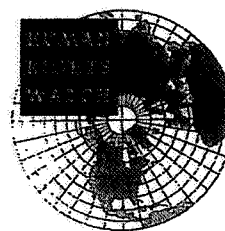


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Burundi: The Gatumba Massacre
War Crimes and Political Agendas
Human Rights Watch Briefing Paper, September 2004

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"There were songs, alleluias, the same as those that we sing in our churches. That's why some still trusted them. Then the shots, the fire. That afternoon I had played soccer with friends. [Now] some of them are dead."

- Gatumba survivor, aged 14

Summary

On August 13, 2004 a force of armed combatants, many of them members of the Forces for National Liberation (Forces pour la Liberation Nationale, FNL), massacred at least 152 Congolese civilians and wounded another 106 at Gatumba refugee camp, near Bujumbura, the capital of Burundi. The FNL is a predominantly Hutu rebel movement known for its hostility to Tutsi and the victims were largely Banyamulenge, a group often categorized with Tutsi. But the massacre was more than just another case of ethnically-targeted slaughter in a region known for such horrors. At the intersection of two faltering peace processes, the attack underlined the continuing political conflicts within both the Democratic Republic of the Congo and Burundi and made them worse. Various contenders for power within these two countries as well as parties to conflicts across national boundaries immediately tried to appropriate the massacre for their own political ends. In so doing they increased the likelihood of armed conflict and the slaughter of still more civilians.

Soldiers of a recently-established United Nations (UN) peacekeeping force were unable to save the civilians because they were told of the attack only when it was over. Soldiers and police of the Burundian armed forces also failed to offer assistance but they were fully aware of the slaughter, which took place within a few hundred yards of their camps.

The highest officials of the Burundian and Rwandan governments and leaders of the Congolese Rally for Democracy-Goma (Rassemblement Congolais pour la Démocratie-Goma, RCD-Goma) quickly asserted that the massacre had been carried out by a large, well-organized force coming from the Congo and combining Congolese Mai Mai, Rwandan rebel combatants ("Interahamwe") and the FNL. Rapidly disseminated by the press, this version became widely known and within two weeks of the attack was

mentioned by the Secretary-General of the United Nations in a report to the Security Council.¹

In the meantime, the FNL accepted responsibility for the attack but asserted that the refugee camp harbored Banyamulenge combatants preparing for a new war on Congo. Less well known in international circles, this version of events also spread widely, through informal channels of communication among FNL supporters and various groups in the Congo. Several civil society groups from apparently from South Kivu produced documents supporting this theory and circulated them by electronic mail.

In months before the massacre, the political transitions in Congo and Burundi were failing to make expected progress and dissatisfied contenders in each country were increasing their demands. Ethnic tensions, so often linked to political struggles, were also rising. In this atmosphere, the horror of Gatumba immediately fed fear and hatred among the Tutsi and related groups while the threats in reaction to the massacre spurred the same emotions among Hutu and groups affiliated with them. After repeated assertions that genocide was imminent—or had actually been committed—Rwandan and Burundian leaders accused the Congolese army and government of involvement in the massacre and threatened war against them.

The Gatumba massacre was a direct attack on civilians in violation of international humanitarian law (the laws of war) for which all those responsible must be fully prosecuted. The Burundian government has issued arrest warrants for two leaders of the FNL, a promising first step that must be followed by the actual arrest and prosecution of the perpetrators.

Human Rights Watch researchers conducted extensive interviews among victims, residents of Gatumba, Burundian military and civilian authorities, and officials of various UN agencies. This report is based on that research.

¹ United Nations Security Council, "First Report of the Secretary-General on the United Nations Operation in Burundi," paragraph 13, S/2004/682, August 25, 2004.

Recommendations

To the government of Burundi

- Ensure a prompt and thorough investigation of the Gatumba massacre and of the failure of Burundian military forces to come to the assistance of the refugees. Make public the results of the inquiry.
- Assist investigators designated by the United Nations Security Council to investigate this case.
- Complete procedures for joining the International Criminal Court (ICC) without requesting the seven-year exemption for war crimes possible under article 124 of the statute of the court.
- Request the ICC prosecutor to investigate the Gatumba massacre in accord with article 12(3) of the ICC statute. Should the ICC not proceed with prosecutions related to the case, ensure that any persons accused of this crime be brought to trial in Burundian courts according to international standards of due process.
- Ensure that all refugee camps are located sufficiently distant from the borders of the refugees' country of origin to ensure their security from cross-border attacks.
- Ensure that refugees are effectively protected twenty-four hours a day.

To the government of the Democratic Republic of Congo

- Ensure prompt completion of a thorough investigation of any participation by Congolese citizens and particularly by any members of the Congolese armed forces in the Gatumba massacre. Ensure that any persons accused of this crime be brought to trial according to international standards of due process.

To the FNL and other armed movements in Burundi and the DRC

- Take all necessary steps to ensure combatants under your control comply with international humanitarian law and hold accountable those who fail to do so.

To the United Nations Security Council:

- Carry out further investigations of the Gatumba massacre to supplement the preliminary inquiry done at your request, either by establishing an international panel of inquiry or by referring the case to another appropriate international mechanism.
- Encourage troop-contributing nations to speed provision of fully staffed and equipped forces to the United Nations Operations in Burundi (ONUB).
- Support fully an effective human rights unit within ONUB and direct this unit to publish prompt and complete reports of its investigations.

To United Nations High Commissioner for Refugees (UNHCR):

- Follow strictly the UNHCR policy of placing refugee camps distant from borders of the country from which refugees have come and use public and diplomatic pressure to move resistant governments towards compliance with this policy.
- Insist that governments fulfill their responsibilities to assure the security of refugees, using any needed public and diplomatic pressure to achieve that end. Insist that governments establish a reliable system of immediately alerting UNHCR personnel of any threat to refugee camps.

To donor governments and governments in the region:

- Insist that states prosecute those responsible for the Gatumba massacre and other grave violations of international human rights and humanitarian law in Burundi, or assist the International Criminal Court or the Burundian government in its prosecutions.

The Context

Inside Burundi

Following nearly ten years of civil war with several rebel movements, the Burundian government had reached agreements with all but one by the start of 2004. The government and the Forces for the Defense of Democracy (Forces pour la défense de la démocratie, FDD), formerly its most powerful challenger, have supposedly been demobilizing their forces and creating a new integrated army since early in the year. But neither the government army nor the FDD has moved its troops into designated sites and their forces remain deployed throughout the country in an informal de facto collaboration against the FNL, the main rebel movement to remain outside the peace process.² The political wing of the FDD, the National Council for the Defense of Democracy (Conseil national pour la défense de la démocratie, CNDD)³ entered government, but the uneasy coalition of parties meant to guide Burundi through a transition set to end October 31, 2004, has failed to adopt the necessary legislative measures, including a constitution and electoral law. Faced with this lack of progress on the military and political fronts, various international actors initiated a series of talks but progress continues to be slow.⁴ In late June and July, a number of predominantly Tutsi parties demanded revision of a previously arranged division of power on an ethnic basis. In early August eleven of them were still unable to agree on this issue with the predominantly Hutu parties.⁵

In mid-July 2004 Special Representative of the Secretary-General Carolyn McAskie sought to broker negotiations between the government and the FNL. She also helped work out an agreement between the FNL and the FDD, locked in an increasingly bitter conflict over control of the contested province of Bujumbura rural.⁶ But that agreement soon collapsed in the face of continued combat.

Since 2003 the FNL had been steadily losing political strength to the FDD, which had been profiting from its inclusion in the government. Since June the FNL had also been under increasing diplomatic pressure after the regional heads of state imposed a travel

² See Human Rights Watch, "Suffering in Silence: Civilians in Continuing Combat in Bujumbura Rural, Briefing Paper, June 2004.

³ In August 2004, the party held a congress and adopted the official name CNDD-FDD-Inama y'Abanyagihugu.

⁴ Human Rights Watch, "Burundi: Civilians Pay the Price of a Faltering Peace Process," February 2003.

⁵ United Nations Security Council, "First report of the Secretary-General," paragraphs 2-6.

⁶ Human Rights Watch interviews, Bujumbura, 17 and 25 August 2004.

ban on FNL leaders and threatened to ask the African Union for sanctions if the movement did not accept negotiations within three months. Militarily, too, FNL forces suffered increasingly severe attacks by Burundian army and FDD combatants in late July and early August, apparently reflecting growing determination by some military leaders to defeat the FNL militarily.⁷ In these attacks there were a number of civilian casualties and some 30,000 civilians forced to flee their homes. An attack on a major FNL base in the Rukoko forest in the days just before the Gatumba massacre reportedly killed several FNL officers.

Despite all these setbacks, FNL forces showed new strength towards the end of July. They launched attacks in former strongholds like Kabezi, Bujumbura rural province, but also in other areas like Ngozi province. They issued a pamphlet warning people in Bujumbura rural province that they would be punished if they supported the FDD.⁸ Then at the end of July and in early August, FNL forces reportedly were responsible for two sets of killings near Gatumba. Three persons were killed in each case, supposedly for cooperating either with the FDD or with the government. In one case, the killers supposedly left behind a message explaining that they had killed the victim because he had denounced them to authorities.⁹ The FNL later told ONUB that it would attack "pro-Government civilians" as long as civilians in Bujumbura rural, its own base of power, continued to suffer from government-led military operations.¹⁰

The increase in FNL activity may result at least partly from support by one hundred to two hundred Rwandan rebel combatants who arrived from the Congo in two groups, one in April and another in early July.¹¹ Loosely called "Interahamwe," some of these Rwandan combatants may have participated in the 1994 genocide in Rwanda as members of the Interahamwe militia or of the Rwandan Armed Forces (Forces Armées Rwandaises, FAR) before fleeing to Congo. Other Rwandans opposed to the current Rwandan government joined their ranks after 1994; although these recruits played no role in the genocide, they are usually labeled "Interahamwe," a name that inevitably carries association with the genocide. Some Rwandan rebels accept the leadership of a political movement known as the Democratic Forces for the Liberation of Rwanda (Force Démocratiques pour la Libération du Rwanda, FDLR) but others operate

⁷ United Nations Security Council, "First report of the Secretary-General," paragraphs 10-12, 32-33.

⁸ Human Rights Watch interview, Bujumbura, August 17, 2004.

⁹ Human Rights Watch interview, Gatumba, August 20, 2004.

¹⁰ United Nations Security Council, "First report of the Secretary-General," paragraph 33.

¹¹ Human Rights Watch interviews, Bujumbura, August 17 and 21, 2004. A previous alliance between FNL and Rwandan combatants between 1997 and 2000 ended abruptly when the FNL murdered scores of their Rwandan fellow-combatants. Human Rights Watch, "Burundi: Neglecting Justice in Making Peace," Volume 12, Number 2 (A), April 2000.

autonomously. It is unclear whether those who have moved to Burundi since April 2004 represent independent groups or those linked to the FDLR.

The movement of Rwandan rebel combatants into Burundi appears to be one facet of growing integration between rebel forces based in Congo and those in Burundi. The FNL, which has for years sporadically operated from bases in Congo, has reportedly shown interest in reinforcing these bases.¹²

Inside the Democratic Republic of the Congo

Like Burundi, the transitional government in Congo is mired in continuing power rivalries that have stalled the peace process and kept the uneasy coalition of former rebel forces from being an effective national government. Elements of the former rebel movement RCD-Goma have offered some of the greatest resistance to the transitional process. They sought to retain their influence over North and South Kivu and they encouraged or permitted military officers from within their own ranks to challenge central government control.

Closely affiliated with Rwanda, RCD-Goma has in the past often championed the cause of the Banyamulenge, a Kinyarwanda-speaking people who live largely in the high plateaus of South Kivu. The Banyamulenge association with Rwanda has drawn upon them the hostility of many other Congolese, particularly in the wake of the two wars that Rwanda waged on Congolese soil that cost an estimated three million civilian lives. Even after the Rwandan troops largely withdrew in 2002, other Congolese continued to see the Banyamulenge as more "Rwandan" than "Congolese" in their loyalties.¹³

As the transitional government sought to assert its control over the Kivus in early 2004, soldiers still loyal to RCD-Goma engaged in skirmishes with other troops of the national army. In an atmosphere of growing tension in late May, national army soldiers participated in ethnically-based attacks against Banyamulenge civilians in Bukavu, the major town of South Kivu. Two officers associated with RCD-Goma, Brigadier General Laurent Nkunda (a Tutsi from North Kivu) and Colonel Jules Mutebutsi (one of the Banyamulenge), led several thousand troops in attacking Bukavu and occupying the town for a week, displacing General Mbuza Mabe, the regional commander of the national army. Nkunda and others charged that the killings of Banyamulenge in Bukavu

¹² Leonard Nyangoma, said to be leading a small Burundian rebel movement, reportedly has also sought bases in Congo. Human Rights Watch interview, Bujumbura, August 17, 2004.

¹³ Some Banyamulenge RCD-Goma soldiers under Commander Patrick Masunzu rejected the Rwandan link in 2002 causing a continuing split in the Banyamulenge community.

constituted genocide. During Nkunda's march toward Bukavu and the subsequent occupation of the town, his troops killed several civilians, raped scores of women and girls, and systematically looted property.¹⁴

Troops of the UN peace-keeping force in the Congo, United Nations Mission in the Congo, (MONUC), helped negotiate the withdrawal of the insurgent forces from Bukavu and escorted Colonel Mutebutsi to the Rwanda border while Nkunda withdrew with his men towards Minova, north of Bukavu.

Thousands of Congolese people from Bukavu, Uvira, and the Rusizi plain, including many associated with RCD-Goma, fled to Rwanda and Burundi to escape the violence. Banyamulenge in particular fled because they feared reprisals might be directed against their ethnic group for the uprising led by Mutebutsi and Nkunda. It was some of these Banyamulenge and several dozen people from other ethnic groups, particularly those from Uvira and its environs, who were sheltered in the Gatumba refugee camp.

With the defeat of the Mutebutsi-Nkunda effort, the effective control of RCD-Goma shrank back to the southern parts of North Kivu¹⁵ and military officers and administrators tied to the national government replaced RCD-Goma partisans in positions of authority in South Kivu, except around Minova. The transitional government deployed thousands of troops to the eastern region, saying it feared the possibility of another Rwandan invasion, echoing the concern of local groups and the press who launched increasingly sharp verbal attacks on Banyamulenge and Congolese Tutsi. Those groups responded in turn with charges that other Congolese harbored prejudice and potentially genocidal intentions against them. Rwanda itself also threatened that it would return to the Congo if its own security concerns and those of the Kinyarwanda-speaking populations were not addressed by the national government.

In attempting to solidify its hold on the east, the transitional government sought to win and keep the loyalty of Mai Mai, members of locally based groups of combatants originally organized to protect their communities against the violence that had engulfed eastern Congo since 1996. It has succeeded in integrating some Mai Mai leaders into the government army and administration, but others remain relatively autonomous.¹⁶

¹⁴ See Human Rights watch Briefing Paper, *DR Congo: War Crimes in Bukavu*, June 2004 at <http://hrw.org/english/docs/2004/06/11/congo8803.htm>.

¹⁵ Despite numerous efforts, RCD-Goma has never controlled the "Grand Nord," the northern part of North Kivu, including Beni and Butembo.

¹⁶ Human Rights Watch interview, Bujumbura August 17, 2004; by telephone from London, August 20, 2004.

In the past the Mai Mai have sometimes fought against, sometimes on the same side as Rwandan rebel groups ("Interahamwe"), depending on the situation.

Asked after the Gatumba massacre about the relationship between Mai Mai and Rwandan rebels, one Mai Mai leader insisted there was no long-term link either between Mai Mai and Rwandan rebel groups or between Mai Mai and FNL but he did not rule out the possibility of occasional participation by some "isolated elements" of Mai Mai in joint operations for immediate benefit.¹⁷

Gatumba Refugee Camp

The Site

The small commercial town of Gatumba is in Mutimbuzi commune, province of Bujumbura rural, about ten miles northwest of Bujumbura on the main road towards the Congolese town of Uvira. The border crossing is only a little more than a mile or so further west, an otherwise unremarkable point in a vast expanse of marshland and grassy plains. To the north lies the Rukoko forest and to the south the Rusizi River and Lake Tanganyika. Beyond the edge of Gatumba, there are few houses and a scattering of roughly-constructed enclosures for cattle where young cattle herders spend the night.

At the western edge of town is the zone office and beyond that a military camp that once housed a significant number of troops. In mid-August, many of the soldiers were deployed elsewhere in Bujumbura rural, where skirmishes continue between the FNL and government and FDD forces. According to the camp commander, about one hundred soldiers were at the camp on the night of the attack. Across a small dirt road from the military camp is the camp for national policemen where several dozen policemen were on duty there on August 13. Both camps are permanent, regular facilities of the Burundian armed forces.

The refugee camp is situated less than a mile from the military and police camps, just beyond the edge of town on the main road towards the border. Located next to the road, the camp included one cluster of large tents, fourteen of them green, one white, on one side of a field. Some one hundred yards away and facing them, was another group of twenty-four large tents, all white. Each tent was a dormitory housing several families. Between the tents, on the fourth side of the square and facing the road, was a row of

¹⁷ Human Rights Watch interview, Bujumbura, August 17, 2004.

latrines and showers. Beyond them was a football field and a marsh stretching to Congo, dry enough to cross easily at this time of year.

Camp Population

On the side of the field with white tents were housed about 500 Burundians, repatriated to Burundi in previous months after a period of exile in the Congo. On the other side in recently built green tents were housed most of the Congolese refugees who had arrived beginning in early June. But because of shortage of space on the Congolese side of the camp, a few Congolese families were in tents on the Burundian side.

On the night of August 13, some 825 Congolese refugees were present in the camp, virtually all of them Banyamulenge except for a couple of dozen people from the Bembe, Vira, or Fulero ethnic groups. Those from other groups had fled the Congo because they had been politically associated with RCD-Goma or personally associated with the Banyamulenge.

A number of the Banyamulenge men had held posts in the provincial administration or in the RCD-Goma before fleeing Congo and they continued to be active in directing community life at the camp. Among them were at least two identified with intelligence service in Uvira. These former administrators and political leaders organized meetings at the camp frequently enough to attract the attention of Burundians living in the surrounding community.¹⁸ Many Banyamulenge en route to the Congo stopped at the camp and camp residents, many of them young men claiming to be students, also crossed the border with some regularity.

Some Congolese authorities in South Kivu, some of them Mai Mai, believed that the Banyamulenge in Rwanda and Burundi, including at Gatumba, were preparing to attack the Congo to try to restore RCD-Goma control. They talked of reports that some of the soldiers who had fled with Mutebutsi had not accompanied him to Rwanda but were in Burundi, that Mutebutsi was recruiting Banyamulenge in the Burundian refugee camps to join his force, and that there were arms being stored in Burundian refugee camps.¹⁹ On at least one occasion a group of young men identified as soldiers who had fled with Mutebutsi to Rwanda came through the Gatumba camp.²⁰ Because of these suspicions,

¹⁸ Human Rights Watch interviews, Bujumbura, August 17 and 18, 2004.

¹⁹ Human Rights Watch interviews, Bujumbura, August 17, 2004; by telephone September 1, 2004.

²⁰ Human Rights Watch interviews, August 19, 2004. Some of Mutebutsi combatants were arrested in Cibitoke, Burundi, in late June. Agence Burundaise de Presse, "Une quinzaine de combattants Banyamulenge emprisonnés à Cibitoke", June 24, 2004.

Congolese authorities twice refused to allow young Banyamulenge from Gatumba to enter the Congo.²¹

According to the commander of the military camp of the Burundian army in Gatumba, such fears of preparations for a Banyamulenge attack on Congo were not justified. Burundian troops had searched the refugees when they arrived and had found no arms.²² In addition, repatriated Burundians living in close proximity to the Banyamulenge at the camp reported no military activity there.

RCD-Goma representatives with important posts in the Congolese government came to Gatumba or spoke with a delegation from Gatumba at least four times between June and mid-August. The last such visit was by Azarias Ruberwa, one of four vice-presidents of the Congo and president of RCD-Goma who met with people from Gatumba in Bujumbura a day or two before the attack. Some of these high-ranking officials encouraged camp residents to return to the Congo and promised generous assistance in getting re-established at home, but others insisted that the time was not yet right and that the refugees must remain in the Gatumba camp. Leaders who discouraged refugees from returning home may have hoped to use this and other refugee camps as bases in which to rebuild the strength of RCD-Goma—whether political or military.²³

Attempts to Move the Congolese Refugees

The refugees were under the care of the UN High Commissioner for Refugees (UNHCR), which managed the camp at Gatumba and three others for refugees from Congo. It is UNHCR policy, confirmed by various Conclusions²⁴ of its Executive Committee, to place refugee camps a “reasonable distance” from the border of the country from which they have fled.²⁵ After the arrival of the refugees at Gatumba in

²¹ Human Rights Watch interviews, Bujumbura, August 17 and 26; Gatumba, August 20, 2004.

²² Human Rights Watch interview, Gatumba, August 20, 2004.

²³ Human Rights Watch interviews, Bujumbura, August 19, 21, and 22, 2004.

²⁴ The Conclusions of the Executive Committee of the High Commissioner's Program (“ExCom”) are intended to guide States in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. Although not legally binding, the Conclusions are adopted by consensus, are broadly representative of the views of the international community, and carry persuasive authority.

²⁵ UNHCR's Executive Committee has repeatedly condemned military attacks on refugee camps, called upon host States to do all within their capacity to ensure that the civilian and humanitarian character of camps is maintained, and set out various principles in this respect, including the principle that camps are located at a reasonable distance from the border. These Conclusions also call upon UNHCR to make every effort to promote conditions that ensure the safety of refugees, including arranging with States to ensure that refugee camps are located at a reasonable distance from the frontier of the country of origin. See in particular ExCom Conclusion 48 (XXXVIII) of 1987, ExCom Conclusion 84 (XLVIII) of 1997, ExCom Conclusion 87(L) of 1999 and ExCom Conclusion 94 (LIII) of 2002.

June 2004, UNHCR made repeated efforts to arrange for them to move to a site in Muyinga province, a considerable distance from the Congo frontier, and a place where several hundred Banyamulenge refugees from previous crises were already installed. The Burundian government, responsible for the choice of camp sites and for the protection of the refugees on their territory²⁶, agreed to this but did nothing to oblige the refugees to move and the refugees themselves refused to go. They preferred to remain near the border where they could more easily return home for visits and they objected to the climate and the supposed insecurity and prevalence of disease at the Muyinga site. In addition, some wealthier and more powerful members of the Banyamulenge community who did not live in the camp but in houses in Gatumba and Bujumbura were registered as camp residents and continued to receive food and other assistance. This practice, along with attempts to inflate the number of persons needing aid, is not uncommon in refugee camps. It is not clear if those involved were exploiting the system for purely personal gain or if they were directing the resources to some other purpose. But in any case, these refugee leaders, like some of the official visitors from the Congo, exerted considerable pressure on the refugees not to move. In July, UNHCR told camp residents that food being distributed at that time was the last to be given to them at Gatumba and that future aid would be delivered only at the site in Muyinga. Camp residents found other sources of supply, either from in Burundi or from the Congo, and most continued to say they would not move from Gatumba.²⁷

UNHCR requested the government to provide protection for the camp and paid the costs of this protection. Ten policemen were supposed to be assigned to this duty, but on the night of August 13, there were only six present, three at one side of the camp and three at the other. They had no means of communication with the police camp or with their commanding officer. Gatumba also lacked a camp administrator, leaving the camp under the supervision of local administrative officials. In other camps UNHCR had provided handheld radio sets to the guards and had paid for the services of a camp administrator but these measures were not taken at Gatumba because the camp was meant only for transit and was in the process of being closed down.²⁸ Most members of the camp committee, refugees themselves, and local administrative and military officials,

²⁶ ExCom Conclusion 94 (LIII) of 2002 acknowledges in paragraph (a) that "host States have the primary responsibility to ensure the civilian and humanitarian character of asylum by, inter alia, making all efforts to locate refugee camps and settlements at a reasonable distance from the border, maintaining law and order, ..." This Conclusion further recommends to host States, in paragraph c(iv), that "refugee camps and settlements should benefit from adequate security arrangements to deter infiltration by armed elements and strengthen law and order."

²⁷ Human Rights Watch interviews, Bujumbura, August 21 and 22, 2004.

²⁸ Human Rights Watch interviews, Bujumbura, August 24 and 26, 2004.

however, had cellular telephones and had the telephone numbers necessary to contact UNHCR staff.²⁹

The Attack

In the late afternoon of August 13, local residents of Gatumba noticed a few unfamiliar men in military uniform in town. Some of them, speaking Swahili, asked local children to bring them water.³⁰ A UN staff person saw men in military uniform near the camp and asked them who they were. They answered that they were there to provide security to the camp and he did not insist further. In the early evening, boys from the camp who were playing soccer on the field behind the camp saw another small group of men loitering nearby, as did a woman who went to take a shower an hour or two later.³¹

But none of these incidents was remarkable enough to cause any real concern and the refugees retired for the night as usual. Most were asleep by ten o'clock. One young woman was still awake, nursing her month-old baby.³² Cattle herders in an enclosure immediately next to the green tents and others across the road were also settling in for the night.³³ The commander of the military camp had shared a drink with friends in town and had just returned to the military camp while other town residents were still in one of the several small bars talking and drinking. One local official was watching the Olympic Games on television with neighbors.³⁴

The attackers came across the marsh from the direction of the border. At least one witness actually saw some of them cross the border; other attackers apparently joined the group on the Burundi side of the frontier.³⁵ One of the attackers fired an initial shot at a distance, perhaps as a signal to others in their group. Then they moved towards the refugee camp, playing drums, ringing bells, blowing whistles, and singing religious songs in Kirundi. At least two local residents heard them sing, "God will show us how to get to you and where to find you."³⁶ One other heard shouts of "Ingabo Z'Imana," "[We

²⁹ Human Rights Watch interview Bujumbura, by telephone, August 30, 2004.

³⁰ Human Rights Watch interview, Bujumbura, August 18, 2004.

³¹ Human Rights Watch interviews, Bujumbura, August 19, 2004; by telephone from London, August 20, 2004.

³² Human Rights Watch interview, Bujumbura, August 24, 2004.

³³ Human Rights Watch interviews, Gatumba, August 20 and 22, 2004.

³⁴ Human Rights Watch interviews, Gatumba, August 20, 2004.

³⁵ Human Rights Watch interviews, Bujumbura, August 24 and 26, 2004.

³⁶ Human Rights Watch interviews, Bujumbura August 19 and Gatumba, August 22, 2004.

are] the army of God.” Many reported hearing attackers sing choruses of “Alleluia” and “Amen.”³⁷

Most of the attackers wore military uniforms, either camouflage or solid green, but a few were in civilian dress. Most carried individual firearms but they also had at least one heavy weapon.³⁸ A number of the combatants were child soldiers. According to a survivor of the massacre, some attackers were so small that the butts of the weapons they were carrying dragged on the ground.³⁹ There were women in the group, encouraging the others by their songs and shouts, and ready to assist in carrying away the loot.⁴⁰

When the policemen heard the songs and shouts, they began to fire at the attackers who returned their fire. When the policemen exhausted their ammunition, they fled, either to hide nearby or to report to their commanding officer at the police camp.⁴¹ Stopping some fifty yards from the tents, the attackers raked the tents with fire, mostly from small-arms. They had at least one heavy arm, however, “so loud that it made its own echo,” said one witness.⁴² A Burundian who lived some distance down the road from the camp said spoke of detonations of grenades that “made the roof shake.”⁴³

Even in the midst of the noise and confusion of the attack some refugees did not immediately understand the danger. Some believed the attackers were bandits coming to steal the cows stabled nearby. Others believed those singing the religious songs had come to save them especially since some attackers were shouting “Come, come, we’re going to save you”⁴⁴ Anyone who stopped out the entry of a tent was immediately gunned down, as was one father who sought to save his two children by flight.⁴⁵ The attackers, usually only two or three at a time, ripped open the tent flaps and slit the sides of the tent. Often they stayed at the entrance to the tent and either ordered people to come out or just began shooting into the tent. They then threw or shot incendiary grenades that caused the tents to catch fire.

³⁷ Human Rights Watch interviews, Gatumba, August 18, 2004.

³⁸ Human Rights Watch interview, Gatumba, August 22, 2004.

³⁹ Human Rights Watch interviews, Bujumbura, August 18, 2004.

⁴⁰ Human Rights Watch interviews, Gatumba, August 18, 2004 and Bujumbura, August 19, 2004..

⁴¹ Human Rights Watch interview, Bujumbura, August 21, 2004.

⁴² Human Rights Watch interview, Gatumba, August 22, 2004.

⁴³ Human Rights Watch interview, Bujumbura, August 18, 2004.

⁴⁴ Human Rights Watch interviews, Gatumba and Bujumbura, August 18, 2004.

⁴⁵ Human Rights Watch interview, Bujumbura, August 18, 2004.

Most victims died by weapons fire or by being burned to death. Fifty-one of the corpses of adults and fifteen of children had been burned.⁴⁶ One survivor reported seeing an attacker stab a woman to death, probably with a bayonet, and several of the dead had received blows from machetes.⁴⁷ But according to a survey of statistics collected at hospitals treating the wounded, only one person who had been struck with a machete; all other injured persons suffered wounds from gunfire, explosion, or burns.⁴⁸ These attackers were men “experienced in killing,” as one observer remarked.⁴⁹

The attackers began at either end of the group of tents housing the refugees, burning eight of them completely and burning three partially and leaving intact those in the center of the row. About an hour after their arrival the attackers left, heading back in the direction from which they had come. They carried away loot from the camp, particularly valuable items like money, radios, and clothing, but they did not stop to take cattle from the nearby enclosures. As they made their way across the plain in the direction of the border, they again sang and made music, a sound local residents followed until it died away in the distance.⁵⁰

Of the just over 800 refugees, 152 were killed, all Banyamulenge except for fourteen Bembe people.⁵¹ One hundred and six were wounded. Most victims were women and children. Early the next morning a Human Rights Watch researcher went to the site. She found government and international officials preoccupied with determining the cause and extent of the disaster. Ignored by all of them, a child three or four years old stood alone crying in front of a still smouldering tent.

The Protected Burundians

The attackers harmed only Banyamulenge or others sheltered in tents with them. They did not attack any of the Burundian repatriated persons nor any Banyamulenge fortunate enough to be housed on the Burundian side of the camp. According to witnesses, the attackers even posted men at the entry to these tents to caution the persons inside not to come out.⁵² One of the Banyamulenge who nonetheless came out the back of one of these tents said he was set upon by attackers, one of whom told the others to shoot him.

⁴⁶ Human Rights Watch interview, Bujumbura, August 21, 2004, Gatumba, August 22, 2004.

⁴⁷ Human Rights Watch interviews, Bujumbura, August 19 and 24, 2004.

⁴⁸ Human Rights Watch interview, Bujumbura, August 21, 2004.

⁴⁹ Human Rights Watch interview, Bujumbura, August 20, 2004.

⁵⁰ Human Rights Watch interview, Gatumba, August 22, 2004.

⁵¹ Human Rights Watch interview, Bujumbura, August 21, 2004.

⁵² Human Rights Watch interview, Gatumba, August 18, 2004.

Another in the group stopped them, saying, "He came from the tents of our brothers."⁵³ Another witness reported hearing an attacker say, "Leave those [people] alone, they are your brothers."⁵⁴ The young mother who was nursing her baby when the attack began, a Bembe, was in a tent on the Banyamulenge side of the camp. She was shot in the foot while still in the tent and tried to get out at the back. As she did, she spoke some phrases in Kibembe to comfort her baby or to try to locate another woman. She said that a passing attacker heard her and asked in Kibembe if she were Bembe. When she responded yes, he helped her to get away, carrying her baby and taking her across the paved road to hide in a bush on the other side. There he asked her if there were other Bembe in the camp and remarked that "they", that is, the attackers, believed that there were only Rwandans and Burundians in the camp. Among some Congolese, it is common to refer to Banyamulenge as "Rwandans." She then asked him if they were going to kill everyone except the Burundians. According to her, he answered, "Our comrades told us not to kill on the side of the camp with the Burundians."⁵⁵

Some of the repatriated Burundians present in the camp told a local official that the attackers had assured them that they would not be harmed. Others told some UN staff that they were not afraid because they knew in advance what was going to happen. They refused to explain further what they had meant: whether they simply had a general sense that there would be an attack, whether they knew that an attack would come that evening, or whether they knew that in any attack they would not be targeted. Some Burundians resident in Gatumba also suggested that they expected an attack but without giving any reason why.⁵⁶

The morning following the attack, most repatriated Burundians left the camp quickly. Over the next days local residents expressed fear of a reprisal attack by unknown perpetrators and some even took to spending the night in Bujumbura instead of in their own homes in Gatumba. Whether the repatriated Burundians from the camp shared this general fear or if they had a more specific reason to expect reprisals, many scattered to other places. The government established a new site for them, separate from that assigned to the surviving Banyamulenge, but there were few repatriated Burundians left in the camp to take up residence there.⁵⁷

⁵³ Human Rights Watch interview, Gatumba, August 17, 2004.

⁵⁴ Human Rights Watch interview, Gatumba, August 18, 2004.

⁵⁵ Human Rights Watch interviews, Bujumbura, August 21 and August 24, 2004.

⁵⁶ Human Rights Watch interview, Bujumbura, August 21, 2004.

⁵⁷ Human Rights Watch interviews, Gatumba, August 20 and Bujumbura, August 17 and 21, 2004.

Attack on the Military Camp and the Police Camp

The Burundian government has responsibility for protecting refugees on its territory, a responsibility it recognized by posting policemen as guards at the refugee camp. Yet the one hundred soldiers and several dozen policemen in the immediately adjacent camps did nothing to stop the slaughter of the refugees. Commanders of the military and police camps said they could not help the refugees because they were pinned down by heavy attacks on their own camps.⁵⁸ Soldiers and police rolled out in their trucks only after midnight, when the attackers had left the site on foot by paths overland. In contrast to the 258 refugees dead and wounded, there were no dead or injured soldiers or police nor did the Burundian armed forces inflict any casualties or capture any combatants from the attacking force.⁵⁹

Local residents, including some in the immediate vicinity of the military and police camps, knew immediately that the refugees had been attacked. One described how they heard the noise of weapons and even the shouts of the attackers and the cries of the victims, which carried clearly through the night air. They saw the tracer bullets against the night sky and soon after, the flames and smoke from the burning tents.⁶⁰ Administrative officials from the most local through the provincial governor knew that the refugees were being attacked and exchanged information with each other and with the commander of the police camp during the hour that the killing continued.⁶¹ The commander of the police camp said that he understood “very quickly” that the refugees were being attacked. He too heard the cries and shouts and saw the tents burning.⁶²

In contrast to others, the commander of the military camp—who had the larger number of troops—asserts that he did not know the refugee camp was attacked until some thirty minutes into the slaughter when he was called by one of the Banyamulenge leaders, who was himself not in the camp but had heard of the attack from others.⁶³ Given that the military commander was within a few hundred yards of many others who knew that

⁵⁸ Human Rights Watch interviews, Gatumba, August 20 and 26, 2004.

⁵⁹ Human Rights Watch interviews, Bujumbura, August 17 and 18, and Gatumba, August 22, 2004.

⁶⁰ Human Rights Watch interviews, Bujumbura, August 18; Gatumba, August 20, 2004.

⁶¹ Human Rights Watch interviews, Gatumba, August 20, 2004; by telephone August 23, 2004.

⁶² Human Rights Watch interview, Gatumba, August 26, 2004.

⁶³ Human Rights Watch interview, infantry camp at Gatumba, August 20, 2004. The camp commander did not introduce himself by name but from other sources, Human Rights Watch researchers learned that he is Major Budigoma. He is apparently the same officer who was charged with various crimes in connection with the massacre of 174 civilians at Itaba in 2002. After a court martial in early 2003, he was found guilty of having failed to report civilian casualties. He was sentenced to four months in prison but was released immediately because he had been in detention for five months. He was re-integrated into the army at full rank. Human Rights Watch, “Burundi : Civilians pay the price of a faltering peace process,” February 2003.

refugees were being killed, it is difficult to understand how he could not also have known what was happening.

The military camp commander began an interview with Human Rights Watch researchers by announcing that he would provide them the "official version" of events.⁶⁴ His camp was attacked, he said, at the same time as the refugee camp by a large number of combatants. He estimated the number of those attacking the military camp as one or two companies, meaning more than two hundred combatants. At one point he suggested that the attackers had surrounded the military camp, which occupies a vast expanse of flat terrain. He later said that combatants with one or more heavy weapons were concentrated at the main gate—a single bar across the road—while others with individual arms fired from the back of the camp. Spent ammunition found on the ground at the camp entrance supports the contention that combatants fired from there, but apparently without their bullets reaching any of the camp buildings. There was no visible damage to any buildings from the gunfire.⁶⁵

In an interview with a Human Rights Watch researcher the police commander maintained that his camp had also been attacked although all the information he provided seemed to refer to the military camp rather than to his own. There was no physical sign of an attack having been carried out against the police camp. He maintained that neither he nor the military camp commander had enough men "to force their way through" the attackers.⁶⁶

The military camp commander said that he spoke on the telephone with the police camp commander about the attacks on their respective camps, but not about the attack on the refugees. The military camp commander was also in contact either by radio or by telephone with the commander of another military camp a few miles distant at the airport as well as with general staff headquarters, some fifteen miles away, where his communications with his men were being monitored by the officer on guard. He also had a telephone conversation during the attack with the chief of staff of the army, General Germain Niyoyankana. According to General Niyoyankana, he could hear the sounds of firing over the telephone. The camp commander told him that he heard firing from beyond his camp—meaning presumably from the refugee camp—but that it was impossible for him to leave his own camp and to assemble the number of troops

⁶⁴ Human Rights Watch interview with the camp commander, infantry camp at Gatumba, August 20, 2004.

⁶⁵ Human Rights Watch interviews, Gatumba and Bujumbura, August 20 and 21, 2004.

⁶⁶ Human Rights Watch interview with commander of the police camp, Gatumba, August 26, 2004.

necessary for an “*élément d’intervention*,” that is, a group that could carry out the necessary rescue operation.⁶⁷

In addition to the nearby military position at the airport, the camp commander had two battalions stationed in the Rukoko forest, not far from the area.⁶⁸

The camp commander said he never asked for reinforcements because he felt he was in control of the situation, that is, he was able to keep the combatants from entering the military camp. Neither he nor any of the other officers interviewed offered a satisfactory explanation of why reinforcements were not sent to provide the “*élément d’intervention*” that might have saved lives at the refugee camp.

When the weapons fire ended, soldiers and policemen went to the refugee camp and gathered up the wounded for transport to hospitals in Bujumbura. According to one witness on the scene, they did not pull any living persons from the tents that were still burning; anyone inside had perished by then in the flames.⁶⁹

One observer well-connected to Burundian soldiers suggested that the men at the Gatumba military and police camps—like others in the Burundian armed forces—have been so demoralized by the uncertainties of plans for demobilization and changes in the military system that they lacked the commitment to carry out their duties. The observer suggested further that officers may sometimes have trouble getting men to obey their orders and that this might have been such a case.⁷⁰ If this explanation is correct, it would have been appropriate for charges to have been brought against those failing to observe military discipline; in the three weeks since the slaughter, apparently no such charges have been brought. In addition, this explanation might have relevance for one camp, but seems less likely to apply to all those officers at whatever level of command, who were aware of the attack on the refugee camp and yet did nothing to stop it. Whether they feared for their own safety, cared little about refugees from another country, or had other personal or political reasons for not acting, these officers should be held accountable for their failure to act to provide security for the refugees.

⁶⁷ Human Rights Watch interview with Gen. Germain Niyonyankana, chief of general staff, Burundian armed forces, Bujumbura, August 24, 2004.

⁶⁸ Human Rights Watch interview with the camp commander, Gatumba, August 20, 2004.

⁶⁹ Human Rights Watch interview, Gatumba, August 22, 2004.

⁷⁰ Human Rights Watch interview, Bujumbura, August 20, 2004.

The Perpetrators

FNL responsibility for the attack

The details of the attack show that the FNL was the chief force in the slaughter at Gatumba. Witnesses both in and near the camp agree that the attackers arrived making music and singing religious songs in Kirundi. This has been standard practice for FNL attacks for several years, a practice not found among other Burundian armed groups nor ordinarily among groups in the Congo. Many witnesses said that women accompanied the combatants and carried off looted goods. Several witnesses commented also on the young age of some of the attackers. In the last two years, FNL forces included women and children in many attacks. In addition, the site of the refugee camp at Gatumba lies near the Rukoko forest where the FNL are known to have an important base.⁷¹

A twenty-five-year-old FNL combatant arrested by Burundian authorities on August 19 confessed to participating in the Gatumba attack, saying that he himself killed some of the refugees. The circumstances of his arrest were peculiar: he had supposedly been stopped by a group of young men in charge of security in the neighborhood of Ngagara, a very heavily Tutsi area and presumably not a place where a FNL combatant would feel at ease. The security detail invited him to share a few beers, after which he confessed his crime to them. Although the circumstances of his arrest raise considerable doubt, some UN investigators found some of his information credible. He was said to have been able to explain, for example, where and how some of the group crossed the border. Authorities have not made public the full extent of his information nor have they revealed where he is being detained.⁷²

The FNL has accepted responsibility for the attack. Pasteur Habimana, spokesman for the movement, was the first to make such a statement. Early on the morning of the attack he called several Burundian journalists to castigate them for having broadcast reports that the perpetrators of the massacre had come from the Congo and were mostly Rwandan rebels and Mai Mai.⁷³

Even after it became increasingly clear that accepting responsibility for the attack might be seriously damaging to his group, Habimana as well as the national secretariat made no retraction. They did elaborate on several reasons why the FNL had made the attack. They referred to the many killings of civilians that had gone unpunished in the years of

⁷¹ Human Rights Watch interviews, Gatumba and Bujumbura, August 17, 18, 19, 20, 21 and 22, 2004.

⁷² Human Rights Watch interviews, Bujumbura, August 20, 21, and 26, 2004.

⁷³ Human Rights Watch interviews, Bujumbura, August 20 and 21, 2004.

conflict in Burundi, seeming to suggest that attacking the Banyamulenge was a justifiable response to these previous killings. Habimana also claimed that the FNL force had attacked the military and police camps and had pursued soldiers and police who fled from their camps to the refugee camp. There, said Habimana, Banyamulenge had brought out arms that had been hidden and fired on the FNL. As the days passed, he elaborated this explanation to the point of calling the refugee camp the Banyamulenge general staff headquarters. No evidence supports these claims.⁷⁴

Habimana's declaration that the FNL was responsible for the massacre, improbable though his justifications seem, appears to be correct.

Languages

Information about languages spoken by the attackers cannot by itself identify their ethnicity or nationality, far less their affiliation with any particular group or army. Many persons in the region—particularly those affiliated with armed bands—have lived outside their home regions and at least some of them have mastered the languages of the areas in which they lived. Thousands of Burundians, for example, have lived in parts of Fizi where Kibembe is spoken and some of them speak Kibembe. In addition, many people from Burundi, Congo, and Rwanda speak Swahili, whether they have ever traveled abroad or not.

When testimony about language is put together with other information, however, it can assist in identifying the attackers. All survivors interviewed by Human Rights Watch researchers report having heard attackers speak Kirundi. Burundian witnesses near but not in the camp say the same thing. The songs and bits of phrases reported by many witnesses are all Kirundi.⁷⁵ No other language was cited by witnesses as often or as consistently. This information strengthens the conclusion that FNL forces played the most important role in the attack.

Some survivors say they also heard Kinyarwanda, Swahili, Kifulero, Kibembe, and Lingala but when asked for the exact words they heard, few could provide convincing details. In one exceptional case, the young Mubembe mother mentioned above said that her conversation with an attacker was conducted in Kibembe, but according to a second witness, another attacker at the same tent appeared not to understand Kibembe. The attacker asked the occupants of the tent in Kirundi, "Who are you?" When people

⁷⁴ Human Rights Watch interviews, Bujumbura, August 20 and 21, 2004; FNL Secretariat National aux relations extérieures, COMMUNIQUE PH-FNL 010/08/2004, dated August 30, 2004.

⁷⁵ Human Rights Watch interview, Gatumba, August 22, 2004.

replied in Kibembe, he seemed not to understand their answers and shot into the group.⁷⁶

One survivor who had been a RCD-Goma intelligence agent in Uvira spoke often to press and investigators; he presented several variants of how his life had been spared, but all involved his speaking Kifulero and being understood by attackers who also knew that language. His account became so well known that other survivors who were asked for evidence of languages spoken sometimes cited his experience when they had no specifics of their own to offer.⁷⁷

Numbers

Considering witness testimony, the extent, intensity and duration of the attack, and the well-armed nature of the attackers, it seems likely that fewer than one hundred attackers carried out the massacre of the refugees. As mentioned above, witnesses say that only one or two, sometimes three attackers came to the entry of each tent. The tents were not attacked simultaneously, meaning that some attackers struck in one place before moving on to another during the course of the hour they were there. Nor was the attack of uniform intensity: of the fifteen tents, those at either end of the rows were hardest hit while some tents escaped relatively unscathed. Attackers approached from one direction and did not surround the tents, although the structures occupied a relatively small terrain. Because of this, some people were able to escape from the back of the tents and then to flee to safety in the surrounding bush. The figure of approximately one hundred attackers also accords generally with estimates from Burundians resident in the immediate area.⁷⁸

The combatants who attacked the military camp—and perhaps the police camp—also appear to have been few in number, certainly not one or two companies suggested by the commander of the military camp. It is frequent FNL practice to attack military posts with small groups of five to ten men, who set up a barrage using a great deal of ammunition.

⁷⁶ Human Rights Watch interview, Bujumbura, August 19, 2004.

⁷⁷ The witness has two wives, only one of whom was of the Banyamulenge. One account is that he was spending the night with the non-Banyamulenge wife who was in a tent on the Burundian side of the camp and persuaded attackers that he was not Banyamulenge by speaking Kifulero to them. Human Rights Watch interviews, Gatumba, August 18 and Bujumbura, August 19, 2004.

⁷⁸ Human Rights Watch interview, Bujumbura, August 25, 2004.

Other Perpetrators

If the attackers numbered only a hundred or so, FNL forces could presumably have made up all or almost all of them. Evidence about languages spoken, although not conclusive, suggests there may have been some others present. In addition, witnesses recall attackers having said such phrases as "Our comrades told us not to kill on the side of the camp with the Burundians," words which suggest that the speaker was not himself a Burundian.⁷⁹ Current evidence does not permit further conclusions about the number or ethnic or political affiliation of such persons. Given the presence of Rwandan rebels in Burundi, some of them might have joined with the FNL, but their participation would not necessarily implicate the FDLR. Some Bembe are members of Mai Mai groups, so the presence of at least one speaker of Kibembe might suggest a link to the Mai Mai, but Human Rights Watch researchers found no other indication of Mai Mai involvement.

Both the FDLR and Congolese authorities, including Mai Mai, have denied any participation by troops under their command.⁸⁰

The "official version"

By 2 a.m. on August 14, barely two hours after the end of the attack, both a local journalist and Radio France Internationale had been alerted to the attack. By that time, a Rwandan military officer based in Cyangugu also was informed about the massacre and MONUC officers in Congo (though not their ONUB counterparts in Burundi) learned of it soon after. It appears that by this time Banyamulenge and others associated with them were already telling their contacts that the attackers had come from the Congo and included "Interahamwe."⁸¹

With news of the massacre broadcast on early morning programs on local radio and spread by word of mouth, members of national and international community gathered at the massacre site beginning at 7 a.m. the morning after the attack. There the president of the Banyamulenge community told UN staff many that the attack had been planned in the Congo and showed a pamphlet as proof.

⁷⁹ Human Rights Watch interviews, Bujumbura, August 21 and 24, 2004.

⁸⁰ Agence France Presse, "Massacre de Gatumba : les rebelles rwandais démentent être impliqués," August 16, 2004.

⁸¹ Human Rights Watch interviews, Bujumbura, August 20, 22, and 24, 2004.

The pamphlet and evidence of prior planning

The pamphlet shown that morning warned other Congolese to distance themselves from Banyamulenge by July 29 and called for Congolese to cut ties with Tutsi and Banyamulenge and to unite “to fight our enemy.”⁸² A previously unknown group, the Force de la coordination des patriots et nationalistes révolutionnaires du mouvement congolais des combattants non-violents pour la démocratie (MCCND), affixed its seal to the pamphlet. The pamphlet denounced a supposed Rwando-Ugandan-Burundian coalition intent on Tutsi colonization and complained that Banyamulenge had taken over the land of Congolese and that Rwandans, Ugandans, and Burundians had exploited Congolese mineral resources.

The pamphlet seemed intended to influence Congolese rather than Burundians. It was written in Swahili and French, not in Kirundi. The name of the group claiming authorship and the content of the message also seemed to fit the Congolese situation better than that of Burundi.

Banyamulenge spokesmen sought to connect the pamphlet to Burundi by claiming that the pamphlet had been circulated in the central market of Bujumbura and in the camp itself. But camp residents questioned about the pamphlet said they had never seen it before the attack. Nor had UN personnel in Burundi (ONUB and UNHCR), Gatumba local residents, and Burundian local and military officials seen or heard of this pamphlet before the morning after the attack.⁸³

A second pamphlet circulated in Congo shortly before the attack and was brought to the attention of MONUC, but it was a specific threat against Banyamulenge leader and Vice-President Azarias Ruberwa, warning him not to come to Uvira. A staff member of UNHCR in Burundi heard news of a pamphlet circulating from a MONUC officer on August 12 and asked other staff to inquire about it among refugees at Gatumba on August 13.⁸⁴ At that time, camp residents said that the only pamphlet they knew of was the one threatening Ruberwa.

Although the two pamphlets may be authentic, no evidence has yet been presented linking one or both to the Gatumba massacre.

⁸² Human Rights Watch interview, Bujumbura, August 21, 2004. Human Rights Watch researchers obtained copies of the pamphlet in French and in Swahili.

⁸³ Human Rights Watch interviews, Bujumbura, August 17 and 20, 2004.

⁸⁴ Human Rights Watch interviews, Bujumbura, August 21 and by telephone, August 30, 2004.

Controlling Testimonies

During the course of the morning of August 14, two or three male survivors assumed the role of authoritative sources of information for investigators as well as for the press. One was the RCD-Goma intelligence agent mentioned above whose account took several different forms during the course of the week.

That morning and throughout the next ten days, some UN investigators and Human Rights Watch researchers who wanted to speak to persons other than apparently authoritative Banyamulenge males found it difficult to see such persons alone. When Human Rights Watch researchers sought out women—often more spontaneous in their answers than men—they found one or more men intruding on the conversation, sometimes giving answers in place of the women and sometimes correcting their responses. According to one UN staff member, one of the Banyamulenge was in charge of the survivors in each hospital in Bujumbura and that person frequently joined conversations that were meant to be private.⁸⁵ These ever-present Banyamulenge seemed to want to make all information conform to a given version of facts rather than to permit a reconstruction of the most accurate possible account of the tragedy.

The more the “official version” becomes widely known, the more witnesses will deliver testimonies that conform to it. One such poor person questioned about languages spoken during the attack indicated that he knew what was generally said about the attack. He told a Human Rights Watch researcher, “I know that some say that there were other languages but I am telling you what I saw and heard: only Kirundi.”⁸⁶ Finding such witnesses who can distinguish what they saw and heard from the official version is already difficult and is likely to become more difficult over time.

The elaborated “official version”

The earliest versions speaking generally about Mai Mai, Rwandan rebel (“Interahamwe”), and FNL participation in the attack became refined in the days after August 14. Eventually some officials even specified that there were five companies—some 600 combatant—involved in the attack: two companies of Rwandan rebels (“Interahamwe”) and two companies of Mai Mai that slaughtered the refugees and one company of FNL that attacked the military and police camps.⁸⁷ Because some Mai Mai are part of the Congolese national army, this led some Burundian authorities to take the next step and

⁸⁵ Human Rights Watch interview, Bujumbura, August 21, 2004.

⁸⁶ Human Rights Watch interview, Gatumba, August 22, 2004.

⁸⁷ Human Rights Watch interview, Gatumba, August 26, 2004.

conclude that soldiers of the Congolese army had participated in the slaughter.⁸⁸ Although the information about various groups making up the attacking force may be correct, the "official version" exaggerates the numbers and the sophistication of the operation. Whether seeking to excuse the inaction of the Burundian soldiers and police by suggesting they were completely outnumbered or trying to support a more general view that a menacing genocidal operation is already underway, this presentation seriously distorts reality.

The Other Version

Supporters of the FNL position have begun developing arguments seeking to explain, if not excuse, the Gatumba attack. Several civil society groups from South Kivu have circulated their interpretation of events by electronic mail. They argue that the Banyamulenge were using the refugee camp to prepare an attack on the Congo, supposing in that way to legitimate the FNL action. They say that when FNL troops chased Burundian soldiers and police into the refugee camp, the Banyamulenge brought out their arms and engaged in the combat. Some of the ammunition stored by the Banyamulenge in the camp exploded after being hit by gunfire. This and cross fire accounted for civilian casualties. They assert that a number of Burundian soldiers were killed at the camp and that FNL agents in civilian dress saw their bodies being transported away by fellow soldiers after the combat was over.⁸⁹

The FDLR published a press release asserting that troops of the Rwandan army were present in the camp.⁹⁰ A group known as the "Civil Society of South Kivu" also claimed that the FNL had skirmished with these Rwandan army soldiers before entering the camp. This group also asked for the Congolese government to "liberate" the town of Goma from RCD-Goma, apparently meaning to replace RCD-Goma soldiers and administrators with persons from other parties to the transitional government. The same group asserted that the Gatumba tragedy resulted in part from the failure to observe the real border between Congo and Burundi. They asserted that in fact Gatumba belonged

⁸⁸ Agence France Press (AFP), "New crisis in Great Lakes as Rwanda, Burundi threaten DR Congo", August 17, 2004.

⁸⁹ Société Civile du Sud-Kivu, "Analyse des faits sur les tueries des réfugiés ressortissants de la RD-Congo perpétrées à Katumba (au Burundi), August 20, 2004, signed by thirty-six persons; Arche d'Alliance, "L'Evolution de la Situation des massacres de Gatumba au Burundi voisin une semaine après."

⁹⁰ Agence France Presse, "Gatumba: des rebelles rwandais affirment que l'armée rwandaise est impliquée," August 21, 2004.

in Congolese territory and they appealed to the African Union to restore Gatumba to the Congo.⁹¹

This version is presented with less polish than the “official version” and has been disseminated more slowly but the potential extent of its impact should not be underestimated.

The United Nations

After endless disputes and postponements had bogged down the transition in Burundi, the United Nations Security Council gave a new impetus to the peace process by creating a relatively strong peace-keeping force for Burundi while the Secretary General named a new special representative to push forward political developments.⁹² Some Burundian actors did not appreciate the new dynamism shown by the UN and would have preferred continuing the war or at most making hesitating progress towards peace and the elections meant to mark the end of the transition.

No Burundian military or civilian leader informed UN staff of the Gatumba massacre until well after it was over. According to one UN staff member, the commanding officer of the ONUB peace-keeping force learned of the tragedy from MONUC officers, not from his Burundian counterparts. UNHCR staff, accustomed to being contacted by refugees for all kinds of problems, were first told of the slaughter by a local official who called one of them at 6 a.m.⁹³ Such a uniform and blatant failure to inform any UN officer in Burundi promptly of the tragedy—at a time when Burundian civilian and military officials were exchanging information among themselves—appears to have been more than a simple oversight.

The ONUB mandate in paragraph 5 charges the force with protecting civilians in immediate danger of physical violence, a task to be discharged without infringing on the responsibilities of the Burundian government in the same domain. Political leaders from Burundi, Rwanda, and elsewhere used this most recent case of UN failure to protect civilians to once more stress UN inability to save civilian lives, in the past as in the

⁹¹ Société Civile du Sud-Kivu, “Analyse des faits sur les tueries des réfugiés ressortissants de la RD-Congo perpétrées à Katumba (au Burundi), August 20, 2004, signed by thirty-six persons.

⁹² The peacekeeping force ONUB was established by 1545 (2004), adopted May 21, 2004.

⁹³ Human Rights Watch interviews, Bujumbura, August 21 and 22, 2004.

present. In making such criticism, they do not mention that UN staff had not been informed of the attack and so could not possibly have intervened to stop the killing.⁹⁴

While criticizing ONUB for not reacting to this specific event is unfair, it is appropriate to remark that the UN force had not yet exercised effective control over the borders even though its mandate in paragraph 6 specifically assigns it the duty of "monitoring the borders of Burundi, paying special attention to refugees. . . ." At the time of the attack, the force had only about half its projected troop strength which may help explain why it had not yet begun to effectively monitor the border.⁹⁵

The first ONUB statement about the Gatumba massacre on August 14 denounced the slaughter but ended by calling on perpetrators of the attack to return to cooperating with all parties in the peace process. As public horror over the crime grew, the UN withdrew from this position and announced a suspension of talks with the FNL, apparently recognizing that even the hope of negotiating an eventual settlement to the war could not justify dealing with persons who accepted responsibility for such a crime.

Justice

A crime of this horror calls for justice, as many national and international actors have recognized. The UN Security Council directed a preliminary inquiry of the massacre and will likely ask for further investigation by some UN or other international mechanism. The African Union may launch an inquiry, General Mbuze Mabe, Chief of the 10th Military Region of the Congolese army, has ordered an investigation and a Burundian inquiry is under way in the hands of two magistrates. The presidents of Burundi and Congo also discussed launching a joint inquiry. At best one or more of the investigations will provide material for successful prosecution of those responsible for the massacre; at worst the multiplicity of efforts will lead to confusion and conflicting interpretations of the events.

Prosecution of FNL Leaders

After the public statements of the FNL spokesman Habimana asserting that his movement carried out the attack on the camps, the Burundian government issued arrest warrants for him and for FNL head Agathon Rwasa. As of this writing, neither has been

⁹⁴ Agence France Presse, "Massacre de Gatumba: l'Onu 'ne fait rien', selon le président rwandais", Kigali, August 17, 2004.

⁹⁵ United Nations Security Council, "First report of the Secretary-General," paragraphs 37-39.

apprehended. The two could be tried under a Burundian law of May 8, 2004 providing for the prosecution of those charged with genocide, crimes against humanity, and war crimes. This law gives Burundian courts jurisdiction over such crimes committed on Burundian territory after May 8, 2003, including over perpetrators who are not resident of Burundi or who are outside the borders of Burundi.

From the start Habimana linked the massacre of the Banyamulenge with past killings of civilians that have gone without investigation and without punishment. Of course the deliberate killing of civilians can never be justified, but his comments underline the continuing importance of impunity in Burundi. Absence of criminal prosecutions for killing on one side provides pretexts for those who wish to carry out killing on the other.

Although there have been several apparent war crimes and crimes against humanity committed in Burundi since the promulgation of the May 8 statute, there have thus far been no prosecutions under this law which is little known even among judges and magistrates.

Burundian authorities could seek the assistance of the International Criminal Court (ICC) in investigating and prosecuting this case. Habimana said that he would have no hesitation appearing before an international jurisdiction although he has no confidence in the Burundian judicial system. In April 2003 the national assembly approved the Rome Statute of the International Criminal Court, a first step in joining the ICC, but the senate split over the possible use of article 124, which would allow Burundi exemption from ICC jurisdiction for war crimes for seven years. The government withdrew the measure from the senate, which then took no action on the assembly resolution approving the treaty. The constitutional court ruled in July 2003 that the failure of the senate to act within the legally specified delay meant that the law could be sent to the president for signature and promulgation. In August 2003, the president signed the law, but his signing was kept secret until recently. In order to complete the process of joining the ICC, the Burundian government would need simply to officially inform the court of its approval of the treaty and of its wish to join. The Gatumba massacre offers the Burundian government an ideal opportunity to complete its membership in the court and to invite its assistance in finding and punishing the perpetrators of this crime.

Even without completing the formal process of joining the ICC, Burundian authorities could request the exercise of the jurisdiction of the court for this case, in accord with article 12(3) of the ICC Statute. Such a request would then trigger at least a preliminary investigation by the ICC prosecutor.

Commitment to justice for the Gatumba victims, essential though it is, must be only the starting point for a much broader effort involving justice for all parties to the conflict in Burundi and elsewhere in the region. In an August 30 press release, the FNL asked “why the same compassion [as shown for the Gatumba victims] was not shown when there were massacres of millions of Burundian Hutus and Rwandan refugees in the Congo.” The release then specifically referred to the massacre at Itaba in which Major Budigoma, currently head of the Gatumba military camp, was implicated.⁹⁶ It is illegal and immoral to use killings on one side to try to justify killings on the other, but military and political leaders often do just that. It is only real justice—justice for all victims, regardless of the crime, regardless of the perpetrator—that can deprive them of that powerful tool to mobilize followers for violence.

The Risk of More War

International

In the days after the Gatumba massacre, the chief of staff of the Burundian army and the president and several other leading authorities of Rwanda threatened war on the Congo, imputing at least negligence and even deliberate participation in the massacre to some in the Congolese government and army. Under heavy diplomatic pressure, they took no immediate action to carry out these threats—and the president of Burundi even backed away from the threat soon after—the congruence in their positions suggested a new relationship.⁹⁷

Before 1994, Burundi and Rwanda were closely linked, in part because of their similar demographic structure, and ethnically-related killings or repression in one country often provoked reactions in the other. After the Rwandan genocide and the massive departure of Rwandans to Congo, Rwanda became more intimately involved with Congo, first in its attempts to counter a resurgence of strength by the former Rwandan army and Interahamwe, subsequently in building political and economic ties with its rich but weak neighbor. Although Burundi collaborated in these wars in the Congo, it left more ambitious designs to Rwanda and Uganda and focused its attention on combating Burundian rebel groups with bases on Congolese soil. With this more narrow military focus, Burundi did not participate in the large-scale illegal economic exploitation or the larger political ambitions of its northern neighbors. For several years, Rwandan soldiers have moved in and out of Burundi, sometimes offering support to the Burundian army

⁹⁶ FNL National Secretariat for Foreign Relations, COMMUNIQUE PH-FNL 010/08/2004, “A Qui Profite les Evenements de Gatumba?”

⁹⁷ Agence France Presse, “L’armée burundaise ‘n’exclut pas une offensive’ contre la RD Congo,” August 17, 2004.

in its battles with rebels, sometimes pursuing Rwandan rebels operating in Burundi. The Gatumba massacre may mark a new stage of cooperation between Rwandan and Burundian military, suggesting that the two-sided contest between Rwanda and Congo may become a three-sided conflict, with the risk of spreading war throughout the region.

The closer cooperation that appears to be developing among some government leaders of Burundi, Rwanda, and parts of RCD-Goma parallels, responds to, and is likely to reinforce the apparently growing cooperation among FNL and Rwandan rebel forces detailed above.

Within Congo and Burundi

RCD-Goma joined Rwanda and Burundi in menacing Congo, with its president (also one of the vice-presidents of the Congo government) declaring that the transition was not working and that the participation of his party was suspended. General Nkunda, who with Mutebutsi led the attack on Bukavu, declared he was ready to go to combat again. Had the menace being carried out, the war would have been, as in the past, both within Congo and from outside across its borders.

Like its chief backer, Rwanda, RCD-Goma heeded the diplomatic voices counseling calm and its members returned to rejoin the government. The fundamental problems among the actors directing the transition remain, however. Should RCD-Goma decide once again that its interests would be served by confrontation with the transitional government, it will almost certainly use the horror of Gatumba to rally its own followers and to attempt to sway international opinion.

Within Burundi political and military leaders dissatisfied with ethnically-based arrangements for the future political system sought to use the killing of the Banyamulenge to buttress their demands for a larger share of power. In a letter to the president of Burundi, Tutsi-dominated parties cite the massacre as proof that a "genocidal trend" is "still a reality" in Burundi, with the necessary implication that they require special guarantees in such a situation. Even at the funeral of the victims, they tried to turn the occasion into a political demonstration, unfurling their signs over the coffins and flowers.

The bitterness and intransigence shown by Tutsi leaders and those supporting them has not yet led to war, but it has already elicited parallel reactions among Hutu and other related ethnic groups.

“Genocide” and fears of a “Tutsi empire”

The growing risk of armed conflict feeds and is fed by heightened fear and hatred between ethnic groups, emotions that are both real and at the same time exaggerated and manipulated by political leaders for their own ends. The increasingly frequent invocation of “genocide,” beginning with Nkunda’s use of the term at the time of the Bukavu attack and continuing now in describing the Gatumba massacre is evoking on the other side increasingly frequent reference to the decades-old myth of a Tutsi intention to create a “Tutsi-Hima” empire in central Africa.

Rwanda was not immediately and necessarily involved in the Gatumba tragedy in the sense that it did not involve Rwandan citizens and was not executed on Rwandan soil, yet Rwandan authorities beginning with the president made clear that Rwanda would play a major role in the developing political and ethnic struggles. Given the Rwandan capacity and readiness to participate in conflicts outside its own boundaries, such statements give heart to some seeking further Rwandan involvement in the Congo while conversely inspiring dread among other.

In Rwanda itself questions of ethnic fear and hatred had been revived in April 2004 by the commemoration of the tenth anniversary of the genocide. The Rwandan parliament had also made political use of these sentiments in labeling political dissent and civil society autonomy as forms of “divisionism” and “genocidal ideology” in reports in May 2003 and June 2004. These measures in themselves and in the pretext adopted of preventing genocide risk promoting resentment and anger that could be directed into ethnic channels, particularly if a new war is fought in the immediate region.

With the rhetoric spawned by Gatumba massacre still echoing, some groups and persons turned to action. In the ten days after the Gatumba massacre, two persons were lynched in interior provinces of Burundi after they were rumored to be Tutsi using medical injections to poison Hutu with the intention of reducing their numbers to approximate those of the Tutsi. These accusations recalled talk of a “Simbananiye plan” to gradually equalize the numbers of Hutu and Tutsi, an accusation made against Tutsi since Tutsi soldiers slaughtered massive numbers of Hutu in 1972. In Congo RCD-Goma members from other groups refused to follow the lead of Kinyarwanda-speaking leaders—mostly Banyamulenge and Tutsi—when they announced withdrawal from the government, suggesting the party itself has divisions along ethnic lines. Meanwhile two persons from South Kivu—a place now presumed to be hostile to RCD-Goma were killed on the road outside Goma. Although robbery appeared to be the primary motive, others from South Kivu quickly interpreted the incident in regional and ethnic terms. The story spread that

the killers had said the murders were reprisals for the Gatumba killings. Persons opposed to the presence of people from South Kivu in Goma circulated pamphlets against them and in at least one case paraded through a part of Goma largely occupied by people from South Kivu chanting threats against them..

These fears and hatreds extend to personnel of the UN as well. Following the Bukavu attack in early June, Congolese elsewhere attacked UN staff and installations because MONUC was accused of having favored the Banyamulenge. Once it became known that Secretary-General Annan mentioned the apparent implication of Mai Mai and Rwandan rebels as well as FNL in the Gatumba massacre, people in Uvira again demonstrated their hostility against the UN, seen to be again favoring the "Tutsi" version of events.

Invoking "genocide" elicits an almost automatic reaction from people inside and outside the region who bear the burden of guilt for their failure to halt the 1994 genocide in Rwanda. For some survivors and Burundian authorities, the "genocidal" nature of the Gatumba massacre demonstrated that Rwandan rebel "Interahamwe" had to have been in charge of the killing at the refugee camp. Asked for more details, they talked of the brutal and intimate nature of the killing by machete and yet the vast majority of victims at Gatumba were killed or injured by gunfire delivered at a distance, sometimes from outside the tent, or by grenades also thrown from a distance. Journalists too seized on the massacre to revive once again the images of genocide, unquestioningly accepting information from the field that reinforced the clichés stored in their own minds.

Those who are themselves inclined to respond quickly and positively to invocations of genocide may not be sufficiently aware that Tutsi fears of genocide are increasingly mirrored by Hutu fears of measures that may be taken on the pretext of preventing genocide. The responsibility to remain always vigilant of the danger of genocide carries the simultaneous responsibility to remain firmly rooted in the facts; overuse of the term itself stimulates further fear and raises the likelihood of violence. The killings at Gatumba, like some of those at Bukavu, were clearly done on an ethnic basis. Recognizing that raises concern that further killing will follow directed at one ethnic group or another. In this context, it is less important to arrive at a legalistic determination of the nature of the crime than it is to identify its perpetrators and to punish them.

