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## The Legal Legacy of the Special Court for Sierra Leone: The Sierra Leone Perspective—When the Story Is as Important as the Storyteller

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## THE LEGAL LEGACY OF THE SPECIAL COURT FOR SIERRA LEONE: THE SIERRA LEONE PERSPECTIVE—WHEN THE STORY IS AS IMPORTANT AS THE STORYTELLER

*Dr. Michael Imran Kanu\**

The civil conflict in Sierra Leone from 1990 to 2002 is recorded as one of the most brutal in recent human history. For a direct victim and witness to the atrocities committed during the said conflict and a witness to the transitional justice process, including the establishment of the Special Court for Sierra Leone (SCSL), the question of accounting for the legacy of the tribunal is paramount. Equally paramount to the legacy story is the storyteller's perspective, particularly so when the subject is understudied or in the periphery of the atrocity crimes' accountability discourse.

It is with this mindset that I find Charles Jalloh's *The Legal Legacy of the Special Court for Sierra Leone* ("*The Legal Legacy*") to be a compelling read, not only because of the exceptional and robust argument on the useful and, in specific circumstances, the novel jurisprudential contributions of the SCSL to the development of (then) nascent international criminal law (ICL) and justice; but also, for offering a hitherto missing perspective—the Sierra Leone perspective. As the global community's resolve to end impunity for atrocity crimes matured from the infancy of the ad hoc international criminal tribunals—the International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR)—to a recognizable field of international law, the contributions of the SCSL, embedded in its "legal legacy," cannot be best understood or contextualized without the necessary focus on its establishment, jurisdiction (including personal jurisdiction), organization, trials and relationship with the Sierra Leone Truth and Reconciliation Commission, which Charles Jalloh so expertly and excellently conveys in his new book.

Charles Jalloh continues to reinforce the view that he is a leading academic voice on the work of the SCSL. *The Legal Legacy* with its rigor and critical examination of the tribunal's jurisprudential contributions to ICL on forced marriage as a crime against humanity, child recruitment as a war crime, head of state immunity, and blanket amnesties (collectively the SCSL "many firsts"), follows the path of his earlier academic contributions as (lead)

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editor, *Consolidated Legal Texts for the Special Court for Sierra Leone*,<sup>1</sup> *The Law Reports of the Special Court for Sierra Leone* for the AFRC Case,<sup>2</sup> the CDF Case,<sup>3</sup> the Taylor Case<sup>4</sup> and the RUF Case,<sup>5</sup> and *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law*.<sup>6</sup>

In contrast to the pioneering International Military Tribunals in Nuremberg and the Far East (Tokyo), the Security Council created ICTY and ICTR, the permanent treaty-established International Criminal Court, the subsequent or other internationalized/hybrid courts,<sup>7</sup> and the impunity gaps that still exist for countries with similar experiences, the focus on the establishment of the SCSL provides the right context for appreciating Charles Jalloh's "Legal Legacy" appropriately and narrowly defined to include "reference to the body of legal rules, innovative practices, and norms that the tribunal is expected to hand down to current and future generations of international, internationalized, and national courts charged with the responsibility to prosecute the same or similar international crimes."<sup>8</sup> Before this bequeathal is made, the bridge between the broader concept of the legacy for internationalized tribunals and the "legal legacy" is found in the story and motivation to establish the SCSL. This fits into the book's core purpose, which is to specifically discuss the SCSL's legal legacy, *and* not as an adjunct to the ICTY and ICTR in the existing literature.

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<sup>1</sup> CHARLES JALLOH, *CONSOLIDATED LEGAL TEXTS FOR THE SPECIAL COURT FOR SIERRA LEONE* (2007).

<sup>2</sup> *THE LAW REPORTS OF THE SPECIAL COURT FOR SIERRA LEONE VOLUME I: PROSECUTOR V. BRIMA, KAMARA AND KANU (THE AFRC CASE)* (Charles Cherner Jalloh & Simon M. Meisenberg eds., 2012).

<sup>3</sup> *THE LAW REPORTS OF THE SPECIAL COURT FOR SIERRA LEONE VOLUME II: PROSECUTOR V. NORMAN, FOFANA AND KONDEWA (THE CDF CASE)* (Charles Cherner Jalloh & Simon M. Meisenberg eds., 2013).

<sup>4</sup> *THE LAW REPORTS OF THE SPECIAL COURT FOR SIERRA LEONE VOLUME III: PROSECUTOR V. CHARLES GHANKAY TAYLOR (THE TAYLOR CASE)* (Charles Cherner Jalloh & Simon M. Meisenberg eds., 2015).

<sup>5</sup> *THE LAW REPORTS OF THE SPECIAL COURT FOR SIERRA LEONE VOLUME IV: PROSECUTOR V. SESAY, KALLON AND GBAO (THE RUF CASE)* (Charles Cherner Jalloh & Simon M. Meisenberg eds., 2020).

<sup>6</sup> *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* (Charles Cherner Jalloh ed., 2013).

<sup>7</sup> The Extraordinary Chambers in the Courts of Cambodia, the International Judges and Prosecutors Program in Kosovo, the Special Panels for Serious Crimes in Timor-Leste, the Special Tribunal for Lebanon, the War Crimes Chambers in the State Court of Bosnia and Herzegovina, the Extraordinary African Chambers established by the African Union and Senegal to try former Chadian President Hissene Habre, and the Special Criminal Court for the Central African Republic.

<sup>8</sup> CHARLES C. JALLOH, *THE LEGAL LEGACY OF THE SPECIAL COURT FOR SIERRA LEONE*, at x (2020).

The SCSL was created by a treaty between the United Nations and the Government of Sierra Leone in 2002 on the request of the Government of Sierra Leone,<sup>9</sup> and authorized by UN Security Council Resolution 1315.<sup>10</sup> The request followed a similar request from Rwanda, and it offered an attractive precedent for the other UN-backed courts in East Timor, Kosovo, Bosnia, and Cambodia. In setting out his methodology, Charles Jalloh lamented about the absence of public information on the Government of Sierra Leone's position on some of the issues relating to the negotiations and Statute of the SCSL, save for the correspondence between the Government and the UN. This is in contrast to UN noticeable literature, including the UN reports on the conflict situation in Sierra Leone and the seminal Report of the UN Secretary-General on the establishment of the SCSL (the unofficial *travaux préparatoires*). To reflect the national perspective of Sierra Leone, perceived as the weak bargaining partner, Charles Jalloh's ingenuity must be commended, as he so effectively drew from the memoirs and other writings of the political leadership in Sierra Leone at the time, including then President Ahmad Tejan Kabbah, who initiated the process, the Attorney-General and Minister of Justice, and later Vice-President Solomon Berewa, who led the delegation of Sierra Leone in the negotiations, to fill the narrative gap.

The question that immediately comes to mind then is whether this endeavor was necessary. Although the decision on the "role of the United Nations Security Council in creating ad hoc courts" was not covered in the book owing to the economy of space, the chapter on the "Establishment of the Special Court for Sierra Leone" rightly answers the question by underlining the ubiquitous peace versus justice dilemma.<sup>11</sup> For the Government of Sierra Leone, it turned out to be a peace with justice paradigm, notwithstanding the amnesty provisions in the two peace Accords concluded in Abidjan and Lomé. Frustrations over the repeated violations of the peace agreements, led the Government to request UN assistance to ensure accountability for the heinous crimes committed post the 1996 Abidjan Accord. In this period of seeming global retreat in international criminal justice in the continuum of "tribunal fatigue" in the UN system, it is useful to reflect on the remarkable desire of the Government of Sierra Leone for "credible justice" to punish adversaries, a framing which allowed the SCSL to move away from the hitherto victors' justice archetype of ICL.

The motivation for credible justice laid the foundation for the credible contributions of the SCSL to international criminal justice. The substantive

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<sup>9</sup> Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, U.N.-Sierra Leone, Jan. 16, 2002, 2178 U.N.T.S. 137.

<sup>10</sup> S.C. Res. 1315 (Aug. 14, 2000).

<sup>11</sup> JALLOH, *supra* note 8, at 41.

discussions, the “many firsts” of the SCSL, that followed the context-setting was brilliantly summarized by Charles Jalloh, thus:

The Sierra Leone Court was among the first to grapple with some of the more important and recurring legal dilemmas for many modern post-conflict situations. For example, among others, the SCSL was the first international criminal court to prosecute persons bearing “greatest responsibility”; to try and convict persons for the recruitment and enlistment of children for the purposes of using them in hostilities. It was also the first international tribunal to recognize the new crime against humanity of forced marriage as an “other inhumane act,” and importantly, the first to indict, fully try, and then convict an African president for planning and aiding and abetting the commission of international crimes in a neighboring state thereby getting the opportunity to pronounce on the question of his immunity.<sup>12</sup>

This book is an excellent contribution to the body of knowledge on international criminal law and practice, with particular attention to broadening the “legal legacy” of the Special Court for Sierra Leone, with the noble endeavor of mainstreaming the perspective of Sierra Leone in its creation. It is an informative piece of work for policymakers, academics, practitioners, students, researchers, and most certainly diplomats.

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<sup>12</sup> JALLOH, *supra* note 8, at xi.