DEBT-FOR-DEVELOPMENT EXCHANGES: AN INNOVATIVE RESPONSE TO THE GLOBAL FINANCIAL CRISIS

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I INTRODUCTION

Debt-for-development exchanges are not new. The first was undertaken in 1987. Two decades later, in 2007, it was estimated that these financial techniques had resulted in the cancellation of US$5.7 billion of debt and the application of US$3.6 billion to development projects.[1]

The most common type of debt-for-development exchange today is between a creditor and debtor nation. Under a typical exchange, the creditor nation will offer to cancel a specified part of a loan or loans if the debtor nation applies a portion of the amount cancelled (or perhaps the repayments it would have made on the loan over the next five to ten years) towards mutually determined development projects in the debtor nation.

Early debt-for-development exchanges typically involved an environmental or other Non-Government Organisation ('NGO') which purchased the debt for a discount in the secondary market and tendered it to the debtor government in return for a promise to apply an agreed amount of local currency to mutually agreed environmental or other projects in the debtor nation. The evolution of this technique from one involving NGOs to bilateral transactions between creditor and debtor nations has been analysed in detail elsewhere.[2]

There are many variations of this structure, some of which are highlighted in the transactions this article examines. There are also various ways of ensuring the relevance and practicality of the development projects selected to be funded, and

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1 Working Group on Debt Swaps for Education, *Draft Report for the Director-General of UNESCO* (August 2007) 5, <http://www.unesco.org/education/EFAWGSDE/WGDSE_2nd_draftreportforDG_EN.pdf> at 17 August 2009.

2 Ross P Buckley, 'Debt-for-Development Exchanges: The Origins of a Financial Technique', (2009) 2(1) *The Law and Development Review*.

the transparency and accountability of the funding mechanisms used, some of which are also examined in the analysis to follow.

Debt-for-development exchanges matter. They make debt relief more politically and practically attractive to donor countries, and serve the development of recipient countries through the cancellation of external debt and the funding of important development projects.[3]

The Global Financial Crisis ('GFC') has, at the time of writing in mid-2009, already severely affected many poorer nations.[4] This is to be expected. Just as rich individuals are more economically resilient to shocks and changes than poorer individuals, so it is with nations.[5] This article explores one of the more effective techniques available to richer nations to assist those less fortunate than themselves. This technique is of particular importance for the many lesser-developed nations excluded from multilateral debt relief initiatives.

This article looks at recent developments in debt-for-development exchanges initiated by European countries, specifically Switzerland, Italy, Spain, France, Germany and Norway.

II THE SWISS DEBT REDUCTION FACILITY

As debt-for-development exchanges became more widely used in the 1990s, Switzerland was the first donor country to use debt-for-development exchanges as an integral part of their national development program.[6] In March 1991, the establishment of the Swiss Debt Reduction Facility ('SDRF') was announced at the parliamentary session celebrating the 700th anniversary of the Swiss Confederation. Its creation was the result of a sustained campaign by local NGOs, whose petition, 'Debt needs debt reduction', had garnered 250,000 signatures in support of a comprehensive debt reduction program.[7] The SDRF was established with the objective of cancelling all official bilateral and commercial debt owed to Switzerland by highly indebted poor countries. Debt relief was channelled through the establishment of counterpart funds to invest in poverty reduction schemes, income generation and environmental projects. The SDRF has been credited with 'piloting' debt-for-development conversions and the techniques of counterpart funding.[8]

The SDRF was established with an endowment fund of CHF 500 million. The State Secretariat for Economic Affairs managed the program, and the Swiss Agency for Development Cooperation was responsible for the utilisation of local

3 Ibid.

4 Sakiko Fukuda-Parr, 'The Human Impact of the Financial Crisis on Poor and Disempowered People and Countries' (30 October 2008) <http://www.un.org/ga/president/63/interactive/gfc/sakiko_p.pdf > at 25 July 2009; 'GFC Turning into Human Calamity: IMF', *The Sydney Morning Herald* (Sydney), 28 April 2009.

5 Steven Cork, Brian Walker and Ross Buckley, *How Resilient is Australia?* (2008) 1.

6 Ralf Maurer, *Evaluation of Swiss Debt Reduction Facility* (2001) 5.

7 Ibid 9.

8 Ibid 5.

currency resources generated by the debt-for-development swaps. To be eligible for debt reductions, debtor countries had to either have:

(i) an annual income of less than US$700 per capita;
(ii) had debt renegotiated with the Paris Club with favourable results; or
(iii) had its debt rescheduled with the Swiss Development Cooperation but not at the favourable rate granted for the poorest nations.[9]

To be eligible, countries also had to demonstrate that they had sought to implement economic and social reforms within the country and had developed coherent debt-relief management strategies.[10] Debt reductions took place under the SDRF from 1991 to 1995, with the Fund thereafter being utilised as a 'financing window' for the Highly Indebted Poor Country ('HIPC') initiative.[11] Nineteen countries benefited from debt reductions under the program, with counterpart funds established in 12 countries.[12] The nominal debt reduced was just over CHF 1 billion, which was converted into CHF 267 million in local currencies, which in turn was placed in trust funds and used to fund development programs.[13]

Accordingly, the early exchanges under the SDRF allowed for large measures of debt cancellation, approaching 75 per cent of the debt on average. This contrasts, most favourably, with many debt exchanges by the United States, and all French ones, which were done at face value (with no debt cancellation involved), and even with German initiated exchanges in which, typically, half of the debt is cancelled and the balance converted and applied in local currency.

In 1995, Switzerland agreed to a debt reduction agreement with Egypt, where CHF 150.3 million of Egypt's debt was reduced by 40 per cent. The debt utilised in the agreement was rescheduled and came from commercial transactions. The remaining 60 per cent of the debt not forgiven was deposited in local currency in the Egyptian-Swiss Development Fund, established under the agreement, to provide financing for poverty reduction programs.[14] The priority areas of the agreement were job creation, environment/natural resources and social services.[15] The size of counterpart funds in donor nations in other instances ranged from CHF 1 million in Guinea, to CHF 90 million in Egypt. The use of counterpart funds and the general administration of the Swiss exchange programs appear to have been highly effective and transparent.

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9 State Secretariat for Economic Affairs ('SECO'), *The Swiss Debt Reduction Program 1991–2001: Achievements, Perspectives* 10 <www.seco.admin.ch> at 11 May 2009.

10 Ibid.

11 Maurer, above n 6, 11.

12 Bolivia, Hondures, Jordan, Tansania, Peru, Zambia, Ivory Coast, Ecuador, Egypt, Guinea, Philippines and Senegal. Other nations that received debt relief did not establish counterpart funds as the debt forgiven was of a much smaller proportion. SECO, above n 9, 16–17.

13 Maurer, above n 6, 10; SECO, above n 9, 5.

14 Sherif Kamel and Eshandar A Tooma, *Exchanging Debt-for-Development: Lessons from Egypt's Debt-for-Development Swap Experience* (2005) 15.

15 SECO, above n 9, 55.

The endowment fund was depleted by 2001.[16] Further debt reduction was not extended under the program, as it was decided to channel all remaining debt relief through the HIPC initiative.[17] Therefore Switzerland, after pioneering the technique in Europe, no longer participates in debt-for-development exchanges. However, Italy, Spain, Germany, France and Norway do continue to use debt exchanges.[18] The analysis commences with Italy's transactions, because it has undertaken some of the more innovative exchanges of late.

III ITALIAN DEBT-FOR-DEVELOPMENT EXCHANGES

Italian debt exchanges are regulated by two pieces of legislation: *The Measure for the Stablisation of Public Finance* (law 499/1977) and the *Measure to Reduce External Debt of Lower Income and Highly Indebted Countries* (law 209/2000).

For a country to be eligible for debt exchange under law 209/2000, the debtor nation must:

(i) have reached a 'multilateral understanding' with an organisation such as the Paris Club;

(ii) have made a commitment to respect human rights;

(iii) have renounced war as a means of solving controversy; and

(iv) be pursuing measures for social and human development, particularly the reduction of poverty.[19]

Under this law, funds liberated by a debt conversion can be utilised in four specified sectors: agriculture, health, education and infrastructure.[20] Within 90 days of entering into an agreement, the Italian Minister of Treasury, Budget and Economic Programs, in concert with the Minister of International Affairs, must issue criteria stipulating how the agreement will be carried out. Agreements may be suspended if funds are not being used for the purposes outlined in the agreement.[21] A report must be made annually to the Italian Parliament for each debt-for-development exchange agreement, detailing, among other things, the costs, timing and progress of projects being implemented.[22]

Under article 5 of law 209/2000, the Italian Government can authorise a debt swap in cases of natural disasters and grave humanitarian crises to assist the people and nations affected by such events. Pursuant to this provision, Italy undertook a debt exchange with Indonesia in 2005. Italy agreed to swap US$24.2

16 Ibid 4.

17 Mauer, above n 6, 6.

18 Marta Ruiz, *Debt Swaps for Development: Creative Solution or Smoke Screen?* (2007) 5.

19 Legge 28 luglio 2000, n 209 *Misure per la riduzione del debito estero dei Paesi a piu basso reddito e maggiormente indebitati*, art 1.

20 209/2000 art 3(3).

21 209/2000 art 4(1).

22 209/2000 art 6(1).

million and €5.7 million of loans previously rescheduled under the Paris Club. The funds were to be used in Aceh and Northern Sumatra, areas devastated by the Boxing Day tsunami in late 2004.[23] A management committee including representatives of Indonesia and Italy was established to monitor the projects and ensure their transparency and accountability.[24] Between 2006 and 2008, a substantial portion of the funds was invested in 10 development projects. The terms of the final phase of the debt-for-development exchange were finally settled in early 2009 with an agreement that the remaining funds will be utilised for a range of development projects in Aceh. Seven projects will be financed for a total of US$13.6 million, including the construction of a fishing port, three irrigation systems and two roads. The remaining money will be used to support a government poverty alleviation scheme called the Hopeful Family Program.[25]

Under law 209/2000, Italy has participated in a sizable number of other debt-for-development exchanges, including with Yemen, Pakistan and other countries.[26] However, Italy's largest debt exchange programs to date have been with Kenya and Egypt.

A Kenya-Italy Debt-for-Development Program

At the end of 2002, Kenya's external debt stood at US$5.1 billion, 32.2 per cent of which was bilateral debt. The International Monetary Fund ('IMF') recommended that debt sustainability in Kenya could be achieved by 'partial substitution of domestic debt by increased inflows of external grants and concessional loans' plus debt rescheduling.[27] Kenya was eligible to participate in a debt-for-development agreement with Italy following two debt-rescheduling agreements through the Paris Club in 2001 and 2004.

In October 2006, Italy and Kenya signed a debt-for-development agreement to the value of €44 million over 10 years. The program's objectives are to foster economic growth, increase employment and work towards poverty alleviation.[28] The agreement supports community based projects, seeks to address the causes of poverty, and promotes direct beneficiary participation in national poverty reduction strategies in six designated regions in Kenya.[29] Four areas are

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23 'Italy Agree to Carry Out Debt-Swap for Aceh Reconstruction', *Jakarta Post* (Jakarta), 9 March 2005.

24 Zakki P Hakim, 'Post-Tsunami Deal on Debt Swap Signed', *Jakarta Post* (Jakarta), 10 March 2005.

25 'Government Secures Debt Swap with Italy', *Jakarta Post* (Jakarta), 10 January 2009.

26 In 2003, Italy signed a debt exchange agreement with Yemen by which Italy agreed to allow US$15.9 million of bilateral debt owed by Yemen to be used to finance development projects under the framework of its Poverty Reduction Strategy: 'Italy and Yemen Finalize Debt-for-Development Agreement', *Yemen Times* (Sana'a), September 15 2003. In 2008, Italy undertook a debt-for-development exchange with Pakistan for US$100 million focused upon rural development, poverty alleviation and education. A joint government monitoring body will assess and approve the specific projects to be undertaken: 'Pakistan: Italy Converts $100 million Debt into Aid', *Andkronos International*, 4 April 2008 <http://www.adnkronos.com/AKI/English/Politics/?id=1.0.2039459866> at 17 August 2009.

27 International Monetary Fund, *Kenya: Debt Sustainability Analysis* (2003) <http://www.kiddp.org/docs/Debt%20sustainability%20kenya.pdf> at 17 August 2009.

28 Kenya-Italy Debt for Development Program, 'Introduction' <http://www.kiddp.org/intro.html> at 17 August 2009.

29 Nirobi, Kilifi, Tharaka, Nyandyra, Suba and West Pokot.

earmarked for support under the debt-for-development agreement: water and irrigation, health, education and vocational training, and the upgrading of slums. Designated funds are to be paid annually, in local currency, into an ad hoc counterpart fund of the Central Bank of Kenya.[30] Article II (6) of the agreement states that 'all amounts spent by selected projects shall be considered as cancelled by the Italian government'.[31] Therefore, under the agreement, Kenya in effect is able to repay the principal on its loans from Italy by spending the equivalent amount in local currency on national development projects.

Implementation of programmes under this debt-for-development agreement is overseen by three inter-ministerial bodies: a steering committee, technical committee and secretariat.

The Steering Committee is composed of representatives of the Kenyan Ministry of Finance, the Kenyan Ministry of Planning and National Development and the Italian Embassy. The Steering Committee is responsible for defining the priority areas for intervention, approving initiatives to be financed, supervising implementation of initiatives and controlling the management of the counterpart fund.[32]

The National Technical Committee draws its members from Kenyan national and local governments, from civil society and from the Italian Cooperation for Development.[33] Its role is to provide a technical assessment of proposed initiatives, which it presents to the Steering Committee with recommendations.[34] It also monitors the implementation of agreements.

The Secretariat is comprised of a Kenyan director and an Italian appointed coordinator. It is in charge of the day-to-day running of the programme. It implements resolutions, decisions and directives of the Steering Committee, and authorises distribution of funds.[35] Suggestions for projects are made through District Development Committees, which also coordinate the implementation of approved projects.

In the area of education, funding from the Kenya-Italy Debt-for-Development Program ('KIDDP') has focused upon the vocational training sector through Youth Polytechnics (vocational training centres). Polytechnics are regional facilities that focus on education for local requirements in areas such as carpentry, metal work and animal husbandry. KIDDP has aligned its priorities

30 Kenya-Italy Debt for Development Program, 'Financing Procedures' <http://kiddp.prg/finan.html> at 17 August 2009.

31 *Agreement on Debt-for-Development Swap Between the Government of the Italian Republic and the Government of the Republic of Kenya* (2006) <http://www.kiddp.org/docs.html> at 17 August 2009.

32 *Regulation Scheme of the Agreement on Debt-for-Development Swap Between the Governments of Italy and Kenya* (2006) <http://www.kiddp.org/docs.html> at 17 August 2009.

33 The Italian Co-operation for Development is an organisation within the Ministry of Foreign Affairs that works to alleviate poverty and support institutional growth within developing countries through supporting development programs globally through public/private partnerships. See Co-operazione Italiana allo Sviluppo, <http://www.cooperazioneallosvillupo.esteri.it> at 17 August 2009.

34 *Regulation Scheme of the Agreement on Debt-for-Development Swap Between the Governments of Italy and Kenya*, above n 32.

35 Ibid.

with those of the National Policy for Youth Polytechnics and the Vocational Training Sector Plan of the Ministry of State for Youth Affairs. The focus is upon capacity building, curriculum implementation, provision of training equipment, and rehabilitation of infrastructure. The aim is to improve the resources and teaching capacity of 50 polytechnics within the six designated regions and during the 10 years of the programme.[36]

In the water sector, selected projects seek to increase access to safe water and sanitation services, particularly in rural areas. In the health sector, projects are aligned with National Health Sector Strategic Plan. The aims are to increase access to health services in rural areas through community health projects and to improve the quality of those services through the provision of equipment and upgrading of health facilities. The training of community members is also a priority to create, train and equip a body of community health workers.[37]

The final priority sector is the upgrading of slums, particularly the Korogocho slum in Nairobi with an estimated population of 120,000. The goal is to improve the quality of life in the slum and enhance welfare and security.[38] The objectives of the program are to gain a detailed appreciation of Korogocho, build the capacity of actors and institutions within the community, prepare a sustainable plan for upgrading, provide land tenure and implement visible improvements.[39] A Residents Committee was elected in August 2008 to represent the community. Consultations have since taken place between community organisations, faith based organisations and government.[40] The boundary of Korogocho and its eight villages have been mapped, a footbridge has been built to connect the slum with the neighbouring community, and work has begun on a community office.[41]

In 2007 and 2008, seven water projects, seven education projects and three health care projects were implemented. One year into the programme, Joseph Kinyua, Permanent Secretary of Treasury, said:

> I wish to encourage other development partners to borrow a leaf from the Government of Italy and consider this innovation, in order to release additional resources to find programmes that will enable us to achieve the MDGs [Millennium Development Goals].[42]

In general, the KIDDP has been directed towards significant areas of developmental need within Kenya and appears to have been well operated and generally effective. The selection of projects has tended to avoid those that

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36 Kenya-Italy Debt for Development Program, *Kenya-Italy Debt-for-Development Programme Support Towards the Kenya Vocational Training Sector*, 10, <http://www.kiddp.org/docs.html> at 17 August 2009.

37 Kenya-Italy Debt for Development Program, *Brochure* (2008) 8 <http://www.kiddp.org/docs.html> at 17 August 2009.

38 Korogoch Slum Upgrading Programme, 'Goals and Objectives' <www.ksup.org/about.php> at 17 August 2009.

39 Ibid.

40 Kenya-Italy Debt for Development Program, above n 37, 19.

41 Korogoch Slum Upgrading Programme, 'Projects' <www.ksup.org/projects.php> at 17 August 2009.

42 Kenya-Italy Debt for Development Program, above n 37, i.

provide high profile photo opportunities for donors, in favour of those, such as enhancing access to water and upgrading of slums, that are more likely to make a real difference to the lives of local people. In addition, the governance arrangements in which at a range of levels Kenyan and Italian officials work closely together are well adapted to facilitate the transfer of knowledge and skills that can be an important collateral benefit of well structured aid programs.

B Egypt-Italy Debt-for-Development Program

In 2001, Italy signed a US$149 million debt-for-development agreement with Egypt, to be conducted over five years. This was the fourth debt-swap arrangement Egypt had participated in, following agreements with France (1994), Switzerland (1995) and Germany (2001).[43] The Italian Cooperation for Development explains Italy's willingness to enter into this agreement in terms of the significant relationship between the two nations: Italy is Egypt's second largest export market, and the fifth largest source of imports into Egypt.[44] The Italy-Egypt Debt Swap Agreement ('IEDSA') focused on three objectives: human development, poverty alleviation and environmental protection. Applicants eligible for grants under the program were Egyptian Public Institutions, Egyptian NGOs, Italian NGOs and United Nations Agencies.[45] The exchange simply redirected otherwise scheduled debt repayments away from Italy and into a special fund in the Bank of Egypt designated for mutually agreed development projects. In other words, under this agreement, Egypt still had to repay its debts, but the repayments were redirected in their entirety towards development projects within Egypt. The agreement was initially for 2002 to 2007, but the end date was extended to December 2008 to allow for the completion of projects that had experienced delays.[46]

In total, 53 projects were financed by the IEDSA.[47] Project areas that received funding were the environment, water resources, rural development, poverty, youth and children, health, women's development and information, communication and technology ('ICT'). Preference was given to projects in areas in which Italy had conducted successful domestic programs, in order to exploit the creditor country's expertise. These areas included the promotion and protection of cultural assets, environmental management, education, and small and medium enterprises.[48]

The IEDSA was overseen by a Management Committee and supported by a Technical Support Unit. The Management Committee was comprised of the

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43 Italian Cooperation in Egypt, 'The Italian-Egyptian Debt-for-Development Swap' <http://www.utlcairo.org/english/progetti/progetti/16_debtswap_main.html> at 17 August 2009.

44 Italian Cooperation in Egypt, *Italy and Egypt: Cooperation Between Two Ancient Civilizations* (February 2007) 1 <http://www.utlcairo.org/english/brochure%20en%20mar07.pdf> at 23 February 2009.

45 Italian Cooperation in Egypt, above n 43.

46 Italy-Egyptian Debt-for-Development Swap Program (IEDSA), *Annual Report* (2008) 6 < http://www.utlcairo.org/stampa/DS1_final_report2008.pdf> at 17 August 2009.

47 For further information on specific projects, see ibid.

48 Italian Cooperation in Egypt, above n 44, 3.

Ambassador of Italy and the Egyptian Minister of International Cooperation, assisted by experts in development and representatives of Egyptian Ministries and the Bank of Egypt.[49] The Management Committee was responsible for selecting programs, monitoring the implementation of the agreement and reviewing the results. The Technical Support Unit supported the Management Committee by monitoring and implementing the agreement, and transferring funds.[50] Development projects were undertaken throughout Egypt, with a specific focus upon poorer areas.[51]

Environmental and rural development projects received the highest level of funding. The projects undertaken were diverse, from the development of a sustainable area management plan to biodiversity research, solid waste management and management of protected areas.[52] The Wadi El Hitan Museum was established under the IEDSA and later nominated by UNESCO as a World Heritage natural site.[53] Funded rural development projects focused upon increasing productivity and access to markets, as well as fostering organic agriculture.[54]

Projects funded by the agreement in the area of ICT have been lauded as being particularly successful.[55] ICT projects were funded not only to increase the availability of technology throughout the country, but also to provide the training required to use it. While only five per cent of the IEDSA budget was spent on ICT, the programs have been heralded for supporting technological development across the country and increasing computer literacy.[56]

Egypt's projects also created new economic and social opportunities for underprivileged groups such as women, low waged and low skilled workers and those in rural communities. The Smart Schools Network Project and Mobile IT Club projects provided ICT access to member of rural communities,[57] and broader access to educational materials was achieved through the Electronic Library Project and the Community Portal Development Project.[58]

Overall, the IEDSA was considered to be a great success by both Egyptian and Italian officials. The Italian Ambassador to Egypt, His Excellency Claudio Pacifico, has claimed the outcomes achieved validated the debt exchange approach, and that debt-for-development exchanges serve as a potent demonstration of a positive partnership in development.[59] There has, however,

49 Samir Radwan, Sherif Kamel and Nivine El Oraby, *Partners for Development: The Experience of the Italian-Egyptian Debt Swap Program (2001–08)* (2008) 26 <http://www.utlcairo.org/stampa/Final%20study%20IEDS.pdf> at 17 August 2009.
50 IEDSA, above n 46, 9.
51 The Delta, Greater Cairo and Giza.
52 Radwan, Kamel, El Oraby, above n 49, 35–8.
53 IEDSA, above n 46, 82–3.
54 Radwan, Kamel and El Oraby, above n 49, 41.
55 Ibid 13.
56 Kamel and Tooma, above n 14, 3.
57 Radwan, Kamel and El Oraby, above n 49, 44.
58 Ibid 47–8.
59 Ibid 11.

been criticism of some areas of the agreement particularly of the failure to involve local communities at the project design stage and of bureaucratic delays in government procedures.[60]

However, on balance, the development programs appear to have been particularly successful in the areas of slum upgrading, community development and youth rights and in fostering ICT literacy. The implementation of the debt exchange has further illustrated the success of programs that are 'decentralized, participatory, and integrated'.[61]

C Conclusion: Italian Debt-for-Development Swaps

The Italian Cooperation in Egypt stated that 'the Italian debt-for-development swap is considered as a model of co-operation, which is to be imitated and replicated'.[62] Since the conclusion of the first IEDSA, Italy has demonstrated its willingness to participate in further debt-for-development exchanges. In light of the positive outcomes of the first exchange agreement, a second debt-for-development agreement was signed with Egypt in 2007 for a four year period, to the value of US$100 million. The focus will be upon developing export markets for Egyptian agricultural products, encouraging collaboration between the Egyptian and Italian private sectors, supporting the development of basic industries, and enhancing the reforms in the ICT sector.[63]

Italy's debt exchanges in Kenya have been likewise well targeted and conducted. All of Italy's programs are characterised by a high degree of transparency in which the executed versions of all important documents are posted on the Italian Government website, and information generally is made freely available.

IV SPAIN

In 2004, the Spanish President announced that Spain's commitment to debt relief extended beyond the HIPC initiative and committed it to be 'actively involved in debt swap operations for social development, especially in the area of primary education'.[64] In 2005, the Spanish Minister for Foreign Affairs reiterated Spain's commitment 'to find innovative and additional sources of financing of development'. He announced Spain was 'working on a plan to swap debt for public investment in key areas for human development in Latin American

60 Ibid 61–2.
61 Ibid 62.
62 Italian Cooperation in Egypt, above n 44, 6.
63 Radwan, Kamel and El Oraby, above n 49, 26.
64 UNESCO Working Group on Debt Swaps for Education, above n 1, 10.

countries'.[65] Spain has implemented this commitment through debt-for-education exchanges.

In 2003, the Ibero-American Conference on Education called on Heads of State to look at converting debt into funds for education, and in 2005 the Ibero-American Pact for Education had, as a goal, the promotion of techniques for debt-for-education exchanges.[66] Spain's commitment to debt-for-education exchanges is in line with this pact.

Debt-for-education exchanges have been pursued to meet commitments under the MDGs for universal primary education. In 2007, 72 million children worldwide were still not enrolled in primary education, and, in 2006, aid for basic education represented only 2.6 per cent of overall Official Development Assistance ('ODA').[67] In 2003, the Ministers of Education of Argentina, Brazil and Venezuela and the President of Peru encouraged UNESCO to take a leading role in promoting debt-for-education exchanges. The result was the adoption of a resolution creating a working group for debt-swaps for education at the 33rd session of the General Conference of UNESCO in 2005.[68] The working group has since met twice to exchange lessons learned from past debt-for-education exchanges and to formulate guidelines for best practices.

UNICEF had been a pioneer in investing in education through debt exchanges – exchanges it sponsored retired almost US$200 million of debt between 1989 and 1995 for education and other development focused programs. UNICEF has not participated in debt exchanges since 1995, and bilateral debt swaps have emerged as a greater source of education funding.[69] Although the UNESCO working-group, unlike UNICEF, has no funding base through which to pursue debt-for-education exchanges directly, its formation has been encouraged as a means to assess implementation, foster facilitation between nations and develop best practice models.[70] While Germany and France are active in the field of debt-for-education exchanges, the working group on debt-for-education exchanges has modelled its best practice guide for debt exchanges on those undertaken by Spain.[71]

In 2005, Spain signed a four-year debt-for-education swap of US$100 million with Argentina. The funds swapped under the agreement were transferred to the Education Ministry with the stipulation that they be in addition to the annual

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65 Speech by the Spanish Minister of Foreign Affairs and Cooperation at the 60th period of sessions of the United Nations General Assembly, New York, United Nations, 2 September 2005, available at <http://www.pnac.es/IDIOMAS/en-GB/AboutTheAoC/Statements/mae20050920en.htm> at 17 August 2009.

66 'What Are Debt-for-Education Swaps?', Working paper for the UNESCO Working Group on Debt Swaps for Education (2007) 13 (copy on file with author).

67 United Nations, *Millennium Development Goals Report* (2009) 15; UNESCO Working Group on Debt Swaps for Education, above n 1, 2.

68 UNESCO Working Group on Debt Swaps for Education, above n 1, 3.

69 Melissa Moye, *Overview of Debt Conversion* (2001) 13–14.

70 Ruiz, above n 18, 25.

71 UNESCO Working Group on Debt Swaps for Education, above n 1, 7.

education budget.[72] An oversight committee, with representation from both governments, undertakes the supervision, monitoring and evaluation of the agreement.[73] The funds from the agreement were allocated to two existing scholarship schemes for students of impoverished families to complete lower-secondary education. The funds provided textbooks and teaching materials, as well as additional income to families of poorer students.[74] While the amount of debt cancelled by the agreement was negligible in comparison to Argentina's total external debt of US$190 billion, the funds represented an extraordinary 10 per cent of public expenditure on non-salary components of public education.[75]

In 2005, Spain also signed debt-for-education agreements with Ecuador for US$50 million and with El Salvador for US$10 million. The funds in El Salvador were directed towards the purchase of educational materials and the construction and renovation of facilities in impoverished regions.[76] Since then, Spain has entered into debt-for-education exchanges with Honduras for US$138.3 million, Bolivia for US$72 million and Peru for US$11 million and €6 million.[77] In 2007, Spain signed an agreement with Paraguay to exchange US$10 million of debt for investment in education. These funds were included in the 2009 Budget of the Ministry of Education and Culture. Part of the funds will go towards the Government's planned investment in education infrastructure.[78]

Spain's initial debt exchanges were solely with Latin American countries, but it has recently signed an agreement with Ghana. In March 2009, Spain and Ghana entered into a debt-for-education swap for US$46.36 million over a seven year period. The money will be deposited in a debt-for-development swap trust fund. A Joint Government Committee will be established to determine which sectors will benefit from the funds diverted by the agreement.[79]

Spain's debt exchange activities have been targeted towards promoting education and generally have been conducted efficiently and transparently. They can serve as a useful model for the structuring and implementation of debt-for-education exchanges for other donor nations interested in the promoting education.

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72 Carlos Aggio, *A Case Study on Debt Conversion: Spain and Argentina*, A background paper prepared for the Education for All Global Monitoring Report (2005) 3 <http://www.oei.es/deuda/145999e.pdf> at 8 March 2009.

73 Ibid 4–5.

74 Ibid 4.

75 Ibid 5.

76 *What are Debt-for-Education Swaps?*, above n 66, 16.

77 UNESCO Working Group on Debt Swaps for Education, above n 1, 5.

78 Natalia Ruiz Dias, 'Paraguay Debt-for-Education' (2009).

79 David Adaevoh, 'Spain to Provide $46.36 Million Debt-Relief to Ghana', *Modern Ghana News* (Accra), 9 March 2009.

V GERMAN DEBT-FOR-DEVELOPMENT SWAPS

Germany was one of the first countries to use debt exchanges to promote debt relief and development efforts, having done so since 1993. By the end of 2008, Germany had signed debt exchanges with 19 countries to a face value of €1.36 billion. These agreements waived €737 million of bilateral debt.[80]

The German Federal Ministry for Economic Cooperation and Development ('BMZ') selects countries eligible for debt exchanges by looking at the urgency of the need for debt relief, the political conditions in the debtor nation, previous cooperation in debt management, and the current educational initiatives and poverty reduction measures of the debtor nation.[81] The BMZ's budget is allocated through German budgetary regulations, and the German government has to approve the debt to be exchanged.[82] Going forward from 2008 on, €150 million of bilateral debt has been earmarked for debt exchanges each year.

The BMZ states that 'funds released as a result of debt relief must be used to combat poverty and promote sustainable development'.[83] Sectors eligible for investment include environmental and resource protection, education, and general poverty reduction.[84] German debt-for-development swaps involve a substantial element of debt forgiveness, with typically only 20 per cent to 50 per cent of the debt cancelled being required to be invested in local currency in development projects.[85]

Germany has cancelled US$7.1 billion face value of debt under the extended HIPC initiative.[86] Given this extensive debt cancellation, debt exchanges are no longer required with HIPCs. However, the scope of debt exchanges Germany may undertake has recently been expanded. Until 2008, only debt rescheduled by the Paris Club was eligible for German debt-for-development exchanges, but this rule has recently been amended to permit the exchange of non-restructured debt. This important legislative change allows debt exchanges to be undertaken with countries that are not defined as low or lower-middle income countries.[87]

Kathrin Berensmann attributes the success of German debt-for-development agreements, specifically in Jordan and Indonesia, to the way in which they have been developed in line with the national development strategies of debtor nations.[88] The first exchange between Germany and Indonesia was signed in

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80 German Federal Ministry for Economic Cooperation and Development (BMZ), Debt-for-development swaps <http://www.bmz.de/en/issues/DebtRelief/instrumente/dept_swaps.html> at 17 August 2009.

81 Kathrin Berensmann, *Debt Swaps: An Appropriate Instrument for Development Policy? An Example of German Debt Swaps* (2007) 15.

82 Ibid 14.

83 German Federal Ministry for Economic Cooperation and Development, 'Background: Debt Holds Back Development' <www.bmz.de/en/issues?DebtRelief/hintergrund/index.html> at 17 August 2009.

84 German Federal Ministry for Economic Cooperation and Development, above n 80.

85 Berensmann, above n 81, 14.

86 German Federal Ministry for Economic Cooperation and Development, 'The German Contribution to the HIPC Initiative' <http://www.bmz.de/en/issues/DebtRelief/instrumente/hipc_initiative/taking_stock.html> at 6 June 2006.

87 German Federal Ministry for Economic Cooperation and Development, above n 80.

88 Berensmann, above n 81, 17.

2002. Germany forgave €25.6 million on condition that 50 per cent of the debt forgiven was invested in education. The funds were designated for improving facilities in primary schools in 17 provinces, and reached approximately 33,000 schools.[89] Indonesia, although not a HIPC, had developed an interim Poverty Reduction Strategy Paper in order to qualify for preferential loans from the World Bank.[90] The debt swap was undertaken in line with Indonesia's national development strategy, which defines education as a priority.[91]

Similar debt exchanges have been undertaken by Germany with Jordan to target sectors outlined in its national development strategy: water sanitation, education and poverty reduction. Between 1992 and April 2006, Germany signed debt exchange agreements with Jordan amounting to €213.6 million. This represented 59 per cent of Jordanian foreign currency denominated debt owed to Germany at the end of 2005, thus having a significant impact on debt reduction (which is rare for debt-for-development exchanges).[92]

A German Debt-For-Nature Agreements

In 1996, Germany signed a debt-for-nature agreement with the Philippines, in which it agreed to cancel DM12.8 million of bilateral debt in exchange for the Philippines investing 30 per cent of the debt in local currency in a Community Forest Program.[93] Environmental conservation was similarly the focus of a debt swap worth DM10 million with Peru in 1999.[94] Germany has since expanded the notion of 'debt-for-nature' beyond environmental concerns, such as forest conservation to address needs in poor countries for water and sanitation.[95]

In 2000, the Malagasy Government established a Sustainable Financing Commission to design a sustainable financing strategy for Madagascar's third Environmental Program. The Commission identified bilateral debt exchanges and HIPC debt relief as promising financing mechanisms. Madagascar had already benefited from debt-for-nature exchanges: between 1989 and 1996 Conservation International, the Missouri Botanical Garden and the World Wildlife Fund

89 German Federal Ministry for Economic Cooperation and Development, 'Debt Swap Between Indonesia and KfW: Debt Release in Favour of Basic Education' (Press Release, 4 December 2002), <http://www.kfw.de/EN_Home/Presse/PressArchiv/bis11.2005/Pressemitteilung22335.jsp> at 17 August 2009.

90 German Federal Ministry for Economic Cooperation and Development, 'Indonesia: Situation and Cooperation' (October 2007) <www.bmz.de/en/countries/partnercountries/indonesien/cooperation.html> at 17 August 2009.

91 Berensmann, above n 81, 17.

92 Ibid 16. Berensmann cautions against the comparison of these figures because the terms of the current FC-related claims do not coincide with the terms of debt swapped, although she concludes it 'does provide an indication of the significance of the debt swapped'; Maurer, above n 6.

93 Amanda Lewis, 'The Evolving Process of Swapping Debt for Nature' (1999) 10(2) *Colorado Journal of International Environmental Law and Policy* 442.

94 Alberto Paniagua V, 'Bilateral Debt-for-Nature Swaps: The Profonanpe Experience – Peru', Vth World Parks Congress Sustainable Finance Stream (September 2003) Durban, South Africa, 5.

95 William Reilly, 'Using International Finance to Further Conservation: The first 15 years of debt-for-nature swaps' in Chris Jochnic and Fraser Preston (eds), *Sovereign Debt at the Crossroads* (2006) 211.

('WWF') negotiated nine debt-for-nature exchanges utilising commercial bank debt with a face value of US$11.7 million.[96]

In 2003, Germany introduced Madagascar to bilateral debt-for-nature exchanges. Germany agreed to cancel €23.3 million in exchange for the equivalent of €13.8 being invested in local currency in environmental conservation over 20 years.[97] Under the debt exchange agreement with Germany, the funds were invested in the Madagascar Foundation for Protected Areas and Biodiversity and the National Association for Management of Protected areas.[98]

In 2001, Germany cancelled DM 60 million of debt owed to it by Peru in exchange for the equivalent of DM 24 million in local currency being invested by Peru to alleviate poverty in farming communities. Mutually agreed projects included the provision of seeds for planting and the enhancement of processing of agricultural products and improvement of rural infrastructure. The aim was to encourage farmers into alternative revenue sources that were not dependent on illicit drug cultivation.[99] By 2004, Germany had engaged in similar debt-for-nature exchanges with Bolivia, Ecuador, Honduras, Jordan and Vietnam.[100]

Most recently, Germany has undertaken a number of debt exchanges with Indonesia. In 2004, Germany and Indonesia entered into a debt-for-environment agreement in which US$29.25 million of debt was cancelled.[101] A second exchange for environmental purposes was signed in 2006, with €6.25 million allocated to be spent over a four-year period. The program aimed to increase Indonesian environmental quality through funding aid for micro and small businesses. The money was to be distributed through an environment soft loan program, overseen by an Indonesian financial institution, PT Bank Syariah Mandiri.[102] All debt-for-developments swaps between Indonesia and Germany are monitored by the Jakarta branch of the German Development Bank (KfW).[103] Indonesia and Germany have suggested there may be further debt-swap agreements to curtail the effects of climate change and limit the level of deforestation,[104] and in early 2009 the deputy to the Coordinating Minister for the

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96 Melissa Moye and Jean-Paul Paddak, *Madagascar's Experience with Swapping Debt for the Environment: Debt-for-nature Swaps and Highly Indebted Poor Country (HIPC) debt relief* (2003) 5 <www.cbd.int/doc/external/wwf/wwf-madagascar-en.pdf> at 17 August 2009.

97 Ibid 9.

98 Ibid.

99 KFW, 'KfW and Peru Sign Agreement on Debt Conversion' (Press Release, March 2001), <http://www.kfw.de/EN_Home/Presse/PressArchiv/bis11.2005/Pressemitteilung22291.jspp> at 17 August 2009.

100 Matthias von Bechtolsheim, *Promotion of Developing Countries: Debt for Nature Swaps in German Financial Co-operation* (2004).

101 Tony Hotland, 'RI, Germany Agree US$29.25 debt swap deal', *The Jakarta Post* (Jakarta), 15 May 2004.

102 Republic of Indonesia, 'Debt-for-nature swap program on environmental investment for micro and small businesses' (Press Release, 3 October 2006).

103 Hotland, above n 101.

104 Tony Hotland, 'RI-Germany Eye Cooperation Around Renewable Energy Sources' *The Jakarta Post* (Jakarta), 28 February 2008, 3.

Economy, Mehendraw Siregar, confirmed that Indonesia was in negotiation with Germany for a €20 million debt exchange.[105]

Germany's debt exchange programs appear to have been well targeted and effectively administered. However, information on the programs is not easy to attain and the German Government does not appear to be committed to conducting the programs in a transparent manner. It is almost as if Germany believes these programs are the business only of itself and the recipient government. A greater commitment to transparency would, at the least, allow other nations to benefit from Germany's experience as well as serving as a useful check against potential abuses or inefficiencies in their programs. This is not to suggest that there have been abuses or inefficiencies, nor is there any evidence of the same. However, there is much to be said for the adage that underpinned the design of US securities regulation in the 1930s, and which the US financial system, to its great detriment, moved away from in the years leading up to the GFC: that 'sunlight is the best disinfectant'.[106]

B Debt2Health

The Global Fund to Fight AIDS, Tuberculosis and Malaria currently funds two-thirds of the measures to combat malaria and tuberculosis worldwide and a third of the global spending on HIV/AIDS.[107] In September 2007, it unveiled its Debt2Health initiative.[108] Germany was the first national participant in the initiative, and the sole contributor until Australia recently announced a commitment to cancel Indonesian debt in return for investment in the Global Fund.[109] The Executive Director of the Global Fund, Dr Michel Kazatchkine, in launching the program noted that

> a significant number of countries which do not qualify for debt relief through existing multilateral initiatives still spend as much as one-fifth of their export earnings on servicing debt while at the same time struggling with a high disease burden.[110]

The first agreement undertaken in the Debt2Health program was between Germany and Indonesia. Germany pledged to cancel €50 million of debt provided Indonesia invested the equivalent of €25 million in the Global Fund. This is the first trilateral debt exchange Germany has undertaken, and it has promised to commit €200 million over four years in support of Debt2Health.[111] Germany signed a second agreement under the Debt2Health initiative with

105 'Government Secures Debt Swap with Italy', *The Jakarta Post* (Jakarta), 10 January 2009.

106 Louis Brandeis, *Other People's Money – and How the Bankers use it* (1914) 92.

107 German Federal Ministry for Economic Cooperation and Development (BMZ), *Promoting Health – Fighting HIV/AIDs* (2007) 23, <http://www.bmz.de/en/service/infothek/fach/materialien/Materialie178.pdf > at 17 August 2009.

108 German Federal Ministry for Economic Cooperation and Development, 'Debt conversion initiative Launched to Fund Health Programs' (Press Release, 26 October 2007).

109 Australian Government, 'Australia Converts Commercial Debt to Indonesia into Health Programs' (Press Release, 28 May 2009) < http://www.theglobalfund.org/en/pressreleases/?pr=pr_090528> at 17 August 2009.

110 Ibid.

111 Ibid.

Pakistan in November 2008. Germany agreed to forgo €40 million in debt repayments under an agreement by which Pakistan agreed to invest €20 million with the Global Fund. Annual payments of €5 million will be made by Pakistan, commencing in 2009.[112]

The real benefits of trilateral exchanges lie in enforceability and transparency. A commitment by Indonesia to pay €25 million to the Global Fund to Fight AIDS, Tuberculosis and Malaria within Indonesia is far more enforceable and transparent than a similar commitment by Indonesia to invest these resources to achieve these ends. In the former case, nothing less than a funds transfer to the Global Fund will discharge the obligation. In the latter, it is up to the Indonesian Ministry of Health to seek to ensure the Ministry of Finance pays the money, which politically may be difficult as Finance Ministries tend to be powerful institutions, and it is open to the Ministry of Health to identify measures as being undertaken in pursuance of this commitment which would have been funded anyway.

C Conclusion: Germany's Debt Swaps

Germany has committed to achieving the MDGs in its *Program of Action 2015*. Its support of the Debt2Health initiative is explained as a measure to fulfill this commitment.[113] The use of debt exchanges in the designated sectors of the environment, education and poverty reduction are in line with a commitment to meet the MDGs and expand debt relief beyond the HIPCs to reach lower-middle income countries. At the International Conference on Financing for Development in 2002, in Monterrey, Mexico, developed countries examined how to mobilise the necessary resources to meet the MDGs with the resultant Monterrey Consensus of a pledge to increase ODA.[114] In line with the consensus, Germany has set a timetable to achieve an increase in ODA as a proportion of Gross National Income to 0.7 per cent by 2015.[115] Debt exchanges can thus be seen as an initiative of the German Government in line with these commitments and as measures to increase aid effectiveness.

In 2008, the BMZ highlighted the adoption of budget support as a tool for increasing aid, whereby the funds would be channeled directly to the national budget of partner countries, with payments contingent upon the fulfillment of agreed upon disbursements.[116] Budget support aims to reduce the costs of project-based financing, facilitate increased public spending and improve the level of

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112 *German Financial Co-operation with Pakistan* (30 November 2008) <http://www.theglobalfund.org/documents/innovativefinancing/DE-PK.pdf> at 17 August 2009.

113 German Federal Ministry for Economic Cooperation and Development, above n 107, 11.

114 German Federal Ministry for Economic Cooperation and Development, *Summary of the 12th Development Report* (May 2005) 7 <http://www.bmz.de/en/service/infothek/fach/materialien/materialie149.pdf> at 17 August 2009.

115 Ibid 19.

116 German Federal Ministry for Economic Cooperation and Development, *Budget Support in German Development Policy: A Contribution to Increase Aid Effectiveness* (2008) 6 <http://www.bmz.de/en/service/infothek/buerger/Budgethilfe.pdf> at 17 August 2009.

joint policy dialogue.[117] The BMZ noted that the use of budget support as a development tool represents a contribution to the achievement of MDGs and is in line with the Paris Declaration on Aid Effectiveness of 2005.[118] The Paris Declaration established five key principles for enhancing aid effectiveness: ownership, harmonization, alignment, results and mutual accountability. Budget support is perceived as a measure specifically in support of strengthening partner country ownership.[119] In an assessment of German debt exchanges, Berensmann advocated an increase in their scope and noted the potential to move beyond funding of individual projects to the use of debt exchanges as a tool for budgetary support.[120] The expansion of debt exchanges in this way would certainly assist Germany in meeting its development commitments.

VI FRENCH DEBT CANCELLATION AND DEVELOPMENT CONTRACTS

France was involved in numerous debt exchanges in the 1990s. The largest debt exchanges were a debt-for-equity exchange with Morocco to the value of FF600 million which sought to foster economic and social development through increased French investment[121] and a debt-for-development swap with Egypt worth FF58 million in 1993.[122] More recent debt exchanges have included agreements with Jordan for US$15.3 million to be invested in poverty-reduction programs,[123] and with Madagascar for US$20 million to be invested in the Madagascar Foundation for Protected Areas and Biodiversity in 2008.[124]

However, of late France has routinely used debt exchanges primarily as a mechanism to meet additional commitments undertaken by the G7 for debt relief to HIPC nations.[125] The enhanced HIPC will provide US$39.4 billion in debt relief to highly indebted countries in present-value terms,[126] to reduce debt in HIPC countries by 49 per cent and their debt service by 56 per cent.[127]

117 Ibid 2.
118 Ibid 19.
119 Ibid 8.
120 Berensmann, above n 81, 21-2.
121 Moye, above n 69, 11.
122 Kamel and Tooma, above n 14, 17.
123 Rana Awwad, 'France Signs Debt-Swap Agreement with Jordan', *Jordan Times* (Amman), 7 March 2002.
124 WWF, 'Monumental French Debt-for-Nature Swap' (Press Release, 13 June 2008).
125 In January 2000, all G-7 countries agreed to cancel all bilateral debt to the HIPC countries. See France-Diplomatie, 'The C2Ds, a Funding Instrument under the APSFs' <http://www.diplomatie.gouv.fr/en/france-priorities_1/governance_6058/financial-governance_6397/the-c2ds-funding-instrument-under-the-apsfs_11332.html> at 17 August 2009.
126 The present value of debt is calculated using the cost of borrowing export credits from OECD governments: Matthew Martin, 'Assessing the HIPC Initiative: The Key Policy Debates' in Jan Joost Teuissen and Age Akherman (eds) *HIPC Debt Relief – Myths and Reality* (2004) 12–14.
127 Ibid.

Under France's scheme of Debt Cancellation and Development Contracts ('C2Ds'), the debtor nation still repays the debt to France, but the money is then re-invested in the debtor country through grants allocated to projects that have been agreed on by both countries. With the aim of reducing poverty, potential beneficiary sectors are primary education and vocational training, health and the fight against major epidemics, the decentralization of infrastructure and the management of natural resources.[128]

Three French government ministries manage C2Ds. The Ministry of Economics, Finance and Industry and the Ministry of Foreign Affairs oversee the financial transactions and the negotiations with the debtor country. The implementation of the C2D is managed by the French Agency for Development ('AFD').[129] Both the French and the debtor governments negotiate the C2D, but the French Government retains substantial influence.[130] In order to better align the partnership around the national strategies of the debtor nation to combat poverty, Partnership Framework documents have been entered into since 2004 with all debtor nations undertaking C2Ds to define the agreed strategy and to be signed by both governments and published.[131]

The C2D mechanism is described by the French Government as a 'donation based refinancing mechanism' with an approach that 'lays emphasis on ownership by the relevant country and partnership by combining civil society participation with effective and foreseeable aid.'[132] The AFD states that the benefits of C2Ds lie in the 'meaningful dialogue' they facilitate with debtor nations about poverty reduction, and the greater accountability they provide to the French Parliament about aid funding.[133]

Twenty-two countries are eligible for C2Ds, with the total debt eligible for refinancing estimated at $US4.6 billion.[134] The C2D is carried out when the nation reaches the completion point of the HIPC process. To date, C2Ds have been signed with nine countries. Mozambique reached its HIPC completion point in 2001 and France agreed to a 100 per cent bilateral debt cancellation of €95 million to be undertaken in two C2D agreements from 2001–4 and 2005–7.[135] Uganda, Bolivia, Tanzania, Mauritania, Ghana, Madagascar, Nicaragua and the Cameroon have also signed C2Ds with France. In Mauritiania, Tanzania and

128 Coumba Fall Gueye et al, *Negotiating Debt Reduction in the HIPC Initiative and Beyond* (2007) 26.

129 Danny Cassiman and Joe Vaessen, *Linking Debt Relief to Microfinance – An Issues Paper*, (International Labour Office, Geneva) 2006, 10.

130 Ibid.

131 France Diplomatie, 'Framework partnership document – Congo (2008–2012)', <http://www.diplomatie.gouv.fr/en/country-files_156/congo_201/france-and-congo_5882/cultural-scientific-and-technical-cooperation_6291/framework-partnership-document-france-congo-2008-2012_11773.html > at 17 August 2009.

132 Ibid.

133 Agence Française de Développment, 'Debt Reduction – Development Contracts, <www.afd.fr/jahia/Jahia/site/afd/lang/en/pid/1163> at 17 August 2009.

134 WWF, 'Central Africa's first debt-for-nature swap helps tropical forests in Cameroon' (Press Release, 22 June 2006).

135 Cassiman and Vaessen, above n 129, 10.

Nicaragua, special focus was on using the funds to support the development of the education sector.[136]

A C2D in Action: Partnership with Cameroon

In 2006, France and Cameroon signed a C2D for €537 million over five years, the largest foreign public development program ever signed by France. The agreement earmarked four sectors for investment: education, health, infrastructure and natural resources.[137] The agreement was the first C2D to allocate funds to protect natural resources, with US$25 million allocated over five years to protect parts of the Congo Basin, the world's second largest tropical forest. The money will be contributed to the Forest and Environment Sector Program,[138] with the funds earmarked for increase in the environmental management of forest activities, community resource management, training and research, and the sustainable management of resources.[139]

The OECD had criticised early C2Ds as providing an uncertain role for participation by NGOs.[140] The agreement with Cameroon addressed this criticism through the creation of a Steering and Monitoring committee, comprised of representatives of both governments, as well as members of civil society and NGOs. This body allocates the resources and monitors the results. The meetings are co-chaired by the French Ambassador to Cameroon and the Cameroon Ministers of Economy and Finance. The meetings are also attended by the European Union Commission's delegation in Cameroon.[141]

Oversight of the agreement is undertaken by two additional administrative bodies. The Bilateral Technical Committee oversees technical and administrative monitoring. It examines the projects and programs proposed and evaluates the research and feasibility. The committee is comprised of representatives of the President of Cameroon and the Minister of Finance, and the Chair of the Technical Committee for Program Monitoring. From France there are representatives of AFD and of the Economic and Cooperation services of the French Embassy in Cameroon. In France there is also a permanent Technical Secretariat for Program Implementation that reports to the minister of Economics and Finance and centralises and consolidates budget and accounting information relating to C2D implementation.[142]

The agreement contains a number of provisions intended to enhance the perception of ownership in Cameroon. All procurement procedures are aligned

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136 UNESCO, above n 1, 5-6.

137 AFD, *AFD in Cameroon: Implementation of Debt-Reduction Development Contract (C2D)* (December 2007) <http://www.afd.fr/jahia/webdav/site/afd/users/administrateur/public/pdf/AFD_Cameroun_GB.pdf> at 17 August 2009.

138 The Cameroon Government department for forest policy.

139 AFD above n 137.

140 Development Assistance Committee, *DAC Peer Review – France* (2004) 15.

141 AFD, above n 137.

142 Ibid.

with national procedures and there is a minimum level for participation of local subcontractors. The funds are allocated over five years, with a focus on improving living conditions, reducing poverty, and enhancing education, the fight against AIDs, healthcare and infrastructure. All contracts relating to the implementation of the agreements contain provisions relating to social and environmental responsibility.[143]

B Conclusion: French Debt-for-Development Exchanges

In contrast to Germany's commitment to debt-for-development exchanges as a tool for debt relief as well as the promotion of development, France's use of Debt Cancellation and Development Contracts reflects a deep unease with debt forgiveness. Using debt exchanges as a tool to meet HIPC commitments, rather than as an instrument to increase debt forgiveness, relegates this instrument to being a way to add further conditions to pre-existing debt relief commitments, instead of a means to generate additional debt relief and increased aid flows to debtor nations. Conceived as a tool to encourage dialogue with debtor nations and foster the participation of civil society, C2Ds offer no additional debt relief forgiveness for countries with unsustainable debt levels but redirect debt repayments into development projects.[144] The OECD has also criticised C2Ds because of the high costs associated with their complex management systems.[145]

In summary, C2Ds stand out as the pre-eminent example of how not to use the debt-for-development mechanism. In France's hands, debt-for-development exchanges have become a way to reduce the sovereignty of developing countries. C2Ds give France control over how the savings will be spent from debt cancellation that France, as a member of the G7 nations and the Paris Club, has all ready committed to extend. It is to be hoped that no other developed nations adopt France's lead and misuse this mechanism in this way.

VII NORWAY

In contrast, Norway has long been a leader within Europe in debt relief for developing nations. In 1998, it developed a Plan of Action on debt relief for developing countries, and was the first OECD country to urge 100 per cent debt cancellation for HIPC nations.[146] In its 2004 *Debt Relief for Development: Plan of Action*, Norway indicated it would 'pursue the Norwegian proposal for bilateral creditors to undertake multilaterally coordinated debt-for-development

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143 Ibid.

144 Richard Moncrieff, *French Development Aid and the Reforms of 1998–2002*, PhD Thesis, School of Humanities, University of Southampton, December 2004, 128.

145 Development Assistance Committee, above n 140, 15.

146 Royal Norwegian Ministry of Foreign Affairs, *Debt Relief for Development: A Plan of Action* (16 April 2004) <http://www.regjeringen.no/en/dep/ud/Documents/veiledninger/2004/Debt-Relief-for-Development.html?id=419443> at 17 August 2009.

swaps'.[147] An attempt to arrange a debt swap with Ecuador in 2004 was however met with protests from civil society organisations in both countries, which claimed that this debt was 'illegitimate' as the money was lent for an irresponsible purpose. Norway lent to Ecuador as part of the Norwegian Ship Export Campaign of 1976 to 1980, which sought to secure employment for the failing domestic ship building industry, at the expense of the needs of the debtor nation.[148] In 2006, Norway responded to these criticisms by cancelling the debt to Ecuador, which had been loaned to purchase vessels built in Norway. The debt was cancelled in recognition that the loans were made by Norway out of self-interest, not responsibly to aid Ecuador's development.[149]

Norway has cancelled US$80 million of debt with Ecuador, Egypt, Peru, Jamaica and Sierra Leone,[150] all of which arose out of export credit for Norway's ship building industry. Burma and Sudan also hold debt to Norway from the Norwegian Ship Export campaign, however Norway has declined to cancel any debt until the internal situation changes in these two nations.[151] In cancelling these debts, Norway has not used the labels of 'illegitimate' or 'odious' debt,[152] but has recognised these debts as a failure of development policy.[153] Debt cancellation has been undertaken as a means to bring an end 'of a dark chapter in the history of Norwegian development cooperation.'[154] Norway was criticised within the Paris Club for breaking creditor solidarity in the unprecedented move of cancelling this debt; however, the Norwegian Minister for International Development, Erik Solheim, indicated that in cancelling illegitimate debt, Norway hoped 'to see more active debate on the creditor countries' political responsibility towards poor countries'.[155] To this end, Norway provided funding to both the United Nations Conference on Trade and Development and the World Bank to research the concept of odious debt in international law.[156] There has been increased public debate on the issue of odious debt, and Ecuador was the first country to convene an official debt audit commission to assess the

147 Ibid.

148 Jubilee USA, 'Recent Developments on Odious and Illegitimate Debt', Briefing Note 5, April 2008, 2.

149 Ruiz, above n 14, 9.

150 Ibid 16.

151 Norwegian Campaign for Debt Cancellation, 'Norway Cancel Illegitimate Debt and Take Co-responsibility for Failed Development Policy' (Press Release, 2 October 2006).

152 Alexander Sack in 1927 defined odious debt as debt contracted against the interests of a population without their consent, accompanied by full awareness of the creditor nation. The concept of illegitimate debt is broader, encapsulating debt resulting from the loss of war, irresponsibly lending, and lending without transparency or participation: Jubilee USA, above n 148, 2.

153 Norwegian Ministry of Foreign Affairs, 'Norwegian Development Assistance in 2008 – priority areas' < http://www.regjeringen.no/en/dep/ud/selected-topics/development_cooperation/norwegian-development-assistance-in-2008.html?id=493308> at 17 August 2009.

154 Norwegian Ministry of Foreign Affairs, 'Norway defends unilateral debt cancellation in the Paris Club' (Press Release, 2 October 2006).

155 Ibid.

156 Both papers were published in 2007 and their findings differed considerably. The UNTCA paper by Robert Howse concluded that odious debt was a concept grounded in Public International Law, whilst the World Bank paper asserted that public international law provides no foundation for the repudiation of debts on the basis of their 'odious nature': Jubilee USA, above n 148, 4.

legitimacy of loans to the country.[157] However, NGOs and international financial institutions have not thus far been successful in agreeing on how to define or tackle the problem of illegitimate and odious debt.[158]

Norway did undertake a debt-for-development exchange in 2006. Debt exchanges were used by the Asian Development Bank ('ADB') as a tool to raise funds for the Pakistan Earthquake Fund. The earthquake in Pakistan in 2005 killed 80,000 people and left 200,000 injured and over 2.6 million people without shelter. The ADB and the World Bank estimated that US$5.2 billion would be necessary to provide aid to the area.[159] Norway contributed US$20 million in November 2006 through a debt-for-development exchange. The funds were committed to the specific target of reconstruction of primary schools.[160]

VIII CONCLUSION

European nations, with the exception of France, have led the way in the use of debt-for-development mechanisms in the past decade. This is consistent with the greater concern they have displayed for the debt burdens under which many developing countries labour. For instance, when the US argued strongly for the total cancellation of Iraq's debt to Paris Club creditors in the aftermath of the Iraq war, France and Germany insisted that the US also support total debt cancellation for HIPC and that debt relief for the much richer Iraq be capped at 80 per cent.[161] This stance of the leading European powers led to the resolution of the G8 nations in 2005 that the IMF, the concessional lending arm of the World Bank and the African Development Fund should totally cancel all of their debts to poor countries that comply with the requirements of the World Bank's debt relief program, the HIPC initiative. This resolution became known as the Multilateral Debt Reduction Initiative ('MDRI'). This total cancellation of debt will certainly assist those nations that receive it, but only 24 nations currently qualify for such total debt cancellation, and only a further 17 can potentially become eligible in the future.[162] The exclusion of so many heavily indebted nations from HIPC makes the debt cancellation offered by debt-for-development exchanges for such nations even more important.

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157 Ibid 2.

158 Alex Wilks, 'World Bank, NGOs Clash at Roundtable on Odious Debt', *Bretton Woods Project*, 26 September 2008.

159 Asian Development Bank, 'Belgium in EURO 10 Million Debt Swap for Pakistan Earthquake Reconstruction' (Press Release, 31 January 2007).

160 Norwegian Ministry of Foreign Affairs, 'Norway to Undertake Debt-for-Development Swap with Pakistan' (Press Release, 3 November 2006). In January 2007 Belgium similarly committed to a debt swap to fund the earthquake relief, to the value of €10 million: ibid.

161 Ross P Buckley, 'Iraqi Sovereign Debt and Its Curious Global Implications' in Heazle and Islam (eds) *Beyond the Iraq War: The Promises, Perils and Pitfalls of External Interventionism* (2006) 141.

162 International Monetary Fund, *A Factsheet: Multilateral Debt Relief Initiative* (January 2009) <www.imf.org/external/np/exr/facts/mdri.htm> at 17 August 2009.

Another recent example of European social conscience in action is Norway's groundbreaking cancellation of sovereign debt on the grounds the loans were made primarily to support its struggling shipping industry, rather than in the best interests of the debtors.[163]

This analysis of European initiated debt-for-development exchanges suggests that this technique offers at least four benefits:

(i) Debt-for-development exchanges promote debt reduction. Debt reduction is critically important for many developing countries, especially for those such as Indonesia and the Philippines that are excluded from the HIPC and MDRI processes, yet still labour under stultifying debt overhangs. For instance, in 2007 Indonesia's total external debt stood at US$137.4 billion, which was 31.7 per cent of GDP, and represented 104.5 per cent of total exports.[164] In 2008, the Philippines' total external debt was US$53.5 billion, which represented 33.4 per cent of GDP.[165]

(ii) Debt-for-development exchanges can make debt cancellation more attractive to donor countries. Exchanges give donor countries considerable control over how the debtor country will spend the funds it no longer has to commit to debt servicing. Well structured exchanges, as seen in many of the transactions considered here, can also promote transparency and accountability in how the savings generated by debt relief are applied.

(iii) Debt-for-development exchanges camouflage debt relief for donor countries. Debt relief is often a politically sensitive topic in donor countries and a debt-for-development exchange can make it more politically palatable.

(iv) Perhaps most importantly, debt-for-development exchanges provide desperately needed funding for development programs in poorer nations. As seen in the transactions analysed, debt-for-development transactions have provided funding for everything from the upgrading of slums to water supplies, from educational projects to those dealing with the provision of information and communications technologies and training.

In contrast, debt-for-development exchanges have few downsides.

One criticism is that exchanges entail a loss of sovereignty for the debtor nation if the debt relief was going to be granted anyway by a donor country, as

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163 See Norwegian Campaign for Debt Cancellation, above n 150; European Network on Debt and Development, 'Norway Makes Ground-Breaking Decision to Cancel Illegitimate Debt' (Press Release, 3 October 2006) <http://www.eurodad.org/whatsnew/articles.aspx?id=302> at 17 August 2009.

164 See International Monetary Fund, *Country Report No 08/299* (September 2008) <http://www.imf.org/external/pubs/ft/scr/2008/cr08299.pdf> at 17 August 2009.

165 *Philippines Quarterly Economic Update – January 2009*, Report for the World Bank <http://siteresources.worldbank.org/INTPHILIPPINES/Resources/PhilippinesQuarterlyEconomicUpdateWorldBankJanuary2009asofJan23.pdf> at 17 August 2009.

the exchange simply gives to the donor country a degree of control over how the saved funds will be expended that it would otherwise not have had. This is the way in which France misuses the mechanism. However, bilateral debt relief outside the HIPC or MDRI frameworks is not common, debt-for-development exchanges encourage much debt cancellation, and France is alone in using debt exchanges to impose conditions upon debt cancellation that would have been granted anyway.

It is also arguable that exchanges may be used to get rid of illegitimate debt. Illegitimate debt is debt lent for irresponsible purposes, as in Norway's case considered above. Donor governments may be likely to initially offer for exchange debt which may be illegitimate. This is natural, as most governments will seize an opportunity to bury questionable conduct. This causes NGOs such as the Jubilee Network to seek audits for all debt offered for use in exchanges to ensure illegitimate debt is not used in exchanges.[166] Clearly it is preferable for illegitimate debt to be cancelled outright because it is illegitimate. However, if this is unlikely (and, as Norway is the only nation to have done so, it does seem unlikely), the issue for international civil society is whether, given the crushing debt overhang in many poorer nations, it is better simply to support all exchanges that result in the reduction of debt and the application of funds to worthwhile developmental programs, without insisting on the somewhat idealistic requirement that debt used in these exchanges be audited to ensure it is free from any taints whatsoever.

Apart from these two issues, there seem to be few other grounds upon which objection to these exchanges is possible.

Debt-for-development exchanges have made a significant contribution to date to development programs. The debt burden on developing countries has severely curtailed spending on health, education and other social programs, and the need to raise exports to service the debt has often damaged the environment in those countries. Debt-for-development exchanges have been important because they have gone some small way to redressing these damaging social and environmental impacts of external debt.

As the current GFC will impact poorer nations more harshly than richer ones, and as the consequences will be felt for longer in poorer, and thus less resilient, economies, debt-for-development exchanges have an even more important role to play now in seeking to offset some of the impacts of the GFC. The export revenues of poorer nations are falling, in some cases precipitately, as commodity prices weaken and global trade flows contract. Most developing countries do not have freely convertible currencies and raise external capital in foreign currency, so debt service needs to be funded from export revenues.[167] Contracting export revenues will thus intensify the burden on these nations of servicing their existing external debt. In addition, debt-for-development exchanges offer funding for

166 See, eg, Jubilee USA, *Recent Developments on Odious and Illegitimate Debt*, (April 2008) <www.jubileeusa.org/?id=111> at 17 August 2009.

167 Ross P Buckley and Peter Dirou, 'How to Strengthen the International Financial System by Improving Sovereign Balance Sheet Structures' (2006) 2 *Annals of Economics and Finance* 257–69.

development projects that will be more needed than ever in this context of decreasing export income. The GFC provides a strong reason for creditor governments to make far greater use now of debt-for-development exchanges as measures to reduce the impact of the GFC upon poorer and more vulnerable nations.