

GOVERNMENT OF THE STATE OF NIGERIA

THE JUDICIARY

JUDGE'S CHAMBERS

HIGH COURT OF JUSTICE

Owerri, Imo State, NIGERIA

16th June, 1997

The Military Administrator of
Imo State, Owerri.

Through: The Chief Judge of Imo State
High Court of Justice,
Owerri.

Your Excellency,

MEMORANDUM SUBMITTED BY THE JUDGES OF THE HIGH COURT
OF IMO STATE ON THE SUCCESSION TO THE OFFICE OF THE CHIEF
JUDGE OF IMO STATE.

By the end of July 1997 the Judges of High Court of Imo State will commence their annual vacation. We resume about the middle of September. This is the period of our annual leave. Shortly after our resumption, the Chief Judge of Imo State, the Hon. Justice G.G.I. Ojiako, may commence his leave preparatory to retirement in December 1997. The period after our resumption, to the time the Hon. Chief Judge may probably start his retirement processes may be too short and crowded for us to have meaningful deliberations for the matter we raise in this memo. For another reason, the retirement of the Chief Judge is not a secret and we are anxious that you receive a briefing from us before the intensive lobbying for that office may begin. Undoubtedly, unscrupulous politicians may regard the office, fortuitously thrown open during this period of elections as one that rotates and as one of the constants in the combinations for their zoning formula. The strict neutrality of the High Court must be jealously guarded and maintained at any costs. To compromise its neutrality for political expediency will

damage the image of the judiciary and administration of justice beyond repair. So, we decided to present this memo and our main focus is peaceful succession to the office of the Chief Judge to ensure a robust and virile judiciary that should be the pride of Imo State.

Your Excellency, Imo State has a High Court and a Customary Court of Appeal. Both Courts are provided for in Section 6 of the 1979 Constitution of the Federal Republic of Nigeria. That section has not been abrogated. Both courts are distinct, separate and have their jurisdictions spelled out. In some states the equivalent of Customary Court of Appeal is the Sharia Court of Appeal. Appointments of Judges into the Courts are made by the Provisional Ruling Council (PRC) on the recommendation of the Advisory Judicial Committee (AJC). Section 235 of the 1979 Constitution provides for the appointment of the Chief Judge and Judges of the High Court, while Section 246 provides for the appointment of the President and Judges of the Customary Court of Appeal. The Constitution does not provide for Judges to move from one court to the other. The Courts are separate and distinct each with its own head. When the office of the Chief Judge or that of the President of the Customary Court of Appeal becomes vacant, the Constitution has clearly provided in separate sections what should happen. There is no provision for the Chief Judge of the High Court to act for the President of the Customary Court of Appeal or for the President of the Customary Court of Appeal to act for the Chief Judge. Both Courts for all purposes maintain their separate identities. For the High Court the relevant Section is Section 235(4) as amended by the Constitution (Suspension and Modification) Decree 1993 usually referred to as Decree 107 of 1993. The Section as amended states as follows:

"If the office of the Chief Judge of a State is vacant or If the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the

office has resumed those functions, the functions shall be performed by a person to be designated from time to time in that behalf by the Provisional Ruling Council on the advice of the Advisory Judicial Committee from among the Judges of the High Court."

The equivalent provision for the Customary Court of Appeal is Section 246(4) as amended.

Your Excellency before the amendment, the Constitution gave the State Governors (Military Administrators) exclusive discretion to designate the person who should act as a Chief Judge and his choice was strictly limited to the Judges of the High Court. Judges from outside the High Court did not qualify to be considered for the appointment. Even now after the removal of discretionary power to appoint an Acting Chief Judge, it is our view that as the Military Administrator of Imo State you have a duty to make an input in this question of succession and it is proper that you ascertain our views in order to be properly guided, as your predecessors did when the situation arose.

All of us, Judges of the High Court of Imo State including our Chief Judge, met in the Chambers of our Chief Judge, and there highly deliberated on this matter. We are anxious for a transition devoid of rancour and polarisation of the Imo State High Court. We place very great premium on esprit-de-corps amongst Judges. This spirit is a hall mark of any judiciary and it is only fostered when time honoured traditions of our profession are upheld. If these traditions are breached for any expediency whatever, the result is usually most unwholesome, and must therefore be avoided.

It is in the light of the foregoing that we send this humble memo praying your Excellency to be guided by our view in this matter when the time comes for you to make your input. All of us are unanimous in the view that when the office of the Chief Judge becomes vacant, whoever is the most senior amongst the Judges of the High Court of Imo State should be preferred for the vacant office. In that way

there will be no rancour or polarisation. There will be peace and unity in Imo State Judiciary. We notice that this is what is followed in other jurisdictions. It ensures harmony. For the avoidance of doubt, a situation where the President of the Customary Court of Appeal is brought over to head the High Court will not go down well with us. The Customary Court of Appeal ought to be allowed to mature.

We pray for peace to prevail in Imo State.

We thank your Excellency for receiving this memo. We assure you of our highest esteem always.

We remain,

Yours Obediently,

JUDGES OF IMO STATE HIGH COURT.

1. Hon. Justice A. A. Ononuju
2. Hon. Justice D.E. Njiribeako
3. Hon. Justice M.O. Maranzu
4. Hon. Justice S.O. Ekpe
5. Hon. Justice P.C. Okoli
6. Hon. Justice L.C. Alinnor
7. Hon. Justice G.I. Udom-Azogu
8. Hon. Justice E.O. Metu
9. Hon. Justice S.N. Nwachukwu
- * 10. Hon. Justice P.C. Onumajulu
11. Hon. Justice A.J. Amaeshi
12. Hon. Justice N.O. Adigwe
13. Hon. Justice B.A. Njemanze
14. Hon. Justice I.O. Agugua
15. Hon. Justice C.I. Dureke
16. Hon. Justice A.O.H. Ukachukwu
17. Hon. Justice C.E. Nwosu-Iheme
18. Hon. Justice A.N. Opara.

[Handwritten signatures and initials corresponding to the list of judges, including names like Ononuju, Njiribeako, Maranzu, Ekpe, Okoli, Alinnor, Udom-Azogu, Metu, Nwachukwu, Onumajulu, Amaeshi, Adigwe, Njemanze, Agugua, Dureke, Ukachukwu, Nwosu-Iheme, and Opara.]