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Gregory S. Gordon, University of North Dakota

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AN AFRICAN MARSHALL PLAN:
CHANGING U.S. POLICY
TO PROMOTE THE RULE OF LAW AND PREVENT MASS ATROCITY
IN THE DEMOCRATIC REPUBLIC OF CONGO

Gregory S. Gordon

I. INTRODUCTION

Beginning in 1998, the Democratic Republic of Congo (DR Congo) became engulfed in a 5-year war that turned out to be the deadliest armed conflict since World War II.\(^1\) In fact, many have referred to it as Africa's "First World War."\(^2\) A recent mortality report from the International Rescue Committee says that as many as 5.4 million people have died from war-related causes in DR Congo since 1998.\(^3\) Despite a 2003 peace deal and the country's first elections in over 40 years being held in 2006,\(^4\) a staggering 45,000 people continue to die each month, both from the conflict and the related humanitarian crisis.\(^5\) Women are being raped in unimaginable numbers -- as many as 4,000 reported cases per year\(^6\) -- while militia groups torture, enslave and murder civilians for control and exploitation of mineral resources.\(^7\) The years of warfare have forced six million from their homes.\(^8\) The United Nations High Commissioner for Refugees has estimated the

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\(^2\) See Michael J. Glennon, How International Rules Die, 93 GEO. L.J. 939, 970 (2005) (relating that Madeleine Albright and others have referred to the ongoing five-nation bloodbath in Congo (Kinshasa) that has resulted in millions of deaths as Africa's "First World War").


\(^4\) Franco Henwood, The DR Congo: Moving Beyond the Bullet and Ballot Box, in THE DEMOCRATIC REPUBLIC OF CONGO: FROM PEACE RHETORIC TO SUSTAINABLE POLITICAL STABILITY? 31 (Jideofor Adibe ed., Adonis & Abbey 2007) [hereinafter PEACE RHETORIC].


\(^7\) Aaron Ezekiel, The Application of International Criminal Law to Resource Exploitation, 47 NAT. RESOURCES J. 225, 227 (2007) (noting that crimes include forced labor, kidnapping, mass rape and sexual slavery, mutilation, and mass murder -- possibly meeting the definition of genocide in some ethnically based instances).

huge central African country has 1.1 million internally displaced people and a further 400,000 have fled abroad.\textsuperscript{9}

Thirty-eight years before the outbreak of this humanitarian disaster, the country had been trying to imagine a bright future after holding its first free elections as an independent nation.\textsuperscript{10} Patrice Lumumba was elected prime minister and began to steer the country on a course of reform after seventy-five years of disastrous Belgian colonial rule.\textsuperscript{11} But Lumumba, who sought aid from the Soviet Union,\textsuperscript{12} was considered a threat to United States regional interests in the Cold War.\textsuperscript{13} And so with American (and Belgian) direction and backing, Lumumba was overthrown and killed.\textsuperscript{14} Army Colonel Joseph Mobutu (who would later change his name to "Mobutu Sese Seko") eventually took control of the government and launched a three-decade reign of tyranny and kleptocracy from which the country is still trying to recover.\textsuperscript{15} As noted above, it has been mired in armed conflict ever since.\textsuperscript{16}

Independent elections in 2006\textsuperscript{17} and peace initiatives recently concluded in Nairobi\textsuperscript{18} and Goma\textsuperscript{19} have certainly improved the situation and given the country a modicum of hope for an end to the violence and the development of the rule of law. But this fragile state of affairs has not ended the mass atrocity and it will not hold without significant outside assistance.\textsuperscript{20} In this regard, the United States must play a decisive role.\textsuperscript{21} Other potential

\textsuperscript{9} Id.
\textsuperscript{11} Id.
\textsuperscript{12} Contrary to popular belief, Lumumba at first sought aid from the United States, not the Soviet Union. See SEAN KELLY, AMERICA'S TYRANT: THE CIA AND MOBUTU OF ZAIRE 28 (Am. Univ. Press 1993). He appears to have approached the Soviet Union because that was the only place he could find support in his country's effort to rid itself of colonial rule, not because he was a communist. Id. at 29. Lumumba not only denied being a communist, but said he found colonialism and communism to be equally deplorable, and professed his personal preference for Congolese neutrality between the East and West. Id. at 49.
\textsuperscript{13} Id. at 106.
\textsuperscript{14} Id. at 95.
\textsuperscript{15} Id. at 141.
\textsuperscript{17} Joseph Kabila was elected president of the DR Congo as a result of these elections. See UNICEF HUMANITARIAN ACTION, Democratic Republic of Congo in 2007, available at http://www.unicef.org/har07/files/DRC.pdf [hereinafter UNICEF DRC].
\textsuperscript{18} The "Nairobi Communiqué," signed on November, 9, 2007, is the joint document signed by the Governments of the DR Congo and the Republic of Rwanda for a common approach to end the threat posed to peace and stability in both countries and the Great Lakes Region. See A BRIEFING ON THE CONGO by the Special Representative of the Secretary General Alan Doss in DR Congo, THE WOODROW WILSON International Center for Scholars, April 16, 2008, available at http://www.wilsoncenter.org/index.cfm?topic_id=1417&fuseaction=tocps.event_summary&event_id=403264 [hereinafter Congo Briefing].
\textsuperscript{19} The "Goma Agreement" was the result of the Goma conference on peace, security and development for the Kivu provinces held this past January. The Acts of Engagement which provided for an immediate ceasefire among the armed groups in the area, demobilization of militias and the acceleration of the peace process were signed on January 23, 2008 by the DR Congo government and the armed groups. See id.
\textsuperscript{20} The primary ones would be the United States, the European Union, the African Union and the United Nations. See id.
donors do not have the same capacity to deliver the necessary aid. The European Union, for example, due to various bureaucratic and financial restraints, is limited in the extent of effective assistance it can provide. The African Union (AU) has been trying to keep the peace in Darfur but has been lacking sufficient money and supplies. It is in no position to shoulder the massive burden in DR Congo. Nor is the United Nations, which is overextended in the field of humanitarian assistance.

While the U.S. has at times exerted a positive influence in the DR Congo peace and rebuilding process in recent years, its involvement has not been sufficient to bring about lasting positive change. Many commentators have called on the United States, with its contribution to the problems in DR Congo and its enormous wealth and influence, to do much more for the rule of law and respect for human rights to take firm root and spread

21 See Stewart Patrick, The Role of the U.S. Government in Humanitarian Intervention, April 5, 2004, available at http://www.state.gov/s/p/rem/31299.htm (suggesting the dominant role played by the United States in humanitarian assistance given that, for example, it alone was responsible for one-third of all global humanitarian assistance in 2003).

22 It might be argued that, with our current commitments in Iraq and Afghanistan, the United States is already stretched too thin to take on this commitment. However, there are good indications the United States will be pulling out of Iraq in the near future. See, e.g., Warren P. Strobel, For First Time, Bush Agrees to “Time Horizon” for Iraq Pullout, McClatchy Newspapers, July 18, 2008, available at http://www.mcclatchydc.com/103/story/44720.html. In any event, many experts are calling for a renewed U.S. foreign policy that looks beyond Iraq and Afghanistan and focuses on other regions in greater need of assistance. See, e.g., John Edwards, Reengaging with the World: A Return to Moral Leadership, 86 FOREIGN AFFAIRS 20 (2007), available at http://www.foreignaffairs.org/20070901faessay86502/john-edwards/reengaging-with-the-world.html.


25 See Dr Subhash Kapila, United Nations Organization at the Crossroads, South Asia Analysis Group, Nov. 17, 2004, http://www.southasiaanalysis.org/%5Cpapers12%5Cpaper1168.html (noting that the United Nations has deviated from its primary role of preventing conflicts and over-extended into various fields, including humanitarian assistance).


throughout this gargantuan, fractured polity\(^28\) -- one that is the size of all of Western Europe.\(^29\)

But what exactly can the United States do to promote the rule of law and human rights in DR Congo? This Article contends that U.S. DR Congo policy has been formulated in dribs and drabs, limited in quantity relative to the enormity of the crisis and without an overarching plan for promoting the rule of law and yielding long-term, systemic change. To be effective, U.S. Congolese policy must be designed and executed with a holistic approach -- security, disarmament, infrastructure, food assistance, and health care must all undergird greater efforts to establish the rule of law. In effect, the U.S. must initiate an "African Marshall Plan" -- a massive resource and assistance infusion to bring about wide-ranging, organic change and secure the benefits of Congo's free elections and the recent Nairobi/Goma peace process.\(^30\) To implement such an "African Marshall Plan,"\(^31\) this Article advocates both procedural and substantive changes in U.S. policy toward DR Congo.

Part II of the Article will place current U.S. policy in context by examining the U.S. role in Congo's post-independence human rights debacle -- its support of Mobutu and its shifting alliances in the African Great Lakes Region after the Cold War. Part III will consider DR Congo's continuing human rights problems after elections in 2006 and recent American piecemeal efforts to contribute to the country's peace and rebuilding process during that time.


\(^{30}\) The "Marshall Plan," more formally known as the "European Recovery Program," was a project instituted by the United States after World War II to foster economic recovery and promote peace in Europe. It took its form in a June 5, 1947 speech when U.S. Secretary of State George Marshall urged European countries to make decisions regarding their economic needs so that material and financial aid from the United States could be integrated on a broad scale. In April 1948, President Truman signed the act establishing the Economic Cooperation Administration (ECA) to administer the program. From 1948-1951, over $12 billion was dispersed to western European countries under the program. The Marshall Plan greatly contributed to the economic recovery of Europe and helped promote peace and stability in the region. See Marshall Plan, THE COLUMBIA ENCYCLOPEDIA (6th ed. 2007), available at http://www.bartleby.com/65/ma/MarshalPl.html.

\(^{31}\) This would certainly not be an exact replica of the original Marshall Plan but the term is used here to convey the notion of large-scale, holistic assistance to a region that has recently been devastated by war. Although the entire continent would not receive assistance under the plan, it is referred to as an "African" Marshall Plan because of the geographic and political centrality the DR Congo to the entire continent.
Finally, Part IV of the Article will analyze recommended changes in U.S. policy necessary to end the widespread violence and culture of impunity in DR Congo. These recommended changes are both procedural and substantive.

With respect to the procedural changes, U.S. policy is currently formulated by a variety of agencies in an ad hoc manner. Creation of a single Congo working group or agency with an integrated agenda and a presence on the ground will bring much needed reform. It will allow the U.S. to formulate benchmarks in assessing the human rights situation in the country and better identify potential external partners, such as the European Union, to end the atrocity crime wave in DR Congo. Moreover, using an ombudsman to assure that U.S. assistance is distributed by non-corrupt persons in an effective manner will also be a necessary part of the reform effort. Finally, to assure proper local coordination and efficiency, the U.S. should establish a permanent cadre of expert on-the-ground staff to sustain U.S. engagement in curbing human rights abuses and establishing the rule of law.

Substantively, three important aspects to the U.S. policy in promoting the rule of law must be addressed: (1) eliminating the so-called "negative forces" in the region, which entails militia disarmament, military integration of dissident groups, repatriation of extremist Hutu forces, inclusion of Rwanda in the process, and control of illegal resource exploitation; (2) building up essential institutions in DR Congo, which includes expanding, reforming and participating in MONUC (the UN peacekeeping mission), creating a DR Congo domestic human rights advisor office, and building up civil society, especially in the justice sector; and (3) ending impunity, which involves supporting the International Criminal Court, domestic and possibly hybrid tribunal prosecution efforts, and generally ensuring enforcement of human rights and humanitarian law.

As Western Europe needed a massive infusion of American assistance to lift itself from misery after World War II, the DRC needs such an infusion now. Anything short of that will leave the Congo mired in its current predicament -- the post independence cycle of violence and misery. This would plunge the Great Lakes region of Africa, if not all of Africa, further into the abyss. In this increasingly interconnected world, it is clearly in the interests of the United States to prevent that outcome.

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II. BACKGROUND: MOBUTU, AFRICAN WARS AND THE PEACE PROCESS

A. The Cold War and the Rwandan Genocide

From the 1960s through the 1980s, United States policy in the DR Congo (known as Zaire from 1971), which entailed support of dictator Mobutu Sese Seko, was shaped by the exigencies of the Cold War. Support for Mobutu was disastrous for the country, however. Resource extraction for personal gain, rampant corruption, formation of a brutal police state, and the complete disintegration of infrastructure were the result of 32 years of Mobutu's autocratic rule.

The end of the Cold War changed the U.S. political calculus in the region and Mobutu looked to the French for support, while the United States began to consider the potential of other partnerships in the Great Lakes Region – ultimately forming ones with Uganda and Rwanda. By the beginning of 1994, Rwanda had become the regional focus as two decades of rule by Rwandan President Juvenal Habyarimana (also a French client) was coming apart under the weight of economic problems and ethnic pressure from a conflict between the majority Hutus and the minority Tutsis (sparked by armed incursions by an expatriate Tutsi military force from Ugandan – the Rwandan Patriotic Front (RPF)).

Although the two sides attempted to form a compromise government through the "Arusha Accords," powerful extremist Hutus were against this solution and an extremist Hutu militia, the "Interahamwe," was being recruited, organized and armed with machetes. On April 6, 1994, Habyarimana's airplane was shot down as he returned from negotiations in Arusha and Hutu extremists launched a well planned genocide that resulted in the murder of 800,000 Tutsis within 100 days and sent shock waves throughout the region.

As the genocide was taking place, the RPF (which began to receive U.S. support) was winning on the battlefield and the Rwandan Armed Forces (assisted by the French) began to retreat. Eventually, a mass exodus of Rwandan Hutus (precipitating the "Great Lakes

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33 See Henwood, supra note 4, at 30.
34 See Thierry Vircoulon, Beyond the Transition: The Agenda of Reconstruction and Governance in the Democratic Republic of Congo, in PEACE RHETORIC, supra note 4, at 35.
39 Id.
40 Id.
Refugee Crisis”) poured over the borders into neighboring countries (helped by the French who established evacuation corridors as part of "Opération Turquoise") with a large portion ending up in Zaire.\textsuperscript{42} Sprawling refugee camps, funded by international aid agencies, crawling with Interahamwe mass murderers, and controlled by génocidaire leaders, mushroomed along the Rwanda-Zaire border.\textsuperscript{43} In the meantime, relying in part on assistance from the United States, the RPF consolidated its control over Rwanda.\textsuperscript{44} Also during this time, the refugee camps in Zaire became armed bases for cross-border killing missions into Rwanda, where génocidaire leaders hoped to carry on their genocidal mission, silence witnesses and destabilize RPF control over the country.\textsuperscript{45} Eventually, these leaders began to prepare for an invasion of Rwanda that would defeat the RPF and restore to them control over the country.\textsuperscript{46}


At the same time, new ethnic tensions were flaring up in the eastern part of Zaire. Banyamulenge Tutsi (Zairian/Congolese Tutsi) were coming under attack from the Hutu refugee camps, they were being subjected to various human rights violations by the Zairian government, including loss of property, arrest, and murder.\textsuperscript{47} Armed and assisted by the RPF (again, with U.S. support), the Banyamulenge launched attacks against the camps, which ultimately resulted in their being dismantled, and then they carried the fight towards Kinshasa.\textsuperscript{48} They were joined by other disaffected groups, including leftists who had supported Patrice Lumumba as well as ethnic and regional minorities opposed to the dominance of the Kinshasa region.\textsuperscript{49} Laurent Désiré Kabila, an ethnic Katangese, former Lumumba lieutenant and leftist political leader, had been fighting the Mobutu government for decades and became the leader of the rebellion that was starting to control large swathes of territory in its march toward Kinshasa.\textsuperscript{50} The rebellion (known as the Alliance des Forces Démocratiques pour la Libération du Congo-Zaire (AFDL) was supported, militarily and financially, by Rwanda and Uganda\textsuperscript{51} (which, in turn, were both supported by the United States). In the end, the AFDL toppled Mobutu and the country's name was changed back to the "Democratic Republic of Congo" (at


\textsuperscript{44} See ROBERT E. GRIBBIN, IN THE AFTERMATH OF GENOCIDE: THE U.S. ROLE IN RWANDA 86 (2005).

\textsuperscript{45} Preventable Genocide, supra note 43.

\textsuperscript{46} Id.

\textsuperscript{47} Id., at E.S. 56.  See also THOMAS TURNER, CONGO WARS: CONFLICT, MYTH & REALITY 89 (2007);


\textsuperscript{48} Preventable Genocide, supra note 43, at E.S.57.

\textsuperscript{49} See N'ZONGOLA-N'ITALAJA, supra note 10, at 225; Congo Civil War, INDOPEDIA, http://www.indopedia.org/ Congo_Civil_War.html [hereinafter “Indopedia”].

\textsuperscript{50} Indopedia, supra note 49.


\textsuperscript{52} See N'ZONGOLA-N'ITALAJA, supra note 10, at 225.
independence it was known as the "Republic of Congo" before being changed to DR Congo and then Zaire).  

Congolese Tutsis as well as the governments of Burundi, Rwanda, and Uganda, all relied on the Rwandan military presence in the DR Congo for protection against hostile armed groups operating from the eastern part of the country. These groups included:

(1) The Interahamwe;

(2) The former Rwandan Armed Forces (RAF), which had fought the RPF during the Rwandan genocide;

(3) The Mai Mai, a loose association of traditional Congolese local defense forces, which fought the influx of Rwandan immigrants;

(4) The Alliance of Democratic Forces (ADF), made up of Ugandan expatriates and supported by the Government of Sudan, which fought the Government of Uganda; and

(5) Several groups of Hutus from Burundi fighting the Tutsi-dominated Government of Burundi.

The United States at first supported Kabila's government. But that support did not last. After gaining power, Kabila sought independence from Rwanda and Uganda and asked them to remove their military contingents. Both countries refused. Rwanda felt it needed to deal with ongoing Interahamwe and FAR attacks launched from the DR Congo and Uganda was honoring its alliance with Rwanda and also believed that the ADF still posed a serious threat as it was using the DR Congo as a base. So Kabila's relationship with the Rwandans and Ugandans, as well as their backers from the United States, deteriorated.


War broke out again in 1998. This time, Kabila allied himself with Zimbabwe, Angola, and Namibia (and to a certain extent with Chad, Libya, and Sudan). Facing them were Rwanda and Uganda (along with Burundi, to a certain extent) and the rebel groups these

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53 See Preventable Genocide, supra note 43, at E.S.57.
55 Id.
56 TURNER, supra note 47, at 150.
57 Congo Civil War, supra note 54.
59 See John F. Clark, Explaining Ugandan Intervention in Congo: Evidence and Interpretations, 39 J. MODERN AFRICAN STUDIES 261, 271 (2001). Certain commentators believe Rwanda and Uganda were motivated only by Congolese resource exploitation concerns and the reasons cited were mere pretext. See, e.g., NZONGOLA-NTALAJA, supra note 10, at 227.
60 NZONGOLA-NTALAJA, supra note 10, at 227.
countries supported. The Rwandan-backed rebel group (the "Rassemblement Congolais pour la Démocratie" – RCD), immediately went on the offensive. After its initial march on Kinshasa was repulsed, it withdrew to eastern DR Congo, where it established de facto control over portions of that region and continued to fight the Congolese Army and its foreign allies. In February 1999, Uganda backed the formation of a rebel group called the "Mouvement pour la Libération du Congo" (MLC), led by Jean-Pierre Bemba. Together, Uganda and the MLC established control over the northern third of the DR Congo.

Eventually, the country was divided into three more or less separate zones with the RCD/Rwanda largely controlling the Eastern part of the DR Congo, the MLC/Uganda the DR Congo's northern third, and DR Congo forces and their foreign allies asserting dominion over the rest of the country. A stalemate ensued.

1. **The Lusaka Accord**

In July 1999, a cease-fire was proposed in Lusaka, Zambia, which all six main parties (the DR Congo, Zimbabwe, Angola, Namibia, Uganda, and Rwanda) signed by the end of August. The "Lusaka Accord" called for a cease-fire, the deployment of a UN peacekeeping operation (known by its French acronym, "MONUC"), the withdrawal of foreign troops, the creation of a "Joint Verification Commission" (financed by the United States and designed to track compliance with the Accord), and the launching of an "Inter-Congolese Dialogue" to form a transitional government leading to elections. The parties to the Lusaka Accord failed fully to implement its provisions in 1999 and 2000. In the meantime, Laurent Kabila drew increasing international criticism for blocking full deployment of UN troops, hindering progress toward an Inter-Congolese Dialogue, and suppressing internal political activity.

2. **Illicit Resource Exploitation**

In June 2000, in response to reports of widespread illicit resource exploitation, the President of the UN Security Council requested the UN Secretary-General to establish a Panel of Experts on the illegal exploitation of the DR Congo's natural resources and other forms of wealth. He also requested the Panel research and analyze the links between the resource exploitation and the continuation of the conflict in the DR Congo. Although the DR Congo's abundant resources include commodities such as petroleum and timber,

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61 Congo Civil War, supra note 54.
62 Id.
63 Id.
64 Id.
65 Id.
66 Id.
67 Id.
68 See Frazer, supra note 26.
69 Congo Civil War, supra note 54.
70 Id.
71 Id.
much of the exploitation involved the country's vast mineral wealth, which includes gold, copper, cobalt, uranium, diamonds, coltan and cassiterite (the latter two are used to manufacture, among other electronic appliances, cell phones). (Ultimately, the Panel systematically documented the ways in which massive exploitation of natural resources was linked to the military conflict, arms trafficking, and human rights abuses in the DR Congo.)

3. *Laurent Kabila’s Assassination and the Sun City Accord*

In the meantime, the conflict dragged on. Then, in January 2001, Laurent Kabila was assassinated by one of his own bodyguards. His son Joseph became DR Congo president and the fighting continued. By 2002, however, with U.S. prodding, the Inter-Congolese Dialogue had commenced in earnest in South Africa. This led to an all-inclusive power-sharing agreement (including a Third-Party Verification Mechanism – once again financed by the United States), which was signed by delegates in Pretoria on December 17, 2002. By the end of 2002, all Rwandan, Angolan, Namibian, and Zimbabwean troops had withdrawn from the DR Congo. The Pretoria Accord was formally ratified by all parties on April 2, 2003 in Sun City, South Africa (it is thus also known as the "Sun City Accord"). The United States played an important role in the diplomacy that culminated in this agreement, which provided the framework for the DR Congo's transition to democracy. During this time, the United States also took the lead in the United Nations Security Council and became one of the largest financial contributors to MONUC (which continues today).

4. *The Transitional Period*

Following nominations by each of the various signatory groups, President Kabila on June 30, 2003 issued a decree that formally announced the transitional government lineup, which would consist of a president and four vice presidents (forming a so-called "pentarchy"). The four vice presidents – Azarias Ruberwa, Arthur Z’ahidi Ngoma, Abdoulaye Yerodia Ndombasi, Jean Pierre Bemba – representing various groups involved in the conflict -- took the oath of office on July 17, 2003, and most incoming ministers (36 ministries were created) assumed their new functions within days thereafter.

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72 See Background Note, supra note 51.
74 See TURNER, supra note 47, at 163.
75 Congo Civil War, supra note 54.
76 Id.
77 See Frazer, supra note 26.
78 See Congo Civil War, supra note 54.
79 Ugandan troops officially withdrew from the DR Congo in May 2003. Id.
80 Id.
81 See Frazer, supra note 26.
82 Id.
83 See Congo Civil War, supra note 54.
84 Id.
E. Human Rights Violations Continue: 2003 to Present

The DR Congo endured a difficult period between the formation of the transitional government in 2003 and the scheduled elections (ultimately held in 2006). Despite the supposed cessation of hostilities, massacres continued in eastern Congo during 2003-2005.\textsuperscript{85}

1. The Interahamwe

The remaining Interahamwe feared returning to Rwanda, convinced they would be targeted by vengeful Tutsi. These Hutu extremists remained in the forests of east Congo, preying on villages for food and money.\textsuperscript{86} In May 2005, for example, it was reported that Interahamwe based in eastern Congo were responsible for hundreds of summary executions, rapes, beatings and civilian hostage-taking in the territory of Walungu, South Kivu Province.\textsuperscript{87} In the meantime, Rwandan incursions into the DR Congo, designed to clear out these militia forces, disrupted the fragile government and led to further instability.\textsuperscript{88}

2. Laurent Nkunda

In addition, one of the groups that had been fighting in the war, the Rwandan-backed Rally for Congolese Democracy-Goma (RCD-Goma), was committing war crimes and crimes against humanity in Eastern Congo's Kivu region. RCD-Goma soldiers, commanded by Laurent Nkunda, refused to integrate into the Congolese army and clashed with other Congolese army forces in South Kivu. Nkunda and his troops took control of the South Kivu town of Bukavu on June 2, 2004 (claiming this action was necessary to stop genocide of the Banyamulenge). During the fighting, Nkunda's troops, alleged by some to be taking orders from Rwanda,\textsuperscript{89} are alleged to have carried out war crimes, killing and raping civilians and looting their property. Nkunda, now leader of the Tutsi rebel faction called the National Congress for the Defense of the People or CNDP, was indicted by the Congolese government in September 2005.\textsuperscript{90}

3. Ethnic Massacres in Ituri Province

Also during this period, rival militias backed by Rwanda (supporting the Union of Congolese Patriots – or "UPC") and Uganda (sponsoring the Nationalist and Integrationist Front – or "FNI"), created instability in the northeastern region of Ituri, as

\textsuperscript{85} Id.

\textsuperscript{86} Id.


\textsuperscript{88} See Congo Civil War, supra note 54.


they battled over border trade and mining of mineral resources. At the same time, Ituri also experienced mass ethnic violence between the region's agriculturalist Lendu and its pastoralist Hema ethnic groups. The Lendu ethnicity was largely represented by the FNI militia, while the UPC militia claimed to be fighting for the Hema. The violence between these groups was intensified by a "borrowing" of ethnic ideology from the Hutu-Tutsi conflict in Rwanda. Lendu began thinking of themselves as kin to the Hutu, while the Hema identified themselves with the Tutsi. Five militia leaders who were operating actively in Ituri during this period, including former UPC leader Thomas Lubanga Dyilo and former DR Congo Vice President Jean-Pierre Bemba (leader of the militia Mouvement de la Libération du Congo or MLC), have been indicted by the International Criminal Court for war crimes.

4. **The Tripartite Process**

In 2004, to stem the tide of regional violence and instability during this period, the United States helped launch the so-called "tripartite process," resulting in the creation of the "Tripartite Plus Joint Commission" consisting of the DR Congo, Rwanda, Uganda and Burundi. The Commission was established to help these countries work together cooperatively to resolve their problems and to support and enhance regional security.

5. **Elections**

After suffering through this difficult period, general elections were held in the DR Congo on July 30, 2006, the first multiparty elections in the country in 46 years. Congolese citizens went to the polls to elect both a new president and National Assembly, the lower-house of the Parliament. A run-off contest was then held on October 29, 2006 and Joseph Kabila was elected as DR Congo president. The United States provided the initial support to launch the Congolese Independent Election commission and it sent observers to both rounds of national elections.

93 Id.
97 Id.
98 See *Congo Civil War, supra* note 54.
III. CONGO IN THE AFTERMATH OF ELECTIONS AND U.S. POLICY DURING THIS TIME

A. Post-Election Human Rights Violations

Although the official end of the war and elections brought a certain degree of peace to the DR Congo, in many respects the war never ended. The post-2003 armed conflict and large-scale human rights abuses already described were symptomatic of the kind of violence that continued to rage throughout the country, especially in its eastern portion. Numerous militias, such as Nkunda’s CNDP, various Mai Mai fighting groups (such as the Congolese Patriotic Resistance), and former Interahamwe (primarily with the FDLR and its splinter groups) never put down their arms.

Early in 2007, combatants loyal to Nkunda were integrated into the national army in a process called “mixage.” Unfortunately, the newly established "mixed" brigades killed scores of civilians and committed rapes and other abuses in their operations against the FDLR. By August the political agreements had collapsed and many of Nkunda’s former troops returned to his control. Renewed clashes between Nkunda’s troops and government soldiers followed and they have continued to date.

Underlying issues, such as questions about disarmament of these militias, army reform, justice for the victims of abuses, and the illegal exploitation of Congo’s mineral wealth have not been resolved and continue to cause difficulties. In many respects, mineral exploitation, and its attendant problems, has been most responsible for fueling the ongoing violence. As a result, over a million people are still displaced in North and South Kivu provinces and are still too frightened to return to their homes. The situation for women and girls has been particularly desperate. To date, at least 60,000 women and girls have been raped (since 1998) throughout the Congo by militia groups or soldiers from the national army. In one province alone, 4,000 of those raped were children. Children also continue to be recruited into armed service. Congo has one of the highest rates of child soldiers in the world.

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103 Id.
105 Id.
106 Id.
107 Id.
109 Id. See also Ezekiel, supra note 7, at 227.
110 Id.
111 Id.
112 Id.
113 Id.
B. The Nairobi-Goma Peace Process

In November 2007, the United States helped to facilitate an agreement between the governments of Congo and Rwanda, known as the Nairobi Communiqué, which seeks to tackle problems related to the presence of the FDLR in the eastern part of Congo.\textsuperscript{114}

On January 23, 2008, a ceasefire agreement ("Goma Agreement") was signed by the government and 22 armed groups in the eastern town of Goma following weeks of negotiations.\textsuperscript{115} Once again, the United States played a vital role in negotiating the agreement and urging the various groups to sign it.\textsuperscript{116} Following the signing, the Congolese government set up a peace program for eastern Congo, called the "Amani program," and appointed Abbé Apollinaire Malu Malu, a Catholic priest, to spearhead the efforts toward peace.\textsuperscript{117}

Also pursuant to the Goma Agreement, a "Joint Technical Committee on Peace and Security" (Committee) was recently established to monitor the Agreement and work out the details of troop disengagement.\textsuperscript{118} The Committee, which has representatives from all the armed groups, had its first official meeting on April 3, 2008.\textsuperscript{119} It is jointly chaired by the government and representatives of the international community, including the United States.\textsuperscript{120} International and Congolese human rights and aid groups hope that an independent special advisor for human rights can be created and can play a vital role in helping this committee tackle human rights issues that will inevitably come up.\textsuperscript{121}

C. The DR Congo Relief, Security and Democracy Promotion Act

Recent U.S. efforts to establish peace in the DR Congo have also involved assistance in alleviating suffering and building up the country's civil institutions. On December 22, 2006, Congress enacted the DR Congo Relief, Security and Democracy Promotion Act of 2006 (the Act).\textsuperscript{122} The Act established 15 policy objectives aimed at addressing a range of concerns regarding humanitarian assistance, social development, economic and natural resource exploitation, governance and security issues.\textsuperscript{123} Without coordinating between and among each other, in fiscal years 2006 and 2007, respectively, U.S. agencies – USDA, DOD, HHS, DOL, State, the Treasury and USAID – collectively allocated a total of about $217.9 million and $181.5 million for the DR Congo under the Act.\textsuperscript{124}

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\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{123} Id.
\textsuperscript{124} Id.
About seventy percent of these funds were allocated for programs that support the Act's humanitarian and social development objectives, while the remainder was allocated for programs and activities that support the Act's economic, governance, and security objectives.\textsuperscript{125} For example, USAID is providing humanitarian assistance that includes emergency supplies, food, and water and sanitation improvements to vulnerable populations.\textsuperscript{126} The Department of Treasury has worked to provide the DR Congo with interim debt relief. The Department of State is working to provide training and other assistance aimed at professionalizing members of the DR Congo's military.\textsuperscript{127}

Nevertheless, in spite of these efforts to establish civil society in the DR Congo, and since the Goma Agreement, the United Nations and others reported recently that scores of Congolese civilians have been deliberately killed, executed or “disappeared,” some of them children.\textsuperscript{128} At least 500 women and girls were raped – as this figure only reflects those who reached a clinic for medical treatment, the real figure is likely much higher.\textsuperscript{129} In the town of Shabunda in the province of South Kivu, for example, at least 50 women and girls were reported raped each month since January 2008.\textsuperscript{130} Clearly, the violence associated with the armed conflict and the absence of valid, functioning social institutions has continued.\textsuperscript{131}

IV. RECOMMENDED CHANGES IN U.S. POLICY TO PROMOTE THE RULE OF LAW AND HUMAN RIGHTS

The DR Congo appears to have reached a critical juncture in its tumultuous history. After years of suffering under dictatorship and a series of devastating internal and regional armed conflicts, it has installed its first democratically elected government in more than 40 years. And while the United States bears significant responsibility for many of the DR Congo's past problems, the United States has partially atoned for its sins by playing an important role in the fall of the Mobutu regime and helping to negotiate the end of the post-Mobutu wars, promote regional security, facilitate elections, provide humanitarian assistance, and nurture the DR Congo's fledgling democracy. But these efforts have not achieved the desired goal of ending the DR Congo's internal armed conflicts and atrocities and establishing a stable society.\textsuperscript{132}

But what more can the United States do to promote peace and prosperity in the DR Congo? The answer lies in both procedural and substantive changes to U.S. policy. This should lead to a massive infusion of assistance that can be thought of as an "African Marshall Plan."

\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{127} Id.
\textsuperscript{128} Q&A, supra note 108.
\textsuperscript{129} Id.
\textsuperscript{130} Id.
A. Procedural Policy Reforms

Procedurally, the United States needs to formulate a more coherent and unified policy regarding the DR Congo. Part of this will entail coordinating its various and scattered agency activities. There has been some recent progress in this regard as the National Security Council (NSC) has established an interagency group, including State, Defense, and Treasury, to help discuss DR Congo policies and approaches and coordinate certain agency activities. However, this group does not include other agencies that contribute to U.S. assistance efforts (such as DOL, HHS, or USDA) or other agencies that could make important contributions (such as the Department of Justice).

Moreover, since the U.S. government has not established a process to assess systematically its overall progress in the DR Congo, it cannot accurately assess whether it has allocated its resources in the most effective manner. Nor, for that manner, can it determine whether it is allocating sufficient resources to the DR Congo. There must be benchmarks to assess progress in the human rights situation in DR Congo. Formulation of such benchmarks must be a part of U.S. procedural policy reform.

In addition to promoting coherence and efficiency in U.S. policy formulation, the proposed coordination process could help the U.S. identify additional bilateral or multilateral measures that would contribute to success in America's DR Congo policy. What partners would be most effective in working with the U.S. in effecting holistic change that will lead to the end of atrocities in Congo? Should the U.S. focus on spearheading initiatives with the E.U., the A.U., the U.N. or all three? Or can other partners be identified? How can the U.S. best coordinate with these partners? Put simply, internal U.S. coordination will help work out these questions and promote superior external coordination.

Finally, procedural reform in delivery of U.S. assistance to DR Congo also entails effective monitoring and quality control of allocation and distribution of aid and assistance. Given the long-standing and pervasive culture of corruption in Congo, that allocation and distribution currently risks being compromised by the malfeasance of official Congolese recipients. An ombudsman or other oversight mechanism should be implemented to prevent this from happening.

Similarly, the U.S. should have a permanent presence on the ground to coordinate its participation in all peace and stabilization efforts. It has already made some progress in that regard. In September 2007, it appointed senior conflict advisor Tim Shortley to...
support peace efforts in eastern Congo.\textsuperscript{137} It should go further by establishing permanent offices in both eastern Congo (where a majority of human rights violations is currently taking place) and Kinshasa -- with full-time staff from the State Department, USAID, and other U.S. government agencies -- to sustain U.S. engagement in curbing human rights abuses and establishing the rule of law throughout the country.\textsuperscript{138}

B. Substantive Policy Reforms

Once this procedural reform is instituted, the United States could start to address some of the serious substantive issues with its DR Congo policy. To begin with, U.S. policy currently emphasizes humanitarian aid at the expense of law sector reform. However, there is a good argument for shifting the policy focus to rule of law and security sector reform. In the absence of legal norms and security, the country is incapable of developing its civil society and the United States is in any event hindered in delivering humanitarian assistance. Law and order must be the first order of business.

But what concrete measures could the United States take to help institute law and order in the country and in the region? As mentioned above, there are three areas in which reform could lead to significant progress: (1) eliminating the so-called "negative forces" in the region; (2) building up essential institutions in the DR Congo; and (3) ending impunity.

1. Eliminating "Negative Forces"

In general, for those who work on DR Congo issues, the "negative forces" are the militias, rebel groups and criminal Congolese government military and security personnel that have participated in mass murder, large-scale sexual violence (wherein tens of thousands of Congolese women and girls have been raped), and numerous other human rights violations. In the short-term, the United States must direct a large portion of its investment in the DR Congo to eliminating these forces. This can be achieved through three objectives: (1) providing additional support for the ongoing (and often ineffective) Disarmament, Demobilization & Repatriation program and the military integration process; (2) seeking Rwandan support for these initiatives; and (3) preventing illegal resource exploitation which has both fueled and financed the negative forces.

a. Demilitarization & Integration

Demilitarization involves the disarmament and demobilization of combatants and their reintegration into society.\textsuperscript{139} It is premised on the idea that combatants tend to disrupt and undermine the peace process, either by returning to hostilities with their opponents or by resorting to armed banditry.\textsuperscript{140} It consists not only of instituting structured

\textsuperscript{137} See Policy Standard, supra note 28.
\textsuperscript{138} Id.
disarmament and demobilization of combatants, but also providing monetary incentives designed to facilitate reintegration into civilian life. Thus, in the DR Congo, combatants have been given the choice of reintegrating into civilian life or joining the FARDC.

Owing to the complexities of the Congolese war, the government and international community have had to deal with both Congolese and foreign armed groups and militias. Congolese armed groups have been undergoing the Disarmament, Demobilization and Reintegration (DDR) process. Foreign armed groups, on the other hand, have been undergoing the disarmament, demobilization, repatriation, reintegration or resettlement (DDRRR) process.

Pursuant to the Nairobi Communiqué (or Nairobi Action Plan) and the Goma Agreement, MONUC DDRRR teams have redoubled efforts, working jointly with Congolese authorities, to raise awareness of the DDRRR process among Rwandan combatants. The public awareness campaign is designed to make combatants aware of the real social and economic opportunities open to those who surrender their weapons and choose voluntary repatriation to Rwanda. Although it is the linchpin of efforts to restore order in Eastern Congo, it has gotten off to a slow start and lacks sufficient personnel and materiel. Ongoing military clashes between and among FARDC, Nkunda’s forces, the FDLR and Mai Mai demonstrate that the DDRRR process is far from complete and that the Congolese government still faces numerous challenges in disarming and demobilizing these volatile elements in the Kivus.

The United States, coordinating with other significant donors such as the EU, would do well to make substantial resource contributions to this effort as foreign combatants play a significant role in the current violence and human rights violations in the east. With the success of the DDRRR process, a stable Eastern Congo will provide the basis for stabilizing the rest of the country, instituting the rule of law, and ending the large-scale human rights abuses.

But for stability in Eastern Congo (and the rest of the country, for that matter), the DDR process must also be completed successfully. Remaining renegade rank-and-file Congolese troops, which also commit atrocities in Eastern Congo and elsewhere, must be neutralized, brought to justice (where appropriate), effectively integrated into the FARDC or returned to civilian life. In this regard, improvements in the far east cannot be at the expense of other regions, such as Bas-Congo in the far west, where the Congolese

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141 Id.
142 Id.
143 Id.
144 Id.
146 Id.
147 See Feeley & Jensen, supra note 132.

For those ex-combatants who choose to reintegrate into civilian life, there must be sufficient social and economic infrastructure to absorb and sustain them.\footnote{See UNICEF DRC, supra note 17.} This is especially true for child ex-combatants -- they are the future of DR Congo and they must be properly educated and embraced by the community.

For those who chose to join the FARDC, they should expect to work for an army that is professional, well-structured and respectful of international humanitarian and human rights law. Expending additional resources toward professionalization of the FARDC is also critical. We must see an appreciable increase in U.S. investment for this essential process, which has also been hindered by shortages of men and money.\footnote{See Office of International Justice and Peace, Background on the Democratic Republic of Congo, Feb. 2008, available at http://www.usccb.org/sdwp/projects/200802drcongobck.pdf [hereinafter DRC Background]. Any such assistance, however, must be in accord with the so-called "Leahy Law." The "Leahy Law" is a human rights rider to recent appropriations legislation that is designed to prohibit U.S. military assistance to foreign military units that have "committed gross violations of human rights." See Foreign Operations Appropriations Act, Pub. L. No. 106-429 § 563, 114 Stat. 1900, 1900A-46 (2001). The law is known by the name of its principal sponsor, Vermont Senator Patrick Leahy. It first appeared as part of the 1997 Foreign Operations Appropriations Act, Pub. L. No. 104-208, 110 Stat. 3009 (1996), and was originally applicable only to the State Department's International Narcotics Control (INC) program. The "Leahy Law" in the 2001 Foreign Operations Appropriations Act, Pub L. No. 106-429 § 563, 114 Stat. 1900, 1900A-46 (2000), expanded its scope and states: None of the funds made available by this Act may be provided to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless the Secretary determines and reports to the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.}

None of the funds made available by this Act may be used to support any training program involving a unit of the security forces of a foreign country if the Secretary of Defense has received credible information from the Department of State that a member of such unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.

Some consider the "Leahy Law" to be the most important legal tool used to promote respect for human rights through U.S. security assistance programs. See Bill Quigley, The Case for Closing the School of the Americas, 20 BYU J. PUB. L. 1, 8 n.39 (2005).
b. **Rwanda**

Demobilization of the Hutu combatants clearly requires the support and participation of Rwanda, a participant/signatory in the Nairobi and Goma processes. Nevertheless, Rwanda is still accused of providing covert assistance to Nkunda and generally failing to take seriously its Nairobi communiqué obligations. For the effective functioning of the Goma/Nairobi processes in general, and the DDRRR process in particular, this activity must cease.

Moreover, the rebel Hutus must have legitimate incentives to return to Rwanda. This will require that Rwanda insure that returning Hutus are treated fairly and given social and economic opportunities (although génocidaires have to be brought to justice). To the extent Rwanda needs continuing or expanded financial support for these efforts, it should be provided by the United States. Additionally, given its long-standing alliance with and support of Rwanda, the U.S. is in a unique position to influence Rwanda's domestic and foreign policy to be in line with all U.S. regional peace and stability initiatives, as reflected in the Goma/Nairobi processes.

c. **Preventing Illegal Resource Exploitation**

Much of the DR Congo’s armed conflict has been fueled and financed by illicit trade in minerals and other natural resources. Currently, much of that activity is taking place in the Kivus, where militias operate with the incentive of personal enrichment primarily through control of mining areas and exploitation of their resources (which also finances the armed conflict). Extracted minerals are being purchased and used by American companies in manufacturing everything from cell phones to gas turbine airplane engines. American companies that take advantage of these illicit, low-priced commodities should be fined, sanctioned and possibly prosecuted by the U.S. government. This will go a long way toward reducing the motivation and sustenance of negative forces in the DR Congo. Moreover, the U.S. should support the DR Congo in establishing a legal framework for the exploitation of natural resources that assures a fair share of the benefits go to local communities.

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153 See Congo Briefing, supra note 18.
154 Id.
155 See Dizolele, supra note 151.
158 See DRC Background, supra note 150.
2. Establishing Positive Forces

In addition to supporting efforts to eliminate negative forces in the region, the United States must also make significant contributions toward establishing positive forces in the DR Congo. There are three primary building efforts on which to focus: (1) expanding and strengthening MONUC; (2) establishing a human rights infrastructure; and (3) building up civil society.

a. MONUC

Although it runs the world's most expensive peacekeeping operation,\(^{159}\) MONUC's current force levels do not reflect the critical role it is expected to play under the Goma and Nairobi processes.\(^{160}\) MONUC's resources are stretched to the limit, creating risks in areas of ongoing as well as potential and rising tension (such as Bas Congo).\(^{161}\) Quite simply, it is difficult, if not impossible, for a force of under 20,000\(^{162}\) to provide stability to a country the size of Western Europe. Elsewhere far more troops have been deployed in countries with similar problems. In Liberia, a country roughly the size of one district in Congo, 15,000 U.N. troops have been allocated, and Burundi, DR Congo’s tiny eastern neighbor, has been allocated 5,000 troops.\(^{163}\) It is clear that MONUC requires an increase to make troop numbers commensurate with the size of the DR Congo and the extent of security challenges it faces.\(^{164}\)

In addition to providing additional financing for MONUC, the United States should actually contribute troops. Well trained, well disciplined American military personnel could make a significant difference in permitting MONUC to carry out its mission.\(^{165}\) Much like the Marshall Plan, perhaps it is time to start thinking of MONUC as the beginning of a new kind of NATO in Africa.

Part of this should entail the U.S. ensuring that all MONUC personnel are properly trained and that any found engaging in violations of human rights or humanitarian laws

\(^{159}\) See Dizolele, \textit{supra} note 151.

\(^{160}\) See Stretched to the Limit, \textit{supra} note 148.

\(^{161}\) Id.


\(^{164}\) See Dizolele, \textit{supra} note 151.

\(^{165}\) After the failure of the UN in the mid-1990s to stop blood-letting in Somalia, Rwanda and the Balkans, many argued it would be better for those who are properly equipped to deal with putting out the fires of conflict. In 1999, it was NATO that stopped the killing of ethnic Albanians in Kosovo, while a force led by Australia halted the conflict in East Timor. A year later, in Sierra Leone, the quick deployment of about 1,000 British soldiers helped save what was then the UN's largest peacekeeping mission from collapsing under attack by rebels of the Revolutionary United Front. \textit{See Call the Blue Helmets, THE ECONOMIST}, Jan. 4, 2007, \textit{available at} http://www.uiowa.edu/~c030060/ecst.peacekeeping.htm. It must be acknowledged, however, that the United States has not "blue-hatted" troops since its attempts at nation-building in Somalia resulted in dozens of U.S. soldiers being killed or wounded.
be swiftly and appropriately punished. U.S. financing and participation should be contingent on such conditions.

Finally, resources should be devoted to establishing effective outreach programs for MONUC so it can promote a positive image among Congolese civilians and those in arms. This is critical, \textit{inter alia}, in light of crimes (including sexual violence) committed by MONUC personnel\textsuperscript{166} and discontent with MONUC demonstrated in recent riots in eastern Congo.\textsuperscript{167} A public outreach campaign will go a long way toward ameliorating public perception of MOUNC and thereby make it a much more effective force.

\begin{itemize}
  \item \textbf{b. Security Sector Reform}

  In addition to DDR, DDRRR, and integration, the DRC needs a global approach to security sector reform (SSR) that includes more than the army.\textsuperscript{168} Of course, national and local police forces must also be given adequate training and resources.\textsuperscript{169} In addition, the intelligence sector, border control and customs should also be studied and upgraded to achieve internal efficacy and meaningful integration with the military and police forces.\textsuperscript{170}

  \item \textbf{c. National Human Rights Office}

  As mentioned previously, international and Congolese human rights and aid groups hope that an independent special advisor for human rights can be established to assist the Goma Committee deal with DR Congo's ongoing human rights issues. This is an excellent idea but should be extended to the national level. Given human rights violations occurring throughout the country, including in diverse places such as Bas Congo, Kinshasa, and the Ituris, a national human rights ombudsman should be created. This office should have regional branches in various provinces and the resources and capacity, \textit{inter alia}, to bring litigation and undertake educational programs.

  \item \textbf{d. Civil Society: An Emphasis on Judicial Sector Reform}

  In the absence of genuine efforts to rebuild Congolese civil society, the measures listed above will be of little to no avail. In addition to governmental, commercial, and medical infrastructure and services, civic participation on all levels must be encouraged and permitted to flourish.\textsuperscript{171} Internally displaced persons (IDPs) and refugees must be

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\begin{flushright}
\textsuperscript{166} \textit{Id.}
\textsuperscript{169} \textit{Id.}
\textsuperscript{170} \textit{Id.}
\textsuperscript{171} \textit{See generally Jose Ayala-Lasso, Making Human Rights a Reality in the Twenty-First Century}, 10 E\textsc{m}O\textsc{r}Y INT'L L. REV. 497, 504 (1996) (indicating that rebuilding civil society and national capacities is necessary for the protection of human rights through strengthening democracy and the rule of law).}

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resettled and given assistance.\textsuperscript{172} Corruption must be systematically rooted out.\textsuperscript{173} Investment in a long-term development strategy is essential. This will require the maintenance, improvement and significant expansion of such American efforts as the DR Congo Relief, Security and Democracy Promotion Act of 2006.

For purposes of establishing and maintaining peace establishing the rule of law is paramount and so the judicial sector stands out as perhaps the top priority in this area. It must be provided with adequate personnel, resources and training. In this regard, two sections of the U.S. Department of Justice could provide invaluable assistance. The International Criminal Investigative Training Assistance Program (ICITAP)\textsuperscript{174} could send experts to provide specialized training to various Congolese law enforcement branches.\textsuperscript{175} Similarly, the Office of Prosecutorial Development, Assistance and Training (OPDAT) could furnish a resident legal advisor to Kinshasa to help with rebuilding the justice sector.\textsuperscript{176} Together, these two agencies could team up to accomplish, among other things, the following:

\begin{itemize}
\item establish community justice projects that improve coordination between police, prisons, and courts;
\item institute anti-corruption programs; and
\item set up a Women's Justice and Empowerment Initiative that seeks to improve the government's ability to investigate, prosecute, and adjudicate DR Congo's rampant gender-based crime.\textsuperscript{177}
\end{itemize}

\begin{footnotes}
\item[173] See James C. Hathaway, Forced Migration Studies: Could We Agree Just to "Date"?, 20 J. REFUGEE STUD. 349, 360 (2007) ("Corruption [in DR Congo] is everywhere endemic and rampant.").
\item[175] Id. Zagaris explains that within the "overlapping set of U.S. agencies and individuals assisting foreign police," ICITAP emerged in the 1990s as a primary coordinator of U.S. assistance to foreign police. Id. Established in 1986 under the administration of the U.S. Department of Justice, ICITAP operates with policy guidance from the Department of State. Id. ICITAP funding comes from USAID, channeled through the State Department. Id. Its objective is to train foreign police, prosecutors, judges, and other criminal justice personnel to further the "rule of law" in their countries. Id.
\item[176] See Jenia Iontcheva Turner, Transnational Networks and International Criminal Justice, 105 MICH. L. REV. 985, 1004-1005 (2007) (explaining that OPDAT was established with the primary mission of providing assistance to foreign nations so as to equip the U.S. with a stronger base of foreign cooperation in the fight against organized crime, illegal narcotics, and terrorism and prosecution of war crimes).
\item[177] ICITAP and OPDAT have already partnered to establish similar programs in other parts of Africa. See U.S. Dept. of Justice, Africa and Middle East, http://www.usdoj.gov/criminal/icitap/programs/africa-mideast/ (last visited Aug. 17, 2008).
\end{footnotes}
3. **Ending Impunity**

As the preceding paragraphs make clear, there can be no peace without justice in the DR Congo. For the cycles of violence and war to abate, perpetrators of war crimes, crimes against humanity and genocide must be held to account for their crimes. Moreover, human rights and humanitarian law must be strictly enforced to prevent commission of such crimes in the future. The United States can and should play a crucial role in both regards.

a. **Supporting Prosecution Efforts**

i. **International Criminal Court**

The International Criminal Court investigations and prosecutions of Ituri warlords could represent an important step in ending the culture of impunity that has pervaded in DR Congo. By its absence from and hindrance of the ICC, the U.S. is hampering a crucial human rights initiative in DR Congo.\(^{178}\) In addition to assuring more effective results for existing investigations and prosecutions, U.S. participation could help facilitate ICC investigations related to crimes in other parts of the country and committed by high-level perpetrators in the government, military and other sectors of society. For example, it is perhaps time for the ICC to indict Laurent Nkunda given the DR Congo's failure to apprehend and prosecute him. Clearly, as indicated above, Ituri is not the only area where atrocities have been committed over the past decade.

ii. **Domestic Prosecutions**

In that regard, DR Congo domestic prosecution efforts must also be bolstered. Nkunda is the poster child for this necessity. As mentioned above, U.S. agencies such as ICITAP and OPDAT could provide significant assistance. These agencies could spearhead efforts to place resources in the proper hands for justice sector rebuilding efforts. In addition, the United States could establish various programs, such as a "Rewards for Justice" program (already used effectively in Africa to apprehend Rwandan génocidaires on the lam) to help capture DR Congo fugitives, such as the indicted Laurent Nkunda.\(^{179}\)

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\(^{178}\) See generally, Marcus R. Mumford, *Building upon a Foundation of Sand: A Commentary on the International Criminal Court Treaty Conference*, 8 J. Int'l. L. & Prac. 151, 156 n.16 (noting generally that the U.S. policy against the ICC is obstructing one of the primary global human rights campaigns).

\(^{179}\) The "Rewards for Justice" program has been used by the U.S. Department of State to aid in the apprehension of human rights violators. See Allison Marston Danner, *Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court*, 97 Am. J. Int'l. L. 510, 535 (2003) (describing how the program has been used help bring Rwandan génocidaires into custody).
iii. Establishing a Hybrid Tribunal?

Finally, to the extent, atrocity crimes have been committed outside the temporal jurisdiction of the International Criminal Court (i.e., before July 2002) and are beyond the competence of Congolese authorities to investigate and prosecute, a separate internationalized hybrid tribunal should be established. For the culture of impunity to end, pre-2002 crimes must also be dealt with.

b. Ensuring Enforcement of Human Rights & Humanitarian Law

Committing United States troops to MONUC would certainly help bolster enforcement of both human rights and humanitarian law in DR Congo -- an essential part of establishing and maintaining the rule of law there. Even absent that, the U.S. should provide assistance in training MONUC and Congolese troops in the law of war. This would certainly help reduce victimization of civilians and a rampant culture of predation.

V. Conclusion

During the first phase of Congolese independence, U.S. policy was clearly dominated by narrow Cold War interests. But as this Article has demonstrated, that policy has evolved over the past decade. Although the United States has at times had divergent objectives (including resource exploitation) and problematic partners (including, most notably, Rwanda and Uganda) in the Great Lakes Region during these past ten years, its goal of helping DR Congo emerge from the rubble of Mobutism and civil war has gained greater urgency and become a more prominent and fixed part of U.S. policy. Considering that 45,000 people per month are still dying because of the DR Congo conflict, it is high time that goal be completely achieved. Not only is it the right thing to do and the best policy from a humanitarian perspective, it is in the U.S. and global interest that a country the size of Western Europe, lying at the heart of the African continent, attain stability.

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181 Id. See also Dizolele, supra note 151.

182 Collins, supra note 47.

183 See Mark Bellamy, Weak States in Africa: US Policy Options in the Democratic Republic of Congo: Testimony Before the Senate Committee on Foreign Relations Subcommittee on African Affairs, April 9, 2002 (statement of Mark Bellamy, Principal Deputy Assistant Secretary for African Affairs), available at http://www.state.gov/p/afrls/rm/9313.htm (Former U.S. Principal Deputy Assistant Secretary for African Affairs explaining that, in light of major humanitarian crisis in DR Congo destabilizing much of Africa, it is in U.S. best interests to restore stability to the Great Lakes region; ameliorate the humanitarian crisis; promote a democratic government and respect for human rights; and promote economic development and reform).
As this Article has demonstrated, the United States must now implement an "African Marshall Plan" -- a mammoth infusion of resources and assistance is needed. This plan should be administered by a well-integrated, single agency or office within the U.S. government and use an ombudsman to insure proper allocation and distribution of resources. As the original aid program helped Western Europe hold on to peace and democracy after World War II, the "African Marshall Plan" should provide the same benefits for the DR Congo in the wake of Africa's "First World War." This behemoth of a country is truly at a crossroads in its history. It is still not too late for Patrice Lumumba's vision of an independent, secure and prosperous Democratic Republic of Congo to be realized. For that to happen, the spirit of Lumumba and Marshall must now come together for the birth of a new central Africa.

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