

27<sup>th</sup> November, 2023

THE EXECUTIVE SECRETARY  
NATIONAL MEDIA COMMISSION  
ACCRA

Attn: GEORGE SARPONG

Dear Sir,

**RE: FINAL CAUTION AGAINST INCITEFUL BROADCAST**

“WITHOUT PREJUDICE”



This is in reference to the NMC's letters dated 14<sup>th</sup> and 21<sup>st</sup> November 2023 addressed to the Board of Directors and Board Secretary of Media General respectively and our letter dated 20<sup>th</sup> November 2023 on the above-mentioned subject matter.

The Board of Media General Ghana Ltd upon receipt of your letters in respect of the above subject matter, held an urgent board meeting on the 27<sup>th</sup> of November 2023 to deliberate on the issues raised in your letters of 14<sup>th</sup> and 21<sup>st</sup> November 2023. Kindly note that the Board still stands by its responses in its letter dated 20<sup>th</sup> November 2023 in answer to your letter dated 14<sup>th</sup> November 2023. At our meeting today, we further resolved to respond as follows:

- a. As stated in our letter of 20<sup>th</sup> November, 2023, we respect the mandate of the National Media Commission (NMC) enshrined in Chapter 12 of the 1992 Constitution and pursuant to the relevant provisions in the National Media Commission Act, 1993 (Act 449) and National Media Commission (Broadcasting Standards), 2002 L.I 1715. We reiterate our respect for the NMC's role in regulating media practices in accordance with the laws of the State.
- b. Article 21(1)(a) of the Constitution guarantees the fundamental human rights of all persons to free speech and expression which freedom shall include freedom of the press and other media. Article 162(1), (2), (4) and (5) under Chapter 12 of the 1992 Constitution provides as follows:

*“(1) Freedom and independence of the media are hereby guaranteed.*

*(2) Subject to this Constitution and any other law not inconsistent with this Constitution, there shall be no censorship in Ghana.*

*(4) Editors and publishers of newspapers and other institutions of the mass media shall not be subject to control or interference by Government, nor shall they be penalized or harassed for their editorial opinions and views, or the content of their publications.*

*(5) All agencies of the mass media shall, at all times, be free to uphold the principles, provisions and objectives of this Constitution, and shall uphold the responsibility and accountability of the Government to the people of Ghana.*

The above-mentioned provisions of the 1992 Constitution guarantee the freedom and independence of the media that includes Onua TV/ Onua FM, subsidiaries of Media General. Furthermore, Clause (4) of Article 162 among others protects institutions of the mass media from the control or interference by Government or from being penalized or harassed for their editorial opinions and views or the contents of their publications. We believe that the guarantees and freedoms enshrined herein are to enable all agencies of the mass media to at all times be free to uphold the principles, provisions and objectives of the Constitution and to hold Government and duty bearers responsible and accountable to the good people of Ghana.

As a media conglomerate, and being in the industry for over 25 years we do not however lose sight of the fact that these rights and freedoms are subject to the limitations as reasonably required in the interest of national security, public order, public morality and for the purpose of protecting the reputations, rights and freedoms of other persons as enshrined in Article 164 of the Constitution of Ghana.

- c. The Board notes with great concern the biased, unfair and unlawful conduct of the NMC for the following reasons:
  - i. The subject matter mentioned by Captain Smart in the publication under reference is a matter of national interest that has been investigated by the ONUA TV Morning Show Team. It is imperative to note that, at no point in time during the said broadcast of the publication, did Captain Smart talk about mutiny, insurrection etc. In fact, he has in previous publications stated his dislike of coup d'état, political insurrection, rebellion, revolution whatsoever. It therefore came as a surprise to the Board when it received no complaints or any invitations from NMC for any investigation to be conducted to ascertain the truth or otherwise of what was alleged to have been broadcasted. Rather, the NMC resorted to issuing sanctions of withdrawal and an apology. Furthermore, the NMC's categorization of what Captain Smart is alleged to have said during the broadcast in question as

constituting "mutiny" and "insurrection" is unfortunate. As an independent body we expected that the NMC will follow due process and accord us a fair hearing.

- ii. We believe that the NMC pursuant to Section 2 of Act 449 has a clear understanding of its mandate and the fact that each function stated therein deals with a different subject matter. Pursuant to Chapter 12 of the 1992 Constitution and the Preamble of Act 449, all the functions of the NMC are all geared towards the promotion of the freedom and independence of the media. The NMC in paragraph 2 which is erroneously labelled "5" of your letter dated 21<sup>st</sup> November, elected to pick and choose which part of your functions to highlight for implementation. The letter referred to Article 167(b) of the Constitution and emphasized the mandate of the Commission as follows: *"5. Mandate of NMC: Article 167(b) of the Constitution (1992) empowers NMC "to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media (Emphasis added). Your lawyers should have no difficulty in explaining this to you, i.e, that the Commission has power "to take all appropriate measures" and that the mediation and settlement constitute an inexhaustive list of tools the Commission may use to achieve its object. Ordinarily, we would not say more beyond this. However, since this is the second time you have wilfully submitted yourselves to a misreading of the law, we feel obliged to point out to you that the law could not have intended that when we are faced with a broadcaster inciting mutiny within the armed forces as you are doing, we should be constrained by complaints settlement procedures. You know the story of Nero fiddling while ancient Rome burned. The National Media Commission will not do that today when in Niger, Chad, Guinea, Gabon, Burkina, Sudan and twice in Mali there have been military insurrections."*

In response to your position above stated, the Board submits that the functions of the NMC as stated in Article 167 of the 1992 Constitution and reproduced in Section 2(1)(a) to (g) and (2) of Act 449 are clear and unambiguous. The functions of the NMC should however, be performed subject to compliance with due process under the Constitution and relevant laws not be inconsistent with the Constitution. We would like to restate the mandate of the Commission as it pertains to this matter. Article 167 (a) and

(b) of the 1992 Constitution (as reproduced in Section 2 (1) (a) and (b) of Act 449, stipulates the functions of the NMC, among others, as follows:

167 (a) *“to promote and ensure the freedom and independence of the media for mass communication or information;”*

167(b) *“to take all appropriate measures to ensure the establishment and maintenance of the highest journalistic standards in the mass media, including the investigation, mediation and settlement of complaints made against or by the press or other mass media;”* (emphasis ours).

The heading of Article 167 of the 1992 Constitution and Section 2 of Act 449 is “Functions of the Commission”. The word “functions” is defined in Section 46 of the Interpretation Act, 2009 (Act 792) thus: *“In an enactment, the expression...‘functions’ includes powers and duties.”* In the 2<sup>nd</sup> part of Section 2(1)(b) of Act 449, the mandate of the Commission “to take all appropriate measures...” also [include] investigation, mediation and settlement of complaints...”. The word “including” is defined in the Oxford Dictionary as *“having something as part of a group or set.”* It is our position that the word “including” used in the second part of Article 167(b) of the Constitution 1992 [see also Section 2(1)(b) of Act 449], is *in addition to* all the appropriate measures to be undertaken by the Commission to ensure the establishment and maintenance of the highest journalistic standards in the mass media. The functions therein are therefore a set of the same group.

Act 449 provides under Sections 12 to 15, the setting up of a Settlement Committee, the processes the Committee employs in the settlement process and its ruling on complaint(s) referred to it. The provisions in Sections 12 to 15 of Act 449 are quite detailed. The Settlement Committee may conduct further investigations where it considers it necessary and may consider both oral and documentary evidence provided by the parties and make its ruling on the issues as it considers just in the circumstances (Section 14(1) and (2) of Act 449). It is the Board’s submission that, the Commission is mandatorily enjoined under Section 15(4), Act 449 to be guided by the rules of natural justice in its deliberations on matters. The Board further submits that it is not coincidental that the framers of the law categorically indicated the sanctioning powers of the NMC after a completion of a settlement process. Furthermore, it is instructive to note that the basic rule/ canon of interpretation of statutes requires that the provisions of the statute are read

as a **whole** and to arrive at the meaning of the provision, the reader has to consider the purpose of the law, and in considering the said purpose the legislative intent should not lead to an absurdity. Your letter dated 21<sup>st</sup> November 2023, stated your unwillingness to grant Onua TV/ FM an opportunity to be heard on the basis that doing so will lead to an absurdity of the law. We clearly disagree with the NMC's interpretation of the law. The conclusion that the framers of the law granted the NMC sanctioning powers without granting the person to be affected a right to be heard is the biggest absurdity in light of all the provisions in the 1992 Constitution indicated above and in particular the provision on censorship. As you advised the Board of MG to seek further legal advice on the functions of the NMC in your letter dated 21<sup>st</sup> November 2023, kindly note that the Board heeded the advice. We also urge the NMC likewise to immediately seek legal advice from its lawyers on the proper interpretation of the law in the execution of its mandate

- iii. The Board further states that per Article 296 of the 1992 Constitution it is required to act fairly and reasonably. The article provides as follows: *"Where in this Constitution or in any other law discretionary power is vested in any person or authority –*
- (a) That discretionary power shall be deemed to imply a duty to be fair and candid;*
  - (b) The exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and*
  - (c) Where the person or authority is not a judge or other judicial officer, there shall be published by the constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power."*

From the foregoing, NMC, being a constitutional body vested with discretionary powers much of necessity and in the performance of its functions not have lost sight of the two (2) fundamental rules of natural justice: (1) the rule against bias and (2) the right (to be afforded Onua FM / Onua TV) to a fair hearing. The NMC failed when it refused and/or neglected to invite Onua TV / Onua FM and engage them to establish the veracity or otherwise of the allegations. The NMC instead

of complying with its own Act 449, resorted to threats and referring to other jurisdictions whose legal regime, legal requirements and circumstances are different from ours. Furthermore, those regimes and circumstances surrounding their political instability are matters extraneous to the publication of Captain Smart.

iv. It is submitted that the entire approach of the NMC is dangerous and amounts to censorship of the media, which for all intents and purposes could not have been the intention of the framers of the law. We believe that the Constitution in its wisdom upholds the right to a fair hearing and due process, even in matters subject to regulatory oversight. The NMC's unhealthy approach to this matter raises questions about its underlying agenda to discredit the good work of the Onua brand and the entire Media General Ghana Group. Indeed, the constant leaking of letters addressed to the Board of Media General Group on online news and WhatsApp platforms hours before the letters are served on the Board is indicative of a premediated and unlawful agenda on the part of the NMC. Assuming without admitting that the NMC's interpretation of the law is correct one will also expect the NMC to be open to dialogue. It is indeed a shame that three decades after the promulgation of the 1992 Constitution, a constitutionally mandated body such as the NMC will call a request for an opportunity to be heard before a decision is taken on any matter a "*red herring strategy*".

d. The Board believes that it is imperative that the NMC follows due process in the performance of its functions.

e. Furthermore, the Board deems it necessary to respond to particular matters raised in the NMC'S letter dated 14<sup>th</sup> November 2023. In that letter, the NMC cited letters dated 2<sup>nd</sup> December 2022 and 8<sup>th</sup> December 2022 in which the NMC stated thus: "*that we drew your attention to the use of your station to promote violence against the State and your Management's lack of capacity to address same.*" Considering that the NMC found it necessary to revisit the contents of those letters, we have equally found it necessary to address those issues now. We respond as follows:

i. The MG Board finds the statement that "*that we drew your attention to the use of your station to promote violence against the State and your Management's lack of capacity to address same*" unfortunate. This is an unprovoked attack

on the MG Board. In the circumstances, we demand that the NMC retracts the insults.

- ii. Your letter further stated that the NMC is coming to the Board again to give it an opportunity for internal gatekeeping. The Board welcomes advice or an explanation from the NMC on what specifically they mean by "internal gatekeeping" that is not already being done by the Board. The Board strives daily for growth and perfection and we will continue to do so. We however, advise NMC to be more proactive in protecting hard working journalists who have been attacked, killed, maimed in this country with a deafening silence from the NMC contrary to section 2(a) of Act 449.
- f. As the pacesetter and a stakeholder in the media industry, we take seriously, the freedoms guaranteed under the laws of Ghana and the limitations therein. We as a Board would like to call on NMC to retract its letters and threats and the publication of the contents of same by other media outlets without due process. We will urge NMC to comply with the procedures under Act 449 subject to the 1992 constitution in resolving these matters. In addition, it is imperative that the NMC is mindful of its language and general conduct in matters of this nature. The constant publication of letters addressed to us on social media platforms before they are delivered to us is inconsistent with the high standards expected of a constitutional body such as the NMC.
- g. We assure the NMC of our highest regard for its functions and also pledge our commitment to uphold the highest professional standards as a media house. We believe that open dialogue and adherence to constitutional principles are essential for maintaining a free and responsible media landscape and we expect the NMC to abide by these principles.

Yours faithfully,

  
Kojo Yankah  
Board Chairman

  
Sena Edekor  
Board Secretary

CC: The Chairman of the National Media Commission