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DEALING WITH GENDER-BASED CRIMES IN INTERNATIONAL CRIMINAL LAW

*Ms. Tamara Cummings-John**

It is a delight to read this excellent monograph entitled *The Legal Legacy of the Special Court for Sierra Leone* by Professor Charles C. Jalloh and to participate in this important discussion of it. The Special Court for Sierra Leone, which forged new ground as arguably the best model of the so-called “hybrid” international criminal tribunals, is one of the understudied success stories of modern international criminal law. Professor Jalloh, whose scholarship and other efforts stood as a notable exception,¹ has again delivered through authoritative analysis of the core “legal legacy” of the Special Court for Sierra Leone, combining academic rigor with practical insights gained from his prior experience as a legal adviser in the Special Court.

Professor Jalloh, who is well known as a leading international lawyer (as evidenced by his important contributions to the work of the International Law Commission), provides an incredible analysis of the Special Court for Sierra Leone’s contribution to international criminal jurisprudence—comparing it to other international criminal tribunals while also contextualizing its response to the specific atrocities of the Sierra Leonean conflict.

The Legal Legacy of the Special Court for Sierra Leone reminds us of the bold steps taken by the hybrid tribunal in dealing with gender-based crimes. Professor Jalloh meticulously tracks the genesis of prosecuting sexual violence which was a key characteristic of the Sierra Leone conflict. His handling of the subject is reminiscent of the realities of prosecuting sexual violence including in the national context where a vast majority of sexual crimes such as rape and sexual assault go unreported, and when reported, very few result in a prosecution and even fewer in a conviction. In much the same way, Professor Jalloh documents the uphill battle faced by prosecutors in the Special Court for Sierra Leone (SCSL) in trying to indict gender-based

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¹ See, for instance, his seminal work that became the first comprehensive analysis by a group of scholars of the successes and challenges in THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW (Charles C. Jalloh, ed., 2013).

crimes. It is somewhat disheartening to be reminded of SCSL judges splitting hairs over technical differences between sexual slavery, forced marriage, or conjugal slavery when those of us familiar with the conflict and the work of the Office of the Prosecutor in SCSL, are acutely aware that the characteristics of the conflict demanded an inclusion of forced marriage in every single indictment. The phenomenon of bush wives was not invented by the SCSL prosecutors but rather was a key aspect of the conflict that was aimed at degrading women and girls—not only sexually, but also socially, resulting in them being stigmatized even after the conflict had long ended.

Professor Jalloh provides an analysis that takes us from the human rights context to that of international criminal tribunals including the International Criminal Court (ICC). While he is unable to state categorically that the SCSL's jurisprudence as it relates to forced marriage has facilitated the work of the Prosecutor of the permanent court, the ICC, Professor Jalloh confirms that the SCSL's conclusions whether in the AFRC, the RUF of the Charles Taylor trials, have provided some useful reference points for the ICC. Specifically, he refers to the Pre-Trial Chamber's decision in the Ongwen case to refer to the distinction in the AFRC Appeals Judgement between sexual slavery and forced marriage. This is a testament to the SCSL's legacy—the fact that forced marriage was addressed in every single one of the cases, even if the result may not have been its inclusion in an indictment or a conviction, it was nonetheless a crime that was part and parcel of the conflict in Sierra Leone and that has left a visible scar on the nation.

Moving forward to present day, Professor Jalloh's thoughtful book—which also examines other knotty issues such as the first prosecutions of the war crime of child recruitment, the status of blanket amnesties for international crimes, and the immunity of former Liberian president Charles Taylor—will serve not only Academia and Legal Practitioners but will also inform the Sierra Leonean government as it grapples with gender-based crimes. Some may argue that this is a remnant of the conflict, but, as the cases of women and girls being victims of gender-based crimes show no sign of abating, what is abundantly clear is that there is a pressing need for accountability. In 2019, the Sierra Leonean government declared sexual and gender-based violence a national emergency, and in 2020 an initiative was launched, setting up special courts for rape cases by the Chief Justice. The SCSL's deliberations, conclusions, and judgments on gender-based crimes will serve the country at this critical juncture, and Professor Jalloh's book is to be highly commended for making this possible by documenting the SCSL's legacy so well. Through this monograph, which now becomes the leading such work on the SCSL, Professor Jalloh has—much as he suggested in relation to the tribunal—bequeathed his own legacy to Sierra Leone and the international criminal law community.