REPUBLIC OF GHANA

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Date. 29th April 2024

HIS EXCELLENCY NANA ADDO DANKWA AKUFO-ADDO
PRESIDENT OF THE REPUBLIC OF GHANA
JUBILEE HOUSE
ACCRA

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

Your Excellency,

RE: BRIEF ON THE NEED FOR MINIMUM NUMBER OF TWENTY JUDGES ON GHANA'S SUPREME COURT

Respectfully, by a correspondence referenced as *OPS104/24/231A* dated 18th March, 2024 headed as above, the Secretary to the President seeks the input and perspective of the Attorney-General and the Minister for Justice on a brief submitted by the Chief Justice of Ghana, Justice Gertrude Araba Esaaba Sackey Torkornoo to His Excellency the President of the Republic of Ghana dated 21st February, 2024.

The brief, a copy of which was attached to the correspondence under reference, proposes an increase in the number of Justices of the Supreme Court from the conventional not fewer fifteen Justices to twenty Justices.

The brief sets out the jurisdiction of the Supreme Court under the Constitution as follows:

(1) Final appeals in all cases filed in the hierarchy of courts including final appeals for chieftaincy matters from the Judicial Committee of the National House of Chiefs;

(2) Original and exclusive jurisdiction in the interpretation of the Constitution;

(3) Supervisory jurisdiction over Superior Courts;

(4) Review jurisdiction over decisions of the Supreme Court;

(5) Original jurisdiction in determining whether or not official documents that may be prejudicial to the security of the State or injurious to public interest may be produced in any court;

(6) Original jurisdiction in Presidential elections petitions; and

(7) Original jurisdiction over claims of reparation for wrongly convicted persons.

The brief also provides statistics on the number of Justices of the Supreme Court, cases filed, cases concluded and cases pending in the five-year period (2018-2023).

By convention, the number of Justices of the Supreme Court has averaged fifteen Justices since the coming into force of the Constitution, 1992. The Supreme Court had the lowest number of twelve (12) Justices in the 2022/2023 legal year.

For the 2018/2019 legal year, the Supreme Court of Ghana had 14 Justices. The highest number of eighteen Justices was recorded in the 2019/2020 legal year due to new appointments made in anticipation of the imminent retirement of some Justices. By 2020/2021, the number of Justices of the Supreme Court had reverted to sixteen (16). At the end of the 2022/23 legal year, the Supreme Court had 12 Justices, the lowest in the period under review.

JUSTIFICATION PROVIDED BY THE CHIEF JUSTICE FOR AN EXPANSION OF THE MEMBERSHIP OF THE SUPREME COURT

According to the brief, the Supreme Court is duly constituted by not less than five Justices in the exercise of its appellate or supervisory jurisdiction and by seven Justices in the exercise of its original jurisdiction in the interpretation and enforcement of the Constitution, or in its review jurisdiction.

In an application for review in a constitutional matter, nine Justices of the Court usually constitute a panel for the hearing of the application. Thus, with the conventional average of fifteen Justices, only two panels of five and seven Justices or nine Justices can be constituted. This tends to exhaust the entire number of Justices of the Supreme Court on a sitting day.

The constitution of the Supreme Court for appeals is further challenged by recusal of Justices of the Court owing to the frequent situation where some of the Justices would have dealt with aspects of the cases on appeal during their journey from the courts of first instance up to the Supreme Court. The ripple effect of this, which is attended by disruption of pre-sitting conferences, post-hearing conferences and hearings, is the constant reconstitution of panels to enable appeals to be heard.

Furthermore, with not less than forty-five cases on the Cause List in a week and approximately one hundred and eighty hearings in a month, each panel

of the Court has to manoeuvre convenient times for pre-sitting conferences on applications, writs and appeals, and for post-hearing conferences to determine final opinions on each matter before rulings and judgments can be delivered. These conferences, due to the fewer number of panels that can be constituted, contribute to delays in the work of the Supreme Court.

The Chief Justice's brief provided graphic statistics covering a five-year period, from October 2018 to October 2022, of cases pending at the Court at the beginning of each legal year, matters filed during each legal year, matters concluded each legal year, cases pending at the end of each legal year and the rate of conclusion of cases. While the statistics reveal a general exponential increase in the cases before the Court over the years under consideration, there is a decreasing trend of cases concluded across the years under review.

Whereas there were **761, 869, 906, 799** and **939** cases before the Supreme Court in the 2018/2019, 2019/2020, 2020/2021, 2021/2022 and 2022/2023 legal years respectively, the Court concluded **559 cases** with 14 Justices, **653 cases** with 18 Justices, **694 cases** with 16 Justices, **385 cases** with 14 Justices and **344 cases** with 12 Justices in the respective legal years. The domino effect of this is a backlog of 202, 216, 221, 414 and 595 cases in the respective legal years, correlative with the number of Justices of the Supreme Court for the years under review.

The brief articulates that the policy behind the decision to reduce the jurisdiction of the Supreme Court or appoint more Justices ought to be dependent on the obligation to match the supply of judicial services with the demand for judicial services, measured by the flow of new cases, the number of pending cases and disposal of the backlog of cases.

In view of the realities of the workload and output of work at the Supreme Court and the need for the Court to appropriately serve the justice needs of the country and ensure the speedy resolution of cases, the Chief Justice requested the President to consider the appointment of additional Justices to the Supreme Court, to bring the number of Justices of the Supreme Court to twenty.

This will enable the constitution of three undisturbed panels of five Justices and two panels of seven or nine Justices to work on any set of cases to reduce the specter of constantly reconstituted panels and its effect on pre-hearing conferences and post-hearing conferences.

ISSUE

The issue arising is whether or not the proposal to increase the conventional number of Justices of the Supreme Court from fifteen to twenty is in order.

ADVICE

In addressing the issue, the following were considered:

(a) the Constitution;

(b) the Courts Act, 1993 (Act 459);

(c) the composition of the Supreme Court in some jurisdictions sharing the Common Law tradition; and

(d) the need for a review and/or control of the jurisdiction of the Supreme Court.

A. The composition of the Supreme Court

Article 128 of the Constitution provides for the composition of the Supreme Court and the qualifications of its Justices as follows:

> ***"128. Composition of the Supreme Court and qualifications of its Justices***
>
> *(1) The Supreme Court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court.*
>
> *(2) The Supreme Court shall be duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in article 133 of this Constitution.*
>
> *(3) The Chief Justice shall preside at sittings of the Supreme Court and in his absence, the most senior of the Justices of the Supreme Court, as constituted, shall preside.*
>
> *(4) A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer."*

Even though clause (1) of article 128 of the Constitution stipulates a minimum of ten Justices including the Chief Justice, for the Supreme Court, the number of Justices for the Court is not capped. The framers of the

Constitution consciously envisioned the need not to impose an upper limit on the number of Justices of the highest court of the land, providing the opportunity for an increase as may be necessitated by the demand for justice.

Thus, in the absence of a constitutionally determined upper threshold of the number of Justices of the Supreme Court, the determination of the number of Justices serving on the Court at any point in time would be a function of the administration of justice and the needs of the Court. Given the massive influx of cases at the Supreme Court (in contrast to the situation in 1992 when the Constitution was adopted and enacted), the request for the increase in the number of Justices of the Supreme Court to twenty is not only constitutional but also in accord with the need to ensure speedy and effective justice, avoid delays and unnecessary expense as well as conduce to the efficient administration of the Supreme Court.

B. The jurisdiction of the Supreme Court

The power of the Supreme Court to review its decisions, the power of a single Justice of the Supreme Court and the original jurisdiction of the Supreme Court to determine whether or not official documents deemed prejudicial to the security of the State or injurious to the public interest may be produced in any court are exercisable under articles 133, 134 and 135 of the Constitution.

Section 1 of the **Courts Act, 1993 (Act 459)** is a restatement of article 128 of the Constitution on the composition of the Supreme Court, while sections 2 to 5 of **Act 459** restate articles 129, 130, 131 and 132, respectively, of the Constitution on the general, original, appellate and supervisory jurisdictions of the Supreme Court.

Further, sections 6, 7 and 8 of Act 459 restate the power of the Supreme Court to review its decisions, the powers of a single Justice of the Supreme Court and the original jurisdiction of the Supreme Court to determine whether or not official documents deemed prejudicial to the security of the State or injurious to public interest may be produced in any court, already conferred by articles 133, 134 and 135 of the Constitution.

Section 9 of Act 459 also reproduces the Supreme Court's power to hear and determine petitions presented to the President for the grant of prerogative of mercy.

Thus, from a wholistic examination of the Constitution and Act 459, the Supreme Court is constitutionally and statutorily mandated to:

(a) determine final appeals in all cases filed in the hierarchy of courts including final appeals for chieftaincy matters from the Judicial Committee of the National House of Chiefs;

(b) exercise original and exclusive jurisdiction in the interpretation of the Constitution;

(c) exercise supervisory jurisdiction over superior courts;

(d) exercise review jurisdiction over decisions of the Supreme Court;

(e) exercise original jurisdiction in determining whether or not official documents that may be prejudicial to the security of the State or injurious to public interest may be produced in any court;

(f) exercise original jurisdiction in Presidential elections petitions;

(g) exercise original jurisdiction over claims of reparation for wrongly convicted persons; and

(h) hear and determine petitions presented to the President for the grant of prerogative of mercy.

The performance of these functions would, in accordance with the Constitution, require differently constituted panels of the Supreme Court sitting at the same time. Understandably, the constitution of panels of the Supreme Court, almost simultaneously, for effective and efficient work could be daunting for the administration of the Supreme Court in the face of the current conventional upper limit on the number of Justices, especially so as the Court is incessantly inundated with cases.

Evidently, the exponential increase in the backlog of 414 and 595 cases in 2021/2022 and 2022/2023 legal years in which there were the fewest number of Justices serving on the Supreme Court for the five-year period under review, provides scientific basis for an assertion that the capacity of the Court to deliver on its constitutional mandate is significantly affected by the size of the human resources at its disposal. It provides justification for the number of Justices on the Supreme Court to be enhanced in order to stem the tide of the increases in outstanding cases. The expansion of the membership of the Supreme Court to twenty, as requested in the brief, would be appropriate in the circumstances.

However, attention needs to be drawn to the fiscal implication on the public purse of any appointment of a Justice of the Supreme Court. It is noted that salaries payable to a Justice of the Superior Court of Judicature are a charge on the Consolidated Fund. Further article 155(1) of the Constitution provides that a Justice of the Superior Court of Judicature, ***subject to the conditions stipulated in the article***, shall, on retiring, in

addition to any gratuity payable to him, be paid a pension equal to the salary payable for the time being to a Justice of the Superior Court from which he retired. The additional appointment of Justices of the Supreme Court thus, has financial implications for the State.

C. Composition of the Supreme Court in some Commonwealth jurisdictions

In the ensuing paragraphs, the composition and jurisdiction of the Supreme Courts in some Commonwealth jurisdictions, namely, the United Kingdom, United States of America, Canada, South Africa and Kenya are considered.

United Kingdom

Section 23 of Part 3 of the **Constitutional Reform Act, 2005 (c.4)** provides for the composition of the Supreme Court of the United Kingdom as follows:

> ***"23. The Supreme Court***
>
> *(1) There is to be a Supreme Court of the United Kingdom.*
>
> *(2) The Court consists of 12 judges appointed by Her Majesty by letters patent.*
>
> *(3) Her Majesty may from time to time by Order in Council amend subsection (2) so as to increase or further increase the number of judges of the Court.*
>
> *(4) No recommendation may be made to Her Majesty in Council to make an Order under subsection (3) unless a draft of the Order has been laid before and approved by resolution of each House of Parliament.*
>
> *(5) Her Majesty may by letters patent appoint one of the judges to be President and one to be Deputy President of the Court.*
>
> *(6) The judges other than the President and Deputy President are to be styled "Justices of the Supreme Court".*
>
> *(7) The Court is to be taken to be duly constituted despite any vacancy among the judges of the Court or in the office of President or Deputy President."*

Currently, there are twelve Justices of the Supreme Court of the United Kingdom.

Even though the number of Justices of the UK Supreme Court (UKSC) is fixed at 12 (with His Majesty given the power to increase the number by Order in Council), under section 38 of the **Constitutional Reform Act, 2005 (c.4)**, the President of the UKSC may request for specified persons to act as a judge of the Supreme Court. Section 38 of the Constitutional Reform Act, 2005 (c.4) provides as follows:

"Acting judges

38. (1) At the request of the President of the Supreme Court any of the following may act as a judge of the Court—

(a) a person who holds office as a senior territorial judge;

(b) a member of the supplementary panel under section 39.

(2) A request under subsection (1) may be made by the Deputy President of the Court if there is no President or the President is unable to make that request.

(3) In section 26(7) of the Judicial Pensions and Retirement Act 1993(c. 8) (requirement not to act in certain capacities after the age of 75) for paragraph (b) substitute—

"(b) act as a judge of the Supreme Court under section 38 of the Constitutional Reform Act 2005;".

(4) Every person while acting under this section is, subject to subsections (5) and (6), to be treated for all purposes as a judge of the Supreme Court (and so may perform any of the functions of a judge of the Court).

(5) A person is not to be treated under subsection (4) as a judge of the Court for the purposes of any statutory provision relating to—

(a) the appointment, retirement, removal or disqualification of judges of the Court,

(b) the tenure of office and oaths to be taken by judges of the Court, or

(c) the remuneration, allowances or pensions of judges of the Court.

(6) Subject to section 27 of the Judicial Pensions and Retirement Act 1993, a person is not to be treated under subsection (4) as having been a judge of the Court if he has acted in the Court only under this section.

(7) Such remuneration and allowances as the Lord Chancellor may with the agreement of the Treasury determine may be paid out of money provided by Parliament to any person who acts as a judge of the Court under this section.

(8) In this section "office as a senior territorial judge" means office as any of the following—

(a) a judge of the Court of Appeal in England and Wales;

(b) a judge of the Court of Session, but only if the holder of the office is a member of the First or Second Division of the Inner House of that Court;

(c) a judge of the Court of Appeal in Northern Ireland, unless the holder holds the office only by virtue of being a puisne judge of the High Court."

Remarkably, the UKSC primarily exercises only an appellate jurisdiction over decisions of other appellate courts, and in rare cases, from courts of first instance. The Court also has a special role in relation to the devolution statutes in Scotland, Wales and Northern Ireland ("devolution references"). To ensure that the UK Supreme Court is not overburdened with cases, the restrictions on appeal are typically onerous, with the jurisdiction invoked only pursuant to leave which is granted if the case raises an "*arguable point of law on a matter of general public importance*".

The jurisdiction of the UKSC and the mode of exercise thereof, clearly render a comparison of the composition of that court with the composition of Ghana's Supreme Court inappropriate.

United States of America

The brief of the Chief Justice contains a comparative review of the numbers and jurisdictions of the Supreme Courts of the United States of America. Thus, I will refrain from the conduct of a similar exercise herein, save to note that:

i. The federal system of government practiced by the United States implies that each of the 50 States has a Supreme Court, with the exception of Oklahoma and Texas, which have two Supreme Courts each (one for civil and one for criminal cases).

ii. The total number of "State Supreme Court judges" throughout the United States of America is three hundred and forty-four (344), implying that the oft-referenced nine Justices of the US Supreme Court (with all its grossly limited jurisdiction) is supported by 344 State Supreme Court judges who deliver final decisions in most cases in the 50 States of the United States.

iii. The jurisdiction of the US Supreme Court is much narrower with the Court further circumscribing same through a selective process of determining cases to be heard each year. Consequently, the number of cases heard by the US Supreme Court is about ten percent (10%) of the number of cases heard by the Supreme Court of Ghana each year.

Considering the above, a comparison of the composition of the US Supreme Court with that of Ghana's Supreme Court is misleading and unhelpful.

Canada

In Canada, the number of Justices of the Supreme Court is capped at nine - the Chief Justice of Canada, and eight puisne judges. A puisne judge of a court is a judge other than the Chief Justice of that court. Subsection (1) of section 4 of the Supreme Court of Canada Act, R.S.C., **1985, c. S-26** provides for the constitution of the Court as follows:

> ***"Constitution of Court***
>
> **4 (1)** *The Court shall consist of a chief justice to be called the Chief Justice of Canada, and eight puisne judges."*

Remarkably, the Supreme Court of Canada has **only an appellate jurisdiction**, being the highest court of appeal in both civil and criminal matters. Most appeals are heard only pursuant to the grant of leave by the Court, where the matter involves a question of public importance or an important issue of law (or of both law and fact) warranting consideration by the Court. On the average, the Supreme Court of Canada hears between 65 and 80 appeals in a year, ensuring that the workload is significantly lower than that of Ghana Supreme Court.

South Africa

The Constitution of the Republic of South Africa, 1996 provides for the judicial system of South Africa. At the apex of the judicial system are two courts - the Constitutional Court and the Supreme Court of Appeal, with the Constitutional Court being superior in rank.

The **Constitutional Court** has jurisdiction only on constitutional matters and issues connected with decisions on constitutional matters. It consists of eleven Justices, that is, Chief Justice, Deputy Chief Justice and nine other judges.

Section 167 of the South African Constitution provides as follows:

"167. ***Constitutional Court***

(1) The Constitutional Court consists of the Chief Justice of South Africa, the Deputy Chief Justice and nine other judges.

(2) A matter before the Constitutional Court must be heard by at least eight judges.

(3) The Constitutional Court—

(a) is the highest court of the Republic; and

(b) may decide—

(i) constitutional matters; and

(ii) any other matter, if the Constitutional Court grants leave to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court, and

(c) makes the final decision whether a matter is within its jurisdiction.

(4) Only the Constitutional Court may—

(a) decide disputes between organs of state in the national or provincial sphere concerning the constitutional status, powers or functions of any of those organs of state;

(b) decide on the constitutionality of any parliamentary or provincial Bill, but may do so only in the circumstances anticipated in section 79 or 121;

(c) decide applications envisaged in section 80 or 122;

(d) decide on the constitutionality of any amendment to the Constitution;

(e) decide that Parliament or the President has failed to fulfil a constitutional obligation; or

(f) certify a provincial constitution in terms of section 144.

(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, the High Court of South Africa, or a court of similar status, before that order has any force.

(6) National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court—

(a) to bring a matter directly to the Constitutional Court; or

(b) to appeal directly to the Constitutional Court from any other court.

(7) A constitutional matter includes any issue involving the interpretation, protection or enforcement of the Constitution."

The Constitution of South Africa also provides for the **Supreme Court of Appeal** as the *highest of court of appeal in all matters, except in constitutional matters and cases dealt with by the Constitutional Court.* Currently, the Supreme Court of Appeal of South Africa is made up of **twenty-three judges**. There is no limit to the number of judges serving on the Supreme Court of Appeal of South Africa.

"Constitution and set of Supreme Court of Appeal

5. (1) (a) The Supreme Court of Appeal consists of –

(i) the President of the Supreme Court of Appeal;

(ii) the Deputy President of the Supreme Court of Appeal; and

(iii) so many other judges as may be determined in accordance with the prescribed criteria and approved by the President."

Kenya

The Constitution of Kenya, 2010, establishes and constitutes the Supreme Court. The Constitution fixes the number of Supreme Court judges at seven. Article 163 of the Constitution of Kenya provides as follows:

*"**Article 163 - Supreme Court***

(1) There is established the Supreme Court, which shall consists of—

(a) the Chief Justice, who shall be the president of the court;

(b) the Deputy Chief Justice, who shall—
(i) deputise for the Chief Justice; and

(ii) be the vice-president of the court; and

(c) five other judges.

(2) The Supreme Court shall be properly constituted for the purposes of its proceedings if it is composed of five judges."

In accordance with article 163(3) of the Kenyan Constitution, the Supreme Court of Kenya has only two jurisdictions:

(a) exclusive jurisdiction to hear and determine disputes relating to the election of the President of Kenya; and

(b) to serve as the highest court of appeal in Kenya.

It would be noted that in respect of appeals, the Kenya Supreme Court, except in cases involving the interpretation of the Constitution, in accordance with article 163(4)(b), only exercises jurisdiction where either the Supreme Court or the Court of Appeal certifies that "*a matter of general public importance is involved*".

The Kenya Supreme Court has **no** original jurisdiction in the interpretation of the Constitution, with same reserved for the High Court. An appeal against the decision of the Court of Appeal in a matter involving the interpretation or application of the Kenyan Constitution may however proceed as of right to the Supreme Court.

Therefore, unlike the United Kingdom, the United States of America, Canada, Kenya and South Africa, where the number of justices of the Supreme Court

is capped, the highest number of Justices of the Supreme Court of Ghana is not capped in either the Constitution or in the Courts Act, 1993 (Act 459). This gives discretion to the appointing authority to increase the appointment of Justices to the Supreme Court as the demands of the administration of justice require.

THE NEED FOR A REVIEW AND/OR CONTROL OF THE JURISDICTION OF THE SUPREME COURT

A careful study of relevant provisions of the Constitution, 1992 as well as the deliberate restriction of the jurisdiction of Supreme Courts in notable jurisdictions of the common law tradition, show that, in the long term, there ought to be a reform of the various jurisdictions conferred on Ghana's Supreme Court by the Constitution. The legal regime for an invocation of the jurisdiction of Ghana's Supreme Court is, by far, one of the most liberal, relaxed, and uncontrolled in the world.

It is noted that most Supreme Courts of the common law tradition exercise only an appellate jurisdiction, invoked pursuant to leave, which is granted in cases involving matters of public importance, or important questions of law or of both law and fact.

In Ghana, the constitutional stipulation in article 131(1) for appeals to lie from the Court of Appeal to the Supreme Court:

(a) **as of right** in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal **from a judgment of the High Court or Regional Tribunal in the exercise of its original jurisdiction** or

(b) with **the leave of the Court of Appeal**, in any other cause or matter, **where the case was commenced in a court lower than the High Court** or Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest, substantially widens access to the Supreme Court in numerous cases with little or no restriction.

In the first place, all appeals from cases covered by article 131(1)(a) of the Constitution lie as of right to the Supreme Court. Further, the stipulation that appeals emanating from the lower courts may proceed to the Supreme Court only with the leave of the Court of Appeal provides no major limitation as the Court of Appeal invariably grants such requests. In any event, the restrictive effect of the condition in sub clause 1(b) of clause 1 of article 131 is negated

by clause 2 of article 131, which empowers the Supreme Court to entertain an application for special leave to appeal to the Supreme Court *in any cause or matter, civil or criminal, and to grant leave accordingly*, notwithstanding clause 1 of article 131.

The provisions referred to above, informed by the desire to grant virtually unlimited access to the Supreme Court for the benefit of Ghanaians, may be laudable as an ideal in constitutionalism. Unfortunately, however, they have resulted in the inundation of the Supreme Court, a phenomenon which impedes the efficient and effective delivery of justice by the highest court of the land.

This is compounded by the unlimited access of Ghanaians to the original jurisdiction of the Supreme Court under Article 2(1) as well as the exclusive appellate jurisdiction of the Supreme Court in cases from the National House of Chiefs and matters relating to the conviction or otherwise of a person for high treason or treason by the High Court.

Due regard must also be had to the original jurisdiction of the Supreme Court in cases involving a challenge to the validity of the election of the President of the Republic which in the year 2013 engaged nine Justices of the Supreme Court for 8 months.

The foregoing calls for an urgent constitutional amendment to limit access to the Supreme Court to ensure that the caseload in the nation's highest court conduces to efficiency. The proposed constitutional amendment would ensure that the Court of Appeal would be the final appellate court in most cases, and that the cases covered by the original jurisdiction of the Supreme Court should be subject to the leave of the Supreme Court in most cases. Even though the constitutional provisions on the jurisdiction of the Supreme Court are not entrenched, a bill for an amendment of same is required to comply with the elaborate procedure prescribed by article 291 of the Constitution.

Pending recourse to and compliance with the procedure for an amendment of the Constitution, I suggest the enactment of regulations by the Judiciary to govern the exercise of the multiplicity of jurisdictions conferred on the Supreme Court of Ghana. Through regulations, the Supreme Court can, within the constraints of the Constitution, restrict the threshold for the hearing of cases filed before it, especially appeals from the Court of Appeal to the Supreme Court. The prescription of a threshold for the hearing of any matter in respect of which jurisdiction has been conferred on the Court neither undermines the jurisdiction of the Court nor is unconstitutional.

CONCLUSION

In the light of the foregoing, it is respectfully submitted as follows:

1. That, having regard to the relevant provisions of the Constitution, the determination of the number of Justices of the Supreme Court at any point in time would be a function of the administration of justice and the needs of the Court.

2. Given the breadth of the multiplicity of jurisdictions of the Supreme Court and the influx of cases at the Supreme Court, the request for the increase in the number of Justices serving on the Supreme Court from the conventional fifteen (in addition to the Chief Justice) to twenty, is not only constitutional but would ensure speedy and effective justice, minimise delays and unnecessary expense and conduce to the general efficient administration of the Supreme Court.

3. The performance of the functions of the Supreme Court would, in accordance with the Constitution, require differently constituted panels of the Supreme Court sitting at the same time. Understandably, the permutations in the constitution of the panels, almost simultaneously, could be daunting for effective and efficient work in the face of limited number of Justices at the Supreme Court, as the Court is incessantly inundated with cases.

4. The exponential increase in the backlog of 414 and 595 cases in 2021/2022 and 2022/2023 legal years in which there were the fewest number of Justices of the Supreme Court for the five-year period under review, provided scientific justification of the necessity to expand the number of Justices at the Supreme to stem the tide of the increasing backlog of cases. The enhancement of the membership of the Supreme Court to twenty, as requested in the brief by Her Ladyship the Chief Justice, is appropriate.

5. However, attention needs to be drawn to the fiscal implication on the public purse of any additional appointment of Justices to the Supreme Court. This is in view of the charge of emoluments payable to Justices of the Supreme Court on the Consolidated Fund.

6. The jurisdictions exercised by other Supreme Courts in notable countries in the Common Law tradition are relatively much narrower, in comparison

to the width of the multiple jurisdictions conferred on the Supreme Court of Ghana.

7. Ultimately, a constitutional amendment circumscribing the jurisdiction of the Supreme Court of Ghana, in the long term, is necessary, as stated above.

8. Therefore, unlike in Canada, the United Kingdom, Kenya and South Africa, where the number of justices of the Supreme Court is capped, the highest number of Justices of the Supreme Court of Ghana is not capped in the Constitution or in the Courts Act, 1993 (Act 459). This gives discretion to the appointing authority to increase the appointment of Justices to the Supreme Court subject to the demands of the needs of justice.

Please accept the assurances of my highest esteem.

Yours faithfully,

GODFRED YEBOAH DAME
THE ATTORNEY-GENERAL
AND MINISTER FOR JUSTICE

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matter in respect of which jurisdiction has been conferred on the Court neither undermines the jurisdiction of the Court nor is unconstitutional.

CONCLUSION

In the light of the foregoing, it is respectfully submitted as follows:

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3. The performance of the functions of the Supreme Court would, in accordance with the Constitution, require differently constituted panels of the Supreme Court sitting at the same time. Understandably, the permutations in the constitution of the panels, almost simultaneously, could be daunting for effective and efficient work in the face of limited number of Justices at the Supreme Court, as the Court is incessantly inundated with cases.

4. The exponential increase in the backlog of 414 and 595 cases in 2021/2022 and 2022/2023 legal years in which there were the fewest number of Justices of the Supreme Court for the five-year period under review, provided scientific justification of the necessity to expand the number of Justices at the Supreme to stem the tide of the increasing backlog of cases. The enhancement of the membership of the Supreme Court to twenty, as requested in the brief by Her Ladyship the Chief Justice, is appropriate.

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8. Therefore, unlike in Canada, the United Kingdom, Kenya and South Africa, where the number of justices of the Supreme Court is capped, the highest number of Justices of the Supreme Court of Ghana is not capped in the Constitution or in the Courts Act, 1993 (Act 459). This gives discretion to the appointing authority to increase the appointment of Justices to the Supreme Court subject to the demands of the needs of justice.

Please accept the assurances of my highest esteem.

Yours faithfully,

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