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Swapping Debt for Education: Harvard and Ecuador Provide a Model for Relief

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1. INTRODUCTION

As of August 1990, the outstanding debt of Third World nations had reached $1.3 trillion.¹ In Latin American countries, for example, debt service payments amount to almost half of the receipts from exports.² As of July 1990, Ecuador, the country on which this Note focuses, had an outstanding debt of approximately $11 billion.³

Through the years, creditors and debtor nations have developed various programs to deal with this now familiar debt crisis. The programs range from debt restructurings⁴ to debt-for-equity swaps⁵ to debt-for-nature swaps.⁶ In a unique agreement, Third World debt is now being used to promote education.⁷ On July 10, 1990, Harvard University and Ecuador announced the signing of an agreement that instituted the first “debt-for-education” swap with a Third World nation.⁸ In this swap, Harvard uses heavily discounted debt to create scholarships for Ecuadorian students to

¹ Anthony Flint, When Nations Try to Swap Their Way Out of Debt, BOSTON GLOBE, Aug. 19, 1990, at A14; see id. (listing the outstanding debt of major debtor nations).
³ Flint, supra note 1, at A14 ($10.9 billion); Harvard Sets Up Fund Switching Ecuador Debts into Scholarships, L.A. TIMES, July 10, 1990, at 3 ($11.2 billion) (hereinafter Harvard Sets Up Fund). Ecuador owes 58% of this debt to commercial banks, 22% to international financial institutions, and 20% to foreign governments. Harvard Sets Up Fund, supra.
⁵ See generally Derek Asiedu-Akrofi, A Comparative Analysis of Debt Equity Swap Programs in Five Major Debtor Countries, 12 HASTINGS INT’L & COMP. L. REV. 537 (1989) (discussing the debt-equity swaps of Chile, Mexico, Argentina, Brazil, and the Philippines).
⁶ See generally Timothy B. Hamlin, Debt-for-Nature Swaps: A New Strategy for Protecting Environmental Interests in Developing Nations, 16 ECOLOGY L.Q. 1065 (1989). Holland and Brazil have even completed a debt-for-soccer player swap. The Adventures of Banking’s Mr. T, INSTITUTIONAL INVESTOR, Sept. 1990, at 143, 143. In the most recent twist on the debt swap, the Catholic Church in Ecuador announced its intention to buy $28 million of Ecuador’s discounted foreign debt to help Ecuadorian Indian groups buy their land. Catholic Church Plans to Buy $28 Million of Ecuadoran Debt, CHI. TRIB., Nov. 16, 1990, at 4.
⁷ Flint, supra note 1, at A14.
study at Harvard and research opportunities in Ecuador for Harvard faculty and students.9

The only way a Lesser Developed Country (LDC) can reduce its debt is through economic growth, which occurs with an educated population who can work in and competently govern its country. While debt-for-education swaps cannot significantly reduce debt, they can play a significant role in providing human expertise to resolve some of the problems that led to the debt crisis.10 Debt swaps, in general, enable banks to realize some value on nonperforming debt.11 Additionally, banks can often take tax deductions for any realized loss.12 If intermediary parties participate in the debt swap, they also benefit from various tax deductions.13

Part II of this Note focuses on various alternatives for dealing with the debt crisis. Section A briefly describes a debt restructuring program, while section B explains how debt-for-equity swaps work. Section B also discusses the different regulations debtor nations impose on debt swaps, the benefits and drawbacks for each of the parties to the transaction, and the tax implications involved. Finally, in section C, a discussion of debt-for-nature swaps will ensue.14 Part III then analyzes in detail the debt-for-education swap between Harvard and Ecuador. Section A explores the emergence of debt-for-education swaps. Section B introduces the agreement between Harvard and Ecuador, while section C details the debt-for-education swap. Section D discusses the duties and obligations of the parties to the agreement. Sections E and F explore the benefits and risks of the swap. Finally, section G considers the present status of the program. The Note concludes with a look at the future of debt-for-education swaps, both for Harvard and for other educational institutions.

12 See infra notes 92–147 and accompanying text.
13 See id.
14 Debt-for-nature swaps are procedurally similar to debt-for-education swaps and were the original source of the idea for debt-for-education swaps. Strong Interview I, supra note 9.
II. A Brief Overview of Some Alternatives for Dealing with the Debt Crisis of LDCs

A. Debt Restructurings

Since Mexico declared in August 1982 that it would not be able to service its debt, creditor banks and governments have been attempting to develop various programs to deal with the ensuing debt crisis.\textsuperscript{15} When Mexico declared "bankruptcy," its government claimed that it could still make the interest payments on the debt, but would have to restructure the principal payments.\textsuperscript{16} Banks quickly realized that they would have to participate in financial restructuring to foster economic growth in Third World countries like Mexico.\textsuperscript{17} At the same time, however, banks would have to satisfy regulatory guidelines with sufficient debt service.\textsuperscript{18} These problems gave rise to formal debt restructuring programs.

All debt restructuring plans generally follow similar steps, with each country tailoring the agreement with the banks to meet its own particular political and economic needs.\textsuperscript{19} The fundamental idea of

\textsuperscript{15} Bogdanowicz-Bindert, supra note 2, at 527. The debt crisis affects everyone: international financial institutions, debtor countries, and even the American people. For example, the inability of debtor countries to pay their loans forced many banks to restructure their Third World loans and lend "new money" in order to receive interest on the outstanding loans. See id. at 529; Meissner, supra note 4, at 620. Some statistics may put the debt crisis into perspective:

- In June 1982, U.S. banks held LDC debt equal to 211 percent of U.S. bank capital and LDC debt owed to the largest nine U.S. banks was 323 percent of their capital.
- Debt owed by Argentina, Brazil, and Mexico to all U.S. banks equalled 82 percent of the U.S. banks [sic] capital; debt owed by these three countries to the largest nine U.S. banks equalled 116 percent of their capital.

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\textsuperscript{16} Meissner, supra note 4, at 619. This article by Charles Meissner provides a general commentary on the debt restructuring process for the larger LDCs.

\textsuperscript{17} Charles F. Meissner, Debt: Reform Without Governments, 63 FOREIGN POL’Y 81, 82–83 (1984).

\textsuperscript{18} Id.

\textsuperscript{19} Meissner, supra note 4, at 621. Most countries base their agreements generally on Mexico’s restructuring agreement of 1984. Id.; see also Meissner, supra note 17, at 87–88.
a debt restructuring plan is to extend the original term of the loan by rescheduling the principal payments and to loan the debtor country "new money" to pay the outstanding interest.\textsuperscript{20} "New money," however, is a misleading term.\textsuperscript{21} The debtor country receives a new loan, with interest, to pay the outstanding interest on the original loan.\textsuperscript{22} This new money thus increases the debtor nation's indebtedness and leads to a longer term problem of solvency\textsuperscript{23} as immediate obligations disappear into the future.\textsuperscript{24} In addition, restructuring and assuming new debt is even more complicated for some debtor countries because their creditors have already attained the legal lending limit for those countries.\textsuperscript{25} Despite these problems, many countries at this time have negotiated debt restructurings or are in the process of negotiations.\textsuperscript{26}

Large debtor countries with greater outstanding debts, such as Mexico and Brazil, utilize the debt restructuring process on a greater scale than do smaller LDCs, such as Ecuador, Peru, Chile, and Bolivia.\textsuperscript{27} Because these smaller debtor countries do not impact the international financial system on a large scale,\textsuperscript{28} their leverage is weak and they have difficulty attracting the resources necessary to alleviate their debt problems.\textsuperscript{29} For example, Mexico, with a $90.7 billion debt, can cause more harm to creditors if it cannot service its debt than can a smaller country, like Ecuador, with less outstanding debts.
ing debt. Consequently, creditors are less pressed to restructure small LDC debts because they have larger threats looming from large LDCs.

B. Debt-for-Equity Swaps

Economic growth is the only solution to the debt crisis for the smaller LDCs struggling with political and social problems. One way for debtor countries to achieve economic growth is to encourage investment by both foreign and domestic investors. Acting on this theory, and as an alternative to debt restructuring programs, many banks and debtor countries are choosing to participate in debt swaps, or debt conversions, to deal with LDC debt. A "debt swap" is the act of buying discounted debt of a country—represented by a piece of paper releasing the debt—and exchanging the debt within the debtor country for local currency. The purchaser of the debt usually invests this local currency in the debtor country. The idea was inspired by creditor banks' wishes to reduce their exposure in LDCs. In addition, the debtor countries began to realize that increased investment by foreign investors benefits their economies. For example, increased investment by foreign corporations potentially creates more jobs for the people in the debtor nation. Moreover, debt swaps could encourage repatriation of capital that earlier flowed to industrialized countries and further aggravated the debt crisis.

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30 For a list of LDCs and their respective outstanding debts, see Flint, supra note 1, at A14.  
31 See Bogdanowicz-Bindert, supra note 2, at 529. From the debtor country's perspective, the main challenge is to pay their debt service while attempting to acquire enough foreign exchange to further economic growth. Meissner, supra note 17, at 82, 90. Ecuador remains a two class system: the wealthy and the poor. The wealthy continue to control the politics of the country, with frequent coups causing continual upheaval. The poor remain uneducated, especially in the rural areas where the elite government finds it easier to control a less educated population. See Laurel S. Walters, Debts Fund Scholars, CHRISTIAN SCI. MONITOR, July 30, 1990, at 14.  
32 Meissner, supra note 4, at 629.  
33 Hofmann, supra note 11, at 508. As of May 1990, American banks had completed more than $132 million worth of debt swaps. Ecuador's Debt Is Used to Create Scholarships, N.Y. TIMES, July 12, 1990, at A18 [hereinafter Debt to Create Scholarships].  
34 See Steve Reifenberg, Turning Bad Debt into Good Programs? LASPAU Explores Debt-for-Education Swaps 1 (June 1988) (Executive Summary) (copy on file at the Boston College Third World Law Journal office).  
35 See id.  
36 Hofmann, supra note 11, at 507.  
37 Id.  
38 See id. at 512. See generally Asiedu-Akrofi, supra note 5 (informative analysis of debt-
1. How Debt-for-Equity Swaps Work

Debt-for-equity swaps generally adhere to the same basic scheme, and each country tailors its agreement to meet its specific needs. In a typical debt-for-equity swap, a bank holds an obligation for a certain amount of debt from a foreign country. An investor, for instance a company, that wants to invest in a country will purchase that country’s debt at a discount on the secondary market. The company will present the debt to the debtor country, usually to its Central Bank, which will redeem the debt in local currency at a small discount, but close to face value. The company usually will then invest the currency in the debtor country according to that country’s debt conversion regulations. Until the recent debt-for-education swap, the buyer of the debt invested the local currency itself in the economy; most countries’ laws prohibited the investor from converting the local currency received back into dollars.

equity conversions in Chile, Brazil, Argentina, Mexico, and the Philippines. Repatriation of flight capital—capital that has flowed to other countries—in this sense means encouraging those persons who previously invested their capital in foreign countries to return that capital and invest it in the local economy. See Meissner, supra note 4, at 614.

See Asiedu-Akrofi, supra note 5, at 540–65. This pattern is similar to debt restructurings in that there is a basic model from which each country deviates somewhat. See id.


The secondary debt market is a market for the sale of high-risk debt at a discount. See Reifenberg, supra note 34, at 3. A purchaser of debt on the primary market pays the face value of the debt. The banks created this secondary market initially to trade debt among themselves, therefore changing the composition of their Third World debt portfolios. Andrews, supra note 28, at 220. For example, if a bank wanted to get rid of its Chilean debt and increase its Argentinean portfolio, it could swap its Chilean debt for Argentinean debt on the secondary market. Today, the secondary market has expanded to allow private investors, such as corporations or nonprofit organizations (like Harvard), to purchase debt at a discount directly on the secondary market.

A broker often arranges the sale of the debt. Berney, supra note 40, at 41. At this point, the investor becomes the holder of the obligation. Technically, the investor now reserves the right to payment for the full amount of the debt, regardless of the amount paid for the debt. For example, if the investor buys a $100 obligation for 20% of its face value, the debtor country still owes $100 to investor as the new obligor.

The Ecuadorian government operates the Central Bank. 6 ENCYCLOPÆDIA BRITANNICA 289 (15th ed. 1985).

Berney, supra note 40, at 41–42. Before performing the swap, the investor usually will need a waiver from the Central Bank. This waiver will obligate the Central Bank to redeem the debt.

See generally Asiedu-Akrofi, supra note 5 (discussing debt swap programs and regulations in five countries).

Berney, supra note 40, at 42. Until Ecuador’s Regulation (see infra note 178) permitting proceeds from the swap to be used outside the country, debtor nations that were parties to the swaps usually prohibited immediate repatriation of capital. See infra note 57 and accom-
This discussion raises the question why a debtor country, which would benefit most from secondary market discounts, simply does not repurchase its own debt directly on the secondary market. The answer is simple: banks forbid governments of debtor countries to use this procedure. Presumably, a fundamental assumption in these programs is that the debtor country is unable to service its foreign debt immediately. If the debtor country has the money to buy its debt on the secondary market, then most creditors will probably suspect that the country can service its debt. The lenders would rather continue to receive their interest, if the country can pay, than forgive a large percentage of the debt, which is the effective outcome of a debtor country's repurchase.

2. Debtor Country Regulations

There are two types of debt-for-equity swaps in which creditors, investors, and debtor countries can participate: foreign banks can convert some of their own debt into local investments in the LDC, or Multinational Corporations (MNCs) can buy debt from the secondary market and exchange it for local currency to invest in the country. The latter of these two swaps is more common. Each debtor country has its own guidelines and restrictions for debt-for-equity swaps. Many countries, for example, distinguish

panying text; see also Hofmann, supra note 11, at 514. Repatriation of capital—as distinguished from repatriation of flight capital—refers to taking the proceeds of a debt swap back into the investor's country instead of investing the proceeds, in local currency, in the debtor country. See id. For example, Mexico and Brazil prohibit redemption of the investment earlier than the schedule for repayment of the loan. Id.; Asiedu-Akrofi, supra note 5, at 546–47. Thus, the investor could not convert debt bought at a discount into local currency for near the face amount of the debt, and then immediately convert the local currency received back into dollars for a greater return on his initial investment. See Asiedu-Akrofi, supra note 5, at 546–47. Any payments the country makes must follow the agreed-upon repayment schedule. See id. In Chile, dividends accruing from the debt-equity investments may not be repatriated for four years, and capital may not be repatriated within the first ten years. Asiedu-Akrofi, supra note 5, at 543–44.

46 Andrews, supra note 28, at 220.
47 Berney, supra note 40, at 42; Asiedu-Akrofi, supra note 5, at 539.
48 Berney, supra note 40, at 42. Banks are more likely to swap debt among themselves in order to change the composition of their portfolios. Andrews, supra note 28, at 220.
49 See Berney, supra note 40, at 39; William Ollard, The Debt Swappers, EUROMONEY, Aug. 1986, at 67, 69; Hofmann, supra note 11, at 509–12. In addition, as a result of the LDCs' restrictive approach to direct foreign investment in the late 1960s and 1970s, creditors and investors were more cautious when the LDCs returned with their schemes to reduce commercial borrowing. Berney, supra note 40, at 39–40. The investors now require some reassurances and impose strict guidelines of their own. Id. at 40.
"priority investments" from "non-priority investments."50 Priority investments generally include investments that promote an influx of foreign exchange as well as investments that promote programs that are socially beneficial to the country.51 Investors that swap debt for priority investments receive advantages that those in non-priority investments do not, usually in the form of reduced fees for currency exchange.52 Countries also vary the percentage of the face value of the debt that they will convert into local currency.53 Moreover, countries often differ in their agreements as to who may invest in corporations within the country.54 Some countries, such as Chile, permit any and all foreigners and natural citizens to invest through debt swaps.55 Other countries, such as Brazil, allow only original creditors and their assignees to convert the debt.56 Finally, most countries have restrictions on the repatriation of capital.57 Many countries, however, are loosening their restrictions on debt conversions in an effort to make them more desirable to foreign investors.58

3. Benefits and Drawbacks for Each of the Players

Debt swaps initially look promising for the bank and the foreign country: they simultaneously retire foreign debts and promote productive investment in the country.59 In reality, however, debt swaps

50 See Hofmann, supra note 11, at 510–11.
51 Id. For example, the Philippines lists as priority investments, among others, export-oriented firms, firms paid in foreign currency, firms producing agricultural goods, firms providing health care services, and firms constructing and renovating middle and low income housing and educational facilities. Id.
52 Id. at 509–10. For example, in the Philippines, individuals or other parties who make priority investments pay a fee of 5%, while those who make non-priority investments pay a 10% fee. Id. In Mexico, discounts on converted money range from 0% to 25% depending on the "priority status" of the investment. Id. at 511.
53 Id. at 510–11 (compare the Philippines, where the Central Bank redeems the debt at face value, with Mexico, where the Mexican government redeems the debt at less than face value). For example, if a foreign investor wanted to contribute $50,000 of debt to a country in exchange for local currency to invest in the country, some countries may exchange 100% of the face value of the debt; others may only exchange 80% to 90% of the debt. Often foreign countries will base the discount on the priority or non-priority of the investment. Id.
54 See Hofmann, supra note 11, at 510–11; Asiedu-Akrofi, supra note 5, at 541–65.
55 Asiedu-Akrofi, supra note 5, at 541–42.
56 Id. at 547.
57 Hofmann, supra note 11, at 514. See generally Asiedu-Akrofi, supra note 5. For a definition of repatriation of capital, see supra note 45.
58 See Ollard, supra note 49, at 69; Asiedu-Akrofi, supra note 5, at 543.
59 Ollard, supra note 49, at 69.
have drawbacks as well as benefits for each of the players in the scheme: the debtor country, the bank, and the investor.

For the debtor country, the benefits of a debt swap are varied. The discounted value of the debt reduces the cost of investing in the country, creating greater incentive for corporations to invest.\(^60\) The investor injects money into the country, which fosters economic growth.\(^61\) Economic growth, in turn, creates more jobs for the country's citizens.\(^62\) Another advantage of investment of foreign debt is that the investor, instead of the debtor country, bears the dual risks of devaluations in the exchange rates and inadequate profitability.\(^63\) These transactions also encourage the repatriation of flight capital.\(^64\) As foreign investors and developers are more inclined to invest in a country that is economically growing or stable, the debt swap also potentially promotes an influx of other foreign exchange.\(^65\)

When a country reduces its obligations on foreign debt, it also lowers its payments for servicing debt.\(^66\) The country replaces debt liability that requires prompt attention with equity liability that will probably be easier to pay.\(^67\) The debt is now in local currency; thus, the burden on the country to repay the debt is lessened because the government controls the supply of local currency.

Notwithstanding these advantages, critics contend that there are many problems with debt-for-equity swaps.\(^68\) They argue, for example, that the exchange of foreign debt for domestic currency increases the internal domestic debt of a country, possibly causing the country to lose control over its supply of money and rate of exchange.\(^69\) This potential inflationary pressure makes some debtor nations hesitant to participate in debt swaps.\(^70\) Most countries, how-

\(^{60}\) Hofmann, supra note 11, at 512.

\(^{61}\) See Ollard, supra note 49, at 69.


\(^{63}\) Hofmann, supra note 11, at 513. On the other hand, if the investment is successful, the country may end up paying more foreign exchange in dividends than it previously paid in interest on the original debt. Id.

\(^{64}\) Id. at 512. For a definition of flight capital, see supra note 38.

\(^{65}\) Hofmann, supra note 11, at 513.

\(^{66}\) Id.; Berney, supra note 40, at 40.

\(^{67}\) Berney, supra note 40, at 44.

\(^{68}\) See id. at 45–47; Hofmann, supra note 11, at 512–15.

\(^{69}\) Hofmann, supra note 11, at 515; Berney, supra note 40, at 43. Supporters of debt-equity swaps reject this inflation argument, contending that increased investment has a positive impact on the country's economy. Hofmann, supra note 11, at 515. They reason that positive impact from increased production and more jobs partially offsets any negative inflationary pressures. Id.

\(^{70}\) See Hofmann, supra note 11, at 515; Reifenberg, supra note 34, at 5. For example,
ever, have put restrictions on the amount of debt that foreign investors can convert into local currency.\textsuperscript{71} Thus, inflation is not a necessary threat if debtor countries know how to manage the conversions.\textsuperscript{72}

Critics also argue that investors would have invested money in the country anyway, and that the debt swap transactions award foreign investors, rather than debtor nations, the benefit of buying the country’s debt at a discount.\textsuperscript{73} They posit that the debt-for-equity swaps allow debtor governments to prepay debt unnecessarily while giving the investor the advantage of buying the country’s assets at a discount.\textsuperscript{74} Finally, critics note that some debtor countries participating in debt restructuring programs\textsuperscript{75} fear that debt swaps reduce their debt and, consequently, reduce the amount of new money they receive from restructuring agreements.\textsuperscript{76}

The greatest benefit for a bank selling on the secondary market is that it removes undesirable debt from its balance sheet.\textsuperscript{77} A bank sells on the secondary market because it believes the debtor country will never repay the debt.\textsuperscript{78} Because keeping the loan on its balance sheet increases administrative costs, a smaller regional bank often finds it desirable to take a loss in the secondary market.\textsuperscript{79} Smaller regional banks generally have smaller LDC portfolios and may find carrying the debt on their balance sheets to be administratively

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\textsuperscript{71} Hofmann, \textit{supra} note 11, at 515.

\textsuperscript{72} See \textit{id.}

\textsuperscript{73} \textit{Id.} at 512. Debtor countries, however, may not repurchase their debt at a discount. Andrews, \textit{supra} note 28, at 220.

\textsuperscript{74} Hofmann, \textit{supra} note 11, at 512. If critics are worried that foreign investors will consume the country’s assets at less than fair market value, the numerous restrictions that most countries impose on foreign investment should allay their fears. \textit{See id. See generally Asiedu-Akrofi, \textit{supra} note 5 (discussing restrictions imposed on investors in Mexico, Brazil, Argentina, Chile, and the Philippines).}

\textsuperscript{75} For a discussion of debt restructuring programs, see \textit{supra} notes 15–30 and accompanying text.

\textsuperscript{76} Ollard, \textit{supra} note 49, at 69. The amount of money a lender must contribute to restructuring reflects that lender’s share of outstanding debt for that particular country. \textit{See Hofmann, \textit{supra} note 11, at 515. As the principal amount of the debt decreases, the amount of interest owed decreases. Consequently, the amount of new money needed to make interest payments also decreases.}

\textsuperscript{77} Hofmann, \textit{supra} note 11, at 512.

\textsuperscript{78} Reifenberg, \textit{supra} note 34, at 3.

\textsuperscript{79} \textit{Id.} at 10–11.
Removing the debt from their books, therefore, is desirable. Larger banks, however, are less inclined to participate in debt swaps for a variety of reasons. First, the Federal Reserve requires them to keep a certain amount of reserves for each LDC's debt. In addition, because of negative accounting consequences, large banks often prefer to keep the loans on their balance sheets. Finally, larger banks have the ability to restructure debts. Thus, they have new money to invest in the LDCs.

The investor, the third party in debt swaps, also receives many benefits from these transactions. First, the investor buys the debt at a discount, so it is able to reduce the cost of the investment. The investor is also able to get more foreign currency through debt swaps than it could by purchasing the currency at the official exchange rate. Internal regulations in the debtor country, however, create some drawbacks for the investor. Some countries have local restrictions on foreign ownership, and some of the restructuring

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80 Id.
81 "Reserves" refers to the money a bank puts aside out of its present profits to cover debts it believes LDCs will not be able to repay. Telephone Interview with Gregory P. Buscone, Commercial Loan Officer, Shawmut Bank (Sept. 25, 1991). When an LDC fails to pay its debt, the bank takes the loss out of its reserves instead of deducting the loss from its profits. Id. For example, if a bank has profits of $100 million and believes that an LDC will not pay $50 million of debt, the bank puts aside $50 million of present profits in its reserves. Id. The bank's balance sheet will thus reflect only $50 million of profits for that year. Id. If the LDC actually fails to pay the $50 million debt, the bank will take the loss out of its reserves and its profits will remain at $50 million for the year. Id.
82 Id.
83 See Ollard, supra note 49, at 74; see also Meissner, supra note 17, at 86. Under current accounting standards, if a larger bank sold a portion of a given country's debt, the bank's entire portfolio for that country would have to be discounted at that same price. Meissner, supra note 17, at 86; see Ollard, supra note 49, at 74 (European banks more active in swapping, possibly because accounting consequences are different); Hofmann, supra note 11, at 516.
84 Meissner, supra note 4, at 621; see Meissner, supra note 17, at 82.
85 Meissner, supra note 17, at 83.
86 Hofmann, supra note 11, at 512. Even though the debtor countries usually redeem debt at a discount, the conversion value is above the secondary market price of the debt and near its face value. See Reifenberg, supra note 34, at 3–4.
87 See Berney, supra note 40, at 42–43. For example, one may need $5,000,000 to exchange directly into sucres worth $2,500,000 at the official exchange rate. In the debt-for-education swap, discussed infra at Part III, Harvard only needed to spend $775,000 to receive $2,500,000 worth of sucres.
88 Ollard, supra note 49, at 73.
89 For example, Mexico allows only a maximum of 49% ownership in Mexican companies. Hofmann, supra note 11, at 514. The Philippines government limits foreign ownership to 40% of a company's equity holding, although it can be flexible on a case-by-case basis. Id. On the other hand, Chile places no ceiling on the percentage of foreign equity holdings in its companies. Id. at 514 n.54.
agreements prohibit lenders from assigning interest in the debt to entities other than banks or financial institutions. For banks and investors, however, the biggest drawback is the Internal Revenue Service's (IRS) Revenue Ruling 87–124.

4. Tax Implications of Debt Swaps

Before Revenue Ruling 87–124, banks and investors, especially for-profit corporations, benefited from debt-for-equity swaps because the IRS did not tax any gain from the transactions. This tax treatment created an incentive for banks and MNCs to invest in Third World countries. Revenue Ruling 87–124, however, removed this tax benefit, and with it, much of the incentive to invest in Third World nations through the debt swap procedure. Now, investors must pay tax on any gain they receive through the swaps. Debtor country restrictions on repatriation of capital further frustrate the investors because they often do not receive actual cash from their investments to pay the taxes on any gain from the swap. For example, Bolivia and Venezuela prohibit repatriation of capital before a five-year period. Mexico and Brazil prohibit repatriation before twelve years. Thus, MNCs and banks cannot rely on money from the gain for immediate payment of taxes.

Revenue Ruling 87–124 affects various debt swap situations differently. These situations may involve transactions among any combination of a United States bank that holds an obligation from a foreign country, an MNC, a charitable or non-profit organization, a foreign country's Central Bank, and a corporation from that country (foreign corporation). Different uses of a foreign country's

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90 Id. at 514–15. These restrictions on lenders arise from debtor countries' fears that if lenders assign their interests to an entity other than a bank or financial institution, the amount of new money the restructuring agreement requires the lender to contribute will also decrease. See supra note 76.
92 Berkson & Cohen, supra note 62, at 577.
93 See id.
94 See Rev. Rul. 87–124, 1987–2 C.B. 205. This gain results from the conversion of discounted debt, in dollars, to almost face value in local currency, and then the conversion of this larger amount of local currency back into dollars. The end result amounts to the investor receiving more dollars on the second conversion than it originally invested. Note that qualified charitable organizations do not have to pay tax on any gain. I.R.C. § 501 (West 1991).
95 Berkson & Cohen, supra note 62, at 579 n.8.
96 Id.
97 Id.
obligation, illustrated in each of the following situations, result in different tax consequences for the participating parties.

a. **An MNC buys the obligation from a bank and invests in a foreign corporation**

Assume that the bank holds a $100 obligation from the foreign country. Assume also that the foreign country’s debt currently sells for 20% of its face value, or $20, on the secondary market, and that the MNC will buy this obligation for that amount. Finally, assume that the Central Bank agrees to redeem the debt in local currency at 50% of its face value, or the equivalent of $50, but subject to the restriction that this local currency must be used in the foreign country in a manner approved by the country’s government. When the bank sells the obligation to the MNC for $20, the bank recognizes an $80 tax loss. The MNC’s adjusted basis in the property becomes its purchase price of $20. Next, the MNC redeems the obligation at the Central Bank for the equivalent of $50 in local currency, subject, however, to the above-mentioned restrictions. The MNC recognizes a taxable gain equal to the

98 This situation is similar to Situation 1 in Rev. Rul. 87–124, 1987–2 C.B. 205.
99 Assume $100 is the bank’s adjusted basis in the obligation. See I.R.C. § 1011 (West 1991); Rev. Rul. 87–124, 1987–2 C.B. 205 (Facts). The adjusted basis in the obligation refers to the cost of the obligation to the bank, less any gains or losses the bank has actually recognized for tax purposes. See I.R.C. § 1011; I.R.C. § 1016 (West 1991); MARVIN A. CHIRELSTEIN, FEDERAL INCOME TAXATION 239 (5th ed. 1988).
101 Id.
102 Id.
103 For the purposes of this Note, the term “recognize” means that the entity actually pays tax on the gain or takes a deduction for the loss. See I.R.C. § 1001(c) (West 1991); CHIRELSTEIN supra note 99, at 239. The term “realize” means that the entity experiences a gain or loss as a result of the transaction. See I.R.C. § 1001(b); CHIRELSTEIN, supra note 99, at 239.
104 The amount of loss from a sale of property is the excess of the property’s adjusted basis—in this case, $100—over the amount realized by the bank—here, $20. See I.R.C. § 1001(a); Rev. Rul. 87–124, 1987–2 C.B. 205 (Law and Analysis, Situation 1).
106 See Rev. Rul. 87–124, 1987–2 C.B. 205 (Facts, Situation 1). This example is extremely simple. In reality, the IRS treats the foreign currency as property and recognizes that restrictions on exchange and use of the currency and other limitations imposed by the debtor country, with respect to debt swaps, may decrease the fair market value of the currency. Id. (Law and Analysis, Situation 1); Berkson & Cohen, supra note 62, at 578. Thus, after considering all factors, the fair market value of the local currency may not be worth exactly $50. This limitation only reduces the amount of the MNC’s immediately recognized gain and basis in the stock; it does not reduce the value of the local currency to the price the MNC
dollar value of the local currency received ($50) minus the MNC's basis in the obligation ($20), or $30. The MNC then exchanges the local currency for stock in a foreign corporation. Thus, the MNC's basis in the stock it receives becomes the fair market value of the local currency that it exchanged for the stock. This situation is probably the least desirable situation for the MNC, because it must immediately recognize, for tax purposes, a $30 gain. Because the MNC invests the local currency it receives in stock of a foreign corporation, the MNC will have to pay the taxes on the gain out of money from income that is unrelated to this debt swap transaction.

b. The bank exchanges the obligation for stock in a foreign corporation

Assume the same facts as above: the bank holds a $100 obligation from a foreign country whose Central Bank will redeem the debt in local currency for 50% of its face value. In this situation, the bank delivers the obligation to the Central Bank. The Central Bank then credits the foreign corporation's account with the equivalent of $50 in local currency. In return, the foreign corporation gives the bank $50 worth of its stock. The IRS treats this transaction as if it involves two steps. First, the bank sells the $100 obligation to the Central Bank for $50 worth of local currency. Thus, the bank recognizes a loss equal to the excess of the bank's adjusted basis in the obligation ($100) over the fair market value of the local currency ($50), or $50. Second, the bank exchanges the local currency for stock in the foreign corporation. Because the bank's basis in the local currency is equal to the stock's fair market value, the bank recognizes no gain upon this exchange. The bank recognizes no gain unless, upon disposition

107 See id. (Law and Analysis, Situation 1).
108 See id. (Facts, Situation 1).
109 See id. (Holdings, Situation 1).
110 This situation is similar to Situation 2 in Rev. Rul. 87–124, 1987–2 C.B. 205.
111 See id. (Facts).
112 See id. (Facts, Situation 2).
113 See id.
114 See id.
115 Id. (Law and Analysis, Situation 2).
116 Id.
117 Id.
of the stock at some later time, the bank sells it for an amount in excess of its basis.\textsuperscript{119}

In the end, both parties profit in this situation. The bank not only receives some value for its nonperforming debt, but also can take a tax deduction for any loss it realizes. The foreign country, moreover, benefits from investment in its local corporations.

c. The bank delivers the obligation to the Central Bank, which credits a charitable organization’s account\textsuperscript{120}.

Assume again that the bank holds a $100 obligation from a foreign country whose Central Bank will redeem the debt for $50 worth of local currency.\textsuperscript{121} The bank delivers the $100 obligation to the Central Bank.\textsuperscript{122} The Central Bank credits the account of a qualified United States charitable organization with the equivalent of $50 in local currency, to be used within the foreign country.\textsuperscript{123} Under section 501 of the Internal Revenue Code, the charitable organization recognizes no taxable gain from this transaction.\textsuperscript{124}

Similar to the previous situation, the IRS treats this transaction as consisting of two steps.\textsuperscript{125} The first step is the same, as the IRS again views the bank as selling the obligation—with a basis of $100—to the Central Bank for local currency worth $50.\textsuperscript{126} Thus, the bank realizes a loss of $50, for which it can take a deduction.\textsuperscript{127} The second step, however, offers more benefits to the bank than in the previous situation. Because the bank contributes the local currency to a qualified charitable organization, the IRS allows the bank to take a charitable deduction for the value of the local currency, or $50.\textsuperscript{128} Consequently, the bank recognizes a tax deduction for its

\textsuperscript{119} See I.R.C. § 1001(c).

\textsuperscript{120} The charitable organization must satisfy the requirements of I.R.C. § 170 (West 1991). Rev. Rul. 87–124, 1987–2 C.B. 205 (Facts, Situation 3). This situation is similar to Situation 3 in Rev. Rul. 87–124.


\textsuperscript{122} See id. (Law and Analysis, Situation 3).

\textsuperscript{123} Id. (Facts, Situation 3).

\textsuperscript{124} See I.R.C. § 501.

\textsuperscript{125} Ronny J. Halperin, Comment, Revenue Ruling 87–124: Treasury’s Flawed Interpretation of Debt-for-Nature Swaps, 43 U. MIAMI L. REV. 721, 724 n.17 (1989). The bank, however, will still be permitted to transfer the obligation directly to the charitable organization in the country. Id. at 724–25. It need not actually take the two steps to complete the transaction. See id.

\textsuperscript{126} Rev. Rul. 87–124, 1987–2 C.B. 205 (Law and Analysis, Situation 3).

\textsuperscript{127} Id. (Law and Analysis, Situation 3). The bank’s loss is equal to its adjusted basis in the obligation ($100) minus the amount it realizes from the sale ($50). Id.

\textsuperscript{128} Id.; Treas. Reg. § 1.170A–1(c)(1) (as amended in 1984).
entire $100 basis in the obligation.\textsuperscript{129} Next to receiving full payment of the obligation, including interest, this situation is the most advantageous for the bank. Because the transaction effectively discharges 50\% of the country's debt, this situation is more advantageous for the foreign country than the previous situations.

Before Revenue Ruling 87–124, banks did not benefit from these particular contributions to the extent they benefit under the new ruling\textsuperscript{130} because, in general, tax law limits the donor's charitable deduction to the fair market value of the property donated.\textsuperscript{131} Prior to this ruling, the IRS would have treated the above transaction as involving only one step: the bank donating the $100 obligation—with a fair market value of $20—to a charitable organization.\textsuperscript{132} The bank could have taken a deduction of only $20, the fair market value of the obligation.\textsuperscript{133} The IRS did not acknowledge the sale of the obligation for the local currency. Thus, the bank did not recognize a loss of $50. Additionally, in the second step, the IRS determined the allowed charitable deduction based upon the fair market value of the obligation ($20) instead of the fair market value of the local currency ($50).\textsuperscript{134} This method produced a limited allowed deduction. Consequently, banks benefited more by selling the obligation at a discounted price.\textsuperscript{135} If the bank in this situation sold the obligation for $20, it could recognize a loss of $80.\textsuperscript{136}

By creating an exception for debt-for-equity swaps in Revenue Ruling 87–124 and viewing the transaction in two steps, the IRS created new incentive for banks to donate debt to charitable organizations instead of selling it. All parties to the transaction benefit: the bank recognizes a loss for its entire basis (though it does not retain its $20); the charitable organization recognizes no taxable gain; and the foreign country recognizes benefits through the charitable organization's use of the local currency within its country.

d. The MNC donates the obligation to a United States charitable organization

In this situation, assume again the same facts: the bank holds an obligation for $100 from a foreign country whose debt sells for

\textsuperscript{129} Halperin, \textit{supra} note 125, at 725.
\textsuperscript{130} See id. at 723–24.
\textsuperscript{131} Treas. Reg. § 1.170A–1(c)(1); Halperin, \textit{supra} note 125, at 723–24.
\textsuperscript{132} See Halperin, \textit{supra} note 125, at 723–24.
\textsuperscript{133} See Treas. Reg. § 1.170A–1(c)(1).
\textsuperscript{134} See Halperin, \textit{supra} note 125, at 724.
\textsuperscript{135} See id.
\textsuperscript{136} I.R.C. § 1001.
20% of its face value on the secondary market. The MNC buys the obligation from the bank for $20. The bank’s adjusted basis in the obligation is $100. Thus, as in the first situation, the bank recognizes a loss of $80. The MNC’s adjusted basis in the obligation is its purchase price of $20. When the MNC donates the obligation to a United States charitable organization, current tax law allows the MNC a deduction for the fair market value of the obligation at the time of the contribution. Therefore, if the MNC immediately donates the obligation, it can take a deduction of the fair market value of the obligation, or $20.

The charitable organization then redeems the obligation at the Central Bank for the equivalent of $50 in local currency that it will invest within the foreign country. Although the charitable organization realizes a gain as a result of this exchange, the IRS does not tax this gain. Once again, this transaction benefits all parties: the bank takes a deduction for a loss; the MNC takes a charitable deduction; the charitable organization realizes no taxable gain upon the exchange of the obligation into local currency; and the foreign country profits from the investment.

e. The charitable organization buys the obligation from the bank

Finally, again assume that the bank holds a $100 obligation from a foreign country whose debt sells for 20% of its face value on the secondary market. The charitable organization buys the obligation from the bank for $20. As discussed in previous situations, the bank realizes a loss of $80, for which it can take a deduction. The charitable organization then redeems the obligation, in which it has a basis of $20, at the Central Bank for $50 in local currency. In contrast to the MNC’s tax consequences, the charitable

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138 See I.R.C. § 1001; see also supra note 104 and accompanying text.
141 I.R.C. § 501. The charitable organization, however, must use the currency in a way consistent with its charitable purpose. Id. § 501(b).
142 This situation is similar to the debt-for-education swap between Harvard and Ecuador, discussed infra in Part III.
144 See I.R.C. § 1001; see also supra note 105 and accompanying text.
organization does not recognize a taxable gain from this exchange.\textsuperscript{146} The charitable organization, however, may use this local currency only for investments that relate to its charitable purpose.\textsuperscript{147} This last situation again produces beneficial tax consequences for all parties to the transaction. The bank may take a deduction for most of its basis in the obligation, and the charitable organization does not have to recognize any gain from the exchange of the obligation into local currency that it can use to benefit the country.

With respect to tax consequences, the ideal debt-for-equity swap involves some sort of charitable donation, either from a bank or an MNC. The next most desirable situation involves a charitable organization as an investor. Although Revenue Ruling 87–124 may have deterred some direct debt-for-equity swaps by banks and MNCs, it did create incentives to use other debt swap methods involving charitable donations of debt, such as debt-for-nature swaps or debt-for-education swaps discussed in the following parts of this Note.

Even with the many risks and drawbacks to the various parties, debtor countries are still participating in and encouraging debt-for-equity swaps. In fact, the debt swap has developed further into debt-for-development swaps. In debt-for-development swaps, the investor swaps discounted debt for the country's promise to use the debt for specific programs aimed at further development in the country.\textsuperscript{148} Of these debt swaps, the debt-for-nature swap is the most widely recognized by the public.

C. Debt-for-Nature Swaps

Debt-for-nature swaps endeavor to control the exploitation of natural resources while simultaneously responding to the country's needs.\textsuperscript{149} In 1987, Conservation International (CI) became the first environmental organization to participate in a debt-for-nature swap with an LDC.\textsuperscript{150} In this relatively simple agreement, CI purchased $650,000 of Bolivia's debt on the secondary market for $100,000.
in exchange for Bolivia's promise to preserve 3.7 million unprotected acres of the Bolivian lowland plain.\textsuperscript{151}

Following this landmark swap, World Wildlife Fund (WWF) negotiated three more swaps with Ecuador, Costa Rica, and the Philippines.\textsuperscript{152} WWF's swap with Ecuador was more complex than any previous swap.\textsuperscript{153} This agreement was similar to the debt-for-education swap discussed below, in that it exchanged debt for bonds denominated in local currency.\textsuperscript{154} WWF used a three-step procedure to convert $1 million of Ecuador's debt into a fund, the proceeds of which an Ecuadorian nature foundation would use for the preservation of undeveloped lands.\textsuperscript{155}

In this WWF-Ecuador debt-for-nature swap, WWF purchased $1 million of Ecuador's debt at 35\% of its face value.\textsuperscript{156} WWF exchanged the debt at the Central Bank for bonds repayable in Ecuadorian sucre.\textsuperscript{157} WWF then donated this debt to Fundacion Natura, an Ecuadorian environmental group.\textsuperscript{158} Fundacion Natura retained the bonds and received the proceeds from their sale.\textsuperscript{159} Finally, WWF and the Ecuadorian government agreed to let Fundacion Natura use the proceeds from these bonds for protection of undeveloped lands, environmental education, and other activities.\textsuperscript{160} The parties to the original debt-for-nature agreements intended primarily to set aside land for the creation of natural reserves. Today, however, conservation organizations are concentrating more on the education and training of people to manage the reserves.\textsuperscript{161}

In addition to helping pay for conservation, debt-for-nature swaps also have the potential to generate economic productivity by

\textsuperscript{151} Id. at 1069. Bolivia also agreed to let CI participate in administrating the protected lands. Id.
\textsuperscript{152} Id. at 1068.
\textsuperscript{153} See generally id. (providing a detailed explanation of the debt-for-nature swaps between these entities).
\textsuperscript{154} See id. at 1069.
\textsuperscript{155} Id.
\textsuperscript{157} Hamlin, supra note 6, at 1069.
\textsuperscript{158} See id.
\textsuperscript{159} Id.
\textsuperscript{160} Lovejoy, supra note 156, at A25.
\textsuperscript{161} Reifenberg, supra note 34, at 22. See generally Hamlin, supra note 6 (discussing how debt-for-nature swaps benefit the participating parties).
increasing the number of national parks and increasing tourism.\textsuperscript{162} Although debt-for-nature swaps only relieve a minuscule portion of the debts, they have proved effective vehicles for using debt to benefit natural resources and development.\textsuperscript{163} Moreover, these swaps provided good working models for the debt-for-education swap between Harvard University and Ecuador.\textsuperscript{164}

III. Debt-for-Education Swaps

A. The Birth of the Idea

The idea for a debt-for-education swap began when the Latin American Scholarship Program of American Universities (LASPAU)\textsuperscript{165} went in search of more monies for scholarships.\textsuperscript{166} LASPAU's fundamental premise is that "human resource development is crucial to modernization in developing countries and that economic growth can occur only with enhanced technical knowledge and management skills within Latin American universities and research centers."\textsuperscript{167} Ned Strong, Area Director of LASPAU, was in Argentina in 1987 when CI and WWF announced the first debt-for-nature swaps. In conversations with an Argentine colleague, the idea for the debt-for-education swaps emerged.\textsuperscript{168} When Mr. Strong returned from Argentina, he spoke with others at LASPAU about the idea.\textsuperscript{169} Mr. Strong's interest in the feasibility of a debt-for-education swap coincided with a State Department announcement that it would encourage and provide assistance for organizations

\begin{enumerate}
\item Lovejoy, \textit{supra} note 156, at A25.
\item See generally Reifenberg, \textit{supra} note 34, at 24–26 (discussing benefits to Costa Rica and Peru); Hamlin, \textit{supra} note 6 (discussing benefits in swaps between WWF and the Philippines, Ecuador, and Bolivia, and between CI and Costa Rica).
\item See Reifenberg, \textit{supra} note 34, at 23. Reifenberg also discusses the debt-for-education swap in this paper.
\item LASPAU was formed in 1964 when Harvard made a move to attract more Latin American students. Strong \textit{Interview I}, \textit{supra} note 9. It is now associated with about two hundred other universities, administering approximately one thousand to twelve hundred scholarships. \textit{Id.} LASPAU adds between two hundred fifty and three hundred new scholarships per year, and is currently working with the Fulbright program. \textit{Id.}
\item Sunder, \textit{supra} note 9, at 5; Steve Reifenberg & Ned Strong, Debt-for-Education in Ecuador I (Summer 1990) (briefing memorandum prepared by LASPAU) (copy on file at the Boston College Third World Law Journal office). "Debt-for-education" will be used interchangeably with "debt-for-scholarship" throughout this Note.
\item Reifenberg, \textit{supra} note 34, at 1.
\item Strong \textit{Interview I}, \textit{supra} note 9.
\item \textit{Id.}
\end{enumerate}
interested in participating in debt-for-education swaps that would give more Latin American students the opportunity to study in the United States.\textsuperscript{170}

In early 1988, LASPAU hired an intern from the Kennedy School of Government at Harvard, Steve Reifenberg, to explore whether a debt-for-education swap would be feasible or beneficial for LASPAU.\textsuperscript{171} At the end of the study, Mr. Reifenberg informed LASPAU that the only obstacles to a debt-for-education swap were the various regulations enacted by some LDCs that prohibited investors in debt swaps from changing local currency into dollars for use outside their country.\textsuperscript{172}

Coincidentally, in August 1988, Luis Parodi, a LASPAU supporter, gained election to the Vice Presidency of Ecuador.\textsuperscript{173} LASPAU approached Vice President Parodi in March 1989 with its idea for a human resource-development scholarship program for Ecuadorian students.\textsuperscript{174} Impressed with the human resource development idea, Vice President Parodi's only question was how to fund the program.\textsuperscript{175} In May 1989, LASPAU suggested to Parodi that a debt-for-education swap might produce the funding for scholarships; however, Ecuador would have to change its law to facilitate the transaction.\textsuperscript{176} Subsequently, Parodi began to lobby the Ecuadorian government for changes in the Ecuadorian law regarding debt swaps.\textsuperscript{177} On October 31, 1989, Vice President Parodi's efforts succeeded when Ecuador enacted a regulation\textsuperscript{178} governing debt

\textsuperscript{170} Reifenberg, supra note 34 (Executive Summary); see Deputy Assistant Sec'y of State for Inter-American Affairs Paul D. Taylor, Remarks at Drexel Burnham Lambert Latin American Investors Conference (Jan. 29, 1988) [hereinafter Taylor Remarks] (copy on file at the Boston College Third World Law Journal office).

\textsuperscript{171} Strong Interview I, supra note 14. For a discussion of Mr. Reifenberg's analysis and conclusions, see Reifenberg, supra note 34.

\textsuperscript{172} Strong Interview I, supra note 9; Sunder, supra note 9, at 5. For example, under Ecuador's old regulation, if an organization paid fifteen cents per dollar for Ecuadorian debt purchased on the secondary market, it could give that debt to Ecuador and redeem it for 100\% of the face value in local currency. The organization could use this currency, however, for investments only in Ecuador. Strong Interview I, supra note 9.

\textsuperscript{173} Strong Interview I, supra note 9; Sunder, supra note 9, at 5.

\textsuperscript{174} Strong Interview I, supra note 9.

\textsuperscript{175} Id.; Parodi himself was a former university rector in Ecuador. Sunder, supra note 9, at 5. Thus, he would strongly support a program that created scholarships to enable Ecuadorian students to study at one of America's premier universities.

\textsuperscript{176} Strong Interview I, supra note 9.

\textsuperscript{177} Id.; Sunder, supra note 9, at 5.

swaps for social benefit entities. The new regulation allows foreign entities to donate Ecuador’s debt to any program that is socially beneficial to Ecuador, even if some of these programs require investments in foreign currency, such as United States dollars. The Central Bank, however, will only exchange the debt for 50% of face value in local currency.

The following paragraph outlines some of the most important features of the Ecuadorian Regulation. Ecuador’s Central Bank has set aside a maximum of $150 million in face value of its outstanding debt for these social benefit programs. The government may not allocate more than $5 million in face value of this total to any single project. The cash to finance the swaps must come from foreign countries and be in the form of a donation to an entity of the donor’s choice, as long as the entity is qualified under the Ecuadorian Regulation. Finally, the proposed debt swaps must meet three prerequisites to qualify under this regulation: (1) a legally constituted local Ecuadorian entity must receive the donation and demonstrate that it can carry out the proposed program; (2) the donor must design the project with an investment plan and a budget; and (3) the National Development Council (CONADE) must approve

179 LASPAU, Brief Background on Debt Swaps for Scholarships in Ecuador 1 (1990) (outlining the major components of the regulation) [hereinafter Brief Background] (copy on file at the Boston College Third World Law Journal office); Strong Interview I, supra note 9; Walters, supra note 31, at 14. These social benefit entities include those non-profit, local entities, “whose objective is the realization of social or cultural, educational, amateur athletics and environmental protection activities.” Ecuadorian Regulation, supra note 178, at art. I. Ecuador’s Monetary Board recognized that, “one should take advantage of foreign donations to reduce the foreign debt.” Id. at pmbl.

180 Strong Interview I, supra note 9. The programs must still benefit Ecuador. Id. Under Ecuador’s old regulation, the investor could exchange the debt for 100% of its face value in local currency; however, the investor could use this currency only for investments within Ecuador. Id. Under the new regulation, the Central Bank will exchange the debt at only 50% of its face value, but the investor may use the local currency it obtained in or out of Ecuador. Id. Thus, it is possible for Harvard to exchange local currency from the sale of Ecuadorian bonds back into United States dollars, to be used for the scholarships. Id.

181 Ecuadorian Regulation, supra note 178, at art. IX; Strong Interview I, supra note 9. This regulation applies to all debt swaps that are socially beneficial to Ecuador, whether in or out of the country. Strong Interview I, supra note 9.

182 Ecuadorian Regulation, supra note 178, at art. VII. This is probably to minimize inflationary risks. Strong Interview I, supra note 9. Although the Ecuadorian Regulation states that a maximum of $50 million will be set aside for these programs, the Ecuadorian government has increased this amount to $150 million. Interview with Ned Strong, Area Director of Latin American Scholarship Program of American Universities, in Cambridge, Mass. (Feb. 6, 1991) [hereinafter Strong Interview II].

183 Ecuadorian Regulation, supra note 178, at art. III.

184 Id. at art. I.
the project.\textsuperscript{185} With the Ecuadorian Regulation in place, LASPAU only had to find a donor of the debt.\textsuperscript{186}

B. The Harvard-Ecuador Agreement

Because Harvard University's former president, Derek Bok, had recently announced a plan to "internationalize" Harvard,\textsuperscript{187} the University seemed the appropriate entity to approach with the idea for a debt-for-education swap with Ecuador.\textsuperscript{188} In November 1989, Harvard University, along with LASPAU and the Commonwealth of Massachusetts, hosted Vice President Parodi.\textsuperscript{189} During his stay, Vice President Parodi met with Derek Bok to discuss the possibility of Harvard participating in a debt-for-education swap with Ecuador.\textsuperscript{190} Intrigued by the idea, Derek Bok formed a steering committee to study the proposal.\textsuperscript{191} Seven months later, in July 1990, Harvard and Fundacion Capacitar, an Ecuadorian educational foundation, signed the first-ever debt-for-education agreement.\textsuperscript{192}

A group of leading Ecuadorian educators, government officials, and business people—including Vice President Parodi\textsuperscript{193}—organized Fundacion Capacitar in September 1989.\textsuperscript{194} The organization is "dedicated to the training and development of students and professionals in the natural sciences, social sciences, technical areas, cultural areas, teaching, and, in general, any discipline that contributes to Ecuador's well-being."\textsuperscript{195}

\textsuperscript{185} Id. at art. IV. Because Parodi is President of CONADE, Harvard's debt-for-education swap was quickly approved. Brief Background, supra note 179. The Ecuadorian Regulation also governs the issuance of Ecuadorian bonds by the Central Bank, the interest due on those bonds, and their maturity dates. Ecuadorian Regulation, supra note 178, at art. VIII.

\textsuperscript{186} Strong Interview I, supra note 9.

\textsuperscript{187} Sunder, supra note 9, at 1. Derek Bok was pressing the University to increase foreign student enrollment and expand foreign studies. Debt to Create Scholarships, supra note 33, at A18; Flint, supra note 8, at 25.

\textsuperscript{188} Strong Interview I, supra note 9.

\textsuperscript{189} Sunder, supra note 9, at 5.

\textsuperscript{190} Id.

\textsuperscript{191} Id. Bok was especially intrigued when Parodi explained that his proposition meant Harvard would get back three dollars for every one dollar it invested. Strong Interview I, supra note 9.

\textsuperscript{192} Debt to Create Scholarships, supra note 33, at A18; Flint, supra note 8, at 25.

\textsuperscript{193} Harvard-Ecuador Farming Project, supra note 140, at 13.

\textsuperscript{194} Id.; see Agreement Between Harvard University and Fundacion Capacitar, July 9, 1990, Harvard Univ.-Fundacion Capacitar, at 1 [hereinafter Agreement] (copy on file at the Boston College Third World Law Journal office).

\textsuperscript{195} Agreement, supra note 194, at 1. Capacitar means "to train." Strong Interview I, supra note 9.
Harvard credits the signing of the agreement to Vice President Parodi. Without Parodi's efforts to lobby for changes in the regulation, this agreement never would have succeeded.196 The debt-for-education swap is an appealing way to develop a base of financial aid to provide for the costs of students from Ecuador.197

C. How the Debt-for-Education Swap Works

Under the agreement, Harvard pledged to buy a portion of Ecuador's debt at a discount and donated the debt, in the form of a note, to Fundacion Capacitar.198 Fundacion Capacitar then redeemed the note at the Central Bank for 50% of its face value in local currency bonds.199 Fundacion Capacitar sold these bonds to entities within Ecuador at a discount.200 Using the majority of the proceeds from the sales, Fundacion Capacitar purchased United States dollars on the local market.201 It then invested the dollars in an interest bearing fund in the United States, to be used for scholarships for eligible Ecuadorian students to study at Harvard.202 Fundacion Capacitar kept the smaller portion in Ecuadorian sucres that will finance research and study in Ecuador by Harvard students and professors.203

More specifically, the debt swap works as follows. Harvard bought $5 million of Ecuador's debt on the secondary market from Chase Manhattan Bank in New York, at 15.5% of the debt's face value.204 Thus, Harvard's total investment in the transaction was

196 Sunder, supra note 9, at 5.


198 Reifenberg & Strong, supra note 166, at 2; Walters, supra note 31, at 14. Because Ecuador enacted its new regulation directed specifically at programs like debt-for-education swaps, Harvard did not need a waiver from Ecuador's Central Bank obligating the Central Bank to redeem the note. See supra note 43.

199 Reifenberg & Strong, supra note 166, at 2; Walters, supra note 31, at 14.

200 Reifenberg & Strong, supra note 166, at 2.

201 Id.

202 Id.; Walters, supra note 31, at 14. Scholarships may be full or partial. Agreement, supra note 194 (Annex C).

203 Reifenberg & Strong, supra note 166, at 2.

204 Telephone Interview with Frank Connors, University Attorney, Harvard University (Feb. 5, 1991) [hereinafter Connors Interview]; see Sunder, supra note 9, at 1, 5. The difference between the figures in the published articles and figures in this article occurs because Harvard ultimately bought the debt for 15.5% of face value, instead of 15% of face value. Strong Interview I, supra note 9. For a diagram of the process, see Sunder, supra note 9, at 5 (Debt for Education: The Ecuador Model).

A consolidation agreement among lenders to Ecuador posed a potential threat to the transaction. Connors Interview, supra. This agreement stipulates that if one lender receives
$775,000.205 Harvard then donated this debt to Fundacion Capacitar.206 Fundacion Capacitar exchanged the debt at Ecuador's Central Bank for local currency bonds at half the face value, or $2.5 million.207 It then sold these bonds on the local market at approximately 85% of their local value.208 Finally, Fundacion Capacitar converted the proceeds from these sales, approximately $2 million,209 back into dollars and placed them into a scholarship fund in the United States.210 The Harvard Management Company, which administers Harvard's endowment as well as various other trusts, manages this fund.211 Fundacion Capacitar, however, continues to own the fund.212

full payment of its obligation from Ecuador, then Ecuador must pay all other lenders in full. Id. In addition, all potential buyers of Ecuador's debt must receive approval to buy it from a servicing agent—in this case, Citibank. Id. Thus, when Harvard bought the debt, it became a party to this consolidation agreement. Id. When Harvard then donated the entire debt to Fundacion Capacitar, which also became a party to the agreement, it left itself open to a potential breach of contract suit by one of the member banks. Id. Fortunately, this threat never arose. Id.

205 Strong Interview I, supra note 9; Sunder, supra note 9, at 1, 5. At this point, Harvard assumed creditor status with respect to Ecuador. Although Harvard paid only $775,000 to purchase the debt, Ecuador's obligation to Harvard remained $5 million because Harvard still held the $5 million note.

206 Sunder, supra note 9, at 1, 5; Strong Interview I, supra note 9. Harvard now relinquished its creditor status, and Fundacion Capacitar assumed creditor status with respect to Ecuador. Similar to the situation supra note 205, although Fundacion Capacitar paid nothing for the note, Ecuador technically still owed $5 million to Fundacion Capacitar.

207 Sunder, supra note 9, at 1, 5. In this way, Harvard's donation experiences the "multiplier effect;" in effect, its donation of $775,000 more than triples to the $2,500,000 value. Reifenberg, supra note 34, at 8. Fundacion Capacitar faced no local restrictions on its conversion of the note to local currency. Connors Interview, supra note 204.

There was no agreement between Harvard and Ecuador's Central Bank that the Central Bank would redeem the note. Id. Harvard acted only on the good faith and representation of the people in Ecuador, such as Luis Parodi. Id.

208 Sunder, supra note 9, at 1, 5. Ecuador's $5 million foreign obligation is now effectively eliminated in exchange for a $2.5 million internal obligation to the local bondholders. See Flint, supra note 1, at A14. In other words, Fundacion Capacitar's sale of the bonds on the Ecuadorian local market eliminates Fundacion Capacitar's creditor status; the bondholders are now the creditors with respect to Ecuador's $2.5 million internal debt. See id. Some financial analysts expressed skepticism regarding the sale of Ecuadorian bonds on the international market; however, Teresa Petras, Vice President in charge of Ecuadorian debt trading at J.P. Morgan, feels confident that there is a limited secondary market for the bonds within Ecuador. Debt to Create Scholarships, supra note 33, at A18.

209 Sunder, supra note 9, at 1, 5 (Debt for Education Model). The discrepancy between the total proceeds of the sale and the final amount put in the scholarship fund results from discounts on the bonds, administrative cost, and fees totaling approximately 8%. Strong Interview I, supra note 9.

210 This swap is different from other debt swaps because the debt is turned back into dollars. Walters, supra note 31, at 14.

211 Connors Interview, supra note 204.

212 Id.
Because Fundacion Capacitar owns the fund, the donor realizes no gain. Thus, Revenue Ruling 87–124 would not affect this swap, even if a non-exempt organization was the donor of the debt.\textsuperscript{213} This transaction is similar to the situation in which the charitable organization buys the obligation from the bank, described previously in this Note.\textsuperscript{214} Here, Harvard, a charitable organization, bought $5 million debt on the secondary market for $775,000. Chase Manhattan, the bank that sold the debt, can now take a deduction for the loss it realized through the sale, the difference between its adjusted basis and the sale price of $775,000.\textsuperscript{215} It follows that although Harvard received nothing from Fundacion Capacitar in exchange for the note, Harvard cannot take a deduction because it is a tax-exempt organization. Because Harvard donated the debt to Fundacion Capacitar before the currency was exchanged, Fundacion Capacitar is the only party to the transaction that may have to recognize a gain.\textsuperscript{216}

Even if Harvard was a non-exempt MNC, it would have paid no taxes. Again, assuming the MNC donated the note before it was exchanged for local currency, the only entity to realize a gain in the transaction would be Fundacion Capacitar. The IRS may have allowed the MNC a charitable deduction if Fundacion Capacitar utilized the money it received from the donation for activities related to its charitable purpose.

As designed, the fund will yield approximately $150,000 annually for expenditures in the United States and Ecuador—scholarships in United States dollars for Ecuadorian students and grants in Ecuadorian sucres for Harvard faculty and students.\textsuperscript{217} The $2 million core of the fund will remain untouched.\textsuperscript{218} Fundacion Capacitar will divide the interest from the fund into two parts: it will use 85%—approximately $127,500—in United States currency to

\textsuperscript{213} See supra notes 92–147 and accompanying text.
\textsuperscript{214} See supra notes 142–47 and accompanying text.
\textsuperscript{215} See I.R.C. § 1012; I.R.C. § 501.
\textsuperscript{216} Fundacion Capacitar may have to recognize a gain under Ecuador’s tax laws. With respect to the federal tax laws of the United States, however, Fundacion Capacitar will not have to recognize a gain on the redemption of the $5 million note to the Central Bank. As a foreign entity not engaged in a trade or business in the United States, Fundacion Capacitar is beyond the reach of United States domestic tax laws. On the other hand, Fundacion Capacitar may be subject to tax on the interest generated from the fund. See I.R.C. § 61 (West 1991).
\textsuperscript{217} Sunder, supra note 9, at 5 (Debt for Education Model). This estimation assumes a 7.5% yield.
\textsuperscript{218} Reifenberg & Strong, supra note 166, at 2.
fund the scholarships for Ecuadorian students; the remaining 15% in local currency—approximately $22,500—will be used to fund local costs for research and study in Ecuador by students and professors from Harvard.\(^{219}\) Harvard predicts that about seventy people (from both Harvard and Ecuador) will benefit from this transaction over the next ten years.\(^{220}\) The intention of the parties is to continue the agreement permanently;\(^{221}\) the agreement, however, provides that, during the tenth year, the parties must conduct a formal evaluation of the program.\(^{222}\)

### D. Responsibilities of the Parties

The debt-for-education agreement lists the responsibilities of Harvard and Fundacion Capacitar.\(^{223}\) With respect to the scholarships, Fundacion Capacitar will be responsible for accepting all applications as well as recruiting, advising and counseling the applicants, and assisting them with the application process and deadlines.\(^{224}\) Harvard will be responsible for assisting in recruitment of students and receiving applications for admission.\(^{225}\) In addition, Harvard will provide information necessary for applicants to apply for financial aid if they have not already done so.\(^{226}\) Finally, Harvard must make its admissions decisions between January and April of each year.\(^{227}\)

In addition to sharing recruiting responsibilities, the parties must establish a committee that will make resource allocations for the following year's activities.\(^{228}\) This committee will also award the scholarships annually in April.\(^{229}\) To be eligible to receive a scholarship, the applicant must complete a standard Harvard application,
with an essay, and a standard financial aid application. The committee will award scholarships primarily on the basis of need. It will grant many of the scholarships to Ecuadorians who wish to pursue graduate degrees. Other scholarships will go to Ecuadorian professors, most of whom have relatively lower incomes. In addition, Harvard expects to award some scholarships to mid-level professionals, most of whom are middle class. The committee will also consider an applicant’s proposed area of study and place of origin within Ecuador. The committee permits applicants to choose any area of study at the undergraduate, graduate, or professional level. Mr. Strong, Area Director of LASPAU, did not indicate that the applicants’ choice of any particular area of study would weigh strongly in their favor. He did imply, however, that areas of study most beneficial to Ecuador upon the student’s return are preferable. Finally, to prevent a “brain drain,” the committee will award the scholarships to Ecuadorian students in the form of loans. When the student returns to Ecuador, Fundacion Capacitar will automatically forgive the loan.

With respect to the research and study grants, Fundacion Capacitar is responsible for supporting research, internships, and study by assisting in making professional connections and providing logistical support where needed. For Harvard’s part, it must encourage applications for grants from the different departments, faculties, professional schools, programs, and institutes. The above-mentioned committee must decide the general areas of interest and the number of grants it will award for the Harvard students’ and professors’ research, internships, and study in Ecuador. Because the committee will award grants on a rolling basis,

230 Agreement, supra note 194 (Annex C).
231 Jean Evangelauf, Harvard to Buy $5-Million of Ecuador’s Debt to Create Scholarship Fund, CHRON. OF HIGHER EDUC., July 18, 1990, at 1; Strong Interview I, supra note 9.
232 Strong Interview II, supra note 182.
233 Id.
234 Id. Applicants usually are sponsored by an Ecuadorian company and guaranteed a full-time job when they return. Id.
235 Id. Mr. Strong said that the committee would place strong emphasis on awarding scholarships to students from the provinces. Id. Difficulties arise, however, because students from the provinces are less likely to speak sufficient English to study at Harvard. Id.
236 Id.; Reifenberg & Strong, supra note 166, at 1.
237 Strong Interview I, supra note 9.
238 Evangelauf, supra note 231, at 1.
239 Id.
240 Agreement, supra note 194 (Annex C).
241 Id.
242 Id.
the committee must appoint a Harvard-based "grant review board" that will select those applicants who will receive grants based on the committee's standards.243

To be eligible for a research and study grant, Harvard professors and students must propose projects that are beneficial to Ecuador.244 The committee will take requests and award grants on a rolling basis.245 Ecuador prefers projects in areas such as urban and regional planning, rural development, health care, and teaching.246 The committee possibly will consider programs in ecology, environmental studies, and natural sciences.247

E. Benefits of the Swap

Proponents of the debt-for-education swap have described it as a "lose-lose" situation turned around to benefit all.248 The bank benefits because it has removed questionable debt obligations from its books and replaced them with dollars.249 Harvard moves toward its goal of increasing its enrollment of foreign students.250 Harvard also benefits as its increasing presence in Ecuador more effectively attracts highly qualified candidates from that country.251 In addition to its presence in Ecuador, Harvard receives positive public relations benefits worldwide.252 The debt swap also enables more Harvard professors and students to gain valuable experience through internships and research in Ecuador.253 Furthermore, Harvard's initial donation of $775,000 tripled to a value of $2 million.254 Finally, by using local currency to fund these grants, Harvard frees valuable dollars of its scholarship fund that may have gone to finance these grants.255 It can use these freed funds for additional scholarships.256
The benefits for Ecuador and its citizens are also numerous. First, more lower and middle class Ecuadorians will receive the benefit of a Harvard education. These students will most likely return with their skills to Ecuador. Educating students will build human capital necessary for economic growth that Ecuador needs to contribute to debt reduction efforts. Second, Ecuador will retire some of its foreign debt. Although this amount is minimal compared to its total debt, the benefits Ecuador receives through the agreement make the small amount more valuable.

F. Risks and Drawbacks of the Swap

The only drawbacks for Harvard and Fundacion Capacitar are the administrative and financial complexities inherent in any debt swap. These problems, however, are minor. In contrast, the debt swap does pose some risks for Ecuador. When Harvard donates the $5 million of foreign debt to Fundacion Capacitar and it converts the note to bonds in sucre, at 50% of face value, the government still has an outstanding internal debt equal to $2.5 million. Some critics contend that because the government must raise money to pay interest on the bonds, it will raise taxes, close hospitals, or print money to handle the internal debt. Given the benefits of the investment in human resource development, however, the government of Ecuador profits by having half as much debt outstanding in local currency instead of 100% debt in foreign currency that it must service immediately. As with other debt swaps, the risk of

257 Flint, supra note 1, at A14. Miguel Falconi, Fundacion Capacitar’s President, says this is the main purpose of the agreement. Walters, supra note 31, at 14.
258 Flint, supra note 1, at A14; Strong Interview 1, supra note 9; see also infra notes 269–71 and accompanying text.
259 Taylor Remarks, supra note 170, at 5; see also Reifenberg, supra note 34 (Executive Summary).
261 See Debra Rosenberg & Lydia Denworth, Swapping Debt for Knowledge, NEWSWEEK, July 30, 1990, at 47. Five million dollars is miniscule compared to Ecuador’s $11 billion debt. See Harvard Sets Up Fund, supra note 3, at 3; Flint, supra note 1, at A14. Hopefully, however, the swap will play a part in enlarging the scope of human resource development. See Reifenberg, supra note 34, at 2.
262 Reifenberg, supra note 34 (Executive Summary).
263 Flint, supra note 1, at A14.
264 See id.
265 Id.
266 See Walters, supra note 31, at 14 (quoting Robert Scott, Vice President of Finance at Harvard University).
inflation is always present. Proponents of debt swaps are not worried, however, because the amount involved in these transactions is generally too small to be inflationary.

One of the strongest arguments against the program is that the Ecuadorian recipients of the scholarships will not return to Ecuador upon completion of their degrees. Fundacion Capacitar, however, takes steps to ensure that they will return. One important factor in choosing applicants is what type of job they hold in Ecuador. Based upon his experience working with LASPAU-administered scholarships, Ned Strong concluded that 99% of the people usually return to their home countries.

One criticism levied against the agreement is that there may be risks in taking students from provincial Ecuadorian culture to a completely different culture at Harvard. Additionally, the program's desire to benefit both provincial and urban students may be difficult to achieve because most English-speaking Ecuadorians live in the cities. Finally, the attempt to reach provincial students may be hindered somewhat because in countries like Ecuador, the levels of primary, secondary, and higher education in rural areas are low. Thus, structural problems in Ecuador's educational system work against Fundacion Capacitar's and Harvard's efforts to attract Ecuadorians from rural areas. Consequently, the effort to reach rural students may ultimately be nothing more than "a symbolic effort to show goodwill" on Harvard's part.

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267 Laura Caldwell, Swapping Debt to Preserve Nature, CHRISTIAN SCI. MONITOR, Sept. 11, 1990, at 19; Flint, supra note 1, at A14.
268 Flint, supra note 1, at A14. In addition, Ecuador limited the amount of debt foreign investors could convert to $50 million. Strong Interview I, supra note 9.
269 Strong Interview II, supra note 182; see Evangelauf, supra note 231, at I.
270 Strong Interview II, supra note 182. Applicants whom the Committee considers unlikely to return will not be chosen for these particular scholarships. Id.
271 Id.
272 Walters, supra note 31, at 14. Eric Ehrmann, a journalist who writes on Latin American affairs, contends that Ecuadorian students who do not really know any system other than the post-feudal system of large landholding interests may be in for a culture shock at Harvard Yard. Id. The program is not intended to reach the peasants in the potato fields, however. Strong Interview II, supra note 182. In addition, applicants may have spent some time in the United States, either working or studying. Id.
273 Each applicant's English skills will be reviewed. Strong Interview II, supra note 182.
274 Those receiving the scholarships will attend intensive English classes prior to starting classes at Harvard. Id.
275 Id.
276 Id.
G. Present Status of the Program

In the first year, Fundacion Capacitar received between seventy and ninety applications from Ecuadorian students. Only about twenty of those applicants speak English well enough to gain admission to Harvard. When Harvard makes its decisions regarding admission to the University, the committee would ideally like to award between three and four scholarships. As of September 1991, Harvard has already enrolled one of these scholarship recipients.

With respect to the grants, the program has already awarded grants to two Harvard graduate students. These students presently are in Ecuador to begin developing an organic farming system. Both of these students have extensive prior experience in Latin American countries. Additionally, Harvard is in the process of creating a committee of faculty members to consider proposals for these grants by faculty members.

Finally, LASPAU received a $93,000 grant from the Ford Foundation to produce a handbook on the debt-for-education program. The Ford Foundation expects other educational institutions, considering this method of funding international students, to benefit from Harvard’s experiences.

IV. Conclusion

Overall, the debt-for-education swap is beneficial to all parties. Harvard discovered that the governments of Third World countries are actively seeking arrangements that guarantee scholarships for their students as well as practical assistance from the Americans who go to their countries on grants. Harvard is contemplating

277 Strong Interview I, supra note 9. In the second round, announced in June 1991, Fundacion Capacitar has so far received 110 applications. Telephone Interview with Ned Strong, Area Director of Latin American Scholarship Program of American Universities (Oct. 21, 1991) [hereinafter Strong Telephone Interview].
278 Id.
279 Id.
280 Id.
281 Harvard-Ecuador Farming Project, supra note 140, at 1.
282 Id. at 1, 8.
283 Id. at 1.
284 Strong Telephone Interview, supra note 277.
285 Harvard-Ecuador Farming Project, supra note 140, at 8.
286 Id.
287 Id.
similar debt-for-education swaps with other countries.\textsuperscript{288} It is now, however, seeking private donors to buy the debt and donate it to Harvard for these purposes.\textsuperscript{289} With respect to the tax consequences, this type of donation would be beneficial to all parties: the bank could take a loss; the buyer could take a charitable contribution deduction; and Harvard would not recognize a tax on any gain because it is a non-profit organization. In addition, in future swaps, Harvard will prefer to work with countries that historically produced candidates who demonstrated a strong potential for scholarship and in which interest in educating their citizens at Harvard is already high.\textsuperscript{290} Drawing from Harvard’s experiences with its first debt-for-education swap, other universities have begun developing their own similar agreements with Third World countries.\textsuperscript{291}

Even though these programs may cause only a small dent in the debt of Third World nations, ultimately the human resources and skills that the scholarship recipients develop benefit all parties concerned. The American University gains international recognition and more cultural diversity of its student body, and the participating country gains educated citizens who can use their education to further develop their country. Thus, more organizations should continue to expand on the idea of debt-for-education swaps and develop other creative ways to relieve Third World debt. Many Third World nations could benefit from programs like the debt-for-education swap between Harvard and Ecuador.

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\textsuperscript{288} Strong Telephone Interview, supra note 277. In fact, Harvard has completed another debt-for-education swap with Mexico, similar to the debt-for-education swap with Ecuador. \textit{Id.}

\textsuperscript{289} \textit{Id.} Nancy Pyle, Harvard’s Special Assistant to the President for International Affairs, says, “Although Harvard received an excellent return on its investment in this case, I think it’s important to note that the University did not make a profit; it simply found a way to multiply its scholarship aid resources.” \textit{Id.}

\textsuperscript{290} \textit{Harvard-Ecuador Farming Project}, supra note 140, at 8. A representative from Harvard has already spoken to ambassadors from Argentina and Costa Rica. Sunder, \textit{supra} note 9, at 1.

\textsuperscript{291} Strong interview 1, \textit{supra} note 9. University of California at Los Angeles is nearing completion of its negotiations, as is the University of Pittsburgh. \textit{Id.} In addition, the Oregon State University System has completed transactions in Ecuador. Strong Telephone Interview, \textit{supra} note 277. A consortium of southern and western universities has also established a fund in Mexico. \textit{Id.}