

THE APPEALS CHAMBER ("Appeals Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Justice Renate Winter, Presiding Judge, Justice Jon M. Kamanda, Justice George Gelaga King and Justice Emmanuel Ayoola;

SEIZED of the "Defence Notice of Appeal and Submissions Regarding the Majority Decision Concerning the Pleading of JCE in the Second Amended Indictment", dated 26 March 2009 ("Appeal"), as corrected;¹

CONSIDERING the "Prosecution Response to Defence Appeal Against Majority Decision on the Pleading of Joint Criminal Enterprise in the Second Amended Indictment", dated 3 April 2009 ("Response") and the "Defence Reply to the Prosecution Response to Defence Appeal Against Majority Decision on the Pleading of Joint Criminal Enterprise in the Second Amended Indictment", dated 7 April 2009 ("Reply");

NOTING the "Decision on Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE" issued by Trial Chamber II ("Trial Chamber") on 27 February 2009 ("Impugned Decision");

NOTING the "Decision on Defence Application for Leave to Appeal the Decision on Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE", dated 18 March 2009, in which the Trial Chamber by majority granted the Defence of Charles Ghankay Taylor ("Defence") leave to make the Appeal;

HEREBY DECIDES the Appeal based on the written submissions of the Parties.

I. BACKGROUND

1. The dispute giving rise to the Appeal was initiated by the Defence in an urgent motion filed on 14 December 2007 in which it argued that joint criminal enterprise ("JCE") was defectively pleaded in the Second Amended Indictment.² The Prosecution filed its response on 7 January 2008,³ and a reply was filed on 14 January 2008.⁴ In light of the Appeals Chamber's judgment in the case

¹ *Prosecutor v. Taylor*, SCSL-2003-01-T, Corrigendum to Defence Notice of Appeal and Submissions Regarding the Majority Decision Concerning the Pleading of JCE in the Second Amended Indictment, 30 March 2009.

² *Prosecutor v. Taylor*, SCSL-2003-01-T, Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 14 December 2007 ("Original Defence Motion").

³ *Prosecutor v. Taylor*, SCSL-2003-01-T, Prosecution Response to "Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE", 7 January 2008 ("Prosecution Response to Original Defence Motion").

⁴ *Prosecutor v. Taylor*, SCSL-2003-01-T, Defence Reply to Prosecution Response to Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 14 January 2008.

of *Prosecutor v. Brima et al.*,⁵ the Trial Chamber, on 6 March 2008, allowed the Parties to file a new round of submissions.⁶ These consequential submissions were completed on 15 April 2008.⁷ The Trial Chamber dismissed the Defence's motion in an oral decision on 19 February 2009⁸ with written reasons following in the Impugned Decision on 27 February 2009. A majority of the Trial Chamber held that the Second Amended Indictment⁹ had to be read as a whole. They also held that the Prosecution had adequately fulfilled the pleading requirements of the alleged JCE, and that it had provided sufficient details to put the Defence on notice of the case against him.¹⁰ In his dissent, Justice Lussick opined that the Second Amended Indictment defectively pleaded JCE as a mode of liability,¹¹ but that other material provided by the Prosecution nonetheless put the Defence on notice of the alleged JCE.¹²

II. SUBMISSIONS

A. Appeal

2. The Defence submits that the Majority of the Trial Chamber erred in holding that JCE was properly pleaded in the Second Amended Indictment.¹³ The Defence essentially advances four grounds in support of its submission.¹⁴ First, it submits that the Second Amended Indictment is defective because it fails to properly plead the "common purpose" of the alleged JCE.¹⁵ The Defence avers that the Majority erroneously discerned the common purpose from paragraphs 5 and 33 of the Second Amended Indictment.¹⁶ In its view, paragraph 5 serves solely to particularise

⁵ *Prosecutor v. Brima et al.*, SCSL-2004-16-A, Judgment, 22 February 2008, filed on 3 March 2008 ("*Brima et al.* Appeal Judgment").

⁶ *Prosecutor v. Taylor*, SCSL-2003-01-T, Scheduling Order in Relation to the Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 6 March 2008, p. 2.

⁷ *Prosecutor v. Taylor*, SCSL-2003-01-T, Consequential Submission in Support of Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE, 31 March 2008 ("*Defence's Consequential Submission*"); *Prosecutor v. Taylor*, SCSL-2003-01-T, Prosecution Response to the Defence's Consequential Submission Regarding the Pleading of JCE, 10 April 2008 ("*Prosecution Response to Consequential Defence Submission*"); *Prosecutor v. Taylor*, SCSL-2003-01-T, Defence Reply to Prosecution Response to the Defence's Consequential Submission Regarding the Pleading of JCE, 15 April 2008.

⁸ *Taylor Transcript*, 19 February 2009, pp. 24052 In. 26 – 24053 In. 3.

⁹ *Prosecutor v. Taylor*, SCSL-2003-01-PT, Prosecution's Second Amended Indictment, 29 May 2007 ("*Second Amended Indictment*"), para. 33.

¹⁰ Impugned Decision, para. 76.

¹¹ *Prosecutor v. Taylor*, SCSL-2003-01-T, Decision on Public Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE – Dissenting Opinion of Justice Richard Lussick, 27 February 2009 ("*Dissent from the Impugned Decision*"), paras 1-15, corrected by *Prosecutor v. Taylor*, SCSL-2003-01-T, Corrigendum, Decision on Public Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE – Dissenting Opinion of Justice Richard Lussick, 12 March 2009.

¹² Dissent from the Impugned Decision, paras 16-23.

¹³ Appeal, paras 7 and 19; Impugned Decision, para. 76.

¹⁴ See Appeal, para. 19.

¹⁵ Appeal, paras 8, 20, 21 and 30.

¹⁶ Appeal, paras 8, 23 and 30; Impugned Decision, para. 71.

Count 1 (acts of terrorism)¹⁷ and paragraph 33, assuming it contains an implicit allegation of JCE, does not describe the common purpose.¹⁸ The Defence posits that there is no reason, nor was any advanced in the Impugned Decision, why the two paragraphs should be read together.¹⁹

3. Second, the Defence submits that the Majority erred in only considering some, but not all, of the factors relevant to whether JCE was adequately pleaded in the Second Amended Indictment.²⁰ It contends that the factors omitted from adequate consideration include (i) by what means the common objective was contemplated to have been achieved; (ii) the legal effect on Taylor's statutory rights of notice resulting from deletion of the paragraphs describing the JCE in the Amended Indictment²¹ and the Second Amended Indictment; and (iii) the "fluid, ever-evolving" description of the common purpose in the Prosecution's "secondary accusatory instruments and/or pronouncements".²² The Defence also argues that the Majority invariably resolved the factors it did consider in favour of upholding the Second Amended Indictment.²³ These errors, the Defence contends, resulted in shifting the burden of showing the sufficiency of pleading of JCE from the Prosecution to the Appellant.²⁴

4. Third, the Defence challenges the Majority's finding that the Prosecution "intended to charge" Taylor with having participated in a JCE, because simply showing the Prosecution's "intention to charge" JCE is legally insufficient to put an accused on adequate notice of the material elements of that mode of liability.²⁵

5. Finally, the Defence submits that the Majority erroneously considered that paragraph 34 of the Second Amended Indictment served to partially clarify his alleged participation in the JCE.²⁶ According to the Defence, paragraph 34 is only concerned with Taylor's alleged responsibility under Article 6(3) of the Statute, whereas JCE liability arises under Article 6(1) of the Statute.²⁷

6. The Defence requests the Appeals Chamber to grant the following relief:

¹⁷ Appeal, para. 24.

¹⁸ Appeal, paras 25-29.

¹⁹ Appeal, para. 30.

²⁰ Appeal, paras 9, 33 and 34.

²¹ *Prosecutor v. Taylor*, SCSL-2003-01-1, Amended Indictment, 17 March 2006 ("Amended Indictment").

²² Appeal, para. 35.

²³ Appeal, paras 34 and 36.

²⁴ Appeal, paras 31, 33 and 36.

²⁵ Appeal, paras 10 and 37 citing Impugned Decision, para. 70; Reply, para. 15.

²⁶ Appeal, paras 11 and 38 citing Impugned Decision, para. 74.

²⁷ Appeal, para. 38; Reply, para. 16.

- (i) to hear oral arguments on the Appeal;²⁸
- (ii) to dismiss the Second Amended Indictment and to release Taylor forthwith from custody;²⁹ and
- (iii) alternatively, to sever the allegation of JCE from the Second Amended Indictment.³⁰

B. Response

7. The Prosecution opposes the Appeal.³¹ It submits that the Majority of the Trial Chamber correctly concluded that, read as a whole, the Second Amended Indictment fulfils the pleading requirements with respect to JCE.³² The Prosecution submits that JCE was pleaded as a form of liability in this case³³ and that the Second Amended Indictment, in particular paragraphs 5 and 33, sufficiently pleads the “nature and purpose” of the JCE.³⁴ The Prosecution contends that the requirements for proving a JCE include “the existence of a common plan, design or purpose which amounts to or involves the commission of a crime provided for in the Statute” and that the words “plan” or “design” includes the means by which any objective is to be achieved.³⁵ According to the Prosecution, the Second Amended Indictment states that all the crimes charged amounted to or were involved in a common plan, design or purpose in which Taylor participated, or were a reasonably foreseeable consequence thereof.³⁶

8. In response to the Defence’s argument that the Majority of the Trial Chamber omitted relevant factors from consideration, the Prosecution submits that the Majority provided a sufficiently reasoned opinion.³⁷ First, it argues that the Second Amended Indictment makes clear that the means to achieve the common purpose consisted of the campaign of terror, which included the crimes charged, and that there was no need for the Majority to address separately how that campaign would be carried out.³⁸ Second, the Prosecution submits that, as the Second Amended Indictment was found to have put the Defence on sufficient notice, the Majority did not have to discuss the issue of notice any further, nor did it shift the burden of proof.³⁹ Third, the Prosecution

²⁸ Appeal, paras 12(i) and 39(i).

²⁹ Appeal, paras 12 (ii) and 39(ii).

³⁰ Appeal, paras 12 (iii) and 39(iii).

³¹ Response, para. 2.

³² Response, paras 2, 7, 9-11 and 15.

³³ Response, paras 17-20.

³⁴ Response, para. 16. See also *ibid.*, para. 24.

³⁵ Response, paras 22 and 23.

³⁶ Response, paras 14 and 20.

³⁷ Response, paras 25 and 26.

³⁸ Response, paras 27 and 28.

³⁹ Response, para. 29.

contends that it has consistently alleged that Taylor “participated in a common plan, design or purpose to utilize a campaign of terror, including all the crimes charged in the Indictment, in order to pillage the diamond wealth of Sierra Leone and forcibly control the population and territory of Sierra Leone.”⁴⁰ The Prosecution refers in this respect to the allegations on JCE in the Original Indictment,⁴¹ the Case Summary accompanying the Amended Indictment,⁴² the Prosecution’s Pre-Trial Brief,⁴³ its opening statement, and the Amended Case Summary.⁴⁴ Also, assuming *arguendo* that there were changes in its JCE pleadings, the Prosecution argues that the Defence fails to show how it was prejudiced given that the Amended Case Summary was filed five months before the commencement of the presentation of evidence.⁴⁵

9. The Prosecution further submits that the Majority’s reference to the Prosecution’s “intention” to charge JCE simply indicates that participation in a “JCE” was being charged despite the fact that the Prosecution did not use that exact terminology.⁴⁶ It avers that the full Impugned Decision explains in detail how each of the requirements for pleading JCE was satisfied.⁴⁷

10. Lastly, the Prosecution submits that paragraph 34 of the Second Amended Indictment is relevant to the nature of Taylor’s alleged participation in the JCE because an accused in a leadership position may contribute to a JCE by consistently failing to take action to prevent crimes or to punish responsible subordinates.⁴⁸ It also argues that the Amended Case Summary links Taylor’s alleged leadership position with all the modes of liability charged.⁴⁹ In any event, the Prosecution posits that “the superior responsibility aspect” can be severed from the Impugned Decision without impacting its outcome and that, therefore any error in this regard does not invalidate the Impugned Decision.⁵⁰

11. The Prosecution opposes the Defence’s request for an oral hearing⁵¹ and the relief sought.⁵²

⁴⁰ Response, paras 30-33 and 39.

⁴¹ *Prosecutor v. Taylor*, SCSL-2003-01-I, Indictment, 7 March 2003 (“Original Indictment”).

⁴² *Prosecutor v. Taylor*, SCSL-2003-01-I, Case Summary Accompanying the Amended Indictment, 17 March 2006 (“Case Summary”).

⁴³ *Prosecutor v. Taylor*, SCSL-2003-01-PT, Public Rule 73 *bis* Pre-Trial Conference Materials, Pre-Trial Brief, 4 April 2007 (“Prosecution’s Pre-Trial Brief”).

⁴⁴ Response, paras 34-38.

⁴⁵ Response, para. 12.

⁴⁶ Response, paras 40-42.

⁴⁷ Response, para. 41.

⁴⁸ Response, para. 44.

⁴⁹ Response, para. 44.

⁵⁰ Response, para. 45.

⁵¹ Response, para. 53.

⁵² Response, paras 46-54.

C. Reply

12. The Defence replies that, the Prosecution fails to explain why paragraphs 5 and 33 of the Second Amended Indictment should be read together.⁵³ The Defence further submits that, contrary to the Prosecution's position, the Impugned Decision does not identify the campaign of terror as the means to achieve an objective. In any event, it continues, the majority of the Trial Chamber erred in failing to identify the objective and the means of the JCE as alleged in the Second Amended Indictment.⁵⁴

13. The Defence also replies that the Amended Case Summary cannot substitute for the pleading of material facts, such as the objective and means of the JCE, in the Second Amended Indictment. Citing Judge Lussick's dissenting opinion, the Defence argues that the Prosecution cannot cure a defective indictment by amending a case summary.⁵⁵ The Defence argues that the Prosecution has not provided timely, clear and consistent information in sufficient detail regarding the accusation of Taylor's participation in a JCE.⁵⁶ According to the Defence, the Prosecution only first mentioned "campaign of terror" in direct association with JCE liability in the Pre-Trial Brief, and again in its Opening Statement.⁵⁷ The Defence contrasts these statements of the common purpose with allegedly inconsistent statements made by the Prosecution in the Original Indictment, the Amended Case Summary, the Second Amended Indictment, the Second Amended Case Summary and even the Prosecution's Response, which, taken together, the Defence argues have deprived the Defence notice of the nature of the charges against Taylor.⁵⁸

III. APPLICABLE LAW

14. In order to guarantee a fair trial, the Prosecution is obliged to plead material facts with enough specificity to inform the accused clearly of the charges against him so that he may prepare his defence.⁵⁹ In order to determine whether the Prosecution meets this requirement, the Chamber

⁵³ Reply, paras 5-7.

⁵⁴ Reply, para. 9.

⁵⁵ Reply, para. 11 quoting Dissent from the Impugned Decision, para. 8.

⁵⁶ Reply, para. 12.

⁵⁷ Reply, para. 12.

⁵⁸ Reply, paras 12-14.

⁵⁹ *Briama et al.*, Appeal Judgment, para. 37; *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-A, Judgment, 28 May 2008 (*'Fofana and Kondewa Appeal Judgment'*), para. 363; *Prosecutor v. Simić*, IT-95-9-A, International Criminal Tribunal for the former Yugoslavia, Judgment, 28 November 2006 (*'Simić Appeal Judgment'*), para. 20; *Prosecutor v. Kupreškić et al.*, IT-95-16-A, International Criminal Tribunal for the former Yugoslavia, Appeal Judgment (*'Kupreškić et al. Appeal Judgment'*), para. 88; *Prosecutor v. Ntagerura et al.*, ICTR-99-46-A, International Criminal Tribunal for Rwanda, Judgment, 7 July 2006 (*'Ntagerura et al. Appeal Judgment'*), paras 21 and 22.

will read the indictment as a whole⁶⁰ and take into consideration the context of the case, in particular, the form of participation alleged against the accused.⁶¹

15. Where JCE is alleged, the Prosecution must plead, among other material facts, the nature and purpose of the enterprise and the nature of the accused's participation in the enterprise.⁶² As the Appeals Chamber has previously ruled, the "purpose of the enterprise" comprises both the objective of the JCE and the means contemplated to achieve that objective.⁶³

16. An indictment is defective if it fails to properly notify an accused of the nature and cause of the charges against him. In some circumstances, the defect in an indictment may be cured by timely, clear and consistent information detailing the factual basis underpinning the charges against the accused⁶⁴ so that the accused was in a reasonable position to understand the charges against him.⁶⁵

IV. DELIBERATIONS

A. Request for oral hearing

17. As a preliminary issue, the Appeals Chamber considers the Parties' written submissions sufficient to adjudicate the Appeal,⁶⁶ and therefore declines to hear oral arguments from the Parties.

B. Alleged errors in the Impugned Decision

18. The Trial Chamber held that taken together, paragraphs 5, 9, 14, 22, 23, 28, 33 and 34 of the Second Amended Indictment fulfilled the pleading requirements for JCE and put the Defence on notice that the Prosecution intended to charge Taylor with having participated in a JCE.⁶⁷ In particular, it found: (i) that paragraphs 5 and 33 of the Second Amended Indictment denoted that the alleged common purpose of the JCE was "a campaign to terrorize the civilian population of the

⁶⁰ *Brimo et al.* Appeal Judgment, para. 81.

⁶¹ *Brimo et al.* Appeal Judgment, paras 37 and 38.

⁶² *Brimo et al.* Appeal Judgment, fn. 146; *Simić* Appeal Judgment, para. 22; *Mugerwa et al.* Appeal Judgment, para. 24; *Prosecutor v. Kvočka et al.*, IT-98-30/1-A, International Criminal Tribunal for the former Yugoslavia, Judgement, 28 February 2005 ("*Kvočka et al.* Appeal Judgment"), para. 28.

⁶³ *Brimo et al.* Appeal Judgment, para. 76 (holding that the ultimate objective of the JCE and the means to achieve that objective constitute the common plan, design or purpose of the JCE).

⁶⁴ *Fofana and Kondewa* Appeal Judgment, para. 363.

⁶⁵ *Naležitić and Martić* Appeal Judgment, para. 27; *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, International Criminal Tribunal for the former Yugoslavia, Judgement, 17 December 2004, para. 142; *Rutaganda v. Prosecutor*, ICTR-96-3-A, International Criminal Tribunal for Rwanda, Judgement, 26 May 2003, para. 303.

⁶⁶ See Practice Direction for Certain Appeals Before the Special Court, 30 September 2004, para. 14.

⁶⁷ Impugned Decision, para. 79. The Impugned Decision does not explain why the Trial Chamber did not consider paragraphs 6 and 18 in this respect, but as no error is alleged to have arisen from this omission, the Appeals Chamber need not consider it any further.

Republic of Sierra Leone”;⁶⁸ and (ii) that Taylor’s alleged participation in the JCE was identified in paragraphs 33 and 34 as “planning, instigating, ordering, committing or aiding and abetting the planning, preparation or execution of” the alleged crimes; or alternatively, that “while holding positions of superior responsibility and exercising command and control over [RUF, AFRC, RUF/AFRC Junta and/or Liberian subordinates ...] the Accused is responsible for the acts of his subordinates [...]”.⁶⁹ It is these two findings that are the principal subject of the appeal. The Appeals Chamber notes that this appeal pertains only to questions regarding defects in the form of the Second Amended Indictment, and it is without prejudice to any findings regarding the criminal liability of the accused, particularly, in regard to the question whether a joint criminal enterprise has been established or whether the accused participated in such joint criminal enterprise.

19. As a preliminary matter, the Appeals Chamber considers that the Second Amended Indictment charges JCE as a mode of liability. While paragraph 33 of the Second Amended Indictment employs the words “common plan, design or purpose” instead of “joint criminal enterprise”, these expressions have been used interchangeably in the practice of both the ICTR and the ICTY. In the present case, paragraph 33 effectively conveyed the concept of joint criminal enterprise to the Appellant, thereby putting him and his Defence on notice that JCE is charged as a mode of liability in this case.⁷⁰

20. Turning to the first impugned finding regarding the alleged common purpose of the JCE, the Appeals Chamber observes that paragraph 5 of the Second Amended Indictment reads as follows:

5. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliances, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted and encouraged by, acting in concert with, under the direction and/or control or, and/or subordinate to the **ACCUSED**, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone.

Paragraph 33 of the Second Amended Indictment reads thus:

33. The **ACCUSED**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed, or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes amounted to or were involved

⁶⁸ Impugned Decision, para. 71.

⁶⁹ Impugned Decision, para. 74.

⁷⁰ Cf. *Prosecutor v. Sylvestre Gacumbitsi*, ICTR-01-64-A, International Criminal Tribunal for Rwanda, Judgment, 7 July 2006, para. 165, with further references from both the ICTR and the ICTY.

within a common plan, design or purpose in which the ACCUSED participated, or were a reasonably foreseeable consequence of such common plan, design or purpose.⁷¹

21. Paragraph 33 alleges that Taylor participated in a JCE, the common purpose of which was to commit the crimes referred to in Articles 2, 3 and 4 of the Statute. As evident from paragraph 33 itself, and as further reinforced by the repetition of the words "acting in concert" in relation to each Count of the Second Amended Indictment,⁷² the alleged JCE encompasses all the crimes charged in the Second Amended Indictment. The only other place in the Second Amended Indictment where all the Counts are mentioned collectively in relation to an allegation of JCE, is in paragraph 5 under Count 1, wherein it is alleged that Taylor, "acting in concert with" others, committed the crimes charged in Counts 2 through 11 "as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone". Therefore, although paragraph 5 appears under the heading "Particulars" under Count 1, charging acts of terrorism, it is clear from a holistic reading of the Second Amended Indictment that the allegations in paragraph 5 complement the allegations in paragraph 33. The Trial Chamber therefore did not err in finding that paragraphs 5 and 33 of the Second Amended Indictment sufficiently plead the alleged common purpose of the JCE. This part of the Appeal is accordingly dismissed.

22. As to the second impugned finding, paragraph 34 of the Second Amended Indictment reads:

In addition, or alternatively, pursuant to Article 6.3 of the Statute, the ACCUSED, while holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, is individually criminally responsible for the crimes referred to in Article 2, 3 and 4 of the Statute as alleged in this Amended Indictment. The 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 the ACCUSED failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

23. The Appeals Chamber has considered the Defence submission that, because JCE arises under Article 6(1) of the Statute, the Trial Chamber erred in law in considering that the allegations on his liability under Article 6(3) of the Statute in paragraph 34 of the Second Amended Indictment serve to clarify his alleged participation in the JCE.⁷³ The law does not preclude acts from forming both the basis for liability under Article 6(3) and, at the same time, constituting participation in a JCE. Indeed, as held by the ICTY Appeals Chamber, it is "sufficient that the accused 'perform acts that in some way are directed to the furthering' of the JCE in the sense that he significantly

⁷¹ Amended Indictment, para 33.

⁷² Second Amended Indictment, paras 5, 9, 14, 18, 22, 23, and 28.

⁷³ Appeal, para. 38.

contributes to the commission of the crimes involved in the JCE."⁷⁴ The Defence's challenge to the Trial Chamber's finding that paragraph 34 clarifies Taylor's participation in the JCE therefore fails.

24. The Appeals Chamber has also considered the Defence submissions that the Trial Chamber erred in failing to consider (i) by what means the common objective was contemplated to have been achieved; (ii) the legal effect on Taylor's statutory notice rights resulting from deletion of the paragraphs describing the JCE in the Amended Indictment and the Second Amended Indictment; and (iii) the "fluid, ever-evolving" description of the common purpose in the Prosecution's "secondary accusatory instruments and/or pronouncements".⁷⁵

25. The Appeals Chamber reaffirms that the common purpose comprises both the objective of the JCE and the means contemplated to achieve that objective.⁷⁶ While the common purpose is a material fact which must be pleaded in the indictment, notice to the accused does not require the objective and the means to be separately pleaded in the indictment as long as the alleged criminality of the enterprise is made clear, as it was in the Second Amended Indictment.

26. The Appeals Chamber also finds no basis for the Defence's allegations that the Trial Chamber was biased or that it improperly shifted the burden from the Prosecution to the Defence. The Trial Chamber expressly discussed the pleadings and allegations which the Defence suggests it disregarded, therefore the suggestion that these submissions were not considered in relation to the sufficiency of notice to the accused lacks support.⁷⁷ Because the Trial Chamber expressly noted in the Impugned Decision the contested pleadings and allegations, there is no indication that the Trial Chamber disregarded them in reaching its decision.⁷⁸

27. Finally, the Appeals Chamber dismisses the Defence argument that the Trial Chamber examined only whether Prosecution "intended to charge" JCE rather than whether legally sufficient notice had been given to Taylor. The Trial Chamber explicitly stated that "the Prosecution has adequately fulfilled the pleading requirements of the alleged Joint Criminal Enterprise in the

⁷⁴ *Prosecutor v. Kravtšnik*, International Criminal Tribunal for the former Yugoslavia, IT-00-39-A, Judgement, 17 March 2009, para. 695, citing *Prosecutor v. Tadić*, International Criminal Tribunal for the former Yugoslavia, IT-94-1-A, Judgement, 15 July 1999, para. 229.

⁷⁵ Appeal, para. 35.

⁷⁶ *Brima et al.* Appeal Judgment, para. 76.

⁷⁷ The Trial Chamber made extensive observations regarding the way in which JCE was pleaded in the Original Indictment, the Amended Indictment and the Second Amended Indictment, and indeed quoted parts of the allegations regarding the "common purpose" provided in the Case Summary, the Prosecution's Pre-Trial Brief, its opening statement, and Amended Case Summary. See Impugned Decision, paras 8-12.

⁷⁸ Cf. *Kvočka et al.* Appeal Judgment, para. 23.

Indictment, and that it has provided sufficient details to put the Accused on notice of the case against him.”⁷⁹

28. For these reasons, the Appeals Chamber finds that the Defence fails to demonstrate an error in the Impugned Decision.

V. DISPOSITION

BASED ON THE FOREGOING REASONS, THE APPEALS CHAMBER

DISMISSES the Appeal in its entirety.

Done this 1st day of May 2009 at Freetown, Sierra Leone.

Justice Renate Winter,
Presiding

Justice Jon M. Kamanda

Justice George Gelaga King

Justice Emmanuel Ayoola



⁷⁹ Impugned Decision, para. 76.