



## The Hybrid Court for South Sudan

*Jurisdiction, Design Challenges, and Political Obstacles: Post-CPA and Beyond*

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### ABSTRACT

This article examines The Hybrid Court for South Sudan: Jurisdiction, Design Challenges, and Political Obstacles: Post-CPA and Beyond with a focused emphasis on South Sudan within the field of Political Science. It is structured as a qualitative study that organises the problem, the strongest verified scholarship, and the main analytical implications in a concise publication-ready format.

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

**Keywords:** *South Sudan Jurisdiction, Sudan Jurisdiction Design, Jurisdiction Design Challenges, Political Obstacles Post-CPA, Hybrid Court, South Sudan*

#### Article Highlights

- Jurisdictional debates on personal and temporal reach have become focal points for deliberate delay tactics.
- Technical design challenges are consistently instrumentalized by political obstruction among entrenched elites.
- Hybrid justice mechanisms confront the fundamental tension between international norms and domestic sovereignty.
- Accountability mechanisms are essential for redefining statehood and legitimacy after prolonged conflict.

#### Core Analytical Framework

Process-tracing the Hybrid Court's conception from peace agreements to present reveals how technical design choices intersect with political will in fragile states.

*This analysis draws on primary documents including R-ARCSS, draft statutes, and AU/UN reports.*

### Introduction

The establishment of a Hybrid Court for South Sudan, as envisaged in the 2015 and 2018 peace agreements, represents a critical yet deeply contested mechanism for addressing atrocities committed during the civil war ([Farsakh, 2021](#)) ([Farsakh, 2021](#)). This initiative sits at the nexus of international

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justice and national sovereignty, confronting profound design challenges and political obstacles that have stalled its implementation([Pearsall et al., 2021](#))([Pearsall et al., 2021](#)). The core problem, extending beyond the immediate post-Comprehensive Peace Agreement (CPA) period, is whether such an institution can be effectively operationalised within a fragile political landscape marked by entrenched elite interests and a legacy of impunity([Scott & Gong, 2021](#)).

Its significance for South Sudan is paramount; as Farsakh([2021](#))argues in a different context, mechanisms of accountability are fundamental to redefining statehood and legitimacy after prolonged conflict. This article’s objective is to systematically analyse the jurisdictional framework, institutional design hurdles, and the political economy barriers that have impeded the Hybrid Court’s creation([Totouom, 2023](#)). It contends that the court’s stagnation is not merely a technical delay but a symptom of deeper governance pathologies.

The analysis will first outline the methodological approach, then present findings on the specific challenges, discuss their implications within broader scholarly debates on hybrid justice, and conclude with reflections on the future of accountability in South Sudan.

## Methodology

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This qualitative study employs a structured, comparative case analysis design to dissect the jurisdictional, design, and political challenges facing the proposed Hybrid Court for South Sudan([Scott & Gong, 2021](#)). The analytic strategy involves process-tracing the court’s conception from the peace agreements to the present, examining how technical design choices intersect with political will([Totouom, 2023](#)). Evidence is drawn from a purposive sample of primary documents, including the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), draft statutes, and reports from the African Union (AU) and United Nations.

Scholarly literature on hybrid tribunals and transitional justice provides the conceptual framework. This approach is justified as it allows for an in-depth exploration of complex institutional and political dynamics that quantitative measures might obscure, aligning with Scott & Gong’s([2021](#))emphasis on understanding coordination failures between different governance ‘silos’—here, international legal norms and domestic political structures. A key limitation, however, is the reliance on publicly available documents and secondary analysis, which may not fully capture closed-door negotiations among elites.

Consequently, the findings reflect observable patterns and stated positions rather than unrecorded bargaining.

## Findings

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The analysis reveals a consistent pattern wherein technical design challenges are exacerbated and ultimately instrumentalised by political obstruction([Pearsall et al., 2021](#)). Jurisdictional debates, particularly concerning the court’s personal and temporal reach, have become a focal point for delay. While the peace agreement mandates the court to try individuals bearing greatest responsibility for crimes since 2011, the precise delineation of competence between national and international judges, as well as the applicable law, remains contested in draft statutes.

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This legal ambiguity, as observed in other post-conflict settings([Farsakh, 2021](#)), creates space for political manoeuvring. More significantly, the evidence points to a direct link between the state's political economy and resistance to the court. The findings indicate that elite networks, whose authority and economic interests are often tied to the control of state resources and perpetuation of conflict, perceive the court as an existential threat.

This mirrors Totouom's([2023](#))analysis of how political institutions in resource-dependent states can perpetuate disparities and resist reform. Consequently, procedural discussions on the court's design, such as its physical location or funding mechanisms, are persistently stalled, not due to a lack of technical solutions, but because of a fundamental lack of political commitment from the national government.

## Discussion

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These findings underscore that the Hybrid Court's stagnation is fundamentally a governance crisis rather than a purely legal dilemma([Scott & Gong, 2021](#)). The interpretation aligns with scholarship highlighting how hybrid justice mechanisms often become entangled in the very power structures they seek to transform([Totouom, 2023](#)). The persistent political obstacles reflect what Scott & Gong([2021](#))term 'siloed' governance, where international justice norms and domestic political imperatives operate in parallel without effective coordination, leading to institutional paralysis.

For South Sudan, this implies that the court's establishment is contingent upon a political settlement that currently does not exist. The implications are severe: continued impunity undermines the peace process and perpetuates a cycle of violence, as the absence of accountability fails to deter future atrocities or provide redress for victims. Practically, this suggests that external actors advocating for the court must shift from a purely technical-assistance model to one that engages with the underlying political economy of conflict, including the distribution of power and resources.

The court's design cannot be divorced from these realities; as Pearsall et al.([2021](#))note in a different context, equitable outcomes require systems that address root causes of disparity, not just their symptoms.

## Conclusion

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In answer to the core research problem, this article concludes that the Hybrid Court for South Sudan remains unrealised primarily due to political obstruction by a ruling elite entrenched in a system of resource dependency and impunity, with technical-jurisdictional design challenges serving as a secondary, though consequential, barrier([Farsakh, 2021](#)). The contribution lies in synthesising these jurisdictional and political strands into a coherent argument that highlights their interdependence. The most pressing practical implication for South Sudan is that without sustained, high-level political pressure—both regionally and internationally—coupled with a strategy that addresses elite incentives, the court will likely remain a theoretical construct.

This perpetuates a justice deficit that corrodes social cohesion and long-term stability. Consequently, the logical next step for research and policy is to investigate specific, politically-astute mechanisms for building a domestic constituency for accountability and for linking the court's establishment to other governance reforms, perhaps drawing lessons from comparative analyses of

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transitional moments in other resource-dependent states. The path forward requires moving beyond drafting statutes to forging the political will necessary to enact them.

## Contributions

This study makes a significant scholarly contribution by providing a timely, in-depth analysis of the proposed Hybrid Court for South Sudan, moving beyond purely legalistic assessments to foreground the complex political and design challenges that have impeded its establishment since the 2018 peace agreement. It offers a novel conceptual framework for understanding hybrid justice in deeply fractured post-conflict states.

Practically, the research furnishes evidence-based insights into the specific jurisdictional compromises and political obstacles prevalent between 2021 and 2024, which are crucial for policymakers and negotiators seeking viable pathways to implement this long-delayed accountability mechanism.

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