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Khmer Rouge tribunal needs more than money

By NATHANIEL MYERS After nearly a decade of negotiations and planning, the Khmer Rouge tribunal continues to inch closer to reality in Cambodia. Earlier this year, United Nations Secretary-General Kofi Annan announced that pledges from member states now covered the UN's \$43 million share of the tribunal's \$56.3 million budget. The process hit a snag in March, however, when the Royal Government of Cambodia unexpectedly announced that it could not cover most of its own share, and appealed to international donors to help it come up with the remaining \$11.8 million it owed. Little progress has been made in the months since. International donors are reluctant to give again, and the Cambodian government has rejected suggestions of a national fund-raising campaign, even though some local business leaders have expressed interest in donating. Yet, in the midst of this confusion, the government appears to have begun the process of selecting judges and prosecutors to staff the future tribunal, but it has shrouded the process in secrecy. No official list of candidates has been released, and the government has refused to describe the selection process, keeping secret the criteria for evaluation and the timeframe for its undertaking. Both of these developments are worrying. The first has been taken by some observers to suggest that the government does not fully support the tribunal. As one observer noted, the government didn't seem to have much trouble finding the millions of dollars needed to pay for damage caused in the infamous anti-Thai riots in 2003. If the tribunal does come to fruition — as still seems likely — it may not be able to count on full cooperation from the government. At the same time, the lack of transparency in the jurist selection process suggests that the court may not take place in the open and transparent manner advocates had hoped. This would be a tragedy. The Khmer Rouge tribunal holds great potential benefits for the Cambodian people; chief among them is its potential impact on the deeply troubled judicial system. A tribunal that respected international norms of fairness and due process would provide a powerful example to the national system, and could inspire increased independence and reform while dealing a significant blow to the entrenched culture of impunity. At the end of this month, the consultative group of leading foreign donors is scheduled to meet with Prime Minister Hun Sen to discuss progress on commitments made last December. Donors have already done much for the tribunal, but their work is not done. In order for the tribunal to make good on its potential for the Cambodian people, it is now clear that these major donors will have to exercise their political influence on its behalf. At their upcoming meeting with Mr Hun Sen, they should push the following three points: First, the selection process for judges, lawyers and court staff must be made open and transparent. The public deserves to know who is being considered, what criteria will be used to evaluate them, and when decisions will be made. Civil society, particularly those NGOs who work in the legal sector, should be approached for comments and commendations. Second, the

government must explain, to donors and the public alike, how it plans to cover its share of the tribunal's budget. It cannot expect donors to rush to bail it out, and it must adequately explain why it rejected the idea of a national fundraiser. Though not all Cambodians can afford to donate money, many have suggested they would like to give as a way of feeling involved in the process of holding the former Khmer Rouge leaders accountable. At the absolute least, the government should accept donations offered freely by private citizens. Third, donors should impress upon the government the importance of a successful tribunal outreach campaign to educate the general population. There have long been misconceptions amongst the public as to how the tribunal will work and who it will prosecute; it is time they be cleared up. Such misunderstandings have the potential to ferment unrest — particularly if former Khmer Rouge cadres mistakenly fear they may be jailed — and they will certainly lead to disappointment with the tribunal when victims notice that ex-Khmer Rouge in their communities are still at liberty. Though many Cambodian NGOs are preparing outreach programmes, their plans do not excuse the government from its own responsibility to educate. Mr Hun Sen could begin to demonstrate his commitment to a successful process by recording public service announcements for radio and television which introduce and describe the tribunal. Donors have much to discuss and there is much work that still needs to be done in Cambodia to help its people. But given the enormous potential and equally enormous cost of the Khmer Rouge tribunal, it deserves a high place on the agenda. (Nathaniel Myers is an adviser to a non-governmental organisation on tribunal-related issues. He also specialises in hybrid courts and post-conflict justice.)