



REPUBLIC OF GHANA

# OFFICE OF THE PRESIDENT

SECRETARY TO THE PRESIDENT

Jubilee House, Accra

Tel: +233 (0) 302 738 600

Tel: +233 (0) 302 738 601

Digital Address: GA-000-0288

Ref. No.

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19<sup>th</sup> March, 2021

*Dear Dr. Agute:*

**OPEN LETTER TO THE COALITION OF CIVIL SOCIETY ORGANISATIONS AGAINST  
CORRUPTION ON THE RETIREMENT OF MR. DANIEL YAW DOMELEVO, THE FORMER  
AUDITOR-GENERAL OF THE REPUBLIC AND RELATED MATTERS**

We refer to your press conference of 10<sup>th</sup> March, 2021 in connection with this matter.

The Office of the President is aware that the retirement of the former Auditor-General, Mr. Daniel Yaw Domelevo, has generated considerable discussion in the public domain and particularly, on social media, with suggestions that the Government is not committed to the fight against corruption. The narrative of this discussion focuses on unfounded allegations that Government had targeted Mr. Domelevo and wanted him out of office at all cost. This narrative, pushed by persons who should know better in civil discourse of this nature, has been based on untruths, deliberate misconstruction of the facts and complete disregard for the rule of law that we, as Ghanaians, have subscribed to. It is in view of the above that the Office of the President has found it necessary to respond to the Coalition of Civil Society Organizations Against Corruption, to correct the misconceptions bandied around in the public domain, and to give the Ghanaian people, who deserve a public discourse based on accurate facts, an opportunity to discern for themselves the true picture in this matter.

**Circumstances surrounding his appointment**

At the outset, it is important to set out, in full, the circumstances that led to the appointment of Mr. Domelevo, to demonstrate that, notwithstanding those circumstances, the President of the Republic was committed to working with Mr. Domelevo, and did, in fact, work with him during his term of office as Auditor-General. The fact is that Mr. Domelevo was appointed on the eve of



the exit from office of His Excellency, former President Mahama. He was appointed on 30<sup>th</sup> December, 2016, after former President Mahama had overwhelmingly lost the mandate of the people of Ghana to govern in the presidential and parliamentary elections of 7<sup>th</sup> December, 2016. Stranger still is the fact that Mr. Domelevo's appointment process was initiated on 13<sup>th</sup> December, 2016, a few days after this emphatic rejection. The appointment process for Mr. Domelevo was rushed through the Council of State, to enable former President Mahama appoint Mr. Domelevo before leaving office. A reasonable and objective conclusion was that, having lost the mandate to govern, former President Mahama appointed Mr. Domelevo to office, knowing very well that President Akufo-Addo would be sworn into office in a few days, to pursue a particular agenda. To support this agenda of the former President, one needs to examine, critically, the wording of the letter dated 13<sup>th</sup> December, 2016, from the then Chief of Staff, Julius Debrah, to the Council of State. It is important to reproduce the entire letter below for ease of reference:

**"APPOINTMENT AS AUDITOR-GENERAL**

*H.E. the President has nominated Mr. Daniel Domelevo to replace Dr. Felix Kwame Aveh as Auditor-General and would appreciate the opinion of the Council of State thereon.*

*The change is as a result of some unforeseen developments.*

*Kindly lay the request before the Council of State for consideration and communicate the decision for the attention of H.E. the President.*

*The inconvenience caused by the change is very much regretted.*

*Mr. Domelevo's curriculum vitae is attached."*

It is clear from the above letter that the former President had consulted the Council of State on appointing Dr. Felix Kwame Aveh as Auditor-General. It is also clear that the consultation process was done before the December 7, 2016 elections. Mr. Domelevo was not the intended Auditor-General prior to the election of December 7, 2016. Dr. Felix Kwame Aveh was the Auditor-General that former President Mahama intended to appoint if he had won the election of December 7, 2016. But he lost the election. Indeed, in notifying the Council of State of the reason why former President Mahama was seeking to replace Dr. Aveh, the then Chief of Staff stated that "*the change is as a result of some unforeseen developments.*" It is fair to conclude that the "*unforeseen developments*" was no other development but the painful loss of the election of



December 7, 2016. After losing the election, it became necessary for former President Mahama to change his nomination for Auditor-General, with the sole aim of saddling the then President-elect, Nana Akufo-Addo, with an Auditor-General, whose allegiance was to former President Mahama, instead of the nation.

The Council of State met on Monday, 19<sup>th</sup> December, 2016, and considered and endorsed former President Mahama's replacement for Auditor-General as he requested. By letter of the same day, the Council of State conveyed its decision to former President Mahama. Mr. Domelevo was subsequently sworn into office and appointed on 30<sup>th</sup> December, 2016, 8 days prior to former President Mahama's departure from office. It must be noted that Mr. Domelevo, hitherto, was not an auditor, and had not been engaged in auditing. Before his early retirement from the public service in 2010, he was the Director of Payroll at the Controller and Accountant General's department.

Shortly after assuming office as President of the Republic, President Akufo-Addo became seised with these facts and the strange circumstances surrounding the appointment of Mr. Domelevo. Nevertheless, the President invited Mr. Domelevo to a meeting in the presence of their mutual friend, the current Minister for Energy, Hon. Dr. Matthew Opoku Prempeh, MP, who introduced Mr. Domelevo to the President. At that meeting, the President encouraged Mr. Domelevo to continue his work as Auditor-General and pledged his support for the work of the Audit Service and the Auditor-General. Mr. Domelevo has, indeed, publicly acknowledged the truth of this assertion.

The President has never held the view that the work of Mr. Domelevo was embarrassing his government. On the contrary, the President has always been a strong advocate for the Office of the Auditor-General because he believes the work of the Auditor-General is necessary for ensuring that the country's financial resources are used prudently, and the public purse is protected. As a matter of fact, and of public knowledge, the President ensured that Mr. Domelevo was provided the necessary resources required for the efficient running of the Audit Service, because the President considered the work of the Audit Service a critical part of good governance. It was, thus, not surprising to hear Mr. Domelevo acknowledge these efforts of the President during the



OccupyGhana Anniversary Lecture held at the British Council on 14<sup>th</sup> June 2019, where he stated emphatically that he had been supported immensely by the President, as follows:

*“The Executive has been very supporting, and I said it in Egypt; I said the problem about Africa is that we set up all these structures and we don’t fund them but in Ghana, I have received, not everything that I wanted, but a substantial increase in support. So, if we are doing something, which you people say you’ve heard, from Ghana, is because the Government is resourcing me. So, when you go back resource your agencies that are fighting corruption. Don’t just go and establish them. Fanfare and that’s the end. So, I must say the Executive has played its part. I hope you are aware when there was a change in government, the first, one of the first announcement we heard was a ban in procurement of vehicles, is that not it? but this was the time that Government gave us [Audit Service] the permission to buy 34 vehicles to support the Audit Service. We had never bought 10 vehicles in the history of the Audit Service before. But this permission was granted. Up to today, some are struggling with financial clearance to recruit staff, but Government gave us permission on two occasions. As at today, we have recruited, from 2017 to date, more than 400 additional staff to support us to do our work. That is the practical way of fighting corruption. It’s not by the slogans. I’m not saying the slogans are not good, they are good, but after the slogan, it must be supported by systems and actions that we require to go.”*

From these words of Mr. Domelevo, it is obvious that the support he received from the President was unprecedented in the history of the Audit Service. Mr. Domelevo considered the support from the President as the “practical way of fighting corruption”, and not by mere slogans, as some of the civil society organisations in your coalition have been engaged in. This cannot be the position of a government that had targeted Mr. Domelevo and wanted him out at all cost. That assertion is completely baseless and must be totally disregarded.

**Kroll Associates U.K. Limited**



Before addressing the matters involving Kroll Associates U.K. Limited (“Kroll Associates”), it is important to introduce to Ghanaians Kroll Associates, its work and the reasons for their engagement by Government. Kroll Associates is a reputable global firm that, among other things, assists companies and governments in investigations to identify wrongdoers, recover assets and seek legal remedies. The Kroll Associates team is made up of experts with extensive experience in areas including fraud and corruption prevention and detection, money laundering investigations, asset tracing and recovery. Due to the nature of the investigative methods employed by Kroll Associates, its work is usually not made public until investigations are completed and prosecution or other legal steps have been initiated. It is based on Kroll Associates’ experience and international reputation in these areas for achieving results that led Government to engage them to assist in investigations into alleged corrupt acts of former President Mahama’s government.

The Kroll Associates matter has been misconstrued and misinterpreted deliberately in the public domain so much that a patently false picture has been painted to the effect that Mr. Domelevo was targeted because of the disallowance and surcharge in the matter involving Kroll Associates and Hon. Yaw Osafo-Maafa, the former Senior Minister, who was tasked with coordinating aspects of the investigations into financial impropriety and corruption allegations during the tenure of former President Mahama. Even worse is the patently absurd assertion by a popular public commentator that the courts were being used to frustrate the work of Mr. Domelevo. It is, therefore, essential to outline the facts in the matter involving Kroll Associates to you as well as for the benefit of the public, to correct the misconception in the public space:

1. By letter dated 22<sup>nd</sup> August, 2019, the Ministry of Finance requested progress reports on the contract performance by Kroll Associates for audit inspection. In that letter, the Ministry of Finance referred to paragraphs 50 and 52 of the Auditor-General’s report on the Ministry of Finance for the year 2018 in respect of payments to Kroll Associates, which stated as follows:

*a. In paragraph 50 of the report asserts:*



- (i) *That although there was no evidence of work done, the Ministry in 2018 paid an amount of GHS 4,890,000.00 to the company*
  - (ii) *That though the contract was signed in September, 2017 some of the invoices attached to the payment vouchers predated the award of the contract.*
- b. *In paragraph 52 of the report;*
- (i) *recommends that in view of the non-performance of Kroll Associates in executing the contract, the contract should be abrogated and any monies paid to the company recovered immediately.*

The Ministry of Finance was of the view that, even though the agreement was signed on 29<sup>th</sup> September, 2017, the agreement stated in article 3 that it was to take effect from 13<sup>th</sup> February, 2017 in accordance with the letter of intent dated 2<sup>nd</sup> February, 2017.

2. By letter dated 23<sup>rd</sup> August, 2019, the then Senior Minister, Hon. Yaw Osafo-Mafo, responded to the Ministry of Finance and stated, among others, as follows:

*"Since September, 2017 Kroll has been working with the Government of Ghana to undertake extensive and thorough investigations of allegations of wrongdoing, and providing evidence of assets recoveries for possible prosecution. Kroll's assignments also include building capacity for the transfer of skills and supporting Ghana in its efforts to reduce corruption, and advising on preventive techniques structures to prevent corruption and asset dissipation. As paragraph 3 of your letter points out, a Letter of Intent was signed on 2<sup>nd</sup> February, 2017 which allowed Kroll to commence work with effect from 13<sup>th</sup> February, 2017. Kroll has since 2017 worked diligently and consistently and their fees have been paid against the investigations they have conducted and value of assets Kroll has identified and secured. All payments were properly invoiced for settlement. I trust this information*



*provided will be sufficient to enable you to respond to the Auditor-General's report."*

3. By letter dated 24<sup>th</sup> September, 2019, Mr. Domelevo notified Hon. Yaw Osafo-Mafo and Kroll Associates of his intention to disallow/surcharge. His reason for the notice was that a sum of GHS 4,869,421.87 (equivalent of USD 1,031,460.50) had been paid to Kroll Associates with no proof of work done. He stated further that the agreement had not been approved by the Public Procurement Authority and Parliament.
4. By letter dated 8<sup>th</sup> October, 2019, two weeks later, Hon. Osafo-Mafo responded to Mr. Domelevo's notice dated 24<sup>th</sup> September, 2019. He stated that approval had been obtained for the agreement and attached a copy of the approval to his letter. He also provided proof of work done by Kroll Associates and stated that the reports of work done by Kroll Associates had been submitted to the Office of the Senior Minister, COCOBOD, Bank of Ghana and the Economic and Organised Crime Office. He provided a breakdown of the work done by Kroll Associates in respect of COCOBOD, which had resulted in the case in the High Court against Dr. Stephen K. Opuni and Mr. Seidu Agongo. He indicated that Kroll Associates was still investigating some matters that were confidential, privileged and classified security matters, which could not be disclosed at that stage. Hon. Osafo-Mafo, however, invited Mr. Domelevo to inspect the work done by Kroll Associates at his office. The letter states as follows: "*They are, however, available at the office of the Senior Minister for your inspection.*" Hon. Osafo-Mafo's response was the very epitome of transparency and clarity.
5. Despite the above information and invitation to inspect, and without any response to it, Mr. Domelevo arbitrarily issued a Notice of Specification and Certification of Disallowance and/or Surcharge dated 22<sup>nd</sup> October, 2019 against Hon. Yaw Osafo-Mafo, M/S Kroll Associates U.K. Limited, Mr. Michael Ayesu, Mr. Abraham Kofi Tawiah, Ms. Eva Asselba Mends and Mr. Patrick Nomo, for a refund of the total amount of GHS 5,510,353.73.
6. The persons mentioned in the Notice of Specification and Certification of Disallowance and/or Surcharge dated 22<sup>nd</sup> October, 2019, appealed against Mr. Domelevo's decision.



Mr. Domelevo refused to file the necessary legal processes within the stipulated time, and, therefore, contempt proceedings were brought against him pursuant to Order 54A Rule 5 (1) and (2) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) (as amended by C.I. 102). The Court, per its ruling dated 12<sup>th</sup> May, 2020, held that Mr. Domelevo was in contempt of court within the meaning of the Rules, and cautioned and discharged him. The Court, however, had this to say about Mr. Domelevo's conduct:

*"I find, that knowing what is required as the Auditor-General, in circumstances where the doer must also have intended or at least foreseen probable consequences of their non-action, especially when C.I. 102 is one of the primary legislations with which he routinely works, exercises his jurisdiction and discretion, a failure or refusal to file the required documents and reply to the Notice and Grounds of Appeal within the mandatorily stipulated time or as soon as he did have notice of same, would be willful. ... In sentencing the Respondent [Mr. Domelevo] the Court has in mind the very crucial role of the Respondent [Mr. Domelevo] in our country and would not wish to dog him or discourage him or his office in the performance of his duties with a harsh custodial sentence, especially in the midst of the Covid 19 Pandemic. The court also notes that the documents in contention were eventually filed on the 31<sup>st</sup> of January, 2020. The court would, in the circumstances rather caution and discharge the Respondent [Mr. Domelevo], and warn him to have as businesslike, serious and timeous an attitude to appeal and challenges to the decisions he makes as he would the surcharges and disallowances, as he cannot choose which part of the Rules he uses in carrying out his statutory duties to obey and which ones he would like to ignore, disregard and disrespect. One cannot approbate and reprobate by in one breadth holding his own statutory institution in high esteem, while his actions (or inactions) would undermine the work of the Court, another institution of State."*

7. Pursuant to an application for special directions filed by Kroll Associates on 18<sup>th</sup> February, 2020, the Court, on 25<sup>th</sup> May, 2020, determined that, in the circumstances, the matter of



the status of the documents to be examined and whether or not they are prejudicial to national security was to be referred to the Supreme Court since it had exclusive jurisdiction to do so.

8. By letter dated 11<sup>th</sup> August, 2020, the Registrar of the Supreme Court notified the High Court of the holding of the Supreme Court as follows:

*"Having informed the Court that the special confidential documents which necessitate the Learned Trial Judge to make a reference to this Court have been inspected by a team from the Audit Service, representing the Acting Auditor-General and found same to be satisfactory, this Court is of the view that the reference to the Supreme Court is moot and the reference is accordingly struck out."*

9. The High Court, consequently, upheld the appeal on all the grounds and in its judgment dated 29<sup>th</sup> October, 2020, held as follows:

*"Eventually, in the ensuing exchanges, the Senior Minister, Hon. Yaw Osafo-Maafa (as his name is spelt therein) (the 1<sup>st</sup> Appellant in Suit No. CM/MISC.0315/2020, wrote Exhibit AG 12 (also attached as Exhibit D to the Appeal) a letter dated 8<sup>th</sup> October, 2019 which concluded inter alia thus; "The work of Kroll Associates under the agreement include asset tracing and asset searching ... which will be produced in as evidence for the prosecution and are therefore considered as privileged and confidential information and reports. They are, however, available at the office of the Senior Minister for your inspection ... They will be available after the investigations for your inspection and study." The Respondent [Mr. Domelevo] upon receiving this and other correspondences rather opted to issue a notice of specification and certification of disallowance and/or surcharge against the Appellants in the consolidated matters before the Court without taking up the offer or opportunity to inspect the documents. No reason was given for the refusal, and nothing else was heard from the*



*Respondent, other than the issuance of the notice that has culminated in these appeals. Eventually however, when the matter was referred to the Supreme Court, not only did the Respondent's office now agree to inspect the documents, they also expressed satisfaction with the work done. ... Clearly, both appeals relate to the surcharge and/or disallowance issued on the basis of no work having been done by Kroll Associates. It is clear then, that had the Respondent [Mr. Domelevo] not been hasty, and had the Respondent's office taken up the offer to inspect the documents which would be made available for inspection, the whole issue of whether or not work had been done would have been resolved without this convoluted and tortuous legal battle. Eventually, the Respondent has declared that **"we were satisfied with the work done"**. That has apparently settled the matter before the court regarding the issue of whether or not the work was done which merited the payment of the subject matter of disallowance and surcharge."*

The Court continued thus:

*"In this case, however, the Auditor-General had clearly engaged the office of the Senior Minister directly to a point. There is however no clear reason on the record to show why he did not complete the engagement and decided to withdraw his co-operation without consummating the engagement already commenced. It must be put on record that for any and every person in public office who exercises discretionary power of any sort, under Article 296 of the 1992 Constitution; (a) that discretionary power shall be deemed to imply a duty to be fair and candid; and (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. ... In this case, this Court holds the view that the Respondent [Mr. Domelevo], in order to observe due process and to prevent any procedural lapses, ought to have at least communicated his refusal to inspect the documents for stated reasons before going ahead*



*to issue the notices that have given rise to the Appeals before this court. Without going into any further detail, since by their eventual agreement to inspect the documents the Respondent's office have tacitly acknowledged the error of their ways, I hold that the Respondent [Mr. Domelevo] failed to abide by the well-known rules of natural justice of giving the Appellants the opportunity to be heard."*

It is noteworthy that nary a sound of caution or condemnation was heard from you or your colleagues in civil society when Mr. Domelevo was using his office to engage in such unacceptable and unconscionable conduct. Indeed, a less charitable perspective would be that this was a patent abuse of office. Yet, there was no chatter from our friends of Civil Society.

It is important to stress that throughout the entire process, the President had no issue with the work of the Auditor-General in respect of his audit of the Ministry of Finance and the payment to Kroll Associates. The President in no way interfered with the process. With the true and accurate position enumerated above, it is mischievous and unpatriotic on anyone's part to suggest that it was the Kroll Associates matter that led to the purported ousting from office of Mr. Domelevo. In any event, there are questions begging to be asked: who, ultimately, was the beneficiary of the attack of the Auditor-General on the work of Kroll Associates, an internationally reputable and well-respected investigative entity, that was engaged to unearth some of the alleged corrupt practices of the erstwhile Mahama government; was this attack in aid of the fight against corruption; and what agenda was Auditor-General Domelevo serving by this attack? Objective commentators can draw their own conclusions.

It is also worth stating that there were other occasions when the courts found it necessary to interfere with Mr. Domelevo's disallowance and surcharge of individuals and entities. For instance, as recently as December 2020, the Supreme Court, by a unanimous decision in **Zoomlion Ghana Limited v. The Auditor-General [2020] DLSC 9926**, held that Mr. Domelevo's exercise of the power of disallowance and surcharge against Zoomlion Ghana Limited was wrong and not supported by law.

### **Accumulated leave**



On the matter of his accumulated leave, by letter dated 29<sup>th</sup> June, 2020, the President requested Mr. Domelevo to take his accumulated leave of 123 working days with effect from Wednesday, 1<sup>st</sup> July, 2020. Mr. Domelevo, by letter dated, 3<sup>rd</sup> July, 2020, informed the President that he started his leave on 1<sup>st</sup> July, 2020 as requested and included his annual leave for the year 2020, which the President accepted in the letter dated 3<sup>rd</sup> July, 2020. It is important to highlight that the President, at all times in requesting Mr. Domelevo to take his accumulated leave, acted based on time-tested legal principles, the rule of law and good governance practices, which Mr. Domelevo accepted. In the 3<sup>rd</sup> July, 2020 letter, Mr. Domelevo was assured by the President that the decision for him to take his annual leave was not borne out of bad faith but rather, given the publicization of the deteriorated relationship between the Audit Service Board and Mr. Domelevo, the President, as the appointing authority, was the only person who could request that Mr. Domelevo take his accumulated leave, which he did. Again, it is mischievous to allege that by requesting Mr. Domelevo to take his accumulated annual leave, he had been targeted by the President. It is important to point out that the President acted pursuant to his understanding of the law and Constitution, and as advised by counsel. We stand by it as legal and proper. The Office of the President also stands by the well-accepted principle of public policy that public servants should take their leave, and not accumulate it. We note, however, that the issue whether the President has authority to request the Auditor-General to proceed on accumulated leave is pending before the courts and we await their views.

### **Retirement of Mr. Domelevo**

The matters relating to the date of retirement came to the attention of the Audit Service Board, which, by law, is responsible for administrative matters of the Audit Service. The Board conducted its investigation, and, in accordance with article 23 of the Constitution and the rules of natural justice, invited Mr. Domelevo, by letter dated 24<sup>th</sup> February, 2021, to attend a special meeting of the Board to resolve the disparities in his date of birth, which had come to the attention of the Board. By letter dated 26<sup>th</sup> February, 2021, which was the date on which the special meeting had been scheduled, Mr. Domelevo declined the invitation, stating as follows:



*"Whereas the information you allegedly have is false, and completely irrelevant for purposes of reckoning time for my retirement [compulsorily or otherwise], you are reminded that the Board is not my appointing authority."*

That notwithstanding, the Board, by letter dated 26<sup>th</sup> February, 2021, outlined the disparities and anomalies in the date of birth of Mr. Domelevo, and requested him to provide an explanation of the disparities and anomalies within 24 hours of the letter. By letter dated 27<sup>th</sup> February, 2021, Mr. Domelevo provided the explanations to the disparities and anomalies, and added that "the information provided to SSNIT was after elementary or middle school," whatever that means. Upon receipt of Mr. Domelevo's explanation, the Board, by letter dated 2<sup>nd</sup> March, 2021, informed Mr. Domelevo that, as far as the Audit Service is concerned, Mr. Domelevo was deemed to have retired. The Board then referred the matter to the President, since Mr. Domelevo has always insisted that the Board was not his appointing authority and, therefore, could exercise no administrative authority over him. The President, upon receipt of the information, caused the allegations to be investigated to ascertain whether or not Mr. Domelevo was deemed to have retired on 1<sup>st</sup> June, 2020 since his date of birth was 1<sup>st</sup> June, 1960. It is important to set out in full, the disparities and anomalies that were brought to the attention of the President.

1. On 1<sup>st</sup> October, 1978, Mr. Domelevo completed, by hand, a registration form for SSNIT membership. On that form, he stated his date of birth as 1<sup>st</sup> June, 1960. Mr. Domelevo, after completing the said registration form by hand, signed it as containing true and accurate information. He also indicated on the registration form that his hometown was Agbatofe in Togo. For the sake of emphasis, we reiterate that Mr. Domelevo completed this registration form in his own hand, signed it and thumbprinted it. It is worth noting that he joined SSNIT as an employee of the Ghana Education Service at Mpraeso as an eighteen year old.
2. The Office of the President was also provided with a SSNIT Change of Beneficiary Form that Mr. Domelevo had completed on 25<sup>th</sup> October, 1993. On that form, again completed by hand, he stated his date of birth as 1<sup>st</sup> June, 1961, and this time his hometown was stated as Ada. It is unclear whether or not this change in date of birth was an attempt by Mr. Domelevo to correct his original date of birth provided to SSNIT in October 1978. The



fact of the matter is that there are laid down procedures under law for changing a worker's date of birth at SSNIT. The Basic National Social Security Scheme Regulations, 2011 (L.I. 1989) and its predecessor regulations, Social Security Regulations, 1973 (L.I. 818), laid down the procedure for making the necessary correction to a worker's age. From the evidence submitted to the President, and through the further investigations conducted by the Office of the President, the President was satisfied that Mr. Domelevo had not complied with laid down procedure for making the necessary changes to his age at SSNIT.

3. Through its own investigations, the Office of the President discovered that the Ghanaian passport number A454800, issued on 28<sup>th</sup> February, 1996, had 1<sup>st</sup> June 1961 as his date of birth and now Kumasi as his hometown. Thus, from all the official documents in respect of Mr. Domelevo, there are two dates of birth: 1<sup>st</sup> June, 1960 and 1<sup>st</sup> June, 1961, and three hometowns: Agbatofe, Ada and Kumasi.

The above inconsistencies are what the Audit Service Board sought to clarify with Mr. Domelevo, who refused to attend the special board meeting and reminded the Board that it was not his appointing authority. Mr. Domelevo could have used that opportunity to provide the best evidence to show that his date of birth was not 1<sup>st</sup> June, 1960 as had been stated in the records but rather 1<sup>st</sup> June, 1961. He ought to have provided his birth certificate to put the matter to rest to the extent that it could, but he failed or refused to do so. As far as SSNIT is concerned, Mr. Domelevo's date of birth is 1<sup>st</sup> June, 1960 and his date of retirement was 1<sup>st</sup> June, 2020. He had in fact taken early retirement on 31<sup>st</sup> January, 2010. Thus far, Mr. Domelevo has not challenged his date of birth being 1<sup>st</sup> June, 1960 except to say his baptismal certificate, which cannot be evidence of date of birth, states his date of birth as 1<sup>st</sup> June 1961. He has never challenged the authenticity of the registration form for SSNIT that he completed by hand and signed dated 1<sup>st</sup> October, 1978. Indeed, on that registration form, Mr. Domelevo was put on notice to provide true and accurate information, failing which he would be liable to prosecution. Section 251 (b) of the **Criminal Offences Act, 1960 (Act 29)** provides as follows:

***"A person commits a misdemeanour who, with intent to defeat, obstruct, or prevent the course of justice, or the due execution of the law, or evade the requirements of the law, or to defraud or injure a person, or to obtain or***



*assist in or facilitate the obtaining of any passport, instrument, concession, **appointment**, permission or **any other privilege or advantage, endeavours to deceive or to overreach a public officer acting in the execution of a public office or duty by a false statement, declaration or assurance, whether written or verbal or by a written or verbal statement, declaration or assurance which the person making the statement, declaration or assurance did not have good reason to believe to be true.***"

[Emphasis added.]

Indeed, in completing the Old Age Retirement and Invalidity Benefit Application Form (SS-B1) on 9<sup>th</sup> June, 2017, which the Office of the President discovered through its own investigations after the Audit Service Board referred the matter to it, Mr. Domelevo stated his date of birth as 1<sup>st</sup> June, 1960, signed and thumbprinted same.

The courts are very clear that where a person provides a date of birth for the purposes of an occupational pension scheme or SSNIT, it is that date of birth that will be used for reckoning the retirement age of that employee and not any other date on subsequent official documents. In ***AngloGold Ashanti Ghana Ltd v. Alhassan Sinare* [2020] DL CA 9862**, the Court of Appeal affirmed the right of AngloGold Ashanti to reject a new birth certificate submitted by its employee showing that his correct date of birth was 29<sup>th</sup> April, 1965. AngloGold Ashanti had insisted that the employee's correct date of birth was 1<sup>st</sup> July, 1959, which was the date of birth on his membership certificate of the company's occupational pension scheme. The Court looked at all the documents, including official documents such as a new birth certificate and Voters ID which had all been acquired after the employee had provided his date of birth for the company's occupational pension scheme, and held that the employee's birth certificate was not genuine, and that AngloGold Ashanti was right to retire the employee when he attained the mandatory retirement age according to the company's policy.

In another and more recent decision of the courts in ***Joseph Essel Biney v. Electricity Company of Ghana Limited* [10<sup>th</sup> February, 2021] (Appeal No: H1/33/2020)**, the Court of Appeal had another opportunity to address this matter of reckoning of date of retirement of employees. In this case, which is very similar to the present case, Mr. Biney had provided 7<sup>th</sup>



April, 1954 as his date of birth to SSNIT instead of 7<sup>th</sup> April, 1957. Having discovered this error, he approached a couple of employees of SSNIT to reconcile his date of birth but was not successful. On 26<sup>th</sup> August, 2013, ECG wrote to him notifying him of his impending retirement on the attainment of 60 years on 7<sup>th</sup> April, 2014, based on the record available to ECG, that is, the SSNIT record. Upon receipt of this notice, Mr. Biney caused his lawyers to challenge the decision and subsequently commenced an action against ECG. At trial, the High Court accepted Mr. Biney's version of events and concluded that since Mr. Biney's actual date of birth was 7<sup>th</sup> April, 1957, his compulsory retirement on 7<sup>th</sup> April, 2014 was not only premature, wrongful and unfair, but the same amounted to an unfair termination of appointment. ECG appealed this decision, and the Court of Appeal allowed the appeal and set aside the judgment of the High Court. The Court held as follows:

*"Generally, the date of birth of a person as shown on that person's certificate of birth is presumed to be accurate. However, that presumption is not conclusive and could be rebutted by cogent evidence to the contrary. In other words, evidence of credible facts may be admitted to rebut the presumption. The question which arises at this point is, whether any facts exist on the Record of Appeal to disprove the Plaintiff's date of birth on his birth certificate and on his Personal Record Form with the Defendant. We would answer this question in the affirmative. It is the date of birth which the Plaintiff voluntarily submitted to SSNIT in 1976. In arguments, counsel for the Defendant referred to the Basic National Social Security Scheme Regulations, 2011 L.I. 1989 and we agree with his submission that, the Plaintiff ought to have taken advantage of the Regulations to correct his date of birth, if there was a genuine mistake, that is, by petitioning the Director-General of SSNIT. That way, the Director-General of SSNIT or his representative duly authorized, would have investigated and if the assertion was found to be true, he would have taken steps to make the necessary correction pursuant to Regulation 27 of L.I. 1989. ... **As far as SSNIT is concerned, the date of birth entered in the records of the Trust is considered accurate until the Director-General reasonably believes that it is not accurate. Until the Director-General who has the mandate to effect changes in the SSNIT official record pertaining to date of birth is petitioned, or otherwise officially***



*notified, by the affected worker or employee, the Director would not know of any other date apart from the date captured in the record of SSNIT. From the foregoing, if there was any mistake at all in the Plaintiff's date of birth at SSNIT, it was not the duty of his employers to petition SSNIT for the so-called mistake to be corrected, and no duty was cast on the Defendant to establish that the date voluntarily submitted by the Plaintiff to SSNIT was made in error.*"[Emphasis added.]

Given the nature and obligations of his office and his own public pronouncements on public servants staying in office after their date of retirement, Mr. Domelevo was under an obligation to ensure that the issues surrounding his date of birth and date of retirement were addressed once and for all. The fact that the date of birth in Mr. Domelevo's passport is 1<sup>st</sup> June 1961 does not make that his date of birth for the purposes of retirement in view of the position of the law, because the passport was obtained subsequent to his SSNIT membership card.

The Office of the President, through its investigations, also discovered that Mr. Domelevo had not petitioned the Director-General of SSNIT to correct the mistake in his date of birth, if indeed, it was a genuine mistake. Moreover, if Mr. Domelevo's baptismal certificate was issued in June 1961, as he stated in his letter of 27<sup>th</sup> February, 2021, then he could have used that baptismal certificate and other evidence to support his petition to the Director-General to amend his date of birth in the SSNIT records. He "did not have the courage" to petition the Director-General to rectify his date of birth. The Court in the ***Joseph Essel Biney v. Electricity Company of Ghana Limited*** case (supra) had this to say concerning official documents obtained subsequent to SSNIT registration:

*"Another argument by counsel for the Plaintiff is that, the Plaintiff tendered the bio date section of his passport, his health card from the Ministry of Health and Baptismal Certificate from the church of Pentecost to show that he was born on 7<sup>th</sup> April, 1957. Given these facts, counsel argues that this court cannot come to any different conclusion than that, the Plaintiff was actually born on 7<sup>th</sup> April, 1957. A perusal of the Plaintiff's bio data page of his Ghanaian Passport at page 154 of the Appeal Record shows that, the passport was issued on 28<sup>th</sup> June, 1999.*



*Similarly, the health record form at page 155 of the Appeal Record was filled out on 16<sup>th</sup> January, 2009. There was no mention of the Plaintiff's church of Pentecost baptismal certificate in his witness statement at page 133 of the Appeal Record, it was also not part of the documents exhibited to the said witness statement. Just like the Plaintiff's birth certificate, the issuance of the passport in 1999 and a 2009 health record form all postdate the 7<sup>th</sup> April, 1954 date of birth captured in the records of SSNIT, which the Plaintiff has not had the courage to petition for the same to be changed in accordance with Regulation 27 of L.I. 1989. **For retirement purposes, we reiterate that the Defendant was justified in using the date of birth voluntarily supplied to SSNIT by the Plaintiff when he was first employed in 1976, to retire him.** We are fortified in this conclusion because per Regulation 26 of L.I. 1989, the compulsory old age retirement of a SSNIT contributor is 60 years. The Defendant did not act contrary to any provision in the Labour Act, Act 651 by acting on credible information officially made available to it, to notify the Plaintiff of his impending retirement. **The Defendant applied the law and duly retired the Plaintiff on attainment of 60 years, calculated from his own date of birth submitted to SSNIT on his enrolment on 16<sup>th</sup> January, 1976. On the evidence, where lies the unfairness in directing a person who by his own deed is due for retirement, to proceed to do so? We find none!** [Emphasis added.]*

The Office of the President, having reviewed all the documents made available to it and the relevant law, including the above cases, concluded that Mr. Domelevo's date of retirement was 1<sup>st</sup> June, 1960. The President also took note of the fact that no credible information had been put forth to show that Mr. Domelevo was born on any other day other than 1<sup>st</sup> June, 1960. No steps have been taken by Mr. Domelevo to contest his date of birth, if indeed it was erroneous in the records of SSNIT. The formal process of petitioning the Director-General of SSNIT to correct a date of birth had not been done.

Accordingly, by letter dated 3<sup>rd</sup> March, 2021, the President notified Mr. Domelevo that, based on the records and information available to his Office that his date of birth was 1<sup>st</sup> June, 1960, and in accordance with article 199 (1) of the Constitution, he was of the view that Mr. Domelevo had



retired as of 1<sup>st</sup> June, 2020. Mr. Domelevo was bound by law to retire on 1<sup>st</sup> June, 2020. For the sake of clarity and emphasis, Mr. Domelevo was neither sacked nor was his appointment terminated; he retired by operation of law because he had attained the compulsory retirement age of 60 years. Applying the words of the Court in ***Joseph Essel Biney v. Electricity Company of Ghana Limited*** (supra), the President applied the law and duly considered Mr. Domelevo as retired on attainment of 60 years on 1<sup>st</sup> June, 2020, calculated from his own date of birth submitted to SSNIT on his enrolment on 1<sup>st</sup> October, 1978. "On the evidence, where lies the unfairness in directing a person who by his own deed is due for retirement, to proceed to do so?" The Court also made this profound observation:

*"The situation where employees change their dates of birth from one workplace to the other to enable them stay longer in employment must be frowned upon. If this practice remains unchecked, people who attain the compulsory retirement age may remain in active service to the detriment of the younger generation."*

It is worthy of note that Mr. Domelevo has himself had occasion to endorse the views of the Court above in his address delivered at the 5<sup>th</sup> Delegates Conference of the Audit Service Divisional Union of the Public Service Workers Union on 29<sup>th</sup> January, 2019. Undeniably, after the Office of the President had written to notify Mr. Domelevo that he had formally retired as of 1<sup>st</sup> June, 1960, Mr. Domelevo proceeded to hold a thanksgiving service at which he thanked the President for all his support and encouragement during his time in office. It is, thus, very disappointing to hear a very senior and otherwise distinguished member of civil society make such loose and thoughtless statements like the President's credibility on anti-corruption is in "tatters" and "has been in tatters for a while," and that the compulsory retirement of Mr. Domelevo puts the nail in the coffin of the President's credibility. Such statements are not based on facts and driven likely by emotions. The fact is that the President's credibility on anti-corruption is unmatched and no amount of misconceived opinions can change that. The President established the Office of the Special Prosecutor and ensured that more than enough resources were at the disposal of the Special Prosecutor for his work. The Right to Information Act, which had remained on the books for many years without being enacted, was passed under the President's leadership. Anti-corruption agencies of the State have been well-resourced in an unprecedented manner. In the words of Mr. Domelevo, "That is the practical way of fighting corruption. It's not by the slogans." In



October, 2020, the Commission on Human Rights and Administrative Justice ("CHRAJ"), in its report on the conflict of interest of the then Chief Executive of the Public Procurement Authority, commended the President on forwarding the complaint he had received to CHRAJ. CHRAJ noted that that was the second time in the history of the Commission that a sitting President had brought a complaint before the Commission in respect of his own appointee. Upon receipt of the report, the President acted swiftly on the recommendations of CHRAJ. In light of these few examples and many other anti-corruption initiatives undertaken by the President, it is preposterous for anyone or organization to conclude that the President has failed in the fight against corruption. It is simply not true. It is not surprising that, contrary to the erroneous propositions of some opinionated domestic critics, Ghana's anti-corruption credentials have been enhanced and so acknowledged by reputable global anti-corruption agencies during the President's tenure of office.

### **Conclusion**

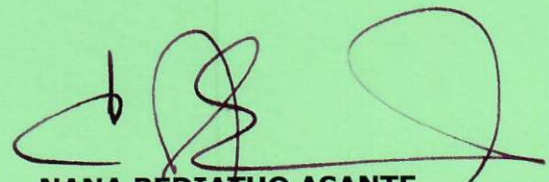
The above constitutes the true and accurate position on the matters related to Mr. Domelevo's retirement. He was not targeted or chased out of office as has been stated wrongly in the public domain. When President Akufo-Addo assumed office, he worked and continues to work with all the constitutional office holders that had been appointed by his predecessor, former President Mahama, including the Commissioner for CHRAJ, Mr. Joseph Whittal, who, like Mr. Domelevo, was also appointed a few days before former President Mahama left office and the Chairperson of the National Commission for Civic Education, Ms. Josephine Nkrumah. Both of these office holders are still in office. The President also worked with the then Chairperson of the Electoral Commission appointed by former President Mahama, Mrs. Charlotte Osei, until her removal by impeachment pursuant to article 146 (9) of the Constitution, initiated by employees of the Electoral Commission, after she had lodged a complaint with the Council of State against her deputies. It is, therefore, completely disingenuous on anyone's part to suggest, even remotely, that the President has been removing constitutional office holders that he met in office or that he has difficulty working with them.

The President has, throughout his entire professional and public life, been a fighter for constitutionalism and strong institutions of state, and will continue to ensure that, under his watch, these institutions are further strengthened for the development of our beloved country. It



beggars belief that notable public personalities who avow their faith in the rule of law would, in the face of the President's public record, seek to paint him as a petty-minded authoritarian, who disregards the rule of law on a whim or as a result of personal dislike, ill will or malice. The President's record of promoting and protecting the Constitution throughout his public life including his tenure as President of the Republic, makes a complete mockery of such baseless accusations. Indeed, the very idea that in spite of the clear requirements of law, the President should not have acted, on account of Mr. Domelevo's allegedly praiseworthy past work, is itself corrupt and actuated by gratuitous bias, and should not be countenanced under any pretext. Its advocates should know better. The Office of the President will encourage all well-meaning Ghanaians to engage in public discussions using accurate facts rather than misleading the good people of Ghana with wrong facts, conjecture, and politicised speculation. Mr. Domelevo has served his nation, and the President wishes him the very best in his future endeavours.

Please accept the President's best wishes.



**NANA BEDIATUO ASANTE**  
**SECRETARY TO THE PRESIDENT**

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**THE SPOKESPERSON  
COALITION OF CIVIL SOCIETY  
ORGANISATIONS AGAINST CORRUPTION  
ACCRA**

**ATTN: DR. KOJO PUMPUNI ASANTE**