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OCCUPYGHANA® PRESS STATEMENT

OCCUPYGHANA® CALLS FOR THE EXISTING TELEVISION LICENCE REGIME TO BE REPEALED AND REPLACED

OccupyGhana® has followed the recent discussions regarding TV Licence Fees, particularly the announcement that specific courts have been established to try defaulters. We disagree with these moves for two reasons:

1. There is no constitutional or statutory basis for the Ghana Broadcasting Corporation (GBC), simply as the designated “licensing authority,” retaining the revenue from what is essentially a tax, and then determining how to use it, outside laws passed and appropriations made by Parliament, and
2. The entire TV Licence regime that was established in 1966 (with just a few amendments) has become obsolete. What is required is not a forcible re-implementation of it, but a root-and-stem review that repeals the existing law and regime, and, if necessary, introduces a new statute and regime that takes the current realities in broadcasting into account.

We will address these matters in turn:

UNCONSTITUTIONALITY AND ILLEGALITY

The Television Licensing Act, 1966 (NLCD 89) and the various Television Licensing Regulations passed under it, provide for the payment of TV Licence Fees for the licensing of the installation and use of “television receiving sets.” These are to exist and operate under the auspices of a “licensing authority” that would be either “the Ghana Broadcasting Corporation or any other statutory corporation appointed by the Minister by legislative instrument.” Every contravention of the Act (including the non-payment of the fee) is an offence punishable by up to a fine of 250 penalty units (GHS3,000) and/or up to one year’s imprisonment.

The TV Licence Fee is simply a tax for owning or dealing in the affected apparatus. GBC is merely the currently designated body to administer the licences and collect those taxes, as an agent of the government. We are not aware of any statute that gives GBC the power to retain the revenue derived from the tax and then use it for its operations, developing content, sharing with other broadcasters or for any other purpose.

That tax revenue is also not listed as one of the sources of funds of the GBC under section 10 of the Ghana Broadcasting Corporation Act, 1968 (NLCD 226). Although that section provides that GBC's funds include "moneys accruing to the Corporation in the course of the performance of its functions," tax revenue does not accrue to the GBC and does not fall under this rubric. Similarly, if the Minister were to designate another statutory corporation as the "licensing authority" under the Act, that entity would not have the right to use the revenue.

Further, that revenue does not constitute GBC's "internally generated funds" (IGF). Article 176 of the Constitution demands that "all revenues or other monies raised or received for the purposes of, or on behalf of, the Government;" and "any other monies raised or received in trust for, or on behalf of, the Government," must be mandatorily paid into the Consolidated Fund. Exceptions, particularly retentions, are only permitted under an Act of Parliament.

That is why statutes such as the Ministries, Departments and Agencies (Retention of Funds) Act, 2007 (Act 735) and the Public Financial Management Act, 2016 (Act 921) contain strict rules on the use of IGFs, and our statute books are replete with specific statutes (too many to be listed here) in which Parliament expressly allows entities to keep all or part of IGFs. We are not aware of any such statute with respect to the GBC.

It is on these bases that we believe that the automatic retention of the TV Licence Fees by the GBC for its purposes is unconstitutional and illegal and we therefore call for that practice to cease forthwith. Absent a specific enabling legislation, all TV Licence Fees collected should be immediately deposited in the Consolidated Fund.

OBSOLENCE

We further contend that both the regime and the law on TV licensing are obsolete for three main reasons:

(i) The Act defines "television receiving set" as "an apparatus CONSTRUCTED SOLELY for the reception of pictures, with or without sound transmitted by radio" [Emphasis added.] This means that if the apparatus in use, by its manufacture and technology, is not restricted to only receiving pictures (with or without radio-transmitted sound), but is capable of receiving other signals, that apparatus is not the subject of licensing and consequently the payment of the fee. We think that contrary to your expressed view, the law expressly rules out the vast majority of apparatuses (Smart TVs, phones, pads, tablets, etc.) that are currently in use, and which are manufactured to receive and process more than just pictures. Indeed what may even be called "TVs" today are not mere linear broadcast receivers and translators of pictures. They are also used to play games, watch movies, project presentations, display location adverts and browse the Internet. The reality is that a strict application of a law that is based on 1966 technology, to 2017 apparatuses would leave the licensing authority with precious little or almost nothing to enforce the licence against.

(ii) With over authorized 505 radio stations (392 operational) and 75 television stations, Ghanaians have a lot of media sources to consume both local/public and international content. This ensures competition that should result in producing quality content. Also, Ghana has recorded a tremendous growth in the number and diversity of media channels, with Ghanaians having countless media sources such as radio, newspaper, magazines, websites and other online platforms. Further, online platforms such as YouTube, Hulu, Netflix, Apple TV, Amazon Prime Video and Google Chromecast are redefining content broadcasting online and pointing to the future of TV broadcasting. All these are available and consumed in Ghana, driving the growth of data usage. There are also cable-TV services in Ghana who broadcast local channels through set-top boxes. Some of these have become the first choice channels for media content consumption, thereby reducing the audience share for traditional TV transmission. Evidently, GBC is not the only TV media source where public information is consumed for it to warrant an automatic right to TV Licence Fees and to be able to produce and broadcast public information. Further, not all Ghanaians or TV owners in Ghana will consume GTV's content.

(iii) GBC (managers of GTV) is a commercial broadcaster. For years, it enjoyed an absolute monopoly in television broadcasting and the income from adverts and sponsored contents. Now it has competition and is faltering. Compelling Ghanaians to pay TV Licence Fees to GBC is grossly unfair and anti-competitive. Announcing the setting up of a court for these purposes sends the wrong signal to Ghanaians, that draconian steps are being taken to use the judiciary a tool of enforcement of a grossly unpopular tax. If GBC is unable to be profitable, in spite of years of government subvention and TV Licence Fees, then it may be time to consider selling it.

CONCLUSION

In conclusion, the world of television has moved from being analogue to the digital sphere. The rules have changed. In a world of digitisation, Ghana should be thinking of laws and policies that look into the future, and seek to create the enabling smart digital environment for prosperity and opportunities for all. You cannot, in 2017, be seeking to implement laws based on obsolete and currently inapplicable 1966 technology and then seek to punish Ghanaian for not complying with it. That is why we are advocating the repeal of the 1966 law and regime, and if necessary, the enactment of new laws that take the new realities into account.

Yours in the Service of God and Country.

OccupyGhana®

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ABOUT OCCUPYGHANA®

OccupyGhana® is a socio-political non-partisan pressure group with the vision of engaging Ghanaians in development process and ensuring good and responsible governance. We are passionately committed to ensuring that Ghana develops to its full economic potential and remains a strong democracy.