CONSTITUTIONALISM WITHOUT CONSTITUTIONAL CULTURE: REASSESSING DEMOCRATIC GOVERNANCE IN NIGERIA*

Abstract
Despite over two and a half decades of uninterrupted civilian rule since 1999, democratic governance in Nigeria continues to be characterised by systemic deficiencies that undermine the ideals of constitutionalism. Although the Constitution of the Federal Republic of Nigeria (CFRN)1999 (as amended) establishes a comprehensive legal framework founded on constitutional supremacy, separation of powers, federalism, the rule of law, and the protection of fundamental rights, its effectiveness has been constrained by a weak constitutional culture. The legitimacy concerns surrounding the 1999 Constitution, having originated from a military transition rather than a participatory constitution-making process, have further fueled debates on constitutional ownership and democratic governance. This article contends that Nigeria's constitutional challenges including executive overreach, legislative corruption, judicial passivity, weak institutional accountability, and the distortion of federalism through excessive fiscal centralization are attributable less to deficiencies in the constitutional text than to the absence of a genuine constitutional culture characterised by respect for constitutional limitations, institutional independence, transparency, accountability, and commitment to the rule of law. It argues that constitutional reform alone cannot secure democratic consolidation unless accompanied by institutional integrity, civic constitutional consciousness, effective enforcement of constitutional norms, and unwavering adherence to the supremacy of the Constitution.

Keywords: Constitution, Democracy, Governance, Constitutionalism, Constitutional Culture

1. Introduction

Constitutionalism remains one of the fundamental pillars of modern democratic governance. It rests on the premise that governmental authority must derive from, be exercised in accordance with, and be limited by a supreme constitution.[1]In addition, it rejects arbitrary governance and subjects political power to legal restraints, institutional accountability, and judicial scrutiny[2]. Consequently, constitutionalism is not synonymous with the mere existence of a written constitution; rather, it embodies a legal and political order in which constitutional principles are faithfully internalised and respected by state institutions and public officials.[3] The CFRN 1999 proclaims its supremacy under Section 1(1), binding all authorities and persons throughout the Federation. Section 1(3) reinforces this by declaring any inconsistent law void to the extent of its inconsistency. These provisions establish constitutional supremacy as the bedrock of governance and affirm the Constitution as the *grundnorm* of the legal order.[4] Despite these elaborate legal safeguards, Nigeria's democratic governance continues to reveal persistent structural deficiencies:

1. Executive dominance frequently overshadows legislative oversight and judicial independence.
2. Political patronage dilutes institutional autonomy.
3. Electoral controversies erode public confidence despite iterative legislative reforms.
4. Fiscal centralization distorts the federal arrangement.

This raises a fundamental legal question: *Does Nigeria suffer from an inadequate constitutional text, or does its governance crisis stem from a structural failure to cultivate a constitutional culture?* This article argues that Nigeria's governance deficit is fundamentally a crisis of constitutional culture rather than constitutional design. Adopting a doctrinal legal methodology, this article critically evaluates the constitutional principles of supremacy, separation of powers, judicial independence, federalism, electoral administration, and human rights to demonstrate that constitutionalism requires a governing ethic beyond mere legal mechanics.

2. Conceptual Framework

Constitutionalism

Constitutionalism refers to the doctrine that government authority is derived from and limited by the constitution. At its core, constitutionalism encapsulates the idea that no government is above the law and that the exercise of governmental power must be constrained by legal norms, institutional checks, and the protection of individual rights.[5] In the Nigerian context, scholars have engaged rigorously with this concept in ways that reflect the country's turbulent

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[1] BO Nwabueze, *Constitutionalism in the Emergent States* (London: C Hurst & Co ,1973) 1–12.
[2] AV Dicey, *An Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959) 183–205.
[3] MJC Vile, *Constitutionalism and the Separation of Powers* (Carmel: Liberty Fund, 1998) 14–21.
[4] Hans Kelsen, *General Theory of Law and State* (London: Harvard University Press, 1945) 110–124.See also Dias, *Jurisprudence,* (London: Butterworth, 1980) p 3; I B Lawal, 'Application of Islamic Law Under the 1999 Nigerian Constitution: Problems and Prospects' (2025) IX(IV) *International Journal of Research and Innovation in Social Science* 4440-4448.
[5] BO Nwabueze, *Democratization* (Lagos: Spectrum Books ,1993) 1–5

political history. Nwabueze, one of Nigeria's most authoritative constitutional scholars, defines constitutionalism as a system of governance in which the constitution effectively limits the power of government and secures individual liberty.[6] He distinguishes mere constitutionalism from genuine constitutionalism, and argues that a country may have a constitution without being constitutionalist if the government routinely overrides constitutional provisions without accountability. This distinction is particularly instructive for Nigeria where successive governments, both military and civilian, have at various times treated the constitution as a mere document of convenience rather than a binding fundamental law.

Falana, a frontline human rights lawyer and constitutional activist, situates constitutionalism within the broader framework of rights-based governance[7]. For Falana, genuine constitutionalism is inseparable from the enforceability of fundamental rights and the independence of the judiciary to hold government accountable. He submits that in Nigeria, constitutionalism has remained largely aspirational because the political elite has consistently undermined the institutions designed to give constitutional provisions practical efficacy. Similarly, Oyebode approaches constitutionalism from an international law perspective, emphasising the need to harmonise domestic constitutional frameworks with international human rights norms.[8] Oyebode contends that Nigeria's constitutionalism is weakened by the failure to domesticate key international instruments fully and to enforce them through the courts.[9] The concept of constitutionalism in Nigeria therefore cannot be understood in isolation from the country's democratic experiment, the behaviour of political elites, popular participation, judicial capacity, and the role of civil society in holding government to constitutional standards.

Democratic Governance

Democratic governance refers to a system of government in which political authority is derived from the consent of the governed, exercised through free and fair elections, respect for the rule of law, transparency, accountability, and the protection of civil liberties.[10] It encompasses both the procedural dimensions of democracy and the substantive dimensions.[11] In Nigeria, the concept of democratic governance has been examined through multiple lenses reflecting the country's peculiar political trajectory. Suberu conceptualises democratic governance in terms of the capacity of the Nigerian state to manage its plural divisions through inclusive institutional arrangements.[12] For Suberu, democratic governance in Nigeria must grapple with the centrifugal forces of ethnicity, religion, and regionalism, which have historically undermined the consolidation of a stable democratic order.[13]

Ake, in his seminal work on democracy and development in Africa, surmised that democracy in Nigeria and the broader African context has been largely elite-driven and has failed to address the material conditions of the majority of citizens.[14] Ake distinguishes between a minimalist conception of democracy that is satisfied with periodic elections and a developmental democracy that places the welfare of the people at the centre of governance. He contends that Nigerian democracy has been trapped in the former category, producing governments that are formally elected but substantively unaccountable. These perspectives underscore the importance of examining democratic governance in Nigeria not merely as a formal institutional arrangement but as a substantive project of ensuring that political power is exercised in the interest of all citizens.

Rule of Law

The rule of law is a foundational concept in constitutionalism and democratic governance. In its classical formulation attributed to A.V. Dicey, the rule of law encompasses three key propositions: the supremacy of law over arbitrary power, equality before the law, and the derivation of constitutional rights from the ordinary law of the land.[15] In Nigeria, the concept has been extensively discussed in relation to the country's democratic governance challenges. Sagay posits that the rule of law in Nigeria has been chronically violated by successive governments, both military and civilian, through the instrumentalization of the judiciary, the abuse of executive power, and the manipulation of

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[6] Ibid. For a detailed discussion of the evolution, nature and features of the concept of constitutionalism, see generally, CP Patterson 'The Evolution of Constitutionalism', (1948) 32(5) *Minnesota Law Review* 1-32; M Bazezew, 'Constitutionalism' (2009) 3(2) *Mizan Law Review* 358-396

[7] Femi Falana, *Fundamental Rights Enforcement in Nigeria* (Lagos: Legal Research International, 2012) 22–25.

[8] Akin Oyebode, *International Law and Politics* (Benin: Benin Social Science Series for Africa 2003) 44–48.

[9] ibid

[10] George A. Genyi, '*The Rule of Law and Democratic Governance in Contemporary Nigeria: Comparative Notes on Regimes, 1999-2015' (2021) 1(2) African Journal of Democracy and Election Research, 1.*

[11] ibid

[12] RT Suberu, *Federalism and Ethnic Conflict in Nigeria* (Washington DC: United States Institute of Peace Press, 2001) 3–10.

[13] Ibid. See also IB Lawal, 'Public Declaration of Assets in Nigeria: Conflict or Synergy Between Law and Morality?' (2009) 9(1) *African Human Rights Law Journal 224-261*

[14] Claude Ake, *Democracy and Development in Africa* (Washington, DC: Brookings Institution Press, 1996) 1–9.

[15] SP Anuye and others, '*The Doctrine of the Rule of Law; a Necessity to Democratic Governance' (2017) 17(4) Global Journal of Human-Social Science: H Interdisciplinary, 1-13.*

legislative processes.[16] He contends that the absence of genuine rule of law is the single most important obstacle to Nigeria's democratic consolidation. Okafor engages with the concept of the rule of law from a human rights perspective, arguing that the rule of law is only meaningful in Nigeria if it is understood substantively to include the protection of economic, social, and cultural rights, and not merely civil and political rights.[17]

Separation of Powers

The doctrine of separation of powers, classically articulated by Montesquieu, holds that governmental authority should be divided among three distinct branches; each with its own functions and each serving as a check on the others. In Nigeria, the 1999 Constitution (as amended) formally embeds this principle through its tripartite structure of government. However, Nigerian scholars have consistently pointed out the practical failures of this doctrine in the country. Nwosu contends that the doctrine of separation of powers in Nigeria has been undermined by the dominance of the executive branch, which has historically eclipsed both the legislature and the judiciary.[18]Obiora maintains that the separation of powers in Nigeria is further undermined by the dominance of political parties and their control of legislators, which makes the legislature an appendage of the executive rather than an independent co-equal branch of government.[19] Eze similarly contends that the judiciary's independence in Nigeria is compromised by the mode of appointment of judges, which gives the executive considerable influence over who sits on the bench, thereby undermining the separation of powers in practice even where it is formally preserved in the constitution.[20]

Federalism

Federalism, as a concept and a constitutional arrangement, refers to a system of government in which sovereign power is constitutionally divided between a central government and constituent units, each enjoying autonomy within its designated sphere. Nigeria operates a federal system, and scholars have engaged extensively with the implications of Nigerian federalism for constitutionalism and democratic governance. Suberu notes that Nigerian federalism is characterized by a pervasive centralization that has undermined the autonomy of constituent states and has concentrated revenue, power, and political authority at the federal level, thereby distorting the federal principle.[21] Argument for genuine fiscal federalism has been revived by contemporary scholars such as Agbu, who claims that the current revenue allocation formula in Nigeria is not only inequitable but fundamentally anti-federal, reinforcing political dependence of the states on the federal government and undermining the constitutional autonomy of sub-national units.[22] Jinadu examines Nigerian federalism from a political theory perspective, arguing that the Nigerian state has used federalism as an instrument of managing ethnic and regional tensions rather than as a genuine constitutional principle of limited government.[23] These perspectives collectively illuminate the tensions within Nigerian federalism that have consequences for both constitutionalism and democratic governance.

3. Legal Framework for Constitutionalism and Democratic Governance in Nigeria

The Constitution as the Supreme Law: The Legal Basis of Constitutional Supremacy

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the basic law of constitutionalism in Nigeria.[24] The provision states that the Constitution is supreme and binding on all persons and authorities in Nigeria and that any other law that is inconsistent with it shall to the extent of the inconsistency null and void.[25] Section 1(2) also provides that the Federal Republic of Nigeria shall not be governed nor shall any person take control of the Government of the Federal Republic of Nigeria or any part thereof except in accordance with the provisions of the Constitution.[26] This is a measure that safeguards against unconstitutional appropriation of power.[27]More so, the Constitution can be altered in accordance with the legal process prescribed in section 9 which provides for a rigid process. Accordingly, a proposed amendment must be supported by a two-thirds majority of the membership of each House of the National Assembly, and in the case of certain provisions (including those relating to fundamental rights)

[16] Itse Sagay, *Nigerian Law of Contract* (Lagos: Spectrum Books Limited, 2001) 15–20.
[17] OC Okafor, *The African Human Rights System, Activist Forces and International Institutions* (Cambridge: Cambridge University Press 2006) 30–35.
[18] HC Nwosu, *Catching the Wind: Memoirs of a Returning Officer* (Ikot Ekong: Academic Publishing Company, 2004) 112-118.
[19] LA Obiora, 'Constitutional Democracy and Democratic Governance in Nigeria: Reflections on Three Decades of Constitutional Engineering' (2007) 40(2) *Law and Politics in Africa, Asia and Latin America* 225, 240.
[20] OC Eze, *Judicial Independence and Constitutional Governance in Nigeria* (Enugu: Fourth Dimension Publishers 2010) 55–60.
[21] Suberu, *op cit* 45–50.
[22]Agbu, *op.cit* 25–28.
[23] LA Jinadu, 'Federalism, the Consociational State, and Ethnic Conflict in Nigeria' (1979) 15(2) *Publius: The Journal of Federalism* 71, 85.
[24] ibid
[25] ibid
[26] ibid
[27] Nwabueze, *Constitutionalism in the Emergent States, op Cit*

and in relation to the process of alteration, it has to be approved by a resolution of the Houses of Assembly of at least two-thirds of the state legislatures in the Federation.[28]

Federalism and the Distribution of Power

The Constitution (as amended), provides that Nigeria is a Federation of thirty-six (36) States and the Federal Capital Territory, Abuja.[29] Section 7(1) deals with the local government and provides that the system of local government by elected local government councils is guaranteed by the Constitution and in that regard the Government of every state shall ensure their existence in accordance with a law which provides for their establishment, structure, composition, finance and functions.[30] The model adopted for the vertical distribution of legislative competence is contained in the Second Schedule which contains an Exclusive Legislative List of sixty-eight items which are to be exercised by the National Assembly and a Concurrent Legislative List of similar items which may be exercised by either the National Assembly or the state Houses of Assembly.[31]

The legal basis for fiscal federalism is primarily provided by section 162 which provides that all revenue collected by the Government of the Federation shall be deposited into the Federation Account except for certain specified exceptions and shall be allocated among the different tiers of government (Federal, State and Local Governments) in accordance with the allocation formula set out in the section in the manner prescribed therein.[32] Section 162(5) and (6) also provides that the amount standing to credit of the local government councils shall be transferred to the states to benefit their local government and that each state is to maintain a State Joint Local Government Account in which shall be paid all payments to the local government councils of that state.[33]However, due to the misappropriation of these funds by the State Government, it is therefore pertinent to ensure the Revenue Mobilization Allocation and Fiscal Commission (RMAFC) and the Office of the Accountant-General of the Federation maintain strict, direct electronic routing of allocations straight to democratically elected Local Government Council accounts[34], bypassing any attempts to recreate State Joint Local Government Accounts (SJLGAs).

Elections and Political Parties

The legal framework of the electoral process can be traced to Section 153 and Part I of the Third Schedule of the Constitution which provided for the Independent National Electoral Commission (INEC). Section 228 provides the National Assembly the authority to enact laws on registration, funding, activities and dissolution of political parties.[35] The detailed statutory framework is provided by the Electoral Act 2026 which replaced and abrogated the Electoral Act 2022, and is the main law establishing the rules governing the registration of voters, the conduct of elections and the management of electoral disputes.[36] Of particular importance is section 47(2) of the Act which requires the accreditation of voters to be carried out through a Bimodal Voter Accreditation System (BVAS) and sections 50(2) and 64 of the Act, which allow for the electronic transmission and collation of results, including the legal basis for the INEC Result Viewing Portal.[37]

The burden of proof for non-compliance with the provisions of the Act or guidelines and regulations thereto is also expressly allocated to the petitioner in the provisions on election petition contained in the Act.[38] However, the effectiveness of the electoral system depends not merely on the existence of sound legal provisions but on their faithful implementation. While allocating the burden of proof to the petitioner is consistent with established evidential principles, it has generated sustained debate because much of the evidence necessary to establish electoral irregularities remains under the control of INEC. Section 138 of the Electoral Act of 2026 also places a strict limitation of post-election petition grounds as tribunals are now barred from hearing candidate qualification or certificate forgery

[28] CFRN 1999 s 9(2) and (3). For a detailed discussion of the constitutional amendment procedure in Nigeria, see I B Lawal, 'The Review of the Constitutional Amendment Procedure and Presidential Assent in Nigeria.' (2015) 55 (7) *Journal of Law and Conflict Resolution* 26-30.

[29] ibid, ss 2(2) & 3

[30] ibid, ss 2(2), 3 and 7(1).

[31] ibid, Second Schedule, Parts I and II; AI Michael, 'Nigerian Morbid Federalism and Demand for Political Restructuring' (2020) 14(1) *African Journal of Political Science and International Relations*, 13-21

[32] CFRN, s 162(1) - (3); Christopher Gberevbie, 'Nigeria Federalism and Fiscal Federalism' (2023) 8(2) *Jurnal Politik dan Pemerintahan*, 89-111.

[33] CFRN, s 162(5) - (8).

[34] *Attorney General of the Federation v Attorney General of Abia State & 35 Others'* (2024) LPELR-62576(SC)

[35] ibid, ss 153, Third Schedule Part I, and 228.

[36] Electoral Act 2026, s 1

[37] ibid, ss 47(2), 50(2) and 64; Samson Odogu Nmor and Anita Uchenna Onochie, 'Electoral Integrity in Nigeria: Challenges, Strategies and Pathways to Reform' (2024) 5(1) *LASJURE*, 76-85

[38] Electoral Act 2026, s 135(1) read with the established common law and statutory principle that he who asserts must prove; Solomon Timothy Anjide, 'Scrutinising Nigeria's Electoral Trajectory: The Electoral Act 2022, the 2023 Polls, and the Judiciary's Verdict' (2025) 3(4) *Kashere Journal of Politics and International Relations*, 238–248.

claims after an election has concluded. A more balanced approach such as shifting the evidential burden to INEC once the petitioner establishes a credible prima facie case could strengthen electoral justice without undermining the principle that allegations must be proved. This would better promote constitutionalism, electoral integrity, and democratic governance in Nigeria.

Fundamental Human Rights

The fundamental law governing civil and political rights in Nigeria is guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Section 46(1) further provides that any person who alleges that any of the provisions of Chapter IV has been, is being, or is likely to be contravened in any State in relation to him may apply to a High Court for redress. Crucially, Section 46(3) grants the Chief Justice of Nigeria (CJN) the exclusive constitutional power to make rules regarding the practice and procedure of the High Courts for the enforcement of these rights. In the exercise of this constitutional power, the Chief Justice of Nigeria enacted the Fundamental Rights (Enforcement Procedure) Rules, 2009, which continue to govern the practice, procedure, and enforcement of human rights across all Nigerian courts today[39]. Since the FREP Rules are derived directly from a constitutional provision rather than an Act of the National Assembly, they possess an elevated status that overrides regular civil procedure rules. Hence, the rule liberalizes the doctrine of *locus standi* in the enforcement of human rights as it does not only allow only those whose rights are breached to approach the court for redress, but also allows anyone acting on behalf of another person who cannot act in his own name.

The Supreme Court in the case of *Abacha v. Fawehinmi*[40] held that rules made pursuant to constitutional powers enjoy a status superior to regular statutes or High Court rules. In other words, FREP Rules carry the same legal weight as the Constitution itself because they are created via an explicit constitutional mandate. Furthermore, the parallel catalogue of political, economic, social, educational, environmental and cultural objectives can be seen in Chapter II of the Constitution,[41] which are the Fundamental Objectives and the Directive Principles of State Policy. However, section 6(6)(c) expressly states that the judicial powers of the courts shall not extend to an inquiry into whether there is conformity or not with these objectives on any question as to the conformity or not of any act or omission of any authority or person, or any law.[42]

The other legal source of rights in Nigeria is the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act which incorporates socio-economic guarantees similar to those in Chapter II.[43] The African Charter Act contains explicit provisions protecting the right to work, health, and education, which Nigerian courts uses to bypass the strictures of Section 6(6)(c) when dealing with non-state actors or specific administrative failures, creating a parallel track for human rights litigation.

The non-justiciability mandated by Section 6(6)(c) of the Constitution produces profound political, economic, and legal effects on the Nigerian governance landscape. Essentially, it transforms what could be a legal bill of rights into a declaration of political intent where citizens cannot sue the state for failing to provide employment, healthcare, or quality education, the executive and legislative branches face no legal consequences for systemic governance failures. A government can preside over a failing public school system or inadequate healthcare facilities without worrying about a court order compelling them to fix it or declaring their inaction unconstitutional. In addition, since direct litigation is blocked, aggrieved parties are forced to artificially tie socio-economic failures to Fundamental Rights under Chapter IV. For example, severe environmental pollution is litigated as a breach of the Right to Life[44] rather than a breach of environmental objectives. Lawyers rely heavily on the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act to bypass the non-justiciability clause, forcing courts to use international jurisprudence to address domestic socio-economic issues.

To truly transform these dormant promises into enforceable rights, a dual legislative approach is required. It is pertinent for the National Assembly to execute a fundamental constitutional amendment to delete or modify Section 6(6)(c), thereby granting direct justiciability to Chapter II. Concurrently, until such sweeping constitutional alterations are achieved, the legislature must aggressively expand its statutory framework by passing specific, independent laws[45]

[39] CFRN 1999 (n 1), s 46(1) and (3); Fundamental Rights (Enforcement Procedure) Rules 2009
[40] (2000) 6NWLR (Pt. 660) 228
[41] CFRN 9n 1), ss 13-24
[42] ibid, s 6(6)(c) read together with Chapter II, ss 13–24; OVC Ikpeze, 'Non-Justiciability of Chapter II of the Nigerian Constitution as an Impediment to Economic Rights and Development' (2015) 5(18) *International Institute for Science, Technology and Education Journal* 48
[43] African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.
[44] Section 33 of the Constitution of the Federal Republic of Nigeria (as amended)1999p
[45] IB Lawal, 'The Non Justiciability of the Fundamental Objectives and Directives Principles of State Policy in Nigeria; A Review', In AI Abikan and AS Ishola (Editors) *Nigerian Judiciary: Contemporary Issues in Administration of Justice.* Ilorin:(Nigerian Bar Association, 2013) p113

to systematically activate individual objectives mirroring the successful blueprint used to guarantee basic education via the Universal Basic Education (UBE) Act.

Accountability and Anti-Corruption

The authority for fiscal responsibility is in the Constitution of the Federation of Nigeria, 1999, under section 80. The section created the Consolidated Revenue Fund (CRF) of the Federation into which all revenues or other moneys raised or received by the Federation be paid, except as otherwise provided by an Act of the National Assembly and section 85, which created the Auditor-General of the Federation, whose duty is to audit the public accounts.[46] The dedicated statutory anti-corruption regime includes the Corrupt Practices and Other Related Offences Act 2000 which established the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the Economic and Financial Crimes Commission (Establishment) Act 2004 which established the Economic and Financial Crimes Commission (EFCC).[47] Important in this regard is Section 3(14) of the ICPC Act which provides that the Commission shall have full independence in the exercise of its powers and shall not be subject to any direction or control of any person or authority.[48]

While Section 3(14) grants the ICPC absolute operational independence, its structural independence is compromised at the root. The Chairmen and board members of both the ICPC and the EFCC are appointed by the President subject to Senate confirmation[49] as the executive branch holds control over their appointments, tenures, and funding allocations. Hence, true independence is incredibly difficult to sustain in practice. In addition, the power of the Attorney-General of the Federation (AGF) who is a political appointee and a member of the President's cabinet, to enter a discontinuation of criminal proceedings as provided under Section 174 of the Constitution, overrides the statutory independence of the ICPC and EFCC, meaning a politically exposed person's prosecution can be legally halted mid-trial by the executive branch. Furthermore, when these politically exposed persons are convicted, they are hurriedly pardoned by the executive[50].

Also, while Section 85 establishes the Auditor-General to act as the ultimate financial watchdog, the office historically suffers from chronic underfunding and a lack of enforcement teeth. The Auditor-General can flag irregularities, but the office lacks the statutory power to directly prosecute offenders, relying instead on the National Assembly's Public Accounts Committee or forwarding reports to the EFCC/ICPC. Likewise, Section 308 of the Constitution grants absolute civil and criminal immunity to sitting Presidents, Vice Presidents, Governors, and Deputy Governors. Since a massive portion of public funds flows through state executives, the ICPC and EFCC are legally barred from prosecuting these individuals while they are in office, often allowing evidence to go cold or disappear over a 4 to 8-year administrative term. Furthermore, the legal framework heavily relies on post-corruption enforcement (catching bad actors after the money is gone) rather than leveraging the structural, preventive capabilities inherent in Section 80's CRF framework through real-time, digital public accounting. Another institutional fiscal-transparency feature is the Central Bank of Nigeria's Treasury Single Account policy, which gathers government revenue into a single institutional mechanism to minimize the sharing of bank accounts by government agencies, which has historically been a problem in Nigeria.[51]

4. Institutional Framework for Constitutionalism and Democratic Governance in Nigeria

The National Assembly

Section 4 of the Constitution vests the legislative powers to the National Assembly. It is a bicameral legislature made up of the Senate, consisting of 3 members elected from each state and 1 member from the Federal Capital Territory and the House of Representatives, both of which are elected for 4-year terms that run concurrently with the executive.[52] The National Assembly's powers of oversight over executive action (as an institution) are exercised through a system of committees, standing and ad hoc, which is, in practice, the primary way in which the powers of the National Assembly under section 88 are exercised, such as through the scrutiny of the budget, confirmation

[46] CFRN, ss 80(1) and 85(2) - (3)

[47] Corrupt Practices and Other Related Offences Act 2000; Economic and Financial Crimes Commission (Establishment) Act 2004

[48] ibid, s 3(14). This provision has also been duplicated in the EFCC Act.

[49] Section 2(3) of Economic and Financial Crimes Commission (Establishment) Act 2004; Section 3(6) of the Corrupt Practices and Other Related Offences Act 2000. For detailed analysis of the operations of these two anti-corruption bodies, see I B Lawal and O O Onakoya, 'ICPC : An Analytical Discourse of Its Practice, Procedure and Mechanisms' in *Corruption and National Development*, *Proceedings of 46th Annual Conference of the Nigerian Association of Law Teachers*(NALT), Ilorin (2013) 503-560; and D O Odeke, 'Economic and Financial Crimes Commission (EFCC) and Financial Accountability and Transparency in Nigeria' *African Journal of Management and Business Research* (2024) 17(1) 213-234; respectively.

[50] IB Lawal, 'Nigerian Executive and Prerogative of Mercy,' (2006)1(2) *International Journal of Law and Contemporary Studies* 235—254

[51] H Salihu, 'Combating Corruption in the Nigerian Civil Service' (2020) 23(1) *Journal of Money Laundering Control*, 267.

[52] CFRN (n 1), ss 48 and 49

hearings of executive nominees requiring confirmation by the Senate and public hearings on issues of national concern.[53] The institutional instrument of legislative power at the state level is State Houses of Assembly which also have the constitutionally important institutional role of ratification and rejecation of proposed changes to the constitution as provided in section 9(3) of the constitution. It is however disheartening that in the discharge of their duties the members of the legislature, both at the federal and state levels, have sometimes been accused of acts incompatible with their revered status such as legislative corruption and general abuse of legislative immunity[54].

Presidency and State Governments

The executive institution at federal level consists of the President, the Vice-President and the Federal Executive Council.[55] The state level institution corresponds to the Governor, the Deputy Governor and the State Executive Council. An extensive civil service bureaucracy, divided into ministries, departments and agencies, ensures the functioning of the day-to-day public administration, and is supported by both levels of the executive institution. [56] The capacity and professionalism of these institutions and the insulation from political interference that they enjoy is an important, but often overlooked, factor in the practical development of constitutionalism, and good outcomes of the constitutional order are unlikely to be achieved where the implementing machinery of the order is either under-resourced or subject to inappropriate political direction.[57] More so, the Constitution by virtue of section 138 CFRN proscribes the president from holding any other executive office or paid employment in any capacity whatsoever. However, this provision was violated by President Muhammadu Buhari who made himself the Minister for Petroleum[58] without the legislature having any real oversight in the unconstitutionality of the action.

Judiciary and National Judicial Council (NJC)

The judicial system in Nigeria is structured in a fashion that includes Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, High Courts of Federal Capital Territory and each of the respective states in addition to the Sharia and Customary Courts of Appeal where they exist in the states, courts and tribunals as provided by law.[59] The National Judicial Council is the organization that has the primary responsibility for protecting judicial independence. The NJC functions as an institution by means of sub-committees which have charge to look after discipline, to conduct interviews and to recommend candidates for judicial appointments, and to draw up guidelines.[60] However, despite these procedural safeguards, several systemic hurdles remain. Since the NJC only makes *recommendations* for appointments and removals to the President or State Governors. Executives sometimes exploit this requirement by delaying or refusing to confirm recommended appointments, or by refusing to act on removal recommendations for political allies. In addition, state governors historically attempted to bypass the NJC to remove "stubborn" Chief Judges via State Houses of Assembly. However, the landmark Supreme Court decision in *Elelu-Habeeb v. A.G. Federation*[61] affirmed that no judicial officer in Nigeria can be validly disciplined or removed without the prior recommendation of the NJC. These instances highlight the recurring vulnerability in the legal framework; while the NJC holds the sole power of recommendation, the Executive holds the operational power of swearing-in. Where an executive actor dislikes an NJC recommendation, they often use administrative stalls, refuse to swear in the judge, or attempt to use the legislative arm (State Houses of Assembly) as a backdoor around the NJC. It is therefore important that the Constitution be amended to mandate that once the NJC submits a recommendation for a judicial appointment or removal, the President or State Governor must act within 30 to 60 days and if the executive fails to act or state a valid constitutional objection within that window, the NJC's recommendation should automatically take effect.

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[53] For a detailed discussion of the functions of Nigerian Legislature, see generally I B Lawal, 'Part-Time Legislature: Panacea for Good Governance in Nigeria', *Law and Social Justice Review* (2024) 5(2) 136-142; CJ Igbokwe-Ibeto and RO Anazodo, 'Managing Executive-Legislative Working Relationship for Good Governance and Service Delivery in Nigeria' (2015) 4(8) *Review of Public Administration and Management,* 13-24.

[54] For a fuller discussion of some of the excesses of Nigerian legislators, see I B Lawal, 'Legislative Corruption in Nigeria: A Watchdog's Albatross?' (2006)3(1) *Journal of Law and Diplomacy* 1-13

[55] CFRN, ss 130, 142 and 147

[56] Yusuf Garba Manjo, *Civil Service, Governance and Development: Imperatives of New Reforms for Democratic Consolidation in Nigeria: Case Studies from Subnational Level* (Ibadan: Olad Publishers & Printing Enterprises, 2000) p34

[57] ibid

[58]For a further explication of this theme see IB Lawal, Appointment of Ministers and Commissioners Under the 1999 Nigerian Constitution: Need for Further Amendments? (2023)5(4) *International Journal of Law, Policy and Social Review*143-148; Premium Newspaper, reported on the 30th of September 2015. Retrieved from *https://www.premiumtimesng.com/news/190809-buhari-appoints-petroleum-minister-to-name-other-ministers-wednesday.html accessed on 28th of June 2026.*

[59] CFRN (n 1), s 6(5)(a) - (j).

[60] National Judicial Council, 'Committees in NJC' (2026). Retrieved from https://njc.gov.ng/committees-of-NJC accessed 20 June, 2026

[61] (2012) 13 NWLR (Pt. 1318) 423

States, Local Government Councils, and Revenue Allocation Bodies

Institutional architecture of federalism in Nigeria involves three tiers of government namely, the Federal Government with its organs of government, the Thirty-six (36) States of the Federation with their organs of government and the Seven Hundred and Seventy four (774) Local Government Councils with their organs of government.[62] The main institution for the operation of fiscal federalism is the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC), a federal agency tasked to monitor revenues to and from the Federation Account, while the Federation Account Allocation Committee (FAAC) is an inter-governmental institutional forum comprised of the finance officials of the federal and state levels which meets monthly to allocate revenue among the three tiers of government.[63] At the state level, the State Joint Local Government Account which was created as an institutional mechanism under section 162(6) of CFRN is administered by the state government on behalf of local government councils for receiving the allocation and onward disbursement. Due to the misappropriation of these funds by the State Government, it is therefore pertinent to ensure the Revenue Mobilization Allocation and Fiscal Commission (RMAFC) and the Office of the Accountant-General of the Federation maintain strict, direct electronic routing of allocations straight to democratically elected Local Government Council accounts[64], bypassing any attempts to recreate State Joint Local Government Accounts (SJLGAs)**.**

5. Critical Examination of the Application of the Legal and Institutional Framework

Constitutional Supremacy and Amendment

The principle of supremacy discussed above has been entrenched in Nigerian jurisprudence to the effect that if the Constitution prescribes conditions for the exercise of a power, then, neither the ordinary legislature nor the executive can alter conditions without a formal amendment in the constitution.[65] However, the legitimacy of the underlying text remains open for discussion in application.[66] The CFRN 1999 was enacted by a military government in Nigeria by Decree No 24 of 1999, and the Nigerian scholarship to-date treats this as an uncloaked legitimacy deficit which raises the issue of the autochthonous constitutionalist authority of the CFRN 1999.[67]Particularly instructive is the practical operation of section 9, which is a gap between legal design and applied outcome. Proposals for amendments were brought to state Houses of Assembly in 2015, 2019 and 2023, none of which was successful in achieving a two-thirds majority.[68] This failure of the regular constitutional amendment process leads to the use of litigation as a means of constitutional change.

Executive Orders and Legislative Oversight in Practice

In practice, the separation of powers, as it is outlined in sections 4, 5, and 6 based on the text has not resulted in an effective functional separation. The frequent use of presidential Executive Orders which seek to control issues that should be addressed by legislation, are a recurring current practical danger to the structural integrity of the doctrine.[69] Another recent line of scholarship, inspired by the Supreme Court's formulation of the doctrine in *Ugba v Suswan*,[70] suggests that while the Court has settled on this doctrine of horizontal separation between the three arms of government and vertical separation between the federal, state and local tiers, the independence of the Court is still compromised in practice by executive tampering, particularly in matters of court funding and court appointments.[71] Similarly, legislative oversight is said to be applied irregularly. Although the oversight mechanism is constitutionally well defined, current scholarship on executive-legislative relations suggests that it is often hindered by patronage politics, the partisan makeup of the legislature compared with the executive and the lack of adequate sanctions for

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[62] CFRN 1999 (n 1), ss 2(2), 3, 7 and 162; BO Akinyemi, 'That Supreme Court Ruling on the Autonomy of Nigerian Local Governments' (2024). Retrieved from https://www.bolajioakinyemi.com/that-supreme-court-ruling-on-the-autonomy-of-nigerian-local-governments/ accessed 20 June, 2026

[63] AO Akinkugbe, 'The Supreme Court's Decision in *Attorney General of the Federation v Attorney Ge*neral of Abia *State & 35 Others'* (2024). Retrieved from 444 accessed 20 June, 2026.

[64] *Attorney General of the Federation v Attorney General of Abia State & 35 Others'* (2024) LPELR-62576(SC)

[65] Odinakachukwu E Okeke, 'The Constitutional Framework for Socio-Economic Rights / Benefits in Nigeria and South Africa: A Comparative Survey' (2023) 19(1), *Unizik, Law Journal*, 92-105

[66] ibid

[67] Adakole E Odike, Hemen Philip Faga and Matthew Enenche Ogwuche 'The Constitution of the Federal Republic of Nigeria, 1999: Analyzing the Quest for an Autochthonous Constitution' (2024) 4(3) *Bureaucracy: Indonesia Journal of Law and Social-Political Governance*, 2539-2552.

[68] Palladium Group, 'Nigeria's Local Governments Get a Lifeline in Supreme Court Win' (2024). Retrieved from https://thepalladiumgroup.com/news/Nigeria-Local-Governments-Get-a-Lifeline-in-Supreme-Court-Win accessed 20 June, 2026

[69] Linus O Nwauzi, 'The Doctrine of Separation of Powers under the Nigerian Constitution' (2022) 8(2) *International Journal of Social Sciences*, 113–127

[70] (2012) LPELR-9726(SC)

[71] O Nnajiofor and D Nnajiofor, 'The Reality and Practice of Separation of Powers in Nigeria' (2025) 9(2) *African Journal of Law and Human Rights*, 119.

failing to attend to legislative subpoenas and resolutions.[72] The result is that in practice, the doctrine of separation of powers lives on more as a constitutional promise than a true form of institutional control.[73]

Independence of the Judiciary

Notwithstanding the institutional structure, in practice, the executive has repeatedly been the subject of concern in respect of judicial appointments and removal. In 2023, the Chief Judge of Osun State was suspended by the State Governor, and legal practitioners have petitioned the NJC for the unconstitutional act of removing a judicial officer.[74] This also comes against the backdrop of the ongoing fears of judicial interference in election petition tribunals.[75] The financial-autonomy guarantee in section 121(3) CFRN has also been unevenly implemented; existing literature on judicial performance in electoral adjudication suggests that the actual practice of funding by governor has been a persistent mechanism for the exercise of executive influence over state courts, especially in election petition cases where political considerations are at stake.[76]Further, commentators have given positive responses to the NJC's implementation of its 2023 Revised Guidelines and the introduction of a new policy for 2025 which allows public participation in the vetting of nominees, a development the CJN described as an additional layer of transparency in the appointment of judges.[77] But observers warn that the actual effect of the reform will be contingent on its thorough enforcement, especially because of the reported problems of public confidence in judicial integrity, a survey of which showed that about 20% of those who interacted with the judiciary were approached with a request for some form of bribery.[78]

The 2024 Local Government Autonomy Decision

A less-than-ideal illustration of the difference between the federalism legal framework and its implementation is the Supreme Court's ruling in *Attorney-General of the Federation v Attorney-General of Abia State & 35 Ors*,[79] in a unanimous judgment by a seven-member panel ruled that the withholding or retention of funds by state governments is null and unconstitutional.[80] It further held that the funds should be paid directly to the democratically constituted local governments councils either by the Federation or through the state provided the funds are fully and promptly transmitted.[81] It also declared the dissolution of democratically elected local government councils by governors through their executive orders or state legislations to be unconstitutional, unlawful and null and void.[82] This is one of the most important decisions of the Supreme Court in decades because of the attainment, by judgment, of a degree of fiscal decentralization which the ordinary constitutional amendment process described in section had repeatedly failed to provide.[83] The ruling has also been criticized to the effect that the court surreptitiously assumed a legislative role at variance with the separation of powers it was nominally upholding.[84]

Anti-Corruption Legal and Institutional Framework

Notwithstanding the statutory independence of the ICPC and EFCC, there is persistent suggestion that these organizations have been compromised due to its selective prosecution of the relevant crimes.[85] The current literature in Nigeria shows some consistencies in the observation that on several occasions, political elites have been seen to employ the anti-corruption agencies as tools to attack political opponents.[86] Structurally, it has distorted the view of impartiality of the agencies among the public. Those weaknesses are also found in the empirical and doctrinal studies and they are exacerbated by judicial delay.[87] A review of EFCC's conviction rates across the period 2010 to 2022 substantiates that EFCC has had a measurable

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[72] AbdulRasheed Hamza Bamidele, Adedibu Abayomi Adegoroye and Lawal Yusuf Birisan, 'Legislative and Executive Relations in Nigeria' (2025) 9(2) *The Abuja Management Review*, 243-257

[73] ibid

[74] E Agbo, 'NJC clears Osun Chief Judge, reverses suspension of Court of Appeal Judge' (2026). Retrieved from https://www.premiumtimesng.com/news/top-news/849675-njc-clears-osun-chief-judge-reverses-suspension-of-court-of-appeal-judge.html accessed 20 June, 2026

[75] Nigeria Network of NGOs and Access to Justice, 'Review of Judicial Independence in Nigeria' (OHCHR, 2024).

[76] K Kingston, V Enebeli and F Amadi, 'Judicial Financial Autonomy and the Inherent Powers of the Executives in Nigeria: Lessons from Australia, Britain and Canada' (2022) 12(1) *African Journal of Social Sciences* 19-32.

[77] Punch Editorial, 'Judges' Appointment in Nigeria: A Step in the Right Direction' (Punch, 2025). Retrieved from https://punchng.com/judges-appointment-a-step-in-the-right-direction/ accessed 20 June, 2026

[78] ibid

[79] Suit No SC/CV/343/2024

[80] ibid

[81] ibid

[82] ibid

[83] Domitilla Onoshiorena David-Makar, Tyodzer Patrick Pillah and Roseline I Ayeh, 'The Supreme Court Judgement on Local Government Autonomy and Abolition of State-Local Government Joint Account: An Evaluation of Issues, Performance and Trends' (2025) 2(5) *IRASS Journal of Arts, Humanities and Social Sciences*, 69-84

[84] BO Akinyemi, 'That Supreme Court Ruling on the Autonomy of Nigerian Local Governments' (2024). https://www.bolajioakinyemi.com/that-supreme-court-ruling-on-the-autonomy-of-nigerian-local-governments/ accessed 20 June, 2026

[85] Olugbemiga Samuel Afolabi, 'Elite Corruption, Anti-Corruption Campaigns and the Politics of Democracy in Nigeria' (2025) 21(2), *Taiwan Journal of Democracy*, 191-22

[86] ibid

[87] ibid

but contested conviction record and that, despite its achievements in a handful of high-profile cases, weak institutional capacities, such as the political interference, judicial delay, and variously reported culture of impunity, continue to limit its actual deterrent effect.[88] It has been recommended however the establishment of anti-corruption courts with adequate resources to speed up the process of prosecution and to make better institutional coordination between ICPC and EFCC to minimize duplication.[89]

6. Conclusion and Recommendations

This article reveals a persistent gap between Nigeria's formal constitutional framework and its actual practice. While the 1999 Constitution and complementary statutes like the Electoral Act 2026 establish principles of constitutional supremacy, separation of powers, and federalism, these are systematically undermined in practice. The constitution's military origin creates a legitimacy deficit, fostering a culture where constitutional provisions are treated as aspirational rather than binding. Executive dominance pervades all branches, with budgetary control and patronage constraining legislative oversight and judicial independence. Fiscal centralization contradicts federalist principles, despite judicial interventions. The 2023 elections showed technological progress undermined by operational failures and judicial interpretations that retreated from transparency. Fundamental rights protection suffers from the non-justiciability of socio-economic rights, while anti-corruption agencies face selective prosecution and political interference. The article concludes that Nigeria's core challenge is not inadequate constitutional text but a deficit of constitutional culture, political will, and institutional capacity.

Flowing from the foregoing analysis, the following recommendations are proposed: First, constitutional supremacy should be reinforced through strict and consistent compliance with constitutional provisions by all organs of government. Second, constitutional review should be undertaken through a genuinely participatory and inclusive process that reflects the sovereign will of the Nigerian people. Third, the independence of the judiciary should continue to be strengthened through full implementation of constitutional guarantees relating to judicial appointments, security of tenure and financial autonomy. Fourth, the doctrine of separation of powers should be more rigorously respected in constitutional practice. Legislative oversight should be strengthened through greater institutional capacity, non-partisan committee investigations and timely implementation of oversight recommendations. Furthermore, members of legislature found wanting in the performance of their oversight functions or otherwise involved in legislative corruption should either be removed by the legislative house concerned or recalled by the members of their constituency.[90] Executive reliance on executive orders should remain strictly confined within constitutional and statutory limits to prevent undue encroachment upon legislative authority. Fifth, Nigeria's federal structure should be strengthened through greater fiscal decentralisation and clearer constitutional respect for the autonomy of sub-national governments. Devolution of appropriate governmental responsibilities, effective implementation of local government financial autonomy and periodic review of the revenue allocation formula would promote more balanced federal governance while encouraging greater accountability at all levels of government. Sixth, electoral governance should be continually improved through enhanced institutional independence for the Independent National Electoral Commission, effective enforcement of electoral offences, transparent deployment of electoral technology and greater internal democracy within political parties. Seventh, anti-corruption agencies and accountability institutions should operate free from political interference. Their appointment processes, operational funding and prosecutorial decisions should be guided exclusively by constitutional and statutory standards in order to strengthen public confidence in anti-corruption efforts. Eighth, greater emphasis should be placed on civic constitutional education through the mass media and the school curricula in addition to legal reforms.[91]

Finally, political leadership at every level of government must embrace constitutionalism as a governing philosophy rooted in full participatory governance. Beyond holding public officials accountable to the rule of law, we must ensure that the legislative process truly represents every segment of society. By embedding duly elected leaders from professional and trade associations such as lawyers, hairdressers, mechanics, and engineers into the House of Assembly and National Assembly, these sector leaders can directly present their challenges and co-create effective legislation. True constitutional democracy relies on both institutional integrity and a lawmaking process that empowers everyday occupational leaders to advocate for their members.

In conclusion, Nigeria's constitutional future does not depend solely upon drafting a better constitution; it depends more fundamentally upon cultivating a constitutional culture in which the Constitution is respected not merely because it is legally binding, but because it embodies the shared democratic values upon which legitimate governance rests. Constitutionalism without constitutional culture is incapable of sustaining democratic governance. Conversely, a society grounded in constitutional culture possesses the institutional resilience necessary to transform constitutional ideals into democratic reality.

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[88] DO Odeke, 'Economic and Financial Crimes Commission (EFCC) and Financial Accountability and Transparency in Nigeria' (2024) 17(1) *African Journal of Management and Business Research*, 218-234

[89] ibid

[90] IB Lawal 'Impeachment and Recall of Legislators in Nigeria and United States of America' (2015)12(12) *US-CHINA Law Review.* 993-1001

[91] MIO Nwogu, KC, Nwogu and IB Lawal, 'How Obligatory is the Obligation of the Mass Media Under the 1999 Nigerian Constitution?' (2023) 9(6) *International Journal of Law* 1-5