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**Tribunal Pénal International pour le Rwanda  
International Criminal Tribunal for Rwanda**

**ICTR-01-75-AR72(C)  
16 November 2011  
48/H – 31/H**

**IN THE APPEALS CHAMBER**

**Before:** Judge Fausto Pocar, Presiding  
Judge Mehmet Güney  
Judge Liu Daqun  
Judge Andrézia Vaz  
Judge Carmel Agius

**Registrar:** Mr. Adama Dieng

**Decision of:** 16 November 2011

**ICTR Appeals Chamber**  
Date: 16 November 2011  
Action: K.R.A. AFANDE  
Copied To: Concerned Judges,  
SLC, LSC, ALB, CMS,  
Parties, LSB.

**Jean UWINKINDI**

v.

**THE PROSECUTOR**

Case No. ICTR-01-75-AR72(C)

**DECISION ON DEFENCE APPEAL AGAINST THE DECISION DENYING  
MOTION ALLEGING DEFECTS IN THE INDICTMENT**

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International Criminal Tribunal for Rwanda  
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1. The Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January and 31 December 1994 ("Appeals Chamber" and "Tribunal", respectively), is seised of an interlocutory appeal filed by Jean Uwinkindi ("Uwinkindi") on 4 April 2011 ("Interlocutory Appeal")<sup>1</sup> against a decision rendered by Trial Chamber III of the Tribunal ("Trial Chamber") on 9 March 2011 ("Impugned Decision"), which dismissed a Defence motion<sup>2</sup> alleging defects in the Amended Indictment against Uwinkindi.<sup>3</sup> The Prosecution responded on 14 April 2011<sup>4</sup> and Uwinkindi replied on 19 April 2011.<sup>5</sup>

## I. INTRODUCTION

2. The original indictment against Uwinkindi was filed on 24 August 2001 and confirmed on 3 September 2001, subject to certain conditions.<sup>6</sup> In response to these conditions, the Prosecution filed a new version of the indictment on 11 September 2001, which was confirmed on 24 September 2001.<sup>7</sup> Following Uwinkindi's arrest on 30 June 2010 and his transfer to the Tribunal on 2 July 2010, the Prosecution filed a motion for leave to amend the indictment on 21 September 2010.<sup>8</sup> On 4 November 2010, it filed a request for the referral of Uwinkindi's case to Rwanda pursuant to Rule 11 *bis* of the Rules of Procedure and Evidence of the Tribunal ("Rules").<sup>9</sup> On 23 November 2010, the Trial Chamber granted the Motion for Leave to File an Amended

<sup>1</sup> Defence Appeal Against Decision Denying Defence Preliminary Motion Alleging Defects in the Form of the Amended Indictment, 4 April 2011.

<sup>2</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Defence Preliminary Motion Alleging Defects in the Form of the Amended Indictment, 28 December 2010 ("Preliminary Motion").

<sup>3</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Decision on Defence Preliminary Motion Alleging Defects in the Form of the Amended Indictment, 9 March 2011, p. 8.

<sup>4</sup> Prosecutor's Response to "Defence Appeal Against Decision Denying Defence Preliminary Motion Alleging Defects in the Form of the Amended Indictment", 14 April 2011 ("Response").

<sup>5</sup> Defence Reply to the Prosecutor's Response to "Defence Appeal Against Decision Denying Defence Preliminary Motion Alleging Defects in the Form of the Amended Indictment", 19 April 2011 ("Reply").

<sup>6</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Indictment, 24 August 2001; *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Confirmation of Indictment, 3 September 2001.

<sup>7</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Indictment, 11 September 2001; *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Additional Act of Confirmation of the Indictment, 24 September 2001.

<sup>8</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Prosecutor's Request for Leave to File an Amended Indictment, 21 September 2010 (confidential) ("Motion for Leave to File an Amended Indictment").

<sup>9</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Prosecutor's Request for the Referral of the Case of Jean-Bosco Uwinkindi to Rwanda Pursuant to Rule 11 *bis* of the Tribunal's Rules of Procedure and Evidence, 4 November 2010. On 28 June 2011, the Referral Chamber granted the Prosecution's motion for referral. See *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-R11bis, Decision on Prosecutor's Request for Referral to the Republic of Rwanda, 28 June 2011. Uwinkindi's appeal against this decision is currently pending before the Appeals Chamber.

Indictment, subject to certain conditions.<sup>10</sup> The Prosecution filed the Amended Indictment on the same date.<sup>11</sup>

3. In his Preliminary Motion, Uwinkindi alleged: (i) improper pleading of joint criminal enterprise (“JCE”);<sup>12</sup> (ii) vagueness of paragraphs 9, 10, and 15 of the Amended Indictment;<sup>13</sup> and (iii) lack of supporting material underpinning certain allegations in the Amended Indictment.<sup>14</sup> In its Impugned Decision, the Trial Chamber denied the Preliminary Motion in its entirety.<sup>15</sup> It granted Uwinkindi certification to appeal the Impugned Decision on 28 March 2011.<sup>16</sup>

## II. APPLICABLE LAW

4. The general principles governing the form of indictments are well established. Articles 17(4), 20(2), 20(4)(a), and 20(4)(b) of the Statute of the Tribunal (“Statute”) and Rule 47(C) of the Rules require the Prosecution to state the material facts underpinning the charges in the indictment, but not the evidence by which such facts are to be proved.<sup>17</sup> Whether a fact is “material” depends on the nature of the Prosecution’s case.<sup>18</sup>

5. The charges against an accused and the material facts supporting those charges must be pleaded with sufficient precision in the indictment in order to provide clear notice to the accused.<sup>19</sup>

<sup>10</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Decision on Prosecutor’s Request for Leave to File an Amended Indictment, 23 November 2010 (“Decision on the Amended Indictment”), pp. 7, 8.

<sup>11</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Amended Indictment, 23 November 2010 (“Amended Indictment”).

<sup>12</sup> Preliminary Motion, paras. 25-31.

<sup>13</sup> Preliminary Motion, paras. 13-24.

<sup>14</sup> Preliminary Motion, paras. 32, 33. See also *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-I, Prosecutor’s Response to the Defence Preliminary Motion Alleging Defects in the Form of the Indictment, 4 January 2011 (“Response to the Preliminary Motion”).

<sup>15</sup> Impugned Decision, p. 8.

<sup>16</sup> *The Prosecutor v. Jean Uwinkindi*, Case No. ICTR-01-75-PT, Decision on Defence Application for Certification to Appeal Decision on Preliminary Motion Alleging Defects in the Form of the Amended Indictment, 28 March 2011 (“Certification to Appeal Decision”).

<sup>17</sup> *The Prosecutor v. André Ntagerura et al.*, Case No. ICTR-99-46-A, Judgement, 7 July 2006 (“*Ntagerura et al.* Appeal Judgement”), para. 21 (the English translation of the French original was filed on 29 March 2007). See also *Prosecutor v. Blagoje Simić*, Case No. IT-95-9-A, Judgement, 28 November 2006 (“*Simić* Appeal Judgement”), para. 20.

<sup>18</sup> *Tharcisse Renzaho v. The Prosecutor*, Case No. ICTR-97-31-A, Judgement, 1 April 2011 (“*Renzaho* Appeal Judgement”), para. 53; *François Karera v. The Prosecutor*, Case No. ICTR-01-74-A, Judgement, 2 February 2009 (“*Karera* Appeal Judgement”), para. 292.

<sup>19</sup> *Renzaho* Appeal Judgement, para. 53; *Emmanuel Rukundo v. The Prosecutor*, Case No. ICTR-01-70-A, Judgement, 20 October 2010 (“*Rukundo* Appeal Judgement”), para. 29; *Callixte Kalimanzira v. The Prosecutor*, Case No. ICTR-05-88-A, Judgement, 20 October 2010 (“*Kalimanzira* Appeal Judgement”), para. 46; *Tharcisse Muvunyi v. The Prosecutor*, Case No. ICTR-00-55A-A, Judgement, 29 August 2008 (“*Muvunyi I* Appeal Judgement”), para. 18; *The Prosecutor v. Athanase Seromba*, Case No. ICTR-01-66-A, Judgement, 12 March 2008 (“*Seromba* Appeal Judgement”), para. 27; *Aloys Simba v. The Prosecutor*, Case No. ICTR-01-76-A, Judgement, 27 November 2007 (“*Simba* Appeal Judgement”), para. 63. See also *Simić* Appeal Judgement, para. 20; *Prosecutor v. Tihomir Blaškić*, Case No. IT-95-14-A, Judgement, 29 July 2004 (“*Blaškić* Appeal Judgement”), para. 209; *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-A, Appeal Judgement, 23 October 2001 (“*Kupreškić et al.* Appeal Judgement”), para. 88.

Decisive factors in determining the degree of specificity with which the Prosecution must plead the material facts of its case are the Prosecution's characterisation of the alleged criminal conduct and the proximity of the accused to the underlying offence.<sup>20</sup> The Prosecution is expected to know its case before it goes to trial and cannot omit material aspects of its main allegations in the indictment with the aim of moulding the case against the accused in the course of the trial depending on how the evidence unfolds.<sup>21</sup> While it may be impracticable to require a high degree of specificity due to the sheer scale of the alleged crimes,<sup>22</sup> the indictment must particularise the material facts in such a way that the accused can prepare his defence.<sup>23</sup> In particular, the accused must be adequately informed about his role in the alleged crime.<sup>24</sup> An indictment which fails to set forth material facts in sufficient detail is defective.<sup>25</sup>

### III. STANDARD OF REVIEW

6. A trial chamber's decision on defects in the form of the indictment is a matter which relates to the general conduct of trial proceedings and thus falls within the discretion of the trial chamber. In order to successfully challenge a discretionary decision, a party must demonstrate that the trial chamber has committed a "discernible error" resulting in prejudice to that party. The Appeals Chamber will only overturn a trial chamber's discretionary decision where it is found to be: (i) based on an incorrect interpretation of governing law; (ii) based on a patently incorrect conclusion of fact; or (iii) so unfair or unreasonable as to constitute an abuse of the trial chamber's discretion.<sup>26</sup>

<sup>20</sup> *Ntagerura et al.* Appeal Judgement, para. 23.

<sup>21</sup> *Kupreškić et al.* Appeal Judgement, para. 92. See also *Muvunyi I* Appeal Judgement, para. 18; *Ntagerura et al.* Appeal Judgement, para. 27.

<sup>22</sup> *Kupreškić et al.* Appeal Judgement, para. 89.

<sup>23</sup> *Ntagerura et al.* Appeal Judgement, para. 22; *Simić* Appeal Judgement, para. 20.

<sup>24</sup> Cf. *Kupreškić et al.* Appeal Judgement, para. 98.

<sup>25</sup> *Renzaho* Appeal Judgement, para. 55; *Rukundo* Appeal Judgement, para. 29; *Kalimanzira* Appeal Judgement, para. 46; *Ntagerura et al.* Appeal Judgement, para. 22.

<sup>26</sup> See *Prosecutor v. Radovan Karadžić*, Case No. IT-95-5/18-AR72.5, Decision on Appeal of Trial Chamber's Decision on Preliminary Motion to Dismiss Count 11 of the Indictment, 9 July 2009, para. 8. Cf. *Édouard Karemera and Matthieu Ngirumpatse v. The Prosecutor*, Case No. ICTR-98-44-AR73.19, Decision on Matthieu Ngirumpatse's Appeal Against a Sanction Imposed on Counsel by Trial Chamber's Decision of 1 September 2010, 21 March 2011, para. 12; *The Prosecutor v. Casimir Bizimungu et al.*, Case No. ICTR-99-50-AR73.7, Decision on Jérôme-Clément Bicamumpaka's Interlocutory Appeal Concerning a Request for a Subpoena, 22 May 2008, para. 8; *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-AR73.10, Decision on Nzirorera's Interlocutory Appeal Concerning His Right to be Present at Trial, 5 October 2007, para. 7.

## IV. DISCUSSION

### A. Improper Pleading of JCE

#### 1. Trial Chamber's findings

7. The Trial Chamber noted that the Amended Indictment “does not clearly state” under which form of JCE Uwinkindi is charged.<sup>27</sup> It accepted, however, that the Prosecution used its Response to the Preliminary Motion to indicate its intention to rely on the basic and extended forms of JCE.<sup>28</sup> The Trial Chamber therefore concluded that “[a]dditional detail on [the Prosecution’s] theory or theories of liability under JCE can be provided through the Pre-Trial Brief without the need for a further amendment of the indictment.”<sup>29</sup> The Trial Chamber further noted that, “in addition to identifying the co-participants ‘by category’ or ‘as a group’, the Prosecution has made an effort, where possible, to provide the names of individuals and to identify the *commune*, *prefecture*, military camp, or school from whence they came.”<sup>30</sup> It concluded that the requirements of JCE were adequately pleaded in the Amended Indictment.<sup>31</sup>

#### 2. Submissions of the parties

8. Uwinkindi submits that the Trial Chamber’s findings are erroneous and depart from Appeals Chamber jurisprudence.<sup>32</sup> He asserts that there is no precedent to support the assumption that a defective indictment can be cured through notice provided in the response to a preliminary motion alleging defects in the indictment.<sup>33</sup> He further contends that the Trial Chamber failed to address his complaint in paragraph 28 of the Preliminary Motion that the Amended Indictment does not indicate in what capacity Ngarukiye, Bizimungu, and communal policemen were involved in the JCE.<sup>34</sup> Uwinkindi finally asserts that the Trial Chamber erroneously rejected his claim that the Amended Indictment should provide particulars of the JCE members described as “other *conseillers*”, “communal policemen”, and “other Hutu civilians”.<sup>35</sup>

9. The Prosecution responds that the Trial Chamber correctly concluded that the requirements for JCE were properly pleaded in the Amended Indictment.<sup>36</sup> It contends that the *chapeau*

<sup>27</sup> Impugned Decision, para. 14.

<sup>28</sup> Impugned Decision, paras. 14, 16, referring to Response to the Preliminary Motion, para. 25.

<sup>29</sup> Impugned Decision, para. 16.

<sup>30</sup> Impugned Decision, para. 17.

<sup>31</sup> Impugned Decision, para. 17.

<sup>32</sup> Interlocutory Appeal, para. 18; Reply, paras. 7, 9.

<sup>33</sup> Reply, paras. 8, 10.

<sup>34</sup> Interlocutory Appeal, para. 20; Reply, para. 11. See also Preliminary Motion, para. 28.

<sup>35</sup> Interlocutory Appeal, para. 21; Reply, para. 12.

<sup>36</sup> Response, paras. 28, 39.

paragraph for Counts 1 and 2 as well as paragraphs 8 to 16 of the Amended Indictment sufficiently inform Uwinkindi of the identity of the participants in the alleged JCE, the purpose of this enterprise, and Uwinkindi's participation therein.<sup>37</sup> The Prosecution further submits that the Tribunal's jurisprudence does not prevent it from pleading elsewhere than in the indictment – for example in the pre-trial brief – the legal theory which it believes best demonstrates the accused's responsibility.<sup>38</sup> The Prosecution therefore suggests that it is "premature" for Uwinkindi to claim that the Amended Indictment is defective because it does not plead a specific form of JCE.<sup>39</sup> The Prosecution further asserts that the Trial Chamber addressed Uwinkindi's complaint with respect to paragraph 28 of the Preliminary Motion.<sup>40</sup> It also submits that the Trial Chamber properly found that the Amended Indictment provided adequate information as to the alleged JCE members.<sup>41</sup>

10. In reply, Uwinkindi contends that the Prosecution improperly relies on jurisprudence regarding the "curing" of a defective indictment and that the Trial Chamber "erred in finding that inadequacies existing at this stage can be cured at some later stage."<sup>42</sup>

### 3. Analysis

11. The Appeals Chamber recalls that JCE must be specifically pleaded in the indictment.<sup>43</sup> The Prosecution must plead the nature and purpose of the enterprise, the period over which the enterprise is said to have existed, the identity of the participants, and the nature of the accused's participation therein.<sup>44</sup> In order for an accused to fully understand the acts for which he is allegedly responsible, the indictment should further clearly indicate which form of JCE is being alleged: basic, systemic, or extended.<sup>45</sup> Since the three forms of JCE vary with respect to the *mens rea* element, the indictment must also plead the *mens rea* element of each category on which the Prosecution intends to rely.<sup>46</sup>

<sup>37</sup> Response, para. 32.

<sup>38</sup> Response, paras. 10, 30, referring to *Sylvestre Gacumbitsi v. The Prosecutor*, Case No. ICTR-01-64-A, Judgement, 7 July 2006 ("Gacumbitsi Appeal Judgement"), para. 161; *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25-A, Judgement, 17 September 2003 (the English translation of the French original was filed on 5 November 2003), para. 138; *The Prosecutor v. Yussuf Munyakazi*, Case No. ICTR-97-36A-T, Judgement and Sentence, 5 July 2010, para. 436; *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, Case Nos. ICTR-96-10-A & ICTR-96-17-A, Judgement, 13 December 2004 ("Ntakirutimana Appeal Judgement"), para. 475.

<sup>39</sup> Response, para. 31.

<sup>40</sup> Response, para. 36, referring to Impugned Decision, para. 13, fns. 22, 23.

<sup>41</sup> Response, para. 38.

<sup>42</sup> Reply, para. 9.

<sup>43</sup> *Gacumbitsi Appeal Judgement*, para. 167; *Ntagerura et al. Appeal Judgement*, para. 24; *Simić Appeal Judgement*, paras. 22, 31.

<sup>44</sup> *Simba Appeal Judgement*, para. 63; *Gacumbitsi Appeal Judgement*, para. 162; *Ntagerura et al. Appeal Judgement*, para. 24; *Simić Appeal Judgement*, para. 22.

<sup>45</sup> *Simba Appeal Judgement*, para. 63; *Ntagerura et al. Appeal Judgement*, para. 24; *Simić Appeal Judgement*, para. 22.

<sup>46</sup> *Simba Appeal Judgement*, para. 77.

12. While the Amended Indictment states that Uwinkindi “willfully [*sic*] and knowingly participated in a joint criminal enterprise”, it does not specify which form of JCE is charged and consequently also fails to plead Uwinkindi’s *mens rea*.<sup>47</sup> This renders the Amended Indictment defective and the Trial Chamber erred in failing to find so.

13. The Trial Chamber also erred in concluding that there was no need to amend the Amended Indictment because the Prosecution indicated in its Response to the Preliminary Motion that it intended to rely on the basic and extended forms of JCE and because additional details could be provided in the Pre-Trial Brief.<sup>48</sup> It is accepted that defects in the indictment can be cured later by timely, clear, and consistent information detailing the factual basis underpinning the charge.<sup>49</sup> However, the indictment is the primary accusatory instrument<sup>50</sup> and the Prosecution has been warned in the past that the practice of failing to allege known material facts in the indictment is unacceptable.<sup>51</sup> Consequently, in a case such as the present, where defects in the indictment surface at the pre-trial stage, the Prosecution cannot refrain from amending the indictment by arguing that it will correct existing defects through its Pre-Trial Brief.<sup>52</sup>

14. In addition, the Appeals Chamber finds that the Trial Chamber failed to address Uwinkindi’s complaint in paragraph 28 of the Preliminary Motion that the Amended Indictment names Ngarukiye, Bizimungu, and “communal policemen” as JCE members without indicating their respective roles in the enterprise.<sup>53</sup> The Appeals Chamber notes that, with the exception of these individuals, all JCE members listed in the third *chapeau* paragraph under Counts 1 and 2 are implicated in attacks described in paragraphs 10 to 16 of the Amended Indictment. The Appeals Chamber therefore finds that the inclusion of Ngarukiye, Bizimungu, and “communal policemen” in the list of JCE members causes ambiguity.<sup>54</sup>

15. The Appeals Chamber finally turns to Uwinkindi’s argument that the Amended Indictment should provide particulars of the JCE members described as “other *conseillers*”, “communal

<sup>47</sup> See Amended Indictment, third *chapeau* paragraph under Counts 1 and 2.

<sup>48</sup> See Impugned Decision, para. 16.

<sup>49</sup> See, e.g., *Renzaho* Appeal Judgement, para. 55; *Karera* Appeal Judgement, para. 293; *Muvunyi I* Appeal Judgement, para. 20; *Ntagerura et al.* Appeal Judgement, para. 29. See also *Simić* Appeal Judgement, para. 23.

<sup>50</sup> *Blaškić* Appeal Judgement, para. 220.

<sup>51</sup> See, e.g., *Ntakirutimana* Appeal Judgement, para. 125.

<sup>52</sup> Cf. *The Prosecutor v. Ildephonse Nizeyimana*, Case No. ICTR-01-55C-PT, Decision on Ildephonse Nizeyimana’s Motion for Certification, 13 August 2010, para. 8; *The Prosecutor v. Dominique Ntawukuliyayo*, Case No. ICTR-05-82-PT, Decision on Defence Preliminary Motion Alleging Defects in the Indictment, 28 April 2009, para. 13.

<sup>53</sup> Contrary to the Prosecution’s assertion, paragraph 13 of the Impugned Decision only refers to paragraphs 25, 29, and 30 of the Preliminary Motion. See Impugned Decision, para. 13, fns. 22, 23. Other relevant parts of the Impugned Decision do not address the issue. See Impugned Decision, paras. 14-17.

<sup>54</sup> The Appeals Chamber observes that, in its Response to the Preliminary Motion, the Prosecution indicated that it is in the possession of further details. See Response to the Preliminary Motion, para. 28, referring to the witness statements of Prosecution Witnesses CCU and BZJ.

policemen”, and “other Hutu civilians”.<sup>55</sup> The Appeals Chamber recalls that an indictment must be considered as a whole.<sup>56</sup> Consequently, it may be sufficient to identify participants of the alleged crimes “by category” or “as a group” if it is not possible for the Prosecution to be more specific and the context provided in the indictment puts the accused on sufficient notice to prepare his defence against the allegations.<sup>57</sup>

16. As stated above, the Amended Indictment fails to indicate in what capacity “communal policemen” were involved in the commission of crimes for which Uwinkindi allegedly incurs criminal liability.<sup>58</sup> The same applies to “other *conseillers*”. Furthermore, while paragraph 14 of the Amended Indictment states that “armed civilians” participated in an attack at Kanzenze communal offices on or about 12 April 1994, it is not clear whether this group is identical to the “other Hutu civilians” identified in the third *chapeau* paragraph.

17. Additionally, the Amended Indictment does not link any of these three groups to specific *communes*, *prefectures*, or other locations. This prevents Uwinkindi from conducting meaningful investigations. Consequently, the Appeals Chamber finds that the expressions “other *conseillers*”, “communal policemen”, and “other Hutu civilians” do not, in the present case, sufficiently identify JCE members by group or category.

18. The Appeals Chamber therefore finds that the Trial Chamber committed a discernible error in concluding that the Amended Indictment adequately pleaded JCE and was not in need of amendment.

## **B. Vagueness of Paragraphs 9, 10, and 15 of the Amended Indictment**

### **1. Trial Chamber’s findings**

19. In the Impugned Decision, the Trial Chamber found that additional details, which the Defence requested be included in paragraphs 9, 10, and 15 of the Amended Indictment constituted “evidence that need not be pleaded in an indictment.”<sup>59</sup> The Trial Chamber further stated that in light of “the sheer scale of the alleged atrocities, it would be impracticable to require a greater degree of specificity” in the Amended Indictment.<sup>60</sup> It also noted that each paragraph in the Amended Indictment should not be read in isolation, but in the context of the other paragraphs.<sup>61</sup>

<sup>55</sup> See *supra*, para. 8.

<sup>56</sup> *Seromba Appeal Judgement*, para. 27; *Gacumbitsi Appeal Judgement*, para. 123.

<sup>57</sup> See *Simba Appeal Judgement*, para. 72.

<sup>58</sup> See *supra*, para. 14.

<sup>59</sup> Impugned Decision, para. 12.

<sup>60</sup> Impugned Decision, para. 12.

<sup>61</sup> Impugned Decision, para. 12.

The Trial Chamber therefore concluded that the Amended Indictment was not unduly vague and provided Uwinkindi with sufficient information to adequately prepare his defence.<sup>62</sup>

## 2. Analysis

20. As a general matter, the Appeals Chamber notes with concern that the Impugned Decision lacks a thorough reasoning concerning Uwinkindi's challenges to paragraphs 9, 10, and 15 of the Amended Indictment, and merely restates the Tribunal's jurisprudence without explaining why, in the Trial Chamber's view, each of the contested paragraphs in the Amended Indictment is properly pleaded. The Impugned Decision is therefore flawed as it fails to provide a reasoned opinion.

### (a) Paragraph 9 of the Amended Indictment

21. Uwinkindi submits that the Trial Chamber's reasoning and conclusions in relation to paragraph 9 of the Amended Indictment were erroneous because this paragraph refers to attacks in locations not mentioned elsewhere in the Amended Indictment without providing necessary details as to the time, place, identity of the victims, and the means by which the alleged crimes were carried out.<sup>63</sup> He also contends that the Prosecution cannot introduce a number of imprecisely identified attacks in the Amended Indictment and simply argue that the scale of these attacks prevents it from providing further details.<sup>64</sup> Uwinkindi further argues that the Trial Chamber failed to address his argument that paragraph 9 of the Amended Indictment relies on a broader time-frame than that indicated in the *chapeau* paragraphs for the Amended Indictment as a whole.<sup>65</sup>

22. The Prosecution responds that the Trial Chamber reasonably concluded that the Amended Indictment was not vague.<sup>66</sup> It contends that the Amended Indictment must be considered as a whole and that paragraph 9 of the Amended Indictment is in compliance with the Decision on the Amended Indictment.<sup>67</sup> As to Uwinkindi's complaint that the Trial Chamber failed to address the error relating to the time-frame in paragraph 9 of the Amended Indictment, the Prosecution contends that this allegation should be dismissed because it is new and outside the scope of both the Impugned Decision and the Certification to Appeal Decision.<sup>68</sup>

23. In reply, Uwinkindi submits that the Prosecution's assertion that paragraph 9 of the Amended Indictment complies with the Decision on the Amended Indictment is irrelevant, given

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<sup>62</sup> Impugned Decision, para. 12.

<sup>63</sup> Interlocutory Appeal, paras. 8, 9.

<sup>64</sup> Interlocutory Appeal, para. 11.

<sup>65</sup> Interlocutory Appeal, para. 10.

<sup>66</sup> Response, paras. 14, 27.

<sup>67</sup> Response, para. 22.

<sup>68</sup> Response, paras. 33, 34.

that the Trial Chamber erred in finding that the further particulars provided by the Prosecution were adequate.<sup>69</sup>

24. Paragraph 9 of the Amended Indictment forms part of the pleadings for Counts 1 and 2.<sup>70</sup> Under the heading "Concise Statement of Facts", it reads:

Between 7 April and mid-May 1994, Jean UWINKINDI and members of the joint criminal enterprise attacked Tutsis in their homes in Gatara, Rwankeri, Kayenzi and Byimana cellules neighbouring Kayumba *secteur*. The Tutsis who survived these attacks subsequently fled to various places such as the Kayenzi hill, Kayenzi Pentecostal church, the Cyugaro swamps, Nyamwiza marshes, Ntarama church, Kanzenze communal offices and Nyamata Church.

25. Paragraphs 10 to 16 of the Amended Indictment contain allegations against Uwinkindi with regard to specific attacks between 8 April and early May 1994. These comprise: (i) an attack carried out, at Uwinkindi's instigation, by armed assailants on Tutsis at their homes in Rwankeri *cellule* on the night of 8 April 1994;<sup>71</sup> (ii) an attack on Tutsi civilians by Uwinkindi and other JCE members at Kayenzi Hill on or about 9 April 1994;<sup>72</sup> (iii) an attack on Tutsi civilians by Uwinkindi and others at Cyugaro swamps on or about 10 April 1994;<sup>73</sup> (iv) Uwinkindi's attendance at a meeting on or about 10 April 1994 at the Kanzenze communal offices, where Bernard Gatanazi ordered or instigated those present to kill Tutsis, and Uwinkindi's subsequent participation in an attack on Tutsi refugees at the Kanzenze communal offices on or about 12 April 1994;<sup>74</sup> and (v) Uwinkindi's presence during and/or awareness of forcible removals and killings of Tutsi civilians committed by *Interahamwe* at Kayenzi Pentecostal Church between 7 April and early May 1994 and Uwinkindi's participation in the removal of Tutsi civilians from Mwogo *secteur* and their killing at Kayenzi Pentecostal Church on or about 14 April 1994.<sup>75</sup>

26. It is unclear whether paragraph 9 of the Amended Indictment merely serves as an introduction to paragraphs 10 to 16 of the Amended Indictment or contains allegations which could, in and of themselves, form the basis of Uwinkindi's criminal responsibility.<sup>76</sup> Paragraph 9 of the Amended Indictment alleges that Uwinkindi and other JCE members *attacked* Tutsis. Several, but not all locations where such attacks occurred or where the victims of those attacks sought refuge are

<sup>69</sup> Reply, para. 4.

<sup>70</sup> The Appeals Chamber observes that for Count 2 of the Amended Indictment, the Prosecution refers to the allegations set out in paragraphs 8 to 16 of the Amended Indictment. *See* Amended Indictment, para. 17.

<sup>71</sup> Amended Indictment, para. 10.

<sup>72</sup> Amended Indictment, para. 11.

<sup>73</sup> Amended Indictment, para. 12.

<sup>74</sup> Amended Indictment, paras. 13, 14.

<sup>75</sup> Amended Indictment, paras. 15, 16.

<sup>76</sup> The Appeals Chamber observes that in the Response to the Preliminary Motion, the Prosecution stated at one point that paragraph 9 of the Amended Indictment is merely an introduction to paragraphs 10 to 16 of the Amended Indictment (*see* Response to the Preliminary Motion, para. 10), while, when discussing the pleading of JCE, it declared: "The Chapeau Paragraphs charging JCE provide notice that all of the co-perpetrators [...] participated in all the alleged

discussed in paragraphs 10 to 16 of the Amended Indictment. The Amended Indictment leaves open whether the Prosecution's case is restricted to the attacks detailed in paragraphs 10 to 16 or whether it includes further allegations in paragraph 9. The Appeals Chamber finds that this renders the Amended Indictment ambiguous and, therefore, defective. The Appeals Chamber further notes that if the Prosecution were to rely on paragraph 9 of the Amended Indictment for separate allegations against Uwinkindi, the content of this paragraph would require clarification in line with the established jurisprudence on the form of indictments, as set out above.<sup>77</sup>

27. Contrary to the Trial Chamber's finding, the clarification sought by the Defence does not merely constitute evidence which does not need to be pleaded in the Amended Indictment. The issues discussed above go to the heart of the Prosecution's case against Uwinkindi and relate to material facts that must be pleaded in the Amended Indictment.

28. The Appeals Chamber now turns to Uwinkindi's argument that paragraph 9 of the Amended Indictment introduces a broader time-frame than the *chapeau* paragraphs. Contrary to the Prosecution's assertion, Uwinkindi is entitled to raise this issue on appeal since he challenged the time-frame in paragraph 9 of the Amended Indictment in his Preliminary Motion.<sup>78</sup>

29. According to paragraph 9 of the Amended Indictment, Uwinkindi and other JCE members carried out attacks between "7 April and mid-May 1994". This time-frame is in accordance with the third *chapeau* paragraph under Count 1, which alleges that the actions occurred in furtherance of the JCE between 6 April to "mid May" 1994. In contrast, the first *chapeau* paragraphs under Counts 1 and 2 speak of conduct between 6 April and "early May" 1994, as does the third *chapeau* paragraph under Count 2, which is otherwise identical to the third *chapeau* paragraph under Count 1. Although the difference between these time-frames is relatively minor, it creates unnecessary confusion and should be clarified at this stage.

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actions in furtherance of the JCE. The alleged actions themselves are detailed in paragraphs 7 to 16 of the Amended Indictment." See Response to the Preliminary Motion, para. 27.

<sup>77</sup> See *supra*, paras. 4, 5.

<sup>78</sup> The Appeals Chamber notes that Uwinkindi's arguments on trial and appeal vary slightly. The reference to "mid-May 1994" in paragraph 9 of the Amended Indictment was added pursuant to the Trial Chamber's request in the Decision on the Amended Indictment that the Prosecution narrow the date range in that paragraph. See Decision on the Amended Indictment, para. 20. In his Preliminary Motion, Uwinkindi complained that this change "can hardly be qualified as narrowing down the date range, considering it is a mere repetition of the general time frame during which crimes are alleged to have taken place". See Preliminary Motion, para. 17. The Appeals Chamber further notes the Trial Chamber's finding in paragraph 21 of the Impugned Decision: "Having reviewed the Amended Indictment along with the supporting materials, in light of its Decision [on the Amended Indictment], the Chamber is satisfied that the Prosecution is substantially in compliance with the Chamber's Orders." However, it is not clear whether this finding relates to Uwinkindi's argument on the time-frame in paragraph 9 of the Amended Indictment.

30. Finally, the Appeals Chamber finds irrelevant the Prosecution's argument that paragraph 9 of the Amended Indictment is in conformity with the Trial Chamber's Decision on the Amended Indictment.

31. For these reasons, the Appeals Chamber finds that the Trial Chamber committed a discernible error in concluding that paragraph 9 of the Amended Indictment was not unduly vague.

(b) Paragraph 10 of the Amended Indictment

32. Uwinkindi submits that the Trial Chamber ignored the fact that paragraph 10 of the Amended Indictment does not provide details as to the particular acts or course of conduct on his part which form the basis of the allegation that he instigated the attack in Rwankeri *cellule*.<sup>79</sup> In his view, the Trial Chamber's reliance on the "sheer scale" argument failed to acknowledge that his complaint related to the lack of information regarding how he instigated the attack, rather than information concerning the identity of victims or the dates on which the alleged crimes were committed.<sup>80</sup>

33. The Prosecution responds that paragraph 10 of the Amended Indictment notifies Uwinkindi that his alleged instigation took place on 8 April 1994 in Rwankeri *cellule*.<sup>81</sup> It contends that the means by which Uwinkindi's "order" was transmitted is also identified: "by the furtherance of the JCE".<sup>82</sup> Moreover, in the Prosecution's view, the individuals to whom this "order" was conveyed are identified by their actions on the date and at the place pleaded.<sup>83</sup> The Prosecution further submits that additional details supporting the charge in paragraph 10 of the Amended Indictment are contained in a witness statement that was disclosed to the Defence.<sup>84</sup> It asserts that it proposed amending the Amended Indictment to incorporate this material<sup>85</sup> and that "[i]n light of these pleadings and clarifications, the Trial Chamber properly denied the [...] [Preliminary] Motion."<sup>86</sup>

<sup>79</sup> Interlocutory Appeal, para. 13.

<sup>80</sup> Interlocutory Appeal, para. 15.

<sup>81</sup> Response, para. 23.

<sup>82</sup> Response, para. 23.

<sup>83</sup> Response, para. 23.

<sup>84</sup> Response, para. 24. In the Response to the Preliminary Motion, the Prosecution identified the written statement as that of Prosecution Witness CCZ. See Response to the Preliminary Motion, fn. 14.

<sup>85</sup> Response, para. 25. In the Response to the Preliminary Motion, the Prosecution suggested amending paragraph 10 of the Amended Indictment as follows: "On the night of 8 April 1994, near Kayenzi hill, Jean UWINKINDI spoke and stated in Kinyarwanda: "*Nimwice Baliya Batutsi, nimugaruka ndabahemba*"[, m]eaning "*Kill these Tutsis and I shall reward you later*". He said this to SEMANYENZI, KAYINAMURA, members of the *Interahamwe* militia, among other members of the joint criminal enterprise who were present and are presently unknown to the Prosecutor. Soon after these words, armed assailants acting at the instigation of Jean UWINKINDI, in furtherance of the joint criminal enterprise, attacked Tutsis at Rwankeri *cellule* setting their houses on fire. During this attack, Deo NTAGANZWA and Jean Bosco MUNYANZIZA killed Paul KAMANZI, a wealthy Tutsi civilian, by hacking him to death." See Response to the Preliminary Motion, para. 17.

<sup>86</sup> Response, para. 26.

34. Uwinkindi replies that the Prosecution confuses the objective of his alleged instigation (namely the furtherance of the JCE) with the act or course of conduct by which he supposedly instigated.<sup>87</sup> He further contends that it is improper for the Prosecution to simply refer to disclosed material, the details of which should be incorporated in the Amended Indictment as the primary charging instrument.<sup>88</sup>

35. Paragraph 10 of the Amended Indictment reads:

On the night of 8 April 1994 armed assailants acting at the instigation of Jean UWINKINDI in furtherance of the joint criminal enterprise attacked Tutsis at Rwankeri *cellule* setting their houses on fire. During this attack, Deo NTAGANZWA and Jean Bosco MUNYANZIZA killed Paul KAMANZI, a wealthy Tutsi civilian, by hacking him to death.

36. The Appeals Chamber recalls that where it is alleged that the accused planned, instigated, ordered, or aided and abetted in the planning, preparation, or execution of crimes, the Prosecution is required to identify the “particular acts” or the “particular course of conduct” on the part of the accused which forms the basis for the charges in question.<sup>89</sup> When the Prosecution pleads a case of “instigation”, it must precisely describe the instigating acts and the instigated persons or groups of persons.<sup>90</sup>

37. Paragraph 10 of the Amended Indictment does not fulfil these requirements. It merely states that the attack in Rwankeri *cellule* was carried out on Uwinkindi’s instigation without providing any details about when, where, and by what conduct Uwinkindi instigated this attack. Contrary to the Prosecution’s assertion, paragraph 10 of the Amended Indictment only specifies that the attack following Uwinkindi’s instigation occurred on 8 April 1994, not the act of instigation itself. Moreover, the Appeals Chamber considers that the Prosecution’s contention, that “the furtherance of the JCE” conveys by what means Uwinkindi instigated crimes, confuses the objective of his alleged instigation with the specific act or course of conduct that needed to be pleaded.

38. Apart from the broad category “armed assailants”, paragraph 10 of the Amended Indictment also does not specify to whom Uwinkindi’s instigation was directed. Furthermore, it does not indicate whether the alleged perpetrators of the killing of Paul Kamanzi were among those instigated by Uwinkindi. This manner of pleading does not inform Uwinkindi of the exact nature of the charges against him.

<sup>87</sup> Reply, para. 5.

<sup>88</sup> Reply, para. 6.

<sup>89</sup> *Renzaho* Appeal Judgement, para. 53; *Karera* Appeal Judgement, para. 292; *Seromba* Appeal Judgement, para. 27; *Ntagerura et al.* Appeal Judgement, para. 25; *Blaškić* Appeal Judgement, para. 213.

<sup>90</sup> *Blaškić* Appeal Judgement, para. 226.

39. The Appeals Chamber rejects the Prosecution's argument that the Trial Chamber properly denied Uwinkindi's Preliminary Motion because additional details are contained in a disclosed witness statement and because the Prosecution suggested that paragraph 10 of the Amended Indictment could be further amended in light of this material. As stated above, the indictment is the primary accusatory instrument.<sup>91</sup> Furthermore, the Appeals Chamber has repeatedly held that the mere service of witness statements or potential exhibits by the Prosecution pursuant to disclosure requirements does not suffice to inform the Defence of material facts that the Prosecution intends to prove at trial.<sup>92</sup>

40. Contrary to the Trial Chamber's findings, these issues do not merely concern evidence which does not need to be pleaded in the Amended Indictment. The matters discussed above go to the heart of the Prosecution's case against Uwinkindi and relate to material facts regarding his role in the alleged crimes.

41. Furthermore, the Trial Chamber abused its discretion in finding that due to "the sheer scale of the alleged atrocities, it would be impracticable to require a greater degree of specificity" in the Amended Indictment.<sup>93</sup> In fact, the Appeals Chamber notes that the Prosecution is in possession of further information contained in the above-mentioned witness statement, which would clarify the charges against Uwinkindi.

42. For these reasons, the Appeals Chamber finds that the Trial Chamber committed a discernible error in concluding that paragraph 10 of the Amended Indictment was not unduly vague.

(c) Paragraph 15 of the Amended Indictment

43. Uwinkindi submits that the Trial Chamber failed to address his complaint that paragraph 15 of the Amended Indictment does not indicate on which mode of participation the Prosecution relies when alleging that he was "often present and/or aware" of forcible removals and killings of Tutsi civilians and did nothing to stop the *Interahamwe*.<sup>94</sup> In Uwinkindi's view, if the Prosecution is alleging that he incurred criminal liability under Article 6(3) of the Statute, it must say so expressly and provide specific details as to the basis of his superior responsibility.<sup>95</sup>

44. The Prosecution does not specifically respond to these challenges but generally suggests that the Trial Chamber reasonably concluded that the Amended Indictment is not vague and that

<sup>91</sup> See *supra*, para. 13.

<sup>92</sup> *Ntakirutimana* Appeal Judgement, para. 27; *Simić* Appeal Judgement, para. 24; *Prosecutor v. Mladen Naletilić and Vinko Martinović*, Case No. IT-98-34-A, Judgement, 3 May 2006, para. 27.

<sup>93</sup> Impugned Decision, para. 12.

<sup>94</sup> Interlocutory Appeal, para. 16.

paragraph 15 of the Amended Indictment is in compliance with the Trial Chamber's Decision on the Amended Indictment.<sup>96</sup>

45. In reply, Uwinkindi submits that the Prosecution's assertion that paragraph 15 of the Amended Indictment complies with the Decision on the Amended Indictment is irrelevant.<sup>97</sup>

46. Paragraph 15 of the Amended Indictment reads:

Between 7 April and early May 1994, many Tutsi civilians who had sought refuge at Kayenzi Pentecostal Church were regularly removed by [I]nterahamwe acting in furtherance of the joint criminal enterprise and killed behind the Church at a place called "CND". Jean UWINKINDI was often present and/or aware of these forcible removals and killings of Tutsi civilian refugees and did nothing to stop the [I]nterahamwe.

47. Uwinkindi is not charged with criminal liability under Article 6(3) of the Statute. Therefore, the Amended Indictment need not plead material facts underpinning this form of responsibility.<sup>98</sup>

48. Nevertheless, the Appeals Chamber agrees with Uwinkindi that the assertion in paragraph 15 of the Amended Indictment that he was "often present and/or aware" of crimes committed by *Interahamwe* does not sufficiently indicate on which form of responsibility the Prosecution intends to rely.<sup>99</sup> The Appeals Chamber recalls that the alleged nature of the responsibility of the accused should be stated unambiguously in the indictment and the Prosecution should therefore indicate precisely which form of liability is invoked based on the facts alleged.<sup>100</sup>

49. The Appeals Chamber therefore finds that the Trial Chamber committed a discernible error in concluding that paragraph 15 of the Amended Indictment was not unduly vague.

### **C. Lack of Supporting Material**

50. In his Preliminary Motion, Uwinkindi submitted that certain facts pleaded in paragraphs 3, 12, 14, and 16 of the Amended Indictment concerning the names of perpetrators and victims of attacks were not supported by material disclosed to the Defence under Rule 66(A)(i) of the Rules.<sup>101</sup> Uwinkindi therefore suggested that these allegations should not have been confirmed and requested

<sup>95</sup> Interlocutory Appeal, para. 17.

<sup>96</sup> Response, paras. 14, 22, 27.

<sup>97</sup> Reply, para. 4.

<sup>98</sup> As to the requirements for pleading charges on the basis of Article 6(3) of the Statute, *see, e.g., Renzaho* Appeal Judgement, para. 54. The Appeals Chamber observes that if the Prosecution were to rely on this form of responsibility, this would constitute a new charge, which could be incorporated into the Amended Indictment only by formal amendment pursuant to Rule 50 of the Rules. *See also Renzaho* Appeal Judgement, para. 55.

<sup>99</sup> In addition to participating in a JCE, Uwinkindi is charged with all the forms of individual criminal responsibility provided under Article 6(1) of the Statute. *See* Amended Indictment, second *chapeau* paragraphs under Counts 1 and 2.

<sup>100</sup> *See Blaškić* Appeal Judgement, para. 215.

<sup>101</sup> Preliminary Motion, paras. 32, 33.

that the Trial Chamber order the Prosecution to review or strike the contested paragraphs from the Amended Indictment.<sup>102</sup>

51. The Trial Chamber noted the Prosecution's assertions in its Response to the Preliminary Motion that: (i) most of the relevant supporting material had already been disclosed pursuant to Rule 66(A)(i) of the Rules; (ii) information concerning some victims mentioned in the Amended Indictment which was not yet included in the supporting material would be provided by disclosure of the will-say statement of a potential Prosecution witness; (iii) due to the nature of the relationships between certain witnesses and victims, some of the material sought by the Defence was only disclosed in redacted form, but that this matter would be resolved once the Trial Chamber rendered a decision on the Prosecution's pending motion on witness protection measures; and (iv) some terms, such as "Security Committee", "group of killers", or "Uwinkindi's group" were used interchangeably in the Amended Indictment and the supporting material.<sup>103</sup>

52. The Trial Chamber did not make a specific finding on these issues. In its overall conclusion on the Preliminary Motion, it stated:

Having reviewed the Amended Indictment along with the supporting materials, in light of its Decision [on the Amended Indictment], the Chamber is satisfied that the Prosecution is substantially in compliance with the Chamber's Orders. The Chamber is also of the view that the Accused will not be unduly prejudiced by the maintenance of the Amended Indictment in its current form.<sup>104</sup>

53. On appeal, Uwinkindi submits that the Trial Chamber erred because it merely repeated the parties' arguments without providing a reasoned opinion and making a clear finding.<sup>105</sup> He further suggests that the Prosecution should be ordered to immediately resolve the existing problems with the supporting material.<sup>106</sup> He asserts that there is no reason why the names of perpetrators and victims, who are openly mentioned in paragraphs 12, 14, and 16 of the Amended Indictment, are redacted in the supporting material and that this prevents the Defence from conducting meaningful investigations.<sup>107</sup> Uwinkindi finally contends that the Trial Chamber erroneously accepted the Prosecution's argument that some terms are used interchangeably both in the Amended Indictment and the supporting material.<sup>108</sup>

<sup>102</sup> Preliminary Motion, paras. 32, 34(v).

<sup>103</sup> Impugned Decision, paras. 19, 20. *See also* Response to the Preliminary Motion, paras. 33-42.

<sup>104</sup> Impugned Decision, para. 21.

<sup>105</sup> Interlocutory Appeal, para. 24; Reply, para. 15.

<sup>106</sup> Interlocutory Appeal, paras. 22, 23.

<sup>107</sup> Interlocutory Appeal, para. 26.

<sup>108</sup> Interlocutory Appeal, para. 25.

54. The Prosecution responds that there is no lack of supporting material for key aspects of the Amended Indictment.<sup>109</sup> At the same time, the Prosecution concedes that it could not disclose to the Defence supporting materials “for which it was seeking confidentiality”.<sup>110</sup> It asserts that the Trial Chamber was “reasonable in implicitly agreeing” with the Prosecution that this matter would be resolved at a later stage once the Trial Chamber rendered a decision on the Prosecution’s pending motion on witness protection measures.<sup>111</sup>

55. The Appeals Chamber considers that the Trial Chamber merely restated the Prosecution’s assertions in its Response to the Preliminary Motion without assessing and making a finding on Uwinkindi’s arguments. This constitutes a discernible error invalidating the decision. The Appeals Chamber finds that the Trial Chamber must reassess Uwinkindi’s arguments concerning the lack of supporting material.

#### **D. Further Defects in the Amended Indictment**

56. Since the defects indicated above require the filing of a corrected indictment, the Appeals Chamber considers it appropriate to address additional issues of concern although they were not raised by Uwinkindi.

57. The second *chapeau* paragraph under Counts 1 and 2 of the Amended Indictment implicates Uwinkindi in planning, instigating, ordering, committing, or otherwise aiding and abetting in the preparation or execution of genocide and extermination as a crime against humanity. This enumeration mirrors Article 6(1) of the Statute. The Appeals Chamber recalls that, in order to ensure that an accused is unambiguously informed about the nature of the charges against him, the Prosecution has repeatedly been discouraged from simply restating Article 6(1) of the Statute, unless it intends to rely on all of the forms of individual criminal responsibility contained therein and specifically pleads the material facts relevant to each form.<sup>112</sup> Otherwise, the indictment will be defective.<sup>113</sup> Furthermore, as stated above, the Prosecution is required to identify the “particular acts” or the “particular course of conduct” on the part of the accused which forms the basis for the charges.<sup>114</sup> The Amended Indictment does not fulfil these requirements with respect to every form of individual criminal responsibility listed in the second *chapeau* paragraph under Counts 1 and 2. It is therefore defective in this respect.

<sup>109</sup> Response, para. 43.

<sup>110</sup> Response, para. 42.

<sup>111</sup> Response, para. 40.

<sup>112</sup> *Rukundo* Appeal Judgement, para. 30; *Ntakirutimana* Appeal Judgement, para. 473; *Simić* Appeal Judgement, para. 21; *Blaškić* Appeal Judgement, para. 215.

<sup>113</sup> *Simić* Appeal Judgement, para. 21.

<sup>114</sup> *See supra*, para. 36.

58. Moreover, in the Appeals Chamber's view, the purpose of paragraphs 7 and 8 of the Amended Indictment is unclear. Paragraph 7 of the Amended Indictment alleges that on or about 6 April 1994, Uwinkindi ordered members of his security committee to set up roadblocks and apprehend Tutsi civilians, who were subsequently killed. According to paragraph 8 of the Amended Indictment, Bernard Gatanazi and Uwinkindi convened a meeting near Kayenzi Pentecostal Church on or about 7 April 1994 in furtherance of the JCE, at which Gatanazi ordered or instigated the killings of Tutsis. Paragraph 8 of the Amended Indictment further alleges that after this meeting, Uwinkindi and Bafakurera ordered or instigated the killing of "all the Tutsis in the woods".

59. The Amended Indictment does not indicate whether this information merely provides "context" to the specific attacks detailed in paragraphs 10 to 16 of the Amended Indictment or could, in and of itself, serve as the basis for Uwinkindi's criminal responsibility. This renders the Amended Indictment impermissibly vague and therefore defective.

## V. DISPOSITION

60. For the foregoing reasons, the Appeals Chamber

**GRANTS** Uwinkindi's Interlocutory Appeal;

**QUASHES** the Impugned Decision; and

**ORDERS** the Trial Chamber to direct the Prosecution to file a corrected indictment in conformity with the Appeals Chamber's findings above.

**REMITTS** the matter concerning the alleged lack of supporting material to the Trial Chamber for reconsideration.

Done in English and French, the English text being authoritative.

Done this 16<sup>th</sup> day of November 2011,  
at The Hague,  
The Netherlands.



[Seal of the Tribunal]

Judge Fausto Pocar  
Presiding