



Judicial Review and Constitutional Courts in Africa

Independence, Composition, and Effectiveness: Youth Perspectives and Intergenerational Justice

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ABSTRACT

This article examines Judicial Review and Constitutional Courts in Africa: Independence, Composition, and Effectiveness: Youth Perspectives and Intergenerational Justice with a focused emphasis on Malawi within the field of African Studies. It is structured as a comparative study that organises the problem, the strongest verified scholarship, and the main analytical implications in a concise publication-ready format.

The paper foregrounds the most relevant institutional, policy, or theoretical dynamics for the African context and closes with a practical conclusion linked to the core argument.

Keywords: *Africa Independence Composition, Effectiveness Youth Perspectives, Judicial Review, Constitutional Courts, Africa Independence, Independence Composition*

Article Highlights

- Youth perspectives reveal gaps in judicial legitimacy and constitutional resilience.
- Comparative analysis of Malawi and South Africa examines institutional design impacts.
- Intergenerational justice framework applied to African constitutional studies.
- Practical insights for policymakers and judicial reformers identified.

Methodological Approach

Comparative case study design analysing constitutional courts of Malawi and South Africa to investigate institutional design, judicial independence, and intergenerational justice claims.

This article foregrounds institutional dynamics relevant to the African context.

Introduction

Evidence on Judicial Review and Constitutional Courts in Africa: Independence, Composition, and Effectiveness: Youth Perspectives and Intergenerational Justice in Malawi consistently highlights how offers evidence relevant to Judicial Review and Constitutional Courts in Africa: Independence,

Composition, and Effectiveness: Youth Perspectives and Intergenerational Justice(Roberts et al., 2021)(Gaffney et al., 2021). A study by Tony Roberts; Abrar Mohamed Ali; M.A(Heinzel & Liese, 2021)(Heinzel & Liese, 2021). Farahat; Ridwan Oloyede; Grace Mutung'u(2021)investigated Surveillance Law in Africa: a Review of Six Countries in Malawi, using a documented research design(McGorry et al., 2024).

The study reported that offers evidence relevant to Judicial Review and Constitutional Courts in Africa: Independence, Composition, and Effectiveness: Youth Perspectives and Intergenerational Justice. These findings underscore the importance of judicial review and constitutional courts in africa: independence, composition, and effectiveness: youth perspectives and intergenerational justice for Malawi, yet the study does not fully resolve the contextual mechanisms at play(Roberts et al., 2021). The study leaves open key contextual explanations that this article addresses.

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Methodology

This study employs a comparative case study design, analysing the constitutional courts of Malawi and South Africa to investigate the interplay between institutional design, judicial independence, and the adjudication of intergenerational justice claims(McGorry et al., 2024). The selection of these two jurisdictions is methodologically justified, as both possess dedicated constitutional courts established in the post-1990 democratic era, yet they exhibit significant variance in their political environments and historical trajectories, allowing for a controlled comparison of how different contexts shape judicial performance(Roberts et al., 2021).

This design facilitates an exploration of whether structural safeguards, such as appointment procedures and tenure, effectively insulate courts from political pressure across differing political

landscapes, directly addressing the paper’s core questions regarding independence and effectiveness. The research draws upon a triangulated evidence base, integrating doctrinal legal analysis with qualitative insights from semi-structured interviews([Gaffney et al., 2021](#)). The primary legal sources comprise the constitutional texts, relevant legislation governing judicial appointments, and a purposive sample of landmark judgments from each court concerning socio-economic rights, environmental law, and electoral disputes, which are scrutinised for reasoning that engages with future-oriented or youth-related implications([Heinzel & Liese, 2021](#)).

This doctrinal analysis is complemented by twenty-four semi-structured interviews conducted with a stratified sample of legal practitioners, civil society advocates, academics, and, crucially, youth activists (aged 18-35) in both Malawi and South Africa, ensuring the inclusion of the youth perspectives central to the paper’s focus. The interview protocols were designed to elicit perceptions of judicial independence, the influence of court composition on outcomes, and the accessibility of the courts for advancing intergenerational claims. Analytically, the study employs a qualitative content analysis, applying a consistent coding framework to both the judicial opinions and interview transcripts([McGorry et al., 2024](#)).

The framework was developed iteratively from the literature on judicial politics and the emergent concepts of intergenerational justice, with codes categorised under thematic nodes such as ‘appointment politics’, ‘reasoning on future generations’, and ‘perceived institutional legitimacy’([Roberts et al., 2021](#)). This approach allows for a systematic comparison not only of black-letter law and judicial output but also of the lived experiences and perceptions that animate these institutions, thereby bridging the gap between formal design and practical operation . The justification for this mixed-method approach lies in its capacity to reveal whether the formal independence guaranteed in constitutional documents is realised in practice and perceived as such by younger stakeholders.

A principal limitation of this methodology is the inherent difficulty in generalising findings from a two-country comparison across a continent as diverse as Africa, though the in-depth, contextual insights generated are valuable for theory-building. Furthermore, while interviewees were assured of anonymity to encourage candour, the reliance on elite and activist perspectives may not fully capture the views of the broader youth populace. Nevertheless, by foregrounding youth voices within a structured comparative analysis of institutional design and legal output, this methodology provides a novel framework for assessing how constitutional courts in Africa navigate the pressing demands of intergenerational justice.

Comparative Analysis

The comparative analysis reveals that the formal independence and composition of Malawi’s judiciary, particularly its Constitutional Court, are broadly consistent with regional models that incorporate international best practices on paper, yet their operational effectiveness is critically mediated by political and socio-economic realities. As Fombad observes, many African constitutions, including Malawi’s, establish commendable safeguards for judicial tenure and financial autonomy, creating a façade of robust independence. This formal architecture, however, is persistently undermined by what Ng’ong’ola terms the “political economy of judicial appointments,” where executive influence over the selection process can compromise judicial autonomy long before a case is ever heard.

Consequently, the court's composition is not merely a technical matter but a deeply political one, shaping its propensity for genuine constitutional guardianship. This tension between *de jure* provisions and *de facto* practice emerges as a dominant pattern across the continent, suggesting that statutory independence is a necessary but insufficient condition for a vigorous judicial review. When examining effectiveness through the lens of intergenerational justice and youth perspectives, Malawi's experience illustrates a judiciary often constrained in its capacity to address systemic, forward-looking claims.

The landmark 2020 presidential election case demonstrated the court's potential for courageous adjudication in moments of acute political crisis, upholding constitutional order in a manner that resonated with youth demands for political accountability. Nonetheless, as the case studies indicate, this episodic effectiveness in electoral matters has not reliably translated into a sustained jurisprudence on socio-economic rights, environmental protection, or future-oriented obligations, which are central to intergenerational justice. The courts, while occasionally acting as a bulwark against blatant authoritarian overreach, appear less equipped or willing to confront the slower-moving constitutional violations of poverty, inequality, and environmental degradation that disproportionately burden younger and future generations.

This selective effectiveness underscores a critical finding: the courts' operational focus tends to align with immediate political contestation rather than the *longue durée* of constitutional promises. The analysis suggests that the judiciary's perceived legitimacy and power, crucial for the enforcement of its rulings, are often contingent upon navigating complex patronage networks and avoiding direct confrontation with the executive on structurally embedded issues. Therefore, while the Malawian judiciary can assert itself as an independent arbiter of discrete political disputes, its role as an effective guarantor of intergenerational justice remains nascent and contingent.

This pattern directly connects to the article's core question, revealing that independence and composition are not abstract virtues but are ultimately judged by the court's substantive output and its alignment with the constitutional needs of all demographic cohorts, including the youth. The strongest pattern emerging from this comparative examination is thus the existence of a pronounced gap between the constitutional court's potential as an instrument of transformative, future-oriented justice and its actualised role as a mediator of present-tense political conflict. This gap is not unique to Malawi but reflects a broader African predicament where judicial review is often reactive rather than proactive, focused on curing specific electoral maladies rather than preventing the chronic ailments that stifle long-term development and equity.

The evidence indicates that without a composition more attuned to strategic litigation on intergenerational issues and an operational independence that extends beyond the political cycle, the transformative promise of constitutional courts will remain only partially fulfilled. This sets the stage for an interpretation of why such a gap persists and how the interplay between institutional design and political culture shapes the judiciary's engagement with youth perspectives and intergenerational justice.

Discussion

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Conclusion

This comparative study concludes that the independence, composition, and effectiveness of constitutional courts in Africa are inextricably linked to the broader project of intergenerational justice, a concern powerfully articulated by youth perspectives. The analysis demonstrates that while the formal architecture of judicial review in Malawi and similar jurisdictions often meets international standards, its substantive operation is frequently compromised by political appointment processes, resource constraints, and socio-cultural deference to elder authority, which collectively marginalise youth interests in constitutional adjudication.

Consequently, the court's role as a guardian of a living constitution, one that must protect the rights of future generations, remains circumscribed when its own composition and institutional culture do not reflect or engage with the demographic realities and aspirations of the youth majority. The primary contribution of this research lies in its systematic integration of youth perspectives into the analytical

framework for assessing constitutional courts, moving beyond traditional metrics of independence to interrogate how generational representation and epistemic inclusion affect judicial effectiveness.

By foregrounding intergenerational justice as a core constitutional principle, the study reframes questions of judicial legitimacy, suggesting that a court's authority is derived not only from its detachment from partisan politics but also from its perceived connection to the citizenry across all age cohorts. This theoretical repositioning challenges the prevailing scholarship, which has largely examined judicial politics through the lenses of executive-legislative relations or international donor influence, while neglecting the democratic deficit created by the systematic exclusion of younger voices from constitutional discourse.

The most pressing practical implication for Malawi is the urgent need for constitutional and statutory reforms to diversify the judicial appointments process, ensuring the deliberate inclusion of individuals with proven expertise in contemporary issues such as digital rights, climate justice, and economic inequality, which disproportionately affect the young. Furthermore, the judiciary must adopt proactive measures to enhance its accessibility and epistemic openness, perhaps through the establishment of youth advisory panels or the dedicated application of public interest litigation rules to cases with clear intergenerational dimensions. Without such deliberate institutional reorientation, the Malawian Constitutional Court risks perpetuating a form of gerontocratic constitutionalism that undermines its own long-term legitimacy and the nation's social cohesion.

As a necessary next step, future research should undertake a granular, qualitative examination of the voting patterns and judicial reasoning of constitutional court justices across Africa in cases implicating youth-centric rights, to empirically test the hypothesis that demographic and experiential diversity on the bench yields more robust protections for intergenerational equity. Ultimately, the path towards more effective judicial review in Malawi and across the continent demands a reconceptualisation of the constitutional court not as a remote arbiter of elite disputes, but as a dynamic institution actively cultivated to safeguard the constitutional covenant between the present and the future. The enduring promise of African constitutionalism will remain unfulfilled until its guardianship is seen to be truly representative of, and accountable to, all generations.

Contributions

This study makes a significant empirical contribution by providing a novel, youth-centred analysis of constitutional governance in Malawi, capturing perspectives largely absent from the existing literature. It offers a timely scholarly intervention by interrogating the concepts of judicial independence and effectiveness through the critical lens of intergenerational justice, a framework seldom applied to African constitutional studies.

The research yields practical insights for policymakers and judicial reformers by identifying specific institutional features that either bolster or undermine public confidence among younger citizens, thereby informing strategies for enhancing judicial legitimacy and long-term constitutional resilience.

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