

# Understanding the hybrid elements of the Khmer Rouge Tribunal

Introduction video: <http://www.tubechop.com/watch/1817121>

The ECCC functions as a hybrid model, with international and national legal elements defining the proceedings. A brief introduction to the ECCC as a hybrid court is found at the ECCC's website [here](#), along with further explanation of why the model was chosen [here](#). Further questions are answered by the ECCC [FAQ section](#). AIJ answers basic questions concerning the establishment and functioning of the court below.

## What is an international tribunal?

Beginning in the 1990s, international criminal jurisdiction (Chapter VII of the UN Charter) allowed the establishment of so called ad-hoc tribunals like the [ICTY \(S/RES 827\)](#) in Yugoslavia or the [ICTR \(S/RES 955\)](#) in Rwanda by the United Nations ([UN](#)). Such trials have limited jurisdiction over a specific territory, persons, crimes only under international law and period in the past, which is why they are given the term *ad-hoc tribunal*. But they have a problem of legitimacy because the proceedings are held without the participation of the states and people where the crimes happened. Moreover, they can be established after the acts of crimes by using force under Chapter VII of the [UN-Charter](#) without a permission of the national side, meaning the state affected often has no say over the proceedings. This meant that the trials were not necessarily an effective healing process for the victims, as the people's laws were not themselves involved. The [ICC](#) as a regular court on the other hand is also physically far away from the crime sites and has limited resources and jurisdiction.

## What is a hybrid tribunal?

To avoid the problems of ad hoc tribunals, the international community started working on the concept of *hybrid tribunals*, which blend national and international law aspects. First, they are established in cooperation between the UN and the respective state, normally via agreement, not by the use of force. Like other tribunals they have jurisdiction over specific topics but can charge persons under both national and international law, as defined by the procedural rules (often a combination of national/international jurisprudence). Further, their personnel is nominated/appointed and paid by both sides. The participation of both sides is intended to give the trials more legitimacy and encourage civilian engagement. Examples of hybrid tribunals in other countries include the [Special Court for Sierra Leone](#); [the Special Panels of the Dili District Court in Timor-Leste](#); and [the Special Tribunal for Lebanon](#).

Though hybrid tribunals are regarded as an innovative step for international criminal proceedings, there are significant issues with their functioning, as evidenced with the Court in Cambodia. Among the issues is the fact that managing the international and national aspects at the same time often proves too complex, with conflicts arising between the sides. Further, ensuring judicial independence when the existing judicial system is not strong is often difficult.

## What is the idea behind the establishment of the ECCC?

After years of negotiations between the UN and the Royal Government of Cambodia, an international [agreement](#) between these parties allowed the establishment of a court with the power to put the senior leaders of Democratic Kampuchea and those most responsible for the crimes committed between 17 April 1975 and 6 January 1979 on trial. The bilateral agreement created a partnership between the UN and the Cambodian state, resulting in the [ECCC](#) being established as a hybrid tribunal. To guarantee the two-sided representation the rights and duties of the national and international side are defined in the [law of the establishment](#) and the [internal rules](#) of the ECCC.

## How is the idea of a hybrid tribunal implemented at the ECCC?

The rules of the ECCC ensure the hybrid elements of the [court organization](#) in different ways. Although the ECCC is part of the Cambodian court system (Art. 2 new [ECCC law](#)) the staff of the

court, including prosecutors, lawyers and judges include Cambodians and international personnel. For example, the Pre-Trial and Trial Chamber has 3 of 5 Cambodian judges and the Supreme Court Chamber 4 of 7 (Art. 9 new [ECCC law](#)). In order to prevent the possibility of decisions only made by Cambodian judges both sides agreed to implement the so-called super majority. According to that system a decision requires a vote of at least one international judge. The ECCC has jurisdiction over crimes under international criminal law (genocide, crimes against humanity, war crimes, Art. 4 ff. [ECCC law](#)) and Cambodian national law (homicide, torture and religious persecution under the 1956 Penal Code, Art. 3 [ECCC law](#)). Both the Cambodian government and the international community are required to pay for the work of the court.