Debt-for-Nature Swaps: Effective But Not Enforceable

Tamara J. Hrynik

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Debt-for-Nature Swaps: Effective But Not Enforceable

Environmentalists have seldom had much time for financiers. So welcome a new understanding between the brown-sandalled nature lovers and the black-Guccied bankers.¹

I. INTRODUCTION

In an attempt to alleviate their severe debt problems several Latin American countries are proposing increasingly bold and creative plans. Among these proposals are a debt-for-archeological line drawings plan,² a debt-for-drugs plan,³ a debt-for-exports plan,⁴ and a debt-for-tourism plan.⁵ The most successful of these innovative plans has been the debt-for-nature swap.⁶

Debt-for-nature swaps have been established as a mechanism through which conservation parks and sustainable use⁷ areas are set aside

¹ Greensback Debt, THE ECONOMIST, Aug. 6, 1988, at 62.
² Debt from Outer Space, VI INT’L FIN. L. REV., Nov. 1987, at 1-2. Peru has come up with a plan to swap a portion of its national debt for the promise to conserve archaeological line drawings at Nasca in the Peruvian desert.
³ Debt for Drugs Swap, VI INT’L FIN. L. REV., Aug. 1987, at 1-2. Bolivia has agreed to help decrease cocaine export trafficking in exchange for the opportunity to buy back some of its debt at a discount from creditor banks.
⁴ Jones, Fishmeal? That’ll Do Nicely, EUROMONEY, June 1988 at 149. Peru has entered into an agreement with First Interstate Trading, the trading company of First Interstate Bank of California, whereby an inventory of products is sold to the trading company which then sells them in U.S. markets. According to the senior vice-president of First Interstate Bank, “[o]n [the] selling [of] certain products we may recoup as much as 40 cents in [sic] the dollar.” Id. See also Glen, Debt Ball In Private Sectors Court: Crisis Provides Fertile Ground for New Solutions, AM. BANKER, Sept. 25, 1987 at 11.
⁵ Jones, supra note 4. American Express’s commercial bank, through its travel agency network, will export travel packages to Peru. The agreement covers a period of “two years during which time $10 million in unilateral debt will be retired.” Id.
⁶ Giaimo, Deforestation in Brazil: Domestic Political Imperative-Global Ecological Disaster, 18 ENVTL. L. 537 (1988); Debt-for-nature swaps have gained the attention of most debt ridden third world countries. The first swap, which was facilitated in Bolivia, has served as a model for successful arrangements in Ecuador, Costa Rica, Madagascar, the Philippines, Zambia, Peru, Mexico, and Tanzania among others. Id. at 565. See Beebe & Stroh, Using Debt to Save Nature, N.Y. Times, July 28, 1987, at A23, col. 1; Passell, Saving the Forest in Costa Rica, N.Y. Times, Feb. 8, 1989, at D2, col. 1; Tye, Winning One for the Forest, Boston Globe, Apr. 10, 1989, at 13, col. 1.
⁷ Sustainable use areas are development areas modeled after the structure of the natural forest that is characteristic of the region that will be developed. See Gerstine, Africa’s Rainforests Part II: Traditional Agriculture and Modern Problems, WORLD RAINFOREST REPORT, Sept.-Nov. 1988 at 4.
and legally protected by a foreign government in exchange for cancellation of a portion of that country’s foreign debt. Although debt-for-nature swaps are a far cry from being the answer to the international debt crisis, they do serve several useful purposes.

The most obvious purpose, the conservation and sustainable management of a biosphere reserve, is the motivating force for the environmental groups which endorse and coordinate these ventures. In addition, countries entering into these agreements benefit from a reduction in the total amount of debt that they owe while the banks benefit by selling, at a discount rate, loans that could remain in their portfolios indefinitely.

This Note will examine the development and success of the debt-for-nature swap in Bolivia, since Bolivia was the first country to enter into such a pioneering endeavor combining debt relief with environmental concerns. It will also discuss debt servicing and the debt-for-nature swap as an alternative debt relief program. Finally, this Note will comment on the lack of enforcement alternatives in the Bolivian debt-for-nature swap agreement concluding that this is merely an omission that should not, and most likely will not, jeopardize the utilization of the debt-for-nature swap as an alternative debt relief program.

II. DEBT-FOR-NATURE SWAP

Bolivia has the distinguished honor of being the first country to sign

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Rainforests are very complex and diverse ecosystems which contain countless species of plants and animals.

In traditional European and North American forests the soil contains the nutrients that support the crops or forests. The soil in a rainforest, however, is usually poor in nutrients and very thin. In fact, most of the nutrients that support the complex and diverse species of the rainforest are stored in the trees themselves. Id.

“Northern agriculture . . . typically involves eliminating trees and monocropping large fields. In the tropics, this destroys the nutrient base . . . [and] the natural diversity, and exposes large plots of ground to erosion.” Id.

Since traditional Northern farming methods are not suitable to rainforests, a farming method modeled after the natural forest, known as agroforestry, was developed. Id. Agroforestry has proven to be an effective method of farming in cost, output and long-term land use terms. Id.


The environmental groups coordinating these debt-for-nature swaps include: Conservation International, the World Wildlife Fund and The Nature Conservancy, all located in Washington D.C.. Some of the active groups that endorse the debt-for-nature swaps include: Rainforest Action Network (San Francisco, CA), Cultural Survival, Greenpeace USA (New York, N.Y.), Earth Island Institute (San Francisco, CA), the Environmental Defense Fund (Washington D.C.), the Frank Weeden Foundation and the National Wildlife Foundation.
a debt-for-nature swap agreement "creat[ing] conservation areas totaling more than four million acres in exchange for reduction of part of its foreign debt."\textsuperscript{10}

Conservation International,\textsuperscript{11} a non-profit organization, facilitated this debt-for-nature swap by using a $100,000 grant from the Frank Weeden Foundation\textsuperscript{12} to purchase $650,000 of deeply discounted Bolivian debt from a Swiss bank\textsuperscript{13} through Citibank Investment Bank, its agent in the debt market.\textsuperscript{14} In exchange for the $650,000 face value debt from Conservation International, "the Bolivian government [has] agreed to establish three conservation and sustainable use areas totaling 3.7 million acres, adjacent to the existing Beni Biosphere Reserve."\textsuperscript{15} The three new conservation and development areas and the existing 334,000 acres\textsuperscript{16} of the Beni Biosphere Reserve will cover over 4 million acres of land.

The Beni Biosphere Reserve is the core of the conservation area\textsuperscript{17} consisting of a forest filled with diverse flora and fauna which "supports 13 of Bolivia's 18 endangered animal species, including primates, spotted cats, deer (including the endangered marsh deer), wild boar, river otter, foxes, anteaters and bats, as well as birds, amphibians, and reptiles."\textsuperscript{18} The Chimane Forest Reserve is one of the three conservation and buffer zones that will surround the Beni Biosphere Reserve.\textsuperscript{19} It will remain open to sustained development by the local populations, such as the Chimane Indians.\textsuperscript{20} This area is intended to be a 2,870,561 acre buffer zone to the Beni Biosphere Reserve\textsuperscript{21} where logging, fishing and hunting


\textsuperscript{11} Conservation International is a non-profit organization in Washington D.C. It is advised "by a board of directors of prominent leaders from throughout the Americas and staffed by the largest group of Latin American conservation professionals of any U.S. organization." Conservation International has a unique strategy of addressing forest destruction at both the local and national levels. News from The John D. and Catherine T. MacArthur Foundation, The John D. and Catherine T. MacArthur Foundation Awards $2.3 Million to Conservation International 2-3 (Aug. 18, 1988).

\textsuperscript{12} The Frank Weeden Foundation is a charitable organization in California that donates exclusively to environmental causes. Chandler, A Debt Swap of a Different Nature for Bolivia: Conservationists to Retire Some of the Nation's Loans in Exchange for a Vow on Rain Forest [sic], Wash. Post, July 14, 1987, at E3, col. 1.

\textsuperscript{13} Id.; Truell, What Some Monkeys in Bolivia Have to Do With the Debt Crisis, Wall St. J., Jan. 20, 1988, at 1, col. 4.

\textsuperscript{14} CI Press Release, supra note 10.

\textsuperscript{15} Id. at 2. The Beni Biosphere Reserve is located in northeast Bolivia. Bolivia's Beni Biosphere Reserve, supra note 8.

\textsuperscript{16} Bolivia's Beni Biosphere Reserve, supra note 8.

\textsuperscript{17} Allman, supra note 8, at 54.

\textsuperscript{18} Bolivia's Beni Biosphere Reserve, supra note 8.

\textsuperscript{19} Id.; Allman, supra note 8, at 54.

\textsuperscript{20} Bolivia's Beni Biosphere Reserve, supra note 8; Beebe & Stroh, supra note 6.

\textsuperscript{21} Bolivia's Beni Biosphere Reserve, supra note 8; Beebe & Stroh, supra note 6.
by the local Indians is permitted. In addition, the Yacuma Regional Park and CORDEBENI Hydrological Basin, which border the Beni Biosphere Reserve, will become protected conservation areas and buffer zones. These conservation areas cover a total of 877,205 acres and support several endangered plant and animal species. More specifically, the CORDEBENI Hydrological Basin, a watershed area, is protected from logging that would lead to erosion of the river basin.

During the implementation process, the Bolivian government established a $250,000 fund in local currency to help administer the reserve areas. This fund is indicative of the acceptance of this program by the government and people of Bolivia and as a form of commitment to the project. Further support for the program was shown when the local residents voted at a Congress of Civic Associations to give seven percent of their tax revenues from forestry activities to support the biosphere reserve.

Local support and involvement may be the key to success of this program due to the fact that this land remains under the protected status of the Bolivian government. If this program were simply a passing whim without local support it would probably not survive. Therefore, it is extremely important that all parties, especially the local parties, be committed to this program to insure its success.

Recognizing the important role of Conservation International in facilitating this program, Bolivia designated Conservation International the official advisor "in the design and planning of these protected areas, as well as wildlife management." In this capacity Conservation International can help Bolivia implement an environmentally sound conservation program by bringing their expertise to the planning, development and implementation stages of the project. In addition, Conservation International will be able to evaluate and offer constructive criticism of the program once it has been established. Bolivia, having little or no experience in the area of conservation, will benefit greatly from the guidance Conservation International can provide as their official advisor.

In an effort to strengthen the protection of this area, the Bolivian

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22 Allman, supra note 8, at 54.
23 Bolivia's Beni Biosphere Reserve, supra note 8.
24 Id.
26 Allman, supra note 8.
27 Truell, supra note 13.
government granted Congressional Law status, the highest legal protection status in Bolivia, to the entire area. This protection is implemented through a legislative decree entered into by the executive representative, and ratified by the Bolivian Congress.

Despite the useful purposes and good intentions of the facilitating institution, Conservation International, and the country, Bolivia, the problem of enforcing debt-for-nature agreements remains unsettled. In the Bolivian situation specifically, how can Conservation International, as a private non-profit organization, enforce the continued use of this conservation area in a manner consistent with the purposes set out in the agreement?

Arguably, Bolivia, in contemplating and implementing this agreement recognized that this sort of long-term development and conservation plan would help strengthen the Bolivian economy. In fact, a debt-for-nature swap is a sounder plan than the traditional, and ecologically devastating, short-term economic development projects such as the "slash and burn" forest clearing tactics which lead to soil erosion. But, if a country, such as Bolivia, looses sight of the benefits of the long-term development and conservation program as a result of a governmental policy or public opposition, would an organization, such as Conservation International, be able to enforce the agreement?

III. Development of Debt Servicing

Formulating a public development policy that fosters long-term growth in a developing country is not an easy task, nor is it one in which success is guaranteed. In the past, these plans have ranged from well thought out long-term development projects, including recent efforts by the International Bank for Reconstruction and Development ("World Bank") aimed at developing the private sectors in third world countries, to short-term, high-yield projects which ultimately destroy the land and the indigenous inhabitants and their cultural environment.

Before addressing the enforcement aspect of debt-for-nature swaps, it is necessary to examine how the debt and environmental crisis is com-

31 Bolivia's Beni Biosphere Reserve, supra note 8.
32 Borrelli, supra note 28, at 42.
33 BOL. CONST. arts. 85-98, reprinted in II A. BLAUSTEN & G. FLANZ, CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 32-35 (1988). In this case the United States Ambassador was designated by the President of Bolivia to enter into the agreement on behalf of Bolivia. Agreement, supra note 29, at cls. 6.
34 BOL. CONST., supra note 33, art. 59, at 24-26.
35 "Slash and burn" policies are designed to clear the land for cattle ranches by cutting and selling the trees -slashing- and burning the stumps and vines that remain instead of manually removing them.
36 1988 THE WORLD BANK ANNUAL REPORT 42 [hereinafter WORLD BANK AR].
pounded by organizations that were created to alleviate the economic pressures on developing nations.

The World Bank is an example of an organization created to aid the restoration efforts of the post World War II period. Over the years the World Bank has assumed a direct role in the developmental efforts of third world countries. As international development institutions, the World Bank and other multilateral development banks ("MDBs") are in a strong position to influence international environmental policies. In fact, many of the MDBs have in fact adopted formal environmental policies. However, there is significant evidence that these are paper policies that are never, or rarely, incorporated into the projects themselves.

This evidence includes several notable factors, particularly that negotiations concerning these issues are usually conducted in private sessions or "behind closed doors." For example, the World Bank has a formalized six-step process, called the Project Cycle which provides a format and formula for the World Bank to calculate the costs and evaluate the feasibility and success of proposed projects. The six steps of the Project Cycle include: 1) Identification Phase, 2) Preparation Phase,

37 Members of the United States government created a draft proposal for an international bank that would "facilitate the provision of capital for reconstruction . . . as well as for development purposes." E.S. MASON & R.E. ASHER, THE WORLD BANK SINCE BRETON WOODS 13 (1973). This draft proposal resulted in the formation of the International Bank for Reconstruction and Development. See ARTICLES OF AGREEMENT OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT, as amended effective December 17, 1965 [hereinafter IBRD ARTICLES OF AGREEMENT].

38 Multilateral Development Banks are institutions which lend almost all of their money to governments and government agencies for development projects. SIERRA CLUB, BANKROLLING DISASTERS: INTERNATIONAL DEVELOPMENT BANKS AND THE GLOBAL ENVIRONMENT 11 (1986). The World Bank is the largest MDB but other MDBs such as the Inter-American Development Bank, the Asian Development Bank and the African Development Bank lend significant amounts of money to less developed countries for development projects. Id.

39 Id. at 4.

40 See infra notes 56-65 and accompanying text.

41 SIERRA CLUB, supra note 38, at 4.


43 In this phase the World Bank selects projects that are of high priority and compatible with the criteria and purposes of the World Bank. At the outset the World Bank depended on governments or private individuals to bring these projects to their attention. Id. at 6. Recently, however, the World Bank has identified projects through Identification Missions which are sent to the potential borrowing countries to assess the feasibility of the project. Id. The feasibility test is the prima facie test for approval of the project. D. BAHL, THE WORLD BANK & INTERNATIONAL FINANCE CORPORATION 36 (1986). Sometimes these missions are able to spot areas that are ripe for a World Bank development project and will recommend their findings to the Executive Directors. W. BAUM, supra note 42, at 21. After meeting the feasibility test the World Bank and the borrowing government turn to establishing the methods and conditions of turning the project into a reality.

44 At this point the World Bank and the borrowing government collaborate to produce a detailed description of what the project objectives are, how these objectives will be implemented, (i.e. what means will be utilized) and what terms and conditions the supervision and financing of the
3) Appraisal Phase, 45 4) Negotiations Phase, 46 5) Implementation Phase 47 and 6) Supervision Phase. 48 Recently, the World Bank added a seventh phase, the Evaluation Phase. 49 Here a detailed post-project evaluation is done in an effort to facilitate a comparison with the results of project will be subject to. W. BAUM, supra note 42, at 8-10. The World Bank plays a very active part in this area, despite the fact that it wishes to maintain a distinction between its role as an advisor and as the financial backer and not the borrower or grantor of funds. Id. However, with the expertise that the World Bank and their representatives can bring to the development project discussions concerning technical, operational and financial operations, it is in the best interests of the borrowing country and the World Bank to share this information before the proposal is finalized.

45 As the proposal is finalized the project is scheduled for the Appraisal Phase. An appraisal is an independent review conducted by the staff of the World Bank “cover[ing] the four major aspects of the project—technical, institutional, economic, and financial.” Id. at 11.

The technical review determines whether the project plan utilizes the most efficient or appropriate engineering methods. In addition, the cost estimates, machinery requisitions, utility factors, and the impact on the environment and local people are considered in terms of the realistic expectations of the project and the needs of that area of the country. Id. at 11-12; D. BAHL, supra note 43, at 36-37.

The institutional review is designed to examine the potential borrower and its managerial and organizational structures. W. BAUM, supra note 42, at 12. In doing this the World Bank must take into account the political state of affairs of the country that may or may not influence the project. D. BAHL, supra note 43, at 37.

The financial review is designed to ensure that sufficient funds are available to implement the project, that the borrowing government has the resources or means of acquiring the resources to repay its obligation, and that the project costs are realistic. Id. at 36-38.

Finally, the economic review analyzes the costs and benefits of the project, the alternative methods of implementing the project, and how the project meets the needs of the country. W. BAUM, supra note 42, at 13-15. At this stage the project must show an economic return for the country and the World Bank or risk being rejected. Id. After all the reviews are conducted, they are put into a “report that sets forth its findings and recommends terms and conditions of the loan.” Id. at 17. This report, after being reviewed and redrafted, is then presented to the Executive Directors for approval. The Executive Directors rarely reject the proposal due to the World Bank’s extensive involvement throughout the process. Id.

46 The Negotiations phase is the stage at which the World Bank and the borrower transform the report and terms of the agreement into legal obligations. “The agreement usually contains a schedule of implementation and covenants on such matters as anticipated rates of return, revenue levels, organizational changes and land acquisition.” D. BAHL, supra note 43, at 38. When the negotiations are complete the “appraisal report, . . . the President’s report and the loan documents [are] presented to the Bank’s Executive Directors.” W. BAUM, supra note 42, at 18. Upon approval from the Executive Directors the loan is signed, signaling the first act commencing the project.

47 Subject to the terms of the loan agreement the World Bank assists at this stage as is necessary but the primary burden of implementation rests on the borrower. W. BAUM, supra note 42, at 19. The World Bank remains involved in the project through the companion phase of Supervision. However, by supervising the implementation of the project an on-site evaluation can be compiled to identify the strong points and the defects in the proposal. Id. at 19-24.

48 Id. at 20-21.

49 The need and value of a more structured evaluation system was recognized and “[i]n 1970, an Evaluation phase was established as the final stage in the project cycle. Id. at 22. The information learned in the field through hands-on experience was invaluable; therefore, it was necessary to devise a way to document and reference the findings. In addition, the Operations Evaluation staff, a staff group that reports directly to the Executive Directors, was commissioned.
the pre-implementation work done by the World Bank staff.\(^5\)

Phase Four of the Project Cycle, the Negotiations Phase, is described as a phase that includes open negotiation tactics. In reality, the negotiations are between the borrowing governments, their designated representatives, and the World Bank and rarely include input from the indigenous peoples or members of the communities who are designated as the "intended beneficiaries”\(^{51}\) of these projects.

Further evidence of this paper policy is evident in the cost calculations which rarely take into account "externalities" such as the costs to the environment through the use of pesticides and the impact of deforestation and pollution.\(^{52}\) These types of cost calculations are not built into the World Bank’s "economic rate of return"\(^{53}\) formula as it is set out in the Appraisal Phase of the Project Cycle. In fact, it is reported that the "economic rate of return" formula is nebulous, flexible, and frequently adapted to the needs of the proposal, regardless of the cost to the environment or the harm to the inhabitants.\(^{54}\) This suggests that the World Bank “paper policy” is even further removed from being incorporated into the proposal than previously suggested.

Further evidence of this being a “paper policy” is that the World Bank, as an international development institution similar to most MDBs, is not appropriately staffed to handle environmental concerns.\(^55\) In 1986 the World Bank Office of Environmental and Scientific Affairs had four staff members, only one of which was an ecologist.\(^56\) The environmental evaluations necessary for an informed proposal cannot be appropriately handled by the limited staff resources made available for such purposes.

Over the past few years, increasing pressure from environmental groups, the Reagan Administration, and Members of the United States Congress have forced the World Bank to address the environmental void in their project proposals.\(^57\) In response to this pressure, the World Bank instituted a reorganization plan in 1987 that increased the emphasis given to environmental concerns.\(^58\) As a result of the reorganization “[e]nvironmental units were established in all four regional offices,\(^59\) [and] a central environment department was set up in the senior vice-
The World Bank stated that this reorganization translated into two basic premises: "[F]irst, to expand its efforts to address the environmental consequences of individual projects specifically aimed at environmental problems; and second, to stress the development of policy interventions designed to influence environmentally related behavior on a large scale."\(^6\)

In addition to the groups and parties previously mentioned, these policy changes were influenced by the World Commission on Environment and Development ("Brundtland Commission")\(^6\) by way of their report entitled, *Our Common Future*.\(^6\) The Report emphasized that environmental policies should be fully and naturally integrated into the development and project planning stages by both development institutions and the countries seeking the implementation of the project.\(^6\) Moreover, the Brundtland Commission recommended focusing more on long-term effects rather than short-term profits.\(^6\)

As a result of the Brundtland Commission's report "special attention is [also] being paid to the severe environmental problems in sub-Saharan Africa (such as desertification and salinity), ... and to regional problems such as the pollution of the Mediterranean Sea."\(^6\) More specifically, efforts are being made through the Operations Evaluation Staff of the World Bank, which reports directly to the Executive Directors, to evaluate past projects to try to define patterns, positive or negative, linking projects to each other.\(^6\) This differs from the regular evaluations process in that it will be a cumulative evaluation rather than the single project evaluation that was previously mentioned.\(^6\) Moreover, these evaluations will focus on environmental issues.\(^6\)

The combination of cumulating environmental trends in project evaluations and presenting the results directly to the Executive Directors,
as the Operations Evaluation staff is commissioned to do, may increase the Executive awareness in the World Bank of the need to pursue environmentally sound developmental policies.\textsuperscript{70}

Despite the fact that the World Bank had a six-step\textsuperscript{71} Project Cycle plan and a paper plan on environmental protection, the development programs that have been implemented in recent years indicate that less than prudent judgment was exercised with regard to foreseeing the impact of these programs on the land and people of the countries they involve.\textsuperscript{72}

The high yield\textsuperscript{73} projects, which lack thorough planning, have come back to haunt the World Bank in the form of failing projects, increased loan programs, destitute people and useless land.\textsuperscript{74} Neither the World Bank nor the world in general can afford the continuation of this cavalier attitude toward environmental protection.

If appearances mean anything, then the 1987 Reorganization Plan and its inclusive changes in the World Bank's environmental policies seem to be more than just another paper policy.\textsuperscript{75} The World Bank has increased the size of their environmental units\textsuperscript{76} and appears to be cognizant of the environmental concerns that directly affect their development projects.\textsuperscript{77} The key is to direct the projects in an environmentally sound manner; awareness and planning are the beginning stages of this process.

As noted, designing developmental policies is not an easy task. But the World Bank, as one of the largest development institutions, has an obligation to the countries and people they deal with, the world at large and itself to: 1) incorporate an examination of the impact of their proposed projects on the environment and indigenous people; and 2) direct their public development loan policies in a way that fosters environmen-

\textsuperscript{70} W. BAUM, supra note 42, at 21. See also IBRD ARTICLES OF AGREEMENT, supra note 37, § 4, § 19. This is possible because these reports do not go through the traditional red-tape associated with these types of evaluation programs. The people making the decisions concerning the daily operations of the programs, the Executive Directors, are the ones receiving the reports.

\textsuperscript{71} With the addition of the Evaluations Phase the program has seven steps. However, this phase has not been formally added to the Project Cycle program, therefore, the Project Cycle only has six formal steps or phases.

\textsuperscript{72} See generally Dumanski, supra note 55; World Bank: Accounting for the Environment, THE ECONOMIST (June 21, 1986). These articles discuss the following failed World Bank projects: Polonoreste project in Brazil; Narmada Dam project in India; Transmigration project in Indonesia; and Cattle-Ranching project in Botswana.

\textsuperscript{73} "High Yield" projects are development projects that are designed to produce a high rate of return on the initial investment. They may be less sound than other programs and are usually short-term projects due to the fact that the natural resources they depend on are depleted faster that they can regenerate. Examples of these projects include the Polonoreste, Narmada Dam, Transmigration, and Cattle-Ranching projects mentioned in Dumanski, supra note 55.

\textsuperscript{74} Id.

\textsuperscript{75} See generally WORLD BANK AR, supra note 36.

\textsuperscript{76} Id. at 42-44.

\textsuperscript{77} Id.
tally sound, long-term economic growth that supports the indigenous people.

IV. TOLL OF DEBT SERVICING

Unfortunately, long-term development policies have been the exception and not the rule for developing countries. Therefore, many of these countries find themselves in a situation of continually requesting short-term development loans\(^7\) to meet their mounting debt and interest needs, only to have their total debt obligation rise with the addition of the new loans. Most countries take on the proposed short-term development projects, and their accompanying debt, to try to alleviate some of their internal economic problems.\(^7\) But they soon find themselves burdened with the larger problem of paying the interest or installment payments on the debt that financed the project.\(^8\)

This, in turn, puts a great deal of pressure on the project to succeed and continue succeeding. The problem with this pressure is that not all of the projects are designed to meet the high level of economic return that is necessary to service the debt.\(^8\) Therefore, the countries and their respective governments end up trying to resolve their internal problems with new development programs that only increase their total debt obligation. The result is a more stressful economic environment in the borrowing country that eventually takes its toll on the people, the land and the country.

The toll usually translates into robbing the indigenous people and the environment to pay the banks. In fact, many developing countries find themselves in the unfortunate position of "borrowing" from their forests, soils, wildlife and water supplies to pay their debts.\(^8\) Again, this is a short-term solution, especially for countries merely paying the interest owed on loans, and not principal,\(^8\) because these resources need time to regenerate. Ultimately, because of the long regeneration cycles,\(^8\) consumption will outpace the regeneration ability of these resources, leaving

\(^7\) See supra note 35 and accompanying text.

\(^8\) The internal problems include economic and social problems such as providing food, shelter, and work for their citizens.

\(^8\) Barton, Debt Swaps: New Game in Town, 48 Christianity and Crisis, Mar. 7, 1988, at 62. This puts an additional external pressure on the country in addition to the internal one they were trying to alleviate originally.

\(^8\) See World Bank: Accounting for the Environment, supra note 72 for references to the Transmigration project in Indonesia.

\(^8\) Dumanski, supra note 55.

\(^8\) Barton, supra note 80, at 62-65.

\(^8\) The regeneration periods usually last a few decades. N. Myers, The Primary Source: Tropical Forests and Our Future 173 (1984).
behind environmental chaos and fewer sources for generating future revenue.

V. DEBT-FOR-NATURE SWAPS AS A SOLUTION TO THE DEBT AND ENVIRONMENTAL CRISSES

Although debt-for-nature swaps are not the only nor ultimate answer to either the international debt crisis or the global environmental crisis, they have been established as a vehicle which addresses both concerns.

The useful purposes of a debt-for-nature proposal include: 1) conservation and sustainable management of a biosphere reserve; 2) debt reduction for the participating country; and 3) partial satisfaction of outstanding loans that may remain in the bank’s portfolio for an indefinite period of time.

When compared to the debt-equity arrangements that have been used recently in various countries, debt-for-nature swaps appear to be a better solution to the debt problems of these countries. This is evidenced by the fact that in a debt-equity swap, the participating country basically ends up “selling” or swapping an equity interest in their country to a private-outside third party in exchange for money or a debt note.

In effect debt-equity arrangements create dissention in the participating countries because assets are given to the third party who then owns a piece of the country and may eventually dictate the policy with regard to that geographical or economic area. In a debt-equity swap the focus is on the external control and intervention imposed on these developing countries by outside organizations. This is a necessary imposition on these countries because under recent debt rescheduling agreements, a debtor nation cannot buy back its own debt at a discounted rate. However, outside or third parties can purchase this discounted debt. Therefore, the debtor country is put in the position of having to make political and economic concessions in order to get the discount on some of the debt they owe or to get the discount when paying off these

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85 Debt-equity arrangements involve a foreign investor buying part of a country’s debt from a creditor bank and then reselling the debt to the country owing the debt at its full value. The countries buying the debt pay the full amount in their own currencies which is usually immediately reinvested in existing or new ventures in the country. In other words the country ends up giving up part of its economic control in these situations. Borrelli, supra note 28, at 46-47; Barton, supra note 80, at 62-63.

86 Borrelli, supra note 28, at 46-47; Barton, supra note 80, at 62-63.

87 In 1986 Chile traded a controlling interest in Provida, its largest pension fund manager, and Corsorcio, its premier life insurer for $43 million in Chilean loans. Barton, supra note 80, at 62.

88 Id. at 62-63.

89 Id. at 65; Borrelli, supra note 28, at 46-47.

90 Barton, supra note 80, at 65.
debts, if it is possible. Part of these concessions include making decisions that are not always favorable or in the best interests of the local people.

Contrary to some critical opinions, debt-for-nature swaps do not impose the harsh economic or political concessions on the debtor nations that some debt-equity swaps impose. In a debt-for-nature swap the non-governmental organization, such as Conservation International, helps plan and administer the conservation program. Upon completion of several conditions, the debt is cancelled. Under the Bolivian deal, the debt would be cancelled when the following conditions occur: 1) the conservation reserves totalling over 4 million acres are set aside; 2) Congressional Law status is conferred on these areas; 3) a plan to administer and manage the research and use of the land by local participants is formulated and implemented; and 4) a $250,000 fund, in local currency, is established to administer the project.

In fact, Conservation International, the official advisor to the project, has set up a local Ministry in conjunction with Bolivian officials and scientists to administer the plan. All conservation efforts will be carried out by Bolivian institutions and local residents with the assistance of Conservation International. In addition, this project not only has political support, as manifested by the active participation of Bolivia’s political leaders in the project, but it has the economic support of the $250,000 in local funds to manage and protect the biosphere reserve. Moreover, local residents, during a Congress of Civic Associations, voted to give seven percent of their tax revenues from forestry activities to support the biosphere reserve. Highlighting this demonstration of local support to the project, Conservation International’s President, Peter Se-

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91 Id.
92 See generally Dumanski, supra note 55; World Bank: Accounting for the Environment, supra note 72.
93 G.A. POTTER, DIALOGUE ON DEBT: ALTERNATIVE ANALYSES AND SOLUTIONS 75-82 (1988); Barton, supra note 80, at 65.
95 Id.; CI Press Release, supra note 10, at 1-3.
96 CI Press Release, supra note 10, at 3.
97 Id.
98 Id. at 2.
99 Id. at 3; see also Giaimo, supra note 6, at 566.
100 CI Press Release, supra note 10, at 3.
101 The following Bolivian officials were directly involved in coordinating the project: President Victor Paz Estenssoro, Ambassador Fernando Illanes de la Riva and the Minister of Agricultural and Peasant Affairs, Guillermo Justiniano. CI Press Release, supra note 10; CI Embassy Statement, supra note 30.
102 CI Press Release, supra note 10, at 2; Giaimo, supra note 6, at 566.
103 CI Presents Award to People of the Beni, IV TROPICUS 2 (1988) [hereinafter IV TROPICUS].
ligman, remarked, "[w]hile we are all concerned about protecting the en-
vironment, they have actually done it."104

Debt-for-nature swaps seem to be a dignified alternative to making
political concessions, such as tax breaks,105 and giving economic conces-
sions by exchanging local assets for debt106 by the debtor country. These
swaps are even more enticing in that they are generally well supported by
the participating governments107 as opposed to debt-equity swaps which
may be only grudgingly supported.108

The Bolivian debt-for-nature swap is different from a debt-equity
swap due to the fact that the local people support the project in spirit and
practice. Evidence of this local dedication to the project can be seen
through their efforts to make this project a reality by contributing their
skills as workers and their money as taxpayers.109

VI. PROBLEM AREAS IN DEBT-FOR-NATURE SWAPS

A. Terms

Debt-for-nature swaps could not be implemented on the large scale
that debt-equity swaps are implemented due to the fact that the banks are
not ready, or willing, to relinquish all of their debt holdings from these
developing countries at such enormous discount rates.110 This is high-
lighted by the fact that the amount of debt cancelled in the Bolivian debt-
for-nature swap, $650,000111 of a total debt of $4 billion,112 is relatively
small and could be considered insignificant in the overall debt picture.

More importantly, the success of this type of program is contingent
on the banks finding a way to compensate their portfolios for the dis-
counts they allow and losses they take in these arrangements. Some
deals might be facilitated wherein the banks absorb the costs or losses
themselves.113 Or the banks might try to write off the discounted portion

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104 Id.
105 Barton, supra note 80, at 65; Borrelli, supra note 28, at 46-47.
106 Barton, supra note 80, at 65; Borrelli, supra note 28, at 46-47.
107 Truell, supra note 13; Beebe & Stroh, supra note 6; Allman, supra note 8, at 54.
108 Barton, supra note 80, at 65; Borrelli, supra note 28, at 46-47.
109 IV TROPICUS, supra note 103.
110 Borrelli, supra note 28, at 46-47. The calculated discount rates for debt-for-nature swaps
already facilitated are: Bolivia-85%, Costa Rica-83%, and Ecuador-67%.
111 Id.
112 Id.
113 Several banks have been involved in debt-for-nature swaps, therefore, not all the discounted
loans are being bought from the same bank. The banks involved include: Citicorp Investment Bank
for the Bolivian deal; Central Bank of Costa Rica for the Costa Rican deal; and several U.S. banks
for the swap in Ecuador. Since the losses have been spread among various banks, the question of
how to cover these losses has not been of primary concern. But as these debt-for-nature swaps
become more popular the recoupment problem must be addressed or the banks will limit their use
of this plan. See Borrelli, supra note 28, at 42-44.
as a loss. However, most banks are not going to set up wholesale programs to give away their debt holdings at discount rates without some way to recoup their losses.

The United States Department of the Treasury, in an interesting move to prompt U.S. banks to donate their debt holdings to lesser-developed countries for charitable purposes, has decided to liberally interpret Revenue Ruling 87-124. The Revenue Ruling, which covers both debt-equity swaps and debt-for-charity swaps, allows a bank that transfers its third world debt to a debtor country to take a full cost basis deduction in that debt if it is for charitable purposes. A debt-for-nature swap would be considered a debt-for-charity swap because a non-profit organization receives the debt without consideration and gives it to the debtor country on a conditional basis.

B. The Agreement

The debt-for-nature swap has been hailed as an innovative alternative to the current debt relief proposals available to developing countries. It is innovative, but is it enforceable?

The agreement itself does not mention the possibility of the project failing. Failure of the agreement or project could be the result of factors such as: 1) natural disaster; 2) economic disaster, worldwide or national currency problems, such as inflation or devaluation; 3)
change in political structure; or 4) local undermining if the program is less than promised or produces too low of a return for the effort put into the program by the local people. Nor does it include an arbitration, choice of law, or choice of forum clause in any of its points.122

Since these enforcement issues were not incorporated into the agreement it is necessary to examine whether the enforcement issue was overlooked, intentionally or unintentionally, or summarily rejected as a term of the agreement by both or one of the parties. In addition, a discussion of the alternatives for both parties, in the case of a breach or partial repudiation of the agreement, will help measure the force or power of the agreement and its place as a successful debt relief program for developing countries.

1. Enforcement of the Agreement

There are several reasons which may explain why enforcement language was not included in the debt-for-nature swap agreement between Conservation International and the country of Bolivia. For instance, as previously stated, the enforcement problem may have been overlooked, intentionally or unintentionally, or it may have been summarily rejected after review or consideration by either or both of the parties.

The debt-for-nature swap was a new and speculative idea that involved only a small portion of the total Bolivian debt obligation.123 Given the speculative nature of the program and the small amount of the total debt obligation it represented, Bolivia may not have signed or participated in an agreement that would have included stricter enforcement terms. Their reluctance to accept stricter terms would be based in part on the risk of not being able to uphold the agreement or being forced to breach the agreement due to circumstances beyond their control.124 If Conservation International had tried to demand strict or explicit enforcement terms, they may have had to forfeit the entire plan. Instead, Conservation International used a subtle form of enforcement through the terms of the agreement which provided for the extensive involvement of Conservation International in designing and implementing the project. This may have been the most effective enforcement technique that could have been utilized by the parties. Direct involvement in the project allows for continual dialogue as the project progresses. Thus, Conservation International and the Bolivian representatives would be able to

122 Agreement, supra note 29, at cls. 1-10.7.
123 Only $650,000 (US) out of over $4 billion of debt owed by Bolivia. CI Press Release, supra note 10, at 1; Borrelli, supra note 28, at 42.
124 These circumstances could include social or economic conditions beyond the governments control, such as force majeure. See supra note 120.
125 Agreement, supra note 29, at cls. 1, 10.4.
resolve their differences, or potential problems, as they arose and before they became too large.

Conservation International can, and most likely will, use their presence as official advisor\(^{126}\) to the project to set the foundation for a highly aware and concerned local effort to make this project succeed. Since the environmental concerns were of paramount importance to Conservation International, their direct participation in the program was the most effective way to ensure that this innovative conservation idea would become a reality.

As previously noted, the small amount of debt being exchanged would not have been enough of an incentive for Bolivia to agree to the types of restrictions that would ensure enforcement of the agreement. Thus, Conservation International was probably willing to sacrifice these terms being spelled out for the sake of advancement toward their goal of conserving the rainforests. However, Conservation International was probably aware that the local residents and the government of Bolivia would probably give deference to Conservation International's suggestions as "experts"\(^{127}\) on the matter.

Since this is a five year agreement,\(^{128}\) renewable upon evaluation by the parties when it expires,\(^{129}\) Conservation International may have accepted these terms with the hope of negotiating a longer agreement with stronger terms,\(^{130}\) at the renewal stage.

On the other hand, Conservation International may not have very much leverage to negotiate for stricter terms if the country is adverse to the new terms. The notes for the $650,000 debt have already been given to Bolivia\(^{131}\) and according to the agreement, they were not conditional or revocable.\(^{132}\) Therefore, Bolivia has no incentive to enter into stronger or more stringent agreements regarding the note. Nevertheless, they may enter into an agreement to continue the conservation and development

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\(^{126}\) CI Press Release, \textit{supra} note 10, at 3.

\(^{127}\) They are primarily involved in environmental projects and will therefore have more information to bring to the discussion.

\(^{128}\) Agreement, \textit{supra} note 29, at cl. 10.6.

\(^{129}\) \textit{Id.}

\(^{130}\) Based on their time and financial commitment Conservation International would be in a position to demand these types of terms.

\(^{131}\) CI Press Release, \textit{supra} note 10.

\(^{132}\) Not one provision in the agreement addresses what will happen to the notes after the agreement expires. \textit{See generally} Agreement, \textit{supra} note 29, at cl. 10.7. Clause 10.1 of the agreement calls for the creation of fund in the amount of $250,000 (US) in Bolivian currency. $100,000 of this fund represents the amount paid for the debt obligation from the Swiss bank. \textit{Id.} at cl. 10.1. A national counterpart will contribute the remaining $150,000 to this fund which is to serve as the financial vehicle of the conservation effort in the Amazon. The creation and utilization of this fund gives a sense of quasi-permanence to the project due to the fact that the money will be in use for five years before the agreement expires. \textit{Id.}
work that has begun in the Beni Biosphere Reserve, if it proves to be a mutually beneficial venture.

2. Alternatives Resolutions

Since these enforcement issues were not incorporated into the agreement, the possible alternatives, in case of a breach or partial repudiation, should be examined. These alternatives include: bringing suit in the United States; bringing suit in Bolivia; or possibly bringing an action before the International Court of Justice.

Under U.S. law, the Exceptions of Foreign Sovereign Immunity of a Foreign State\(^1\) would protect Bolivia from suit in United States courts unless it consented to an explicit or implicit waiver of jurisdictional immunity.\(^2\) The Bolivian debt-for-nature swap agreement does not contain an explicit, nor an implied, waiver of sovereign immunity.\(^3\) Therefore, Bolivia would not necessarily be subject to a lawsuit in the United States.

Additionally, the U.S. government would probably decline to act as a party on behalf of Conservation International in this situation due to the private nature of the deal and the relatively small amount of debt forgiven here.\(^4\) Likewise, the United States would be reluctant to be an active participant in these proceedings due to the fact that critics would claim the U.S. was condoning payments that they feel should not be repaid by the debt ridden countries.\(^5\)

Moreover, the U.S. government is not equipped or prepared to intervene or take up these actions economically, politically or administratively. The economic interest for the United States is weak because the banks have already been paid or have taken loss deductions on the

\(^1\) Exceptions to Jurisdictional Immunity of Foreign States and Their Property Under The Foreign Sovereign Immunities Act of 1976 § 3, 28 U.S.C.S. §§ 1602-1611 (1989). This Act created eight exceptions from jurisdiction and three exceptions from attachment and execution. Id. at §§ 3-13. In a world of increasing contact between foreign states and American parties, the Foreign Sovereign Immunities Act was established to distinguish the context under which a lawsuit could be brought against these foreign entities and when they were immune from suit. H.R. No. 1487, 94th Cong., 2d Sess. 6 (1976).

\(^2\) 28 U.S.C.S. at § 3.

\(^3\) Agreement, supra note 29, at cls. 1-10.7.

\(^4\) CI Press Release, supra note 10, at 1; Borrelli, supra note 28, at 46.

\(^5\) Carol Barton is critical of the debt-for-nature swaps saying, “Our involvement in debt swaps compromises our efforts and diverts our attention from the real issue — the need for a just solution to the debt crisis that does not place the burden on the poor, and for new international arrangements in finance and trade that benefit the nations of the South and allow them to define their own development.” Barton, supra note 80, at 65. Debt-for-nature swaps are designed to sustain the local populations by giving them direct input in planning and operating the project. CI Press Release, supra note 10, at 3. Therefore, this criticism seems meritless.
loans, therefore, banks will not pressure the U.S. government to act to uphold the agreement. Politically and administratively, the United States may not want to create undo tension in the international arena by attempting to enforce a debt-for-nature swap.

In fact, the only possible alternative would be to exert pressure via united environmental groups. These groups could be effective because of their focus: economic interests would be secondary to the environmental concerns of these organizations. However, using the pressure of environmental groups to encourage the United States to act on behalf of private organizations in this context would probably not produce the desired results. Despite the fact that the United States is concerned with debt issues—giving and receiving payments for debts—it does not exclusively focus on debt and development projects the way the World Bank and other MDBs do. Debt issues are not the “raison d’etre” or primary business of the United States, as they are for international development institutions. Consequently, there would have to be stronger reasons for the United States to intervene given the possible political, economic, and administrative costs.

Similarly, the United States Supreme Court would limit the jurisdiction of the United States on claims of this type. The Supreme Court has stated:

Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves . . . .

The acts of Bolivia, whether by their officially designated office at the biosphere site or another governmental entity, would constitute a governmental action in its own territory. Clause Five of the agreement between Bolivia and Conservation International designates a national institution to be named the executive entity of its programs acting in representation of the country of Bolivia.

Ultimately, the United States does not have a compelling reason to represent Conservation International or intervene in this area if a prob-

138 Bramble, supra note 94, at 7.
139 This worked with the World Bank. The World Bank adopted policy changes in 1987 as a result of pressure from environmental groups, Congress and the Reagan administration. See supra text accompanying notes 56-65.
142 Agreement, supra note 29, at cls. 5, 10.1. The national entity designated by the government of Bolivia to administer the project is the Ministry of Peasant and Agricultural Affairs. Id.
lem developed. Furthermore, if the United States tried to intervene in this situation both the Foreign Sovereign Immunities Act and the U.S. Supreme Court’s interpretation of the Act of State Doctrine seem to limit the efforts of the U.S. in their attempts to enforce the agreement.

Another alternative for Conservation International would be to bring suit in a Bolivian court in an attempt to enforce the agreement. Article 127 of the Bolivian Constitution describes the powers of the Bolivian Supreme Court. For example, the Supreme Court has the authority “to decide in sole instance” matters concerning: a)“denunciation or complaints against diplomatic and consular agents”; b)“cases arising out of contracts, negotiations, and concessions made by the executive power, and of contentious-administrative claims which the decisions thereon may bring about”; and c)“suits against the resolutions of the legislative power or of one of its chambers, whenever such resolutions may affect one or more concrete rights, either civil or political, and regardless of who the interested parties may be.”

These powers are broad enough to allow the Bolivian Supreme Court to hear an enforcement case brought by Conservation International. However, the Bolivian Supreme Court would probably be inclined to follow the governmental policy that was administered, whether it agreed with it or not. It would be very easy for the Court to rationalize a governmental action that partially or totally repudiated the agreement. For instance, a national interest in terminating the agreement, or part of the agreement, could be a very strong consideration. Similarly, if the government claimed economic or social interests in repudiating the agreement the Bolivian Supreme Court would be most likely to give deference to the acts as being in the best interest of the country. There-

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143 BOL. CONST., supra note 33, art. 127, at 39-40.
144 Id.
145 Id.
146 Id. at para. 7.
147 Id. at para. 8.
148 Id. at para. 10.
149 Id. at paras. 1-12.
150 This paper does not include independent research on the decisional trends of the Bolivian Supreme Court. Instead this opinion is based on a comparison of the U.S. court system. The American courts, which have historically been independent, defer to the doctrine of sovereign immunity when addressing suits against foreign entities. See generally Underhill v. Hernandez, 168 U.S. at 250; Banco Nacional de Cuba v. Sabbatino, 376 U.S. at 398. Since American courts have a reputation for being independent, extending this awareness of sovereign immunity to another court system does not appear to be too far-reaching.
151 National interests may include economic or social conditions that necessitate repudiation of the agreement.
152 If the project is a fiasco the country must look out for its best interest and make appropriate decisions concerning its welfare.
fore, in the domestic Bolivian courts, Conservation International would probably be subject to a bias in favor of promoting governmental actions in the country's best interests and have very little success in an action to enforce the agreement.

Conservation International could also try to bring an action before the International Court of Justice ("ICJ") to enforce the debt-for-nature swap agreement. However, in order to bring an action before the ICJ, an entity must have standing as a state.\textsuperscript{153} Conservation International does not have the required standing to go before the ICJ.\textsuperscript{154} Due to their lack of standing, Conservation International, a U.S. entity, would have to submit their dispute through U.S. government representation.\textsuperscript{155} As a sovereign nation the United States could intervene on behalf of Conservation International under article 34 of the Statute of the International Court of Justice. However, there are two obstacles. First, as previously discussed,\textsuperscript{156} there is very little incentive for the United States to intervene on behalf of Conservation International. Second, the United States has surrendered its capacity to bring actions before the ICJ as a result of walking out of proceedings involving an action by Nicaragua against the United States.\textsuperscript{157}

\section*{VII. Conclusion}

Unfortunately, Conservation International's enforcement alternatives by court action, whether in the United States, Bolivia or before the ICJ, do not appear to further their goal of enforcing the debt-for-nature agreement.

If a problem arises, it appears that the decision of the Bolivian government will dictate the result. This includes a range of possible solutions from minor modification to repudiation of the agreement.

Some critics will argue that due to the lack of an effective enforcement mechanism, this program is just another short-term solution to the environmental and debt crises. Carol Barton of the Center of Concern in Washington D.C. argues that participation in debt swaps means participation in the inequitable system that created the debt crisis — one where Western banks and governments control the resources and set the terms, where nations of the

\textsuperscript{153} Statute of the International Court of Justice § 34, as amended to January 1, 1977.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} See supra text accompanying notes 135-137.
\textsuperscript{157} For a discussion of the United States, Nicaragua and the ICJ see generally Hightet, \textit{Between a Rock and a Hard Place—The United States, the International Court, and the Nicaragua Case}, 21 \textsc{Int'l Law.} 1083 (1987); Rowles, \textit{Nicaragua v. United States: Issues of Law and Policy}, 20 \textsc{Int'l Law.} 1245 (1986); Joyner, \textit{The ICJ Case on the Merits: Legal and Moral Implications of the U.S. Aid to the Contras; the Nicaraguan Side}, 6 \textsc{St. Louis U. Pub. L.J.} 41 (1987).
South cannot get fair prices for their goods, and where Third World elites are rewarded by the North for pillaging their countries and repressing their people.\textsuperscript{158}

The problem with this argument is that it is applicable to almost any debt relief program initiated on behalf of these debt ridden countries. Moreover, it is unfair to condemn these countries\textsuperscript{159} attempts at solving their financial problems in innovative ways, given the fact that the banks are not going to endorse outright forgiveness of all the debt that has accumulated.\textsuperscript{160} Partial forgiveness of the obligations may be on the horizon\textsuperscript{161} for these countries, but total forgiveness is very unlikely.

Notwithstanding the lack of effective enforcement mechanisms, a debt-for-nature swap is not just another short-term solution to these crises. It is a very effective way to address both the economic and ecological problems facing these debtor countries. Previously, these countries relied heavily on outside participation and direction for the implementation of development programs.\textsuperscript{162} They deferred to the advice of international development institutions in designing and implementing these programs. But, these programs were not always designed in the best economic or ecological interests of the participating countries.\textsuperscript{163}

Debt-for-nature swaps utilize the internal organizations and the local peoples of the participating countries to provide a long-term sustainable use program that will support both the people and the environment.

The intentions of the program are noble, but the fact remains that the agreements are unenforceable. This issue might be easily overlooked when the amount of debt forgiven is only $650,000 of a $4 billion debt. But the figures will rise, and this enforcement void needs to be addressed before the debt-for-nature swap arrangements become the victim of abuse.

The most pressing problem is how large the debt forgiveness under debt-for-nature swaps will become and what enforcement changes will accompany these agreements? Bolivia has expressed a desire to retire

\textsuperscript{158} Barton, \textit{supra} note 80, at 63.

\textsuperscript{159} Barton, \textit{supra} note 80, at 62-65. Some may assume that these types of swaps would be more enticing to the poorer countries but this is not necessarily true because the poorer countries with higher debt payments are actually more likely to curtail or suspend their debt payments or just cut down the trees and sell them to make the debt payments. In other words poorer countries have more bargaining chips and less of an incentive to compromise on a small amount of forgiveness.

\textsuperscript{160} Banks are more likely to try to negotiate debt-equity arrangements in countries that have higher return rates per dollar on their debt. Borrelli, \textit{supra} note 28, at 46-47.

\textsuperscript{161} \textit{Id.} at 47-49.

\textsuperscript{162} \textit{See supra} text accompanying notes 36-37.

\textsuperscript{163} \textit{See generally} Dumanski, \textit{supra} note 55; \textit{World Bank: Accounting for the Environment}, \textit{supra} note 72. The Polonoreste Road and Narmada Dam projects are illustrative examples of these problematic programs.
over $6 billion (US) of its current debt obligation in this manner.\textsuperscript{164} In addition, Costa Rica is already whittling away at large amounts of its debt obligation.\textsuperscript{165}

Obviously, as the figures rise the organizations facilitating the debt-for-nature swaps will have to look for a way to enforce these agreements so that when the debt obligations are paid in full the trees do not start falling. This will ultimately depend on the participating governments' dedication to environmental conservation and not the use of the debt-for-nature swaps as a facade to retire some debt.\textsuperscript{166} At this point the organizations facilitating these deals will probably condition the agreements on a pro rata performance and time scale with revocation or penalties assessed for non-performance. But these enforcement issues cannot cloud the innovative spirit that inspired this program nor can it deemphasize the fact that "[w]hile we are all concerned about protecting the environment, they [Bolivia] have actually done it."\textsuperscript{167}

\textit{Tamara J. Hrynik*}

\begin{thebibliography}{9}
\bibitem{165} \textit{Id.}
\bibitem{166} Giaimo, \textit{supra} note 6, at 569-70.
\bibitem{167} IV TROPICUS, \textit{supra} note 103.
* J.D. Candidate, Case Western Reserve School of Law (1990).
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