



MASTER'S THESIS

Titel der Masterarbeit / Title of the Master's Thesis

„The Future of Hybrid Tribunals: What can South Sudan learn from Kosovo and Cambodia?“

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Laws (LL.M.)

Wien, 2025/ Vienna 2025

Studienkennzahl lt. Studienblatt /
degree programme code as it appears on
the student record sheet:

UA 999 079

Studienrichtung lt. Studienblatt /
degree programme as it appears on
the student record sheet:

Human Rights (LL.M.)

Betreut von / Supervisor:

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To my Mum and Dad for their help and support,
To my Grandparents who lived the same circumstances in Albania,
To Knida without whom this wouldn't be possible.

List of Abbreviations

ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan
AU	African Union
AUC	African Union Commission
CPA	Comprehensive Peace Agreement
CRTH	Commission for Truth, Reconciliation and Healing
ECCC	Extraordinary Chambers in the Court of Cambodia
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
FRY	Former Republic of Yugoslavia
HCSS	Hybrid Court of South Sudan
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
IGAD	Intergovernmental Authority on Development
KLA	Kosovo Liberation Army
KSC	Kosovo Specialist Chambers
NGO	Non-Governmental Organisation
PRK	People's Republic of Kampuchea
R-ARCSS	Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan
SITF	Special Investigative Task Force
SPLA	Sudan People's Liberation Army
UNMISS	United Nations Mission

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Introduction

This master's thesis investigates the multifaceted challenges associated with transitional justice, with particular emphasis on the establishment and functioning of hybrid tribunals. Hybrid tribunals have emerged in various post-conflict contexts as mechanisms designed to address serious violations of international human rights and humanitarian law. This study aims to critically evaluate the procedural strengths and limitations of hybrid courts by undertaking a comparative analysis of the experiences in Kosovo and Cambodia. Drawing on these case studies, the thesis will assess the viability of establishing a similar tribunal in South Sudan.

To provide a foundation for this inquiry, the first chapter will offer a concise historical overview of the development of hybrid tribunals, situating their emergence as responses to the procedural and institutional shortcomings of earlier ad hoc tribunals such as the ICTY and ICTR (subchapter 1).

The second chapter will concentrate on the Kosovo Specialist Chambers (KSC). It will begin with an outline of the historical background, detailing the human rights violations committed by members of the Kosovo Liberation Army (KLA) and the corresponding calls for justice and accountability (subchapter 2.1). The discussion will then trace the procedural steps leading to the establishment of the KSC, including the significance of the Del Ponte report and the role of the international community in shaping the tribunal (subchapter 2.2). The following sections (subchapters 2.3 and 2.4) will elaborate on the court's mandate, institutional structure, and procedural framework, encompassing pre-trial activities, indictment processes, victim participation mechanisms, and sentencing practices. The analysis will subsequently turn to the criticisms of the KSC, highlighting concerns related to its location outside Kosovo, its limited temporal jurisdiction, the erosion of evidentiary quality due to the passage of time, and the court's insufficient outreach to the Kosovar public (subchapter 2.5). The final section of this chapter (subchapter 2.6) will consider the tribunal's potential positive contributions, including its capacity to provide victim reparations, clarify longstanding uncertainties surrounding the Marty Report, reinforce the rule of law, and encourage both ethnic reconciliation and intra-Albanian political reform—particularly in light of the influence wielded by former KLA figures within the current political elite.

Chapter three will examine the Extraordinary Chambers in the Courts of Cambodia (ECCC). It will begin with a historical account of the Khmer Rouge regime, tracing its ideological origins and the widespread human rights violations perpetrated during its rule (subchapter 3.1). Subchapter 3.2 will then address the establishment of the tribunal, with emphasis on the lengthy and politically fraught negotiations between the Cambodian government and the United Nations. Thereafter, the chapter will outline the tribunal's formal mandate and jurisdiction (subchapter 3.3). The final subchapters (3.4 and 3.5) will present a balanced evaluation of the court's limitations and achievements. On one hand, the analysis will note the adverse effects of delayed establishment on funding and judicial efficacy, the constraining impact of limited temporal jurisdiction, and persistent challenges regarding corruption and judicial impartiality. On the other hand, the tribunal will be credited for its efforts to address victims' justice demands through meaningful participation, for fostering the development of a shared historical narrative, and for contributing to intergenerational understanding of Cambodia's traumatic past. Additionally, the ECCC's role in legal capacity building and adherence to international due process standards will be acknowledged, despite the structural weaknesses of Cambodia's domestic legal system.

The fourth and final chapter will turn to the case of South Sudan. Subchapter 4.1 will provide a brief but necessary historical overview of the country's protracted civil conflicts from 1955 up to the adoption of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). This section will also outline the current political context. The discussion will then focus on the R-ARCSS itself, providing an in-depth analysis of the Hybrid Court for South Sudan (HCSS), including its structure, mandate, procedural innovations, and critiques. The chapter will conclude with a comparative assessment, drawing on the positive and negative aspects of the ECCC and KSC to identify lessons applicable to South Sudan. The chapter will end with a concluding reflection that synthesises the main findings. Ultimately, the analysis suggests that, under different political circumstances, the R-ARCSS could function effectively with certain modifications. However, given the prevailing conditions, its implementation remains highly unlikely in the foreseeable future.

1. From the Ad Hoc Tribunals of the ICTY and ICTR to Hybrid Tribunals

In the 1990s, the United Nations established two ad hoc international tribunals: the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).¹ These institutions were created to prosecute individuals responsible for serious violations of international criminal law.² While these tribunals marked significant steps toward international justice, they also faced considerable challenges.³ Beyond their extensive costs and protracted legal proceedings, a major criticism was the geographical detachment of the tribunals from the communities most affected by the crimes.⁴ The ICTR was situated in Arusha, Tanzania, while the ICTY operated out of The Hague, far removed from the sites of the atrocities. This disconnect contributed to a broader search for alternative models of justice that were not only more efficient and less costly but also more accessible and relevant to the affected populations.⁵ In response, hybrid tribunals were developed. These courts integrated international and domestic legal elements, both in terms of personnel—combining international judges with local legal professionals—and legal frameworks, by applying both international and national laws.⁶ This model significantly reduced operational costs and, crucially, situated the proceedings within the countries where the crimes had occurred.⁷ Since the creation of the first hybrid tribunal in Sierra Leone in 2002, several others have followed, including those established in Cambodia, East Timor, and Kosovo, among others.

Typically, these tribunals have been established in post-conflict contexts where mass atrocities have taken place, particularly in situations where a dedicated international tribunal does not exist or where the existing mechanism is overwhelmed by the sheer volume of

¹ Elisabeth Nielson, 'Hybrid International Criminal Tribunals: Political Interference and Judicial Independence,' (2010) 15 UCLA J Int'l L Foreign Aff 289.

² Etelle R. Higonnet, 'Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform' (2006) [Ariz. J Int'l & Comp L](#) 347.

³ David Cohen, 'Hybrid Justice in East Timor, Sierra Leone, and Cambodia: "Lessons learned" and the Prospects for the Future' (2007) *Stan. J Int'l L* 1.

⁴ Ibid.

⁵ Etelle R. Higonnet, 'Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform' (2006) [Ariz. J Int'l & Comp L](#) 347.

⁶ Robert F. Carolan, 'An Examination of the Role of Hybrid International Tribunals in Prosecuting War Crimes and Developing Independent Domestic Court Systems: The Kosovo Experiment,' (2008) 17 *Transnat'l L & Contemp Probs* 9.

⁷ Ibid.

cases.⁸ However, hybrid tribunals evoke a mixed response from the international community.⁹ Critics argue that they represent a second-best solution, potentially undermining the legitimacy and consistency of international justice.¹⁰ Others claim they replicate too many features of international courts, diluting the benefits of local engagement.¹¹ Nevertheless, these tribunals possess numerous advantages that hold promise for the future of prosecuting mass atrocities.

This broader turn toward integrated mechanisms like hybrid tribunals must be understood within the evolving theoretical discourse of transitional justice, a field that underpins the normative ambitions of such courts. The term emerged prominently in the mid-1990s, particularly in response to transitions from authoritarian rule in Eastern Europe and Central America, it generally refers to efforts to address legacies of violence and systemic abuse in societies undergoing—or striving for—political transformation.¹² Christine Bell highlights the conceptual ambiguity of transitional justice, arguing that it can be understood in at least three distinct ways: First, as a novel normative framework specifically designed for transitional contexts, second, as the application of ordinary legal mechanisms—such as domestic criminal or human rights law—to exceptional post-conflict scenarios and third, as a concept in flux, evolving as it travels across political and cultural contexts, which Bell views as intrinsic and fundamental to shaping how transitional justice takes form in different regional or local settings.¹³ These layered understandings open up a wide array of mechanisms—truth commissions, criminal trials, reparations, institutional reform, apologies, and memorialisation—each interpreted through competing justice paradigms: restorative, retributive, or procedural.¹⁴ This conceptual framing will underpin the analysis of the ECCC, KSC, and finally the HCSS.

⁸ Olga Martin-Ortega & Johanna Herman, ‘Hybrid Tribunals & the Rule of Law: Notes from Bosnia & Herzegovina & Cambodia.’ (2010) JAD-PbP Working Paper No 7.

⁹ Ibid.

¹⁰ Sarah M.H. Nouwen, ‘Hybrid Courts: The Hybrid Category of a New Type of International Crimes Courts’ (2006) 2 Utrecht Law Rev 190.

¹¹ Paul W. Bennetch, Matthew R. Sellers and Sean C. McGuire, ‘Improving Hybrid Tribunal Design: Domestic Factors, International Support, and Court Characteristics’ (2016) Stanford Law School.

¹² Christine Bell, ‘Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’ (2009) 3 The Int. J of Transit Justice 5.

¹³ Ibid.

¹⁴ Ibid.

One of the central goals of transitional justice is to deliver accountability and redress in the aftermath of conflict.¹⁵ Hybrid tribunals advance this aim by conducting trials in the countries where the crimes occurred, thus fostering a greater sense of justice and public participation.¹⁶ Their presence can promote the rule of law, catalyse judicial reform, and offer functional examples of legal accountability in states where the judiciary is often weak or compromised.¹⁷ Financially, they are more feasible, relying largely on international funding while engaging domestic institutions and actors.¹⁸ From a transitional justice perspective, such prosecutions tend to have a deeper societal impact when carried out locally, where the populations affected can observe and engage with the justice process.¹⁹ The inclusion of international elements ensures a degree of impartiality for both victims and perpetrators and contributes to the establishment of an authoritative record of past crimes.²⁰ This is particularly important in societies where historical atrocities remain unacknowledged or are insufficiently understood.²¹ For instance, in Albania, the crimes of the communist regime are seldom discussed among younger generations, with commemorative events largely attended by those who personally experienced the abuses.²²

Nonetheless, as scholars such as Olga Ortega and Johanna Herman caution, it is essential to acknowledge the limitations of hybrid tribunals and avoid placing unrealistic expectations on their capacity to transform entire societies.²³ While the broader impacts may be substantial,

¹⁵ Chandra Lakha Sriram, Olga Martin-Ortega and Johanna Herman, *War, Conflict and Human Rights* (Oxon: Routledge, 2009) pp.195-213.

¹⁶ Olga Martin-Ortega & Johanna Herman, 'Hybrid Tribunals & the Rule of Law: Notes from Bosnia & Herzegovina & Cambodia.' (2010) JAD-PbP Working Paper No 7.

¹⁷ Laura A. Dickinson, 'The Promise of Hybrid Courts' (2003) 97 Am. J. Int'l L 307.

¹⁸ Olga Martin-Ortega & Johanna Herman, 'Hybrid Tribunals & the Rule of Law: Notes from Bosnia & Herzegovina & Cambodia.' (2010) JAD-PbP Working Paper No 7.

¹⁹ Antonio Cassese, 'The Role of Internationalised Courts and Tribunals in the Fight Against International Criminality' in Cesare Romano, Andre Nollkaemper and Jann Kleffner, *Internationalised Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford University Press, 2004).

²⁰ Olga Martin-Ortega & Johanna Herman, 'Hybrid Tribunals & the Rule of Law: Notes from Bosnia & Herzegovina & Cambodia.' (2010) JAD-PbP Working Paper No 7.

²¹ Ibid.

²² This comes from my own experience, my family was a victim of the communist regime in Albania and I have personally attended several commemorative events where I was the only one of my age group.

²³ Olga Martin-Ortega & Johanna Herman, 'Hybrid Tribunals & the Rule of Law: Notes from Bosnia & Herzegovina & Cambodia.' (2010) JAD-PbP Working Paper No 7.

the primary function of these courts remains the prosecution of perpetrators and the prevention of impunity for grave international crimes.²⁴

²⁴ Jane Stromseth, 'Pursuing Accountability for Atrocities After Conflict: What Impact on Building the Rule of Law? (2006-2007) 1 Geo. J Int'l L 87.

1. The Case of Kosovo

2.1 A Historical Background: The Kosovo Liberation Army

As previously noted, one of the hybrid tribunals established was that of Kosovo. This tribunal was created with the purpose of prosecuting war crimes committed by members of the KLA, a guerrilla organisation implicated in serious violations including massacres and human trafficking during the period of Serbian occupation.²⁵ To properly analyse the legal framework underpinning this tribunal, it is crucial to understand the historical and political context that led to its creation.

The Kosovo Liberation Army is frequently cited as one of the most successful guerrilla movements of recent decades.²⁶ As journalist and historian Tim Judah points out, the KLA's ascent to prominence can be attributed not solely to its internal organisation or military capability, but largely to the miscalculations and failures of its adversaries.²⁷ The origins of the movement can be traced back to the early 1980s, particularly within the environment of Pristina University. During the Serbian occupation, various ideological currents emerged, one of which was grounded in a Stalinist worldview.²⁸ Adherents of this ideology looked toward Albania's communist regime as a model and envisioned a future in which Kosovo and Albania would be unified.²⁹ This group rejected the notion of Kosovo remaining a mere province within the Yugoslav federation, instead advocating for its status as a sovereign republic.³⁰

In its formative years, the KLA engaged in limited militant activities, restricted mainly to the targeted killings of Serbian security personnel.³¹ These early operations were constrained by a lack of resources—insufficient weaponry, limited manpower, and the inability to maneuver

²⁵ Fisnik Korenica, Argjend Zhubi & Dren Doli, 'The EU-engineered Hybrid and International Specialist Court in Kosovo: How 'Special' is it?' (2016) 12 Eur. Const. Law Rew 474-498.

²⁶ Tim Judah, *Kosovo: War and Revenge*, (Yale University Press 2002).

²⁷ Ibid.

²⁸ James Robertson, 'From Enver Hoxha to Bill Clinton' (2018) Jacobin <[From Enver Hoxha to Bill Clinton](#)> accessed 27 April 2025.

²⁹ Ibid.

³⁰ Tim Youngs and Tom Dodd, 'Kosovo' (Research Paper 98/73, House of Commons: International Affairs and Defence Section, 1998).

³¹ Colleen Sullivan, 'Kosovo Liberation Army', (2008) Britannica <[Kosovo Liberation Army \(KLA\) | History & Facts | Britannica](#)> accessed 28 April 2025.

effectively.³² Running parallel to the rise of the KLA was the political leadership of Ibrahim Rugova.³³ Under his guidance, a symbolic parallel republic of Kosovo was established during the Serbian occupation, though largely ineffective due to systemic repression, Rugova's administration adhered strictly to a pacifist philosophy.³⁴ He envisioned Kosovo's independence achieved through non-violence, rooted in dignity, dialogue, and international legitimacy.³⁵ His stance placed him in sharp contrast with the KLA, which pursued the same goal of independence but advocated armed resistance as the primary means to achieve it.³⁶

A turning point came in 1997, when Albania descended into chaos following the collapse of several large-scale pyramid investment schemes.³⁷ The resulting state failure led to widespread looting of military stockpiles, and large quantities of weapons became available on the black market at very low prices.³⁸ These arms were quickly acquired by the KLA, significantly bolstering its firepower and operational capabilities.³⁹ Empowered by this influx of weaponry, the group escalated its activities, prompting an equally forceful retaliation from Serbian forces.⁴⁰ This intensification of violence led to a mass migration of civilians to neighboring Albania and other surrounding countries.⁴¹ The deteriorating humanitarian situation prompted NATO intervention, culminating in an aerial bombing campaign aimed at halting the conflict.⁴²

By the end of hostilities, the human toll was devastating. More than 13,535 individuals had been killed, the overwhelming majority of whom were Kosovar Albanians.⁴³ Furthermore, over 1.5 million ethnic Albanians—representing approximately 90% of the Kosovar Albanian

³² Ibid.

³³ TemA, 'Ibrahim Rugova: The Pacifist Visionary who Paved Kosova's Path to Independence through Democracy and Peace' (2024) TemA <[Ibrahim Rugova: The pacifist visionary who paved Kosova's path to independence through democracy and peace - Kosovo & Region](#)> accessed 28 April 2025.

³⁴ Ibid.

³⁵ I owe this information to my father, who met and spoke to Ibrahim Rugova several times at our home in Rome before I was born.

³⁶ Tim Judah, *Kosovo: War and Revenge*, (Yale University Press 2002).

³⁷ Mark Bromley, 'United Nations Arms Embargoes: Their Impact on Arms Flows and Target Behaviour' (2007) Stockholm International Peace Research Institute.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Tim Judah, *Kosovo: War and Revenge*, (Yale University Press 2002).

⁴¹ Ibid.

⁴² Laura Wise, 'Was NATO's Intervention in Kosovo in 1999 Just?' (2013) E-International Relations <[Was NATO's Intervention in Kosovo in 1999 'Just'?](#)> accessed 29 April 2025.

⁴³ Ibid.

population—had been displaced.⁴⁴ The Serbian occupation came to an end, and in its aftermath, space emerged for reflection and the revelation of suppressed truths.

Initially, it was widely believed that Serbian forces were solely responsible for the atrocities committed during the conflict. However, over time, numerous testimonies and investigations surfaced, indicating that the KLA had also perpetrated grave abuses. These included the targeted killings of not only Serbian civilians but also ethnic Albanians suspected of collaborating with Serbian authorities.⁴⁵ Such revelations underscored the complexity of the conflict and the necessity of a legal mechanism—such as the hybrid tribunal—to deliver impartial accountability for all sides involved.

2.2 The Creation of the Specialist Chambers of Kosovo

Following the developments described above, two years after Kosovo's declaration of independence, the establishment of a special court became a significant matter of international concern.⁴⁶ In April 2008, Carla Del Ponte, former Chief Prosecutor of the ICTY, published memoirs in which she alleged that during the Kosovo conflict, members of the KLA had committed serious human rights violations.⁴⁷ She accused KLA fighters of abducting ethnic Serbs, detaining them in clandestine facilities, and transferring them to remote locations where they were subjected to organ harvesting and illicit trafficking.⁴⁸ Furthermore, Del Ponte claimed that during the time these individuals were held captive, they endured systematic abuse, torture, and extrajudicial killings.⁴⁹

In the wake of these alarming allegations, Dick Marty, a Swiss member of the Parliamentary Assembly of the Council of Europe, conducted a formal investigation.⁵⁰ He subsequently

⁴⁴ Sara L. Ochs & Kirbi Walters, 'Forced Justice: Kosovo Specialist Chambers.' (2022) 32 *Duke J Comp. & Int'l L* 239.

⁴⁵ I owe this paragraph to my Father.

⁴⁶ Sara L. Ochs & Kirbi Walters, 'Forced Justice: Kosovo Specialist Chambers.' (2022) 32 *Duke J Comp. & Int'l L* 239.

⁴⁷ Ian Traynor, 'Former War Crimes Prosecutor Alleges Kosovan Army Harvested Organs From Serb Prisoners' (2008) *The Guardian* <[Former war crimes prosecutor alleges Kosovan army harvested organs from Serb prisoners | War crimes | The Guardian](#)> accessed 29 April 2025.

⁴⁸ *Ibid.*

⁴⁹ Dean Pineles, 'Kosovo: International Criminal Justice in Slow Motion' (2020) 46 *Vt. Bar J* 38.

⁵⁰ Fisnik Korenica, Argjend Zhubi & Dren Doli, 'The EU-engineered Hybrid and International Specialist Court in Kosovo: How 'Special' is it?' (2016) 12 *Eur. Const. Law Rew* 474-498.

submitted a comprehensive report entitled “*Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo*.”⁵¹ This memorandum alleged grave human rights abuses, including the trafficking of individuals and mass killings, reportedly perpetrated by senior-ranking members of the KLA.⁵² The report was appended to a resolution by the Parliamentary Assembly of the Council of Europe, which called upon the European Union to allocate financial and logistical support—via its rule-of-law mission in Kosovo (EULEX)—to pursue a full investigation into the alleged crimes.⁵³

In response, EULEX created a Special Investigative Task Force (SITF) to examine the claims outlined in Marty’s report.⁵⁴ However, the efforts of both EULEX and the SITF were sporadic and largely ineffective, drawing widespread criticism for failing to fulfill their intended mandate.⁵⁵ Amid mounting concerns over the credibility and impartiality of domestic mechanisms, the European Union and the United States began discussing the possibility of establishing a dedicated special tribunal outside of Kosovo that would function with the authority of an international court.⁵⁶ As the proposal gained political traction, particularly in Washington, U.S. officials encouraged the European Union to advance negotiations for such a court, leveraging Kosovo’s aspirations for European integration as a bargaining tool.⁵⁷

Subsequently, both the EU and the U.S. formally requested that Kosovo agree to the establishment of the tribunal and initiate formal investigations into the crimes detailed in Marty’s report.⁵⁸ One of the key stipulations of this request was that the European Union be granted full operational and jurisdictional control over the court.⁵⁹ Additionally, it was

⁵¹ Dick Marty, ‘Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo’ (2010) (Report AS/Jur (2010) 46 Parliamentary Assembly, Council of Europe).

⁵² Ibid.

⁵³ Council Joint Action 2008/124/CFSP of 4 February 2008 ‘On the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO’.

⁵⁴ Ibid.

⁵⁵ Fisnik Korenica, Argjend Zhubi & Dren Doli, ‘The EU-engineered Hybrid and International Specialist Court in Kosovo: How ‘Special’ is it?’ (2016) 12 Eur. Const. Law Rew 474-498.

⁵⁶ Ibid.

⁵⁷ In the EU-Western Balkans Summit (Thessaloniki 2003) Kosovo was promised a European future, though it has become tied to the Special Court.

⁵⁸ ‘The truth beyond any doubt (10/04/2014)’, statement by Samuel Žbogar, Head of the EU Office in Kosovo and EU Special Representative, <eeas.europa.eu/archives/delegations/kosovo/documents/statements/140410_the_truth_beyond_any_doubt_en.doc> accessed 29 April 2025.

⁵⁹ Caitlin E. Carroll, ‘Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occurring Within a Domestic State’ (2013) Seton Hall University.

mandated that the court's seat, all aspects of witness protection, and the detention of suspects—including those convicted and serving sentences—be located outside the territory of Kosovo.⁶⁰ These conditions sparked a period of intensive diplomatic dialogue between EU officials and Kosovo's governing institutions.⁶¹

Following an exchange of official letters, the Assembly of Kosovo ratified the proposed agreement, thereby accepting the establishment of the Special Court as an internationally binding obligation.⁶² The European Commission subsequently included this commitment in its Enlargement Strategy, making the creation of the court a prerequisite for Kosovo's progress toward European Union membership.⁶³ The Special Court was formally established on December 16, 2014.⁶⁴ Although local stakeholders were nominally included in the decision-making process, the substantive legal framework was drafted in Brussels, resulting in minimal local engagement.⁶⁵ This lack of involvement drew sharp criticism from opposition parties within Kosovo's parliament, who argued that the hybrid nature of the tribunal—combining domestic and international legal frameworks—posed potential conflicts with the country's constitutional order.⁶⁶

Ultimately, on August 3, 2015, following a parliamentary plenary session, an agreement was reached to proceed with the establishment of the Special Court, including the necessary constitutional amendments to legitimise its formation.⁶⁷ The Special Court was designed as a parallel judicial structure comprising four tiers (three regular levels and one constitutional),

⁶⁰ Ibid. The seat of the Court is outside of Kosovo with just one office located in Kosovo, however the office is not operational and is there more for symbolic purposes.

⁶¹ Fisnik Korenica, Argjend Zhubi & Dren Doli, 'The EU-engineered Hybrid and International Specialist Court in Kosovo: How 'Special' is it?' (2016) 12 Eur. Const. Law Rev 474-498.

⁶² Ibid.

⁶³ Annex to the Commission Implementing Decision: amending Commission Decision C(2014) 5772 of 20.08.2014 adopting the Indicative Strategy Paper for Kosovo for the Period 2014-2020, European Commission 2018.

⁶⁴ Council Conclusions on Enlargement and Stabilisation and Association Process General Affairs, Council meeting Brussels, 16 December 2014, para 57.

⁶⁵ Vetëvendosje në mbështetje të protestës kundër Gjykatës Speciale' (2015) Telegrafi <[Vetëvendosje në mbështetje të protestës kundër Gjykatës Speciale - Telegrafi - Telegrafi](#)> accessed 30 April 2025.

⁶⁶ Ibid.

⁶⁷ <www.assembly-kosova.org/common/docs/ligjet/05-L-053%20a.pdf>

operating independently of Kosovo's existing judicial system.⁶⁸ It would be staffed by international judges and prosecutors, appointed and financially supported by the European Union, and based within the territory of an EU member state.⁶⁹ To support its operation, the EU committed an estimated 300 million euros in funding.⁷⁰

2.3 Kosovo Specialist Chambers: Mandate and Structure

The Kosovo Specialist Chambers operate under a clearly defined and time-bound mandate. It is a temporary judicial institution tasked with adjudicating crimes against humanity, war crimes, and other serious offenses as specified under Kosovo law—particularly those enumerated in Article 15 of the Law on the Specialist Chambers and the Specialist Prosecutor's Office.⁷¹ The court's jurisdiction is limited to allegations of individual criminal responsibility for offenses committed between 1 January 1998 and 31 December 2000, as directly related to the findings presented in the 2011 report issued by the Council of Europe.⁷²

The Chambers also provide a framework for victim participation, enabling individuals who have suffered direct harm as a result of the crimes under investigation to engage with the legal process.⁷³ Jurisdictionally, the court may prosecute natural persons holding the citizenship of either Kosovo or the former Federal Republic of Yugoslavia (FRY), and it may also hear cases involving alleged crimes committed against individuals of the same nationalities.⁷⁴

⁶⁸ Fisnik Korenica, Argjend Zhubi & Dren Doli, 'The EU-engineered Hybrid and International Specialist Court in Kosovo: How 'Special' is it?' (2016) 12 Eur. Const. Law Rew 474-498.

⁶⁹ Ivana Nikolic, Marija Ristic and Petrit Collaku, 'Kosovo's New War Court: Major Challenges Ahead' (2015) Balkan Transitional Justice <balkaninsight.com/en/article/kosovo-s-new-war-court-major-challenges-ahead-08-11-2015> accessed 30 April.

⁷⁰ Fisnik Korenica, Argjend Zhubi & Dren Doli, 'The EU-engineered Hybrid and International Specialist Court in Kosovo: How 'Special' is it?' (2016) 12 Eur. Const. Law Rew 474-498.

⁷¹ Law No 05/L-053 on Specialist Chambers and Specialist Prosecutor's Office 2015, art 15.

⁷² Ibid under Mandate.

⁷³ [Background | Kosovo Specialist Chambers & Specialist Prosecutor's Office](https://www.scp-ks.org/en/background)

⁷⁴ Kosovo Specialist Chambers, 'KSC at a glance' (Kosovo Specialist Chambers, 2024) <<https://www.scp-ks.org/en/background>> accessed 15 May 2025.

In terms of institutional structure, the Specialist Chambers is divided into two principal components: the Chambers and the Registry.⁷⁵ The Chambers themselves are composed of four judicial levels: the Basic Court Panel, the Court of Appeals Panel, the Supreme Court Panel, and the Constitutional Court Panel.⁷⁶ These levels function hierarchically to ensure both procedural integrity and the availability of judicial review throughout the course of proceedings.⁷⁷

The Registry, responsible for the administrative and logistical support of the court, is subdivided into three core units: the Judicial Services Division, the Immediate Office of the Registrar, and the Administration Division.⁷⁸ Together, these subdivisions ensure the efficient operation of the judicial process, support the work of the judges and legal staff, and maintain compliance with international standards of justice, transparency, and accountability.⁷⁹

2.4 Rules of Procedures of the Chambers and Victim Participation

Judges of the Kosovo Specialist Chambers are appointed from a designated Roster and are assigned to specific cases by the President of the Court.⁸⁰ The President is responsible not only for the overall judicial administration but also presides over any Supreme Court panel in which they participate as a member.⁸¹

To safeguard the principles of fairness and efficiency, judges are subject to deadlines for issuing their judgments and are required to establish structured calendars and detailed work plans.⁸² Additionally, procedural provisions exist to ensure the safety and protection of victims and witnesses who choose to participate in the proceedings, these protective measures may include the use of pseudonyms, voice distortion, facial obfuscation, and the option to conduct private or closed sessions to prevent public exposure.⁸³

⁷⁵ [Chambers | Kosovo Specialist Chambers & Specialist Prosecutor's Office, Registry | Kosovo Specialist Chambers & Specialist Prosecutor's Office.](#)

⁷⁶ Kosovo Specialist Chambers, '*KSC at a glance*' (Kosovo Specialist Chambers, 2024) <<https://www.scp-ks.org/en/background>> accessed 15 May 2025.

⁷⁷ Ibid.

⁷⁸ [The Registrar | Kosovo Specialist Chambers & Specialist Prosecutor's Office](#)

⁷⁹ Ibid.

⁸⁰ Kosovo Specialist Chambers, '*Factsheet: Rules of Procedure and Evidence*' (Kosovo Specialist Chambers, 2024) <https://www.scp-ks.org/en/background> accessed 15 May 2025.

⁸¹ Ibid under Structure and Functioning of the KSC.

⁸² Ibid under Measures to Ensure Fairness, Security and Expeditionness of the Proceedings.

⁸³ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (2017), Chapter 8 Participation of Victims in the Proceedings, pp 66-68.

Upon arrest, the detained individual must be promptly informed of the legal grounds for their detention and brought before a judge without undue delay, the Rules of Procedure and Evidence mandate regular judicial reviews to evaluate the continued appropriateness and legality of the detention.⁸⁴ At the investigative stage, the maximum duration of pre-trial detention is capped at one year, the detainee retains the right to challenge the detention decision by appealing first to the Court of Appeals Panel and, subsequently, to the Supreme Court Panel.⁸⁵

Pre-trial proceedings commence with the filing of an indictment by the Specialist Prosecutor, which is subject to judicial review by a designated pre-trial judge.⁸⁶ An indictment will only be confirmed if the submitted evidence is deemed sufficient to support the charges.⁸⁷ Should the evidence be found lacking, the indictment will not be confirmed and the case will be dismissed, if confirmed, the accused is then invited to enter a plea of guilty or not guilty before the pre-trial judge.⁸⁸

Following the pre-trial phase, both the prosecution and the defense are entitled to present evidence pertinent to the case, the order of presentation typically begins with the Specialist Prosecutor's evidence, followed by the defense's evidence, then evidence requested by the judicial panel itself which is then followed by rebuttal evidence from the prosecution and any rejoinder evidence submitted by the defense.⁸⁹ After the prosecution concludes its presentation, the defense may submit a motion to dismiss any or all charges, particularly if it believes that the presented evidence fails to meet the threshold of proof beyond a reasonable doubt, in such cases, the panel will assess whether the indictment should be dismissed in whole or in part.⁹⁰

The trial judgment must be rendered within 90 days from the close of the evidentiary phase, both prosecution and defense retain the right to appeal the decision.⁹¹ If a conviction is issued, the defendant may first appeal to the Court of Appeals Panel, should that panel

⁸⁴ [Detention Specialist Chambers](#)

⁸⁵ Ibid.

⁸⁶ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (2017), Chapter 6, Section I: Indictment pp 47-48.

⁸⁷ Ibid, pp 47.

⁸⁸ Ibid.

⁸⁹ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (2017) Chapter 6: Indictment and Pre-Trial Proceedings, Section III: Pre-Trial phase, pp 54.

⁹⁰ Ibid, Chapter 6, Section III, Rule 97 Preliminary Motions, pp 56.

⁹¹ Ibid, Chapter 9, Section I, Trial: Preparations and Trial management, pp 68-72.

reverse or amend the original decision—either through acquittal or further conviction—the matter may proceed to the Supreme Court Panel, which will review only those specific outcomes.⁹²

Importantly, the framework of the Chambers allows for the participation of victims in the legal proceedings.⁹³ To qualify, individuals must present adequate evidence demonstrating that they have directly suffered harm as a result of one or more crimes listed in the indictment.⁹⁴ Recognised victims are entitled to legal representation through a Victims' Counsel, who may participate throughout the pre-trial and trial stages, the counsel is granted the right to deliver opening and closing statements and remains present to advocate for the interests of the victims during proceedings.⁹⁵

2.5 Criticisms and Challenges of the Kosovo Specialist Chambers

Despite the promise hybrid courts hold in addressing key limitations of previous international mechanisms such as the International Criminal Court (ICC) and ad hoc tribunals—including narrow mandates, restricted jurisdiction, political constraints, and underdeveloped judicial infrastructures—Kosovo's Specialist Chambers have attracted substantial criticism.⁹⁶ Hybrid tribunals were initially viewed as a forward-looking alternative, aiming to improve upon the structural and legitimacy-related shortcomings of earlier efforts.⁹⁷ Where earlier institutions lacked inclusivity and effectiveness, hybrid models were designed to foster greater local involvement and legitimacy.⁹⁸ However, these aspirations have not been fully realised in the case of the KSC. The court, located in The Hague and staffed exclusively by international personnel, retains most characteristics of an international tribunal.⁹⁹ In practice, its only

⁹² Ibid, Chapter 10, Sub-section 2 Appeals Against Judgements, pp 93-97.

⁹³ Kosovo Specialist Chambers, '*Factsheet: Victims' Participation at the KSC*' (2024) <https://www.scp-ks.org/en/factsheets> accessed 15 May 2025.

⁹⁴ Ibid.

⁹⁵ Rules of Procedure and Evidence Before the Kosovo Specialist Chambers (2017) Chapter 8: Participation of Victims in the Proceedings, pp 66-67.

⁹⁶ Meris Musanovic & Arolda Elbasani, 'The Specialist Chambers' Hybrid Nature as a Promising Solution for Transnational Justice in Kosovo' (2020) Osservatorio Balcani e Caucaso Transeuropa <[The Specialist Chambers' hybrid nature as a promising solution for transitional justice in Kosovo / Kosovo / Areas / Homepage - Osservatorio Balcani e Caucaso Transeuropa](#)> accessed 16 May 2025.

⁹⁷ David Cohen, 'Hybrid' Justice in East Timor, Sierra Leone, and Cambodia: "Lessons learned" and the Prospects for the Future' (2007) Stan. J Int'l L 1.

⁹⁸ Ibid.

⁹⁹ Caitlin E. Carroll, 'Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occurring Within a Domestic State' (2013) Seton Hall University.

hybrid element lies in its legal foundation, specifically its establishment under Article 55 of Kosovo's Constitution.¹⁰⁰

As noted at the outset of this analysis, one of the principal advantages of hybrid courts is their supposed ability to incorporate local legal actors and communities in the delivery of justice. Both legally and geographically, their involvement is meant to ensure a balance between international standards and local legitimacy. Etelle Higonnet underscores this point, arguing that hybrids have the capacity to “harness the credibility of international law and the legitimacy of culturally appropriate institutions,” thereby gaining authority as mechanisms of accountability and social trust.¹⁰¹ Furthermore, such courts are believed to aid in strengthening domestic legal systems by transferring international norms related to due process and transparency.¹⁰² Yet, the Kosovo Specialist Chambers have fallen short of these objectives.

From its inception, the very idea of the KSC was contentious among Kosovo Albanians as previous international investigations had already confirmed that the majority of war crimes during the Kosovo conflict were committed by Yugoslav forces and Serbian police.¹⁰³ However, Dick Marty's report—which served as the foundation for the KSC—focuses narrowly on alleged crimes perpetrated by members of the KLA, specifically within the timeframe of January 1, 1998, to December 31, 2000.¹⁰⁴ This temporal and thematic limitation has led many in Kosovo to view the tribunal as an instrument of selective justice with many arguing that the court has demonstrated a one-sided type of justice.¹⁰⁵ A 2017 public opinion poll found that 76.4% of Kosovo Albanians believed it was unjust for the KSC

¹⁰⁰ Constitution of the Republic of Kosovo 2008, art 55.

¹⁰¹ Etelle R. Higonnet, ‘Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform’ (2006) [Ariz. J Int'l & Compl. L](#) 347.

¹⁰² Ibid.

¹⁰³ Meris Musanovic and Arolda Elbasani, ‘A Contested Attempt at Transitional Justice- the Kosovo Specialist Chambers (2020) Osservatorio Balcani e Caucaso Transeuropa <[A Contested Attempt at Transitional Justice – the Kosovo Specialist Chambers / Kosovo / Areas / Homepage - Osservatorio Balcani e Caucaso Transeuropa](#)> accessed 16 May 2025.

¹⁰⁴ Dick Marty, ‘Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo’ (2010) (Report AS/Jur (2010) 46 Parliamentary Assembly, Council of Europe).

¹⁰⁵ Meris Musanovic & Arolda Elbasani, ‘Can the Kosovo Specialist Chambers do Better than its predecessor?’ (2020) [Justiceinfo.net](#), <<https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20atest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani>> accessed 16 May 2025.

to focus solely on crimes committed by the KLA.¹⁰⁶ Scholar Haxhibeqiri has argued that, had the KSC expanded its jurisdiction to include crimes committed by other parties, it would have garnered greater public support.¹⁰⁷

Nevertheless, it is important to recognise that perceptions of bias vary depending on one's viewpoint. The belief that the KSC targets Kosovo Albanians stems, in part, from those who may fear potential prosecution.¹⁰⁸ Another major criticism concerns the quality of the evidence upon which the tribunal is based.¹⁰⁹ Marty's report has been publicly available since 2010, during which time EULEX had both the mandate and resources to thoroughly investigate the allegations.¹¹⁰ Yet, the mission failed to act decisively. Furthermore, the passage of over two decades since the war presents additional challenges as earlier investigations by domestic and international institutions arguably had a better opportunity to collect timely evidence, engage living witnesses, and preserve memory.¹¹¹

One of the most significant shortcomings, however, lies in the court's lack of effective outreach to the Kosovar public.¹¹² As Maliqi observes, efforts to engage with and inform the population have been minimal.¹¹³ No robust communication strategy has been implemented to

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Michael James Warren et al, 'Public Perception of the Kosovo Specialist Court' (PAX, 2017).

¹⁰⁹ Meris Musanovic & Arolda Elbasani, 'Can the Kosovo Specialist Chambers do Better than its predecessor?' (2020) [Justiceinfo.net](https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>), <<https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>> accessed 16 May 2025.

¹¹⁰ Gezim Visoka, 'Assessing the potential impact of the Kosovo Specialist Court' (PAX, 2017).

¹¹¹ Meris Musanovic & Arolda Elbasani, 'Can the Kosovo Specialist Chambers do Better than its predecessor?' (2020) [Justiceinfo.net](https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>), <<https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>> accessed 16 May 2025.

¹¹² Alison Smith, 'Outreach and the Kosovo Specialist Chambers: A Civil Society Practitioner's Perspective' (2020) 20 Int'l Crim. L Rev 1.

¹¹³ Meris Musanovic & Arolda Elbasani, 'Can the Kosovo Specialist Chambers do Better than its predecessor?' (2020) [Justiceinfo.net](https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>), <<https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>> accessed 16 May 2025.

counteract the widespread perception that the court is selective or externally imposed.¹¹⁴ Notably, the KSC has one office in Kosovo that is largely unused and for symbolic purposes as the seat of the court is in the Netherlands, a fact that contradicts one of the core principles behind hybrid courts—proximity to the population affected by the crimes.¹¹⁵ This physical and symbolic distance reinforces the idea that the tribunal is a foreign imposition rather than a locally grounded institution. The absence of visible outreach has left room for misinformation to proliferate.¹¹⁶ At present, most people in Kosovo derive their understanding of the KSC either from media soundbites—often heroic narratives from former KLA figures—or through informal channels and rumors.¹¹⁷

2.6 Opportunities for Justice: The Constructive Potential of the Kosovo Specialist Chambers

However, the picture is not entirely negative. A number of potential positive impacts of the Specialist Court have been identified. Notably, a recent public opinion poll indicated that 47% of Albanians and 64% of Serbs in Kosovo believe that a legitimate and just outcome of the Court's work would be the sentencing of all indicted individuals who are proven guilty, in accordance with the gravity of the crimes they committed showing a substantial support from both sides.¹¹⁸ Beyond this, the legal framework governing the Specialist Court includes provisions that allow for convicted persons to be ordered to make reparations and restitutions to their victims.¹¹⁹ Delivering justice to the victims and to the families of those affected by ethnically or politically motivated violence holds the potential to contribute to broader

¹¹⁴ Meris Musanovic, 'The Specialist Chambers in Kosovo: A Hybrid Court between Mounting Expectations and Domestic Contestation' in Ioannis Armakolas et al *'Local and International Determinants of Kosovo's Statehood'* (Kosovo Foundation for Open Society, 2021).

¹¹⁵ Ivana Nikolic, Marija Ristic and Petrit Collaku, 'Kosovo's New War Court: Major Challenges Ahead' (2015) Balkan Transitional Justice <balkaninsight.com/en/article/kosovo-s-new-war-court-major-challenges-ahead-08-11-2015> accessed 30 April.

¹¹⁶ Alison Smith, 'Outreach and the Kosovo Specialist Chambers: A Civil Society Practitioner's Perspective' (2020) 20 Int'l Crim. L Rev 1.

¹¹⁷ Meris Musanovic, 'The Specialist Chambers in Kosovo: A Hybrid Court between Mounting Expectations and Domestic Contestation' in Ioannis Armakolas et al *'Local and International Determinants of Kosovo's Statehood'* (Kosovo Foundation for Open Society, 2021).

¹¹⁸ Gezim Visoka, 'Assessing the potential impact of the Kosovo Specialist Court' (PAX, 2017).

¹¹⁹ Kosovo Specialist Chambers, 'Factsheet: Victims' Participation at the KSC' (2024) <https://www.scp-ks.org/en/factsheets> accessed 15 May 2025.

processes of ethnic reconciliation.¹²⁰ It may also assist in resolving persistent inter-communal, societal, and inter-state issues, such as property restitution, the sustainable return and reintegration of displaced persons, and the promotion of peaceful coexistence in public spaces and institutions.¹²¹

As an internationalised legal mechanism, the Specialist Court is also positioned to offer legal clarity, thereby helping to remove the “cloud of uncertainty” that has long overshadowed Kosovo due to the serious allegations outlined in the 2011 Marty Report.¹²² In the official discourse of the Government of Kosovo, the establishment of the Court is portrayed as an inevitable legal and political obligation—one which simultaneously provides the country with an opportunity to confront, and ultimately clarify, those allegations.¹²³ It is expected that Kosovo’s cooperation with international justice mechanisms will serve to restore the confidence of its international partners, and potentially strengthen its position in pursuing diplomatic recognition and membership in key international and regional organisations.¹²⁴

Furthermore, the Specialist Court may play an important role in promoting accountability and reinforcing the rule of law within Kosovo.¹²⁵ It represents one of the most significant tests for Kosovo’s society—an opportunity to demonstrate its commitment to democratic values, legal responsibility, and the pursuit of truth and justice.¹²⁶ The Court provides Kosovo with the moral and political foundation to empower its domestic judicial institutions in assuming responsibility for the investigation and prosecution of conflict-related crimes, including those that remain unpunished and which affect all ethnic groups.¹²⁷ It may also embolden Kosovo to be more assertive in addressing the unresolved issue of missing persons and in demanding

¹²⁰ Ibid.

¹²¹ Gezim Visoka, ‘Assessing the potential impact of the Kosovo Specialist Court’ (PAX, 2017).

¹²² Ibid pp 24.

¹²³ Unpublished data from PAX, CTP, Impunity Watch, and Integra, ‘Public Perception of the Kosovo Specialist Court’, Pristina, April 2017 found in Gezim Visoka, ‘Assessing the potential impact of the Kosovo Specialist Court’ (PAX, 2017).

¹²⁴ Gezim Visoka, ‘Assessing the potential impact of the Kosovo Specialist Court’ (PAX, 2017).

¹²⁵ Personal Interview with a Kosovo Albanian civil society activist, Pristina, 2 May 2017 found in Gezim Visoka, ‘Assessing the potential impact of the Kosovo Specialist Court’ (PAX, 2017).

¹²⁶ Ibid.

¹²⁷ Ibid, Personal Interview with a senior political adviser in the Government of Kosovo, Pristina, 3 May 2017.

war reparation, in this regard, EU assistance may be used as leverage to compel greater cooperation from Serbian authorities in the pursuit of justice.¹²⁸

Another possible positive legacy of the Court lies in its potential to open political and societal space for dialogue on the root causes, drivers, and long-term consequences of the conflict in Kosovo.¹²⁹ It may provide both Albanian and Serb communities with an opportunity to engage in a more honest and transparent discussion about the realities of wartime casualties and the attribution of responsibility for past atrocities, in doing so, the Court could play a constructive role in transforming entrenched ethnic divisions by challenging binary narratives of perpetrators and victims and by disrupting collective patterns of blame.¹³⁰ Within this context, the Specialist Court could offer symbolic redress to the Serb community in Kosovo, which has often felt marginalised in the post-conflict justice process.¹³¹

The Court might also serve to address unresolved intra-Albanian political tensions.¹³² The struggle for Kosovo's independence was carried out by both advocates of peaceful resistance and those who supported armed struggle, a divergence that later gave rise to intra-ethnic polarisation and political rivalry.¹³³ These two factions have, on several occasions, accused one another of engaging in political assassinations during and immediately following the conflict.¹³⁴ Although the temporal jurisdiction of the Specialist Court may not extend to all such incidents, it could nonetheless contribute to clarifying some of these allegations and delivering justice to affected families, thereby advancing the process of intra-ethnic political reconciliation.¹³⁵

¹²⁸ Ibid.

¹²⁹ Ibid, Personal Interview with a former politician in Kosovo, Pristina, 3 May 2017.

¹³⁰ Janine N. Clark, *International Trials and Reconciliations: Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia* (Abington: Routledge, 2014).

¹³¹ Ibid.

¹³² Gezim Visoka, 'Assessing the potential impact of the Kosovo Specialist Court' (PAX, 2017).

¹³³ Crisis Group, 'What happened to the KLA?', Balkans Report No.88, Pristina, 3 March 2000.

¹³⁴ ABA CEELI, 'Political killings in Kosova/Kosovo, March-June 1999' (ABA CEELI, 2000).

¹³⁵ Gezim Visoka, 'Assessing the potential impact of the Kosovo Specialist Court' (PAX, 2017).

Finally, the Court presents an opportunity to critically reassess and potentially reform Kosovo's current political establishment.¹³⁶ A significant portion of Kosovo's contemporary political elite emerged from the political and military leadership structures of the Kosovo Liberation Army, many of these individuals have secured political power and public legitimacy based on their perceived role and moral entitlement as leaders of the armed resistance.¹³⁷ The work of the Specialist Court, by subjecting even former war-time figures to judicial scrutiny, may help recalibrate the political culture in Kosovo by promoting accountability, challenging entrenched power structures, and reinforcing the principles of democratic governance.

In sum, the Kosovo Specialist Chambers embody the tensions, challenges, and potential inherent in the hybrid tribunal model. Born out of the limitations of earlier international judicial mechanisms and the political complexities of post-conflict Kosovo, the Court represents both a practical response to unaddressed crimes and a symbolic attempt to reconcile with a troubled past. While its legitimacy has been questioned due to perceived selectivity, external control, and limited domestic engagement, it nevertheless carries the capacity to strengthen the rule of law, foster inter-ethnic and intra-ethnic reconciliation, and enhance Kosovo's international standing. The Court's success will ultimately depend on its ability to deliver fair and transparent justice, to communicate its purpose and proceedings effectively to the public, and to serve as a catalyst for institutional and societal transformation. Whether it fulfills these ambitions remains to be seen, but its very existence marks an important step in the continuing evolution of transitional justice in Kosovo and beyond.

¹³⁶ David Backer, 'Cross-National Comparative Analysis' in Hugo Van Der Merwe, Victoria Baxter and Audrey R. Chapman *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (USIP Press, 2009).

¹³⁷ Gezim Visoka, 'Assessing the potential impact of the Kosovo Specialist Court' (PAX, 2017).

2. The Case of Cambodia

3.1 The Khmer Rouge Regime

Historically, Cambodia was a prominent and expansive civilisation in Southeast Asia, characterised by its distinctive Khmer culture, which was deeply shaped by the philosophical and religious influences of Hinduism and Buddhism originating from India.¹³⁸ The Khmer Empire, widely regarded as a golden era in Cambodian history, flourished from the 7th to the 13th century.¹³⁹ However, this period of prosperity gradually declined due to sustained military incursions by neighbouring powers, notably Siam (present-day Thailand) and Vietnam.¹⁴⁰ Following this decline, Cambodia entered a new phase of foreign control when it became a French protectorate in 1863, later formalised as a colony.¹⁴¹

After gaining independence in 1953, Cambodia experienced roughly 17 years of relative peace and neutrality before the regional instability caused by the escalating Vietnam War began to spill over into Cambodian territory.¹⁴² In 1969, the United States commenced a secret bombing campaign targeting North Vietnamese communist bases along the Cambodian border, as a result, this intervention, combined with internal political tensions, led to the overthrow of Prince Norodom Sihanouk by the pro-American, anti-Vietnamese General Lon Nol, who declared the establishment of the Khmer Republic.¹⁴³ In response, Sihanouk allied himself with the communist-backed Khmer Rouge, subsequently, following the withdrawal of American forces from Vietnam in 1975, Phnom Penh fell to the Khmer Rouge, and the Cambodian population entered a period of unprecedented state brutality under the leadership of Pol Pot.¹⁴⁴ During the three years of Khmer Rouge rule, an estimated one to two million Cambodians perished as a result of mass executions, forced labour, starvation, and inadequate medical care.¹⁴⁵

¹³⁸ Wendy Lambourne, 'The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?' (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹³⁹ David Chandler, *'A History of Cambodia'* (2nd edn, Westview Press 1996).

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Wendy Lambourne, 'The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?' (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ben Kiernan, *'The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge'* (Yale University Press 1996).

The regime established by Pol Pot is widely recognised as one of the most extreme and dehumanising totalitarian governments of the twentieth century. The Khmer Rouge sought to engineer an agrarian utopia by eradicating urban society and intellectual life, to this end, the regime forcibly evacuated cities, abolished money and private property, and implemented a rigid collectivist ideology that reduced the country to a massive labour camp characterised by systemic violence, fear, and deprivation.¹⁴⁶ Intellectuals, professionals, and perceived dissenters were systematically eliminated; among the first targets were doctors, teachers, artists, and anyone with foreign connections or higher education, additionally, cultural expression was strictly censored, with all art, literature, and music that failed to glorify Pol Pot and the Khmer Rouge ideology banned outright.¹⁴⁷ The result was a near-total annihilation of Cambodia's intellectual and cultural landscape.¹⁴⁸

3.2 Establishment of the Tribunal

Finally, in January 1979, the capital city of Phnom Penh fell to the advancing Vietnamese army, effectively bringing an end to the Khmer Rouge's formal control over Cambodia.¹⁴⁹ In the aftermath of this military intervention, the Khmer Rouge leadership retreated to remote areas near the Thai border, while the Vietnamese-backed People's Republic of Kampuchea (PRK) was established to replace the Democratic Kampuchea regime.¹⁵⁰ Despite the change in political control, the international community, particularly Western powers and China, largely condemned the Vietnamese intervention.¹⁵¹ Due to Cold War alignments and geopolitical tensions, the United Nations continued to recognise the Khmer Rouge as the legitimate government of Cambodia well into the 1980s.¹⁵²

In the immediate aftermath of the regime's fall, Cambodia experienced a notable absence of comprehensive or officially sanctioned mechanisms for accountability and transitional justice.¹⁵³ Although numerous proposals were made by both the international community and

¹⁴⁶ Yoseph Yapi Taum, 'Collective Cambodian memories of Pol Pot Khmer Rouge regime' (Sanata Dharma University, Indonesia 2005).

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Wendy Lambourne, 'The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?' (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹⁵⁰ Ibid. The Khmer Rouge regime was called by Pol Pot Democratic Kampuchea.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Craig Etcheson, '*After the Killing Fields: Lessons from the Cambodian Genocide*' (Texas Tech University Press 2005).

Cambodian authorities, no significant public legal processes addressing the crimes of the Khmer Rouge were implemented in the early years following the genocide.¹⁵⁴ One of the earliest attempts at justice was the People's Revolutionary Tribunal held in Phnom Penh in August 1979, where leading Khmer Rouge figures were tried and sentenced to death in absentia for the crime of genocide.¹⁵⁵ However, this tribunal was not recognised by the broader international community due to procedural deficiencies, lack of transparency, and its association with the diplomatically isolated PRK regime.¹⁵⁶ The absence of due process and the perception of political bias significantly undermined its legitimacy in the eyes of international legal observers.¹⁵⁷

Efforts to pursue accountability for Khmer Rouge atrocities were hindered for years by Cold War dynamics, particularly the prioritisation of strategic alliances over human rights concerns.¹⁵⁸ Respect for state sovereignty further complicated international responses, effectively silencing condemnation of Pol Pot's regime during its most brutal years.¹⁵⁹ A shift in the international stance began in the 1990s, particularly marked by the passage of the Cambodia Genocide Justice Act by the United States in April 1994.¹⁶⁰ This legislative act represented a formal commitment by the U.S. government to seek justice for victims of the Khmer Rouge regime.¹⁶¹ That same year, the Cambodian government passed a domestic law outlawing the Khmer Rouge, signalling a growing willingness to pursue legal redress.¹⁶²

Momentum for a tribunal increased in 1997 when the United Nations began exploring the feasibility of establishing an international criminal tribunal to prosecute senior Khmer Rouge leaders.¹⁶³ In June of that year, Cambodian co-Prime Ministers Prince Norodom Ranariddh

¹⁵⁴ Ibid.

¹⁵⁵ Naomi Roht-Arriaza and Michael Vickery, 'Human Rights in Cambodia in *Impunity and Human Rights in International Law and Practice*' (Naomi Roht-Arriaza edn, Oxford University Press 1995).

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Wendy Lambourne, 'The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?' (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹⁵⁹ Ibid.

¹⁶⁰ Peter J. Hammer and Tara Urs 'The Elusive face of Cambodian Justice in Jaya Ramji and Beth Van Schaak *Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence Before the Cambodian Courts*' (Edwin Mellen Press 2005).

¹⁶¹ Ibid.

¹⁶² Ibid.

¹⁶³ Wendy Lambourne, 'The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?' (2008) Centre for Peace and Conflict Studies, University of Sydney.

and Hun Sen formally requested UN assistance in setting up a court.¹⁶⁴ A UN Group of Experts, formed to assess the situation, issued a report in 1998 recommending the creation of an ad hoc international tribunal.¹⁶⁵ In March 1999, the UN Secretary-General submitted a proposal to both the Security Council and the General Assembly, however, substantive disagreements quickly emerged between the UN and the Cambodian government regarding the court's structure and jurisdictional scope.¹⁶⁶ Prime Minister Hun Sen, in particular, raised concerns that the tribunal might undermine national reconciliation efforts and perceived the proposed model as an imposition on Cambodian sovereignty.¹⁶⁷

A significant diplomatic breakthrough occurred in April 2000, largely due to mediation efforts by U.S. Senator John Kerry, which helped to facilitate negotiations for a hybrid tribunal involving both Cambodian and international judges and prosecutors.¹⁶⁸ Following protracted diplomatic and political negotiations, a draft agreement was signed on June 6, 2003, between the United Nations and the Cambodian government.¹⁶⁹ This agreement laid the groundwork for the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC).¹⁷⁰ The tribunal was formally established in November 2005 after years of lobbying and revisions, marking a long-delayed but critical step toward addressing the crimes committed during the Khmer Rouge era.¹⁷¹

3.3 The Extraordinary Chambers in the Courts of Cambodia: Mandate and Jurisdiction

The judicial mandate of the ECCC was specifically tailored to address the most serious crimes committed during the Democratic Kampuchea regime. According to the tribunal's founding instruments, its jurisdiction extended to two distinct categories of individuals.¹⁷² The first included senior leaders of Democratic Kampuchea deemed responsible for grave violations of Cambodian domestic criminal law, international humanitarian law, and

¹⁶⁴ Ibid.

¹⁶⁵ 'Report of the Group of Experts for Cambodia established pursuant to General Assembly resolution 52/235', A/53/850, United Nations, New York, 16 March 1999.

¹⁶⁶ Wendy Lambourne, 'The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?' (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹⁶⁷ Ibid.

¹⁶⁸ Irene V. Langren, 'Cambodia in 2000: New Hopes Are Challenged in Asia Survey' (2001) 41 Asian Surv 156.

¹⁶⁹ Tom Fawthrop and Helen Jarwis, *'Getting Away with Genocide? Elusive Justice and the Khmer Rouge Tribunal'* (Pluto Press 2005).

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² [About - ECCC](#)

international conventions that Cambodia recognises.¹⁷³ The second category encompassed individuals who did not hold senior leadership positions but were nonetheless alleged to be “most responsible” for committing similar offences during the regime’s rule.¹⁷⁴

The temporal jurisdiction of the ECCC was confined to crimes committed between 17 April 1975 and 6 January 1979.¹⁷⁵ However, the Chambers were permitted to consider evidence and contextual information that fell outside this formal timeframe, insofar as it aided in clarifying historical patterns, demonstrating organisational structures, or proving the accused’s participation in joint criminal enterprises.¹⁷⁶ This approach acknowledged the need for a broader evidentiary framework to understand the systematic nature of crimes committed during the Khmer Rouge regime.

The substantive jurisdiction of the ECCC encompassed both domestic and international crimes. On the national level, the Chambers prosecuted violations of the 1956 Cambodian Penal Code.¹⁷⁷ On the international plane, their jurisdiction included genocide, crimes against humanity, and grave breaches of the 1948 Geneva Conventions.¹⁷⁸ In addition, the court had authority over the destruction of cultural property during armed conflict in accordance with the 1954 Hague Convention for the Protection of Cultural Property and over crimes committed against internationally protected persons under the 1961 Vienna Convention on Diplomatic Relations.¹⁷⁹

As a hybrid tribunal formally established within the Cambodian legal system, the ECCC held territorial jurisdiction over all crimes committed on Cambodian soil and within its territorial waters.¹⁸⁰ This jurisdiction also extended to crimes committed by Khmer Rouge officials beyond Cambodia’s borders, such as in the Socialist Republic of Vietnam.¹⁸¹ Notably, the

¹⁷³ Case 001 Appeal Judgement, F28, paras 52, 60, 61, 79.

¹⁷⁴ UN-RGC Agreement on the ECCC, preamble, articles 1, 2(1) [see also arts 5(3), 6(3)]; Law on the ECCC, articles 1, 2 new; Case 001 Appeal Judgement, F28, paras 63, 74–75, 77–79, 80–81.

¹⁷⁵ Ibid.

¹⁷⁶ Case 002/01 Judgement, E313, fn. 195; Case 002/02 Judgement, E465, para. 60.

¹⁷⁷ Law on the ECCC, article 4. See also, UN-RGC Agreement on the ECCC, articles 2(1), 9.

¹⁷⁸ Ibid.

¹⁷⁹ Law on the ECCC, article. 6. See also, UN-RGC Agreement on the ECCC, articles 2(1), 9.

¹⁸⁰ [About - ECCC](#)

¹⁸¹ Ibid.

ECCC's judicial processes were governed predominantly by Cambodian procedural law, albeit supplemented in certain areas by international legal standards and practices.¹⁸²

The procedural structure of the court followed a three-phase model. Initially, in the preliminary investigation phase, the Co-Prosecutors were responsible for gathering information to determine whether credible evidence existed to support allegations of crimes falling within the court's jurisdiction, if such evidence was found, the Co-Prosecutors could submit a formal request to the Co-Investigating Judges to open a judicial investigation.¹⁸³ This second phase involved a thorough examination of the facts presented, during which the Co-Investigating Judges assessed whether there was sufficient evidence to support an indictment.¹⁸⁴ Upon conclusion, the judges either issued a closing order to indict the accused or dismissed the case.¹⁸⁵ Decisions made at this stage were subject to appeal by the Co-Prosecutors, civil parties, or the defence.¹⁸⁶ If the case proceeded, it entered the trial phase before the Trial Chamber, where evidence was presented, examined, and deliberated upon in pursuit of establishing the truth.¹⁸⁷ The chamber's verdict—whether of guilt or acquittal—could then be appealed to the Supreme Court Chamber, which served as the highest judicial authority within the ECCC.¹⁸⁸

3.4 Structural and Political Obstacles: Assessing the Limitations of the ECCC

One of the most significant challenges faced by the Extraordinary Chambers in the Courts of Cambodia stemmed from the protracted and politically complex process that preceded its establishment.¹⁸⁹ The extensive delays, resulting from prolonged negotiations between the Cambodian government and the United Nations, were marked by disagreements over tribunal composition, jurisdiction, and procedural guarantees.¹⁹⁰ This “ping-pong” diplomacy, as some have described it, significantly delayed the start of proceedings and hindered early momentum.¹⁹¹ As a consequence, the tribunal encountered difficulties securing consistent

¹⁸² [About - ECCC](#) (Judicial Process).

¹⁸³ Law on the ECCC [2004] Chapter VIII, art 23.

¹⁸⁵ [Chambers - ECCC](#).

¹⁸⁶ Law on the ECCC [2004] Chapter VI, art 17.

¹⁸⁷ Ibid, art 19.

¹⁸⁸ Ibid, Chapter X, art 36.

¹⁸⁹ Wendy Lambourne, ‘The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?’ (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

funding, experienced delays in its organisational setup, and faced increasing pressure to uphold international standards of fairness while prosecuting crimes committed more than three decades prior.¹⁹²

A central concern was the ECCC's ability to provide meaningful justice and clarity to the Cambodian public.¹⁹³ One of the prevailing questions among survivors was not simply who committed the crimes, but why: why Cambodians would inflict such atrocities on fellow Cambodians.¹⁹⁴ This psychological and cultural demand for comprehension and acknowledgment placed considerable weight on the tribunal's educative and symbolic role.¹⁹⁵ However, the court's restricted temporal jurisdiction—limited to crimes committed between April 1975 and January 1979—raised doubts about its ability to adequately address the broader culture of impunity that extended both before and after the Khmer Rouge's official rule.¹⁹⁶ Similarly, the tribunal's limited personal jurisdiction, which confined prosecutions to “senior leaders” and those “most responsible” for the crimes, excluded many lower-level perpetrators as well as deceased figures such as Pol Pot and Ta Mok, whose accountability was symbolically significant.¹⁹⁷

The effectiveness of the ECCC was also shaped by the fraught domestic political environment in which it operated.¹⁹⁸ Cambodia's traumatic past left a legacy of corruption, weakened legal institutions, and limited public understanding of core legal principles such as judicial independence and the rule of law.¹⁹⁹ While the tribunal was envisioned as a vehicle for legal and institutional reform, its success in this regard was contingent on the Cambodian government's willingness to adopt and internalise standards of impartial justice.²⁰⁰ In fact, a

¹⁹² Ibid.

¹⁹³ Dinah PoKempner, ‘The Tribunal and Cambodia's Transition to a Culture of Accountability in Jaya Ramji and Beth Van Schaak *Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence Before the Cambodian Courts*’ (Edwin Mellen Press 2005) pp 333-58.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Wendy Lambourne, ‘The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?’ (2008) Centre for Peace and Conflict Studies, University of Sydney.

¹⁹⁷ Ibid.

¹⁹⁸ Dinah PoKempner, ‘The Tribunal and Cambodia's Transition to a Culture of Accountability in Jaya Ramji and Beth Van Schaak *Bringing the Khmer Rouge to Justice: Prosecuting Mass Violence Before the Cambodian Courts*’ (Edwin Mellen Press 2005) pp 333-58.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

United Nations group of experts expressed serious concern about the feasibility of maintaining judicial independence in such a setting.²⁰¹ They warned that the “level of corruption in the court system and the routine subjection of judicial decisions to political influence would make it nearly impossible for prosecutors, investigators and judges to be immune from such pressure in the course of what would undoubtedly be very politically charged trials”.²⁰²

Concerns about judicial impartiality also emerged in the form of specific allegations, such as those directed against Judge Ney Thol.²⁰³ His concurrent role as an officer in the Royal Cambodian Armed Forces raised legitimate questions about his neutrality, as it suggested a close affiliation with political institutions that could compromise his judicial independence.²⁰⁴ These concerns underscored a broader systemic issue: that political allegiances and judicial roles often remained insufficiently separated in Cambodia’s current legal culture.²⁰⁵

Another profound obstacle lay in managing victims’ expectations as for many Cambodians, justice was deeply entwined with emotions of grief and anger.²⁰⁶ While some sought the truth and institutional acknowledgment of their suffering, others explicitly demanded revenge.²⁰⁷ In this regard, the ECCC struggled to satisfy the full spectrum of victim expectations. Notably, there was little indication that former Khmer Rouge leaders indicted by the tribunal would have shown remorse or rejected their ideological convictions.²⁰⁸ On the contrary, some continued to maintain that their actions were in the best interest of Cambodia.²⁰⁹

Compounding these challenges was the legal foundation upon which the ECCC was built. The tribunal was predominantly governed by Cambodian law, with only limited incorporation

²⁰¹ Law on the ECCC.

²⁰² Ibid.

²⁰³ C11/29, Case No. 002, Pre-Trial Chamber Decision, Public Decision on the Co-Lawyer’s Urgent Application for Dismissal of Judge Ney Thol Pending the Appeal Against the Provisional Detention Order in the Case of Nuon Chea, para. 14 (ECCC Feb. 4, 2008), available at <http://www.eccc.gov.kh/en/documents/court/public-decision-co-lawyers-urgent-application-disqualification-judge-ney-thol>.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Nigel P. Field and Sotheara Chhim, ‘Desire for Revenge and Attitudes Toward the Khmer Rouge Tribunal Among Cambodians’ (2008) 13 J. Loss Trauma 352-372.

²⁰⁷ Ibid.

²⁰⁸ Youk Chhang, ‘The Thief of History- Cambodia and the Special Court’ (2007) 1 Int. J. Transit. Justice 157-72.

²⁰⁹ Ibid.

of international legal standards.²¹⁰ This reliance on a national legal system that had seen little substantive development since 1953 raised concerns about procedural fairness and compliance with international human rights norms.²¹¹ During the Khmer Rouge regime, much of Cambodia's legal infrastructure, including its professional class of lawyers and judges, was decimated.²¹² As a result, the pool of legal professionals with robust expertise in Cambodian law remained limited.²¹³ Furthermore, the domestic legal framework itself contained numerous deficiencies.²¹⁴ Key procedural rights—such as access to evidence, legal counsel, court files, and the ability to cross-examine witnesses—were insufficiently guaranteed under existing Cambodian criminal procedure.²¹⁵

Taken together, these structural, political, and legal limitations reflected the profound difficulties inherent in conducting international criminal justice within a hybrid tribunal model, particularly in a post-conflict society where the wounds of the past remain deeply embedded in contemporary governance and public sentiment.

3.5 Building Memory and Justice: The Positive Contributions of the ECCC

Despite considerable criticisms, the ECCC made notable contributions, particularly in addressing the justice demands of victims.²¹⁶ Although the tribunal did not fulfill all expectations commonly associated with transitional justice mechanisms, such as robustly strengthening the rule of law, it succeeded significantly in acknowledging and responding to the need for victim recognition and redress.²¹⁷ One of the principal objectives of hybrid tribunals like the ECCC was to satisfy victims' desires for justice, particularly by acknowledging their suffering and ensuring that those responsible are held accountable.²¹⁸ At

²¹⁰ Seeta Scully, 'Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia' (2011) 13 Asian-Pac. L & Pol'y J 301-53.

²¹¹ Cliff Roberson and Dilip K. Das, *An Introduction to Comparative Legal Models of Criminal Justice* (2nd edn, CRC Press 2008).

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Helen Horsington, 'The Cambodian Khmer Rouge Tribunal : The Promise of a Hybrid Tribunal' (2004) Melb J Int'l L 462-465.

²¹⁵ Ibid.

²¹⁶ Diane Orentlicher, 'Worth the Effort?: Assessing the Khmer Rouge Tribunal' (2020) 18 J. Int'l Crim. Just 615.

²¹⁷ Ibid.

²¹⁸ Diane Orentlicher, *Some Kind of Justice: The ICTY'S Impact in Bosnia and Serbia* (Oxford University Press 2018).

the heart of this justice process lay the fundamental desire of victims to be seen and heard—to have their pain and experiences officially recognised.²¹⁹

A 2008 survey revealed that four-fifths of Cambodians identified themselves as victims of the Khmer Rouge regime.²²⁰ In this context, the prosecutions in Cases 001 and 002 were instrumental in addressing the widespread desire among Cambodians to uncover the truth about the Democratic Kampuchea era.²²¹ Many survivors continued to grapple with unresolved questions, including why such atrocities occurred, why they endured so much suffering, and why fellow Cambodians were capable of such acts.²²² The ECCC, to a significant extent, attempted to provide answers and create a shared historical record.²²³ For instance, during the trial of Duch, approximately 500 Cambodians attended the courtroom daily to witness the proceedings and hear the revelations presented.²²⁴ While the historical narrative offered by the court was inevitably shaped by limitations in historical evidence and potentially biased perspectives, it served as a crucial first step toward enabling Cambodians to construct a more comprehensive and authoritative national history.²²⁵

Intergenerational knowledge transmission also benefited from the ECCC's work.²²⁶ Notably, after the tribunal's activities, 57% of survey respondents reported a deeper understanding of the Khmer Rouge period than they had previously.²²⁷ This was critical given that many Cambodian schoolchildren had historically struggled to comprehend or believe the magnitude of the regime's atrocities, often perceiving their parents' accounts as exaggerated.²²⁸ Such scepticism was largely attributed to the lack of integration of Khmer Rouge history in the

²¹⁹ Report of the Special Rapporteur [Pablo de Greiff] on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence, UN Doc. A/HRC/21/46, 9 August 2012, § 2.

²²⁰ Diane Orentlicher, 'Worth the Effort?: Assessing the Khmer Rouge Tribunal' (2020) 18 J. Int'l Crim. Just 615.

²²¹ Ibid.

²²² Melanie Klinker, 'Forensic Science for Cambodian Justice', (2008) 2 Int'l J Transnat'l Just 227-238.

²²³ Ibid.

²²⁴ Seeta Scully, 'Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia' (2011) 13 Asian-Pac. L & Pol'y J 301-53.

²²⁵ Ibid.

²²⁶ Phuong Pham et al After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia, Human Rights Center, UC Berkeley, 1 June 2011.

²²⁷ Ibid.

²²⁸ Helen Horsington, 'The Cambodian Khmer Rouge Tribunal : The Promise of a Hybrid Tribunal' (2004) Melb J Int'l L 462-465.

national educational curriculum, which remained a politically sensitive subject.²²⁹ The tribunal's work consequently spurred broader public discourse around the Democratic Kampuchea era, enhancing both public knowledge and institutional credibility.²³⁰

In addition to fostering historical awareness, independent assessments commended the ECCC for meeting basic international standards of due process.²³¹ Defence counsel mounted rigorous legal arguments, judgments were well-reasoned and grounded in international jurisprudence, and the Supreme Court Chamber reversed convictions not adequately supported by evidence.²³² Despite criticisms, these factors underscored the tribunal's role in laying the groundwork for a fair and transparent legal process in Cambodia.

From the perspective of accountability, the ECCC played a pivotal role in countering the longstanding culture of impunity in Cambodia, while the tribunal's jurisdiction was limited to senior leaders and key perpetrators, its efforts signified that even individuals at the highest echelons of power can be held accountable.²³³ This message was particularly impactful in a country where political elites have historically enjoyed near-total immunity, thereby offering a nascent but critical shift towards a more accountable governance structure.²³⁴

Capacity-building within the Cambodian judiciary was another important contribution of the ECCC.²³⁵ The tribunal provided national judges and legal staff with practical experience in applying international legal norms within a hybrid legal system.²³⁶ This exposure was further enhanced by a range of international collaborations, including training sessions organised by

²²⁹ Rupert Skilbeck, 'Defending the Khmer Rouge' (2008) 8 Int'l Crim L Rev 423-424.

²³⁰ Seeta Scully, 'Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia' (2011) 13 Asian-Pac. L & Pol'y J 301-53.

²³¹ Ibid.

²³² Judgment, Nuon Chea and Khieu Samphan (Case 002/01), E313, Trial Chamber, 7 August 2014. Case 002/01 covered crimes accompanying two population transfers, including the evacuation of at least two million people from Phnom Penh on 17 April 1975, as well as the execution in Tuol Po Chrey of hundreds of officials who had served in the government that fell to the Khmer Rouge in April 1975. In November 2016, the Supreme Court Chamber reversed several of the trial convictions but affirmed the two defendants' life sentences. Appeal Judgment, Nuon Chea and Khieu Samphan (Case 002/01), F36, Supreme Court Chamber, 23 November 2016.

²³³ Seeta Scully, 'Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia' (2011) 13 Asian-Pac. L & Pol'y J 301-53

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid.

institutions such as Yale University's Cambodian Genocide Program.²³⁷ Although the reach of this impact remained somewhat constrained, it did nonetheless offer tools and frameworks that were previously absent in Cambodia's legal landscape.²³⁸

The tribunal also served as a symbol of governmental credibility and judicial impartiality. By holding proceedings in Cambodia, the ECCC engendered a sense of national ownership and legitimacy, which contrasted with the perceived detachment of other international tribunals like those for Kosovo.²³⁹ This proximity contributed to a growing public belief that Cambodian institutions were capable of delivering justice and upholding the rule of law.²⁴⁰

Outreach was another strategic priority for the ECCC. Recognising the limitations of past tribunals, such as Sierra Leone's, the ECCC established a dedicated Public Affairs section responsible for community engagement and public education.²⁴¹ This initiative included hosting court visits, attending Non Governmental Organisations (NGO) forums, and engaging with local and international media.²⁴² In 2010 alone, over 32,000 individuals visited the tribunal.²⁴³ Complementing these efforts, between 10 and 20 NGOs spearheaded outreach programmes, offering guided tours and facilitating direct interaction between Cambodian citizens and ECCC officials.²⁴⁴

Perhaps the tribunal's most transformative innovation lied in its provisions for victim participation. The ECCC was the first international criminal tribunal to formally include victims as civil parties to the proceedings.²⁴⁵ This allowed victims to participate on an equal

²³⁷ Helen Horsington, 'The Cambodian Khmer Rouge Tribunal : The Promise of a Hybrid Tribunal' (2004) Melb J Int'l L 462-465.

²³⁸ Ibid.

²³⁹ Ellen Emilie Stensrud, 'New Dilemmas in Transitional Justice: Lessons from the Mixed Courts in Sierra Leone and Cambodia' (2009) 46 J Peace Res 5.

²⁴⁰ Youk Chhang 'The Thief of History- Cambodia and the Special Court' (2007) 1 Int. J Transit. Justice 157-72.

²⁴¹ Norman Henry Pentelovitch, 'Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals' (2009) Geo. J Int'l 445-465.

²⁴² Ibid.

²⁴³ Press Release, ECCC, 32,633 Persons Visited ECCC in 2010 (Dec. 30, 2010), available at [http://www.eccc.gov.kh/sites/default/files/media/ECCC_30_Dec_2010\(Eng\).pdf](http://www.eccc.gov.kh/sites/default/files/media/ECCC_30_Dec_2010(Eng).pdf).

²⁴⁴ Youk Chhang, 'The Thief of History- Cambodia and the Special Court' (2007) 1 Int. J Transit. Justice 157-72.

²⁴⁵ Press Release, ECCC, Statement from the Co-Investigating Judges: The Co- Investigating Judges Release the First decisions on Admissibility of Civil Parties in Case No. 002 1 (Aug. 30, 2010), available at [http://www.eccc.gov.kh/sites/default/files/media/OCIJ-ECCC30Aug2010\(Eng\).pdf](http://www.eccc.gov.kh/sites/default/files/media/OCIJ-ECCC30Aug2010(Eng).pdf).

footing with the prosecution and defence and granted them the right to seek collective and moral reparations if the accused were found guilty.²⁴⁶ In Case 001 alone, 58 applicants were accepted as civil parties, while in Case 002, over 3,988 applications and 400 individual complaints were submitted.²⁴⁷ Studies showed that this participatory mechanism not only facilitated individual healing but also supported broader societal reconciliation.²⁴⁸ For example, nearly half of the civil parties in Case 001 indicated that the trial positively influenced their personal readiness to reconcile, and 85% reported they would apply again if given the chance.²⁴⁹

In conclusion, while the ECCC faced significant structural and political limitations, it nonetheless made vital strides in addressing victim recognition, enhancing historical consciousness, and fostering legal capacity. Its contributions, especially in victim participation and public engagement, marked an important chapter in Cambodia's long and painful journey towards justice and reconciliation.

The historical and judicial trajectory leading to the establishment of the ECCC revealed the immense complexity of addressing mass atrocities within a politically fragile and post-conflict society. The Khmer Rouge regime inflicted some of the gravest crimes of the twentieth century, devastating Cambodia socially, culturally, and institutionally. Yet, for decades following its collapse, justice remained elusive. The long delay in the creation of a tribunal — owing to Cold War politics, national resistance, and international disagreements — not only postponed accountability but also eroded public trust in the international community's commitment to justice.

Despite its delayed inception and numerous structural, legal, and political limitations, the ECCC represented a unique and ambitious hybrid model. Its jurisdictional and temporal mandates were narrow, and concerns remained about its dependence on Cambodian law, its vulnerability to political influence, and the challenges of ensuring impartiality within a

²⁴⁶ Ibid.

²⁴⁷ E188, Case No. 001, Trial Court, Judgment (ECCC July 26, 2010), available at <http://www.eccc.gov.kh/en/documents/court/judgement-case-001>. Four applicants were found to be civil parties as direct survivors of S-21 (para. 645), and 54 applicants were accepted as parties on the basis of kinship to someone who died at S-21 (para. 650).

²⁴⁸ Ibid.

²⁴⁹ Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution, 52/135, GA 53/850, SC 1999/231, UN GAOR, 53rd Sess., at para. 60 (Mar. 16, 1999), <http://www.unakrt-online.org/Docs/Other/1999-02-18%20Experts%20Report.pdf>.

compromised legal culture. Nonetheless, the tribunal produced tangible, if limited, successes. It contributed to historical clarification, offered victims a participatory role unprecedented in international criminal justice, and helped to foster a nascent culture of legal accountability in Cambodia. Crucially, the ECCC became a focal point for public dialogue and education. Its outreach initiatives, public proceedings, and collaboration with civil society increased awareness of Khmer Rouge atrocities, especially among younger generations. While the court did not fundamentally transform Cambodia's judicial system, it provided a platform for symbolic recognition and moral vindication. The tribunal's emphasis on victim participation and collective reparations demonstrated that justice was not solely about punishing perpetrators but also about acknowledging suffering and empowering survivors.

Ultimately, the ECCC stands as a contested but significant experiment in transitional justice. It highlights both the promises and pitfalls of hybrid tribunals in deeply divided societies and underscores the need for locally anchored yet internationally supported justice mechanisms. As Cambodia continues to grapple with the shadows of its past, the ECCC's greatest contribution may lie not in legal precedent, but in the memory it preserves and the dialogue it has catalysed.

3. The Case of South Sudan

4.1 A country riddled by Civil Wars: From 1955 to Today

South Sudan, the world's youngest state, has encountered immense challenges since its independence in 2011.²⁵⁰ Its historical trajectory is marked by prolonged conflict and instability, which have deeply undermined the country's political, social, and legal institutions. Prior to achieving independence, South Sudan endured two devastating civil wars against Sudan: the first from 1955 to 1972 and the second from 1983 to 2005.²⁵¹ The socio-political complexity of South Sudan stems in part from its vast ethnic diversity, comprising over 62 distinct ethnic groups, each with unique traditions, customary laws, and conflict resolution practices.²⁵² Despite the diversities, during these civil wars these ethnicities managed to come together against the common enemy, Sudan.²⁵³

Following World War II, Britain made the strategic decision to place southern Sudan under administrative control from Khartoum which resulted in the replacement of British commissioners with northern Sudanese officials, thereby sowing seeds of discontent that contributed to the outbreak of the first civil war in 1955.²⁵⁴ The second civil war, lasting over two decades, pitted the Khartoum government against the Sudan People's Liberation Army (SPLA).²⁵⁵ Tensions escalated in 1978 when President Gaafar Nimeiry sought to assert control over the southern oil fields.²⁵⁶ In 1983, he further inflamed tensions by imposing Sharia Law nationwide and dismantling the semi-autonomous status of the predominantly Christian southern region, sparking the SPLA's armed resistance led by John Garang.²⁵⁷

Years of armed struggle ensued until a significant breakthrough occurred on January 9, 2005, with the signing of the Comprehensive Peace Agreement (CPA), which ended the civil war

²⁵⁰ Kate Almquist Knopf, 'Fragility and State-Society Relations in South Sudan' (2013) The Africa Center for Strategic Studies Research Paper No.4.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ The Three Minutes Post, 'South Sudan Civil War Explained' (Youtube, 30 July 2014) <[South Sudan Civil War Explained](#)> accessed 27 June 2025.

²⁵⁴ Samuel Momodu, 'Second Sudanese Civil War (1983-2005)' 2018 BlackPast <[Second Sudanese Civil War \(1983-2005\) | BlackPast.org](#)> accessed 27 June 2025.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

and set forth the framework for South Sudan's eventual secession in 2011.²⁵⁸ The CPA mandated the transformation of the SPLM from a liberation movement into a coherent political entity representing the various ethnic constituencies within South Sudan.²⁵⁹ In August 2005, following Garang's sudden death, Salva Kiir Mayardit succeeded him as the SPLM's leader, with Riek Machar assuming the role of deputy.²⁶⁰ A national referendum was subsequently held on July 9, 2011, resulting in an overwhelming 98.8% vote in favor of independence.²⁶¹

Despite the optimism surrounding independence, political tensions between Kiir and Machar intensified in the ensuing years. Both leaders began taking unilateral security measures in anticipation of conflict.²⁶² On December 15, 2013, violence erupted in the capital, Juba, between factions loyal to Kiir and Machar—both of whom were senior figures in the SPLM/A, a political and military organisation.²⁶³ The conflict quickly devolved into an ethnic crisis, with Kiir drawing support primarily from the Dinka and Machar from the Nuer.²⁶⁴ Kiir's accusations that Machar was plotting a coup led to the arrest of 11 opposition members, though Machar managed to flee.²⁶⁵

Subsequently, Machar led the opposition forces comprising political defectors and local militias and by April 2014, the conflict had resulted in over 10,000 deaths and the displacement of more than one million people.²⁶⁶ Ethnic violence surged, with reports of systematic killings along ethnic lines by both Dinka and Nuer fighters.²⁶⁷ A 2016 podcast by Hilde F. Johnson, head of the UN Mission in the Republic of South Sudan, noted that the

²⁵⁸ Ibrahim Sakawa Magara, 'Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process' (2021) J. Br Acad 9-33.

²⁵⁹ The Three Minutes Post, 'South Sudan Civil War Explained' (Youtube, 30 July 2014) <[South Sudan Civil War Explained](#)> accessed 27 June 2025.

²⁶⁰ Roots of South Sudan, <[FAQs — ROOTS of South Sudan](#)> accessed 28 June 2025.

²⁶¹ Ted Dagne, 'The Republic of South Sudan: Opportunities and Challenges for Africa's Newest Country' (Congressional Research Service, 2011).

²⁶² The Brookings Institution, 'South Sudan: The untold story from independence to civil war' (Brookings Podcast, 4 October 2016) <[South Sudan: The untold story from independence to civil war | Brookings](#)> accessed 28 June 2025.

²⁶³ The Three Minutes Post, 'South Sudan Civil War Explained' (Youtube, 30 July 2014) <[South Sudan Civil War Explained](#)> accessed 27 June 2025.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ The Brookings Institution, 'South Sudan: The untold story from independence to civil war' (Brookings Podcast, 4 October 2016) <[South Sudan: The untold story from independence to civil war | Brookings](#)> accessed 28 June 2025.

conflict had displaced 2.6 million people and left 6.1 million in urgent need of humanitarian assistance, she criticised the regional leadership's delays in convening emergency meetings and underscored the importance of inclusive political processes that encompass all factions and external oversight in key regions.²⁶⁸

A breakthrough came in 2015 with the Intergovernmental Authority on Development (IGAD), supported by the African Union (AU), mediating the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS).²⁶⁹ Among its provisions, ARCSS called for the establishment of the Hybrid Court for South Sudan, envisioned as part of a broader transitional justice mechanism with the AU tasked with leading its operationalisation, unfortunately, despite ARCSS, hostilities persisted, and only subsided with the 2018 signing of the Revitalised ARCSS (R-ARCSS).²⁷⁰ This renewed agreement aimed to solidify peace and justice frameworks, but the country's fragility remains evident. Understanding this context is crucial in evaluating the feasibility and potential effectiveness of a hybrid tribunal in South Sudan.

In 2024, South Sudan's parliament made significant strides by passing two pivotal transitional justice laws: one establishing the Commission for Truth, Reconciliation, and Healing (CTRH), and another creating the Compensation and Reparations Authority.²⁷¹ Notably absent, however, was legislation to operationalise the Hybrid Court for South Sudan, which remains in legal and political limbo.²⁷² As of 2025, South Sudan is navigating one of its most unstable political climates since the 2018 peace agreement. In March, First Vice-President Riek Machar was placed under house arrest in what has been widely perceived as an effort by President Kiir to consolidate power.²⁷³ This political upheaval followed a broader government reshuffle, including the removal of two vice-presidents and

²⁶⁸ Ibid.

²⁶⁹ Owiso Owiso, 'The proposed Hybrid Court for South Sudan' (2019) Afr. J Confl Resolut 87.

²⁷⁰ Ibid.

²⁷¹ Human Rights Watch, 'South Sudan: Parliament Approves Transitional Justice Laws' (2024) <[South Sudan: Parliament Approves Transitional Justice Laws | Human Rights Watch](#)> accessed 29 June 2025.

²⁷² Ibid.

²⁷³ Katherine Houreld, 'South Sudan's president arrests VP, opposition says, risking imminent war' (2025) The Washington Post <[South Sudan President Salva Kiir arrest of VP Riek Machar, opposition says - The Washington Post](#)> accessed 29 June 2025.

the appointment of loyalists to key offices, leading to concerns over authoritarianism and the erosion of the revitalised peace framework.²⁷⁴

Simultaneously, violence has reignited in several regions, including Nasir and Malakal. These clashes have displaced over 175,000 people and included severe incidents.²⁷⁵ In response, the UN extended the mandate of its peacekeeping mission, UNMISS, until April 2026 and renewed the arms embargo amid rising fears of renewed civil war.²⁷⁶ The electoral process has also been significantly delayed. Originally slated for 2023, national elections are now scheduled for December 2026.²⁷⁷ The delay stems from pervasive insecurity, institutional weaknesses, and the slow pace of implementing transitional justice mechanisms—including the stalled establishment of the Hybrid Court.²⁷⁸ Regional mediation efforts under the Tumaini Initiative continue, but analysts warn that without urgent political consensus and concrete security guarantees, the country risks descending once again into full-scale conflict.²⁷⁹ This comprehensive historical and contemporary overview highlights the deeply rooted structural and political impediments confronting South Sudan. It illustrates the urgent need for a credible, functional transitional justice framework, while simultaneously casting doubt on the current feasibility of implementing a hybrid tribunal amidst such instability.

4.2 The R-ARCSS and The HCSS Mandate and Structure

As previously discussed, the R-ARCSS was adopted with the primary aim of putting an end to the civil war and facilitating a sustainable peace process. Among the provisions contained within the ARCCS and then the R-ARCSS is the establishment of key transitional justice

²⁷⁴ Reuters, ‘South Sudan’s Kiir replaces two vice-presidents, spy chief’ (2025) Reuters <[South Sudan's Kiir replaces two vice-presidents, spy chief | Reuters](#)> accessed 29 June 2025.

²⁷⁵ Daniel P. Sullivan, ‘No Confidence: Displaced South Sudanese Await Real Peace’ (2019) Refugees International <[No Confidence: Displaced South Sudanese Await ‘Real Peace’ - Refugees International](#)> accessed 29 June 2025.

²⁷⁶ UN Security Council, ‘Security Council Extends Mandate of UN Mission in South Sudan for One Year, Adopting Resolution 2779 (2025) by Vote of 12 in Favour with 3 Abstentions’ (SC/16059, 8 May 2025) <[Security Council Extends Mandate of UN Mission in South Sudan for One Year, Adopting Resolution 2779 \(2025\) by Vote of 12 in Favour with 3 Abstentions | Meetings Coverage and Press Releases](#)> accessed 29 June 2025.

²⁷⁷ Human Rights Watch, ‘South Sudan: Parliament Approves Transitional Justice Laws’ (2024) <[South Sudan: Parliament Approves Transitional Justice Laws | Human Rights Watch](#)> accessed 29 June 2025.

²⁷⁸ Ibid.

²⁷⁹ Nicholas Bariyo, ‘World’s Newest Country Teeters on Edge of Civil War’ (2025) The Wall Street Journal <[World’s Newest Country Teeters on Edge of Civil War - WSJ](#)> accessed 29 June 2025.

institutions, notably the CTRH and the HCSS.²⁸⁰ These institutions, alongside additional mechanisms envisioned in the agreement, are designed to operate in a mutually reinforcing manner, serving the overarching objectives of uncovering the truth, facilitating national reconciliation and healing, and ensuring appropriate forms of compensation and reparation for the victims of gross human rights violations committed during the conflict.²⁸¹

A wide array of actors are involved in South Sudan's transitional justice framework. While the AU takes the lead on the establishment and operationalisation of the HCSS, it does so in coordination with various international and regional stakeholders.²⁸² The R-ARCSS is itself a product of collaboration under the IGAD-Plus initiative,²⁸³ which includes member states of the IGAD, the AU, the African Union Commission (AUC), the EU, the People's Republic of China, representatives of the IGAD Partners Forum, and members of the Troika (Norway, the United Kingdom, and the United States), alongside the United Nations.²⁸⁴

Focusing on the HCSS, a 2016 study found that a significant majority—approximately 79%—of respondents in South Sudan supported the prosecution of those responsible for grave abuses through a judicial process.²⁸⁵ The mandate of the HCSS, as outlined in the R-ARCSS, is broad in scope. It encompasses the investigation and prosecution of individuals responsible for violations of both international law and applicable South Sudanese laws committed from 15 December 2013 through the end of the transitional period.²⁸⁶ The court's subject-matter jurisdiction includes genocide, war crimes, crimes against humanity, sexual

²⁸⁰ Ibrahim Sakawa Magara, 'Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process' (2021) *J. Br Acad* 9-33.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Members are quite numerous; they include: Members of IGAD (Djibouti, Ethiopia, Kenya, Somalia, Sudan, Uganda); five representatives of AU (Algeria, Chad, Nigeria, Rwanda, and South Africa); the African Union Commission (AUC); the People's Republic of China; the European Union (EU); the Co-Chair of IGAD Partners Forum (Australia, Austria, Belgium, Brazil, Canada, Czech Republic, China, Denmark, Finland, France, Germany, Greece, Japan, India, Ireland, Italy, Luxembourg, The Netherlands, New Zealand, Norway, Russian Federation, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America, European Union and the League of Arab States.

²⁸⁴ Ibid.

²⁸⁵ Rens Williams and David Kuol Deng, 'Perceptions of Transitional Justice in South Sudan' <[Perceptions of Transitional Justice in South Sudan - csrf-southsudan](#)> accessed 29 June 2025.

²⁸⁶ Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018 art 5.3.1.1.

and gender-based violence, and other serious crimes, reflecting the gravity and complexity of the atrocities committed during the conflict.²⁸⁷

Importantly, the HCSS also enjoys wide personal jurisdiction, extending to any individual implicated in these crimes, irrespective of nationality.²⁸⁸ This provision is particularly relevant given the multi-faceted nature of the conflict and the possibility of foreign actors having contributed to the violence.²⁸⁹ Beyond the punitive aspect, the HCSS is empowered to enforce restorative justice mechanisms. These include the forfeiture of property or proceeds of crime to the state or their restitution to rightful owners, as well as ordering reparations for victims.²⁹⁰ These competencies are designed to provide victims with tangible redress and facilitate broader societal healing.²⁹¹ Moreover, the R-ARCSS explicitly provides that “no immunity shall be permissible,” underscoring a firm commitment to international standards of justice and accountability.²⁹² This position aligns with observations made by Owiso, who notes that crimes committed during violent conflict typically fall under the joint remit of international human rights law and international humanitarian law.²⁹³ However, the notion of international justice remains contentious in some quarters, often critiqued for its susceptibility to external interference and perceived imposition of foreign agendas.²⁹⁴

In this context, the HCSS is designed to function independently of the South Sudanese national judiciary and is to assume primacy over domestic courts.²⁹⁵ The R-ARCSS further mandates that a majority of the judges should come from other African countries and assigns

²⁸⁷ Owiso Owiso, ‘The proposed Hybrid Court for South Sudan’ (2019) *Afr. J Confl Resolut* 87.

²⁸⁸ Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018 art 5.3.2.1.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ Ibrahim Sakawa Magara, ‘Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process’ (2021) *J. Br Acad* 9-33.

²⁹² Joseph Geng Akech, ‘Rethinking Transitional Justice in South Sudan: Critical Perspectives on Justice and Reconciliation’ (2020) *Int. J Transit. Justice* 14. Also found in Chapter V of the R-ARCSS.

²⁹³ Owiso Owiso, ‘Seeking the “Truth” After Devastating, Multi-Layered Conflict: The Complex Case of Transitional Justice in South Sudan’ (2019) *J. Int’l Humanitarian Legal Stud.*

²⁹⁴ Daniel Krcmaric, ‘Should I Stay or Should I Go? Leaders, Exile, and the Dilemmas of International Justice’ (2018) *Am. J Polit. Sci* 62.

²⁹⁵ Joseph Geng Akech, ‘Rethinking Transitional Justice in South Sudan: Critical Perspectives on Justice and Reconciliation’ (2020) *Int. J Transit. Justice* 14.

the AUC the responsibility for determining the court's structure, seat, and composition.²⁹⁶ This setup reflects a hybrid model intended to bolster impartiality and protect the court from local political interference. Timing remains a critical variable in transitional justice. Huntington contends that justice mechanisms such as tribunals must be instituted promptly following a political transition to be effective.²⁹⁷ Yet in the case of South Sudan, the continued instability and the fact that key perpetrators remain in power have complicated the realisation of this objective.

According to the original ARCSS, and reaffirmed in the revitalised version, the AUC is tasked with establishing the HCSS and is entrusted with deciding on several logistical aspects such as location, infrastructure, and the recruitment of judicial personnel.²⁹⁸ Initially, Juba was proposed as the seat of the court, though provisions exist to relocate proceedings should security conditions deteriorate.²⁹⁹ The selection of Juba demonstrates an intention to enhance local legitimacy and accessibility for affected communities. A broader issue that intersects with the HCSS is Africa's complex and often adversarial relationship with the International Criminal Court.³⁰⁰ The ICC has long been criticised for disproportionately targeting African states, leading to accusations of bias and undermining its credibility across the continent.³⁰¹ Against this backdrop, it is unsurprising that the involvement of the ICC in South Sudan's transitional justice process was resisted, particularly given that some IGAD member states such as Kenya and Sudan have themselves been central to this discourse.³⁰²

Within South Sudan, views diverge on the effectiveness of international mechanisms versus local solutions. The country's deep ethnic diversity, comprising dozens of tribes with unique customs, often results in communities relying more on traditional leaders than formal state institutions for justice and accountability.³⁰³ While unity was possible during the First Civil

²⁹⁶ Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018 art 5.3.3.2.

²⁹⁷ Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Vol.4, University of Oklahoma Press 1993).

²⁹⁸ Owiso Owiso, 'The proposed Hybrid Court for South Sudan' (2019) *Afr. J Confl Resolut* 87.

²⁹⁹ *Ibid.*

³⁰⁰ Ovo Imoedemhe, 'Unpacking the Tension Between the African Union and the International Criminal Court: The Way Forward' (2015) *Afr. J Int'l Comp. L* 74.

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ Ibrahim Sakawa Magara, 'Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process' (2021) *J. Br Acad* 9-33.

War when ethnic groups collectively opposed northern Sudan, post-independence dynamics—especially the power struggle between President Salva Kiir and Vice-President Riek Machar—have reignited ethnic rivalries, further fragmenting the nation.³⁰⁴

The push for the HCSS has sparked concerns over the potential for international actors to dominate the accountability process, some fear that the court could become a vehicle for foreign interests rather than a mechanism of genuine justice.³⁰⁵ Others argue that internationalised criminal justice mechanisms are prohibitively expensive and often yield limited results.³⁰⁶ For instance, a South Sudanese religious leader has questioned the cost-effectiveness of such processes, stating, “at times you wonder why we have to agitate for processes that require so much money and take too long just to try one individual whose conviction does not even seem to mean anything to the victims”.³⁰⁷

According to Akech, the inclusion of the HCSS in the R-ARCSS was largely a result of international and regional pressure rather than domestic political will.³⁰⁸ A UN diplomat stationed in Addis Ababa echoed this sentiment, stating that South Sudanese leaders publicly support the court while privately working to obstruct its implementation.³⁰⁹ Reports have emerged of the government hiring American lobbying firms to delay the establishment of the tribunal.³¹⁰ One former detainee criticised the court’s inclusion in the peace agreement, calling it a “landmine on the peace implementation path” and questioning the feasibility of creating an institution designed to prosecute the very leaders expected to implement it.³¹¹ Others have similarly warned of the dangers of initiating prosecutions while Machar and Kiir remain in power.³¹²

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Personal Interview with a South Sudan Religious Leader (RL) held in Nairobi on 19 November 2019 by Ibrahim Sakawa Magara.

³⁰⁸ Joseph Geng Akech, ‘Rethinking Transitional Justice in South Sudan: Critical Perspectives on Justice and Reconciliation’ (2020) *Int. J. Transit. Justice* 14.

³⁰⁹ Personal Interview with a United Nations Official (UNO) held in Addis Ababa on 4 March 2020 by Ibrahim Sakawa Magara.

³¹⁰ Reuters, ‘South Sudan Hires U.S Lobbyist to Help Block War Crimes Court: Contract’ (2019) Reuters <[South Sudan hires U.S. lobbyists to help block war crimes court - contract | Reuters](#)> accessed 30 June 2025.

³¹¹ Ibrahim Sakawa Magara, ‘Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process’ (2021) *J. Br Acad* 9-33.

³¹² Personal Interview with a Diplomat at Uganda Foreign Affairs (UFA) held in Kampala on 29 January 2020 by Ibrahim Sakawa Magara, Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018 art 5.5.1.

Nevertheless, other perspectives suggest that concerns are less about justice per se and more about preserving peace. A South Sudanese diplomat remarked, “our concern is that if [justice] is not done very well it may cause problems to peace... all we want is peace now... everyone wants peace”.³¹³ Magara notes that South Sudan’s political elites exhibit little appetite for justice and accountability, and with Kiir and Machar firmly in control, the operationalisation of the HCSS remains improbable in the near future, mainly as there is a provision in the R-ARCSS that any individual indicted by the HCSS is ineligible to hold public office or participate in government further reaffirming this point.³¹⁴ A professor at Makerere University has argued that the impetus for including the tribunal stemmed largely from Western powers, particularly the United States, which has had a longstanding engagement in South Sudan.³¹⁵ While the AU’s Commission of Inquiry laid the groundwork for the HCSS, its subsequent evolution appears to have been heavily influenced by actors external to the continent.³¹⁶ This external pressure raises questions about legitimacy, especially given that some of the states advocating for the court have themselves been critical of the ICC.³¹⁷

Despite external influence, there is also internal support, especially among South Sudanese civil society organisations that have called for swift prosecutions and accountability.³¹⁸ Yet even among civil society, there is a shared apprehension that a rushed implementation of the HCSS could destabilise the already fragile peace process.³¹⁹ A South Sudanese lawyer observed that “perceptions on the hybrid court are divided... as expected there are those who feel that this is a foreign agenda and those who argue that instead of the hybrid court we

³¹³ Personal Interview with Sudan People’s Liberation Movement in Opposition (IO) held in Nairobi on 13 February 2020 by Ibrahim Sakawa Magara.

³¹⁴ Ibrahim Sakawa Magara, ‘Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process’ (2021) J. Br Acad 9-33; Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018 art 5.5.1.

³¹⁵ Zach Vertin, *A Rope from the Sky: The Making and Unmaking of the World’s Newest State* (Amberley Publishing 2018).

³¹⁶ Ibrahim Sakawa Magara, ‘Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process’ (2021) J. Br Acad 9-33.

³¹⁷ Personal Interview with a South Sudanese Academic (SSA) held virtually on 5 May 2020 by Ibrahim Sakawa Magara.

³¹⁸ Joseph Geng Akech, ‘Rethinking Transitional Justice in South Sudan: Critical Perspectives on Justice and Reconciliation’ (2020) Int. J Transit. Justice 14.

³¹⁹ Ibrahim Sakawa Magara, ‘Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process’ (2021) J. Br Acad 9-33.

should rather invest in local courts”.³²⁰ These concerns also stem from the lack of representation of numerous ethnic groups within the current government—a disparity likely to manifest in the tribunal’s structure and functioning.

Owiso highlights that South Sudan’s central problem is not ethnic diversity per se, but rather the concentration of power within the SPLM, predominantly among Dinka and Nuer elites aligned with Kiir and Machar.³²¹ This power imbalance has led to the marginalisation of other ethnic groups, perpetuating exclusion and inequality in political and legal spheres.³²² Thus, without meaningful reforms and a commitment to inclusivity, the success of the HCSS—should it be operationalised—remains uncertain.

4.3 Crossroads of Justice: Cambodia and Kosovo as Roadmaps for South Sudan’s HCSS

Given that the HCSS has yet to be established, valuable insights may be derived from an analytical comparison with other hybrid tribunals, particularly those of Cambodia (ECCC) and Kosovo (KSC). These two cases serve as significant benchmarks for evaluating what might succeed or fail in the South Sudanese context. Their comparative value lies in the different stages of implementation they represent: Cambodia’s tribunal has largely concluded its work, whereas Kosovo’s is ongoing. This section seeks to evaluate potential lessons for South Sudan by identifying practices from both tribunals that could be incorporated into or avoided within the framework of the R-ARCSS, while also highlighting elements already aligned with best practices.

One of the prominent criticisms directed at the Kosovo tribunal is its narrow temporal jurisdiction.³²³ In contrast, the R-ARCSS extends the HCSS’s jurisdiction to include the entire transitional period, which may more adequately capture the spectrum of crimes and thus

³²⁰ Personal Interview with a South Sudanese Lawyers (SSL) held virtually on 21 May 2020 by Ibrahim Sakawa Magara.

³²¹ Owiso Owiso, ‘The proposed Hybrid Court for South Sudan’ (2019) *Afr. J Confl Resolut* 87.

³²² Ibid.

³²³ Meris Musanovic & Arolda Elbasani, ‘Can the Kosovo Specialist Chambers do Better than its predecessor?’ ([Justiceinfo.net](https://www.justiceinfo.net), 2020). <[45](https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20atest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.> accessed 16 May.</p></div><div data-bbox=)

better meet the expectations of the South Sudanese population.³²⁴ Another significant issue encountered by the Kosovo Chambers concerns the availability and quality of evidence.³²⁵ The considerable time lapse since the crimes occurred has weakened both the evidentiary base and witness availability.³²⁶ South Sudan risks facing a similar problem. If political will remains absent while leaders such as Salva Kiir and Riek Machar remain in power, the potential delay in the court's establishment could compromise evidence quality and heighten risks of interference. The fear is that this delay may either result in a complete lack of accountability or create a court that is viewed as illegitimate due to weakened or tainted evidence. Thus, the timing of the tribunal's implementation is crucial not only for justice but also for public perception and historical truth-telling.

Moreover, Kosovo's tribunal has been criticised for its detachment from the local population, primarily because it is situated outside Kosovo.³²⁷ In this regard, South Sudan may find a more effective model in Cambodia, where the ECCC was praised for its robust outreach. The Cambodian tribunal's on-site presence allowed for daily public attendance, with outreach efforts playing a vital role in promoting intergenerational understanding of historical atrocities.³²⁸ Such accessibility could serve as a template for the HCSS to ensure legitimacy and public trust. In fact, the Cambodian example demonstrated that when tribunals prioritise transparency and community engagement, public support and awareness increase, strengthening the tribunal's long-term impact and historical legacy.³²⁹

A further criticism of the KSC has been its perceived one-sidedness, focusing disproportionately on crimes committed by ethnic Albanians while neglecting those

³²⁴ Ibrahim Sakawa Magara, 'Timing of Transitional Justice Mechanisms and The Implications for The South Sudan Peace Process' (2021) *Journal of British Academy* 9-33.

³²⁵ Meris Musanovic & Arolda Elbasani, 'Can the Kosovo Specialist Chambers do Better than its predecessor?' ([Justiceinfo.net](https://www.justiceinfo.net), 2020).
<<https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20latest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani>> accessed 16 May.

³²⁶ Ibid.

³²⁷ Ibid.

³²⁸ Phuong Pham et al *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia*, Human Rights Center, UC Berkeley, 1 June 2011.

³²⁹ Norman Henry Pentelovitch, 'Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals' (2009) *Geo. J. Int'l* 445-465.

committed by Serbian forces.³³⁰ South Sudan could face analogous challenges if its tribunal focuses solely on crimes committed during the Machar-Kiir conflict, neglecting earlier atrocities committed during the protracted wars with Sudan. This may undermine the legitimacy and perceived impartiality of the tribunal among affected communities. Ensuring that the scope of prosecution reflects the full spectrum of harms suffered will be essential to deliver justice that is both equitable and restorative.

Nevertheless, Kosovo's experience also offers some constructive models. The KSC provides reparations and restitution to victims, an element already incorporated in the R-ARCSS. Similarly, while the EU's instrumental approach to justice in Kosovo—linking it to EU accession—has been controversial, the international pressure for accountability has helped restore confidence in justice institutions.³³¹ This could hold relevance for South Sudan, where external actors may play a vital role in ensuring justice and transparency. The lesson here is that while external involvement can lead to accusations of imposition, it may also be indispensable in initiating judicial processes that domestic actors are either unwilling or unable to implement independently.

Both Cambodia and Kosovo illustrate how hybrid tribunals can promote accountability and strengthen the rule of law. In Cambodia, the ECCC contributed significantly to building institutional credibility and legal capacity, offering training and experience to Cambodian professionals with support from international actors.³³² The KSC has also demonstrated potential in opening political and societal space for dialogue, notably between conflicting ethnic groups.³³³ A similar framework in South Sudan could foster dialogue between the Dinka, Nuer, and other marginalised communities, potentially alleviating long standing ethnic tensions. Encouraging inclusive participation and national conversations about justice and reconciliation can become stepping stones for long-term stability and trust in public

³³⁰ Meris Musanovic & Arolda Elbasani, 'Can the Kosovo Specialist Chambers do Better than its predecessor?' ([Justiceinfo.net](https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20atest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.), 2020). <<https://www.justiceinfo.net/en/43752-can-the-kosovo-specialist-chambers-do-better-than-its-predecessors.html#:~:text=The%20Kosovo%20Specialist%20Chambers%20are%20the%20atest%2C%20contested,the%20victims%2C%20say%20Meris%20Musanovic%20and%20Arolda%20Elbasani.>> accessed 16 May.

³³¹ Gezim Visoka, 'Assessing the potential impact of the Kosovo Specialist Court' (PAX, 2017).

³³² Seeta Scully, 'Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia' (2011) 13 Asian-Pac. L & Pol'y J 301-53 .

³³³ Kosovo Specialist Chambers, 'Factsheet: Victims' Participation at the KSC' (2024) <https://www.scp-ks.org/en/factsheets> accessed 15 May 2025.

institutions. Learning from Cambodia's protracted negotiations and institutional delays is essential. The ECCC faced years of stagnation due to political resistance and international disagreement, a pattern already observable in South Sudan. Unless proactive measures are taken, similar delays may erode the tribunal's viability.

The R-ARCSS, however, offers a more comprehensive temporal and personal jurisdiction than was initially available in Cambodia, providing a stronger legal framework. This proactive inclusion in the agreement reflects a growing recognition of the importance of holistic accountability mechanisms that acknowledge both direct perpetrators and the system-wide structures that enabled violence.

Corruption and judicial impartiality remain key concerns. The ECCC was marred by allegations of impartiality, with some judges accused of political affiliations.³³⁴ South Sudan might mitigate such risks by appointing a majority of judges coming from other African countries, thereby reducing the likelihood of politically motivated prosecutions. Additionally, Cambodia's challenges in sourcing professionals well-versed in both national and international law underline the need for robust training in South Sudan. A 2013 EU workshop emphasised the need for enhanced training in domestic criminal and human rights law, an area where South Sudan similarly lags.³³⁵ This could be addressed through early-stage investments in capacity building, legal education, and knowledge exchange programs with established international institutions.

The decision to locate the tribunal within South Sudanese territory, as was done in Cambodia, could prove beneficial in terms of local engagement and victim recognition. Physical proximity enables affected communities to witness proceedings firsthand, reinforcing a sense of justice.³³⁶ Furthermore, the Cambodian model of victim participation—which allowed victims to act as civil parties in the proceedings—proved transformative.³³⁷ Although the

³³⁴ C11/29, Case No. 002, Pre-Trial Chamber Decision, Public Decision on the Co-Lawyer's Urgent Application for Dismissal of Judge Ney Thol Pending the Appeal Against the Provisional Detention Order in the Case of Nuon Chea, para. 14 (ECCC Feb. 4, 2008), available at <http://www.eccc.gov.kh/en/documents/court/public-decision-co-lawyers-urgent-application-disqualification-judge-ney-thol>.

³³⁵ Directorate-General for External Policies of The Union, 'Workshop South Sudan: Enhancing Capacities for Human Rights' (Policy Department 2013) <[South Sudan: Enhancing capacities for human rights](#)> accessed 30 June 2025.

³³⁶ Youk Chhang 'The Thief of History- Cambodia and the Special Court' (2007) 1 Int. J. Transit. Justice 157-72.

³³⁷ Press Release, ECCC, Statement from the Co-Investigating Judges: The Co- Investigating Judges Release the First decisions on Admissibility of Civil Parties in Case No. 002 1 (Aug.

R-ARCSS includes provisions for victim participation through the CTRH, direct victim involvement in the HCSS proceedings would enhance its legitimacy and emotional resonance.³³⁸ Victim participation not only empowers those affected but also contributes to shaping more comprehensive and inclusive justice narratives.

30, 2010), available at [http://www.eccc.gov.kh/sites/default/files/media/OCIJ-ECCC30Aug2010\(Eng\).pdf](http://www.eccc.gov.kh/sites/default/files/media/OCIJ-ECCC30Aug2010(Eng).pdf).

³³⁸ Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan 2018 ch V, arts 5.2.4.1; 5.3.2.

Conclusion

This thesis has explored the promise and limitations of hybrid tribunals through a comparative examination of the experiences in Kosovo and Cambodia, with the ultimate aim of assessing the potential for such a mechanism in South Sudan under the framework of the R-ARCSS. Both KSC and the ECCC demonstrate that, although hybrid tribunals are far from flawless, they can represent a viable and context-sensitive means of achieving transitional justice—particularly when carefully tailored to the local political and institutional environment and supported by sustained international engagement. These tribunals serve not only as platforms for prosecuting international crimes, but also as instruments for broader societal transformation. Their design reflects an attempt to bridge international norms with domestic needs, thereby contributing to the central goals of transitional justice: accountability, reconciliation, and the restoration of public trust in legal institutions.

The comparative analysis reveals that hybrid tribunals are shaped as much by their legal frameworks as by the political realities and power dynamics in which they operate. In this sense, they are embedded within what Christine Bell has described as a constantly evolving field of transitional justice—one that is not static but highly contingent on the local and regional context. Her assertion that transitional justice mechanisms are inextricably tied to the political and societal conditions in which they are deployed is strongly reflected in the outcomes observed in both the Kosovo and Cambodia cases, and, crucially, in the current trajectory of South Sudan. While the R-ARCSS offers a theoretically sound and legally comprehensive foundation for the establishment of the HCSS, the prevailing political conditions in the country significantly undermine the feasibility of its near-term implementation. The continued dominance of political elites who may be implicated in past atrocities obstructs any meaningful progress toward accountability. This reflects a recurring challenge in transitional justice: that institutional innovation alone cannot overcome entrenched impunity in the absence of genuine political will.

The South Sudanese case thus underscores a core lesson from the comparative analysis—namely, that the success of hybrid tribunals depends not only on their normative design but also on the political transition and societal engagement necessary to sustain them. Until such a transition occurs—marked by demonstrable commitment to justice, institutional reform, and civic inclusion—the HCSS is likely to remain an unfulfilled provision of the peace agreement. Nonetheless, this does not render the effort futile. In the interim, support for local justice initiatives, consistent international pressure, and robust civil society advocacy may serve as incremental but meaningful steps toward creating the conditions necessary for the Court's eventual realisation. Ultimately, the future of hybrid justice in South

Sudan hinges not only on legal design alone, but on the courage and accountability of those tasked with enacting it.

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Abstract

This thesis explores the evolving role of hybrid tribunals in transitional justice processes, focusing on what South Sudan can learn from the experiences of Kosovo and Cambodia. Through a comparative legal and institutional analysis, the study evaluates the structural design, jurisdiction, procedural innovations, and societal impact of the KSC and the ECCC. Both cases illustrate the potential of hybrid mechanisms to address mass atrocities while balancing international standards with domestic legal contexts. Drawing from these models, the thesis assesses the viability of the HCSS, as mandated by the R-ARCSS. While the agreement provides a promising legal and normative framework, the thesis concludes that persistent political instability, ongoing conflict, and the continued dominance of implicated actors render the Court's establishment unlikely in the near future. Nonetheless, the HCSS remains an important symbol of accountability and a potential tool for justice, provided that the necessary political and institutional conditions are eventually met.

Abstrakt

Diese Masterarbeit untersucht die Rolle hybrider Tribunale im Bereich der Übergangsjustiz und analysiert, welche Lehren Südsudan aus den Erfahrungen des Kosovo und Kambodschas ziehen kann. Anhand einer vergleichenden rechtlichen und institutionellen Analyse werden die strukturelle Ausgestaltung, die Zuständigkeit, prozedurale Neuerungen sowie die gesellschaftliche Wirkung der KSC und der ECCC bewertet. Beide Fälle verdeutlichen das Potenzial hybrider Mechanismen, Massenverbrechen unter Berücksichtigung internationaler Standards und nationaler Rechtskontexte zu verfolgen. Aufbauend auf diesen Modellen analysiert die Arbeit die Realisierbarkeit des HCSS, wie er im R-ARCSS vorgesehen ist. Obwohl das Abkommen einen vielversprechenden rechtlichen und normativen Rahmen bietet, kommt die Arbeit zu dem Schluss, dass die anhaltende politische Instabilität, wiederkehrende Gewalt sowie die Machterhaltung von mutmaßlich verantwortlichen Akteuren eine zeitnahe Umsetzung des Gerichts unwahrscheinlich machen. Dennoch bleibt das HCSS ein wichtiges Symbol für Rechenschaftspflicht und ein potenzielles Instrument der Gerechtigkeit – vorausgesetzt, dass zukünftig geeignete politische und institutionelle Voraussetzungen geschaffen werden.