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**Mandate of the Independent Expert on the effects of foreign debt and other related international
financial obligations of States on the full enjoyment of all human rights, particularly
economic, social and cultural rights**

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Excellency,

I have the honour to address this letter to you in my capacity as the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights ("Independent Expert on the effects of foreign debt"), pursuant to Human Rights Council resolutions 7/4 and 11/5. As Independent Expert, it is my duty to examine the effects of foreign debt and the impact of related policies adopted by States on the full enjoyment of all human rights.

According to information received by my mandate, the Argentinian naval vessel, ARA Libertad, has been seized in the port of Tema since 2 October 2012 under a court order sought by the "vulture fund," NML Capital Limited, a subsidiary of the US based investment firm Elliot Capital Management. NML Capital is suing Argentina on the basis of debt arising from the country's defaulted bond swaps in 2005 and 2010. On 11 October 2011, the Commercial Division of the Accra High Court, presided by Justice Richard Adjei Frimpong, upheld the restraining orders placed on the Argentine naval vessel, after lawyers of both parties made their arguments before the court. According to information received, NML Capital was only willing to release the frigate against a payment of USD 20 million in Argentinian bonds, and demands that Argentina settles USD 370 million of its debt.

In a spirit fully recognizant of judicial independence, I wish to express my concern over this case. NML Capital bought bonds from the heavily indebted Argentinian Government in 2000, a year before the country's USD 100 billion sovereign default. According to information received, NML Capital refused to participate in the debt restructuring offered by the Argentinian Government and instead continues to pursue Argentina in various jurisdictions including Ghana. The Argentinian naval training

vessel, ARA Libertad, was detained after the fund - which had obtained judgements in New York and London awarding it more than USD 1.6 billion from Argentina - applied to the Ghanaian courts.

I wish to express my concern over the impact of the High Court order on the national economy of Ghana as the seized naval ship is reportedly causing considerable and substantial hardship and financial losses to the port authority – as its presence at berth eleven allegedly costs nearly USD 22,000 for a period of six days and may result in other commercial ships having to be diverted to neighbouring countries.

In 2001, Argentina successfully reduced its public debt from about 160 per cent of Gross Domestic Product (GDP) by settling with the majority of creditors for a repayment of 30 per cent of its sovereign debt, enabling the country to recover economically. The total public debt currently stands at around 40 per cent of the country's GDP. From a human rights perspective, reduced debt burdens and increased fiscal capacity have contributed to the creation of the conditions necessary for the realization of human rights, particularly economic, social and cultural rights.

It has also been alleged that most of the foreign debt of Argentina, including the debt repayment which is sought by NML Capital is “odious” due to the fact that it was incurred during the country's military dictatorship of the late 1970s and early 1980s.

Although it presents itself as a “global equity investment” firm, NML Capital allegedly operates as a so-called “vulture fund” – a private investment firm that purchases the debts of distressed companies or sovereign States on the secondary market, often for a sum far less than the face value of the debt obligation and then seeks repayment of the nominal full face value of the debt together with interest, penalties and legal costs. Vulture funds also seize the overseas assets of the debtor to force recovery of the debt. According to information provided to me NML Capital, already won a case against Peru in the 1990s, recovering 400 per cent of what the fund paid for Peru's debt.

The case involving the training frigate ARA Libertad does not appear to be an isolated case affecting the Argentine State. Vulture funds which refused to join the swap of defaulted sovereign bonds have allegedly managed to impound so far as 28 other assets belonging to the Argentine State.

The rating agency Standard and Poor's has lowered Argentina's bond rating to B- from B after the seizure of the naval vessel in Ghana and a more recent ruling by an Appeals Court in New York, USA, in favour of vulture funds, thus making it more difficult for Argentina to obtain new loans from international financial markets and increasing the costs for Argentina to service its restructured debt.

In my 2010 report to the Human Rights Council (UN Document A/HRC/14/21) I provided several case studies on the impact of such “vulture funds” on debt relief and human rights. The report provides recommendations on how vulture funds could be tackled through multilateral initiatives or at national level, including through enacting national legislation designed to protect highly indebted countries from the excessive claims of vulture funds.

The Guiding principles on foreign debt and human rights (UN Document A/HRC/20/23) endorsed in June 2012 by the Human Rights Council through its resolution 20/10, affirm that States, international financial institutions and private companies have an obligation to respect human rights, including the duty to refrain from formulating, adopting, funding, and implementing policies and programmes that directly or indirectly contravene the enjoyment of human rights. Paragraph 59 of the Guiding principles states that “Loan agreements should impose clear restrictions on the sale or assignment of debts to third parties by creditors without the prior informed consent of the Borrower State concerned. Every effort must be directed towards achieving a negotiated settlement between the creditor and the debtor.” Furthermore paragraph 62 of the Guiding principles notes that “Creditors should not sell sovereign debt on the secondary market to creditors that have previously refused to participate in agreed debt restructuring”. The Guiding principles also recommend that debt repayment problems and debt-related disputes should rather be resolved by an independent mechanism (paras. 84-86).

I would therefore kindly request the Government of Ghana to bring the attached guiding principles to the attention of its courts and urge the Government to consider adopting national legislation that would prevent “vulture funds” from pursuing excessive claims against heavily indebted countries before its national courts. I also urge the Ghanaian authorities to continue working with Government of Argentina towards a friendly settlement of the matter, so that the seized naval ship can be released.

I intend to issue a public statement on this matter and would welcome any comments or observations you may wish to share by 4 December 2012, which would, of course, be reflected in my statement. I would also be pleased to receive copies of the court order restraining the naval vessel in the port of Tema and the judgement of the Accra High Court upholding its detention.

It is my responsibility under the mandate established by the Human Rights Council, to seek to clarify cases brought to my attention. Since I am expected to report on these cases to the Council, I should be grateful for your comments and observations. I undertake to ensure that your Excellency’s Government’s response is accurately reflected in the reports I will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of my highest consideration.

Cephas Lumina
Independent Expert on the effects of foreign debt and other related
international financial obligations of States

Annex:
Guiding principles on foreign debt and human rights