

**RETHINKING THE AUTOCHTHONISM OF THE 1999
CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA:
ENACTING A DEMOCRATIC CONSTITUTION**

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1.0 INTRODUCTION

Since the independence of Nigeria in 1960, the political atmosphere has encountered a mixture of turbulent civil and military unrest, which has shaped the result of her constitutions. The last of them, the 1999 constitution, which is often ascribed as the second democratic constitution, is trailed with controversy following the dubious procedures of its enactment by the military government. The principle of the sovereignty of the people in Nigeria has always been situated but manipulated with respect to the autochthonism of the 1999 Constitution of the Federal Republic of Nigeria. It is in the light of this issue that this essay revolves through the defects of the 1999 constitution while suggesting prospective recommendations for a democratic constitution.

2.0 THE 1999 CONSTITUTION: A PARODY OF DEMOCRACY

An autochthonous constitution is a constitution that derives its force and validity from its own people or is homegrown or homemade, native and indigenous to the people and not imposed by colonial masters or imperial powers²¹⁸.

The constitution-making process of the U.S. constitution clearly reveals that it is autochthonous. The reason is not far-fetched. As a result of the dismal failure of the Articles of Confederation, the 55 representatives of the 13 colonies-turned-states met at the Philadelphia convention on May 14, 1787, for the purpose of amending the defects of the Articles of Confederation. But when the delegates to the conference concluded that the Articles of Confederation were beyond repairs, they proceeded to change the entire form of government at its very root—that is, they staged a bloodless coup d'état. When nine of the 13-state ratification conference congresses ratified the

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²¹⁸ Nicholas Ebehikhalu, 'Nigeria needs an autochthonous constitution' Thisday live (2022) <https://www.thisdaylive.com/index.php/2022/10/09/nigeria-needs-an-autochthonous-constitution/> accessed 10 June 2025

draft constitution, the Confederate Congress of the United States, on September 17, 1788, enacted the new constitution to come into effect on March 4, 1789. Equally, the preamble of the U.S. constitution also testifies as to its autochthonous nature, where it states: *We, the people of the United States, to form a more perfect Union of indestructible states*²¹⁹.

The autochthonism of the 1999 Nigerian constitution has been in question owing to the circumstances surrounding its inception and promulgation under the administration of the Head of State, Abdulsalami Abubakar. The military council merely appointed Niki Tobi JSC as the Head of the Constitution Debate Coordinating Committee (CDCC) to spearhead the enactment of the 1999 Constitution, and they ended up panel beating the 1979 Nigerian Constitution. The procedure for its enactment didn't scale through public opinion and participation; therefore, the phrase *We are the people of the Federal Republic of Nigeria...do make, enact, and give to ourselves the following constitution* is a fraudulent instigation on the citizens of Nigeria. This lack of dexterity has degenerated to various irregularities in the 1999 Constitution of Nigeria.

Some provisions in the 1999 Constitution tend to invalidate the supremacy of the constitution subsequent to Section 315(5) of the 1999 Constitution, which states that 'nothing in this Constitution shall invalidate the following enactment.' The section revered the NYSC Decree, Public Complaints Commission Act, National Security Agency Act, and Land Use Act over the constitution of the land.

Furthermore, the issue of justiciability of Chapter II of the 1999 Constitution was made unenforceable by the provisions of Section 6(6)(c), subjecting it to a moral theory. Professor Nwabueze and Professor Abiola opined that the matter of the unenforceability of socioeconomic rights has limited the political power and consciousness of the people²²⁰.

Some critics also argue that the centralization of so many powers in the exclusive list and concurrent list has wielded the federal government so much power, and therefore the system of government is in question, as some regard it as a unitary system of government to a federal

²¹⁹ Joe Ekpe Edet, 'The Making of a 'homegrown' constitution' Thisday live (2021) <https://www.thisdaylive.com/index.php/2021/08/01/the-making-of-a-home-grown-constitution/> accessed 10 June 2025

²²⁰ Oluwadayisi Olawole, 'Economic and socio-cultural rights in the democratic governance of Nigeria: Enforcement Mechanisms beyond justiciability' (2014) <https://www.ajol.info/index.php/naujilj/article/download/136310/125800> accessed 10 June 2025

system of government²²¹. The dynamism in our country involving the quest for creation of states, revenue allocation, indigenization of private sectors, decentralization of police, to mention but a few, and more can be attested as the shortcomings of the 1999 constitution. The modern concept of constitutionalism is as important as its process. The idea propagates a constitution and also ensures the procedure of such a constitution is popularly accepted.

3.0 THE WAYFORWARD: RECOMMENDATIONS FOR A DEMOCRATIC CONSTITUTION

Though the 1999 constitution can be attributed to being a failure on the principles of democracy, there can be various initiatives to enhance an autonomous and acceptable constitution of Nigeria through the following ways, as stipulated below:

3.1 Constitutional review: The dynamism and overcrowding population have sprouted a need for revitalization of our constitution. This is crucial to address current issues in the country via the quest for the creation of states, revenue allocation, indigenization of private sectors, and decentralization of police, to mention but a few. The government should establish a trustworthy commission that will dig into the caprices of our society and profound a homogeneous constitution that reflects the will of the people.

3.2 Public participation and awareness campaigns: The significance of public enlightenment not only implores positive inputs but also develops national consciousness among the citizens. The South African Constitution of 1976, argued to be one of the best indigenous constitutions in the world, took seven years of democratic participation before its inception. In addition, when the draft of this constitution is debated in the house of assembly, it should be sent back to the people for review in their different languages.

3.3 Referendum and Representative Democracy: It is best to ratify in a referendum, but it does not remove anything if the existing structure ratifies the constitution into the law of the land. In Nigeria, we practice representative democracy in place of a referendum.

3.4 Accessibility of the human rights: The socioeconomic rights of a citizen are very important in determining his status in society. However, the government should consider the eradication of the restrictive clause on the application of the Objective State policy in the state. This will empower citizens to participate in politics.

²²¹ 'Arowesegbe. J, 'Techniques for Division of Legislative Powers under Federal Constitutions' (2014) <https://core.ac.uk/download/pdf/234649998.pdf> accessed 10 June 2025

4.0 STAGES OF DRAFTING AN AUTOCHONOUS CONSTITUTION

As stated earlier, an autonomous constitution has to emanate from the people, and to buttress this essay, it adopts the method stipulated by Paul R. Williams in his lecture on the *Constitution-making process*²²² while infusing some modifications.

4.1 The preparatory phase: This stage encapsulates the initial negotiation and aggrandization of the quest for a new constitution. This is followed by the establishment of a constitutional commission that will effect this vision. This commission would be filled with different representatives of various ethnic groups and sectors of the country. An initial public elucidation is necessary, and there is national agreement on the structure, changes, and revisions of the constitutional policies.

4.2 The constitutional drafting phase: At this stage, the constitutional commission endeavors to stipulate outlines and procedures for the advancement of opinions for a homegrown constitution. There is an extensive consultation with experts in various disciplines, organizations, political parties, and the international community for laudable contributions. There is preparation of an initial draft resulting from inputs from these bodies.

4.3 The public consultation phase: This is triggered with massive public inquiry and civic education on the significance of popular participation in constitutional drafting. The media remains active at this point, promoting engagement in all nooks and cranny of society. This extensive period imbibes structured participation of all groups and genders, and all the inputs are received for modifications by the constitutional commission.

4.4 The final review and adoption phase: The inputs are collated and modifications are inculcated in the constitutionally drafted texts. At this point, this draft is being exposed to the parliaments, courts, and the public for review and amendments. The draft must be approved by a conglomeration of the public, parliament, court, and other special agencies; then it is ready for adoption. After enactment, it would be necessary to educate the public again on the dictates of the new constitution.

5.0 CONCLUSION

²²² 'Paul Williams, 'The Constitution making process' (2006) <https://www.osce.org/files/f/documents/b/2/22965.pdf> accessed 10 June 2025

Although the 1999 Constitution has failed to address crucial needs of Nigerians, a glimpse of a new constitution would help brighten and foster new innovations in Nigerian society; however, this is not an easy feat and will exhaust both time and money. The establishment of an autochthonous constitution involves a synergy of every citizen of our country to holistically manifest their patriotism. We are Nigerians; we are optimistic of a future filled with great prospects and development.