

DEBT-FOR-NATURE SWAPS: MUTUAL SOLUTIONS TO DEBT BURDEN AND ENVIRONMENTAL DEGRADATION

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Environmental conservation has become one of the biggest global concerns of the the early 1990's. Environmental pressure groups have been mainly responsible for urging leaders all over the world to implement concrete conservation programs in their own countries.

However, Third World countries such as the Philippines have been slow in heeding the call. Saddled with economic problems requiring short-term solutions, funding long-term conservation programs is not a priority. In the Philippines, debt servicing has consistently been receiving the highest budgetary allocation. Economic pressures leave the government with no choice but to generate revenue from the short-term exploitation of natural resources. Since most of the income is used to meet debt payment schedules, any environmental conservation program is necessarily left with meager resources.

There is clearly a mutual causality between the problems that go with indebtedness and environmental degradation. The government policy of rescheduling payments has neither been effective in alleviating the debt burden nor in advancing the cause of environmental conservation. A new approach must be taken — an approach that considers a mutual, rather than a separate, solution to the dual problem of indebtedness and environmental degradation. It is in this context that the Debt-for-Nature Swap was born.

This thesis proposes an effective mechanism by which a Debt-for-Nature Swap may be implemented in the Philippine setting. The writer analyzes Debt-for-Nature swaps that have been undertaken in the past, identifies their areas of weakness and suggests ways of correcting them. Finally, guidelines are drawn which define the role of policy-makers and legislators in bringing about a novel solution to the dual crises of debt and environmental degradation.

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DEFINITIONS

"Convertible Debt" means any item of external debt of the Central Bank of the Philippines.

"Conversion Transaction" means any transaction involving an investment in a Philippine Enterprise that is made, in whole or in part, with the proceeds of the redemption of an item of Convertible Debt.

"New Money Agreement" means that certain \$925 million Credit Agreement dated as of May 20, 1985 among the Central Bank as Borrower, the Republic of the Philippines as Guarantor and the banks and financial institutions parties thereto, as such New Money Agreement may be amended from time to time.

"New Money Bonds" means bonds issued by the Central Bank pursuant to the Bond Subscription Agreement dated February 28, 1990 among the Central Bank as Issuer, the Republic of the Philippines as Guarantor and the banks and financial institutions parties thereto, as such Bond Subscription Agreement may be amended from time to time.

"Philippine Enterprise" means any partnership, joint venture, cooperative, corporation or other form of business association incorporated or organized under the laws of the Philippines.

"Restructuring Agreement" means a Restructuring Agreement signed by a Philippine Public Sector Borrower (dated as of January 10, 1986 or April 16, 1986) implementing the Restructuring Principles, as any such Restructuring Agreement may be amended from time to time.

"Restructuring Principles" means the Restructuring Principles that accompanied the communication to the international banking community dated November 2, 1984 from the Secretary of Finance and the Governor of the Central Bank of the Philippines, as amended and supplemented by the Term Sheet captioned "1987-92 Restructuring of the Philippine External Debt Owed to Commercial Banks" which accompanied a communication from the Secretary of Finance and the Governor of the Central Bank of the Philippines to the international banking community date March 27, 1987.

INTRODUCTION

Despite efforts of the Philippines to ease its foreign debt burden, the International Monetary Fund has stated that the country still has a very serious debt problem.¹ This contradicts pronouncements of Philippine economic and monetary officials that after the conclusion of financing packages with foreign commercial banks, the country can leave its debt problem behind. However, notwithstanding several negotiations and renegotiations with foreign commercial creditors for the past five or six years, the country's total foreign debt as of the end of 1991 stood at US\$29.22 billion, or an increase from the US\$26.26 billion level when the Aquino administration assumed office in 1986.

Independent of the country's serious debt problem is the environmental crisis. With forests disappearing, empty fish nets, the Philippine eagle — a national symbol — almost extinct, the Philippines which was once richly endowed with an enviable abundance of natural resources, now finds itself on the list of the top ten environmental hotspots in the world. If the current rate of deforestation is not averted, it is predicted that primary forests will be gone in a decade. Hence, there is a desperate need for immediate conservation action.

In an effort to solve the first problem, the government has drawn and adopted various schemes aimed at reducing the country's debt stock. Such schemes have included the debt-to-equity conversion program that called for the auction of US\$75 million worth of Central Bank debt papers quarterly; the debt-for-asset swap that involved the payment of Philippine foreign obligations with government assets; the debt buyback program which allowed the government to purchase its debt papers at substantial discounts from its commercial bank creditors; and debt condonation which allowed the conversion of debts into grants for country projects.

On the other hand, government efforts to reverse the trend of environmental decline have been minimal. One of these efforts though is worth citing: the formulation of a "Philippine Strategy for Sustainable Development" whose goal is the achievement of economic growth with adequate protection of the country's biological resources and its diversity, vital ecosystem functions, and over-all environmental quality.² This

is a laudable effort. However, the strategy cannot be effectively implemented because of a serious lack of budgetary support.

Burdened with large debt servicing requirements, funds to pay for the equipment, planning and implementation of measures needed to protect valuable ecosystems have often been left minimal, and sometimes unavailable.

The so-called debt-for-nature swaps have been introduced in the international community as a most innovative alternative to stimulating conservation while ameliorating debt. It proposes to create value in the form of local currency resources or local currency bonds that yield resources that can be utilized to transform the debt problem into new opportunities to support conservation, resource management and reforestation.

The debt-for-nature swap appears to be an appealing option for the Philippines to take in view of the urgent actions that must be taken in order to mitigate serious debt and environmental problems. Thus, in this paper, the writer shall attempt to provide an analysis of the possible effectiveness of this mechanism to achieve progress in both fronts of debt and environment.

In this attempt, the writer shall first provide an exhaustive description of the state of the Philippine environmental degradation. This state of the environment will then be correlated to the country's debt burden problem. The paper shall then proceed to describe the debt-for-nature swap and its conception as a financial mechanism to address both debt and environmental problems. The paper shall then provide an analysis of the Philippine experience with the debt-for-nature swap, the adaptation of this mechanism in the context of the government's debt reduction program and of the laws that have been considered to regulate the same. Finally, this paper concludes with a challenge to both Philippine policy makers — both in the financial and conservation field — and to legislators to formulate regulations, guidelines and policies which would tap the potential effectiveness of the debt-for-nature swap in addressing Philippine debt and environmental problems.

I. THE ENVIRONMENTAL IMPERATIVE

A. Background

Environmental damage is a consequence of development traditionally regarded as a necessary evil for which economic prosperity

¹ Chipongian, *Foreign Debt Problem Still Serious - IMF*, Philippine Daily Inquirer, March 20, 1992 at 17.

² DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, PHILIPPINE STRATEGY FOR SUSTAINABLE DEVELOPMENT: PART 1 - A CONCEPTUAL FRAMEWORK, AT 4 (1990). [hereinafter cited as STRATEGY].

will compensate.³ Yet the increasingly rapid degradation of the world environment has forced a new perspective, one which recognizes a current environmental crisis of global proportions. In the Philippines, one of the more revealing lessons learned during the past two decades of environmental awakening is that the maintenance of the earth's delicate balance by the prophylactics of pollution control and other ecological mitigation measures cannot ensure sustainable development.⁴ There is now a compelling need to overhaul the focus on economic principles and the political economy of natural resources.⁴ In 1979, Rafael Salas has already attuned to this emerging world view when he said:

We are tending globally towards a more holistic view of development with its emphasis on relating environmental factors to programmes. Population growth and development patterns not only affect the demand for resources but also generate environmental changes which will have repercussions on the future carrying capacity of the earth. At the global level, it is not only necessary to take into account the resources required to feed, clothe and shelter a growing population but also the type of technology which will make this possible without worsening the environment. It is, indeed, proper to ask at this point how far population and development plans are consistent with the prudent use of resources, and do not bring about the degradation of our environment.⁵

This chapter details the effects upon the Philippine environment of the destruction of its tropical rain forests, marine resources as well as the exploitation of its wildlife and the urgent need for their protection.

Rain forests are the most important natural entity for maintaining biological diversity and preventing global warming. They are the earth's primary reservoir of biological diversity. While covering only seven percent of the earth's surface, they house between fifty to sixty percent of all plant and animal species, the majority of which have yet to be discovered.⁶ The effects of deforestation are potentially devastating.⁷ Scientists estimate that if current deforestation is not

stopped, approximately fifteen to twenty percent of the world's plant and animal species will be extinct by the year 2000.⁸ Already, approximately 100 plant and animal species are being driven to extinction each day throughout the globe.⁹

The Philippines hosts rich and diverse plant and animal species. Altogether, the Philippines is estimated to harbor about 8,120 species of flowering plants, 3,500 species of indigenous trees, 33 species of gymnosperms, 640 species of mosses, 2,400 species and sub-species of fishes, 240-250 species and sub-species of reptiles, 950 species and sub-species of birds and 230-240 species and sub-species of mammals.¹⁰ Such biodiversity offers vast potentials as irreplaceable sources of food, fuel, fibers, medicine, and materials for industrial, aesthetic and scientific purposes.¹¹

With only twenty-one percent of forest cover in the Philippines, it is clear that widespread, uncontrolled logging has so ravaged the country that hardly an island with an exploitable forest has remained untouched.¹² Indeed parts of the islands of the Central Visayas are already well into the process of desertification.¹³ Although the new government has severely restricted logging operations, the law has proven difficult to uphold. Illegal logging persists, and unarmed, ill-equipped and low salaried forest guards are no match for the smugglers who bribe their way through or simply kill those who stand in the way.¹⁴

With so little forest left, the *kaingeros* (shifting cultivators) now pose an equally serious threat to forest lands, annually clearing some 800-1400 square kilometer of forest cover.¹⁵ Mt. Baloy on the Panay Island, the last refuge for the endangered Visayan Deer is being deforested by local and immigrant shifting cultivators that have exceeded clearing forest cover beyond the 900-meter level in many places around the mountain block.¹⁶ By the end of the century, all tropical rain forest

¹ *Id.*

² *Id.* at 69.

³ DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, PHILIPPINE ENVIRONMENT IN THE EIGHTIES 9 (1986). [hereinafter cited as ENVIRONMENT].

⁴ *Id.*

⁵ Petocz, *Proposed Philippine Conservation Program for Debt-for-Nature Swap*, May 9, 1988.

⁶ *Id.*

⁷ *Id.* at 13.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

³ Barrans, *Promoting International Environmental Protection Through Foreign Debt Exchange Transaction*, CORNELL INTERNATIONAL LAW REVIEW, Winter 1991, at 68.

⁴ STRATEGY, *supra* note 2, at 1.

⁵ *Id.*

⁶ Barrans, *supra* note 3.

⁷ *Id.*

in the Philippines may well be eliminated if the current rate of conversion through logging and cultivation is allowed to continue.¹⁷

The destruction of the Philippine rain forests has varied effects. To the physical environment, because of forest denudation, at least 22 of the country's provinces are already badly eroded, many of which are producers of agricultural products.¹⁸ Soil erosion results in loss of soil nutrients, the top soil, or even the entire soil to river channels and the open sea. It results in the sedimentation of rivers, lakes, dams, irrigation canals and other waterways. Lowland farms also suffer low crop yield or destruction of crops as a result of siltation.¹⁹

The biological effects of forest destruction are even more devastating. Such destruction has threatened the country's genetic resources, putting species on the endangered list, and bringing some to the verge of extinction. The more popular among the threatened animal species are the Philippine eagle, Palawan peacock pheasant, tamaraw, tarsier, Calamian deer, and the Philippine crocodile.²⁰ Other species are vulnerable and may become endangered in the future. The rest, though not immediately endangered, are at risk because they are rare. With every disappearing plant species, several other plants and animals dependent on it are threatened and may eventually disappear.²¹

The effects of deforestation upon global warming may already be discernible. Rain forests absorb a substantial amount of atmospheric carbon dioxide and thereby help maintain a relatively stable balance of atmospheric gases.²² It is theorized that excess carbon dioxide in the atmosphere traps heat near the earth's surface, increasing surface temperatures.²³

The global greenhouse effect has grave implications for the Philippines. In the tropics and sub-tropics, where the Philippines and most developing countries lie, more extreme changes in climactic patterns are predicted. The Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) projects the scenario as one in which there will be heavier rainfall in already heavy rainfall

¹⁷ *Id.*

¹⁸ ENVIRONMENT, *supra* note 10, at 90.

¹⁹ *Id.*

²⁰ *Id.* at 93.

²¹ *Id.* at 90.

²² *Id.* at 93.

²³ *Id.* at 29.

months and lower rainfall in already dry months. The frequency of tropical cyclones may also increase and extend to areas where they are less common.²⁴

Changes in rainfall patterns affect the Philippines' agricultural production and the fulfillment of remaining potentials for cropland development and food supply. The magnitude and frequency of problems already experienced such as flooding and droughts, would also be compounded by climate changes.²⁵

The thermal expansion of the seas, in which ocean levels may rise by 30 centimeters or more is another disruption expected from global warming within the next few decades.²⁶ Being a country with innumerable seaside settlements and ports, the consequences of a rise in sea level may be disastrous for the Philippines. Evacuation of affected populations will be inevitable. Even if there would be more time to reinforce the most vulnerable regions from inundation and flooding, the over-all effort from research and planning to actual implementation of mitigating measures will entail a lot of the country's financial and technical resources.²⁷

The socio-economic effects of forest destruction involve, among others, displacement of cultural communities and economic losses from foregone benefits and damages to life and property. Roughly, 3.5 to 6.6 million inhabitants belonging to indigenous cultural communities reside in the uplands. Displacement from their ancestral lands has haunted not a few of these communities. In the early 1980's the Kaliwa River Basin Project had threatened to submerge the ancestral lands of the communities inhabiting the area. Macli-ing Dulag of the Butbut tribe of Kalinga-Apayao was killed as he was defending the tribe's customary rights during the construction of the Chico Dam.

It is possible to get a rough estimate of the economic cost of deforestation. The conversion of one hectare of old growth forest amounts to a loss of about 100 cubic meters of commercial quality logs, not to mention its potential for sustained yield at a growth rate of 2.4 cubic meters per hectare per year. If these are computed at the current price of about P2,900 per cubic meter, and assuming profits amount to 50% of gross revenue, this will represent a loss in net profits of around

²⁴ *Id.* at 30.

²⁵ *Id.* at 31.

²⁶ STRATEGY, *supra* note 2, at 2

²⁷ *Id.*

₱145,000 per hectare.²⁸ Statistics estimate that some 119,000 hectares of natural forest vegetation were destroyed in 1988, amounting to a gross loss of around ₱34.5 billion per year, or a loss in net profit of about ₱17.3 billion. Even if these areas have been logged according to regulated practices, a loss of future revenues would still amount to ₱5.7 billion or a total of US\$12.98 million net per year.

Thus, the unecological use of forests entails huge economic losses. But of a more paramount consideration is the unquantifiable cost of forest destruction to the loss of species and genetic diversity. Even estimates of this tragic loss does not exist in the Philippines. Philippine losses contribute to the global loss of biological diversity estimated at about 100 species per year. By the year 2000, it is predicted that about a million species would have been lost forever.

B. Destruction of Marine Resources

The role and importance of the coastal zone in the country's economic development and ecological survival can be gleaned from the fact that sixty of the country's seventy three provinces, as well as 1,525 municipalities are located in these areas. About 85% of the population live within 50 kilometers of the coast. Most cities hosting majority of the nation's economic activities are likewise sited in coastal areas. A sizable chunk of the country's income is derived from its coastal resources, primary fisheries. Nationally, fish accounts for 60% of all annual animal protein consumption.

While there are still spectacular reef and coastal zone ecosystems that remain, these now largely exist only in the least populated and most remote parts of the country.²⁹ The coastal zone continues to suffer from exploitative and destructive practices that include dynamite and cyanide fishing, coastal trawling, wanton exploitation of coral and shell life, and mangrove destruction for fish ponds or charcoal. The most serious cause of reef destruction is sedimentation and siltation resulting from irresponsible and destructive practices on the land. Here, the impact of wide-scale commercial logging has not only degraded the terrestrial environment, but has deposited millions of tons of valuable topsoil over the coast, smothering reef life. Destructive fishing practices, like blast, cyanide and muro-ami fishing³⁰ have also been largely re-

²⁸ ENVIRONMENT, *supra* note 10, at 25.

²⁹ Petocz, *supra* note 12, at 14.

³⁰ ENVIRONMENT, *supra* note 10, at 48.

sponsible for the current state of our corals. As of the early 1980's, studies establish that less than six percent of the coral reefs remain in excellent condition. Hence, extensive exploitation and pollution have taken their toll on this extremely vulnerable ecosystem, whose recovery may well take decades.

C. Wildlife Exploitation

Wildlife exploitation for private and commercial use continue unabated and even unmonitored. Once common animals such as the Long-tailed Macaque, formerly considered as pests — kitchen thieves and crop raiders — found all over the Philippines from the coast to upland areas in the interior, have been so severely reduced that they are no longer sighted except in remote regions.³¹ It is reported that since 1964, macaques have been exported from the Philippines for biomedical research. After India banned completely the export of rhesus monkeys in 1978, the export of Philippine macaques rose dramatically. Since 1980, the Philippines has been second only to Indonesia in annually exporting the largest number of primates in the world. Dr. Ronald Petocz narrates the scale of wildlife trade in this country:

There is hardly a domestic flight from Palawan or Mindanao returning to Manila that does not have a number of containers of birds for individual or in commercial quantities. Stuffed pangolins, monitor lizards and baby crocodiles, snake skins, butterflies, giant clams, coral, freshwater and marine fish, and just about any species of shell still found in the Philippines is available in the markets. Live animal markets in Manila not only include protected and endangered species — mammals and reptiles as well as birds — from this country, but so blatant are the dealers and so lax is control and monitoring that there is an open trade in endangered species which include Goura Pigeons from Irian Jaya and parrots from South America. The scale of the trade in wildlife has reached apocalyptic proportions in this country.³²

The country's protected areas such as national parks, game refuge and wildlife sanctuaries and other nature reserves have not been spared from the massive exploitation of a population in search of commercial and economic benefits. Poaching in designated reserves is a continu-

³¹ Petocz, *supra* note 12, at 13.

³² *Id.*

ing problem in the Philippines. It is done by the wealthy class and military quite openly, and by peasants by sleuth or tradition.³³ This situation threatens to deplete the country's endangered living species and destroy the aesthetic value derived from them.

Environmental degradation has other serious implications. According to Delfin Ganapin Jr.:

... for a developing country like the Philippines, the impacts of environmental degradation are much more serious than simply erosion or pollution. In many cases, the social and political impacts are of greater dimension and are more direct. The poor become poorer. And as larger populations are pushed into a desperate struggle for survival, they wrought larger damage to the environment and the cycle continues. There comes a time, however, when this vicious cycle reaches a limit and the fragile fabric of a stressed society starts to unravel. The gun substitutes for the plow. The fire that used to burn forests becomes the fire that will consume society.³⁴

Against this apocalyptic scenario, an environmental awakening has arisen in the Philippines. The experience of the effects of destruction of rain forest and other natural resources in other parts of the globe has given rise to a global environmental consciousness, focused largely on the Central and South American countries and other countries in the tropics, like the Philippines, that house the tropical rain forests.

In light of present and continuing environmental degradation, protecting the rain forests and other natural resources is now a virtual necessity, and where satisfactory protection cannot be imposed, they must be purchased. The growth of the market for discounted debt owed by many of the tropical countries such as the Philippines has provided convenient capital for the purchase.

Conservation organizations in creditor countries have been actively involved in funding environmental protection and conservation strategies in countries whose environments are in a state of deterioration. These organizations have observed that the countries whose natural resource base are most threatened are the same countries burdened with huge external debts. In the meantime, most major creditor banks of heavily indebted countries are disposing debt papers of these countries at substantial discounts in the secondary market. Taking cognizance

³³ *Id.* at 14

³⁴ STRATEGY, *supra* note 2, at 34.

of these developments in the financial community, conservation organizations have sought the secondary market as a way of leveraging limited funds for conservation efforts in the debtor countries. Thus, the debt-for-nature swap mechanism was conceived. Under the mechanism, the swap contemplates the cancellation of an external debt obligation in exchange for environmental action on the part of the debtor nation whose debt servicing payment problems have left such nations with very limited funds for conservation or to further exploit their natural resource base.

Thus, the debt-for-nature swap mechanism was conceived as an attempt to establish a link between debt burden and environmental protection problems and that mutual solutions to both may be possible.

II. THE RELATIONSHIP OF THE ENVIRONMENTAL CRISIS TO THE DEBT CRISIS

This section examines the relationship of economic and environmental problems in the Philippines. This relationship has two important components. First, the debt crisis has exacerbated the exploitation of natural resources through environmentally destructive activities. Second, as a consequence of economic pressures to pay debts, funds to protect and manage wildlife habitats³⁵ are unavailable.

A. Mutual Causality

Many internationally recognized legal commentators have arrived at the conclusion that both the ascendance of developing country debt and of the environment as international market commodities are not wholly independent phenomena. They propose that many of the externally funded development projects which contributed to the accrual of current debts also contributed to the current environmental crisis in these countries. Furthermore, they propound that the developing countries' burden of trying to repay their external debt has also caused, or at least exacerbated, many of the most compelling environmental problems, most notably rapid deforestation.³⁶ The first part of this

³⁵ Curtis & Gibson, *A Debt-for-Nature Blueprint*, 28 Columbia Journal of Transnational Law 7 (1990). [hereinafter cited as Curtis.]

³⁶ Barrans, *supra* note 3, at 70.

chapter shall examine the validity of these propositions in the context of the Philippine experience.

An industry whose development has received much external funding is the fishing industry, particularly in aquaculture. Aquaculture was first given importance during the Marcos years by virtue of Presidential Decree No. 704 issued on May 16, 1975. Since the passage of this law, its declarations has become the major fishery policy of the country. This law encourages and promotes the export of fishery products. Since aquaculture fits squarely into this objective, the ensuing fishery programs were directed towards the development of the aquaculture industry.

In 1978, the Asian Development Bank (ADB) extended \$23.1 million for the Laguna de Bay Fishpen Development Project. This project involved the construction of 2,500 hectares of fishpens in Laguna Lake in modules of 2.5, 5.0 and 10 hectares supposedly to be operated by the fisherfolk. This was followed by the First Aquaculture Development Project (FADP) in 1984 which was basically a credit program aimed to put up milkfish and shrimp ponds in Iloilo, Aklan and Capiz. The project was funded by an ADB loan of \$21.84 million. Other major fishery programs of the government were funded by loans from ADB or the Japanese government. Among the institutions providing the assistance are the Marine Fishery Resources Development Center and the Overseas Economic Cooperation Fund.

True to the declared objectives of the programs, the value of the fishery exports increased steadily from P782 million or 64,890 metric tons in 1979 to P9.6 billion or 128,899 metric tons in 1988. On the overall, the fishing industry contributed 4.9% of the total export earnings in 1988.³⁷

The development of the fishing industry anchored on aquaculture was not without environmental costs. One adverse effect of aquaculture was the destruction of mangrove areas and swamplands to give way to fish pond conversion. Mangrove areas and swamplands serve as breeding areas for fish. At present, over 60% of the country's original 450,000 hectares of mangrove forest has been cleared to accommodate fishponds. Translated into value, this means some 378,000 metric tons of fish and shrimps are lost from the converted mangroves annually. This figure is already 16.4% of the country's total fish production. In addition, the use of pesticides to clean up the fish farms after harvest and antibiotics to control fish diseases pollute the coastal waters and

³⁷ Ybanes, *Japan, Foreign Debt and the Fishing Industry*, Lundayon, July - September 1990, at 37.

harm marine organisms. This aggravates the already deteriorating ecological state of our waters.

A study conducted by a non-governmental organization describes the grim effects of uncontrolled aquaculture:

... uncontrolled aquaculture have extended even to the agricultural sector like the lowering of water table. This is a result of overpumping well water to dilute sea water and attain the salinity required for prawn ponds. In Negros Occidental where prawn farms abound, the intrusion of salt water into the province's water supply have been reported, as well as the drying up of groundwater. Eventually, this will affect rice and other agricultural crop. Worse, it could lead to a crisis in the drinking water supply.³⁸

Thus, nowhere is it more apparent than in the development of the aquaculture where external funding has contributed to the current environmental crisis in the marine resources of the country. The kind of development pursued was characterized by a disregard of its impact on the demand for the marine resources and its consequences on the environment.

The second proposition suggests that looming foreign debt forces developing countries into rapid, short-term exploitation of natural resources. This proposition, tested vis-a-vis the Philippine experience, may find its application in three instances. First, the pressure to produce foreign exchange to meet external obligations has forced the country to exploit its natural resources. Second, the severity of the debt burden forces the population to exploit the natural resources they are in contact with. Third, the debt burden forces a reduction of spending for environmental programs.

With reference to the first instance, a writer thus explains:

To ensure payment of the loans, the World Bank — International Monetary Fund in policing the global economic system implemented the Baker Plan which imposed export-oriented, import liberalization, and privatization measures on its debtor-nations, including the Philippines. The government's adoption of these measures as embodied in the Memorandum of Economic Policy (MEP) further intensified the export-based and import-dependent orientation in our economy and ensured that the bulk of our export earnings will go to the servicing of our external debt.³⁹

³⁸ *Id.* at 24.

³⁹ *Id.* at 21.

Since these loans have to be paid in foreign exchange, the emphasis has been based on export-oriented projects like the export of electronic parts and products, garments, aquaculture and logging (currently our top export earners).

One observation related to this is the exploitation of our natural resources to pay our debts; logging especially exemplifies this because aside from earning dollars as timber/logs, furniture is also among our top export earners.

Secretary Factoran traces this prevailing policy:

In the late forties, the Philippines decided to use its forest resources as a source of foreign exchange to finance its development program. Wood-based industries enjoyed generous incentives. Log harvests rose to about 5 million cubic meters in the late 1950's. Because of strong world demand, the harvest almost tripled to 11 million cubic meters in 1969. Harvest of about 10 million cubic meters continued up to 1974. In 1949, forest products accounted for only 1.5% of total exports. This increased to 11% by 1955 and surged to 33% in 1969.⁴⁰

There is absolutely nothing repugnant to promoting an export-oriented economy. What could be objectionable is the kind of export-orientation that disregards the environmental costs of pursuing such an orientation to a point of environmental collapse. A document released by Shearman and Sterling of the Conservation of the Americas predicts a bitter ending to a continuance of such orientation:

Major conservation groups and others are increasingly concerned that the growth and export-oriented structural adjustment being encouraged in the debtor countries in order to generate foreign exchange for debt service is not only environmentally destructive, but may even jeopardize the longer term economic development of the debtor countries.⁴¹

The experience of the Philippines as detailed above is not an isolated case. The severity of the debt crisis has forced other lesser developed countries to halt many development activities, as well as environmental programs, and instead search for "quick fix" solutions

⁴⁰ FACTORAN, POPULATION, RESOURCES AND THE PHILIPPINE FUTURE: AN ECOLOGICAL PERSPECTIVE (1990).

⁴¹ Chamberlain, *Debt-Equity and Debt-for-Nature*, in CONSERVATION OF THE AMERICAS, DOCUMENT No. 0078c, Nov. 19, 1987.

which generate maximum revenues quickly. In Brazil, for example, quick fix solutions include clear-cutting of the rain forests, which accomodates the use of cut trees for timber export and domestic fuel consumption, and the use of the land for farming and cattle ranching.

As mentioned earlier, the debt burden in the second instance forces a nation's population to exploit its natural resources. Developing countries, of which the Philippines is one, under pressure to meet domestic social needs as well as external financial obligations, may see no choice but to exploit their natural resource base at a pace that cannot be sustained. The result would be calamitous. In these countries, rural people depend on these forests for food, fuel, building materials, medicines, fodder for livestock — indeed for many of their staples. A substantial amount of environmental destruction is the result of measures to meet the most basic human needs for shelter, food, and a rudimentary livelihood. A representative of the World Wildlife Foundation further elaborates on this point:

There are several causes of degredation like poverty is a very basic one since people don't have any other alternatives may be utilizing the resources that they are in a direct contact with and if there is a structural problem like land reform and so forth where you don't have access to land in the lowlands to support their families, they are going to move up lands and there they are going to be accessing the forest and so forth.⁴²

Thus, economic pressures are forcing rural populations onto a path of destructive short-term exploitation of natural resources.

A cursory look at the second instance is a most appropriate prelude to examining the third instance which is the effect of the debt burden in carrying out environmental programs.

Developing countries burdened with large domestic and external debt often cannot pay for the equipment, planning, and other measures needed to protect valuable ecosystems. Such countries where the debt burden means a net flow of capital to the creditor countries, are not able to take a long-term view of their resources and to invest in sustainable programs.⁴³ In debtor nations, programs to manage natural resources are among the first slashed as governments struggle to reduce spending.

⁴² Personal interview with Richard Edwards, Director of World Wildlife Fund - Philippines, January 8, 1992. [hereinafter cited as Edwards interview].

⁴³ Reilly, *Debt-for-Nature Swaps: The Time Has Come*, INTERNATIONAL ENVIRONMENT AFFAIRS, Spring 1990, at 136.

In the Philippines while environmental programs were not subject to budgetary cutbacks, such programs have not received any significant attention from the government for the past two decades. Data on national government expenditures reveal a nominal budget allocation to management of natural resources as reflected in the budget of the agency tasked with this responsibility, namely the Department of Environment and Natural Resources (DENR). Meanwhile, the same data reveal the budgetary allocations to debt servicing which constitutes the bulk of national government expenditures annually. For example, in 1976, the budget for DENR was P391 million compared to the P1,077 million budget for the debt service fund. In 1981, DENR budget rose to P724 million while the debt service fund increased to P3,897 million. Then in 1986, DENR budget was at P1,171 million compared to the debt service fund which was at a staggering figure of P28,061 million. In 1991, the budget for DENR was P4,387 million while the debt service fund was at an even more staggering amount of P122,783 million.

In terms of percentages, the debt service as a percentage of expenditures, was pegged at 4.9 in 1976 then increased to 7.9 in 1981. In 1986, debt service rose dramatically to 24.5 percent then almost doubled in 1990 at 41.6 percent.

As a percentage of revenues, debt service in 1976 was at 6 percent which rose to 10.8 percent in 1981. By 1986, debt service already ate up a big percentage of national revenue at 35.4 percent. Within one year, the debt service burden turned to worse. The portion of the government revenues eaten up by debt service reached a peak high of 67.5 percent in 1987. By 1990, the debt service lowered to 58.8 percent.

Thus, available statistics speak for themselves. The earmarking of a substantial portion of our national government budget to meet both domestic and external debt obligations leaves our government no choice but to allot meager resources to other sectors, i.e. health, social welfare, public works, education, including the environment.

In sum, the current debt burden forces the Philippines, like other heavily indebted nations, into shortsighted revenue maximization. In effect, debtor nations, mortgage their economic future and the future of the environment in an attempt to meet their debt obligations. While a number of other factors have contributed to both problems, the debt crisis serves to exacerbate environmental problems, and the destruction of the environment often exacerbates the debt crisis by depleting usable natural resources. Thus, a complete remedy for developing nations, like the Philippines, must address both the debt problem and environmental concerns.

B. Mutual Solutions

In Third World countries the problem of the debt relief is symptomatic of a more rudimentary problem — how to foster sustainable long-term development.⁴⁴ Like the problem of debt relief, the cause of the developmental problem can be linked with the lack of environmental protection. Recognizing the mutual causality of these problems is the first crucial step in finding a long-term solution to either.

An official statement of the Federal Republic of Germany provides valuable insight for the need for mutual solutions to the problem of indebtedness and environment:

The linkage of economic and ecological objectives and, in particular, trading debts for environmental protection is urgently need for two reasons:

1. Environmental destruction in the third world countries is economically motivated. In the absence of economic prospects in the secondary and tertiary sectors these countries are dependent on exploiting their natural resources (raw materials, agriculture, forestry). For many countries in the third world environmentally protective behavior in the primary sector of the economy would mean having to do without one of the very few opportunities they have for engaging in economic activities that generate work and foreign exchange.

As long as the overindebtedness of these countries stands in the way of new loans and, as such, the development of their economies as well as the creation of jobs in the secondary and tertiary sectors, it would appear hopeless to motivate them to put a stop to large-scale exploitation of their natural resources on the basis of financial allocations in support of environmental protection.

2. Putting a stop to environmental destruction — primarily but not only involving tropical forests — presupposes overcoming what is currently the largest obstacle to development for these countries, i.e. elimination of their overindebtedness and restoration of their creditworthiness. It is only by means of a new capital and profitable investments that a satisfactory economic tradeoff can be created for doing without extensive exploitation of ecologically important natural resources. On this basis, the

relevant countries might be willing to conclude verifiable agreements on the protection of their natural resources with the creditor countries.

The creditor countries would receive in exchange for debt cancellation or debt reduction an ecologically significant return which the third world countries in question could not provide without economic compensation. Debt cancellation linked to a tradeoff would prevent loss of debtor credibility.

By providing a tradeoff, the debtor countries will regain their creditworthiness. The cessation of extensive exploitation of natural resources with detrimental environmental impact will make debt cancellation and new loans possible.⁴⁵

The limited and divergent perspectives of environmentalists and economic planners have resulted in few mutual solutions. Foreign creditors, as well as developing country borrowers, traditionally do not take into account the environmental benefits of rain forest conservation in the cost-benefit calculus precedent to conclusion of project loans and debt relief programs. While environmental and economic concerns are not always viewed as antagonistic, bankers seldom view them as co-dependent. Environmentalists traditionally have taken an absolutist stance. Industrialization tends to polarize economic and environmental concerns. This results in a perception that conservation must be achieved through environmental protectionism rather than through accommodation of commercial activity.

International financial institutions, including the World Bank and the regional development banks, have recently made efforts to consolidate environmental and economic concerns in their lending policies. The World Bank expressed commitments to substantially increase lending for specific environmental projects, including reforestation. Although the environmental returns of these policies thus far have been minimal, the reforms they promise are significant in recognizing the need for and viability of mutual solutions to environmental and economic problems.⁴⁶

The World Bank and regional development banks are mandated by their Charters to promote the development of Third World nations.

⁴⁵ FEDERAL REPUBLIC OF GERMANY, *Official Statement on World Economic Situation, Specifically Indebtedness and Environment*, Federal Press Office, July 24, 1988.

⁴⁶ Barrans, *supra* note 3, at 73.

Since the 1960's, countries have gradually come to realize that environmental protection is a necessary component of development. Thus, the Bank's developmental mandate requires a consideration of environmental protection. To this effect, the World Bank and other multilateral banks have hired environmentalists on their staff to evaluate the impact of their projects on the environment.

The majority of lenders have failed to perceive the need for mutual solutions to environmental and economic problems, prompting environmentalists to seek mechanisms by which they can interject environmental concerns into economic transactions.⁴⁷ For the most part, mutual solutions have not arisen from recognition of mutual causality, but rather from a convenient alliance of bankers and environmentalists in market transactions. Environmental organizations have seized upon the growing secondary market for foreign debt as a means of negotiating environmental protections in foreign countries.

Some banks, generally those holding only limited amounts of Third World debt are seeking to dispose of these debts because they find that the uncertainties of valuation and the complexities of future participation in renegotiation and rescheduling outweigh the residual economic benefits of holding the debts. Thus, these debts are sold at a substantial discount in the secondary market. Insofar as debt-for-nature swaps involve the regular purchase of debt in the secondary market, banks welcome conservation organizations to that market as they would any other potential purchaser.

Conservation organizations have resorted to the secondary market for the purchase of debts of debtor nations to whom commitments have been made for funding of local conservation projects. However, funds available to conservation organizations are limited and as a consequence mechanisms had to be conceived which would have the effect of increasing the effectiveness of existing funds. It is against this background that the debt-for-nature mechanism was conceived. By buying Third World debt at a discount and asking the debtor country which is a recipient of conservation dollars to redeem these debts, new funds are generated which would otherwise be unavailable. Thus, through the debt-for-nature mechanism conservation organizations aim to achieve maximum conservation benefits with limited funds.

⁴⁷ *Id.* at 74.

III. DEBT-FOR-NATURE SWAPS

A. *The Setting*

In 1987, several factors combined to provide impetus to debt-for-nature swaps. Opportunities emerged as a growing number of debtors and lenders, frustrated by the failure of standard approaches to alleviating debt, became open to unconventional solutions. Many debtor nations instituted "debt-for-equity swaps" through which they redeemed portions of their debt in local currency by allowing debt-holders to take equity positions in commercial and industrial projects.⁴⁸ At the same time, a growing number of lender banks began to conclude that sizable portions of their debt portfolios, especially in Latin America, were uncollectible. These banks began to write down or sell high-risk debts at substantial discounts, fueling increased activity in what is called the secondary market.⁴⁹

Taking cognizance of this new development in the international banking community, the Central Bank of the Philippines issued Circular No. 1111 known as the "Program for the Conversion of Philippine External Debt into Equity Investments," which was later revised on October 20, 1987. Section 2 of said Circular explains the rationale for its issuance:

It has come to the attention of the Philippine Government that Philippine external debt obligations owed to commercial banks or financial institutions are being traded in the secondary market. If an investor purchases an interest in such an obligation and the obligor is able to redeem the debt for the peso equivalent of the face amount of the obligation, this permits the investor to obtain pesos. It is the intention of the Government to utilize the opportunity presented by this type of transaction in order to encourage investors (both Philippine and non-Philippine) to make long-term equity investments in Philippine enterprises.

The same section states the benefits expected to be derived from the program to be as follows:

An important ancillary benefit for the Philippines resulting from the discharge of foreign currency denominated debt through the payment of pesos, is a reduction in the aggregate external debt stock

⁴⁸ Fuller & Williamson, *Debt-for-Nature Swaps: A New Way of Funding Conservation in Development nations*, International Environment Reporter, May 11, 1988, at 301.

⁴⁹ *Id.*

of the country. Such reductions alleviate the demands placed on the country's foreign exchange reserves by the need to make current debt service payments on existing foreign currency indebtedness.

The above Circular has since been amended by Circular No. 1267 which took effect on December 20, 1990. While retaining the objectives of the old Circular, the new Circular amended the types of debts eligible for conversion under the debt-equity program to include:

Section 5.11 of each Restructuring Agreement signed by a Philippine Public Sector Borrower, Section 5.11 of the New Money Agreement and Section 4(d) of the Terms and Conditions of the New Money Bonds permit (with the consent of the Central Bank and the Republic of the Philippines) the discharge of any credit covered by any of such Agreements or Bonds through the payment of pesos.

Moreover,

External debt obligations of a Philippine Private Sector Borrower may be redeemed for pesos for conversion into equity investments if such borrower is permitted by the relevant loan Agreement to discharge its external obligations in pesos or the creditor otherwise consents to this arrangement.

Section 9 of the new Circular provides for the list of permissible investments under the debt-to-equity program:

Subject to the receipt of approval referred in Section 30 of this Circular, the peso proceeds of convertible debt redeemed in connection with a Conversion Transaction may be invested in a Preferred Investment or a Less Preferred Investment.

The list of preferred areas of investment are outlined in Schedule 2 of the Circular. This includes Philippine enterprises engaged principally in one or more of the following economic activity:

1. The production, manufacturing or processing of export products from the Philippines...
2. Banking insofar as it involves (a) the acquisition of shares of stock of a bank owned directly or indirectly by the Government and being disposed of under the Government's privatization program, or (b) acquisition of new shares in a bank under a Central Bank approved rehabilitation program;
3. Agriculture, as defined in the Investment Priorities Plan currently in effect at the time the application for a Conversion Transaction is submitted; and

4. Investment in a Philippine Enterprise that is principally engaged (or purposes to engage) in energy related projects as defined in the Investment Priorities Plan currently in effect at the time the application for a Conversion Transaction is sub-mitted.

Furthermore, other investments not included in the list of preferred investments but nonetheless are qualified recipients of peso proceeds from the conversion transaction, are couched under the list of less preferred investments:

1. Activities listed in the Investment Priorities Plan currently in effect at the time the application for a Conversion Transaction is submitted except those specified as Preferred Investments in Schedule 2 hereof;
2. Banking (primary issues) excluding bank privatization and bank rehabilitation referred to in Schedule 2 hereof; and
3. Such other activities as may be considered less preferred by the Monetary Board.

The relevance of understanding the provisions of the debt-to-equity program in the Philippines lies on the fact that the debt-for-nature transactions so far undertaken in the country were accomplished under the guidelines of the debt-to-equity program. For this reason, the debt-for-nature swap is similar to the debt-to-equity swap. The crucial difference between the two types of swaps is that in a debt-to-equity swap, the investor converts debt into an equity interest; whereas in a debt-for-nature swap, the "investor" takes neither property interest in, not title to, an asset. Instead the "investor," more properly referred to as the donor, exchanges the debt into an environmentally-related action on the part of the debtor country.

This section will describe what a debt-for-nature swap is, and explain the steps involved in carrying out such a swap. In the latter effort, the Philippine experience with the debt-for-nature swap will be utilized to shed further light on the financial intricacies involved in the swap.

B. *The Mechanics of a Swap*

A debt-for-nature swap is an agreement whereby a portion of a debtor nation's foreign debt is retired in exchange for that country's pledge to institute environmental protection programs. Although the specific provisions of each debt-for-nature swap are unique and can

be quite complex, there are two basic ways in which a swap may be structured. In the first and most commonly used method, a private conservation organization purchases Third World debt, usually at a substantial discount, from a private bank. The conservation organization then negotiates with the the debtor nation's central bank to redeem the debt and issue local currency bonds or local currency equivalent to the total debt or to a mutually agreed upon redemption rate. These bonds or local currency are issued in the name or for the account of a local conservation organization which is charged with the responsibility of overseeing the environmental protection programs in an area designated by the conservation organization. The conservation program may also be financed in part by the interest paid on the bonds, in case local currency bonds are issued.

The debt-for-nature swap engineered by Conservation International with the Bolivian government provides an illustrative example of the swap as described above. In 1987, the Conservation International initiated the transaction by purchasing \$650,000 of Bolivia's commercial debt through Citicorp Investment Bank for \$100,000, that is, 15 cents on the dollar. A written contract was then executed between Conservation International and the Bolivian Government. In exchange for the debt, Bolivia's president agreed to set aside 3.7 million acres of tropical forest around the Beni Biosphere Reserve as a protected area and to establish a \$250,000 fund in local currency for its management. In addition, the contract specified that the areas covered by the contract be granted the highest legal protection status accorded under Bolivian law.

A similar transaction between Conservation International and Costa Rica provides another illustration of the financial intricacies involved in a debt-for-nature swap. Under the initiative of the Costa Rican Minister of Natural Resources, Energy and Mines, the Central Bank of Costa Rica authorized up to \$5.4 million million in debt swaps. Contributions from a number of donors including the World Wildlife Fund, Conservation International, and the Nature Conservancy have already resulted in the acquisition of the full face amount of debt at prices ranging between 15 to 17 cents on the dollar. The Costa Rican Central Bank redeemed the debt at 70% of its face value by issuing monetary stabilization bonds with a three to five-year maturity date. The bonds were placed in an endowment fund earning at least 23% interest. The interest on the bonds are to be paid quarterly and Conservation International may start redeeming the bonds for 25% of their value after four years. Meanwhile, the remaining principal shall continue to accrue interest until all the bonds have been cashed. While *Fundacion*

de Parques Nacionales and the *Fundacion Neotropica*, two Costa Rican organizations, oversee the payments of bond proceeds, a Costa Rican Bank, the *Banco Cooperativo*, holds the bonds in trust.

The second method of structuring a debt-for-nature swap is to have the private bank negotiate directly with the central bank of the debtor nation to exchange Third World debt for bonds or currency of the debtor nation. The private bank then donates the bonds or currency to a conservation organization, which uses the funds for environmental protection programs in the debtor nation.

A debt swap undertaken in favor of Costa Rica uses the second structure. In a deal orchestrated by Nature Conservancy, Fleet/Norstar Financial Group of New York donated \$250,000 of outstanding debt to Costa Rica. In exchange, Costa Rica agreed to add 25,000 acres of tropical forest to the Braulio Carillo National Park.

Regardless of the form the swap takes, some of the potential benefits of the transactions are immediately apparent: the private bank is able to remove a portion of delinquent debt from its books; conservation organizations move toward fulfillment of their conservation goals; and the debtor nation not only is permitted to pay back part of its debt in local currency, but is also able to ensure the preservation of some of its natural resources in the process.⁵⁰

C. *The Debt-for-Nature Swap: The Philippine Case*

1. OVERVIEW

To date, the Philippines has had two debt conversions under the debt-for-nature swap. The first was in 1988 when a \$2 million debt swap was funded through the World Wildlife Fund in collaboration with the Haribon Foundation, a local non-governmental organization. The proceeds of the debt swap were allocated to fund a Philippine conservation program which was drawn by the World Wildlife Fund, Haribon Foundation and the Department of Environment and Natural Resources. Through negotiations with the Philippine Central Bank, the Philippine debt papers which were acquired for 51 cents on the dollar, were redeemed at face value.

A second debt swap was proposed in the latter half of 1989 by World Wildlife Fund to finance a \$25 million environmental program. The World Wildlife Fund was able to raise funds for this program

through the inclusion of this program in the \$125 million National Resources Management Program (NRMP) financed by the United States Agency for International Development (USAID). After a long series of negotiations with the Philippine Central Bank, the latter authorized a redemption of the face value of the debt papers used in the swap.

2. THE FIVE STEPS OF DEBT-FOR-NATURE SWAPS

a. *The First Step*

The first step in any debt-for-nature program is to obtain the approval in principle from the debtor country. This can involve negotiations with three key parties: the government, the central bank, and an appropriate private conservation organization.⁵¹

In the Philippines, the initiative for a debt-for-nature swap came from the Department of Environment and Natural Resources (DENR). While in Washington, D.C. in 1987, DENR Secretary Fulgencio Factoran and Undersecretary Celso Roque approached World Wildlife Fund (WWF) about the feasibility of funding conservation programs in the Philippines through the debt-for-nature swap. While there are something like 62 protected areas on paper in the Philippines, the budgetary allocation is too little to fund all of them. The DENR has been underfunded over the past several years. The amount allocated by Congress is much less than what DENR asked for. Through studying the debt swaps of other countries, DENR realized that this is a way of leveraging the funds and increasing the amount available for conservation that did not come necessarily from the budget. So the swap was a way of creating new resources for conservation while at the same time effecting a reduction of the debt burden.

In considering the proposal for a debt swap, the WWF had to consider mainly two aspects: first, the conservation imperative in the Philippines; second, the availability of Philippine debt papers in the secondary market. After a study of the Philippine environment, the WWF came out with the conclusion that the Philippines is one of the 10 conservation hotspots in the world:

This means that this is an area where there is a high degree of organism. Animals and plants are in existence here that do not exist any where in the planet. It is also a place where this biological diversity is highly endangered. So the combination of unique biological

⁵⁰ Dillon, *The Feasibility of Debt-for-Nature Swaps*, 16 N.C.J. Int'l Law & Com Reg 130 (1991).

⁵¹ Von Moltke, *Debt-for-Nature Swaps: An Overview*, World Wildlife Fund.

features that are highly endangered due to deforestation and other issues made it a place that is a conservation priority.⁵²

As to the availability of Philippine debt papers in the secondary market, the WWF came out with the following report:

The large amount of official Philippine debt is owed to commercial banks in New York City, like Citibank. These banks determined that it is unlikely that the Philippines will repay all its debts, thus, decided to sell some of these debts at a discount price to international organizations like the WWF.⁵³

Thus, conservation priorities and available debt papers provided the impetus for WWF to engineer a debt-for-nature swap in the Philippines.

Thereafter, WWF approached DENR to discuss a possible debt-for-nature swap and the involvement of a non-governmental organization. The inclusion of a non-governmental organization to operationalize the swap was deemed necessary for various reasons. First, if funds were put in the government, DENR would be faced with problems of bureaucratic red tape. Hence, a mechanism had to be developed where the funds go through the non-governmental organization rather than the National Treasury where DENR would have to beg for the release of the funds every year. The inclusion, therefore, of a non-governmental organization was the most practical approach to sustain the continuity of the projects. Second, there was a policy shift in the DENR from management by the government to community-managed projects. In the transition period, there would be a need for the non-governmental organization to prepare the community to handle the management of the resources transferred to them. Third, in all debt-for-nature swaps, there was a need for a non-governmental organization with a capacity and ability to implement or monitor environmental projects on the ground.

In this manner, the conservation organization in the developed country which orchestrates the funding for the purchase of debt papers are not caught in a double bind. By being able to relinquish effective control over the proceeds of the debt swap to the non-governmental organization in the debtor country, it is able to avoid the "imperialism" issue in the latter country and at the same time is able to vouchsafe

⁵² Edwards interview, *supra* note 42.

⁵³ REPORT ON THE SECOND LEVEL CONSULTATIVE CONFERENCE AND PROJECT ASSESSMENT DEBT-FOR-NATURE-SWAP PROGRAM, June 25-26, 1991, at 7.

to its donors and tax authorities the continuing responsible use of these proceeds.

The choice of Haribon Foundation as the working counterpart of DENR is actually attributed to some personal dynamics. Dr. Celso Roque, who was then the Undersecretary for Environment and Research of DENR, was also one of the leaders of Haribon. At the time of the inception of the debt-for-nature program in the Philippines, Haribon was the only non-governmental organization that was more focused on bio-diversity and wildlife conservation. Furthermore, prior to that time, Haribon had a conservation strategy project for the Philippines which was funded by the WWF.

Discussions among the WWF, the DENR, and the Haribon led to identification of priority conservation projects in the Philippines. This led to the drafting of a conservation strategy program for the Philippines which is labeled as the "Proposed Philippine Conservation Programme for the Debt-for-Nature Swap."

The proposal was finalized and it was submitted to the Central Bank for qualification under the debt-to-equity program. In its application, the WWF indicated that the program would be funded by the proceeds of debt conversion of Philippine debt papers which WWF plans to purchase from Philippine commercial bank creditors.

At the time of the submission of the proposal, the debt-equity program in force was the one provided for by Revised Circular No. 1111. Since the debt which WWF intended to purchase was one covered by the Central Bank Restructuring Agreement, the debt was eligible for conversion under Schedule 1 of the program. The primordial factor, however, which the Central Bank had to consider was whether the peso proceeds of the convertible debt would be invested in any of the permissible investments listed in Schedule 2 or 3 of the Circular. A perusal of the provisions of Schedule 2 of the Circular would not disclose the environmental protection activities as one of the possible recipients of the peso proceeds. This leads one to conclude that the debt-for-nature swap would be considered under the guidelines provided for in Schedule 3 of the Circular which allowed equity investment in an enterprise engaged principally in an economic activity or project not covered by one or more of the investment items listed in Schedule 2 of the Circular.

In evaluating the proposal, Section 9 of the Circular provides the following guidelines:

In considering an application for a Conversion Transaction under this Circular, the Monetary Board shall inquire into the proposed use of the Peso proceeds of such transaction by the Philippine Enterprise concerned.

Thus, in the initial debt-for-nature proposal, a Central Bank official relates how the guidelines were followed:

We asked documents like details of the project, who are the people involved in the project, what are really the specific projects being undertaken. Like for example in the project of Haribon, they presented to us the conservation of St. Paul Park, conservation of marine parks, preservation of endangered species like the Philippine eagle or other wildlife usually located in Palawan.⁵⁴

By a resolution of the Monetary Board, the application for the debt-for-nature program was approved in principle by the Central Bank. After acquiring this approval, the WWF, the DENR, and Haribon Foundation signed the Philippines' first "Debt-for-Nature Agreement" on the 24th of June 1988.

b. The Second Step

The second step in any debt-for-nature swap involves obtaining the debt instrument. The base price for the debt of any debtor country is determined by its price in the secondary market. Sources reveal that the market prices for Third World debt vary considerably, ranging from a few cents on the dollar all the way to parity. For conservation organizations in the developed countries, the lower the price, the greater the leveraging potential for a debt-for-nature swap.

However, buying a portion of a particular country's debt can pose problems for conservation organizations in developed countries if the secondary market is small. Some writers are of the opinion that despite the enormous amounts owed to U.S. and European banks by Third World countries, locating debt in the secondary market can be difficult. The fear of "debt contamination" prevents many banks from selling or donating their Third World debts. Despite current secondary market prices, Third World loans are assumed to be long-term investments that will be fully repaid; hence, banks carry them on their balance sheets at their face value.⁵⁵

These observations raised by some writers may set some difficulty for conservation organizations in engineering debt-for-nature swaps. That is, of course, if these observations were true. However, the experience of the World Wildlife Fund in undertaking a debt swap for the Philippines

may provide a different reality. Relating the process of obtaining a debt paper for conversion under the debt swap, an official of the WWF makes the following comments:

That's the easiest part of the process. It takes just a couple of phone calls. We have a financial department based in Washington and the director simply gets on the phone and calls in banks to bid and ask them to bid in the next day or two. They look around if they have commercial Philippine debt on their own book and if they don't, they might trade with some bank which have Philippine debt and acquire it that way and come back to us and tell us that they are going to sell it.⁵⁶

Furthermore, in the case of the WWF, they make it clear to banks that they are willing to purchase only certain kinds of debts:

There are only certain kinds of Philippine debt we are willing to purchase. We receive a list of six of what are considered as fraudulent loans from the Freedom from Debt Coalition here and we provide a copy of those though a memo to the bank. So we are willing to purchase any Philippine debt, except those six and so we want to make sure that the Filipinos are willing to pay off these debts. Other than that, the mechanics of acquiring debt are very simple.⁵⁷

c. The Third Step

The third step in any debt-for-nature swap is the transfer of title to the debt. The important decision to be made at this step is who the actual purchaser shall be. Some writers suggest that it may be appropriate for the conservation organization in the creditor country to acquire the debt and then donate it to its partner in the debtor country. Others state that it may be possible to donate the necessary resources to permit direct acquisition of the debt by the debtor country organization. In a third version, debt may be donated directly to the debtor country organization, acting as agent for the creditor country organization. The factors governing the choice of actors in this situation are mainly financial and tax-related, although certain considerations like accounting requirements may enter for creditor country conservation organizations.

⁵⁴ Personal Interview with Milo Coloma, Supervising External Debt Specialist, Debt Restructuring Office, Central Bank of the Philippines, October 23, 1991. [hereinafter cited as Coloma interview].

⁵⁵ Curtis, *supra* note 35, at 336.

⁵⁶ Edwards interview, *supra* note 42.

⁵⁷ *Id.*

In the case of the Philippines, World Wildlife Fund followed the mechanism first suggested by writers as stated above. Funds for the debt swap orchestrated by WWF came from a variety of sources. USAID has been the major funder for the aid swaps for the last few years and other groups like the Bank of Tokyo, Japan and some private foundations have put in their resources in the debt swap. With these resources, the WWF purchased Philippine debt papers and presented the same for conversion to the Central Bank.

d. *The Fourth Step*

The fourth step in any debt-for-nature swap is the conversion of the debt in accordance with the agreement reached with the debtor country's government. Writers have described this step as involving a variety of issues such as the issuance of local currency bonds, measures to protect certain sensitive areas, i.e. legislation, the cash payment of local currency in redemption of the debt, local currency disbursement procedures and others.

In the case of the Philippines, the "Debt-for-Nature Agreement" signed in 1988 provided the procedure for the conversion of the debt:

The government of the Philippines, represented by the Department of the Environment and Natural Resources (the "Department"), will request the Monetary Board of the Philippines (the "Monetary Board") to approve the exchange of the Philippine external indebtedness, in an aggregate principal amount of up to US\$2 million, into cash in Pesos, which will be devoted exclusively to financing activities in connection with the maintenance and conservation of the Philippines' biological diversity. Such exchange will comply with all applicable requirements of Philippine law, including Revised Circular No. 1111 (October 20, 1987) of the Central Bank of the Philippines.⁵⁸

Thus, the Central Bank will not execute a debt-for-nature swap unless there is a DENR request for a debt-for-nature swap. This is generally the procedure for debt-swapping.

Other aspects of the actual debt conversion include the matter of the exchange rate to be applied in the conversion and the redemption rate of the debt papers presented for conversion. In the initial debt

swap, the agreed exchange rate was the official exchange rate at the date of redemption. With respect to rate of redemption, under the old Circular No. 1111 the rate was to be determined by a fee structure. Sections 24 and 25 in relation to Schedule 4 and 5 of the Circular provided for a system of fees imposed at the closing of any debt conversion. The fees ranged from 0% to 24%. To illustrate, the fee imposed on conversions intended for equity investments in preferred industries is 15% so the redemption rate is 85% of the face value of the debt. In the initial debt-for-nature swap, however, the fees normally levied in debt-equity conversions were waived as a result of negotiations among the representatives of the DENR, the Central Bank and the Department of Finance. DENR's position was that since the projects to be implemented are properly governmental, the government should contribute to this undertaking. It was agreed, however, that in lieu of the fees, 10% of the peso proceeds would be earmarked for the budget already allotted to conservation activities. As a result of this arrangement, 90% of the face value of the debt paper was effectively converted to local currency and the same credited to the account of the Haribon Foundation as the designated organization to receive and manage the proceeds pursuant to the "Debt-for-Nature Agreement."

However, under the new Circular No. 1267, the system of fees has been replaced by an auction system. Briefly, under this system, a particular auction amount is quoted for a particular quarter and prequalified applicants submit sealed bids stating the redemption price as a percentage of the face value of the debt paper they are willing to accept from the Central Bank. The right to use Central Bank Convertible Debt is then awarded to the lowest bidder. With respect to debt-for-nature swaps, the redemption price is the highest accepted bid price in the immediately preceding auction.

An issue that is also resolved at this step of the swap is the method of utilization of the peso proceeds. In the first debt-for-nature transaction, the drawdown of the proceeds of the swap did not take place in a single transaction. The disbursement of the peso proceeds were divided into tranches. An official of the Central Bank explains the procedure:

Before the Central Bank repays the peso, we require the recipient company to submit to us the utilization schedule, meaning when they would use the pesos and what are the expenses. We ask for intended documents for intended utilizations, like for example if they would buy equipment, then they have to present to us pro forma invoices accomplished already; budget in case of salaries of employees. In the case of constructions, then contracts for construction x x x x Before the Central Bank releases the pesos, the

⁵⁸ Debt-for-Nature Agreement among World Wildlife Fund, Haribon Foundation and the Department of Environment and Natural Resources, June 24, 1988.

proponents will have to convince the Central Bank that they really need the pesos, for example within 30 days. If it is a contract, there should be a evidence that it is due and demandable within 30 days.⁵⁹

The Central Bank official further explains the rationale for imposing these conditions before closing the actual debt conversion:

They (the proponents) would have to show to us if they really need the money immediately because this particular type of transaction is inflationary because the Central Bank will be issuing pesos, adding pesos in circulation. So the concern of the Central Bank is the inflationary effect. So as to some sort of delaying or programming the inflationary impact, we require it to be placed in special securities in the meantime.⁶⁰

e. *The Fifth Step*

The final step in any debt-for-nature swap is the execution of the agreed-upon conservation program. The importance of this step should not be underestimated. This is the ultimate goal of any debt-for-nature program. The reputation of key parties, namely the conservation organization in the creditor country, the debtor country's government and the conservation organization in the debtor country can be at stake. With respect to the first party, it must be in a position to assure its donors and tax authorities the appropriate use of the funds it has received. As to the second party, it must be in a position which would reflect its commitment in implementing innovative programs of this character. Finally, as to the third party, it must be able to show that it is credible and that it can implement and manage its programs well.

The first "Debt-for-Nature Agreement" delineates the roles that the parties play in the execution of the program:

The (Haribon) Foundation will cooperate with World Wildlife Fund in the selection, development and implementation of the specific projects within the framework of Section 2(a) in accordance with the Philippine Conservation Strategy, which has been developed by World Wildlife Fund in close collaboration with the Department (of Environment and Natural Resources) and other Philippine institutions. Proceeds of exchanges will be dedicated to the projects specified in the Attachments to this Agreement, as mutually agreed from time to time by the Foundation, the Department and World Wildlife Fund.

⁵⁹ Coloma interview, *supra* note 54.

⁶⁰ *Id.*

IV. A CRITIQUE OF THE PHILIPPINE DEBT-FOR-NATURE SWAP

An exhaustive discussion of the various steps involved in a debt-for-nature swap reveals that in every step of the program, several issues exist that can be viewed either as impediments to success or factors that can be creatively varied to enhance conservation. It has been suspected for a long time that a link between the financial market and conservation is possible, but that has not yet been made tangible until the conception of the debt-for-nature mechanism. This mechanism establishes that such a link is possible.

It has been shown that a debt-for-nature swap involves numerous actors. To be successful it requires that each of the actors have a substantial stake in its outcome. As in other economic transactions, the best deal is one in which every actor receives some significant benefit and the balance of advantages is perceived as equitable by all.

In the case of the Philippines, the success of the debt-for-nature transactions that have thus far been undertaken can be effectively determined by the results which the swaps have produced. The issue of whether the dual goals of providing debt relief and environmental protection have been achieved through the program becomes the ultimate basis for determining whether similar transactions are worth pursuing in the future as an integral part of the government's debt reduction and environmental conservation strategies.

A. *Debt-for-Nature Swap: An Alternative Approach to Debt Relief*

1. BACKGROUND

During the 1970's and early 1980's, developing countries such as the Philippines borrowed heavily to finance balance of payments deficits caused by a volatile external environment — high oil prices, adverse terms of trade, and surging interest rates — and to cover domestic policy errors, such as overvalued exchange rates, chronic fiscal deficits, and other incentives to overspending and capital flight.

In the 1970's, commercial banks were flushed with recycled petrodollars and other loanable funds and actively competed for Third World clients. But the 1980's brought an experience of global recession. Thus, commodity prices plummeted; banks were willing to lend only at ever increasing double-digit interest rates. This sharply increased the cost of outstanding debts. With the advent of these developments

in the financial community, banks abruptly closed their lending windows to most developing countries, effectively driving debtor countries to the brink of default.

The Philippines was not isolated from the rest of the world during the global recession of the early 1980's. With the scarcity of new money from foreign commercial banks and official sources to spur economic and developmental activities in the country, the economy found itself at a standstill. Political developments at about the same time, highlighted by the assassination of former Senator Benigno Aquino Jr. brought a loss of confidence in the Philippine government causing both foreign and domestic investors to take flight and invest their capital elsewhere. Thus, the Philippine economy started to experience a decline which further deteriorated in the succeeding years. In order to avert an economic collapse, the Philippine government found itself with no alternative but to request for a moratorium on its debt payments. As a result of rising total debt and debt service requirements since the 1970's, an increased proportion of the Gross National Product was being devoted to interest payments rather than productive investments. But to save the economy in the early 1980's, the government had to refocus its scarce resources to meet domestic needs.

While the government of the Philippines tried to revive the economy which was in shambles, there was still the primordial issue of how to handle the debt situation. The total of Philippine external debt which was estimated at U.S.\$2.2 billion dollars in 1975 had grown to U.S.\$11.3 billion dollars by 1981 and further increased to U.S.\$14.9 billion dollars by 1983. At about this time, the performance of the Philippine economy would not make it possible for the government to meet its financial obligations to its foreign creditors.

To avert a financial panic among the creditor banks and governments, the U.S. government, the International Monetary Fund and the commercial banks collaborated to assemble rescue packages that provided for postponing the payment of principal, for new inflows of capital and for austerity measures in the debtor countries.

As a result of these initiatives, what followed next among debtor nations was a series of negotiations with their creditors for a package of debt relief which included rescheduling of matured debt obligations or refinancing of new money to retire old debts or a combination of both. The Philippine strategy of seeking debt relief consisted mainly of negotiating for debt rescheduling and/or refinancing, including requests for condonations or conversion of debts into grants or aid.

Thus, the government commenced negotiations for debt relief among its creditors which were classified into two groups. The first consisted

of foreign commercial banks; the second was comprised of foreign governments or agencies, institutions or instrumentalities thereof. The result of negotiations gave birth to various public sector restructuring agreements for the former and bilateral rescheduling agreements for the latter. Admittedly, the agreements did provide some debt relief and continue to do so. Through these agreements, creditors have provided for more generous terms of repayment — longer maturities, lower spreads over their cost of funds, and elimination of upfront fees in some instances.

However, it must be borne in mind that the purpose of any debtor country in requesting for debt relief is to provide their governments with ample time to formulate their own economic and financial programs which would enable their nation to resume the path of economic growth. Philippine restructuring agreements with commercial bank creditors have been in effect for the past five years. The Philippine government has had four rounds of rescheduling with its official creditors for the past five to six years. Still, the economy has not grown to levels where the debt burden does not impede the real growth of the economy.

Present strategies to debt reduction have not been sufficient to effectively reduce the debt. For instance, while the government has obtained rescheduling of official credits in three previously concluded negotiations with creditor governments, the rescheduling alone of the debts covered by the negotiations have not been sufficient to offer debt relief because these once rescheduled debts found themselves rescheduled in the fourth round of concluded negotiations with the same creditor governments. These previously rescheduled debts plus those debts whose maturities fall within the period of 1 July 1991 to 31 December 1992 are rescheduled once more in a new agreement. Thus, it seems apparent that rescheduling is not sufficient to an effective debt reduction program.

2. DEBT-FOR-NATURE SWAPS: NEW ALTERNATIVE TO DEBT REDUCTION

There could be a continuation of frequent negotiations and re-negotiations of restructuring/rescheduling agreements between creditors and the government, with possible new features, such as those introduced over the last two years: exit bonds bearing below-market interest rates, the conversion of loans into equity at deep discounts, lengthening of maturities and lowering of spreads. However, as it has been shown, this strategy has failed to effectively reduce the debt burden and to revive the economy. Over the past six years, the government debt

service requirements continue to consume the bulk of its resources. Thus, further relief is needed. It is imperative that in addition to present schemes of debt reduction, new alternatives be tapped to promote the same goal.

A possible new approach to traditional methods of debt reduction is through the debt-for-nature swap. The discourse in the previous section illustrates in detail how the mechanism operates to the advantage of the country.

First, the immediate advantage of the swap is a reduction in the foreign debt servicing problems. Under the mechanism, old debts are not merely extended to enjoy longer maturities. The effect of the swap is to retire the debt itself.

Second, an inherent feature of the swap is to retire the debt by payment in local currency or bonds. The consequence of this is that the country is enabled to conserve its hard-earned foreign exchange. This translates into more opportunities for investment of foreign exchange to productive activities such as importation of equipment and machinery for vital industries.

Third, the debt-for-nature swap would contribute measurably to the stabilization of the country's debt. Admittedly, the total volume of debt-for-nature swap transactions is small relative to the principal amount of the debt. Relative, however, to annual interest payments, they appear more important. Under previous and existing restructuring/rescheduling agreements, the country in fact makes partial interest payments, while the balance, in practice, is added to the principal. Virtually, no new real loans are made. Even in refinancing schemes concurrent with rescheduling, no new loan is in effect granted. New money is used to refinance retirement of old debts. This refinancing money in effect comprise the new debts which are nevertheless rescheduled. Debt-for-nature swaps need to be measured not against the outstanding principal, nor against annual interest payments, but against the effective rise in principal attributable to the country's inability to service its debts. The country's debt situation can be considered stabilized when interest payments are not causing an increase in indebtedness. Measured against this standard, debt-for-nature swaps indeed make a noticeable contribution towards a more viable debt situation for the country.

*B. Debt-for-Nature Swaps:
An Alternative Approach to Funding Conservation*

Before embarking on any debt-for-nature transaction, a debtor country must confront the question of whether or not the program

represents interference with their domestic priority-setting procedures. In most instances, however, debt-for-nature programs cover activities already approved directly or indirectly by debtor country governments but for which no funds, or inadequate funds, are available. This is precisely the situation in which the Department of Environment and Natural Resources found itself, inducing it to initiate possibilities of a debt-for-nature program in the country as mentioned in the earlier sections of this paper.

Debt-for-nature transactions involve amounts which, vis-a-vis the external debt of the government, are currently relatively small. To illustrate this, in 1988 when the total external debt obligation of the country was estimated to be U.S.\$27 billion, the debt-for-nature transaction amounted to a nominal amount of U.S.\$2 million. Then last year, relative to the Philippine debt obligations of approximately U.S.\$28 to \$29 billion, the debt-for-nature transaction approved amounted to only U.S.\$10 million. Indeed the amounts involved are small but these swaps have a significant positive effect on conservation where even small amounts of money can achieve substantial results.

It was mentioned earlier that the debt-for-nature swap has been described as a financial mechanism for leveraging funds donated by donor conservation organizations in developed countries. Debt notes are purchased by these donors at a discounted price. However, when these notes are redeemed by the debtor country's central bank, they are done so at a rate higher than the discounted price of the note. A Central Bank official explains how this financial mechanism actually translates in monetary terms:

The benefit really is in the savings being derived from the transaction. If they obtained the paper at a discount, say 50% discount, the cash outlay for this is that for every one dollar face value, only 50 cents is spent. However, when the Central Bank will pay the one dollar at 65%, they would realize a savings of 65% minus 50%, a 10.5% premium as compared to inwardly remitting their dollars through a commercial bank where they will only get one on one, meaning for every dollar he would get only P27 pesos.⁶¹

To illustrate further the multiplier effect of the debt-for-nature transaction, the initial debt swap undertaken in the Philippines can be seen as a case in point. Under the swap, U.S.\$2 million dollars were committed to fund conservation projects through the debt-for-

⁶¹ *Id.*

nature swap. The amount was then utilized to acquire Philippine debt papers in the secondary market. The debt papers were purchased at 51% of their face value. Upon negotiations with the Philippine government, the debt notes were redeemed at 100% of their face value. Clearly, the donor organization realized a premium of 49% from the transaction. If the U.S.\$2 million dollars were directly donated by the donor conservation organization instead of utilizing the debt-for-nature program, they would not have realized any premium in the transaction. This makes the swap more desirable as a means of funding conservation than merely providing cash payments directly.

Thus, the debt-for-nature swap may dramatically increase the impact of conservation dollars. At the current exchange rate, one dollar face amount of acquired debt may yield many multiples over that in local currency. The result of the transaction is thus, making available more resources which would not have arisen if there were no debt-for-nature transaction. Consequently, financing of more critical conservation projects become possible.

Already the effects of the debt-for-nature transaction are apparent. An official of the donor conservation organization relates where the proceeds of the initial debt swap are being utilized:

The establishment of El Nido Park and St. Paul Park were basically paper parks. So we put a structure and staff in place. We basically build them up. The initial work is community organization and the work is being done by Haribon. Same thing with Mt. Pugo. So many of the projects were started due to the debt-for-nature swap.⁶²

And the results so far of conservation efforts are encouraging:

El Nido Park won an gold medal from a civic travel association. It is a very prestigious award and the place has been well-managed. El Nido has also become a major tourist destination and illegal fishing has been stopped in areas which are being protected.⁶³

In conclusion, debt-for-nature programs can be seen as a means of achieving the government's goals in an area where funds have been chronically short because of apparently more pressing needs of short-term economic development. In other words, the program can be utilized to support long-term conservation needs that are recognized

⁶² Edwards interview, *supra* note 42.

⁶³ *Id.*

but have proven hard to meet. Thus, through the debt-for-nature program, the government is able to make a financial and environmental commitment to protect the country's natural resources, a commitment that otherwise might not have been possible.

V. PROPOSING A MECHANISM FOR A PHILIPPINE DEBT-FOR-NATURE PROGRAM

The discussions in the preceding section has shown that debt-for-nature swaps provide new solutions to problems of debt reduction. However, the debt-for-nature swaps undertaken so far have had a negligible impact on the country's debt reduction because of the relatively nominal amounts involved. Implementing large-scale debt-for-nature programs could, however, play an important role in future debt reductions. Having this in mind, it becomes imperative that there be a program which effectively makes possible the happening of such transactions.

In this section, this writer shall not attempt to delineate a framework for a debt-for-nature program. That would be a very complex undertaking which would be best left to financial and legal experts. What this writer will, however, hope to achieve in this section is to establish that present guidelines for the debt-for-nature swaps are not sufficient to effectively carry out debt-for-nature transactions and to lay down the basis for proposing that the debt-for-nature swaps should be governed by guidelines separate from the debt-equity conversion program.

A. Overview

The process of negotiating the terms of a debt-for-nature swap with the debtor government can be time consuming and complicated. The first step involves determining whether the country has a debt conversion program in place or is willing to establish a program to which a debt-for-nature program can be adapted.

In the case of the Philippines, the two swaps so far undertaken were effected under the guidelines of an existing debt-equity conversion program. The first swap, which took place in 1988, was considered regulated by then existing Circular No. 1111. The second swap which was approved by the Central Bank in 1991, was executed under the guidelines of the circular now in force, Circular No. 1267. The first swap was funded by the World Wildlife Fund with Haribon Foundation as the local non-governmental organization as the body responsible

for receipt and management of the funds. The second swap, on the other hand, was financed by the United States Agency of International Development (USAID) as part of its U.S.\$125 million Natural Resources Management Program in the Philippines.

B. *The First Swap*

Under the then existing guidelines of Circular No. 1111, there was no specific provision providing for a debt-for-nature transaction. At about the time the proposal for a debt swap was suggested, only three countries in Latin America have undertaken such a swap: namely Bolivia, Costa Rica, and Ecuador. Thus, the transaction as a form of debt conversion was a very novel idea. Even certain officials from the Central Bank admit that they only found out about the possibility of such a transaction when the proposal for the transaction was actually made by its proponents. This, perhaps, explains to some extent the absence of definite provisions for this approach to debt conversion in Circular No. 1111.

Nevertheless, notwithstanding the lack of express provisions for a debt-for-nature program under the debt-equity program, the Central Bank approved the debt swap. The approval was a result of serious negotiations among the Department of Environment and Natural Resources (DENR), the Department of Finance (DOF), the Central Bank, the World Wildlife Fund and Haribon Foundation.

Even under the old Circular, there were crucial problems which had to be resolved. First, there was the issue of considering the debt-for-nature swap feasible under the debt-equity swap. Second, and more important issue, was the redemption rate to be applied to the conversion transaction. The first issue was resolved by a Monetary Board Resolution which provided that the debt-for-nature transaction may be considered as a "residual item" incorporated in the debt-equity conversion program. The legal basis for the conclusion of the Monetary Board could not be ascertained because of the confidential and restricted nature of the Monetary Board Resolution. Nevertheless, the legal basis may possibly be determined by examining the provisions of the Circular.

Under the Circular, the areas of permissible investments of peso proceeds of conversion transactions are listed under Schedule 2 and Schedule 3. Schedule 2 provides a definite list of permissible investments consisting of nine economic activities which are as follows:

1. The production, manufacturing or processing of export products from the Philippines; x x x x.

2. The rendering of technical, professional or other services outside of the Philippines which are paid for in foreign currency.
3. Banking.
4. Acquisition and operation of non-performing assets being disposed of by the Asset Privatization Trust and other assets x x x being disposed of under the Government's privatization program.
5. The production of agricultural goods x x x x.
6. The provision of health care services in the Philippines or the construction of health care facilities in the Philippines.
7. The construction or maintenance of low and middle income housing projects in the Philippines.
8. The construction or maintenance of educational facilities in the Philippines.
9. x x x an investment in a Philippine enterprise that is engaged principally in an activity or project listed on the Investment Priorities Plan x x x x.⁶⁴

Clearly, the provisions of Schedule 2 do not provide for express provisions wherein the peso proceeds of the debt conversion can be utilized in conservation projects. This leads to no other logical conclusion but that the debt-for-nature program could not be interpreted as covered by the provisions of Schedule 2. This, leaves the provisions of Schedule 3 subject to scrutiny. Schedule 3 provides for a single provision which reads as follows:

For purposes of this Circular, a Schedule 3 Investment means any approved equity investment in a Philippine Enterprise that is engaged (or proposes to engage) principally in an economic activity or project not covered by one or more of the items listed in Schedule 2 of this Circular.⁶⁵

A reading of Schedule 3 gives the impression that the provision is general and sufficient enough to cover all other transactions not falling under Schedule 2, including debt-for-nature transactions. This was probably how the officials of the Monetary Board and the Department of Finance construed it.

⁶⁴ Central Bank Circular No. 1111, Schedule 2, October 20, 1987.

⁶⁵ Central Bank Circular No. 1111, Schedule 3, October 20, 1987.

If the intent of Central Bank and Finance officials was to consider the debt-for-nature transaction as covered by the terms of the Circular, it is the position of this writer that such intent fails to be manifested by the clear terms of the Circular. Schedule 2 obviously rules out a debt conversion transaction where peso proceeds are invested in conservation efforts. Schedule 3, while couched in general terms is, however, not stated in such language that a debt-for-nature transaction may be inferred. Schedule 3 provides that peso proceeds must be invested as equity investments. Equity investment as defined by the Circular in Section 7 means:

In the context of a Philippine Enterprise that is a stock company, such investment may be made either in common shares or x x x preferred shares. In the context of a Philippine Enterprise that is a not a stock company, such investment should be evidenced by an ownership in interest in the Philippine Enterprise concerned.⁶⁶

Thus, under the terms of Schedule 3, the proceeds of the debt conversion should be invested in common or preferred shares if the recipient is a stock company or in an ownership interest if the recipient is a non-stock company. But this is not the case in a debt-for-nature swap, at least not in the Philippine case. Under the swap, the recipient is actually the Philippine environment with Haribon Foundation as the body charged with the responsibility of receiving and managing the funds. It is not accurate to state that the recipient is Haribon Foundation solely or the Department of Environment and Natural Resources alone because the projects which are to be funded by the peso proceeds of the debt-for-nature swap are projects drawn up by the two mentioned entities in collaboration with World Wildlife Fund. Indeed, it is more accurate to state that the Philippine environment is the recipient of the peso proceeds of the swap. Clearly then, the recipient of the transaction is not even a Philippine Enterprise within the contemplation of Circular No. 1111. For this reason, there seems to be no ground to conclude that the Circular provides the legal basis under which the mechanism for a debt-for-nature swap could be effected.

Nevertheless, the Monetary Board ruled that the debt-for-nature swap was properly covered by the provisions of then Circular No. 1111. They justify this ruling by stating that the mechanisms of both debt-equity and debt-for-nature swaps are similar. Both contemplate the purchase of Philippine debt paper in the secondary market at a

⁶⁶ Central Bank Circular No. 1111, Section 2, October 20, 1987.

discount. Both require the conversion of the debt paper into local currency for utilization in some activity in the Philippines. Thus, the basic elements of the transaction are the same. The only difference lies in the fact that while an investor under the debt-equity swap converts his debt papers into equity interest, an investor (more properly, a donor) under the debt-for-nature swap converts his debt papers into funds for local conservation efforts.

However, it is the opinion of this writer that the difference in the proposed utilization of peso proceeds makes a substantial distinction which justifies the proposal that a debt-for-nature transaction should be governed by guidelines separate from the debt-equity program. First, the applicants of the debt-equity swaps are investors who seek to profit by the conversion transaction through their investment in a Philippine enterprise. This is not the case for applicants of debt-for-nature transactions. People who fund the transaction have no greater motive than the protection and conservation of the environment. Hence, their motive is plainly philanthropic and not profit-seeking. If this were the case, why should donors in debt-for-nature swaps be treated similarly and be required to compete with investors in debt-equity swaps? The Philippine debt-equity program provides a quota or a ceiling for debt conversions annually. Since a quota is fixed, applicants would have to compete against each other for an allocation in the the conversion transaction. An important adverse consequence of this set up is that it effectively reduces the amount of available funding by the government that could be allotted for debt-for-nature transactions. Since, debt-for-nature transactions would have to compete against properly debt-equity transactions, it is not unlikely that there would be proposed subscriptions for debt-for-nature swaps that could not be entertained because of debt-equity transactions that would have to be given way. At present, there is already over-subscription for debt-equity transactions alone and this has been the case since the program was started in 1987. Thus, there is some validity in the objections raised by non-governmental organizations that it is inappropriate for non-profit organizations like them to be competing against banks, multinational corporations and other profit-oriented organizations.

A second important reason for the need to formulate a debt-for-nature swap separate from the debt-equity program is the fact that the resultant debt conversion cannot be treated similarly. By debt conversion, the writer here refers to the actual conversion of the debt papers into local currency or more specifically to the redemption rate actually levied on the transaction. Under the old Circular No.1111, the redemption rate was determined by a structure of fees. The fees

ranged from 0% to 24% depending on whether the peso proceeds would be infused as equity in a Schedule 2 or 3 investment. Undersecretary Romeo Bernardo explains how the fee structure worked.

Under the old program, instead of an auction system, what government had was a system of fees capturing the discount by the fee structure. So in the debt-equity for preferred industries they got 15% so the redemption was 85%.⁶⁷

However, under the first swap, the fee system imposed by the debt-equity program was waived upon request of top officials of the Department of Environment and Natural Resources. The rationale for such a request was stated by Secretary Fulgencio Factoran in a letter communication to then Finance Secretary Vicente Jayme which read as follows:

x x x We request that any and all commissions, fees and charges payable to the government on this transaction be waived. The programs for implementation are properly governmental, and our position is that the waiver requested is the least we would contribute to this worthwhile undertaking.⁶⁸

The government had to seriously consider this request because it did not want to set a precedent for all other subscribers of the debt-equity program. As a compromise, it was agreed that 10% shall be earmarked for budget already allotted to conservation activities in lieu of fees.

Thus, the above transaction illustrates that a debt-for-nature transaction cannot be subjected to the same conditions as a debt-equity transaction because the transaction is not profit-making in nature. Unlike regular deals under the debt-equity conversion, investors, or more properly donors, in a debt-for-nature transaction do not expect to get any returns from their "investment" in conservation measures in the country. Thus, it is expected that through the debt-for-nature swap, they would want to get more money from the Central Bank to increase funding for natural resource projects.

Finally, another reason for proposing a separate mechanism for the debt-for-nature swap is for reasons of efficiency in the release of the peso proceeds of the swap. Under the first swap, Haribon Foun-

⁶⁷ Personal interview with Romeo Bernardo, Department of Finance Undersecretary, January 6, 1992. [hereinafter cited as Bernardo interview].

⁶⁸ Letter received by Secretary Vicente Jayme from Secretary Fulgencio Factoran, September 19, 1988.

dation experienced delays in the release of the proceeds precisely because of the requirements imposed by the monitoring agency, the Central Bank. Since the initial swap was subjected to the same requirements as the debt-equity swaps, the processing of requests for release of funds took the same time as debt-equity transactions. This was not good to the program. Delays in the release of peso proceeds caused detrimental effects to conservation projects which required immediate financial support.

C. The Second Swap

The discussions above show how the debt-for-nature swap has, in the past, been nothing more than a "residual item" in the debt-equity conversion program. For the first time, the Central Bank made the guidelines on debt-for-nature program more specific in an amendment of then Circular No. 1111. The debt-for-nature program is at present governed by the new circular for debt-equity conversion, Circular No. 1267 which took effect on December 20, 1990. The pertinent provision which makes mention of the program reads as follows:

Section 13. Excluded Transactions. Certain transactions involving the redemption in pesos of eligible foreign obligations are excluded from the coverage of this Circular. These are:

x x x x x x x x x x

(v) Redemption of Central Bank Convertible Debt for projects with high social impact as may be determined by the Monetary Board, such as, but not limited to vocational/technical educational facilities, non-profit health care and research centers, projects geared toward environmental protection and livelihood projects of overseas contract workers.⁶⁹

Thus, the guidelines for the debt-for-nature program were made more specific by incorporating them in the guidelines developed for high social impact projects. Undersecretary Romeo Bernardo provides insight for this improvement:

This is really a response to the strong interest that many groups indicated, donors and project proponents alike, in wanting to avail of this program to leverage the impact of their donation through

⁶⁹ Central Bank Circular No. 1267, Section 13, Decembner 20, 1990.

giving and achieving the objectives that they are trying to obtain. They are primarily more concerned with the environment x x x x.⁷⁰

The implications of the amendment of the Circular on debt-equity conversion on the debt-for-nature program are two-fold. First, conversion transactions for the benefit of the environment continue to be covered by the provisions of the debt-equity conversion program. Second, the only exception granted as to the treatment of the program is that the transaction is now excluded from the mechanics imposed by the Circular involving redemption into pesos. The exception mentioned in Section 13 of the Circular is more specifically provided for in Section 32:

Applications involving projects with high social impact shall not be subject to the auction system. Instead, decisions shall be made by the Monetary Board on a case-to-case basis. Out of the total amount to be auctioned, the maximum of 10% of said amount shall be allocated for this type of projects. However, the percentage may be adjusted as the Monetary Board may determine. The redemption price shall be equivalent to the highest accepted bid price in the immediately preceding auction.⁷¹

To understand the relevance of an auction in the debt-equity conversion program, reference should be made to Section 31 of the Circular which provides in part:

The Central Bank shall auction over a 3-year period the right to use Central Bank Convertible Debt in Conversion Transactions in the aggregate amount of US\$900 million based on the face value of the Convertible Debt.⁷²

Thus, under the auction system, all applicants under the debt-for-equity conversion program with projects deemed as eligible by the Central Bank may participate in an auction in which an amount is allocated for redemption of Central Bank Convertible Debt. Prospective investors with prequalified applications then submit sealed bids stating the redemption price as a percentage of the face value of the Central Bank Convertible Debt that they are willing to accept from the Central Bank. Those who tender the lowest redemption price wins,

⁷⁰ Bernardo interview, *supra* note 67.

⁷¹ Bernardo interview, *supra* note 67.

⁷² Central bank Circular No. 1267, Section 32, December 20, 1990.

and then to the next lowest bidder and so on until the auction amount for the debt-equity portion is exhausted.

Applications for the debt-for-nature program and other high social impact projects as determined by the Central Bank do not need, however, to participate in the auction because in every auction, 10% of the available auction amount is allocated for projects within the category. Hence in actually determining the redemption price for debt-for-nature swap transactions, simply get the highest redemption price, which is the lowest in the batch option system.

However, with this mechanism provided for under the debt-equity conversion program for debt-for-nature transactions, the mechanism proved to be ineffective in the light of the experience in the second debt swap.

In the second swap, the Central Bank wanted to redeem the debt papers to be financed by the U.S.A.I.D. at the redemption price of 60% or so, pursuant to the provisions above discussed. An official of the World Wildlife Fund, the organization which engineered the swap narrates the problems involved in the swap:

They (the Central Bank) wanted to give us that initial redemption rate that was somewhat lower than what we had gotten originally around 60 % or so and we got a 100% redemption before so we definitely would not accept that because it would not be a wise investment. If you buy debt at that time selling 55 cents to a dollar and convert it to sixty and you get five percent gain. But inflation is 19% so you are actually losing money. So we would not accept that and the USAID would not accept that either and the whole program grant agreement made with the Philippine government before this swap was predicated on the deals originally had with the assumption being that we would get full redemption.⁷³

It was mentioned earlier that the grant of the U.S.A.I.D. for the debt-for-nature transaction was but a component part of the Natural Resource Management Program which was designed to support ecologically sound long-term economic growth in the Philippines. For this purpose, the U.S.A.I.D. committed itself to provide US\$125 million of which US\$25 million was intended to support activities to conserve biological diversity and enhance sustainable natural resource management in cooperation with local and United States-based non-governmental

⁷² Central Bank Circular No. 1267, Section 31, December 20, 1990.

⁷³ Montagnon, *Greening of the Debt*, Federal Tribune, February 7, 1989.

organizations. A debt-for-nature swap was contemplated to be used as the chief financial mechanism in this component to generate funds for the establishment of an endowment to sustain support for local non-governmental organizations in this field.

Thus, it may be gleaned from the foregoing discussion that the debt-for-nature swap was resorted to in order to leverage funds for conservation efforts. The aim of conservation organizations in utilizing the swap is to achieve maximum benefit with available limited funds. This has been the main attraction of the debt-for-nature mechanism for both donors and conservation project proponents alike. If, therefore, the swap would not make possible the leveraging of funds, then it fails to qualify itself as a proper debt-for-nature swap. Debt-for-nature swaps make sense only if they generate new funds that would be otherwise unavailable, or if they increase the effectiveness of existing funds. This was the main concern of the U.S.A.I.D. and the World Wildlife Fund.

On the other hand, the Central Bank was worried about setting a precedent by giving the U.S.A.I.D. full redemption price when they were giving the other high social impact projects lower redemptions. It must be noted that this was exactly the same problem faced in the earlier swap. So what was worked out was a Memorandum of Agreement between the Department of Finance and the Central Bank and the Department of Environment and Natural Resources where the Central Bank would initially give the debt-for-nature swap full redemption and retain 10% as fees. Thus, the net is 90% of the face amount which is similar to the first swap where 10% went to the Department of Environment and Natural Resources for their management project office. However, the difference between what the Central Bank could give pursuant to the regulations of Circular No. 1267 and full redemption price was going to be made up by the Department of Finance. In other words, what actually happened in the swap was the national government was going to pay back the Central Bank for the difference. The Central Bank was to forego interest payments on the dollar deposits of the Department of Finance in the Central Bank until they equalled the Central Bank regulated redemption rate and the full redemption rate.

It will be observed from the two previous debt-for-nature swaps that the swaps were undertaken differently and treated as exceptions to the debt-to-equity conversion program regulations which were supposed to govern the transactions. Admittedly, there are provisions in the debt-equity conversion program which are equally applicable to the debt-for-nature transaction, namely application requirements, compliance requirements, and monitoring requirements. But regulations

on the actual conversion of the debt papers into local currency and the rates at which such papers could be redeemed can not be applied to debt-for-nature transactions because it is the inherent nature of the debt-for-nature transaction that it be able to leverage conservation dollars for local conservation efforts. Absent this feature in a debt conversion to finance local conservation projects, the conversion fails to partake of the nature of a debt-for-nature transaction.

The present mechanism of the debt-equity conversion program fails to provide for such leveraging of funds. Thus, a mechanism which would effectively make this possible is necessary to protect the stability and the continuity of the debt-for-nature program.

D. Preventing Inflation in Debt-For-Nature Transactions

The main reason, under the present guidelines of the debt-equity conversion program, a debt-for-nature swap cannot properly function as a financial mechanism to leverage funds for conservation is the absence of guidelines which will prevent inflation in any debt-for-nature transaction. This particular type of transaction is inflationary because the Central Bank will be issuing pesos, adding pesos in circulation. Thus, the potential for inflation poses a significant problem for any debt-for-nature transaction.

To combat inflation the government can formulate regulations which allow the government to issue local currency bonds instead of cash to the local non-governmental organization in charge of receiving the proceeds in a debt-for-nature transaction. The debt-for-nature swap undertaken in Ecuador in 1987 highlights how the issuance of bonds can address the drawback of inflation. As a result of *Fundacion Natura's* efforts, the Ecuadorian government agreed to exchange up to US\$10 million of the country's external debt for local currency bonds to be held by *Natura*. The interest on the bonds finances a variety of conservation projects. At maturity of the bonds in nine years, the principal of the bonds will become an endowment for *Fundacion Natura*.

A similar mechanism may be adopted in the Philippines. The Central Bank may issue special bonds to the recipient of the proceeds of the debt-for-nature swap instead of issuing local currency to such recipient. In such a case, the Central Bank avoids making one large payment and negates the risk of a sudden increase in money supply. Furthermore, the use of bonds may provide long-term means of support for local conservation. The interest on the bonds will allow the recipient to plan and implement long-range programs without the fear of funding shortfalls.

A second possible option to prevent the inflationary impact of debt-for-nature swaps is to establish a ceiling on the amount of currency to be converted under the program. This would be similar to ceilings previously provided for under the debt-equity conversion programs. Due to the unique nature of the debt-for-nature program, direct negotiations with the government is the best way to determine redemption price. This method is preferable to an auction system because this would allow the government to consider the project proposals of applicants with a greater amount of flexibility, having due consideration to changing priorities in the local conservation effort.

Another method which may negate the inflationary impact of debt for nature swaps is the inclusion of a non-financial component to the debt-for-nature swap. To illustrate this point, the debt-for-nature swap undertaken in Bolivia had primarily a non-financial component requiring the Bolivian government to undertake land use reforms. In return for Conservation International's purchase of US\$650,000 of Bolivian debt, the government agreed to give maximum legal protection to the Beni Biological Reserve. This entailed the raising of the legal status of the Reserve from an administrative decree to a congressional law known as the Supreme Directive. A similar scheme may be adopted in the Philippines.

In summary, incorporating guidelines in a debt-for-nature program which would effectively prevent inflation would be a positive factor towards an efficient implementation of the program. In this way, all the needs and objectives of the parties in any particular debt-for-nature transaction would be satisfied.

VI. CHALLENGE TO POLICY-MAKERS AND THE LEGISLATURE

The underlying concept of a debt-for-nature swap is appealing. These swaps illustrate that the preservation of an endangered natural resource that is vital to a nation can be attained in a manner that simultaneously aids the nation's debt reduction initiatives.

With the implementation of debt-for-nature swaps in five countries to date — Bolivia, Costa Rica, Ecuador, Madagascar, Zambia and the Philippines — worldwide acceptance for these deals has grown and there are even more opportunities. In 1989, debt-for-nature agreements received the favorable endorsements of heads of governments at the Paris Economic Summit. As a result of such endorsement, governments have been exploring ways in which they can incorporate the mechanism into their foreign assistance program. For instance,

in 1989, Netherlands channeled part of its aid budget to the debt swap market by buying Zambian debt worth 1.35 million pounds, which it then turned over to Zambian authorities in exchange for conservation measures. Then early last year, the French Ministry for Cooperation and Development committed to fund up to 70% of the costs of conservation projects of non-governmental organizations, part of which would be through the debt-for-nature program.

In the United States, several initiatives have been undertaken to promote the debt-for-nature swap. In the last quarter of 1987, the House Appropriations Committee directed the Administration to push for new programs in multilateral development banks that would allow Third World countries to repay debt with conservation measures protecting the environment. Likewise at about the same time, the Treasury Department issued Revenue Ruling 87-124 which provided lenders a full-cost-basis-deduction (one based on the face value of the debt rather than on its fair market value) for donations of developing country debt to fund charitable activities in the debtor nations.

Another initiative from foreign governments geared towards the promotion of the debt-for-nature scheme was the endorsement of the Group of 7 — consisting of the seven most industrialized countries — for the inclusion of the debt-for-nature swap in the latest Philippine Bilateral Rescheduling Agreement with Paris Club creditors. While this remains to be worked out bilaterally with each creditor government, the opportunity has been opened for these countries to convert these debts into grants.

Thus, it is apparent that these initiatives lead to no other conclusion but a recognition of the potential effectiveness of the debt-for-nature swap in contributing mutual solutions to the continuing debt crisis and increasing concern over the state of the environment.

The debt-for-nature program is, therefore, ripe for expansion and the government should take advantage of the initiatives already commenced by foreign governments and other creditors. The debt-for-nature swap can be expanded beyond the basic case of a debtor country making debt payments in local currency to local non-governmental organizations for conservation programs and projects. As this writer indicated in the previous chapter, there can also be non-financial components to the concept. This can be in the form of the government agreeing to a variety of microeconomic policy reforms with environmental ramifications. For example, the forest sector may be an area where reforms can be implemented. Massive public expenditures on projects of questionable worth which require the conversion or destruction of large areas of forests should be rejected or

revised. For instance, the conversion of a significant portion of Mt. Apo into a geothermal plant should receive serious consideration from the government.

A debt-buyback scheme with an environmental component is another option that utilizes debts to promote environmental preservation. In March of 1988, Bolivia bought back almost half of its US\$670 million foreign commercial bank debt using funds donated by the Netherlands, Spain and the wealthier Latin American countries. Using the Bolivian experience as an illustration, the Philippine government may request for funding for debt buybacks from foreign governments provided that in exchange for such funding, the government would commit to undertake a conservation measure, i.e. declare by administrative order certain forest sites as protected areas, or issue legislation declaring such areas as protected.

In expanding the role of the legislature, a law can be passed authorizing and providing an appropriation for debt-for-nature transactions. Such law can have the dual objectives of promoting the conservation of the environment and contributing to some relief in debt servicing problems. Furthermore, the law could include as eligible convertible debts not only Central Bank and other public sector debts owing to commercial banks, but also government and public sector debts owing foreign governments or their institutions or agencies.

CONCLUSION

The Philippine experience with debt-for-nature swaps demonstrates that certain components must be in order for the mechanism to function effectively. To begin, a local non-governmental organization must have the credibility and expertise to assume the lead role of managing the programs and projects funded by the debt-for-nature swap. An international conservation organization must then raise the funds and have the ability to arrange a debt purchase. The government's monetary representatives and natural resources representatives must agree to the fiscal and environmental terms of the debt-for-nature swap. The government must demonstrate a commitment of honoring its debt obligations and promoting development, and its willingness to work with non-governmental organizations in monitoring or participating in the conservation programs. Finally, the most important component in the swap is the existence of a stable program to which the debt-for-nature program can be adapted.

Debt-for-nature swaps multiply the limited funds available for conservation. They are an effective means of augmenting the operating budgets of natural resources agencies in the country — both governmental and non-governmental. In so doing, the swaps become a major factor in helping the country conserve its natural resource base.

Furthermore, debt-for-nature swaps provide a viable option to the country's repayment problems in the debt area. They provide a more flexible approach to debt reduction strategies compared to consolidated restructuring agreements for the reason that the terms of the swap can be negotiated with each particular commercial creditor bank or creditor government involved.

To date, the debt-for-nature swaps undertaken have had a negligible impact on debt reduction. Implementing large-scale debt-for-nature swaps could, however, play an important role in future debt reductions. By linking debt reduction programs to environmental programs, significant progress can be made towards sustainable development. This linkage can be established in a variety of ways. A possible approach is to propose to commercial bank creditors to include in restructuring arrangements the rescheduling of substantial amounts of debt to longer term maturities with reduced interest rates in exchange for conservation investment in local currencies in the country. Another approach, this time with multilateral development banks, is to request inclusion in loan agreements of provisions which permits the country to service its debts obligations with local currency payments. Then instead of repaying the loan with foreign currency, the loan amount can be converted into local currency and applied to conservation projects to be agreed upon mutually by the multilateral development bank and the government. Another possible approach, and this time with creditor governments, is to include in bilateral negotiations with these governments provisions permitting debt forgiveness in exchange for environmental action from the government. In this latest effort, in order to dramatically increase the impact of the proceeds of the debt forgiveness, natural resources officials should lobby for the inclusion of provisions which provide that the proceeds would not merely replace already existing budgetary support to the approved projects but would in fact be an addition to such budget.

Debt-for-nature agreements so far have not included choice of law, choice of forum, default, remedy conflict resolution and waiver of immunity provisions. If commercial debts, multilateral debts and bilateral debts are tapped to finance debt-for-nature swaps, commercial bank creditors, multilateral development banks and creditor

governments, such provisions may be included in such agreements to secure compliance of the Philippine government with its commitment under the swap. Furthermore, the government would have the incentive to agree to such provisions because of the possible large amounts of debts that may be involved.

In conclusion, debt-for-nature swaps will solve neither the debt and environmental problems. They are, however, an important part of the broader effort to address the country's debt problem and environmental concern. Debt-for-nature swaps have indeed proven their validity: they can lighten the country's foreign debt by helping preserve the country's own natural heritage.

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