

# Table of Content

<b>Introduction</b> .....	1
1. Objectives and Plan of the Study .....	1
2. Literature Review .....	9
3. Structure.....	20
<b>Part I. Multilateral Debt Relief for Heavily Indebted Poor Countries</b> .....	23
<b>A. The Heavily Indebted Poor Countries Initiative (HIPC)</b> .....	26
1. Concessional Assistance to Low-Income Countries .....	26
2. The HIPC Framework .....	30
2.1. The Heavily Indebted Poor Country Initiative of 1996 .....	33
2.2. The Cologne G-8 Summit of 1999 and HIPC II.....	39
2.3. Eligibility and Implementation under the Enhanced HIPC Framework.....	43
3. What kind of debt is addressed by HIPC? .....	48
4. HIPC Funding and Finances .....	50
4.1. The PRGF-HIPC Trust of the IMF .....	51
4.2. The World Bank HIPC Trust Fund .....	57
4.3. The IDA Debt Reduction Facility.....	60
4.4. HIPC Financing through Multilateral Creditors .....	61
4.5. Conclusion: Trust Fund Financing.....	62
5. HIPC Proceedings .....	63
<b>B. Debt Relief under the G-8: The Multilateral Debt Relief Initiative (MDRI)</b> .....	67
1. MDRI as Operational Successor of HIPC.....	69
2. Subsequent Changes in Lending Policies .....	74
<b>C. Case Study: The Contemporary History of Debt Relief in Ghana</b> .....	77
1. Ghana's History with Economic Aid .....	80
2. Ghana's Reform Process under HIPC .....	86

2.1.	Implementation of the HIPC Framework.....	89
2.1.1.	Preliminary Documents .....	97
2.1.2.	Ghana Poverty Reduction Strategy.....	98
2.1.3.	Decision Point Document .....	102
2.1.4.	Ghana's Completion Point .....	104
2.2.	Donor Coordination under the Multi Donor Budgetary Support (MDBS) .....	106
2.3.	Civil Society Participation.....	108
3.	Ghana beyond HIPC Completion .....	111
4.	Perception by the National and International Public .....	114
5.	Model Character and Comparability of Ghana's HIPC Process with other HIPC Countries .....	118
5.1.	Prescribed Policy Reforms .....	119
5.2.	PRSP Process.....	120
5.3.	Implementation of HIPC Reforms .....	124
5.4.	Board Approval.....	126
6.	Findings.....	128

## **Part II. Doctrinal Reconstruction of HIPC in a Public International Law Perspective.....**

1.	The Legal Quality of the HIPC Program under the Law of IMF and IDA .....	136
1.1.	Decision-Making by the Board of Governors and the Executive Directors .....	137
1.2.	Decision-Making by the Development Committee.....	140
1.3.	Obligations of IMF and IDA Member States under the HIPC Program.....	141
1.4.	Legal Effects of Board Decisions on the Domestic Law of Member States .....	145
1.5.	Legal Effects of Decisions Interpreting the Articles of Agreement .....	146
1.6.	Conclusion.....	148
2.	Legal Relationship Between the HIPC Debtor and the International Financial Institutions .....	150
2.1.	Contractual Obligations.....	150
2.1.1.	Letter of Intent under the Fund's PRGF Arrangement .....	150
2.1.2.	Relief Disbursements under the Trust Funds.....	154
2.1.3.	HIPC (Relevant) Documents .....	155
2.2.	Obligations under the IMF and World Bank's Institutional Law.....	157

2.2.1.	The IMF's Doctrine of Uniform Treatment .....	158
2.2.2.	Equality of Treatment under the Bank Articles .....	160
2.3.	International Obligations of the Fund and the Bank under the ICESCR and an Evolving International Development Agenda .....	161
2.4.	Conclusion.....	171
3.	Legal Relationship Between the HIPC Debtor and its Bi- und Multilateral Creditors .....	172
3.1.	Paris Club Commitments.....	172
3.1.1.	Practices and Proceedings for Paris Club Debt Reschedulings.....	173
3.1.2.	Legal Effects of Paris Club Reschedulings under the HIPC Program .....	176
3.2.	G-8 Commitments.....	179
4.	Legal Relationship between the HIPC Debtor and non-Paris Club and Commercial Creditors .....	180
4.1.	The London Club .....	180
4.2.	HIPC Creditor Litigation .....	182
4.2.1.	Claims by Non-Paris Club Members .....	182
4.2.2.	Commercial Creditor Litigation .....	185
4.2.3.	Booker plc v. Co-operative Republic of Guyana.....	187
4.2.4.	Pari Passu Clause .....	188
5.	Conclusion: "Beyond the Radar Screen of International Law" ....	190

### **Part III. Multilateral Debt Relief Under HIPC – Global Governance Perspectives .....**

1.	Global Governance .....	196
2.	A Global Administrative Law Perspective on HIPC.....	205
2.1.	Descriptive Account: HIPC as a Global Administrative Law Phenomenon .....	207
2.2.	Institutional Framework for Administrating Debt Relief ..	211
2.3.	Substantive Requirements .....	212
2.4.	Regulatory Procedure.....	215
2.5.	Means of Regulation .....	217
2.6.	Means of Enforcement.....	219
2.6.1.	The Official Incentive Structure of the HIPC Program .....	220
2.6.2.	Joint Bank-Fund Conditionality .....	220
2.6.3.	The Role of Supplementary Financiers.....	221
2.6.4.	The Signalling Effect of IMF and World Bank Participation .....	222

2.6.5. Interacting Creditor Fora.....	224
2.6.6. Naming and Shaming .....	225
2.7. Assessment.....	225
3. Findings: HIPC as an Instrument of Global Governance .....	229
3.1. Specifications of the HIPC Program’s Soft Law Nature .....	230
3.2. Global Governance Phenomena and the International Legal Order .....	233
<b>Part IV. Issues of Legitimacy .....</b>	<b>237</b>
1. Legitimacy: An Iridescent Concept.....	239
2. Charter Based Legitimacy of the HIPC Program .....	244
2.1. The Doctrine of <i>ultra vires</i> .....	245
2.2. Legal Analysis in the Light of the Bank and the Fund’s Mandate and Mission .....	247
2.3. Guiding Principles and Interpretative Methodology .....	251
2.4. Findings .....	259
3. Issues of Sovereign Equality and Self-Determination.....	260
3.1. Institutional Ownership .....	262
3.2. Conditionality .....	263
3.3. Findings .....	264
4. Procedural Accountability .....	266
4.1. Systemic and Sound Rulemaking.....	267
4.1.1. Policy Creation.....	267
4.1.2. The Decision Maker .....	268
4.1.3. Decision-Making Standards and Procedures.....	269
4.2. Transparency, Public Participation and the Right to Information.....	271
4.2.1. Institutional Transparency .....	271
4.2.2. Access to Documents .....	273
4.2.3. Involvement of Stakeholders and Civil Society Actors .....	273
4.2.4. Complaint Procedures.....	274
4.3. Power Sharing and Institutional Checks and Balances .....	275
4.3.1. Divided Authority and Delegation .....	275
4.3.2. Review of Board Decisions.....	277
4.4. Findings .....	278
5. Relief Achievements and Effectiveness of the HIPC Initiative.....	279
6. Findings and Recommendations.....	283

<b>Part V. Conclusions</b> .....	289
1. HIPC as Role Model for an International Insolvency Procedure for States? .....	291
2. “Soft Law versus Hard Law” – Soft Legal Regulation as Means for Institutional Adaptation and Development .....	299
3. Legal Research on IMF and World Bank .....	303
<b>Bibliography</b> .....	309
<b>Index</b> .....	351