

# Book Review: *The Legal Legacy of the Special Court for Sierra Leone* (2020), ISBN-13: 978-1107178311, by Charles C. Jalloh



International Journal  
For Court Administration



## BOOK REVIEW

DAVID C. STEELMAN 



### CORRESPONDING AUTHOR:

**David C. Steelman**

Retired American lawyer  
and former principal court  
management consultant,  
National Center for State  
Courts, US

[dsteelman8244@gmail.com](mailto:dsteelman8244@gmail.com)

## ABSTRACT

This article reviews the book by Professor Charles C. Jalloh, **The Legal Legacy of the Special Court for Sierra Leone**, published in 2020 by Cambridge University Press. In this book, the author examines the “hybrid” international/national criminal tribunal, known as the Special Court for Sierra Leone (SCSL), which was created under a pathbreaking bilateral treaty between the United Nations (UN) and the country of Sierra Leone as a UN member state. Jalloh seeks to evaluate the contributions made by SCSL to the development of international criminal law. In particular, he assesses the scope and significance of SCSL legal contributions from its solutions to problems arising between its opening and the completion of its work in 2013, having to do with personal and temporal jurisdiction; gender crimes as crimes against humanity; recruitment of children as war crimes; head-of-state immunity; amnesty; and tensions between criminal tribunals and truth commissions.

### KEYWORDS:

ad-hoc international tribunals; AFRC; amnesty; Annan, Kofi; CDF; child recruitment as war crime; forced marriage as crime against humanity; Freetown; “greatest responsibility” personal jurisdiction; head-of-state immunity; hybrid criminal tribunals; ICTY; ICTR; Kabbah, Ahmad Tejan; Liberia; Lomé Peace Agreement; Rome Statute; RUF; Sierra Leone civil war; Sierra Leonean law; SCSL appeals chamber, trial chambers, registrar’s office, prosecutor’s office, and defense office; Taylor, Charles; temporal jurisdiction; The Hague;

Since the conclusion of the international military tribunals at Nuremberg (IMT) and for the Far East (IMTFE) at the end of World War II, what developments have there been in the jurisprudence of international criminal law? More than five decades after the end of World War II, how much did the ad-hoc tribunal for the investigation and prosecution of war crimes and crimes against humanity committed during the Sierra Leonean civil war contribute to international criminal jurisprudence?

In this 2020 book, Charles C. Jalloh seeks to answer these questions by considering the “legal legacy” of the ad-hoc Special Court for Sierra Leone (SCSL), which was created in 2002 and completed its work in 2013. SCSL was the third modern international criminal tribunal supported by the UN, and it was the first to hold its proceedings where the crimes were committed.

Beginning in 1991, the West African country of Sierra Leone experienced over ten years of civil war, following years of corrupt and authoritarian government, accompanied by the marginalization of young people and women. The war resulted in widespread violence and abuse that included rape, torture, the use of children as soldiers, and the use of girls and women as sex slaves. In 1999, the government of Sierra Leone President Ahmad Tejan Kabbah negotiated a political settlement with civil war opponents in the comprehensive Lomé Peace Agreement.

In 2000, President Kabbah wrote to the UN Security Council seeking support for the creation of a special court for Sierra Leone, both to bring justice for the armed groups who opposed the government in the civil war, and also to bring lasting peace to his country and to West Africa. The Security Council adopted Resolution 1315 in 2000, authorizing Secretary-General Kofi Annan to negotiate an agreement between the UN and Kabbah’s national government to create an independent special court. The negotiations between Annan and Kabbah resulted in a 2002 treaty creating SCSL as a mixed ad-hoc international tribunal, with both national and international elements, which was neither a subsidiary body of the UN nor part of Sierra Leone’s national court system. Instead, it was an independent international organization financed by donations from UN member states.

Under the treaty and annexed national statute, SCSL had six major institutional features: (1) it was the first international criminal tribunal created by the UN in a treaty with one of its member states; (2) it had mixed subject-matter jurisdiction, allowing it to invoke both international and Sierra Leonean national law to prosecute offenders; (3) it was the first modern ad-hoc international criminal tribunal to be located within the country where the alleged crimes occurred; (4) unlike other ad-hoc tribunals funded as part of the regular UN budget, it was funded by voluntary contributions from UN member states; (5) its nonjudicial activities were managed by an oversight committee of representatives from its UN major donor states; and (6) the Sierra Leonean government actively participated in the founding of SCSL and the appointment of judges and other officials.

Because of its funding by voluntary contributions from other countries, SCSL faced financial challenges throughout its operation, and its funding insecurities prevailed until its final closure with the determination of the last case on appeal in December 2013. Within the constraints imposed by those challenges and insecurities, SCSL judges in Trial Chamber I sat in Freetown, Sierra Leone, to hear prosecutions of individual civil war combatants who were members of the Revolutionary United Front (RUF) and the Civil Defense Forces (CDF), while Trial Chamber II heard the case against members of

Truth and Reconciliation Commission; United Nations (UN) Secretary-General, Security Council, and Resolution 1315

#### TO CITE THIS ARTICLE:

David C. Steelman, ‘Book Review: *The Legal Legacy of the Special Court for Sierra Leone* (2020), ISBN-13: 978-1107178311, by Charles C. Jalloh.’ (2022) 13(1) *International Journal for Court Administration* 7. DOI: <https://doi.org/10.36745/ijca.433>

the Armed Forces Revolutionary Council (AFRC) in Freetown and the prosecution of Liberian President Charles Taylor in The Hague, while the appeals chamber conducted appeal proceedings in both Freetown and the Hague.

From the opening of SCSL operations through the completion of its work in 2013, the trial chambers and the appellate chamber were confronted by several special problems arising in its cases. In this book, Jalloh evaluates the contributions that its appellate and trial chambers made to the jurisprudence of international criminal law in its treatment of those problems. To define the “legal legacy” of SCSL, he identifies six issues and evaluates the manner in which the trial and appeals chambers addressed them:

**1. SCSL exercise of personal jurisdiction over those bearing “greatest responsibility” for crimes committed during a specified period of time:**

Jalloh analyzes the practical problems that this manner of framing personal jurisdiction caused for SCSL, with divisions among prosecutors, defenders and trial chambers that were not sufficiently resolved by the appeals chamber. He recommends, among other things, that the creators of future international criminal tribunals must clearly define how jurisdictional requirements would be met, and whether such determinations would require factual assessments of evidence or are purely procedural or legal questions to be decided before any presentation of evidence.

**2. SCSL adjudication of forced marriage as a gender crime against humanity:**

With forced marriage prosecuted for the first time in international law, SCSL ruled that it met the criteria for “other inhumane acts” as crimes against humanity, and ensuring that the gendered burden borne by women and girls in armed conflicts must be recognized and condemned. Comparing SCSL proceedings with those in international tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), Jalloh observes that predominantly male prosecutors failed to charge defendants with gendered crimes until after proceedings began. Though there were different results reached for such charges in separate SCSL trial chambers, their validity as crimes was upheld on appeal.

**3. SCSL adjudication of those recruiting children to be soldiers as a war crime:**

Although children have been part of armed conflict for millennia as either victims or perpetrators, recruiting children to be soldiers was not expressly defined as a war crime in international law until 1998, during the negotiations in Rome for the Statute of the International Criminal Court (ICC). After the treaty came into force in 2002, SCSL was the first international tribunal to apply the crime against individual defendants, and Jalloh assesses how its interpretation of the elements of the war crime of child recruitment could be used by ICC even in the absence of any formal relationship between the two tribunals.

**4. SCSL rejection of head-of-state immunity for Liberian President Charles Taylor:**

Incumbent Liberian President Charles Taylor claimed that he could not be indicted by SCSL because he was a head of state and was

immune from prosecution under customary international law.<sup>1</sup> In a controversial decision, the SCSL appeals chamber rejected the claim by Taylor, taking an approach that Jalloh sees as an important contribution to the normative development of the law of immunity under customary international law. The appeals chamber reasoned that the customary immunity existing “horizontally” between tribunals of co-equal sovereigns was not available in a “vertical” setting in which a defendant was charged with having committed internationally-condemned offenses before an international court with jurisdiction created with significant involvement of the international community.

5. *SCSL trial of individuals charged with international crimes after unconditional amnesty had been granted as part of a peace agreement:*

Jalloh sees another significant contribution to customary international law in the SCSL appeals chamber determination that such national authorities as the Sierra Leone government cannot confer unconditional amnesty on the perpetrators of certain types of internationally-condemned crimes. He sees “a positive step forward in the global struggle against immunity,” so that no single country could hamper the ability of other countries or the international community to investigate or prosecute war crimes, crimes against humanity, or other serious violations of international humanitarian law.<sup>2</sup>

6. *SCSL attention to tensions and conflict between its goals as a criminal tribunal and the reconciliatory goals of the Sierra Leone Truth and Reconciliation Commission:*<sup>3</sup>

Seeking to blend SCSL criminal prosecutions with a simultaneous effort to achieve reconciliation in Sierra Leone through a truth commission in Sierra Leone was a unique innovation, presenting important legal and policy questions about the two can operate at the same time in relative harmony rather than conflict. Jalloh concludes that concurrent operation of the two kinds of institutions cannot easily be reconciled without adequate prior attention to clarifying their relationship in founding instruments and coordinating their efforts in practice.

Charles C. Jalloh was born and raised in Sierra Leone, and he is otherwise uniquely qualified to appraise the legal legacy of SCSL. He is Professor of Law at Florida International University, and he is a member of the UN International Law Commission. In 2018, he was the Fulbright Distinguished Chair in Public International Law at Lund University and Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden. His prior work experience includes being legal advisor in the SCSL in Sierra Leone, the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal

---

<sup>1</sup> Taylor was indicted and convicted by SCSL for having set off a civil war in nearby Liberia in 1989 that would engulf Sierra Leone and several other West African countries.

<sup>2</sup> Jalloh notes that UN policy no longer recognizes the validity of peace treaties that allow amnesty for genocide, war crimes, or crimes against humanity.

<sup>3</sup> The truth commission was created in 2000 as part of the Lomé Peace Agreement between the Kabbah government and its civil war opponents.

Court (ICC). He is widely published in international criminal justice.<sup>4</sup> He holds degrees from Guelph, McGill, Oxford, and a Ph.D. in Law from the University of Amsterdam.

The substantive material covered in the book begins with an overview of the brutal Sierra Leone civil war, and then it proceeds to a discussion of how the special court was established through negotiations leading to a treaty between the UN and Sierra Leone, with foundational documents including UN Security Council Resolution 1315, the UN-Sierra Leone treaty, and the SCSL statute included as appendices. After describing SCSL's jurisdiction, organization and trials, Jalloh devotes separate chapters to each of the six specific substantive jurisprudential problems identified above, and to the extent that the resolution of those matters by SCSL trial and appeals chambers has resulted in positive contributions to the development of international criminal law.

This book gives the reader a sound understanding of the background, purpose, structure and operation of SCSL, as well as an understanding of the place that SCSL occupies in the evolution of international criminal tribunals. Its publication follows an earlier effort led by Jalloh to determine the broad legacy of the SCSL, in which he edited a collection of essays by leading scholars and international criminal practitioners to assess the impact of SCSL for Africa and international criminal law in general.<sup>5</sup> Focusing specifically and intensely on SCSL and international criminal jurisprudence, it is a natural reflection of Jalloh's concerns as one of the expert scholars serving in the International Law Commission, which was established by the UN General Assembly in 1947 to study and make recommendations for the progressive development and codification of international law.<sup>6</sup> As a consequence, the single greatest strength of this book is its identification and appraisal of specific SCSL contributions to the development of international criminal jurisprudence.

Jalloh notes that the SCSL faced constant financial pressures and funding insecurities throughout the duration of its operations. Such funding problems showed that having to rely on ad-hoc hybrid international criminal tribunals like SCSL, financed "on the cheap" by contributions from UN member states, might threaten the very future of international criminal law. Indeed, one of the primary purposes for the enactment of the Rome Statute, going into force in 2002 to create the International Criminal Court (ICC) in the Hague<sup>7</sup> was to establish a permanent international criminal tribunal,

---

<sup>4</sup> Jalloh is founding editor-in-chief of the *African Journal of Legal Studies*. In addition to publishing many journal articles, he edited *Consolidated Legal Texts for the Special Court of Sierra Leone* (2007); *The Sierra Leone Special Court and Its Legacy* (2014); and *Law Reports of the Special Court for Sierra Leone* (2012–2020, with Simon Meisenberg); *Shielding Humanity: Essays in International Law in Honour of Judge Abdul G. Koroma*, (2015, with Femi Elias); and *Promoting Accountability Under International Law for Gross Violations in Africa: Essays in Honor of Prosecutor Hassan Jallow* (2015, with Alhagi Marong). He wrote the monograph reviewed here after he co-authored *The International Criminal Court in an Effective Global Justice System* (2016, with Linda Carter and Mark Ellis); *The International Criminal Court and Africa* (2017, with Ilias Bantekas) and *The African Court of Justice and Human and Peoples' Rights in Context: Development and Challenges* (2019, with Kamari Clarke and Vincent Nmeihelle).

<sup>5</sup> Jalloh (ed.), *The Sierra Leone Special Court and Its Legacy: The Impact for Africa and International Criminal Law* (New York: Cambridge University Press, 2014, ISBN 978-1-107-02914-9).

<sup>6</sup> For more on the work of the International Law Commission, see <https://legal.un.org/ilc/>.

<sup>7</sup> Done at Rome on July 17, 1998, the Rome Statute came into force on July 1, 2002. See United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, <http://treaties.un.org>. An English-language version of its full text is available at <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

replacing such ad-hoc tribunals as SCSL, ICTY, and ICTR, and limiting the expense of their creation, staffing and operations.

Of course, questions about funding the creation, staffing and operations of such international tribunals as SCSL blend easily into the concerns of scholars and practitioners who are regular readers of the *International Journal for Court Administration*, and whose primary academic or professional concern is with the management of such a tribunal. Having specifically excluded such concerns from the purview of the book, the very strength of Jalloh's focus on the jurisprudential legacy of the SCSL also downplays the risks presented for international jurisprudence if tribunals face the prospect of inadequate support and commitment from the international community. Even with this potential weakness, however, Jalloh nonetheless provides court-administration scholars and practitioners with considerable information about the administration of SCSL during the years of its operations.

This book is one that is worth the attention of readers well beyond the study of the Sierra Leone civil war and its aftermath. In addition to its significance for scholars and practitioners of international criminal law, it is highly valuable for historians, political scientists and others concerned with armed conflicts and their social and legal consequences not only in Africa, but also throughout the world, especially since the conduct of international military proceedings at Nuremberg (IMT) and for the Far East (IMTFE) at the end of World War II. It is particularly worthwhile for scholars and practitioners in court administration, whose appraisal and understanding of the judicial branch of government in our own respective countries can be greatly enriched by studying the progress of efforts to promote the growth of international criminal law.

## COMPETING INTERESTS

The author has no competing interests to declare.

## AUTHOR AFFILIATION

David C. Steelman  [orcid.org/0000-0002-4022-5744](https://orcid.org/0000-0002-4022-5744)

Retired American lawyer and former principal court management consultant, National Center for State Courts, US

Steelman  
*International Journal  
for Court Administration*  
DOI: 10.36745/ijca.433

### TO CITE THIS ARTICLE:

David C. Steelman, 'Book Review: *The Legal Legacy of the Special Court for Sierra Leone* (2020), ISBN-13: 978-1107178311, by Charles C. Jalloh.' (2022) 13(1) *International Journal for Court Administration* 7. DOI: <https://doi.org/10.36745/ijca.433>

Published: 22 April 2022

### COPYRIGHT:

© 2022 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC-BY 4.0), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited. See <http://creativecommons.org/licenses/by/4.0/>.

*International Journal for Court Administration* is a peer-reviewed open access journal published by International Association for Court Administration.



# Advance the Rule of Law

with customized, online micro-courses.



## Customize

courses to fit your jurisdiction and need.



## Personalize

courses to fit your court or organization.



## Self-paced

courses take an average of 1 hour to complete.



## Digital badges

earned upon completion of any course.



**Workforce Management micro-courses are available now.**  
\*based on the NACM CORE Curriculum.

[www.edevlearn.com](http://www.edevlearn.com)



[info@edevlearn.com](mailto:info@edevlearn.com)