

**SPECIAL COURT FOR SIERRA LEONE  
OUTREACH AND PUBLIC AFFAIRS OFFICE**



**PRESS CLIPPINGS**

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office**

**as at:**

Tuesday, 2 October 2012

Press clips are produced Monday through Friday.  
Any omission, comment or suggestion, please contact  
Martin Royston-Wright  
Ext 7217

**Local News**Masterpeace, OFP, COJA Celebrate International Day of Peace / *Standard Times*

Page 3

**International News**Why the Special Court for Sierra Leone Should Establish... / *Jurist*

Pages 4-10

# MasterPeace, OFP, COJA celebrate International Day of Peace

In celebrating the International Day of Peace, Master Peace Sierra Leone, One Family People and COJA has held the first ever peace match as part of their celebration.

The event which was done in collaboration with the **Special Court of Sierra Leone** began at the Freetown Cotton Tree and ended at St. John with the theme 'Sustainable Peace for a sustainable future'

The Executive Secretary of COJA Sulaman Jabati described the two day event as a special day in the history of the country.

He called all political leaders to put peace in all their campaigns and rally. He pointed out that justice should be in place and they are working with women and children group for sustainable peace.

One Family People Edward said it is important for all to appreciate the International Day of Peace. He encouraged his audience to preach peace in every aspect of their life through that he said peace will be sustained in the country.

Vice Chair Central ZYC Rugiatu Watta Kandeh in her statement of the role of women in peace said among other thing that during the days of the war, women and children are the ones that suffered the most in the country. She pointed out that women stand firm to ensure that peace is restored in the country because they took the lead, and is now calling on all women to come forward and take part in decision making.

"This is not the time for us to left behind, no more for us to be at the back yard. It is time for us to take part in decision making. We should advise our husband and children about the need of sustainable peace in the country," she said.

She went on to say that the 30% quota is a clear manifestation for women to take the lead and stressed that women can do it better than men when it comes to decision making.

President of the National Youth Coalition Al-Sankoh Conteh said if the youth want to maintain the peace they should desist from drugs.

He went on to say that Sierra Leone has more reason to celebrate the day, "... if we are enjoying peace today we have to be grateful to all stockholders, the UN, ECOWAS, AU, EU among others for their tremendous supports."

He stressed that the youths are in most cases violent because of lack of job, pointing out that all of them have responsibility to play by not allowing themselves to be given drugs.

Country Coordinator MasterPeace Sierra Leone Charles S. Boye said their goal is to see that they attain peace. He called on all to use the method of dialogue to attain peace in any community.

The two days celebration climaxed on the 21st September 2012 at the National Youth Commission National Stadium Swimming pool where youths gave their commitment and plan for all political parties to sign a ballot card as agreement for peaceful 2012 elections while One Family People brass band thrill audience in their peace songs.

## Jurist

Monday, 1 October 2012

### Why the Special Court for Sierra Leone Should Establish an Independent Commission to Address Alternate Judge Sow's Allegation in the Charles Taylor Case

JURIST Columnist [Charles C. Jalloh](#) of the University of Pittsburgh School of Law examines allegations made by Alternate Judge El Hadji Malick Sow at the end of Charles Taylor's trial and argues for the establishment of an independent, fact-finding commission to promote transparency and public confidence in the Special Court for Sierra Leone...

---



#### Introduction

On April 26, 2012, after Presiding Judge Richard Lussick read out the summary of Trial Chamber II's [long-awaited verdict](#) in the case [Prosecutor v. Charles Taylor](#) [PDF] at the Special Court for Sierra Leone (SCSL), Alternate Judge El Hadj Malick Sow controversially proceeded to issue his own "dissenting opinion."

The way in which Trial Chamber II reacted to Sow's decision to make a public statement on Taylor's trial, the exclusion of Sow's statement from the official transcript of the hearing and recent information suggesting irregularities in the SCSL discipline process all underscore the need for greater transparency.

This article argues that it is time for the SCSL to establish an independent, fact-finding commission with a narrowly framed and time-limited mandate to establish the truth, or falsity, of Sow's allegation that there were no (serious) deliberations by the three judges who convicted Taylor and [sentenced](#) him to 50 years imprisonment. Such a commission could also determine the extent to which, if any, Taylor's fundamental right to a fair trial under Article 17 of the [Statute of the SCSL](#) [PDF] was impacted. The proposal for an *ad hoc* commission would demystify what happened during deliberations and can run concurrent with Taylor's appeal. It, therefore, would not delay the conclusion of the tribunal's work.

#### The Role of Alternate Judges in International Criminal Trials is Settled

In a [previous article](#), I took up the question whether there was any legal basis for Sow to issue a "dissenting opinion" under the [UN-Sierra Leone Agreement](#) [PDF], its annexed statute and the tribunal's [rules of procedure and evidence](#) [PDF]. I demonstrated that, even though the provisions guaranteed the alternate judge a right to be present for deliberations, they did not enfranchise him to vote on the outcome. Consequently, I argued that as a matter of both tribunal law and practice, Sow was not authorized to give a separate opinion, whether concurring or dissenting, on the outcome in the Taylor case. Otherwise, it would violate the SCSL statute and contradict the

international criminal justice system which, to date, only provides for three professional judges to adjudicate the guilt or innocence of accused persons instead of four.

Although it follows that no legal value attaches to the conclusions of the alternate judge when the three-judge bench is regularly constituted, there appears to be some new information suggesting the need for greater transparency in the Alternate Judge Sow affair. The new information seems fundamental because, for one thing, the allegations that Sow levelled appear too grave to go unanswered. Furthermore, his decision to speak out publicly has predictably assumed a central role in Taylor's appeal. So, ignoring the issue will only serve to undermine the public perception of the fairness and credibility of that important trial and the SCSL itself.

Taking up the task of determining the veracity of Sow's allegation is one way the tribunal could reassure the accused, the victims, and the public about the integrity of its processes. It is also another way that it could curb the academic and public speculation that is bound to follow if the "black box" of deliberations in this case is not opened up for the world to see what is inside.

### **The Court Should Publish an Official Version of Alternate Judge Sow's Statement**

The first reason why the SCSL cannot "let sleeping dogs lie" stems from two factors. Firstly, the unfortunate circumstances under which Sow made his statement. Secondly, the lack of an authoritative record of what he actually said. Taken together, the public might be left with the wrong perception that the SCSL was trying to silence him because he disagreed with the other three judges and dared to speak publicly about it. Since it is a truism that justice not only needs to be done, but also must be seen to be done, the SCSL should do everything within its power to correct any misapprehensions that may arise on this issue.

It is undisputed that Sow started to read from a prepared statement on Taylor verdict day. The other three Trial Chamber II judges (Lussick, Julia Sebutinde and Teresa Doherty) allegedly did not know of his plans to speak. So, like everyone else, they were apparently caught off guard. Indeed, Presiding Judge Lussick adjourned the hearing, all three judges rose and everyone seemed to be ready to depart the courtroom when Sow started to speak. Through a combination of these extraordinary circumstances, and the kind of decorum we expect from an international tribunal courtroom, the whole episode came off as if the other judges walked out on a colleague while he was speaking.

The problem is that we do not know for how long Sow spoke. Rumors are circulating that his microphone was cut off. It also seems unclear whether he had finished his statement. Although some of what he said seems to have been transcribed by the SCSL stenographers, there is no record of Sow's statement in the official SCSL transcript. Presumably, this is because a hearing is typically deemed to have ended as soon as the presiding judge adjourns the proceedings. In the end, the result is that the public has no official way of verifying what Sow said.

A review of the April 26, 2012, hearing transcript confirms that all three of the regular Trial Chamber II judges, along with Alternate Judge Sow, were present. They entered the courtroom and were ready to deliver the judgment at the scheduled local time of 11:00 a.m. After taking the customary appearances of the parties, at 11:04 a.m., Lussick started reading out the judgment summary. He

only finished at 1:17 p.m., two hours and 13 minutes later. The chamber had unanimously found Taylor guilty. So, the court fixed a date for the sentencing hearing. Lussick then declared the hearing closed.

It was then that Sow started to speak. But there are now two versions of his statement. The first version can be found in the legal blogosphere, as exemplified by Professor Bill Schabas' [blog](#):

The only moment where a Judge can express his opinion is during the deliberations or in the courtroom, and, pursuant to the Rules, when there are no serious deliberations, the only place left for me is the courtroom. I won't get -- because I think we have been sitting for too long but for me I have my dissenting opinion and I disagree with the findings and conclusions of the other Judges, because for me under any mode of liability, under any accepted standard of proof, the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution. And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I'm afraid the whole system is under grave danger of just losing all credibility, and I'm afraid this whole thing is headed for failure.

This statement is similar, but ultimately different from another version that has surfaced more recently in a [defense filing](#) [PDF] before the SCSL Appeals Chamber. The difference lies in the first sentence of the second version which portrays what the alternate judge said as follows:

The only moment where a Judge can express his opinion is during deliberations or in the courtroom, and pursuant to the Rules, *when there is **no** ^ **deliberations**, the only place left for me in the courtroom.* (Emphasis added)

In contrast, the same (first) sentence in the blog version puts it this way:

The only moment where a Judge can express his opinion is during the deliberations or in the courtroom, and, pursuant to the Rules, *when there are no **serious** deliberations, the only place left for me is the courtroom.* (Emphasis added)

The substantive difference between the two versions is immediately apparent. Basically, although the mysterious character in the Defence appeal version seems intended to indicate a missing word ("serious"), if that is not the case, there is clearly a major difference in saying that there were "*no* deliberations" and saying that there were "*no serious* deliberations". Although it cannot be emphasized enough that there is no way of verifying this (which is why I call for an independent commission), if we *assume* for the sake of argument that the allegation is true, it would imply that Taylor's rights have been violated because it is the function of the chamber to deliberate on the evidence in his case. The regular, three-judge chamber is then obligated to render a public verdict by a majority, not unanimity, and to provide a reasoned opinion in writing. That reasoned opinion may include separate or dissenting opinions, both on issues of fact and law.

Although omitting Sow's statement from the official record seems problematic because it gives the impression that the tribunal has something to hide, there is a solid counterargument. In their September 13, 2012, [decision](#) [PDF], the SCSL Appeals Chamber ruled that the transcript was "accurate" and "transparent" given that the official hearing was formally closed when Lussick adjourned the court. It could not therefore subsequently include additional statements.

This is all probably true, in light of settled tribunal practice. But, given that the accused's

fundamental rights and the legitimacy of the SCSL's processes are at stake, I beg to differ. To begin with, it is evident that the appellate judges did not concern themselves with the veracity of Sow's allegation. While in fairness the Appeals Chamber was not being asked to adjudicate the merits of that allegation, one would have thought that the court would be cognizant of the negative public perception that the allegation entails for the outcome reached in the Taylor case. In defense of the appeals judges, one might say the issue regarding the statement had been resolved through the disciplinary process in plenary. But that would seem like a weak counter-argument because that process addressed the *propriety* of the alternate judge's public statement instead of the *truth* or *falsity* of its contents.

If this contention is correct, the question arises what should be done to establish whether deliberations took place or not. Despite the practical difficulties presented by this proposal - especially a financial one for the notoriously cash-strapped court - the SCSL should consider establishing an independent, *ad hoc* fact-finding commission comprised of respected former international tribunal judges and the public to establish the truth of what happened in chambers relative to Sow's allegation. The UN, Sierra Leone and the Management Committee of the tribunal should back this initiative.

One objection to this proposal would be the argument that such a process would infringe upon judicial independence. According to the SCSL statute, the judges are to be independent in the exercise of their functions, and are not to seek or accept instructions from any other source. Once the judges have given their reasoned opinion in writing, it is implied that they owe no additional explanation.

However, an independent fact finding commission would not undermine judicial independence. Moreover, it would not violate the SCSL statute because the commission would not seek to influence the verdict that has already been reached in Taylor's trial. The commission would solely examine the truth of the allegation relating to deliberations. In other words, its role would be for the *anterior* purpose of establishing whether the judges followed procedure consistent with the rights of the accused given the weighty allegation by the alternate judge, who was a close observer of that process. If they did, then it will legitimate the final outcome of the deliberations process. If they did not, then that too can be taken into account.

Besides laying this controversy to rest, under the latter scenario, any newly discovered facts could be folded into the review proceeding conducted by the Appeals Chamber during Taylor's appeal - but only if it could have been a decisive factor in the trial chamber's determination of Taylor's guilt as the SCSL statute requires. In such an instance, if the irregularities are not so fundamental as to invalidate the trial judgment, the appeals judges could exercise their sound discretion to reduce Taylor's sentence to remedy any violation of his rights that might have occurred at trial.

### **Misgivings About the Discipline Process Used Against Alternate Judge Sow**

The first disciplinary step the Trial Chamber took was to remove Sow's name from the Taylor judgment. Sow also did not attend any subsequent hearings. These appear to be hastily adopted measures taken by the Chamber before Sow's discipline process was even completed. Under the

circumstances, the judges were undoubtedly justified in taking *some* measures to address the matter. However, the SCSL should not leave the perception that disciplinary proceedings were initiated against Sow for political reasons, to punish him for holding different views or for the apparent infighting between him and his colleagues throughout the long trial. Most significantly, the tribunal should not leave the wrong perception that the disciplinary process which subsequently concluded Sow was "unfit" to serve as a judge was tainted because it did not comport with basic principles of natural justice.

Under Rule 15 *bis* of the SCSL Rules of Procedure and Evidence, an allegation that a judge is no longer fit to serve may be made to the president who may refer the matter to the Council of Judges. According to the recent appeals chamber decision, after the hearing on April 26, 2012, Lussick sent an email on behalf of Trial Chamber II to then President of the Tribunal Jon Kamanda. Kamanda treated that email as the formal complaint against Sow's alleged unfitness to serve. Kamanda exercised the option, as he is permitted, to refer the question to the Council of Judges.

Interestingly, although Rule 23(A) provides that the Council of Judges shall be comprised of the presiding judges of the Trial Chambers and the president, only one trial chamber was operational at the time of the complaint against Sow. That seems important because the Council plays an initial screening role in that it first has to determine whether: (1) the allegation is of a serious nature, and (2) if there is substantial basis for the allegation. The Council then refers the issue to the Plenary of all the judges which considers the issue and, if necessary, recommends a course of action to the appointing authority.

It is implied that Sow's allegation was considered serious enough and that there was a basis for it to be passed to all the judges for consideration. But, in a single trial chamber court, if Lussick did in fact participate in the disciplinary decision, that would be odd because he would effectively have been a judge in his own cause for the predicate findings of the seriousness of the allegation and the subsequent decision to refer it to the plenary. One might retort that once he filed the complaint, Lussick stepped outside of that role as a regular judge of the trial chamber and into the role of a member of the Council of Judges. That might be true and is one way to justify his wearing of two hats. By the same token, if Lussick participated in the second decision - an admittedly speculative conclusion at this stage - it seems wrong for the complainant judge to also participate in the decision on what do with the complaint.

Whatever the case, Rule 15 *bis* guarantees the judge that is challenged as unfit a right of response. The resolution from the Plenary, read into the record by Lussick on May 16, 2012, fourteen working days from the date of the complaint, implied that this protocol was followed. That is how it ought to be, and was very reassuring.

Yet, in the separate opinion of Appeals Chamber Judge George King issued two weeks ago, he revealed new information alleging procedural irregularities which led him to conclude that Sow's right to be heard had been denied. Additional information hitherto unknown to the public also emerged. Even though the record of the complaint alleging unfitness to sit had been "filed" on April 26, 2012, and the alternate judge responded to it on May 1, 2012, it appears that a further "six-page statement" was prepared by Sebutinde which purported to be the formal complaint against Sow.

That document, [in King's words](#) [PDF], contained "new" and "scurrilous" allegations against Sow. If true, this is highly disappointing conduct, especially for a judge that after the Taylor verdict went on to take up a position on the bench of the International Court of Justice.

Sow was apparently not notified of this additional complaint in the Plenary. Nor did he partake in that meeting. It is uncertain whether he was even invited to attend or whether he had the option to send a legal representative to the meeting to respond to the new complaint. This is not insignificant given that King raised the alarm about the impropriety of not respecting Sow's right of response. This "perversion of justice", as King called it, led the appeals chamber judge to walk out of the Plenary. He, therefore, did not endorse the formal resolution finding Sow unfit to sit and distanced himself from the decision.

Although King's position is laudable, the new information that he has revealed has raised more questions than answers about the tribunal's private handling of the Sow affair. Even more disturbing is that King insinuated that efforts were subsequently made to erase Sebutinde's statement from the plenary record. King did not say by whom but, reading between the lines, it seems likely that Sebutinde and, worse, the other judges might have been involved.

Ultimately, there are questions about the validity of the disciplinary resolution since it appears uncertain how many judges voted in its favor, against it or abstained. It is also unclear whether the decision comports with procedural rules since the only thing the Plenary could do is recommend to the appointing authority (i.e. the UN secretary-general and the government of Sierra Leone) a course of action which both authorities are free to accept or reject. In fact, it is difficult to understand how the plenary could determine he was unfit to serve as a judge and prevent him from further participating in the Taylor Trial because he spoke when he was not allowed to without first getting to the bottom of the predicate factual question of whether he told the truth, which might then justify the making of the statement, or alternatively, that his allegation about the absence of deliberations was a simple case of sour grapes from a bitter alternate judge who then deserved the weighty sanction of unfit to sit that could have effectively killed his international judicial career.

## **Conclusion**

This type of controversy is not new to international criminal law. At the International Military Tribunal for the Far East (IMTFE) in the aftermath of World War II, an early agreement to refrain from dissents in the final judgment fell apart before the proceedings even concluded. The result was that although the [IMTFE charter](#) did not formally provide for separate opinions by the judges as modern tribunals do, there were two dissents from Judges Radhabinod Pal and Henri Bernard and a partial dissent by Judge Bernard Röling.

The most famous dissent was Pal's. He not only disagreed with his colleagues on the law, but also on the facts, based upon which he would have acquitted the 25 accused on all of the charges. According to [Neil Boister and Robert Cryer](#): "Pal countered the majority's factual perspective by providing a colossal factual recapitulation of his own but drawing entirely contradictory inferences, specifically that there was at no time a conspiracy amongst Japanese leaders to commit aggression." (See

*Documents on the Tokyo International Military Tribunal: Charter, Indictment and Judgments at LXXX).*

Similarly, Bernard issued a dissenting opinion from the majority explaining that he was doing so "both on questions of law and fact" as it was necessary "in fairness to the Accused" and to clarify the extent to which his view differed from that of the majority. (See *Dissenting Judgment of the Member from France, ibid.*, at p. 664). Also, while Röling's partial dissent endorsed the majority judgment's restatement of Japan's factual history, he still found it "necessary to dissent on some issues, where a different interpretation should be given to the facts laid before the Tribunal" although he did this "only where it might have direct bearing on the question of criminal liability" under the Charter. (See *Opinion of the Member for the Netherlands, ibid.*, at 709).

In other words, although the Taylor verdict controversy differs in involving a non-voting alternate instead of regular voting judges like those at the IMTFE, history teaches that the SCSL is not unique. Indeed, contrary to the suggestions of some commentators, the SCSL is in good company with the International Criminal Tribunal for the Former Yugoslavia where also regular (not alternate) judges have been known to dissent wholly or partially on factual or legal findings from their judicial colleagues during trial judgments in cases such as *Simic* and *Galic*.

As the tribunal considers this unique proposal for the establishment of an admittedly unprecedented, fact-finding commission to shed light on the validity of Sow's allegation, it seems befitting to conclude with a quote from Pal, who in his voluminous dissenting opinion said the following of the IMTFE that could just as well be said about the SCSL and the verdict in Taylor's case: "As a judicial tribunal, we cannot behave in any manner which may justify the feeling that the setting up of the tribunal was only for the attainment of an objective which was essentially political, though cloaked by a judicial appearance."

If the SCSL does not act creatively to address what Trial Chamber II itself characterized as an "extraordinary situation" by showing the world that it has nothing to hide, history will be forced to judge it. However, history might be more generous to it than the IMTFE if the SCSL established transparency regarding what exactly happened in the chambers deliberations over the guilt or innocence of former Liberian President Charles Taylor.

*Charles C. Jalloh is an Assistant Professor of Law at the University of Pittsburgh School of Law. A columnist for JURIST on issues of international criminal law, his experience includes service as a legal adviser in the Special Court for Sierra Leone, including as court-appointed interim counsel to former Liberian president Charles Taylor. He can be reached via email at [jallohc@gmail.com](mailto:jallohc@gmail.com).*

**Suggested citation:** Charles C. Jalloh, *Why the Special Court for Sierra Leone Should Establish an Independent Commission to Address Alternate Judge Sow's Allegation in the Charles Taylor Case*, JURIST - Forum, Oct. 1, 2012, <http://jurist.org/forum/2012/10/charles-jalloh-sow-scsl.php>.