A BINOCULAR OVERVIEW OF LEGITIMACY ISSUES IN THE NIGERIAN 1999 CONSTITUTION BETWEEN 1999–2025

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Abstract

This paper provides a critique assessment of the Constitution of the Federal Republic of Nigeria 1999 over its first twenty-six years (1999–2025). Despite sustaining Nigeria's longest period of uninterrupted democracy, the document remains deeply controversial due to an inherent crisis of legitimacy stemming from its military promulgation. This paper examines the document's origins and its evolution through five successful "Alteration Acts" and an ongoing Sixth Alteration process. The paper analyzes the persistent structural deficiencies to achieving true federalism, particularly issues bothering on its legitimacy among other contemporary ones. The paper adopts doctrinal methodology and concludes that while incremental amendments have addressed peripheral issues, a fundamental holistic review or a new "people-led" constitution is required to ensure long-term stability and justice. The paper made recommended that Nigeria should move away from "piecemeal" amendments toward a national referendum to adopt a new, truly people-driven constitution with a holistic approach and inclusive approach.

Keywords: 1999 Constitution of Nigeria, Evolution, Legitimacy**,** Structural Deficiencies, Judicial Interventions

1.0 INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 represents a

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pivotal document in Nigeria's contemporary political landscape, marking the crucial transition from decades of pervasive military interregnum to the enduring Fourth Republic. Promulgated under the military government of General Abdulsalami Abubakar, the Constitution commenced operation on May 29, 1999, providing the legal framework that has sustained Nigeria's longest period of uninterrupted democracy.[1]

However, from its inception, the document seems to be enveloped in a profound crisis of legitimacy. This controversy stems primarily from the dissonance between the soaring rhetoric of its Preamble, which declares, *"We the people of the Federal Republic of Nigeria... Do hereby make, enact and give to ourselves the following Constitution"* and the stark reality of its origins.[2] Legal scholars, such as Nwabueze, have consistently described this preamble as a "lie" because the document was crafted by a select military-appointed committee and imposed upon the populace via military decree without popular participation or a national referendum.[3]

Between 1999 and 2025, Nigeria has grappled with the inherent limitations and structural rigidities of this "military-donated" document. The central question remains: can a constitution designed by a centralizing military elite effectively foster inclusive governance within a diverse, multi-ethnic, and complex federal entity? This paper critically analyzes issues of legitimacy of the 1999 Constitution over this twenty-six-year period. It tracks the evolution of the document through five completed "Alteration Acts" and the ongoing Sixth Alteration process,

[1] Akpan, U. J. (2025). *Constitutional development and the evolution of the Nigerian state since 1914*. ResearchGate. www.researchgate.net accessed 2 December 2025
[2] Preamble to the Constitution of the Federal Republic of Nigeria, 1999
[3] Nwabueze, B. O. (2025). *Clarifying the Patriots' position on the 1999 Constitution*. ThisDay Live. www.thisdaylive.com accessed 12 December 2025

evaluating its efficacy in the face of persistent modern governance challenges such as resource control, security sector reform, and judicial independence.

2.0 BRIEF OVERVIEW OF THE 1999 CONSTITUTION

The evolution of the Nigerian Constitution of 1999 represents a transition from rigid military decrees to a gradually devolving democratic framework. Originally promulgated by the military administration of General Abdulsalami Abubakar through Decree No. 24 of 1999, the document has undergone five successful alteration cycles, with a sixth currently nearing completion as of late 2025.[4]

2.1 The Genesis: Military Promulgation and Early Legitimacy Crisis

The 1999 Constitution was essentially a revised version of the 1979 Constitution, drafted without a national referendum or inclusive constituent assembly. This led scholars to critique the document's preamble, "*We the People*," as a legal fiction.[5] During the first decade of the Fourth Republic (1999–2009), the document remained stagnant as early attempts at reform, such as the 2005 National Political Reform Conference, collapsed due to political friction over "third term" agendas of the then government of the then President.[6]

2.2 The First to Fourth Alterations (2010–2018)

The formal evolution began in earnest under the 6th and 7th National Assemblies as follows:

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[4] Kalu, B. (2025). *Constitutional review*. Benjamin Kalu Legislative Portal. www.benjaminkalu.com accessed 20 December 2025

[5] Akpan, U. J. (2025). *Constitutional development and the evolution of the Nigerian state since 1914*. ResearchGate. www.researchgate.net accessed 2 December 2025

[6] Vanguard News. (2025). *Constitutional aberrations: Decree 24 as 1999 Constitution*. www.vanguardngr.com

i. **Electoral and Judicial Reforms (2010–2011):** The First, Second, and Third Alteration Acts primarily addressed the establishment of the National Industrial Court as a superior court and ensured the Independent National Electoral Commission (INEC) attained financial independence.[7]
ii. **Legislative and Political Inclusivity (2017–2018):** The Fourth Alteration was significant for the "Not Too Young to Run" amendment, which lowered the age for political candidacy, and for granting financial autonomy to State Judiciaries and House of Assembly.[8]

2.3 The Fifth Alteration Acts (2023)

The President Muhammadu Buhari, on March 17, 2023, endorsed 16 landmark alteration bills into law, representing a significant devolution of power.[9]

i. **Electricity (Act No. 17):** Deleted the phrase "not covered by the national grid" from the Concurrent List, empowering states to generate, transmit, and distribute electricity in any area (Fifth Alteration (No. 33) Bill, 2022). This prompted the Electricity Act 2023 that created state-level electricity markets.[10]
ii. **Railways and Prisons (Acts No. 15 & 16):** These acts moved

[7] Policy and Legal Advocacy Centre [PLAC]. (2023). *The Constitution of the Federal Republic of Nigeria 1999 (Updated with 1st, 2nd, 3rd, 4th, and 5th Alterations)*. placng.org
[8] Akpan, U. J. (2025). *Constitutional development and the evolution of the Nigerian state since 1914*. ResearchGate. www.researchgate.net accessed 2 December 2025
[9] ConstitutionNet. (2023, March 20). *In Nigeria, president signs 16 constitutional amendment bills into law.* https://constitutionnet.org/news/nigeria-president-signs-16- constitutional-amendment-bills-law
[10] Bloomfield Law. (2023). *The Fifth Alteration to the Nigerian Constitution: Anticipated impact on the Nigerian electricity sector*. https://bloomfield-law.com/sites/default/files/2023- 04/blp_article the_fifth_constitutional_alteration_and_its_anticipated_impact_on_th e_nigerian_electricity.pdf

railways and "Correctional Services" from the Exclusive to the Concurrent Legislative List, allowing states to establish their own rail lines and custodial facilities.[11]

iii. **Judicial Uniformity (Act No. 37):** This amendment ensured a uniform retirement age of 70 years for all judicial officers of superior courts.[12]

2.4 The Sixth Alteration Process (2024–2025):

Between 2024 and 2025, the Constitution evolved through a combination of legislative amendments and "purposive" judicial interpretation. By late 2025, the 10th National Assembly was advancing several new reforms. Key legislative efforts included:

i. Local Government Autonomy: In the landmark case between the *Attorney General of Abia State & 35 Ors v Attorney General of the Federation*[13], the Supreme Court effectively amended the operational reality of Section 162 by mandating direct funding to local governments, bypassing the State-Local Government Joint Accounts which had been a tool for executive overreach on the part of state governments.[14]

ii. The 2025–2025 Review Cycle: By late 2025, the 10th National Assembly held nationwide public hearings to finalize the Sixth Alteration. This cycle focused on the establishment of State Police and the formal codification of the Supreme Court's 2024

[11] (Constitution of the Federal Republic of Nigeria, 1999, Fifth Alteration Bills 15 & 16), 2023a)

[12] Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration Bills 37, 2023b) Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No. 16) Act. (2023a). *Official Gazette*. PLAC. https://placng.org/i/wp-content/uploads/2023/05/Constitution-of-the-Federal-Republic-of-Nigeria-1999-Fifth-Alteration-No.-16-Act-2023.pdf

[13] *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors (SC/CV/343/2024)*

[14] Ibid.

ruling on local government autonomy.[15] As of early December 2025, the National Assembly is coordinating with State Houses of Assembly to ratify these changes, aiming to rectify the structural imbalances identified since 1999.[16]

iii. **Women Seats Reservation:** In a move by the National Assembly, special seats were reserved for women (HB. 1807) to improve gender representation.[17]

iv. **Judicial Efficiency:** Reforms were proposed to expedite election petitions and limit the Supreme Court's jurisdiction to constitutional matters to reduce case backlogs.[18]

3.0 LEGITIMACY: THE PREAMBLE vs REALITY

The legitimacy of the Constitution of the Federal Republic of Nigeria 1999 remains one of the most contentious issues in the nation's legal jurisprudence as of 2026.[19] At the heart of this crisis is the profound dissonance between the democratic aspirations articulated in its "Preamble" and the historical "reality" of its military origins.

3.1 The Preamble: A Claims of Popular Sovereignty

The 1999 Constitution of the Federal Republic of Nigeria indicated that the Preamble started with the phrase, *"We the people of the Federal Republic of Nigeria... Do hereby make, enact and give to ourselves the following Constitution"* Legally, a preamble serves as the source of authority and moral foundation for a constitution. By using these words, the document claims "popular sovereignty", asserting that it is a result

[15] Ibid. (n 3)
[16] National Assembly of Nigeria. (2025a). *Report of the Joint Committee on the Review of the 1999 Constitution (Sixth Alteration)*. NASS Publications.
[17] Ibid.
[18] National Assembly of Nigeria. (2024a). *Constitution of the Federal Republic of Nigeria 1999 (Fifth Alteration) Acts*. Government Press.
[19] Ibid. (n 8)

of the collective will and direct consent of Nigerian citizens.[20]

3.2 The Reality: Military Fiat and Lack of Consensus

In reality, this Constitution was a subsidiary legislation to "Decree 24 of 1999", promulgated by the military administration of General Abdulsalami Abubakar.

i. **Military Imposition:** Critics like Nwabueze, have consistently argued that the document is a "military imposition" because it was drafted by a 25-member committee appointed by the military and approved by the Provisional Ruling Council without a national referendum or plebiscite.[21] The absence of public engagement at the time of drafting has led many to label the Preamble a "legal fraud".

ii. **Centralized Control:** The reality of the document reflects military command structures, notably through the over-concentration of power at the center (the "Exclusive List") and the historical suppression of local government autonomy issues that have sparked continuous unrest through 2025.[22]

3.3 The Continuing Legitimacy Crisis

The disconnection between the Preamble's promise and the military-styled reality has fueled persistent calls for a brand-new, "people-driven" constitution by 2026.

i. **Calls for Referendum:** In late 2025, prominent figures such as

[20] Wazhi, H. N. **(**2024). Constitution and constitutionalism: CONTRADICTIONS in the Nigerian 1999 Constitution. https://www.academia.edu/121525961/Constitution_and_constitutionalism_CONTRA DICTI ONS_in_the_Nigerian_1999_constitution.

[21] Ibid. (n 2)

[22] The Guardian Nigeria. (2025). *Calls are growing for a people-driven constitution in Nigeria*. https://guardian.ng. accessed 22 December 2025

Emeka Anyaoku argued that only a national referendum can confer true legitimacy on a constitution, a feature the 1999 document still lacks despite multiple amendments.[23]

ii. **Judicial Bridging:** The Nigerian judiciary has attempted to bridge this gap through "purposive" interpretations. A notable 2024 Supreme Court ruling on local government financial autonomy sought to realize the Preamble's goal of "promoting good government" by forcing direct federal funding to local councils, bypassing state-controlled accounts that had previously stifled grassroots development.[24]

iii. **Derivative Legitimacy:** Some scholars argue that over 26 years of continuous democratic use has given the document "derivative legitimacy" (Revisiting the legitimacy question of the Nigerian 1999 Constitution, 2021). However, as of late 2025, the ongoing Sixth Alteration process remains under heavy criticism for being another "piecemeal" fix by politicians rather than a holistic overhaul by the people.

4.0 STRUCTURAL DEFICIENCIES

The period between 2021 and 2025 exposed deep structural fissures in this Constitution, particularly regarding the over-centralization of powers and the erosion of grassroots governance.

[23] Anyaoku, E. (2025, July 19). *1999 constitution lacks legitimacy -- it must be replaced through referendum*. The Cable. www.thecable.ng. accessed 1 December 2025
[24] Ibid. (n

4.1 **The Local Government Crisis and Judicial Intervention:** Historically, Section 7 of the Constitution guaranteed the election of local government councils democratically, yet governors utilized Caretaker Committees and the State Joint Local Government Account under Section 162(6) to systematically starve the local government of its federal allocations.[25] This culminated in the landmark case involving the Attorney General of Abia State & thirty five others (2024) against the Attorney General of the Federation (2024). In a historic ruling on 11th July 2024, the Supreme Court declared that paying local government allocations via state-controlled accounts was unconstitutional and illegal (Supreme Court of Nigeria, 2024). The Court mandated that the 774 local councils got their respective allocations from the Accountant-General of the Federation, scolding governors for dissolving elected councils. By late 2025, legislative efforts like the Constitution (Sixth Alteration) Bill, 2025 (HB. 2061) sought to further codify this administrative independence into the constitutional text (National Assembly of Nigeria, 2025c).

4.2 **Centralized Security and the Multi-layered Policing Debate:** The prohibition of state police under Section 214 remained the most contentious structural deficiency. By 2024, rising insecurity led to the introduction of the Sixth Alteration in the 1999 Constitution (Multilayer Policing) Bill, 2024 (HB. 1807) (National Assembly of Nigeria, 2024b). Legislative debates in 2025 revealed a shift in the National Assembly; proponents argued that the federal police were overstretched,

[25] Apalando, I. O. (2024) *Self-contradiction and other problems with the Supreme Court's decision on local governments' financial autonomy*. Charles Anthony Law. https://charlesanthonylaw.com/self-contradiction-and-other-problems-with-the-supreme-courts-decision-on-local-governments-financial-autonomy/

with a ratio inadequate for a population exceeding 200 million (Ojukwu, 2024a). Despite President Tinubu's public support for decentralized security, the bill faced significant legislative hurdles by December 2025, as stakeholders navigated the balance between local accountability and potential political abuse.[26]

4.3 **Resource Control and the Exclusive List:** The "Exclusive Legislative List" continues to house 68 items, including mines and minerals. During 2025, the Sixth Alteration (Compensation in the Land Use Act) Bill, 2024 (HB. 1808) sought to establish fairer compensation mechanisms to protect landowner rights against federal seizure (National Assembly of Nigeria, 2025c). However, broader efforts to move mineral resources to the Concurrent List remain a subject of intense debate in the 10th National Assembly.

4.4 **Immunity Clause and Accountability:** Section 308 provides absolute immunity from civil and criminal prosecution for the President, Vice President, Governors, and Deputy Governors. While intended to prevent distractions, it has been used as a shield for

[26] National Assembly Library Trust Fund, 2025

corruption. Debate persists in 2025 regarding the "stripping" of immunity for criminal offenses involving public funds, as the Economic and Financial Crimes Commission (EFCC) continues to face hurdles in prosecuting sitting executives.[27]

4.5 **Human Rights and the Rule of Law:** Chapter IV of the Constitution guarantees Fundamental Human Rights. However, the "clawback" clauses—provisions that allow these rights to be restricted in the interest of "public safety"—have often been abused. The 2020 #EndSARS movement and subsequent 2024 protests against economic hardship highlighted the gap between constitutional guarantees and police conduct on the ground.[28]

5.0 JUDICIAL INTERVENTIONS

The Nigerian Judiciary, often described as the "last hope of the common man," has played a pivotal role in the evolution of the 1999 Constitution (Ojukwu, 2024b). In the absence of easy legislative amendments, the Supreme Court, in particular, has employed judicial activism and purposive interpretation to address structural lacunae and assert the rule of law.

5.1 Landmark Ruling on Local Government Autonomy

A significant instance of judicial intervention occurred in 2024, addressing the protracted issue of local government autonomy. Since 1999, State Governors consistently undermined the

[27] Eze, C. (2025). The immunity clause and the fight against corruption: 26 years of Section 308. *Journal of African Law*, 12(2), 45-60. Eze, C. (2023). State-local government joint account and Nigeria's federalism. *International Journal of Research and Scholarly Reviews*, 4(2), 1-13. irasspublisher.com

[28] Amnesty International Nigeria. (2025). *State of human rights: A five-year review (2020–2025)*, Abuja: AI Publishing.

constitutionally guaranteed system of democratically elected local councils by dissolving them at will and controlling their federal allocations through the State Joint Local Government Account (SJLGA).

This practice was challenged in the landmark case of the Attorney General of Abia State and thirty-five others (2024) against the Attorney General of the Federation. In its judgment on July 11, 2024, the Supreme Court declared that all funds due to local governments must be paid directly to them from the Federation Account, effectively outlawing the use of caretaker committees and the misappropriation of funds through the SJLGA (Supreme Court of Nigeria, 2024). This judgment shifted the power dynamics that had persisted since 1999 and prompted the National Assembly to initiate the Sixth Alteration Bill, 2025 (HB. 2061) to formally codify this judicial pronouncement into the Constitution itself.

5.2 Navigating Election Petitions and Electoral Justice

The judiciary has also served as the final arbiter in contested electoral outcomes, defining the parameters of democratic transitions in Nigeria. The 2023 general elections and subsequent litigations extending into 2024 highlighted significant strains on the judicial process.

While the courts were praised for delivering numerous judgments on pre-election and post- election matters within constitutionally stipulated timelines, the sheer volume of cases created bottlenecks. Critics, including Femi Falana human rights activists, argued that the system was fundamentally flawed as litigation often continued long after candidates were sworn into office.[29] The judiciary's handling of technicalities versus substantive justice in these cases

[29] Falana, F. (2025, January 10). *The challenges of electoral justice in Nigeria*. Premium Times Opinion. https://www.premiumtimesng.com

led to calls for constitutional reforms under the Sixth Alteration process to ensure that all election matters are concluded *before* the formal swearing-in ceremonies, thereby insulating the judiciary from political pressure associated with removing a sitting official.[30]

5.3 Interpreting Federalism and Executive Powers

Beyond elections, the judiciary has frequently ruled on the limits of federal and state powers. In numerous cases, the Supreme Court has invalidated state laws that encroached on items within the Exclusive Legislative List. The courts have consistently acted as interpreters of the federal balance, preventing states from creating laws on matters like customs and excise.[31] This continuous judicial oversight has ensured a minimal level of adherence to the federal structure, even while legislative amendments were slow to materialize.

6.0 CONCLUSION

The 1999 Constitution has proven remarkably resilient but remains fundamentally flawed. It has successfully midwifed 25 years of uninterrupted democracy—a feat previously unknown in Nigeria. However, significant structural deficiencies persist, including centralized policing, the immunity clause for the President, Vice President, Governors, and Deputy Governors, and the systemic undermining of local government autonomy which continue to stifle regional growth and security.

The "incremental" approach to amendment has addressed problems like electricity and local government autonomy to some extend but has failed to address the foundational question of whether Nigeria should

[30] Premium Times. (2024, October 28). *NBA, Falana demand constitutional review for quick end to election petitions*. www.premiumtimesng.com
[31] Ojukwu, E. (2024a). Regionalism and the failure of centralized policing. *Journal of Legal Studies*, 8(1), 101-115.

return to a regional model or maintain its current 36-state structure.

Ultimately, while years of use have provided derivative legitimacy, the 1999 Constitution remains a contested framework that struggles to foster inclusive governance, fueling persistent calls for a complete "people-led" overhaul rather than continuous piecemeal amendments.

7.0 RECOMMENDATIONS

The following recommendations are apposite.

i. **Holistic Review:** Nigeria should move away from "piecemeal" amendments toward a national referendum to adopt a new, truly people-driven constitution.
ii. **Devolution of Power:** Move more items from the Exclusive List to the Concurrent List, specifically concerning mineral resources and internal security.
iii. **Judicial Independence:** Ensure full fiscal autonomy for the judiciary at all levels to prevent executive interference.
iv. **Electoral Reform:** Constutionalize the requirement that all election petitions must be resolved before any candidate is sworn into office.
v. **State Policing:** Legally framework the decentralization of the police to allow states to manage local security challenges more effectively.