

**HONOURABLE CHIEF JUSTICE
OF THE REPUBLIC OF GHANA**



7th February 2024

HIS EXCELLENCY
THE PRESIDENT OF THE REPUBLIC OF GHANA
OFFICE OF THE PRESIDENT
JUBILEE HOUSE
ACCRA

Your Excellency,

**BRIEF ON THE NEED FOR MINIMUM NUMBER OF TWENTY
JUDGES ON GHANA'S SUPREME COURT BENCH**

Respectfully, I write in reference to our previous discussion on the Chief Justice's proposal for an increase in the number of Justices of the Supreme Court of Ghana.

Kindly find attached a paper justifying the need for the request. Thank you very much.

Please accept my compliments.

A handwritten signature in blue ink, appearing to read 'Gertrude Sackey Torkornoo'.

JUSTICE GERTRUDE SACKEY TORKORNOO

CHIEF JUSTICE



At the end of the 2019/20 legal year, the SCOG had 18 judges. At the end of the 2020/21 legal year, the SCOG had 16 judges. At the end of the 2021/22 legal year, the SCOG had 14 judges. At the end of the 2022/23 legal year, the SCOG had 12 judges. This number has now been increased to 15 Justices.

Constitution of the SCOG for its work

The SCOG is duly constituted for its work by not less than 5 Supreme Court Justices in the discharge of its appellate jurisdictions, and its supervisory jurisdiction. In its original jurisdiction over constitutional interpretation it is duly constituted for its work by 7 judges. It is also duly constituted for its review jurisdiction by 7 judges. An application for review of a constitutional matter requires 9 Justices to preside over it. This means that in any given week when the SCOG sits to consider cases under its original jurisdictions, supervisory and review jurisdictions, the court may require any number of Judges from 5 to 9 per panel for each case

Justification for the membership of the SCOG to be expanded to twenty instead of the convention of 15 Judges

This paper states justifications for increasing the number of Supreme Court Judges from fifteen (15) to a minimum of twenty (20), including the Chief Justice.

It is noted that there have been extensive calls for the reduction of the jurisdictions of the SCOG, in order to reduce the work load of the court, and refine its work in overseeing Ghana's constitutional order. This position paper does not intend to veer into that discussion on reduction of the jurisdictions of the SCOG, because such reduction lies within the long term process of amending the national Constitution...

This paper articulates that the policy philosophy behind the decision to reduce jurisdictions or appoint more Judges ought to be simply motivated by the obligation to match the supply of judicial services with



demand for same as measured by the flow of new cases, the number of pending cases, and disposal of cases in backlog. It is this fundamental and background reason for the appointment of Judges of the SCOG that the paper urges ought to be activated to increase the numbers of Judges on the SCOG, in view of the realities of the Court's workload and output, and the need for the Court to appropriately serve the justice needs of the nation.

1. Stand-alone or Non-overlapping Panels

Currently, the SCOG sits three days a week in alternating weeks in order to keep up with its volume of work. Two days are used for panel sitting, and one day for the sitting of a single Judge. The SCOG therefore sits twelve times a month. On any given day of sitting, the court deals with a minimum of 15 cases and so works on not fewer than forty five matters in a week, or approximately one hundred and eighty matters in a month. These numbers may increase when judgments and rulings are included. With the current limited number of 15 Justices including the Chief Justice, and with recusals necessitated by the oft-occurring situation where Judges of the Supreme Court either sat on a matter on appeal in the Court of Appeal, or presided over the trial of a case on appeal, it is almost impossible to create two stand-alone panels in any given week. Invariably, panels have to be reconstituted to enable Judges to leave a panel and allow new Judges to replace them.

A summary of Appendix A on the numbers of hearings that are pending at the beginning of a legal year and end of that legal year is as follows:

	Oct 2018	Oct 2019	Oct 2020	Oct 2021	Oct 2022	Oct 2023
	July 2019	July 2020	July 2021	July 2022	July 2023	July 2024
Cases	222	202	216	221	414	



pending at the beginning of the year						
Matters filed during the legal year	539	667	690	578	525	
Matters concluded in the legal year	559	653	694	385	344	
Cases pending at the end of the legal year	202	216	221	414	595	
Rate of Conclusion: no of cases concluded v. No cases filed + No of Cases pending at the beginning of the year		75%	77%	44%	37%	

A summary of the numbers of Judges of the court over the same period is as follows:

Oct 2018	–	Oct 2019	–	Oct 2020	–	Oct 2021	–	Oct 2022	–	January 2024	–	
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July 2019	July 2020	July 2021	July 2022	July 2023		
14	18	16	14	12	15	

The figures above show that at the commencement of the last five years, the SCOG had approximately the same number of unheard matters at the end of the year that it had at the beginning of the legal year or higher. In the 2018/19 legal year, more than double the number of cases pending at the beginning of the legal year were filed and disposed off. While hearing as many as the numbers of new cases filed (539/559), the SCOG was unable to shift the number of backlog of cases it had at the beginning of the year (222 compared with 202).

At the end of the 2019/20 legal year, more than triple the number of cases pending at the beginning of the legal year were filed and disposed off. While catching up with hearing as many as the numbers of new cases filed (667/653), the SCOG was unable to shift the number of backlog of cases it had at the beginning of the year (202 compared with 216).

The same pattern persisted by the end of the 2020/2021 legal year. The SCOG continued to catch up with hearing as many as the numbers of new cases filed (690/694), yet it was unable to shift the number of backlog of cases it had at the beginning of the year (216 compared with 221).

In the 2021/2022 legal year, the court fell behind in sitting on the number of cases filed in the year by almost one-third. 578 new matters were filed, and it sat on 385 matters. It ended the year with almost double the number of cases it started with in backlog (216 compared with 414).

This pattern persisted in 2022/2023 legal year. 525 new matters were filed, and the SCOG sat on 344 matters. By July 2023, the backlog of the



court exceeded the cases pending in October 2021 almost two and half times – (519 compared with 216). The percentage of concluded cases was higher with 18 and 16 judges than when the SCOG had 14 and 12 Judges. It reveals a loss of efficiency in resolution of cases in the years that the court has fewer numbers of Justices.

It is posited that with the total number of 525 cases pending as at the end of July 2023 legal year, and 12 Judges from who only 2 sets of panels may be derived, each panel would have had to work to dispose of and render decisions in approximately 263 cases in the year (more than twenty cases each month), even excluding the pending cases from the previous legal year which was 414 cases – leaving an inordinately doubled pattern of backlog of cases.

Delayed decision making and delivery

It is submitted that if the numbers of Judges of the SCOG are not increased, the untenable situation will be created where Justices of the Supreme Court have to sit every week, sit on multiple panels and on three times the numbers of hearings, just to end the year with the same number of backlog of cases as had become the situation by July 2021.

As bad as these circumstances are in terms of delayed justice for those whose cases fall within the backlog, the worse effect is on the quality of work Judges of the highest court can produce with this sort of pressure.

Currently, three factors account for the delays in production of final decisions in the court. First is the number of times every Judge has to sit in a week. This leaves less time for directing and supervising research, and personal writing of opinions. This compels Judges to take longer to work on decisions that satisfy them of the quality of research required for a court of its obligation as the final determiner of issues, the court that interprets the Constitution, and the court that sets the policy and philosophical underpinnings of judicial positions.



The second factor is delays in conferencing of the different panels, because of the actual court room sitting times that Judges have to engage in. It is more difficult for the presidents of panels to obtain consensus for setting conference times for the different panels because Judges have to constantly navigate multiple conference sittings for over-lapping panels each time the court sits.

The third reason is the time spent on writing decisions, because despite the pressure of sitting in court and on different panels, the requirements of independence, competence, integrity and diligence demand that every judge writes their own opinion, or spends quality time reviewing opinions written by a member of the panel before concurring with, dissenting from, or agreeing with language and expressions presented to them, prior to putting their signature to same. Once again, this causes delayed justice for those who have to wait interminably for final decisions to be put out. Because Judges cannot be, and are not willing to compromise the quality of decisions that they put their hands to, and rightly so, the burden created is delayed justice delivery from the SCOG.

This is neither appropriate for quality decision making at the level of final judicial consideration of contentious and policy issues, nor efficient for court users and the democratic credentials of the nation, a factor which weighs heavily on the minds of both domestic and external investors. It is also not physiologically considerate, bearing in mind that the average age of Judges of the court is past 64 years.

Increases in Judges of lower courts vis a vis Justices of the SCOG

Since 2022, as many as 50 lower courts have been added to the District and Circuit Courts. By the end of 2024, that number would have reached 100. The newly created regions are waiting for designated high courts. The Court of Appeal has been expanded from an average number of 25 to 38 judges to enable the newly created permanent COA in Kumasi to sit over cases in the northern part of the country. These increases in the courts below the SCOG means that there will continue to be more



Judges determining issues that the SCOG will have ultimate authority over. The number of SCOG judges therefore ought to be increased to meet the country's justice needs.

Comparative review of numbers and Jurisdictions of the SCOG and the Supreme Court of the United States (SCOTUS)

The USA practices a federal system of Government and has fifty (50) States. Ghana has one Supreme Court because Ghana operates a unitary States. In USA, each federal state has a Supreme Court except Oklahoma and Texas which have two Supreme Courts each (one for civil and one for criminal)ⁱ. The number of federal Supreme Court Judges varies for each State with the maximum number being nine (9) and the minimum being five (5). Information available is that that at present, there are three hundred and forty-four (344) federal Supreme Court Judges in America. This implies that the nine Judges of the SCOTUS, with its limited jurisdiction as the federal Supreme Court, has the base support of 344 State Supreme Court Judges providing final decisions for the 50 States.

A review of the jurisdictions of the SCOG shows a wider and larger scope compared to the jurisdictions of the Supreme Court of the United States (SCOTUS) which is an older and more developed democracy. While the SCOG has jurisdiction over all Constitutional interpretation cases, Supervisory Jurisdiction actions against superior courts, all final Chieftaincy, Criminal and Civil Appeals, all applications for Review of its decisions and any Presidential election petitions, the SCOTUS has jurisdiction as final arbiter in interpretation of federal law, resolving disputes between states, and interpretation of the Constitution of the USAⁱⁱ.

Supreme Courts of the 50 States deal with all cases within the States. Cases that may go to the SCOTUS would commence hearing in federal courts within States. Further, cases that find their way to the SCOTUS go through a selective process before being considered for hearing.



Between 2018 and 2023, the 5 year period under review, the following numbers of cases were filed in and heard by the SCOTUS as compared to the numbers of matters filed in the SCOG:ⁱⁱⁱ

SCOTUS	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024
NUMBER OF CASES FILED	6,442 (In forma Pauperis - 4,847 Paid docket - 1,595)	5,411 (Informa-pauperis- 3,930 Paid docket - 1,481)	5,307 (In forma pauperis- 3,477. Paid docket - 1,830)	4,900 (In forma pauperis - 3,288 Paid docket - 1,612)	4,159 (In forma pauperis - 2,907 Paid docket - 1,252)	
SCOTUS Hearings and disposals	Cases argued- 73. 69 Cases disposed of in 66 signed opinions.	Cases argued -73. 69 Cases disposed of in 53 signed opinions.	Cases argued-72 69 Cases disposed of in 55 signed opinions.	Cases argued-70 63 cases disposed of in 58 signed opinions.	Cases argued- 68 66 cases disposed of in 55 signed opinions.	Cases to be heard - 56

In the face of as many as 6,442 cases filed for consideration of the SCOTUS in 2018/19, the court considered 73 and wrote opinions in 69. In 2022/23 legal year, it considered and wrote opinions in 60 cases.

The SCOG on the other hand has no authority to apply any selective criteria to pick out cases that ought to be heard. It is saddled with hearing all matters filed in order to give a decision, however incompetent, vexatious or frivolous the application or appeal may be.




The SCOG is given extremely limited discretion under **article 132 of the 1992 Constitution** to grant special leave for appeals against certain decisions of the Court of Appeal, that have been extensively considered by lower courts. This limited discretion only applies when applications are made for special leave to appeal, and not in any other matter. If an appeal is filed without the application for special leave, the SCOG still has to hear the appeal and produce a decision to show why the appeal ought to be dismissed for want of special leave.

The national discourse that compares the numbers of the SCOG and SCOTUS is therefore not at all well grounded.

Requests

It is for the above reason that the Chief Justice humbly requests His Excellency the President, to consider the appointment of an additional five (5) Judges to the Supreme Court to ensure the speedy resolution of cases, and speedy delivery of final decisions for the nation. This should bring the current number of the SCOG to 20 Judges, including the Chief Justice. This number will enable the setting of stand-alone panels of 5 and 7 or 9 judges to work on any set of cases on a given day, depending on the jurisdiction of the court being exercised in any given week, thereby reducing the specter of constantly reconstituted panels during a day's sitting.

Respectfully submitted.



G.S. Torkornoo (Mrs)

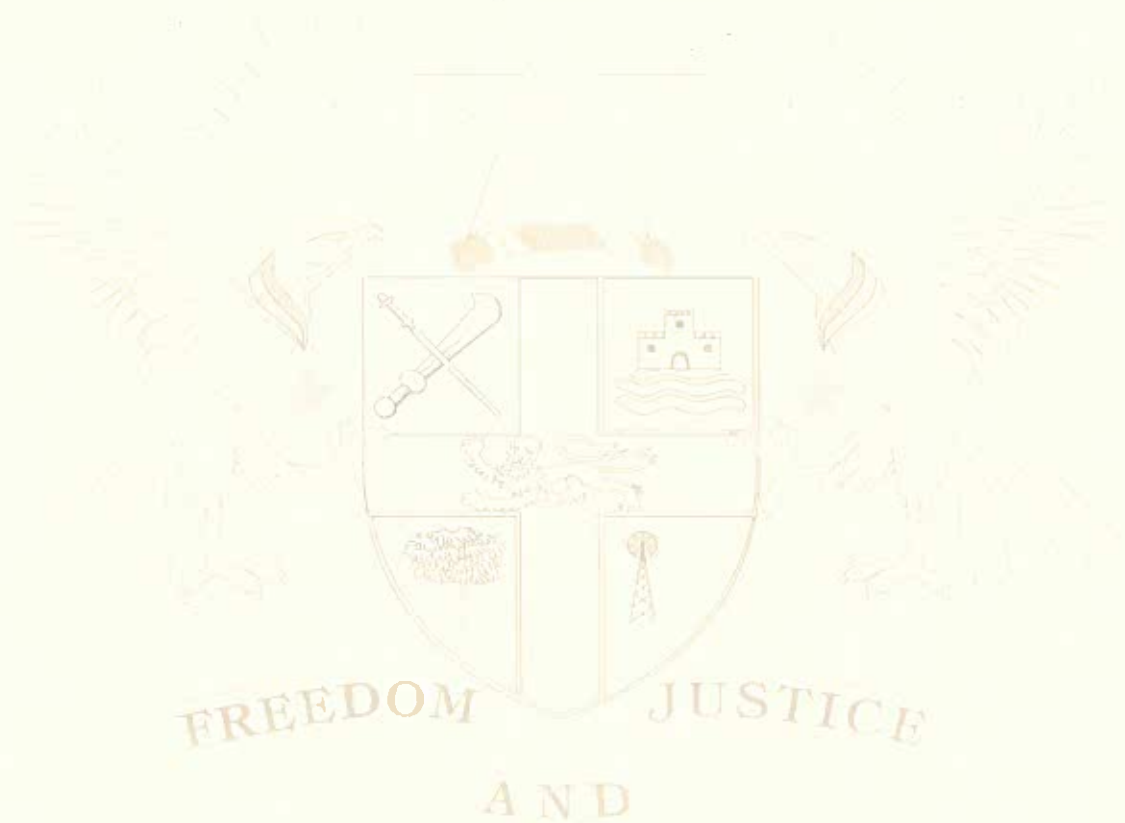
Chief Justice



ⁱ [State supreme courts - Ballotpedia](#) Accessed 1st February 2024

ⁱⁱ [Supreme Court of the United States#cite_note-2](#) Accessed 1st February 2024

ⁱⁱⁱ <https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf>



APPENDIX "A"



JUSTIFICATION ON THE NEED FOR EIGHTEEN (18) SUPREME COURT JUDGES

Caseload

Fig. 1

Constitutional Cases

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	63	82	77	61	76
Number of Cases Filed	63	37	24	36	15
Number of Cases Concluded	44	42	40	21	15
Number of Cases pending at the End	82	77	61	76	76

Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.35	0.35	0.40	0.22	0.16
Number of Supreme Court Justices	14	18	16	14	12

Fig. 2

Supervisory Jurisdiction Actions

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	17	18	12	18	64
Number of Cases Filed	151	168	151	126	115
Number of Cases Concluded	150	174	154	80	81
Number of Cases pending at the End	18	12	18	64	98

Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.89	0.94	0.94	0.56	0.45
Number of Supreme Court Justices	14	18	16	14	12

Fig. 3

Chieftaincy Appeals

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	6	4	4	3	4
Number of Cases Filed	4		4	4	3
Number of Cases Concluded	6		5	3	2
Number of Cases pending at the End	4	4	3	4	5



Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.60	0.00	0.63	0.43	0.29
Number of Supreme Court Justices	14	18	16	14	12

Fig. 4 Criminal Appeals

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	6	9	6	2	1
Number of Cases Filed	16	6	7	4	14
Number of Cases Concluded	13	9	11	5	6
Number of Cases pending at the End	9	6	2	1	9

Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.59	0.60	0.85	0.83	0.40
Number of Supreme Court Justices	14	18	16	14	12

Fig. 5 Civil Appeals

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	55	51	91	111	158
Number of Cases Filed	66	118	173	109	93
Number of Cases Concluded	70	78	153	62	73
Number of Cases pending at the End	51	91	111	158	178

Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.58	0.46	0.58	0.28	0.29
Number of Supreme Court Justices	14	18	16	14	12



Fig. 6

Criminal Motions

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	7	7	5	4	7
Number of Cases Filed	20	11	18	7	39
Number of Cases Concluded	20	13	19	4	16
Number of Cases pending at the End	7	5	4	7	30
Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.74	0.72	0.83	0.36	0.35
Number of Supreme Court Justices	14	18	16	14	12

Fig. 7

Civil Motions

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	51	21	15	16	92
Number of Cases Filed	174	291	269	264	212
Number of Cases Concluded	204	297	268	188	136
Number of Cases pending at the End	21	15	16	92	168
Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.91	0.95	0.94	0.67	0.45
Number of Supreme Court Justices	14	18	16	14	12

Fig. 8

Reference from Lower Courts

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	0	2	2	-	0
Number of Cases Filed	11	2	5	3	1
Number of Cases Concluded	9	2	7	3	-



Number of Cases pending at the End	2	2	-	1
Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	0.82	0.50	1.00	0.00
Number of Supreme Court Justices	14	18	16	12

Fig. 9

Review Cases

	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
No. of Cases Pending at the Beginning	17	8	4	6	12
Number of Cases Filed	34	34	39	25	33
Number of Cases Concluded	43	38	37	19	15
Number of Cases pending at the End	8	4	6	12	30

Rate of Conclusion = No. of Cases Concluded/(No. of Cases filed + No. of Cases pending at the beginning)	84%	0.90	0.86	0.61	0.33
Number of Supreme Court Justices	14	18	16	14	12

Fig. 10

Summary

YEAR	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
RATE OF CONCLUSION OF ALL SUPREME COURT CASES	0.70	0.60	0.78	0.55	0.30
NUMBER OF SUPREME COURT JUSTICES	14	18	16	14	12

