised citizens from holding political office.<sup>25</sup> As Manby (2018) argues, the amendment to the citizenship law was directly aimed at reducing the political influence of persons with Syrian Lebanese descent.<sup>26</sup>

## 5. The Current Citizenship Regime: 1973 – Present

Sierra Leone’s current citizen regime is governed by the Sierra Leone Citizenship Act of 1973 as amended by the 2006 and 2017 Citizenship (Amendment) Acts. This section explores the political dynamics that shape these laws and Sierra Leone’s current citizenship regime. It draws attention to citizenship legislation from 1973 to the post-war period. The continuities and changes to the citizenship regimes of these legislations are also considered.

### 5.1 The political developments behind citizen law reform

Three main factors are crucial in the development of these laws, namely, a desire to reduce the political influence of Syrian Lebanese embodied in the ambitions of John Akar, a desire to advance reconciliation and national development in a post-war Sierra Leone, and to advance women and children’s rights. After being stripped of citizenship by birth and subsequent disqualification from contesting elected office, John Akar sought legal adjudication in the Supreme Court, the highest court in Sierra Leone and later in the Privy Council in England, which was the highest appeal court for Sierra Leone. In what became known in legal history and case law as the Akar v. Attorney-General case, the Supreme Court ruled in favour of Akar,

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<sup>25</sup> Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging*, (London: Hart Publishing): 17.

<sup>26</sup> *Ibid.*, 77.

a decision that was upheld by the Privy Council. The gist of the ruling was that the citizenship law is discriminatory against immigrant communities and unjustified in a democracy.<sup>27</sup> John Akar made another attempt to contest Parliamentary elections in the early 1970's, this time under Siaka Steven's Presidency. Once more, the regime used the 1962 Citizenship Amendment Act to disqualify his candidature. John Akar's lawsuit was unsuccessful before the Sierra Leone Supreme Court. The Stevens government had instituted the Supreme Court as Sierra Leone's highest court in a reworked 1971 Act.<sup>28</sup> A new constitution adopted in 1971 did not include provisions on citizenship; these were instead provided in the Citizenship Act of 1973, with effect from the entry into force of the 1971 constitution.

Another new constitution was adopted in 1991, but quickly followed by the outbreak of civil war and a succession of military coups, until civilian government was restored in 2002. After the end of the civil war, there was a need to advance 'truth and reconciliation' and to facilitate repatriation of Sierra Leoneans who had sought safety abroad to help in national reconstruction and development. The rights to the acquisition of Sierra Leone citizenship based on *ius soli*, *ius sanguinis* and *ius matrimonii* were out of kilter with the residency, familial and matrimonial statuses of many Sierra Leoneans in the diaspora. Between 1991 and 2002, many Sierra Leoneans sought asylum abroad, particularly in North America and Europe, and in the neighbouring countries of Guinea and Liberia.<sup>29</sup> There was a need to encourage Sierra Leone's middle-class professionals who had fled the war to live abroad to come home to contribute to national development without fear of losing the citizenship of Western countries that they had acquired. More importantly, issues around dual citizenship and the rights of spouses and offspring in the diaspora to acquire citizenship needed to be modernised to grant them full membership of the political community. There was a recognition that Sierra Leonean refugees abroad would have voluntarily renounced allegiance to Sierra Leone due to the atrocities and human rights abuses they suffered from both state authorities and the rebels during the civil war. Additionally, some countries hosting immigrants including Sierra Leoneans would require those seeking naturalisation to renounce the citizenship of their homelands to qualify for the host country's citizenship. The need to allow for the 'resumption' of Sierra Leonean citizenship was therefore urgent. After sustained campaigns and advocacy by Sierra Leoneans, the 2006 Act was put in place to respond to these socio-political realities of Sierra Leoneans in the diaspora and for reconstruction and development of the post-war Republic.

There is another undercurrent to modernising the country's citizenship regime, which is an atavistic gender discrimination. Since independence and up to the post-war years, women and children had not been accorded equal treatment under Sierra Leone's citizenship laws. For instance, at independence, women's right to register for Sierra Leone citizenship depended on

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<sup>27</sup> J. P. W. B. McAuslan, 1968, 'John Joseph Akar v. Attorney'-General Source: *Journal of African Law*, Vol. 12, No. 2, (Summer, 1968), pp. 89-109; Published by: Cambridge University Press on behalf of the School of Oriental and African Studies Stable URL: <http://www.jstor.org/stable/744507> Accessed: 15/05/2008 17:22.

J. P. W. B. McAuslan, 1969. 'John Joseph Akar v. Attorney-General of Sierra Leone' Source: *Journal of African Law*, Vol. 13, No. 2, (Summer, 1969), pp. 103-116 Published by: Cambridge University Press on behalf of the School of Oriental and African Studies Stable; Milner, Tuboku-Metzger, and Marcus-Jones 1975, 69 cited in Lina Beydoun, 2013, 'The Complexities of Citizenship among Lebanese Immigrants in Sierra Leone', *African Conflict and Peacebuilding Review*, Vol. 3, No. 1 (Spring 2013), pp. 112- 143.

<sup>28</sup> Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging*, (London: Hart Publishing): 93.

<sup>29</sup> J. Ward, 2017, '10 Important Facts to Know About Sierra Leone Refugees'. The Borgen Project. from <https://borgenproject.org/sierra-leone-refugees>; T. Guberek, D. Guzmán, R. Silva, K. Cibelli, J. Asher, S. Weikart, P. Ball, & W. M. Grossman, 2006, 'Truth and Myth in Sierra Leone: An Empirical Analysis of the Conflict, 1991-2000' A Report by the Benetech Human Rights Data Analysis Group and the American Bar Association. Palo Alto, CA: Benetech.

the citizenship status of their husbands.<sup>30</sup> Up to 1973, a Sierra Leonean mother could not extend citizenship to her child born in or outside Sierra Leone. Children born in Sierra Leone or abroad could only acquire Sierra Leonean citizenship by descent if their father or grandfather was a Sierra Leonean citizen. Citizenship by ‘negro-African’ descent was therefore restricted to Sierra Leonean males. The need to rectify this discrimination against women and children became more urgent after the civil war. Sierra Leonean women could not extend their citizenship to their foreign husbands, most of whom were either refugees or had married abroad whilst in exile. Many foundlings had been born in Sierra Leone with either no known Sierra Leonean parents or have refugee parents who fled to Sierra Leone from neighbouring countries. Others are either displaced by the country’s civil war or had been orphaned. These categories of children are therefore offered no legal rights to citizenship and the attendant protection against statelessness. Additionally, mothers cannot pass along their Sierra Leone citizenship to their ‘adoptive’ children. Most of the children have been adopted during and after the civil war. More importantly, in recent times, Sierra Leone has been signatories to international humanitarian laws governing the treatment of refugees, women and children’s rights to citizenship, nationality and statelessness. The obligation to uphold these international conventions and the need for post-war reconciliation and development therefore became the drivers to eradicate the country’s archaic patrilineal and gendered discriminatory citizenship laws.

## 5.2 The 1973 Citizenship Act

The 1973 Citizenship Act was similar to the previous citizenship law in some respects, in particular by restricting access to citizenship based on race (‘negro African descent’) and gender, and in continuing to prohibit dual citizenship. However, it further restricted *ius soli* citizenship by requiring that the person’s father or grandfather must also have been born in the country.

The 1973 Citizenship Act also effected important changes in the areas around acquisition by birth, marriage and naturalisation as well as in the loss, deprivation and renunciation of Sierra Leone citizenship. Here are the main changes made in the Act:

- A person born in Sierra Leone before or after the entry into force of the 1971 constitution, and not the citizen of any other country, was deemed to be a citizen of Sierra Leone by birth, provided that- (a) his father or his grandfather was born in Sierra Leone; and (b) he is a person of negro African descent (defined as ‘a person whose father and father's father are or were negroes of African origin’) (sections 2 and 3). That is, not only was the restriction based on negro African descent (through the male line only) retained, but it introduced the requirement that an ancestor in the male line must also be born in the country for a child born in Sierra Leone to acquire citizenship at birth. As had previously been the case, a person born outside Sierra Leone after the 1971 constitution entered into force would acquire citizenship only through the father (section 5).
- The Act extended Sierra Leone citizenship to those who had been born abroad and still met the ‘negro African descent’ conditionality: ‘every person born or resident outside

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<sup>30</sup> Bronwen Manby, 2018, *Citizenship in Africa: The Law of Belonging*, (London: Hart Publishing); Laurie Fransman, Adrian Berry & Alison Harvey, 2011, *Sierra Leone, Fransman British Nationality Law* (Bloomsbury, Professional 3rd Edition, 2011).

Sierra Leone on or before the eighteenth day of April, 1971, and who, but for such birth or residence outside Sierra Leone would be a citizen of Sierra Leone by virtue of section 2, shall, on the nineteenth day of April 1971, be deemed to be a citizen of Sierra Leone by birth' (section 4).

- It provided that children of Sierra Leone mothers, born in or outside Sierra Leone and who do not acquire citizenship of another state could become citizens of Sierra Leone (section 6). That is, the law provided for citizenship to be acquired through the mother only if the child would otherwise be stateless.
- The Act made provision for citizenship by naturalization for women who are not Sierra Leoneans who were or are married to Sierra Leonean citizens and to persons of Negro African descent born in the country after April 18, 1971: 'every woman who is not a Sierra Leonean and who is or has been married to a Sierra Leone citizen, may, on application being made by her in the manner prescribed, be granted a certificate of naturalization' (section 7, as amended 1976). No similar provision was made for men married to Sierra Leonean women.
- In 1976, the 1973 Act was amended to introduce differentiation between those of 'negro African descent' and others in relation to naturalisation. There is a provision for 'every person of full age and capacity, either of whose parents is a person of negro African descent who is continuously resident in Sierra Leone for a period of not less than eight years' and not less than fifteen years for those without parents of negro African descent may apply for naturalisation (sections 8 and 9, as amended 1976).
- While previously the law had required all applicants for naturalisation to be at least 21 years old, the 1973 Act also provided for individuals under the age of twenty-one years to acquire citizenship by naturalisation if one of the parents is a naturalised Sierra Leone citizen and 'born outside Sierra Leone on or after the date on which the father or mother became a citizen' (Section 8(4)(b)).
- All other individuals who want to become citizens are relegated to a process of naturalization (section 8).
- A person who had acquired citizenship of Sierra Leone by naturalization or registration under the previous law had to 'renew' their citizenship by application to the minister (section 14).
- It made it possible for a Sierra Leone citizen to renounce their citizenship if the individual is of full age and of capacity and prefers the citizenship of a foreign country (section 15).
- It introduced the language of deprivation of citizenship, either of naturalised citizens who are citizens of other countries or those who have failed to meet certain conditions: 'the Minister may, if he is satisfied that it would be for the public good to do so, by Order, deprive any person who is a citizen of Sierra Leone by naturalisation of his citizenship if that person has been ordinarily resident in a foreign or foreign countries for a continuous period of seven years and has not, during that period, registered annually in the prescribed manner at a Sierra Leone Consulate, or notified the Minister in writing of his intention to retain his Sierra Leone citizenship' (section 18).

### 5.3 The 2006 Citizenship Amendment Act

The 2006 Citizenship (Amendment) Act amended the law to permit dual citizenship for the first time, and to remove gender discrimination in transmission of citizenship for those born in the country. The main changes made to the 1973 Act by the 2006 Act are:

- For the first time, the Act recognises dual citizenship and the “resumption” of Sierra Leone citizenship: A citizen of Sierra Leone may hold a citizenship of another country in addition to his citizenship of Sierra Leone (amending section 9, replacing section 10, repealing section 11, adding section 19A, and amending section 16).
- The act removed gender discrimination in both the definition of ‘negro African descent’ to include ‘a person whose mother or father and any of the grandparents of the mother or father is or was a Negro of African descent’, and in the requirement for a parent or grandparent to have been born in the country. This amendment enables a Sierra Leonean mother to extend citizenship to her child born in Sierra Leone (if the mother or one of the grandparents was also born there), although children born abroad could still only acquire Sierra Leonean citizenship by descent if their father is a Sierra Leonean citizen (amending definitions in section 1, and section 2).
- A restriction on acquisition by adoptive children was retained, but made gender neutral, by adding a definition of ‘mother’, in line with the existing definition for ‘father’, to mean “a natural but not an adoptive mother” (definitions in section 1).
- The Act applies the deprivation of citizenship clause to all naturalised citizens who might be a threat to the public good, instead of focusing on citizens who have acquired citizenship in other countries (amending section 18).
- For the first time, the 2006 Act made provision for individuals to challenge a decision to deprive them of Sierra Leone citizenship (adding section 22A).

#### **5.4 The 2017 Citizenship Amendment Act**

In 2017, the act was amended again to remove discrimination on the basis of sex of the parent in transmission of citizenship to a child born abroad outside Sierra Leone.

#### **5.5 Main principles of the current citizenship regime**

Here, I crystallise the legal provisions relating to how individuals acquire and lose citizenship that are constitutive of Sierra Leone’s current citizenship regime.

##### *5.5.1 Automatic attribution at birth*

Under current laws, citizenship is granted to everyone born in Sierra Leone before 19 April 1971 or resident in Sierra Leone on 18 April 1971 provided that their mother or father or any grandparent was born in Sierra Leone and was a ‘person of negro African descent’. Individuals born in Sierra Leone after 19 April 1971 were deemed to be citizens by birth, subject to the same condition (1973 Act, as amended 2006 section 8,5, 9 & 10). Automatic attribution to citizenship at birth is also extended to persons born or resident outside Sierra Leone and still met the ‘negro African descent’ and ancestor born in the country conditionality (1973 Act, as amended 2006, sections 2, 4). In addition, women now have automatic right to extend citizenship to children who may have been born or reside outside Sierra Leone (1973 Act, as amended 2017, section 5).

### *5.5.2 Acquisition based on marriage*

Foreign women who were or are married to Sierra Leonean citizens qualify to naturalise: ‘every woman who is not a Sierra Leonean and who is or has been married to a Sierra Leone citizen, may, on application being made by her in the manner prescribed, be granted a certificate of naturalisation’ (1973 Act as amended 1976 sections 7, 8, & 9). However, there continues to be absent, the ability of Sierra Leone women to pass along citizenship to a foreign spouse (1973 Act, as amended 2006, section 4).

### *5.5.3 Citizenship by naturalisation*

Individuals who do not meet the automatic right to acquire Sierra Leone citizenship may do so by naturalisation. This includes children of Sierra Leone mothers ‘of negro African descent’ who were born outside Sierra Leone but whose fathers were not of ‘negro African descent’ and whose mothers did not take citizenship of another state (1973 Act, as amended 2006, section 4). Individuals under the age of twenty-one years have a discretionary right to acquire citizenship by naturalisation if one of the parents is a naturalised Sierra Leone citizen and ‘born outside Sierra Leone on or after the date on which the father or mother became a citizen’ (1973 Act as amended 1976 and 2006, sections 8(4) & 9).

Under current citizenship laws, all other persons of ‘negro African descent’ who are born and have been continuously resident in the country for not less than eight years to apply to become a Sierra Leonean citizen (1973 Act, as amended 1976, sections 8(3) & 9).

All other individuals of ‘non-negro African descent’ who are ‘of full age and capacity, resident in Sierra Leone and has been continuously so resident for a period of not less than fifteen years may, on application being made by him or her in the manner prescribed, be granted a certificate of naturalisation if he satisfies the Minister that he is qualified for naturalisation’ (1973 Act, amended 1976, sections 8(2)-(3) and 9).

Other conditionalities for applicants to meet and subject to Ministerial approval include knowledge of a language in use in Sierra Leone, good character would be a good citizen (if negro African) or would make useful and substantial contribution to the advancement, progress and well-being of Sierra Leone (if not of negro African descent) (1973 Act, as amended 1976, section 9 and schedules 2 & 3).

There are also provisions granting executive powers for rejecting an application for Sierra Leone citizenship. For instance, ‘a person shall not be granted’ a certificate of naturalisation if at the time of his birth ‘neither of his parents was a citizen of Sierra Leone and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Sierra Leone’ (1973 Act, as amended 1976, section 8(1)). Naturalised citizens may not hold certain public offices (section 8(5)).

### *5.5.4 Renunciation of citizenship*

Since dual citizenship is now permitted, the law no longer provides for automatic loss of citizenship by operation of law. There are, however, provisions to enable renunciation of citizenship. Any Sierra Leonean may renounce citizenship subject to approval by the executive. The set process for effecting this is: ‘where any citizen of Sierra Leone who is of full age and capacity makes a declaration renouncing his citizenship of Sierra Leone, the Minister shall, if he is satisfied that the person is (a) a citizen of a Commonwealth country, or of the Republic

of Ireland; or (b) a national of a foreign country, cause the declaration to be registered, and thereupon that person shall cease to be a citizen of Sierra Leone’ (1973 Act, section 15).

### 5.5.5 Deprivation of citizenship

There are also bases for the Executive to deprive an individual who has naturalised of Sierra Leone citizenship, namely on grounds of disloyalty and criminality; however, dual citizenship is no longer a ground for deprivation.

The 2006 amendment that removed the possibility of deprivation on the basis of dual nationality introduced instead a broad provision for deprivation of citizenship from a naturalised citizen if the minister ‘is satisfied that it would not be conducive to the public good that such person, being of full age and capacity, should continue to be a citizen of Sierra Leone’ (section 16, as amended).

In addition, ‘any person, who is a citizen by naturalisation may be deprived of his citizenship if by Order from a Minister is satisfied that such person has: ‘(a) shown himself by act or speech to be disloyal to the Republic or its Government or (b) within seven years of his becoming a citizen of Sierra Leone, been sentenced in any country to imprisonment for a term of not less than twelve months for an offence involving fraud or dishonesty’ (1973 Act, section 17). However, the law of deprivation of citizenship is only applicable to naturalised citizens who might be a threat to the public order instead of focusing on citizens who have acquired citizenship in other countries (1973 Act, as amended in 2006, sections 9, 10 & 16).

Another basis for depriving Sierra Leone citizenship is where a person who is ordinarily resident in a foreign country for “a continuous period of seven years failed to register annually in the prescribed manner at a Sierra Leone Consulate, or notified the Minister in writing of his intention to retain his Sierra Leone citizenship (section 18).

## 6. Implications of the current citizenship regime

Whilst the 1973 Act was notable for introducing important changes since independence, other legislation implemented from 1973 to present also contributed to modernising Sierra Leone’s citizenship architecture. This final section explores some of the implications and precarities of the current legal framework for an individual’s membership of the polity. It compares these with other countries in the West-African sub-region to demonstrate how the loss and acquisition of citizenship in varies across the sub-region.

### 6.1 Citizenship acquisition

It has already been noted that individuals could acquire Sierra Leone citizenship based on certain conditionalities: including having ‘negro African’ ancestry, continuous residency period for specific ethnic groups, ability to speak a local language, and a minimum age for naturalisation if born outside Sierra Leone and one of the parents is a naturalised Sierra Leone or ‘born on or after the date on which the father or mother became a citizen’. This suggests that *ius sanguinis* or having ancestral, matrimonial and patrilineal links, *ius soli* or birth right or being born in the national territory, and naturalisation continues to be paths to Sierra Leone citizenship. It is worth highlighting that non-negro Africans can only naturalise and can never



be citizens from birth as is the case with other countries in the sub-region; with the exception of Liberia where only ‘negroes’ are allowed to be citizens.

Sierra Leone shares a similarity with other countries in the ECOWAS group by providing adults with the right to acquisition of a nationality by applying for naturalisation based on long residence in the country.<sup>31</sup> Whilst the length of nationality will vary among countries, Nigeria and Sierra Leone is 15 years, whilst Benin it is only three years’ residence, there are also other criteria common to these countries such as good conduct and a clean criminal record.<sup>32</sup> On the one hand, the naturalisation path in Sierra Leone could be an expensive project for many aspiring citizens of negro African ancestry in a country rife with poverty and destitution. On the other, it will benefit the more affluent aspiring citizens such as the Syrian Lebanese community who are disqualified from the right to automatic citizenship based on their non-negro African descent.

It is worth noting that the 2006 Act took an important stride in modernising the country’s nationality laws. For the first time, the Act provides for dual citizenship and the ‘resumption’ of Sierra Leone citizenship, and removed gender discrimination in transmission of citizenship to those born in the country.

## 6.2 Citizenship deprivation

It has also been noted that the conditions for depriving Sierra Leone citizenship include a person being ordinarily resident in a foreign country for ‘a continuous period of seven years and has not, during that period, registered annually in the prescribed manner at a Sierra Leone Consulate, or notified the Minister in writing of his intention to retain his Sierra Leone citizenship’. In this sense, Sierra Leone is like its neighbour countries of Guinea and Liberia. Naturalised individuals could also be prevented from or stripped of Sierra Leone citizenship on grounds of disloyalty to the state and for criminal conduct. However, Sierra Leone’s laws do not provide for the deprivation of an individual’s Sierra Leone citizenship and nationality from birth – as is also the case with the Gambia, Ghana, Nigeria, and Burkina Faso.<sup>33</sup>

The 1973 Act stipulated that the relevant Minister’s decision to deprive a naturalised individual of their Sierra Leone citizenship could not be challenged. The 2006 Act, however provides naturalised citizens the right to challenge the ministerial privilege to exclude them from Sierra Leone citizenship by appealing to a special committee comprising of: ‘a judge of the Superior Court of Judicature to be appointed by the Chief Justice, who shall be chairman; the Ombudsman; the chairman of the Human Rights Commission; a representative each of the Christian Council of Sierra Leone and the Sierra Leone Council of Imams’ (1973 Act, as amended 2006, section 22A). The inclusion of the legal, human rights and lay sectors in the appeals process provides some independence in the determination of the state’s authority to exclude members of the polity from citizenship. The provision for a judicial challenge is a positive development by serving as a check to the state’s automatic right to render Sierra Leone citizens stateless by stripping citizenship from those who acquired citizenship via naturalisation.

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<sup>31</sup> Bronwen Manby, 2015, ‘Nationality, Migration and Statelessness in West Africa’, UNHCR and IOM, June 2015.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

### 6.3 Gender discrimination

Whilst the gap in the application of rights to citizenship have narrowed for women in many respects, the current citizenship and nationality laws are fraught with gendered disparity. Women can now extend citizenship to their children born in and outside Sierra Leone, but posthumous children continue to be excluded. Women also cannot pass their citizenship to their foreign husbands, a situation similar to that of Benin, Guinea, Nigeria and Togo.<sup>34</sup> The lack of rights to Sierra Leone citizenship for foreign husbands and adopted children of Sierra Leonean women exposes the discriminatory bent of the Sierra Leone citizenship regime along gendered characteristics. More importantly, male spouses and adoptive children of Sierra Leonean women are, therefore, residing in the country under the precarity of citizenship.

### 6.4 Lack of protections against statelessness

Foundlings born in the country without a known Sierra Leonean parent are also susceptible to the precarity of citizenship protection under the current citizenship laws. Currently, there is a lack of legislation that grants them automatic right to citizenship by birth. The only option open to foundlings is that the country has adopted the Child's Rights Act of 2007, which provides children 'the right to acquire a nationality or the right as far as possible to know his natural parents and extended family' (section 24). Sierra Leonean social norms will recognise foundlings as Sierra Leoneans particularly those who are of 'negro African descent and speak a local language. In addition, within the country's social norms, foundlings are highly likely to be adopted particularly by women. Yet, these social norms confront the lack of legal rights of foundlings to automatic citizenship through birth in a scenario where birth is not registered. Foundlings also do not have automatic right to inherit the Sierra Leone citizenship of their adoptive mothers under current regulation. Foundlings, therefore, have no legal protection against statelessness. One positive stipulation of the 1973 Act is that Sierra Leone citizenship can be applied retrospectively or posthumously to children who were born to a father who had died as a Sierra Leonean citizen (section 21).

The law specifically excludes adoptive parents from the definition of 'father' or 'mother'. This also creates the risk that adopted children will not be recognised as citizens.

Sierra Leone acceded to the African Charter and the Rights and Welfare of the Child in 2002, and to the 1961 Convention on the Reduction of Statelessness in 2016, both of which require a state to grant citizenship to a child born in the territory who would otherwise be stateless. Sierra Leone is also a member of the Economic Community of West African States (ECOWAS) which in 2015 adopted a declaration on the eradication of statelessness<sup>35</sup>, and in 2017 a plan of action for its implementation.<sup>36</sup> The Citizenship Act, however, has not been amended to provide this protection.

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<sup>34</sup> Ibid.

<sup>35</sup> Abidjan Declaration of Ministers of ECOWAS Member States on the Eradication of Statelessness, ECOWAS & UNHCR, 23 February 2015 <http://unhcr.org/ecowas2015/ENG-Declaration.pdf>.

<sup>36</sup> Banjul Plan of Action of the Economic Community of West African States (ECOWAS) on the Eradication of Statelessness 2017 –2024 <https://www.unhcr.org/591c38347>

## 7. Conclusion

The above account illustrates that Sierra Leone's current citizenship laws, since independence have gradually diverged from other Anglophone colonial territories of West Africa - Nigeria, the Ghana (formerly the Gold Coast), and the Gambia. Its membership of international institutions such as ECOWAS, the UN and the African Union also continue to influence its citizenship regime. However, Sierra Leone's citizenship regime needs urgent reforms.

There has been a reduction of gender discrimination by allowing women to pass on their nationality to their children, a right once the exclusivity of their male counterparts. The reforms will go a long way to advance Sierra Leone's efforts at post-war reconstruction, national development and peace consolidation. It is also a positive in aligning the country with international laws relating to eradicating statelessness, gender and racial discrimination. Yet, key areas pertaining to the limitations on legal right for women to pass their citizenship to spouses, refugees and foundlings to acquire nationality, and dual citizens to participate in elected office need urgent reforms.

