

**The Opening Statement of**  
**David M. Crane**  
**The Prosecutor**  
**Special Court for Sierra Leone**

**3 June 2004**

**In the International Criminal Trial for**  
**Crimes against Humanity, War Crimes and**  
**Other Serious Violations of International**  
**Humanitarian Law**

**Against**

**Samuel Hinga Norman**  
**Moinina Fofana**  
**Allieu Kondewa**  
**(Case No. SCSL-03-14-I)**

By your leave, this opening will be given in two parts. I will give the first part, introducing the conflict, speak of the crimes alleged, the general allegations, discuss the individual criminal responsibility of the accused, review how we will prove the case in general and speak of the breach of duty by the indictees to their own citizens. In part two, Mr. Joseph Kamara will focus more specifically on the crimes alleged in the joint indictment against the leadership of the CDF.

May it please this Chamber, your honors...

**Introduction**

On this solemn occasion, mankind is once again assembled before an international tribunal to begin the sober and steady climb upwards toward the towering summit of justice.

The path will be strewn with the bones of the dead, the moans of the mutilated, the cries of agony of the tortured, echoing down into the valley of death below. Horrors beyond the imagination will slide into this hallowed hall as this trek upward comes to a most certain and just conclusion.

The long dark shadows of war are retreating. The pain, agony, the destruction and the uncertainty are fading. The light of truth, the fresh breeze of justice moves freely about this beaten and broken land.

The rule of the law marches out of the camps of the downtrodden onward under the banners of "never again" and "no more".

A people have stood firm, shoulder to shoulder, staring down the beast, the beast of impunity. The jackals of death, destruction, and inhumanity are caged behind bars of hope and reconciliation.

The light of this new day-today-and the many tomorrows ahead are a beginning of the end to the life of that beast of impunity, which howls in frustration and shrinks from the bright and shining spectre of the law. The jackals whimper in their cages certain of their impending demise. The law has returned to Sierra Leone and it stands with all Sierra Leoneans against those who seek their destruction.

The ghosts of thousands of the murdered dead stand among us. They cry out for a fair and transparent trial-to let the world know what took place here, here in Sierra Leone. The tears of the maimed, the mutilated, and the

violated will dampen these walls. These victims, their families, their towns, their districts-their country ask all of us here for a just accounting for the agony of those ten long years in the valley of death.

Mankind has stepped back from the brink of chaos several times in the past 59 years. In 1945, civilization gasped in horror at its capacity to cause suffering. Again in the early 1990's, reacting to the horrors of Rwanda and Yugoslavia, the world joined in a further step away from the abyss and now in West Africa, in Sierra Leone, another bold and noble step has been taken away from the grim jaws of the beast.

The Special Court for Sierra Leone, a hybrid international war crimes tribunal, gives a new century, indeed a new millennia the chance to face down that beast of impunity. Imbued with this new spirit against impunity as noted in the Rome Statute which created the International Criminal Court:

*That during this [past] century millions of children, women and men have been victims of unimaginable atrocities that deeply shock[ed] the conscience of humanity;*

*And...*

*Determined to put an end to impunity for the perpetrators of such crimes...*

The Special Court on behalf of the international community and the people of Sierra Leone is now ready to prosecute those who bear the greatest responsibility for war crimes, crimes against humanity, and other serious violations of international humanitarian law.

Sierra Leone, among all the nations of the world, has stood up and said there must be justice for the victims of this decade-long brutal internal armed conflict, fuelled by the greed of a joint criminal enterprise that spread across the region.

That greed, that avarice, set in motion events that pushed an entire nation over the cliff into wanton and malicious destruction. Those events resulted in such crimes as murder, torture, enslavement, terror, looting and burning inflicted on an overwhelmed, battered, and terrorised people.

Despite the obvious political dimension to this conflict, these trials, this trial, are about crimes; and these individuals are indicted for those crimes, the most grievous of acts that a person can be charged with by mankind-war crimes and crimes against humanity.

## **The Crimes Alleged in the Indictment**

### **Introduction**

The persons sitting in the dock before you, before this nation, before the world: Samuel Hinga Norman, the National Coordinator of the Civil Defense Force (CDF); Moinina Fofana, the National Director of War for the CDF; and Alieu Kondewa, the High Priest of the CDF-- the top leaders of the CDF-- have been indicted for the following international crimes:

--Crimes against humanity;

--Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II, and;

--Other serious violations of international humanitarian law in violation of Articles 2, 3, and 4 of this Court's Statute.

We allege in the joint indictment of Norman, Fofana, and Kondewa the following counts:

**Unlawful Killing:** Count 1--Murder as a crime against humanity punishable under Article 2.a. of the Court's statute and/or in the alternative; Count 2-- violence to life, health and physical or mental well-being, in particular murder, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.a of the Statute;

**Physical Violence and Mental Suffering:** Count 3-Inhumane Acts, a crime against humanity punishable under Article 2.i of the statute and/or in the alternative Count 4, violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.a of the Statute;

It must be noted, for all to hear today, that women and children particularly bore the brunt of this conflict and we will most assuredly show this fact day in and day out as we give evidence regarding the criminal allegations in the joint indictment.

**Looting and burning:** Count 5-Pillage, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.f. of the Statute;

**Terrorizing the Civilian Population and Collective Punishments:** Count 6-Acts of terrorism, a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3.d. of the Statute; and Count 7-Collective Punishments, also a violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under 3.b. of our Statute;

And...

**Use of Child Soldiers:** Count 8--Enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities, an other serious violation of international humanitarian law, punishable under Article 4.c. of the Statute.

### **The General Allegations**

Highlighting the general allegations in the indictment against the accused Norman, Fofana, and Kondewa:

- That the Civil Defense Force (CDF) was an organized armed faction;
- That there was a nexus between the armed conflict and all the acts or omissions charged as violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as other serious violations of international humanitarian law.
- That the CDF was an organized armed faction comprised of various tribally-based traditional hunters.
- These accused and those that served in the CDF were required to abide by International Humanitarian Law and the law and customs governing the conduct of armed conflicts.
- All of these alleged offenses charged were committed within the territory of Sierra Leone after 30 November 1996.
- All of the acts or omissions charged in the indictment as crimes against humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone, and that;
- The words civilian or civilian population used in this indictment refer to persons who took no active part in the hostilities, or were no longer taking an active part in the hostilities, among other general allegations in the indictment...

### **Individual Criminal Responsibility**

Each and every indictee is individually criminally responsible for the acts or omissions charged under 6.1 and 6.3 of the Statute. In other words they are each personally liable for these horrific crimes as if they committed each and every crime themselves. Essentially the accused sitting here today either planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of the crimes laid out in the indictment and/or in the alternative they in their superior capacities knew or should have known that subordinates were about to commit the acts charged or failed to take the necessary and reasonable measures to prevent such acts or to punish those who did.

As declared at Nuremberg in 1945:

*[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.*

In Principle 1 of the Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgement of the Tribunal:

*Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.*

Individualized guilt serves the important purpose of not only punishing those found guilty of the crimes charged but also of preventing a collective guilt syndrome. By diminishing the tendency to ostracize a specific ethnic or national group and the need for revenge, it contributes "to the process of national reconciliation." Individual responsibility serves the very important purpose of avoiding a collective guilt syndrome: avoiding laying guilt upon a whole people, ethnic group or national organization because of the misdeeds and manipulation of perpetrators associated with the particular group. Likewise members of such groups are not individually criminally liable for acts or omissions committed by other members or of their leaders. These considerations can help heal the wounds of war.

In general, as alleged in their joint indictment:

Norman was in overall command of the CDF as National Coordinator. His job was to establish, organize, support, and promote the CDF. He was also the leader of the Kamajors and had de jure and de facto command and control over the activities and operations of the Kamajors.

Fofana acted as leader of the CDF in the absence of Norman and was considered his second in command. As National Director of War he had direct responsibility for implementing the policy and strategy for prosecuting the war. Fofana also commanded a battalion of the Kamajors.

Kondewa as the High Priest had supervision and control over all initiations within the CDF, including the initiation of children. He had direct command authority over special-mission units in the CDF.

In the positions referred to above, Norman, Fofana, and Kondewa individually or in concert exercised authority, command and control over all subordinate members of the CDF.

Their plan and purpose and that of their subordinates was to defeat by any means necessary the Revolutionary United Front (RUF) to include the complete elimination of the RUF and members of the Armed Forces Revolutionary Council (AFRC), their supporters, sympathizers, and anyone who did not actively resist the RUF/AFRC occupation of Sierra Leone. Each of these accused acted individually and in concert with subordinates to carry out this plan, purpose or design.

For these acts or omissions, we allege that Norman, Fofana, and Kondewa are each individually criminally responsible pursuant to Article 6.1 of the Statute for the crimes alleged in the indictment, which crimes each of them planned, instigated, ordered, committed, or in whose planning, preparation or execution each accused otherwise aided and abetted or which crimes were within a common purpose, plan or design in which each accused participated or were reasonably foreseeable consequences of the common purpose, plan or design in which each accused participated.

Additionally or alternatively, pursuant to article 6.3, the accused, Norman, Fofana, and Kondewa, while holding these positions of superior responsibility and exercising command and control over their subordinates, are individually criminally responsible for the crimes referred to in the indictment. Each of these accused is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts, or had done so and each accused failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

## **Proving the Case**

It must be noted at this juncture that this is the opening statement and facts asserted are illustrative of criminality. Certainly at trial these allegations of fact will be proven beyond a reasonable doubt.

During the course of the trial we will focus on various and critical crime bases where alleged criminal acts or omissions took place. These crime bases are in Koribundo, Kenema, Base Zero in Bonthe District, Moyamba, Bo, and Tongo.

Throughout the trial we will bring in children who fought in the CDF who will recount story after story of alleged horrors they committed. Part of a lost generation on both sides of this conflict, they will bravely come forward to tell the world the tragic tale of the child soldier in Sierra Leone.

As stated, the crime bases center in the Southern and Eastern Regions of Sierra Leone, mainly in the districts of Bonthe, Pujehun, Moyamba, Kenema, and Bo, the time frame is generally focused between November 1997 to March of 1998. This time period will most certainly capture the res gestae of the crimes alleged to be committed by the accused.

The crimes will be proven in large part by the people of Sierra Leone-witnesses to events that will make men of civility and reason recoil. They will come before you one by one, damaged, proud, some afraid, yet still brave and determined citizens who shouted in the valley of death never again, no more!

These citizens will testify to such acts or omissions by the accused Norman, Fofana, and Kondewa as those alleged crimes committed against a citizen of Sierra Leone in the town of Bradford. The witness alleges that the CDF moved into the town and began to loot rice supplies throughout the day, and returned a few days later to do more looting. The witness, his wife, and daughter hid in a banana plantation to avoid capture by members of the CDF. The witness alleges that they did capture his wife and robbed her of their life savings of 600,000L. They then shot her and left her for dead. The witness recalls her calling his name out as she died. After the CDF left he went to her side, but she was gone, their 5 year old daughter sitting by her mother's corpse.

Other citizens will testify and allege that in Tongo in 1997 and 1998 in a time called Cyborg, a period where the Revolutionary United Front (RUF) called themselves Cyborg and opened a Cyborg Pit, the RUF forced people to mine for diamonds. The Kamajors in the CDF took the mine after the RUF pulled out. Allegedly throughout the day Kamajors picked people at random and hacked them to death, a standard CDF tactic.

The witness will further allege that he was in a captured group that the CDF took to a location near Pandebu. Later released, the witness and those Sierra Leoneans with him were told to follow the main highway to Kenema. Others who had been hiding in the bush joined the group along the way and walked until they were stopped at the bridge at Kambaoma, where other Kamajors arrested them for allegedly being collaborators. The excuse of collaboration was used frequently to justify their criminal acts.

There were around 65 human beings taken out behind a house, the witness will testify. They were told that anyone who used the road they had travelled on were to be killed. Separated into groups of 3 to 4, they were shot. Their bodies were then rolled down a hill into a valley below. At first the CDF used their weapons to execute them, until they got to the last 10. When the CDF realized that they needed the rounds for combat they began to cut the heads off of the remaining 10...one at a time. The witness was cut in the neck from behind and rolled down the hill...he was the last victim of the group and had watched as those in front of him died...one at a time. Though a damaged and broken man, he will be here in this Chamber to tell his story.

With the CDF, the numbers of victims are not on the scale of Rwanda, but there were thousands. Regardless, there can be no impunity, even for the death of one person. The pain and suffering of the victims of crimes spelled out in the indictment against Norman, Kondewa, and Fofana were agonizing, the crimes beyond imagination.

## **A Breach of Duty**

The essential aspects of this case against these indictees, Norman, Fofana, and Kondewa is about a breach of duty perverted into a killing frenzy against innocent civilians, non combatants, their own fellow citizens...even their own tribesmen--the Mende people.

The organization called the Civilian Defense Force, the CDF, an armed faction set up to counter the internal threat of the Revolutionary United Front (the RUF) and later the Armed Forces Revolutionary Council (AFRC); led by Norman and assisted by Kondewa and Fofana and largely supported by the hunting society called the Kamajors who filled the ranks of the CDF; had a duty to defend and protect the people of Sierra Leone, in the Southern and Eastern regions of the country in particular. This duty was even more manifest by the fact that the indictee Norman was the Regent Chief of Koribundo, a location we will mention in a few moments as a crime scene.

Norman, Kondewa, and Fofana tragically failed in that duty by being unable to push the other organized armed factions out, and in their frustration turned on their own--their fellow citizens--the Mende people whom they declared to be collaborators of the RUF or AFRC in such districts and places as Bonthe, Pujehun, Bo, Kenema, Moyamba, the killing field of Tongo, and the black hole of Base Zero.

The issues before you are not, cannot be, political. We have not charged political crimes. The court of law, this Chamber, must focus on the alleged criminal acts of these jointly charged indictees. Politics must remain barred from the proceedings. Respectfully, you must focus your energy on whether, beyond a reasonable doubt, these accused committed crimes--grievous crimes--listed in the indictment against their own people, the people of Sierra Leone. We allege that the accused committed international crimes, their actions were criminal acts, their mindset criminal--not political.

Now defending one's nation is a just cause. It is accomplished by an honoured and necessary profession--the profession of arms--which for centuries has adhered to the laws of armed conflict. The just cause of a civilian defense force in Sierra Leone, set up to defend a nation became perverted and was twisted beyond measure by Norman, Kondewa, and Fofana. Under their leadership these accused war criminals turned what should have been a just cause into an unjust effect--serious breaches of the laws designed to protect humanity. These so-called defenders of the nation were really offenders of the nation looking out for their own self-interests.

Again, they had a duty to defend and to protect, and they failed criminally in that duty and turned against their own people and institutions, such as the Sierra Leonean Police for example. Keep this in mind--they are charged with crimes as individuals, jointly and severally--not with political acts.

This joint indictment is not an indictment of what could have been an important force for good--the organization called the CDF--the organization that these indictees perverted. Nor do we indict the cultural traditions or the concept of the centuries old hunting societies such as the Kamajors. In this chamber, in this indictment, we condemn alleged criminals for what they did as individuals--murder, terror, looting/burning, collective punishment, and recruiting child soldiers, among other war crimes and crimes against humanity.

Let me cite an example of this breach of duty and indeed individual criminal responsibility, as well as this perversion of a just cause. On or about 13 February 1998, due to an attack by the Kamajors on Koribundo, one of our witnesses will testify that he and others were advised to flee to Bo. The witness fled to his brother's house in Bo. However, by then the Kamajors arrived, scouring the town for those persons who fled from Koribundo. The witness will state that he was caught along with his brother and taken to the Kamajor headquarters where they were beaten and tortured. Their captors said they were going to kill and cook his brother that day. The witness will state that afterwards they took them both out back, and standing among other bodies, cut his brother's throat.

The witness will state that he tried to turn away, but his head was held and he was forced to watch his own brother die. The witness you will hear testify will say that the Kamajors told him to go back and tell the people of Koribundo what would happen if they collaborated with the Sierra Leonean Army, the SLA.

He returned to Koribundo, noticing many graves along the road. A short time later the witness will state that Hinga Norman himself came to Koribundo (recall he is their regent chief) and held a meeting at the town barri. At this meeting, allegedly, Norman told the townspeople that they should not hold the Kamajors responsible for what they had done in the town, but they should hold him responsible, that they were acting on his orders. This witness will state that Norman declared that in fact he was disappointed in the Kamajors because he had ordered them to burn all but 3 buildings in the town, the mosque, the barri, and a house he was to stay in. He also stated he was unhappy because the Kamajors did not kill every living thing-even the ants he allegedly said, and rebuked them for being afraid to kill.

### **Concluding**

No one deserves to live in circumstances like this, to die like this, to witness the horrors perpetrated by all sides, and most certainly by these accused, who twisted a just cause into an unjust perversion. We will most assuredly show you, through witness after witness, what the result of these unjust acts or omissions caused-the murder, mutilation, and maiming of thousands, the looting and burning of entire towns terrorizing an entire nation.

Any time the citizens of a nation rise up to seek a just accounting for 10 years of painful war, the international community must respond-and it has. Just look around you today.

If I may, I will close my portion of this opening statement with a poem from a Sierra Leonean, Sydnella Shooter, published recently in Freetown, entitled *Songs that Pour the Heart*. It is called, "My Root in Flames":

Massive eruption everywhere  
Consuming my town and bush  
My cherished cradle my ancestral shrine  
all ablaze

I turned around, my eyes catch  
But a mound of ash  
The ash of my kin's sweat

Blood can't quench this fire  
Weeping through my blood  
There is no fame in these flames  
But ash that brings pain  
Ash with a stain  
The ash of the slain.

This ash that bleeds hearts  
Has nothing on the screen  
But incinerating Sierra Leone  
Vomiting and flaring up

Can we read chronicles of ash  
and ash in chronicles  
When my foundation is razed  
To cinders and ash

Ash weakening hearts  
Ash withering glories  
Ash that never buries  
Atrocities eroding my root.

Let justice be done...thank you.

With your permission I will yield the podium to my colleague, Mr. Joseph Kamara from Sierra Leone.