

## OPINION

## Donors Should Adopt a Balanced Approach To Funding ECCC

BY JOHN HALL

Things are looking better at the Khmer Rouge tribunal than any of us could have anticipated just a few months ago. In response to positive changes, donor nations are beginning once again to open their checkbooks. Now, donors must address a new issue: How they fund the tribunal is almost as important as whether and to what extent they fund it.

Rocked by serious scandals, the tribunal and the UN were forced to act to stave off a total collapse of support from embarrassed donors. Cambodian and UN officials at the tribunal have enacted significant changes that inspire greater confidence and that appear to have addressed many of the most serious problems: A new international-side management team under Knut Rosendhaug is winning plaudits for its focus and vigor; policies have been adopted that have curtailed the worst of the abuses in human resources; and the highly-efficient UN special expert David Tolbert is in the process of fashioning regulations that will hopefully lay to rest legitimate concerns that persist regarding corrupt practices among Khmer appointees.

In response to these significant changes, donor nations are cautiously beginning to promise the funding requested by the tribunal. Without these funds, the tribunal will be forced to close its doors perhaps as soon as the end of the year.

But the way these early donors are choosing to provide their funds is cause for concern. Donor nations that have come in so far have provided funds directly to the Cambodian government for its share of the operations and have largely or entirely avoided funding the court's international side and the UN agencies tasked with supporting the tribunal.

Japan recently donated nearly \$3 million directly to the Cambodian government for use by the Cambodian side of the court. Japan thereby chose not to follow the more typical policy of providing such funds to the UN Development Program, which would then be responsible for dispersal and accounting.

Germany has also announced a donation of \$2.4 million to help the victims support unit, again given directly to the Cambodians. The European Union is expected

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to soon announce a similar donation of perhaps \$5 million.

Why are these donors apparently choosing to avoid entrusting UNDP with the dispersal of funds to the Cambodian side? On its face, using UNDP would seem to ensure that such funds are strictly accounted for by an honest and competent third party. The UN theoretically should inspire confidence in the donors because of its transparency in financial management.

Unfortunately, UNDP has developed a dismal reputation relating to the tribunal. When accusations were initially made by Open Society Justice Initiative that Cambodian staff at the tribunal (including judges) were required to hand over a portion of their salaries to Cambodian officials in return for their employment, UNDP (who had distributed the funds in question) responded defensively and secretly.

Though it launched an audit, it foolishly chose to follow its usual practice and attempted to keep the report confidential. When the auditors' damning conclusions were leaked by *The Wall Street Journal* several months later, the scandal was undoubtedly magnified by the apparent attempt at a cover-up by UNDP.

Donor nations were apparently infuriated by the refusal of UNDP to share with them potentially damaging information in a timely and open fashion.

It is perhaps not so surprising that donors have come to view UNDP with skepticism. What is deeply troubling, however, is that donors now appear to be shying entirely away from entrusting UNDP with their donations, and are choosing instead to provide the funds directly to the Cambodian government. This may be akin to trusting the fox to look after the hen house: Few observers would suggest that the

Cambodian government will be more honest, thorough or transparent in its accounting practices than UNDP.

UNDP has not proven ideal, but it is more trustworthy and—after the intense drubbing it received following its mishandling of the audit fiasco—likely to be more directly responsive to donors when concerns about corruption and mismanagement arise.

The decision by donor nations to provide funds directly to the Cambodian government will inevitably raise troubling questions about their commitment to ending corruption and ensuring transparency at the court. Cynics may note that by providing their money directly rather than through UNDP, donors are reducing the likelihood of another embarrassing scandal resulting from a UNDP audit. After all, if UNDP's role is sharply curtailed, its auditors would have no mandate to investigate any alleged misuse of funds.

Another concern is that the recent donations have failed to provide for the international side of the tribunal. In part, this is the age-old problem of donors being most interested in funding "sexy," non-controversial and high-profile projects. Thus, money is predictably flowing to the victims support unit, while nothing is being earmarked for such mundane but crucial projects such as the general operating budget. The victims support unit is obviously of the greatest practical and symbolic value, but computers, paper, photocopiers, toner, and toilets are also crucial. A fully funded victims support unit won't stop the tribunal from closing if its other basic needs are not met.

Finally, some donors have apparently in private suggested that they will not fund the international side of the tribunal until all

corruption has stopped on the Cambodian side. If true, this is a peculiar and self-defeating strategy. By directly funding the Cambodian side, while withholding funds from the international side, donors would make it virtually impossible for the UN to force the issue if continuing corruption on the Cambodian side is found or reported.

So how should potential future donors such as the US provide funds for this extremely worthwhile undertaking?

First, ensure that the international side is adequately funded. It is, after all, the UN-side of the court, and UNAKRT is tasked with maintaining international standards that nations such as the US represent.

Second, avoid providing direct funding to the Cambodian side without extraordinary safeguards in place. Preferably, provide such funding through UNDP, and use political leverage to demand that UNDP continue to act with the improved level of transparency it has recently demonstrated.

Third, help fund high-profile individual projects, but balance that with a realistic understanding that the more mundane items such as the operating budget are absolutely vital to the ability of the tribunal to operate.

Finally, tie donations to the establishment of a credible and enforceable anti-corruption policy, including whistleblower protection, and an efficient judicial timeline that does not preclude additional prosecutions.

As Knut Rosendhaug has noted, the goal here is to ensure a cost-effective, swift, honest and transparent judicial process securing the rights of both the accused and the victims of the Khmer Rouge. This is a goal that ought to be shared by all interested parties.

Donors play a crucial role in shaping the tribunal, and they need to ensure that the way they choose to fund the court facilitates rather than hinders a successful outcome.

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