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### **RESEARCH DEPARTMENT REGULATORY AND ADVISORY UNIT**

#### **TITLE**

**WRITTEN LAW AND THE PRINCIPLE OF CONSTITUTIONAL DEMOCRACY**

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## **ABSTRACT**

*Constitutional democracy is fundamentally anchored in the authority and clarity of written law. This research examines the intricate relationship between written law and the principle of constitutional democracy. It explores how codified legal rules provide the structural backbone for democratic governance, shaping institutional behaviour and defining citizens' rights. Employing a doctrinal and conceptual methodology, the study analyses constitutional texts, scholarly perspectives, and contemporary judicial decisions to evaluate how written law functions as the guardian of democratic values. It argues that while written constitutions ensure the separation of powers, guarantee human rights, and regulate political processes, the vitality of constitutional democracy ultimately depends on practical judicial interpretation and institutional fidelity. Through a narrative exposition and case analysis, this work highlights the indispensable role written law plays in sustaining constitutional order and democratic legitimacy.*

## **1.0 INTRODUCTION**

When nations declare themselves democratic, their commitment often finds its first and most enduring expression in written law, particularly a written constitution. Such a document does not merely proclaim sovereignty; it structures it. It regulates power, restrains leaders, empowers institutions, and safeguards rights. In constitutional democracies, written law serves as the moral and legal compass that guides and limits governance.<sup>1</sup>

Yet constitutional democracy is more than the words of a constitution. It is a lived reality shaped by political actors, judges, and citizens who breathe life into constitutional principles. The relationship between written law and democracy is therefore dynamic. Governments test boundaries, courts interpret limitations, and citizens negotiate their rights.

Recent judicial decisions across Nigeria, South Africa, the United States, and other democracies show that written law remains a perennial tool for resolving complex political disputes. For instance, in *Marafa v Shinkafi* (2019) 6 NWLR (Pt 1676) 319, the Nigerian Supreme Court insisted that internal party democracy must align with constitutional norms, affirming that democracy begins with adherence to written rules.<sup>2</sup>

### **1.1 METHOD OF RESEARCH**

This research adopts a doctrinal legal research method, relying on primary sources such as constitutions, statutes, and case law; secondary sources including textbooks, journal articles, and scholarly commentaries; and comparative analysis of judicial decisions from Nigeria, South Africa, and the United States.

### **1.2 RESEARCH QUESTIONS**

This research addresses the following questions:

- What is the meaning and nature of written law in constitutional democracies?
- How does written law structure and limit power within democratic systems?
- What is the interaction between written constitutions and democratic governance?
- What are the legal implications of relying on written law in democratic societies?
- How have contemporary constitutional cases interpreted and enforced written law?

### **1.3 RESEARCH OBJECTIVES**

- To define and explain the key concepts of written law and constitutional democracy.
- To examine the theoretical and legal relationship between written law and democratic governance.
- To analyse contemporary judicial decisions illustrating constitutional enforcement.
- To identify legal implications arising from constitutional supremacy and judicial review.
- To evaluate the role of written law in promoting and sustaining democratic values.

### **1.4 SIGNIFICANCE OF THE STUDY**

This research is significant because it contributes to constitutional scholarship by clarifying key concepts, highlights the role of written law in sustaining democratic institutions, provides case-based insights valuable to lawyers, judges, and policymakers, enhances students' understanding of constitutional governance, and deepens appreciation of judicial interpretation in democratic contexts.

### **1.5 SCOPE OF THE STUDY**

The study focuses on written constitutions within common-law democracies, examining principles such as the rule of law, separation of powers, judicial review, and rights protection. It includes contemporary cases from Nigeria, South Africa, and the United States.

## **2.0 LITERATURE REVIEW**

### **2.1 Written Law**

Written law refers to legal norms formally codified in authoritative documents. According to Black's Law Dictionary (10th ed.), it is "law that is found in writing, especially in constitutions, statutes, and regulations."<sup>3</sup>

In constitutional democracies, written law, especially the constitution, defines institutions, regulates political processes, protects rights, and determines how power is distributed. Dias describes written law as "the conscious articulation of societal norms by a lawmaker," a process that becomes binding on both the state and citizens.<sup>4</sup>

### **2.2 Constitutional Democracy**

Constitutional democracy refers to a system of governance that is democratic in structure but constrained by a supreme constitution. Dahl defines it as "a system in which political authority is derived from the people yet regulated through constitutional limits."<sup>5</sup>

Its core features include:

- separation of powers;
- rule of law;
- supremacy of the constitution;
- fundamental rights;
- free and fair elections;
- judicial independence.

Alexander Hamilton, in Federalist No. 78, affirmed that "the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents."<sup>6</sup>

### **2.3 Written Law as the Foundation of Democratic Governance**

Written constitutions serve as blueprints for democratic governance. Section 1(1) of the Constitution of the Federal Republic of Nigeria 1999 provides:

*“This Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.”*

This textual supremacy ensures that no person, however powerful, is above the law.

In *Attorney-General of Lagos State v Attorney-General of the Federation* (2003) 12 NWLR (Pt 833) 1, the Supreme Court emphasised that all governmental powers must be traceable to the constitution.<sup>8</sup> The written law thus operates both as sword and shield, authorising governmental authority while preventing abuse.

### **2.4 Legal Implications of Written Law in Constitutional Democracies**

#### **(a) Supremacy of the Constitution**

Supremacy ensures that actions inconsistent with the Constitution are void, and all state powers derive their legitimacy from constitutional provisions.

In *Marwa v Nyako* (2012) 6 NWLR (Pt 1296) 199, the Court held that any tenure elongation not authorised by the constitution is unconstitutional.<sup>9</sup>

In *Marafa v Shinkafi* (2019), the Supreme Court voided electoral victories due to invalid primaries, reinforcing constitutional democracy within political parties.<sup>10</sup>

#### **(b) Separation of Powers**

Written constitutions divide governmental functions to prevent tyranny.

In *Attorney-General of Abia State v Attorney-General of the Federation* (2006) 16 NWLR (Pt

1005) 265, the Court affirmed that each branch must remain within its constitutional boundaries.<sup>11</sup>

(c) Judicial Review

Judicial review allows courts to test governmental actions against constitutional standards.

It was famously articulated in *Marbury v Madison*, 5 US (1 Cranch) 137 (1803).<sup>12</sup>

Nigerian courts adopted this in *Lakanmi v Attorney-General (Western State)* (1971) UILR 201.<sup>13</sup>

In South Africa, *Economic Freedom Fighters v Speaker of the National Assembly* (2016) ZACC 11 held that President Zuma violated the constitution by ignoring the Public Protector's findings, strengthening constitutional accountability.<sup>14</sup>

(d) Rights Protection

Bills of rights ensure that the government cannot violate fundamental liberties.

In *Obergefell v Hodges* 576 US 644 (2015), the US Supreme Court interpreted the Constitution to legalize same-sex marriage, illustrating how constitutional rights evolve through judicial interpretation.<sup>15</sup>

### **3.0 RECOMMENDATION**

- Strengthening Constitutional Literacy by promoting public enlightenment and simplifying constitutional texts.
- Enhancing Judicial Independence through adequate funding, transparent judicial appointments, and continuous judicial training.
- Deepening Accountability by enforcing consequences for constitutional breaches and ensuring compliance with judicial decisions.
- Reforming Electoral and Party Systems by strengthening campaign finance rules, transparent internal primaries, and effective INEC enforcement.

- Promoting Respect for Constitutional Boundaries: this includes the arms of government remaining within constitutional limits and the prompt enforcement of court orders.
- Continuous Constitutional Review by instituting regular constitutional review commissions, citizen participation in amendments, and Progressive judicial interpretation.

### **3.1 CONCLUSION**

Written law is the heartbeat of constitutional democracy. It defines institutions, regulates power, protects rights, and structures accountability. Contemporary judicial decisions show the indispensable role of courts in enforcing constitutional standards and preserving democratic integrity.

However, a constitution alone is insufficient; it requires political will, judicial independence, and civic vigilance to transform constitutional text into a democratic reality. When faithfully implemented, written law becomes a living instrument guiding nations toward justice, stability, and democratic legitimacy.

Written law is therefore indispensable to any constitutional democracy; it anchors governance in certainty, legitimizes institutions, protects rights, and limits power.

## REFERENCES

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