

Constitutional Courts and the Protection of Constitutional Rights: A Comparative Analysis of Institutional Authority in Indonesia and Morocco

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Abstract

This article addresses a critical gap in comparative constitutional scholarship, which has predominantly examined constitutional courts through the lens of abstract judicial review while underexploring their institutional capacity to address concrete violations of constitutional rights. Existing studies indexed in Scopus tend to focus on single-jurisdiction analyses or regional comparisons, leaving cross-continental assessments of constitutional court authority—particularly between Asian and African constitutional systems—largely underdeveloped. This research aims to analyze and compare the authority of constitutional courts in Indonesia and Morocco in protecting constitutional rights, with particular attention to the institutional limits of norm-centered constitutional adjudication. The study employs a qualitative legal research method using a comparative constitutional law approach, drawing on constitutional texts, constitutional court decisions, and relevant scholarly literature. The analysis demonstrates that, despite differing constitutional traditions and judicial structures, both Indonesia and Morocco rely primarily on abstract constitutional review as the principal mechanism of rights protection, resulting in limited access to constitutional justice for individuals experiencing concrete constitutional harm. The findings further reveal that constitutional court authority in both systems is robust at the normative level but functionally constrained in addressing rights violations arising from administrative actions or judicial practices. The novelty of this study lies in its cross-continental comparative perspective and its reconceptualization of constitutional court authority as a functional, rights-oriented institution rather than merely a formal guardian of constitutional norms, offering broader implications for the design of constitutional justice mechanisms in emerging constitutional democracies.

KEYWORDS: *Constitutional Court Authority; Constitutional Rights Protection; Judicial Review; Constitutional Justice*

Introduction

The protection of constitutional rights has become a central concern in contemporary constitutionalism, particularly in states that adopt constitutional courts as guardians of constitutional supremacy. Modern constitutions no longer merely function as organizational frameworks for state power, but increasingly serve as normative instruments to guarantee and enforce fundamental rights.¹ In this context, constitutional courts are expected to play a decisive role in ensuring that legislative, executive, and judicial actions remain consistent with constitutional commitments to human rights and the rule of law.

Despite this normative expectation, the effectiveness of constitutional courts in protecting constitutional rights varies significantly across jurisdictions. Existing scholarship indexed in Scopus highlights that constitutional adjudication often remains confined to abstract or normative review of legislation, leaving limited institutional space for addressing concrete violations arising from state actions or judicial decisions.² This structural limitation raises concerns about the adequacy of constitutional courts as comprehensive rights-protection mechanisms, particularly in legal systems that do not formally recognize constitutional complaint procedures.

In Indonesia, the Constitutional Court has been granted extensive authority to conduct judicial review of statutes against the Constitution. While this mechanism has contributed substantially to the protection of constitutional rights at the normative level, it remains inherently limited in addressing individual grievances caused by administrative actions, judicial rulings, or omissions by public authorities.³ Several studies published in Scopus-indexed journals emphasize that this limitation creates a protection gap, where citizens experience constitutional harm without having direct access to constitutional remedies beyond abstract judicial review.

Conversely, Morocco presents a distinctive constitutional model shaped by its 2011 constitutional reform, which explicitly strengthens human rights guarantees while maintaining a unique institutional balance between monarchy, judiciary, and constitutional oversight bodies.⁴ Comparative constitutional scholarship indexed in

¹ Giulia Vasino, “Fundamental Rights Protection and Judicial Reasoning of the Italian Constitutional Court: Opening Up To Supranational Models Through The Proportionality Test and the Use of Comparative Arguments,” in *Judicial Review, Fundamental Rights and Rule of Law*, 1st ed., by Maria Grazia Rodomonte and Ludovica Durst (Routledge, 2024), <https://doi.org/10.4324/9781003493891-17>.

² Saliia Tailakova et al., “The Role of Constitutional Litigation in the Protection of Fundamental Human Rights: An Assessment of the Constitutional Court of the Kyrgyz Republic,” *Social and Legal Studies*, March 2, 2025, 59–69, <https://doi.org/10.32518/sals1.2025.59>.

³ Mexsasai Indra et al., “Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia,” *Jurnal Konstitusi* 20, no. 2 (2023): 279–99, <https://doi.org/10.31078/jk2026>.

⁴ Rachid El Bazzim, “The Parliamentary Opposition in Morocco: Evolution and Legal Challenges,” *Verfassung in Recht Und Übersee* 57, no. 4 (2024): 507–32, <https://doi.org/10.5771/0506-7286-2024-4-507>.

Scopus has noted that Morocco's Constitutional Court plays an important role in safeguarding constitutional norms, yet operates within a legal system that emphasizes preventive constitutional review and judicial hierarchy rather than direct individual access to constitutional justice.

Prior comparative studies—such as those examining constitutional justice in transitional democracies, the role of constitutional courts in rights adjudication, and the effectiveness of constitutional review mechanisms in civil law systems—have largely focused on either regional comparisons or single-country analyses.⁵ However, these studies tend to underexplore cross-regional comparisons between Asian and African constitutional systems, particularly in relation to how institutional authority shapes the practical protection of constitutional rights.

Furthermore, existing literature often treats constitutional authority as a formal competence rather than a functional instrument of rights protection. Previous studies have underscored the need to move beyond purely doctrinal analysis toward a more institutional and comparative understanding of how constitutional courts operationalize their authority in responding to concrete constitutional rights violations.⁶ This gap is particularly evident in research that has yet to systematically juxtapose constitutional courts operating within different political, cultural, and historical contexts..

This study addresses that gap by conducting a comparative analysis of the authority of the Constitutional Court of Indonesia and the Constitutional Court of Morocco in protecting constitutional rights. By examining both normative mandates and institutional practices, the research seeks to illuminate how different constitutional designs influence the scope and effectiveness of rights protection. The comparative approach enables a deeper understanding of convergences and divergences in constitutional adjudication across distinct legal traditions.

The novelty of this research lies in its cross-continental comparative perspective and its focus on constitutional authority as a functional mechanism for rights protection rather than merely a formal competence. By systematically comparing Indonesia and Morocco, this study contributes original insights to constitutional law scholarship, particularly regarding the institutional limits of judicial review and the potential role of constitutional courts in bridging the gap between constitutional norms and lived constitutional rights.

⁵ Sebastián Agüero-San-Juan and Felipe Paredes-Paredes, “The Relevance of Facts in Assessing the Constitutionality of Legislation. An Analysis Based on Abstract Review Mechanisms,” *Ius et Praxis* 31, no. 1 (2025): 3–26, <https://doi.org/10.4067/s0718-00122025000100003>.

⁶ Sri Warjiyati et al., “Complaint Authority for Constitutional Complaint by Indonesia Constitutional Court,” *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (2022): 303–15, <https://doi.org/10.29303/ius.v10i2.1070>; Amarru Mutfie Holish and Aulia Maharani, “Strengthening Constitutional Complaint Authority: Enhancing Citizens’ Constitutional Rights Protection in Indonesia,” *Journal of Law and Legal Reform* 4, no. 3 (2023): 347–64, <https://doi.org/10.15294/jllr.v4i3.68129>.

Method

This study employs a qualitative legal research design with a comparative constitutional law approach⁷ to examine the authority of constitutional courts in protecting constitutional rights in Indonesia and Morocco. The comparative approach is used to analyze similarities and differences in constitutional frameworks, institutional mandates, and judicial practices governing constitutional adjudication in both countries. Indonesia and Morocco are selected as case studies due to their distinct constitutional traditions, post-reform constitutional developments, and shared commitment to constitutional rights protection within differing political and legal contexts. This approach allows the study to move beyond descriptive comparison toward an institutional and normative evaluation of constitutional court authority.

The research relies on primary and secondary legal materials.⁸ Primary legal materials consist of constitutional texts, constitutional court decisions, statutory regulations governing constitutional adjudication, and relevant official documents from both jurisdictions. Secondary legal materials include books, peer-reviewed journal articles indexed in Scopus, and authoritative commentaries on constitutional law, judicial review, and constitutional justice. Legal materials are analyzed using qualitative normative analysis, combining statutory interpretation, doctrinal analysis, and comparative reasoning. Through this method, the study systematically assesses how constitutional court authority is constructed, exercised, and limited in practice, particularly in relation to the protection of constitutional rights.

Constitutional Rights and the Institutional Role of Constitutional Courts

Constitutional rights constitute the normative core of modern constitutionalism, reflecting the transformation of fundamental human rights into legally enforceable guarantees embedded within constitutional texts. Unlike ordinary legal rights, constitutional rights derive their authority from constitutional supremacy, positioning them as binding constraints on all branches of state power.⁹ This elevated normative status requires not only formal recognition within the constitution but also the existence of institutional mechanisms capable of ensuring their effective protection in practice.

The institutionalization of constitutional courts represents a central response to this requirement. Constitutional courts are designed to function as guardians of constitutional supremacy by reviewing the conformity of state actions with

⁷ Dian Ekawaty Ismail et al., *Metode Penelitian Hukum: Teori, Aplikasi, Dan Inovasi Dalam Penelitian Hukum*, ed. Tiara Oktaviana Namira Daud (Ruang Karya, 2025).

⁸ Irwansyah Irwansyah, *Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel* (Mirra Buana Media, 2020).

⁹ Robert Alexy, "A Non-Positivist Concept of Constitutional Rights," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 33, no. 1 (2020): 35–46, <https://doi.org/10.1007/s11196-019-09661-0>.

constitutional norms.¹⁰ However, their role extends beyond abstract norm control; constitutionally, they are entrusted with preserving the integrity of constitutional rights against potential erosion resulting from political majoritarianism, administrative overreach, or judicial inconsistency. In this sense, constitutional courts operate at the intersection of law, democracy, and rights protection.

From a theoretical perspective, constitutional rights impose both negative and positive obligations on the state. Negative obligations require the state to refrain from actions that infringe upon protected rights, while positive obligations demand proactive measures to ensure their realization.¹¹ Constitutional courts are uniquely positioned to articulate and enforce these dual obligations through constitutional interpretation, thereby shaping the practical meaning and scope of constitutional rights within evolving social and political contexts.

Nevertheless, the effectiveness of constitutional courts in fulfilling this role is closely linked to their institutional design and jurisdictional scope. Where constitutional adjudication is limited primarily to abstract judicial review, constitutional rights protection may become detached from the lived experiences of rights-holders.¹² This structural feature risks reducing constitutional courts to formal arbiters of legal norms rather than responsive institutions capable of addressing concrete constitutional harms suffered by individuals.

The tension between constitutional supremacy and democratic legitimacy further complicates the institutional role of constitutional courts. While constitutional rights are intended to restrain majoritarian excesses, excessive judicial intervention may raise concerns regarding judicial overreach and democratic accountability.¹³ Constitutional courts must therefore navigate a delicate balance: exercising sufficient authority to protect constitutional rights without undermining the democratic foundations from which constitutional legitimacy ultimately derives.

Comparative constitutional theory suggests that this balance is shaped not only by constitutional text but also by broader political and institutional environments. Constitutional courts embedded in pluralistic systems with strong legal cultures tend to develop more robust rights-protective jurisprudence.¹⁴ Conversely, courts operating

¹⁰ Dovilė Pūraitė-Andrikiienė, “The Role of Constitutional Justice Institutions in the Protection of Vulnerable Groups,” in *Legal Protection of Vulnerable Groups in Lithuania, Latvia, Estonia and Poland*, vol. 8, ed. Agnė Limantė and Dovilė Pūraitė-Andrikiienė, European Union and Its Neighbours in a Globalized World (Springer International Publishing, 2022), https://doi.org/10.1007/978-3-031-06998-7_3.

¹¹ Pravni fakultet Sveučilišta u Splitu et al., “Positive Obligations of the Republic of Croatia in Cases of Domestic Violence: Lessons from the Recent Case-Law of the European Court of Human Rights,” *Zbornik Pravnog Fakulteta u Zagrebu* 75, no. 2 (2025): 259–86, <https://doi.org/10.3935/zpfz.75.2.6>.

¹² Holish and Maharani, “Strengthening Constitutional Complaint Authority.”

¹³ Jorge Farinacci-Fernós, “Constitutional Courts as Majoritarian Instruments,” *ICL Journal* 14, no. 4 (2021): 379–97, <https://doi.org/10.1515/icl-2020-0014>.

¹⁴ Mark Dawson, “Fundamental Rights in European Union Policy-Making: The Effects and Advantages of Institutional Diversity,” *Human Rights Law Review* 20, no. 1 (2020): 50–73, <https://doi.org/10.1093/hrlr/ngaa002>.

within centralized or hierarchical systems may face institutional constraints that limit their capacity to engage deeply with constitutional rights adjudication, even where constitutional guarantees formally exist.

In this context, constitutional courts function not merely as legal institutions but as constitutional actors whose authority is continuously negotiated through jurisprudence, political interaction, and public perception. Their legitimacy in protecting constitutional rights depends on the coherence of their reasoning, consistency of decisions, and perceived commitment to constitutional values rather than institutional self-expansion. This legitimacy dimension is critical in sustaining long-term constitutional rights protection.

Importantly, constitutional rights protection cannot be assessed solely by reference to judicial outcomes. The institutional role of constitutional courts also includes signaling constitutional standards to other branches of government and lower courts. Through interpretive guidance and constitutional reasoning, constitutional courts influence legislative drafting, administrative decision-making, and ordinary judicial practice, thereby extending their rights-protective function beyond individual cases.

Ultimately, the institutional role of constitutional courts in protecting constitutional rights must be understood as dynamic rather than static. It evolves in response to constitutional amendments, political developments, and societal expectations. A purely formal conception of constitutional court authority risks obscuring the substantive challenges involved in translating constitutional rights from textual guarantees into effective legal protection. Recognizing this dynamic role provides the analytical foundation for evaluating how different constitutional systems—such as Indonesia and Morocco—construct and operationalize constitutional court authority in practice.

Authority of Constitutional Courts in Protecting Constitutional Rights: Indonesia and Morocco

The authority of constitutional courts to protect constitutional rights is fundamentally shaped by the constitutional design that defines their jurisdiction, procedural access, and relationship with other branches of power. In both Indonesia and Morocco, constitutional courts are constitutionally mandated to uphold constitutional supremacy, yet the manner in which this authority is exercised reveals important institutional divergences. These differences significantly influence the effectiveness of constitutional rights protection within each legal system.

In Indonesia, the authority of the Constitutional Court is primarily structured around abstract judicial review of statutes against the Constitution. This design reflects a strong commitment to constitutional supremacy by allowing the Court to invalidate

legislation that contradicts constitutional norms.¹⁵ However, the Court's authority is institutionally confined to normative review, limiting its capacity to address constitutional violations arising from administrative actions, judicial decisions, or omissions by public authorities that fall outside the scope of statutory review.

This institutional limitation has important implications for constitutional rights protection. While judicial review enables the Court to safeguard constitutional rights at the level of general norms, it does not necessarily provide remedies for individuals who suffer concrete constitutional harm. As a result, constitutional rights protection in Indonesia tends to operate indirectly, relying on the assumption that invalidating unconstitutional legislation will eventually prevent rights violations in practice.¹⁶ This assumption, however, does not always hold in complex governance settings where rights violations stem from discretionary or institutional practices rather than legislative norms.

Morocco presents a contrasting constitutional configuration shaped by its 2011 Constitution, which emphasizes the reinforcement of human rights while maintaining a hierarchical judicial structure. The Moroccan Constitutional Court exercises authority primarily through preventive and a posteriori constitutional review, ensuring that laws conform to constitutional standards before or after their promulgation.¹⁷ This framework reflects a strong normative commitment to constitutional legality but similarly limits direct individual access to constitutional justice.

Unlike Indonesia, where constitutional review is centralized within a specialized court with broad interpretive authority, Morocco's constitutional system distributes rights protection across multiple judicial institutions. Ordinary courts, particularly the Court of Cassation, play a significant role in applying constitutional principles in concrete cases, while the Constitutional Court retains exclusive authority over constitutional norm control. This institutional separation creates a layered model of rights protection that emphasizes judicial hierarchy rather than direct constitutional adjudication.

However, this layered model also generates structural constraints. The absence of a direct constitutional complaint mechanism restricts the ability of individuals to challenge rights violations directly before the Constitutional Court.¹⁸ Consequently, constitutional rights protection in Morocco often depends on the willingness and

¹⁵ Indra et al., "Strength of Constitutional Court Decisions in Judicial Review of the 1945 Constitution in Indonesia."

¹⁶ Tanto Lailam and M. Lutfi Chakim, "A Proposal to Adopt Concrete Judicial Review in Indonesian Constitutional Court: A Study on the German Federal Constitutional Court Experiences," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 10, no. 2 (2023): 148–71, <https://doi.org/10.22304/pjih.v10n2.a1>.

¹⁷ Lalla Amina Drhimeur, "The 2011 Uprisings, Power Structures, and Reforms in Morocco," in *Public Policy in the Arab World*, ed. Anis B. Brik (Edward Elgar Publishing, 2024), <https://doi.org/10.4337/9781035312696.00022>.

¹⁸ Francesco Alicino, "The Moroccan Constitutional Transition: The Method of Contextualization and Mutual Interaction," *Religion & Human Rights* 10, no. 1 (2015): 63–88, <https://doi.org/10.1163/18710328-12341282>.

capacity of ordinary courts to engage with constitutional norms, potentially leading to inconsistent application and limited constitutional dialogue.

A comparative assessment reveals that, despite their different constitutional traditions, both Indonesia and Morocco exhibit a common structural feature: constitutional court authority is primarily designed to control legal norms rather than to resolve individual constitutional grievances. This shared orientation reflects a traditional conception of constitutional adjudication that prioritizes legal certainty and institutional restraint over individualized rights enforcement.

The implications of this design choice are particularly significant in pluralistic societies where constitutional rights violations frequently arise from administrative discretion, judicial interpretation, or regulatory practices. In such contexts, the authority of constitutional courts to protect rights becomes functionally constrained, as constitutional review alone may be insufficient to address the full spectrum of constitutional harms experienced by citizens.

Accordingly, the authority of constitutional courts in Indonesia and Morocco can be understood as both robust and limited: robust in their capacity to preserve constitutional supremacy at the normative level, yet limited in their ability to provide comprehensive protection for constitutional rights in practice. This tension underscores the need to critically reassess how constitutional court authority is structured and exercised, setting the stage for a deeper comparative evaluation of institutional effectiveness and structural gaps in constitutional rights protection

Comparative Assessment of Institutional Authority and Rights Protection

A comparative assessment of constitutional court authority in Indonesia and Morocco reveals that institutional design plays a decisive role in shaping the practical protection of constitutional rights. Although both systems formally recognize constitutional supremacy and entrust constitutional courts with safeguarding constitutional norms, the manner in which authority is structured and exercised produces distinct patterns of rights protection. This comparison demonstrates that constitutional effectiveness cannot be inferred solely from formal jurisdiction but must be evaluated through institutional functionality.

One key point of convergence lies in the shared emphasis on abstract constitutional review as the primary mechanism of rights protection. In both Indonesia and Morocco, constitutional courts are principally empowered to assess the constitutionality of legal norms rather than to adjudicate individual constitutional grievances.¹⁹ This design reflects a traditional continental model of constitutional justice that prioritizes legal certainty and systemic coherence over individualized access to constitutional remedies.

¹⁹ Lailani Sungkar et al., "Urgency of Procedural Review in Indonesia: Review on Legitimacy and Validity," *Jurnal Konstitusi* 18, no. 4 (2022): 748, <https://doi.org/10.31078/jk1842>.

However, the implications of this shared orientation differ across the two jurisdictions due to variations in judicial structure and institutional interaction. Indonesia's centralized constitutional court model concentrates constitutional interpretation within a single institution, granting it strong symbolic authority as the guardian of the constitution.²⁰ Yet this concentration also accentuates the gap between constitutional adjudication and everyday rights violations, particularly when such violations arise from administrative discretion or judicial practice rather than legislative norms.

By contrast, Morocco's layered judicial architecture distributes rights-related adjudication across ordinary courts and the Constitutional Court. While this arrangement allows constitutional principles to permeate ordinary judicial decision-making, it simultaneously dilutes constitutional accountability by fragmenting authority.²¹ The effectiveness of rights protection thus becomes contingent upon the interpretive willingness of lower courts, creating variability in constitutional enforcement and weakening the centrality of constitutional adjudication.

This divergence highlights a fundamental trade-off between centralization and diffusion of constitutional authority. Centralized models offer interpretive coherence and normative clarity but risk institutional rigidity, whereas diffused models provide contextual responsiveness but may suffer from inconsistency and reduced constitutional visibility.²² Neither model, as currently structured, fully resolves the challenge of translating constitutional rights into effective remedies for individuals.

Access to constitutional justice constitutes another critical axis of comparison. In both systems, individuals lack direct and comprehensive access to constitutional courts for the resolution of concrete constitutional harms. This limited access reflects institutional caution aimed at preserving judicial capacity and preventing overburdening constitutional courts.²³ Yet such caution comes at the cost of restricting constitutional rights protection to indirect and often delayed mechanisms.

From a rights-based perspective, this restricted access undermines the transformative potential of constitutional courts. Constitutional rights are rendered largely reactive, dependent on legislative challenges or judicial referrals, rather than proactive instruments for rights-holders. The comparative analysis thus reveals a

²⁰ Ivana Eka Kusuma Wardani, "Peran Mahkamah Konstitusi Dalam Mengawal Prinsip Checks and Balances Terhadap Dewan Perwakilan Daerah Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 2, no. 2 (2019): 239–52, <https://doi.org/10.24090/volksgeist.v2i2.2883>.

²¹ Hadeel S. Abu Hussein, "The Revolutionary Role of Constitutional Courts in Morocco and Jordan as a Contemporary Example from the MENA Region," in *Courts and Judicial Activism under Crisis Conditions*, 1st ed., by Martin Belov (Routledge, 2021), <https://doi.org/10.4324/9781003200666-11>.

²² Aleksandra Kustra-Rogatka, "The Kelsenian Model of Constitutional Review in Times of European Integration – Reconsidering the Basic Features," *International and Comparative Law Review* 19, no. 1 (2019): 7–37, <https://doi.org/10.2478/iclr-2019-0001>.

²³ Fabian Duessel, "Direct Individual Access to Constitutional Justice in South Korea and Taiwan," in *Comparative Constitutional History*, ed. Francesco Biagi et al. (BRILL, 2020), https://doi.org/10.1163/9789004435315_011.

structural misalignment between the normative ambition of constitutional rights and the institutional pathways available for their enforcement.

Furthermore, the comparative findings suggest that institutional authority alone is insufficient to guarantee effective rights protection. Authority must be complemented by procedural openness, interpretive engagement, and institutional responsiveness. Without these elements, constitutional courts risk functioning as formal guardians of constitutional text rather than as substantive protectors of constitutional rights.

Ultimately, the comparative assessment demonstrates that both Indonesia and Morocco face a shared structural dilemma: how to reconcile constitutional court authority with meaningful access to constitutional justice. This dilemma underscores the need to rethink institutional design beyond traditional models of abstract review, providing a foundation for identifying structural gaps and exploring future directions for enhancing constitutional rights protection

Institutional Gaps and Future Directions for Constitutional Rights Protection

The comparative analysis reveals that the most significant institutional gap in both Indonesia and Morocco lies in the limited accessibility of constitutional justice for individuals whose constitutional rights have been violated. Despite strong constitutional commitments to rights protection, the institutional architecture in both systems prioritizes abstract norm control over concrete rights adjudication. This structural orientation creates a disconnect between constitutional guarantees and the lived constitutional experiences of rights-holders.

In Indonesia, this gap is manifested in the exclusive reliance on judicial review of statutes as the primary mechanism of constitutional protection. While this mechanism preserves constitutional supremacy at the normative level, it fails to address rights violations arising from administrative actions, judicial decisions, or regulatory practices that do not directly stem from statutory norms.²⁴ As a result, individuals who suffer constitutional harm often encounter an institutional vacuum where no effective constitutional remedy is available.

A similar gap exists in Morocco, albeit within a different institutional configuration. The Moroccan constitutional system emphasizes preventive constitutional review and judicial hierarchy, relying heavily on ordinary courts to operationalize constitutional rights in concrete cases.²⁵ However, the absence of a direct constitutional complaint mechanism limits the ability of individuals to challenge

²⁴ Muflih Munazih and Dina Faramida, "Constitutional Judicial System: A Comparison between Indonesia and France," *Trunojoyo Law Review* 7, no. 2 (2025): 391–413, <https://doi.org/10.21107/tlr.v7i2.30462>.

²⁵ Hussein, "The Revolutionary Role of Constitutional Courts in Morocco and Jordan as a Contemporary Example from the MENA Region."

constitutional violations before the Constitutional Court, thereby weakening the Court's role as a forum for substantive rights protection.

These gaps reflect a broader institutional reluctance to expand constitutional court authority beyond abstract review, often justified by concerns over judicial overload, institutional legitimacy, and separation of powers. While such concerns are not without merit, excessive institutional restraint risks undermining the transformative function of constitutional rights.²⁶ Constitutional courts that remain insulated from individual grievances may inadvertently reinforce a formalistic conception of constitutionalism detached from social realities.

Future directions for constitutional rights protection therefore require a recalibration of institutional authority rather than its wholesale expansion. One potential avenue lies in developing controlled access mechanisms—such as constitutional complaint procedures with strict admissibility criteria—that allow constitutional courts to address serious and systemic rights violations without compromising institutional efficiency. Comparative experiences from other constitutional systems demonstrate that such mechanisms can enhance rights protection while preserving judicial legitimacy.

Beyond procedural reform, future institutional development must also focus on strengthening constitutional dialogue between constitutional courts, ordinary courts, and political institutions. Constitutional rights protection is most effective when constitutional courts function as coordinative institutions that guide and harmonize rights-based adjudication across the legal system. This dialogical approach reduces institutional isolation and enhances the diffusion of constitutional norms into everyday legal practice.

Moreover, enhancing constitutional rights protection requires rethinking the interpretive role of constitutional courts. Rather than acting solely as negative legislators invalidating unconstitutional norms, constitutional courts can adopt a more principled interpretive approach that clarifies state obligations, articulates proportionality standards, and provides normative guidance for future governance. Such an approach strengthens rights protection without necessitating expansive jurisdictional reforms.

Ultimately, addressing institutional gaps in Indonesia and Morocco demands a shift from a purely formal conception of constitutional authority toward a functional and rights-oriented model of constitutional adjudication. By aligning institutional design with the normative ambitions of constitutional rights, constitutional courts can more effectively bridge the gap between constitutional text and constitutional justice, thereby reaffirming their central role in contemporary constitutional democracies

²⁶ Christoph Engel and Keren Weinshall, "Manna from Heaven for Judges: Judges' Reaction to a Quasi-Random Reduction in Caseload," *Journal of Empirical Legal Studies* 17, no. 4 (2020): 722–51, <https://doi.org/10.1111/jels.12265>.

Conclusion

This study demonstrates that the authority of constitutional courts in Indonesia and Morocco plays a crucial yet structurally limited role in the protection of constitutional rights. Although both constitutional systems formally position their constitutional courts as guardians of constitutional supremacy, the institutional design in each country primarily confines rights protection to abstract constitutional review. As a result, constitutional courts in both jurisdictions are effective in preserving the normative integrity of constitutional texts but remain less capable of addressing concrete constitutional harms arising from administrative actions, judicial decisions, or discretionary state practices. This finding confirms that constitutional court authority, when narrowly constructed around norm control, is insufficient to ensure comprehensive constitutional rights protection in practice.

By adopting a comparative perspective, this research contributes to constitutional law scholarship by highlighting the institutional gap between constitutional guarantees and accessible constitutional remedies. The comparison between Indonesia and Morocco reveals that effective constitutional rights protection requires not merely strong constitutional authority but also institutional mechanisms that enable meaningful access to constitutional justice. This study therefore underscores the need to reconceptualize constitutional court authority as a functional and rights-oriented institution, capable of bridging the divide between constitutional norms and lived constitutional experience. Such a reconceptualization offers important implications for constitutional design in emerging and transitional democracies seeking to strengthen the role of constitutional courts in safeguarding fundamental rights

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