

The Legal Framework for the Philippine Third Sector: Progressive or Regressive?

MA. OLIVA Z. DOMINGO*

National College of Public Administration and Governance
University of the Philippines Diliman, Philippines

ABSTRACT

The legal framework for the Philippine Third Sector has been very supportive and encouraging. Third Sector Organizations (TSOs) may exist and operate without being registered with any government agency. Registration is required only if the TSO wants to access or raise funds, open a bank account, enter into contracts, participate in a government program, or simply to have a legal personality. Some donors base their giving on the people involved and the advocacies that TSOs promote and are not even concerned whether they are registered or not. There are a number of government agencies where a TSO could register, get a license, or be accredited, and procedures are easy and simple. In general, the Third Sector the world over is averse to extensive regulation. Does a very liberal legal environment, however, protect the sector itself? The ease in obtaining a legal personality in the Philippines has made TSOs vulnerable as mechanisms for the commission of fraud and, indeed, they have time and again been used as conduits for personal gain rather than societal interests. When this happens, the credibility and integrity of the entire Sector is at risk. This paper characterizes the regulatory framework of the Philippine Third Sector to determine whether liberal rules make for a progressive environment, and to examine where the problem lies.

Key words: Third Sector; registration; accreditation.

Introduction

The history and development of the Philippine Third Sector dates back to the 16th century (Cariño 2000: 3) with a few religious organizations engaged in charitable work. Through the years, the sector has grown in number and extended to various fields of interest in response to the demands of the times. The imposition of martial law in 1972, and the repression, press censorship, exploitation of the majority by a few, and the human rights violations that accompanied military rule, provided the impetus for the burgeoning of the sector. Many so-called “cause-oriented” groups of students and

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professionals sprouted to challenge the martial law regime and fight for the restoration of democracy and justice. The much-acclaimed 1986 “bloodless EDSA revolution” and the democratic space that followed it ushered in a new era for the Philippine Third Sector. Foreign governments, funding agencies, and donors poured in funds for development. Their distrust for government at that time made them channel their initiatives and funds through Third Sector organizations (TSOs), including those that had no legal personality or formal accountability mechanisms in place. Pushing the development agenda took precedence over exacting fiscal responsibility. This further spurred the mushrooming of TSOs, both the genuine development-oriented groups eager to take part in the redemocratization and development process, as well as the opportunists that merely wanted to partake of available funds without the burden of strict accounting procedures (Domingo 2005: 24; Songco n.d.: 10).

The United Nations Development Programme (UNDP) defines governance as “the exercise of political, economic, and administrative authority to manage a country’s affairs at all levels.” This is achieved through “complex mechanisms, processes, relationships and institutions through which citizens and groups articulate their interests, exercise their rights and obligations and mediate their differences” (1997: 3, 9). As such, governance transcends the state and includes the market and Third sectors, and the relationships among the three as they engage in societal development.

The Philippine Third Sector’s relationship with government has taken various directions as the history of the nation unfolded—from distrust of and protest against government, to critical collaboration, to tactical alliance, to partnership, to mainstreaming. TSOs will continue to play a significant role in providing alternative mechanisms and strategies in responding to the social, economic, and political demands of the citizenry, especially the less fortunate, marginalized, and “voiceless.” The legal framework governing TSOs is a critical determinant of the extent to which they could actively and effectively perform this role.

This paper characterizes the regulatory framework for the Philippine Third Sector to determine whether an open and progressive legal environment protects the Sector itself.

The Legal Framework for TSOs

The new constitution ratified in 1987 recognizes the contribution of TSOs in national development. Article II provides that “the State shall encourage non-governmental, community-based or sectoral organizations that promote the welfare of the nation.” It further provides that “the State shall respect the role of independent people’s organizations to enable people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means” (Article III, Section 8). Article XIII, Section 15 specifically refers to the role of people’s organizations, defining them as “bona fide associations of citizens with

demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure.”

A terms used in these provisions are varied—*non-governmental, community-based, sectoral, and independent people’s organizations*. Regardless of their nature, however, in the Philippines they are lumped together and more commonly referred to as “NGOs.” The constitution guarantees the right of these organizations to “effective and reasonable participation at all levels of social, political and economic decision-making” and requires state agencies to “facilitate the establishment of consultation mechanisms” (Art. XIII, Sec. 16).

The constitutional framework has indeed secured the place of TSOs in governance and thus enabled them to empower citizens and communities, promote the rights and interests of the marginalized, and effectively engage in the various facets of nation building.

In 1991, the Philippine Congress enacted Republic Act 7160 or the Local Government Code (LGC), which further expanded the enabling environment for the Third Sector. Local government units (LGUs) are expected to promote the establishment and operation of TSOs (Chapter 1, Section 34); to render assistance, financial or otherwise (Section 36); and to make them active partners in local development. The Implementing Rules and Regulations (IRR) of the LGC mandate the representation of TSOs in local development councils, executive committees, and special bodies (Domingo 2005: 25). Executive Order No. 505 issued on 12 February 1992, specifically requires that “representatives of the private sector and non-government organizations based in the regions” shall comprise one-fourth of the members of Regional Development Councils (RDCs).

Within this very supportive and encouraging environment, TSOs are able to pursue their initiatives without government interference. Registration is not even required. Registration, however, confers legal status upon a TSO, which allows it to participate in government programs or receive subsidies, enter into contracts, raise funds, hold a title to a property; or be eligible for tax exemption (Lerma and Los Banos 1999: 241-245; Lerma and Los Banos 2002: 181; Domingo 2005: 280; Sandejas 2006: 5). The government regards even unregistered TSOs as social development partners, although the lack of legal status limits the extent of their participation in government programs and access to funds.

The Philippine Third Sector includes various types of organizations: church-initiated or religious groups; educational institutions; professional associations; charities; labor unions; social welfare organizations; social clubs and civic groups; neighborhood associations; intermediary and developmental NGOs; non-stock, nonprofit corporations; cooperatives; mutual benefit organizations; corporate and grant-making foundations;

grassroots organizations; and other citizens groups. As such, TSOs acquire legal status from different government agencies.

Registration

TSOs that opt for the non-stock, nonprofit corporate structure register with the Securities and Exchange Commission (SEC) as provided for in the Corporation Code of 1980 (Batas Pambansa Bilang 68). They include those organized to pursue charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, or civic services like trade, industry, or agriculture, as well as corporate and educational foundations (Section 88). The Corporation Code prohibits them from distributing part of their income as dividends to members, trustees, or officers, and if they generate profit in the course of pursuing their objectives, these must be used only to further their purpose(s) (Section 87).

The registration requirements of the SEC are simple and easy to comply with. Together with the duly accomplished registration form, TSOs need only to submit the following: Articles of Incorporation; By-Laws; names, nationalities, and residences of the incorporators; list of members; list of contributions; and a Board of Trustees resolution. Filing fees are minimal and the processing of registration could be completed within 24 hours. Applicants can even access the SEC I-Register website for the purpose. As of 31 August 2013, the total number of non-stock organizations, including foundations, registered with the SEC was 145,155 (SEC Economic Research and Training Department).

Registered TSOs are required to maintain and preserve at their principal office a record of all business transactions and minutes of all meetings (Section 74). More importantly, they are required to submit to the SEC every year, a General Information Sheet (containing their address, contact numbers, names of members and trustees, etc.) as well as audited financial statements. In other words, there is a mechanism for verifying their place of operations, the individuals involved, and their financial transactions.

In 1976, Presidential Decree 902-A reorganized the SEC and granted it “absolute jurisdiction, supervision, and control” over TSOs, including the power to deny, revoke or suspend their registration in accordance with law. In the performance of its functions, the SEC is authorized to enlist the support and deputize law enforcement agencies, private institutions, or persons. The SEC is likewise empowered to investigate complaints against non-stock, nonprofit corporations (Section 6, Batas Pambansa Bilang 68) and to impose administrative and civil sanctions (Section 144, Batas Pambansa Bilang 68).

Republic Act No. 6939 created the Cooperative Development Authority (CDA) in 1990 and mandated it to be the sole agency for the registration of all types of cooperatives. The CDA defines cooperatives as “autonomous and duly registered association of persons, with a common bond of interest, who have voluntarily joined together to

achieve their social, economic and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting a fair share of risks and benefits of the undertaking.” The different types of cooperatives include credit, consumer, marketing, advocacy, housing, transport, electric, water, health, dairy, fishermen, workers, insurance, or multipurpose cooperatives.

Besides the registration fee, cooperatives only have to submit the following requirements for registration: Articles of Cooperation; By-laws; bond of accountable officers; a sworn statement that at least 25 percent of the authorized share capital has been subscribed; and a general statement describing the cooperative’s structure, purposes, areas of operation, economic feasibility, and membership size. Registration is good for 50 years. Like non-stock, nonprofits, cooperatives are also required to file their audited financial statements and general information sheets annually. As of December 2012, a total of 37,113 cooperatives registered with the CDA, representing a 62 percent increase over the 22,792 cooperatives that were registered in 2011 (<http://www.cda.gov.ph>).

Labor organizations and associations of workers’ unions go to the Department of Labor and Employment (DOLE) to register in accordance with Article 234 of the Labor Code of the Philippines (Presidential Decree No. 442, 1974).

Institutions engaged in social work must secure a “certificate of registration” from the Department of Social Welfare and Development (DSWD) before they are allowed to operate. Unless registered, they are not entitled to receive any financial aid from any government agency or instrumentality (Republic Act No. 4373, 1965). These types of institutions are required to have a sufficient number of registered social workers to perform their functions according to standards.

The registration of homeowners and neighborhood associations, federations or umbrella organizations is the responsibility of the Housing and Land Use Regulatory Board or HLURB (Republic Act No. 9904, 2010).

Section 10 (m) of Youth in Nation Building Act of 1995 mandates the National Youth Commission (NYC) to “register, establish and/or facilitate and help in the establishment of the youth organizations and youth-serving organizations” (Republic Act No. 8044, 1995).

It is possible that a more extended search and thorough combing of legislative enactments and agency regulations would yield other registration mechanisms. What is clear is that TSOs acquire legal status by “registering” with the corresponding government agency, depending on their type or nature as required in separate pieces of legislation. This is summarized in Table 1.

TABLE 1. Government Agencies for Primary Registration of TSOs

Regulating Agency	TSOs Covered	Legal Basis
SEC	Non-stock, non-profit corporations	Corporation Code of the Philippines, 1980 (B.P. 68)
CDA	Cooperatives, their federations and unions	Cooperative Development Authority Act, 1990 (R.A. 6939)
DOLE	Labor organizations; associations or groups of unions or workers	Labor Code of the Philippines, 1974 (P.D. 442)
DSWD	Social work agencies	Regulating the Practice of Social Work and Social Work Agencies, 1965 (R.A. 4373)
HLURB	Homeowners' and neighborhood associations, federations or umbrella organizations	Magna Carta for Homeowners and Homeowners' Associations, 2010 (R.A. 9904)
NYC	Youth organizations; youth-serving organizations	Youth in Nation Building Act, 1995 (R.A. 8044)

(Domingo, 2005; Sandejas ,2006; pertinent laws)

Accreditation and Licensing

While **registration** confers legal status, **accreditation** is an official recognition from a particular government agency that a TSO satisfies its standards and therefore is qualified to participate in its programs. Meanwhile, **licensing** involves the grant to a TSO of a permit to engage in specific tasks or to practice a profession. In a sense, accreditation and licensing represent a secondary tier in recognizing the legal status of a TSO.

Every government agency and local government unit sets its own accreditation or licensing criteria, requirements, and procedures based on its program priorities and thrusts. In other instances, international donor institutions specify the criteria for accreditation of TSOs qualified to participate in programs they fund. A number of agencies require TSOs to be registered first with the SEC or licensed by another agency prior to accreditation. There are instances when tertiary education TSOs are required to register with the SEC first before the Commission on Higher Education (CHED) grants them a permit to operate, but at the same time, the SEC would require the presentation of a CHED permit to operate before it processes the registration of the TSO, an indication of the lack of coordination among regulatory agencies.

It goes without saying that government agencies that accredit TSOs or issue licenses set high standards for accreditation. For instance, the Department of Agriculture (DA) requires cooperatives, NGOs, POs, foundations, faith-based organizations, and rural-based organizations that want to provide organic agriculture extension services to be registered either with the SEC, CDA, or DOLE before they can be accredited. The criteria for accreditation includes the following (DA Administrative Order No. 11, 2012):

- at least three years of experience in organic agriculture using participatory/community-based approaches and documented positive impact on stakeholders;
- a “positive image and a high degree of acceptability among stakeholders in the areas to be served”;
- affiliation with a reputable local, national, or international federation;
- no record of anomaly in previous transactions; and
- technical competence, with proof of their work and performance.

The DA’s Agricultural Training Institute issues the accreditation only after a TSO satisfactorily complies with these requirements. This fairly recent issuance is a reassuring indication of the high standards for accreditation.

It is a reasonable to expect that accrediting agencies ensure compliance with their set standards and to monitor the operations and performance of TSOs in the programs areas they are authorized to engage in. Government instrumentalities that register or accredit TSOs are vested with sufficient authority to deny, suspend, or revoke the accreditation or license issued and to impose appropriate sanctions when necessary.

Table 2 presents a summary of government agencies that accredit, license, certify, or grant permits to TSOs (listed in alphabetical order according to the agency’s acronym). It identifies the corresponding legislative or executive issuances upon which the authority or responsibility of the particular agency is derived. By no means is the list exhaustive but it provides a glimpse into the regulatory environment governing the Philippine Third Sector and shows the interlocking relationships among government agencies that regulate the operations of TSOs.

The Philippine Third Sector is robust, vibrant, and relatively large. There is no official or accurate count of the total number of TSOs operating in the country but estimates put the number of registered and unregistered TSOs at a low of 249,00 to a high of 497,000 (Cariño 2000: 84). Notwithstanding its size, however, there is no comprehensive law to govern this large sector. Neither are the data of registering and accrediting government agencies linked together to generate an integrated database of all duly TSOs with legal status. Coordination among these agencies is likewise very minimal.

TABLE 2. Government Agencies that License, Accredite, or Certify TSOs

Regulating Agency	Third Sector Organizations	Authority/ Action	Pre-requisite	Legal Basis
Bureau of Internal Revenue (BIR)	PCNC-certified TSOs	Certificate of accreditation as "donee" institution	PCNC Certification	Section 2 (f), BIR Regulation 13-98, 1998
Commission on Higher Education (CHED)	Higher education institutions	Licensing	SEC registration	Higher Education Act of 1994 (R.A. 7722)
Commission on Elections (COMELEC)	Citizens' arms for electoral functions	Accreditation	SEC registration	Omnibus Election Code, 1985 (B.P. 881)
Department of Agriculture (DA)	Farmers and fisher folk cooperatives, associations, or corporations 4H and rural improvement clubs	Encourages participation of those duly registered with appropriate government agencies	SEC or CDA registration	Agriculture and Fisheries Modernization Act (AFMA) of 1997 (R.A. 8435)
Department of Agriculture-Agricultural Training Institute (DA-ATI)	Private organic agriculture extension service providers (OA ESPs): <ul style="list-style-type: none"> • Rural-Based Organizations • Cooperatives • POs • NGOs; • Business Entities • Foundations • Faith-based Organizations 	Accreditation	Prior registration with the SEC, CDA, or DOLE, as applicable	DA Administrative Order No. 11 Series of 2012 (29 February 2012)
Department of Agrarian Reform (DAR)	TSOs participating in DAR programs Agrarian reform communities	Accreditation Accreditation	Duly registered with appropriate government body	DAR Administrative Order No. 11-89, 26 April 1989 Comprehensive Agrarian Reform Act of 1988 (R.A. 6657)
Department of Environment and	Peoples organizations,	Accreditation	SEC, CDA, or DSWD	DENR Adm. Orders 99-36 and 99-53

Natural Resources (DENR)	cooperatives, or indigenous groups that participate in community-based forest management agreements		registration	
Department of Education (DepEd)	Primary and secondary schools Parent-teacher associations Relief organizations	Licensing Temporary Permit Certificate of Recognition (permanent permit to operate) Certification	SEC registration SEC registration encouraged	Education Act of 1982 (B.P. 232) Section 105 (I), Tariff and Customs Code (R. A. 1937) 1957
Department of Health (DOH) Bureau of Medical Services	Hospitals or medical facilities	Licensing	SEC registration	Act Requiring the Licensure of Hospitals, 1965 (R.A. 4226)
Department of Labor and Employment (DOLE)	Rural workers' organizations			
Department of Science and Technology (DOST)	Science clubs and organizations	Accreditation		
Department of Social Welfare and Development (DSWD)	Social welfare institutions and organizations Child-welfare agencies—reception and study centers; detention homes; child-caring institutions; shelter cares; nurseries;	Accreditation Licensing	SEC or CDA registration	Social Welfare Act of 1968 (R.A. 5416) Child and Youth Welfare Act, (P.D. 603)

	rehabilitation centers; day-care and substitute parental arrangements; child-placing agencies Relief organizations Public solicitations, fund drives for charitable or civic purposes Foreign adoption agencies	Certification Permit Licensing and accreditation		Section 105 (I), Tariff and Customs Code (R. A. 1937) 1957
Inter-country Adoption Board (ICAB)	foreign adoption agencies	Accreditation	DSWD license and accreditation	
Insurance Commission (IC)	Mutual benefit associations organized mainly for paying sickness, unemployment or death benefits to the members (not for charity or benevolent purposes)	Licensing	SEC registration required	Insurance Code, 2013 (R.A. 10607)
National Anti Poverty Commission (NAPC)	Organizations representing rights of basic sectors	Accreditation	SEC registration	Presidential Administrative Order 21, s. 2011
National Commission on Culture and the Arts (NCCA)	Arts and culture groups participating in NCCA programs	Accreditation	SEC, CDA, DOLE, or BIR registration required	
National Commission on Indigenous Peoples (NCIP)	Indigenous peoples organizations	Accreditation		The Indigenous Peoples Rights Act of 1997 (R.A. 8371)
National Council on Disability	Non-government organizations or	Encourage-ment as		Magna Carta for Persons with Disability, 2007

Affairs (NCDA)	private volunteer organizations promoting the welfare of disabled persons	partners and extension of possible support		(R.A. 9442, amending the Magna Carta for Disabled Persons, 1992 (R.A. 7277)
National Economic and Development Authority (NEDA)	Organizations and groups consulted for the MTPDP			Cabinet Memorandum, 1 July 2004
Philippine Health Insurance Corporation (PhilHealth)	Health care providers—hospitals, ambulatory clinics, dialysis clinics, rural health units/health centers providing outpatient services for PhilHealth; anti-TB/DOTS clinics	Accreditation	DOH license for 3 years	National Health Insurance Act of 1995 (R.A. 7875)
Technical Education and Skills Development Authority (TESDA)	trade associations; workers' guilds and associations; technical education and skills development centers;	Accreditation	SEC registration	TESDA Act of 1994 (R.A. 7796)
Local Government Units (LGUs)	TSOs participating in local programs and councils	Accreditation		Local Government Code (R.A. 7160)

(Domingo 2005: 16; CODE-NGO 2006: 2-4; Legislative and executive issuances)

Self-Regulation and Tax Incentives

In the early 1990s, a draft revision of the Tax Code contained a proposal to eliminate tax incentives granted to donors of TSOs. This prompted six big TSO networks to negotiate intensively with the Department of Finance (DOF) and its Bureau of Internal Revenue (BIR) for the retention of the privilege (Domingo 2005: 18).

The Tax Reform Act (Republic Act No. 8424) that was eventually enacted in 1997, retained the existing incentive and allows taxpayers to deduct from their taxable income up to 10 percent in the case of an individual, and 5 percent in the case of a corporation, for contributions and gifts made to TSOs and charitable institutions (Section 34 (H), R.A.

8424, 1997). To further implement R.A. 8424, the BIR issued BIR Regulation 13-98 on 14 December 1998, allowing donors to deduct the entire amount of their donations to TSOs that are granted “donee status.” Section 2 of the regulation refers to the “accreditation of non-stock, nonprofit corporations and NGOs” by an “accrediting entity” as a requirement before BIR grants “donee status” to a TSO.

As part of their negotiations with the DOF and the BIR, the TSOs worked together to develop a self-regulatory mechanism within the Sector that would serve as the “accrediting entity” referred to above. The efforts of the Caucus of Development NGO Networks (CODE-NGO), Philippine Business for Social Progress (PBSP), Association of Foundations (AF), League of Corporate Foundations (LCF), Bishop-Businessmen’s Conference for Human Development (BBC), and the National Council for Social Development Foundation (NCSD) led to the establishment of the Philippine Council for NGO Certification (PCNC) in 1997 (Sandejas 2006: 13) as a non-stock, nonprofit corporation registered with the SEC. The PCNC is acknowledged worldwide as a pioneer in TSO self-regulation. The Memorandum of Agreement signed between the Secretary of Finance and the PCNC on 29 January 1998, designated the PCNC as the “accrediting entity.”

The BIR grants “donee status” to TSOs that pass the certification process of the PCNC, which allows donors to deduct the entire amount of their donation to the TSO. The BIR Certificate of Accreditation is valid for a maximum of five years for existing non-stock, non-profit corporations and three years for those that are newly organized (Section 2, f, BIR Regulation 13-98, 1998).

Besides the “donee status,” a PCNC Certificate or “seal of good housekeeping” increases a TSO’s chances to access donor funds while at the same time provides the TSO an opportunity to evaluate the state of its operations. Only a very limited number of TSOs have opted to undergo the certification process, however. The steep cost of certification, which program budgets or donor funds are unable to accommodate, as well as the documentary requirements that are difficult for most TSOs to satisfy, are major obstacles in getting certified. A review of the list of the PCNC-certified TSOs reveals that it is an “elite” group composed mainly of large TSOs, corporate foundations, and those with financial capability to pay the certification fee. Before the DOF and PCNC signed the agreement, there were 6,000 TSOs with “donee status” registered with the BIR (Songco n.d.: 1). As of October 2013, however, the PCNC website lists only 283 TSOs as having been certified (<http://www.pcnc.com.ph/ngo-list.php?a=A>), and therefore eligible for “donee status.” This indicates that the coverage of the self-regulation mechanism relative to the size of the Sector is very limited.

On 22 October 2007, President Arroyo issued Executive Order No. 671, which effectively eliminated the PCNC’s role as “accrediting agency,” even without referring to its existence. The Order designated the CHED, DSWD, DOST, and NCCA as the “accrediting agencies” for “donee status.” The vigilance of the Third Sector leaders led to the

issuance of Executive Order No. 720 in 2008, repealing E.O. 671. E.O. 720 took cognizance of the important role of the PCNC, upheld its certification function, and simply expanded the membership of the PCNC Board to include a representative from the DSWD.

In addition to the grant of “donee status,” TSOs are also generally exempted from paying taxes. Under Section 30 of the Tax Reform Act of 1997, non-stock, nonprofit organizations are exempted from paying taxes on income they generate, except when they earn profit through the use of their assets and properties (Republic Act. No. 8424, 1997). Section 105 (I) of the Tariff and Customs Code likewise provides that “duly registered” nonprofits “certified” as relief organizations by the DSWD and the DepEd are exempt from paying import duties on goods for distribution to the needy (Republic Act No. 1937, 1957).

In general, registered cooperatives are exempt from paying taxes, including income tax, value-added tax, documentary stamp tax, and annual registration fees. TSOs engaged in microfinance are also exempted from paying income taxes, except when microfinance is not part of their registered activities (Revenue Regulation No. 14-2007, 2007).

Progressive or Vulnerable?: The PDAF Scam

As may be gleaned from the discussion above, laws governing TSOs in the Philippines are dispersed and scattered. There are various modes of acquiring legal status but registration is voluntary. Thus, TSOs are able to operate without being registered, accredited, licensed, or certified despite the many government agencies that could grant them legal status and the tax incentives they could enjoy. There is no government entity responsible for regulating activities or setting standards for the operations of non-registered TSOs. In fact, they can operate as de facto organizations, have members, organize activities, and participate in community or local government programs.

For those who choose to be registered, registration requirements are easy and procedures are quick and simple. Accreditation, licensing, or certification is decentralized to various agencies and local government units, which set up their own standards and procedures. The conclusion that may be drawn therefore is that the legal climate is very conducive, open, liberal, and non-restrictive for Philippine TSOs, and therefore progressive. This has allowed the Sector to grow in size and expand its scope of operations.

At the same time, however, the progressive and encouraging legal framework is the Sector’s own source of vulnerability. A great majority of TSOs have been working for the common good, acting responsibly, engaging in activities that neither government nor the private sector have the inclination or capacity to be involved in, addressing concerns of marginalized groups even in areas of conflict or great risk, and making their programs and services accessible to remote communities. This has enhanced the credibility, trust,

and legitimacy of the Sector and secured for it a distinct and valuable role in governance. The liberal regulatory framework, however, has facilitated the legalization of TSOs set up by unscrupulous persons and groups primarily for private gain rather than societal good. When a few TSOs commit any wrongdoing or abuse, the entire Sector's credibility and integrity is eroded. Although instances like these may be few and far between, the Third Sector's image is shrouded with suspicion and distrust and citizens raise legitimacy questions when such occurs.

For instance, since the Local Government Code requires representation of TSOs in local development councils, local government officials organize their own TSOs to gain control of these councils. Oftentimes, the spouses of local politicians head or run the TSOs.

In recent months, more than a dozen whistleblowers have testified that Philippine TSOs have been used as conduits to siphon off billions of pesos in government funds over the past few years. The intricate web of corruption involves the disbursement of Priority Development Assistance Funds (PDAF) for non-existent projects or beneficiaries. The PDAF, or popularly known as the "pork barrel," is intended to finance projects that citizens are supposed to have identified as their priority needs. Accessing the PDAF is a long process—from project identification, review, fund release, implementation, and reporting. It involves several government agencies performing checks and reviews.

The PDAF is provided for in the General Appropriations Act (GAA) or the national budget, which allocates Php70 million (approximately US\$1.5 million) for each congressman every year to fund projects in their respective congressional districts. Congressmen are allowed to spend up to Php30 million for "soft" projects (education, health, social services) and Php40 million for "hard" (infrastructure) projects. Each senator is allocated a much bigger amount of Php200 million (approximately US\$4.4 million) per year because their "constituents" are not limited to a specific district but are all over the entire country.

When the schedule of fund releases is set, the Department of Budget and Management (DBM) alerts the legislators that they may submit their list of priority projects, which must be in accordance with the provisions in the GAA for a given year. The GAA specifies the types of projects that may be funded by the PDAF and identifies the agencies designated to implement them—specific national government agencies, local government units, or government-owned or –controlled corporations (GOCCs). The GAA requires legislators to identify the beneficiaries that meet the standards of implementing agencies, and to prioritize projects located in fourth- to sixth-class municipalities or those intended for indigents identified by the DSWD's Household Targeting System (Ilagan, 2013).

The congressmen then submit their lists of projects to the House Committee on Appropriations, while senators submit theirs to the Senate Committee on Finance. By

this time, project details (description, location, cost, implementing agency, beneficiaries, etc.) must already be indicated. After reviewing the projects, the Chairs of the House and Senate committees, through the House Speaker and Senate President, respectively, jointly endorse the lists to the DBM, which in turn conducts a more thorough evaluation to ascertain whether the projects meet the requirements set forth in the GAA. Incomplete details or the liberal (or “creative”) interpretations of the GAA menu have caused delays during this phase (Ilagan, 2013).

Consonant with the government’s cash program, the DBM then issues the Special Allotment Release Order (SARO) for projects that meet requirements. The SARO obligates funds for the project to the corresponding implementing agency. The DBM furnishes copies of the SARO to appropriate offices within the DBM, the Commission on Audit (COA), and the legislator concerned (Ilagan, 2013). At this point, many government offices and personnel have taken part in the process equipped with the legal basis for monitoring the projects.

An implementing agency could engage a supplier or contractor to implement PDAF-funded projects. TSOs are able to participate in PDAF-funded projects as contractors of implementing agencies, provided they submit to the accreditation process of the agency. Any contract for goods or services is governed by the Government Procurement Reform Act (Republic Act 9184, 2004), which has strict guidelines on prequalification of bidders and bidding procedures. Despite these safeguards, the legislators’ preferred contractors succeed in bagging PDAF contracts most of the time.

In theory, legislators do not participate in project implementation, which is the responsibility of implementing agencies identified in the GAA. In practice, however, legislators are known to exert tremendous pressure on the implementing agencies to award projects to preferred contractors.

As the PDAF process continues, more government personnel, guidelines, and procedures are involved. The DBM issues a Notice of Cash Allocation (NCA) to the government depository bank and informs the implementing agency and the legislator concerned about it through an Advice of Notice of Cash Allocation Issued (ANCAI). This enables the legislator to monitor the project, and the implementing agency to pay the contractor or service provider. For projects implemented by LGUs, the DBM acts as fund administrator. For projects implemented by GOCCs, funds are released to the Bureau of Treasury. Funds are released in tranches. Succeeding tranches are not released unless the contractor submits a progress report and liquidates or settles earlier releases, which have to be validated by the implementing agency and the legislator concerned.

The GAA requires the DBM and all implementing agencies to provide all information pertinent to PDAF projects in their respective websites—the list of projects; names of proponent legislators; names of project beneficiaries or recipients; status of implementation; fund releases and realignments; and assessment reports. LGUs are

required to post such information in three publicly accessible and conspicuous places and have the option of publishing these in newspapers.

On 16 August 2013, the COA Special Audits Office dropped a bombshell when it released Report No. 2012-03, which revealed that from 2007 to 2009, up to Php10 billion (or about US\$232.6 million) PDAF funds released to accredited TSOs were questionable. They were either disbursed for ghost projects, or ghost beneficiaries, or both. PDAF funds released to TSOs retain the character of public funds and are thus subject to auditing rules and regulations.

The discovery of the so-called “PDAF scam” spawned a series of investigations and widespread protest rallies in the Philippines and abroad. More than the specific TSOs and personalities involved, however, the scam dealt a serious blow to the Philippine Third Sector as a whole. The broadsheets, radio and television news, social media, and the public had a field day condemning what are referred to as “bogus NGOs” because they received funds for nonexistent projects. This has seriously damaged the image and integrity of the Sector. TSOs acted swiftly to repair the damage by issuing statements and organizing protest rallies demanding investigation of the people and TSOs involved, and holding them accountable.

Supreme Court Chief Justice Sereno expressed surprise that starting 2006, there was a “philosophical shift” from the legislative and executive branches of government toward TSOs in the implementation of PDAF projects. She noted that taxpayers were financing the growth of TSOs by channeling funds to them, and asked, “Is this a systems failure?” (Burgonio, et al, 2013: 10).

For weeks and weeks, the headlines screamed against the perpetrators of the scam and called for the abolition of the PDAF, the source of massive corruption. TSOs became the favorite whipping boy and the credibility of the Third Sector continued to plunge. Investigations revealed that the TSOs involved in the scam were duly registered and accredited. After they received funds and therefore served their purpose, these TSOs cease operations and could no longer be located. New ones are registered again, with almost the same set of incorporators or new fictitious officers, and through their links with legislators, are able to access government funds once again. Since PDAF projects must satisfy specific GAA requirements, go through layers of review and validation process, be governed by strict government procurement law, be subject to the reportorial and evaluation procedures, and deal with numerous government offices and personnel involved, how could a major scandal like this have taken place? Is there indeed a systems failure?

The many, many instances where TSOs have successfully engaged in the governance process have established the Sector’s credibility and legitimacy in society. A case in point is the partnership of the Commission on Audit with the Concerned Citizens of Abra for Good Government (CCAGG), which has enhanced transparency and accountability in

government projects. The COA and CCAGG have signed a partnership agreement for the conduct of participatory audit. The CCAGG is an organized group of community volunteers engaged in anti-corruption work. It started as an election monitor in a province widely known as a political hot spot. After the elections, it ventured into monitoring government infrastructure projects on its own using tools it developed (Domingo 2006). Utilizing the Value for Money approach, the CCAGG assists the COA in monitoring whether government projects are accomplished at the least cost while producing the desired value or benefit to beneficiaries. The partnership has been very effective thus COA has expanded it to include more TSO partners in its participatory audit projects (ANSA-EAP, n.d.).

The DSWD is one of the PDAF implementing agencies but it runs other programs as well, which are not PDAF-funded. Among them is the *Pantawid Pamilyang Pilipino Program* or 4Ps. The 4Ps, otherwise known as the Conditional Cash Transfer (CCT) program, is a major anti-poverty program of the current Administration featuring the transfer of cash to mothers in exchange for ensuring that their children go to school, get regular health checks, undergo vaccination and deworming, among others. The program is implemented in all the 17 regions of the country covering 1,484 municipalities and 143 cities (Mendoza 2013). Focused targeting enables the DSWD to identify the poorest of the poor in a given area eligible for the program. The cash transfer is insufficient to move families to a non-poor category but are investments in children that mitigate dependency.

There are 421 TSOs nationwide helping the DSWD to implement the 4Ps. They help to validate the economic status of beneficiaries; monitor and collect feedback; conduct training; and facilitate family development sessions. The Philippine Business for Social Progress (PBSP), Association of Foundations (AF), League of Corporate Foundations (LCF), Rotary clubs, and various chambers of commerce count among the DSWD'S partners (Ronda 2013). The PBSP is a registered non-stock corporation drawing its membership from the top corporations in the country. The AF is a network of TSOs registered with the SEC and is engaged in a range of education, science and technology, health, culture, governance, and social development programs. The LCF is a network of operating and grant-making foundations promoting corporate social responsibility (CSR) not only among its members but also in the private sector.

DSWD Secretary Dinky Soliman, a long-time Third Sector leader who has been mainstreamed in government service, has announced plans to further strengthen partnership with TSOs, referring to them as the “third eye” of the DSWD (Ronda 2013).

In the case of PDAF-funded DSWD projects, however, Secretary Soliman believes otherwise. The intense meddling of legislators in project selection and implementation, especially the choice of contractors, has led to the leakage of millions of pesos to ghost projects and ghost beneficiaries. Despite its better judgment, the DSWD is powerless to go against the legislator's choice of a TSO as contractor. DSWD's limited staff likewise

prevents it from monitoring PDAF projects and only gets alerted when TSOs do not liquidate allocated funds. Once the legislator's term has ended, the DSWD is unable to get the former's help to hold the TSO accountable (Delos Reyes, 2013).

One factor in the successful partnership of the DSWD with TSOs in its 4Ps program is the control mechanisms it has put in place. It requires TSOs that want to participate in the program to be registered with the SEC for at least three years before they can be accredited. Whether the DSWD actually checks the General Information Sheet and audited financial statements submitted yearly to the SEC is not certain but the three-year requirement enables the DSWD to look at the TSO's track record to confirm that it is not a fly-by-night opportunist. Furthermore, many of the DSWD partners are well-established, reputable, and large TSOs. Secretary Soliman's long experience in the Sector and her links with other TSO leaders provide another convenient handle in vetting would-be partners. Political interference, however, neutralized this advantage in the case of PDAF-funded projects.

The DA, which has stringent accreditation standards, is among the implementing agencies implicated in the recent scam.

The Way Forward

The encouraging legal framework has made it very easy for "bogus" TSOs to get registered. It is indicative of the insufficient or ineffective safeguards to ensure the integrity of the regulatory environment against fly-by-night operators and pseudo-TSOs. Being able to complete the registration process in 24 hours eliminates a long waiting time but it also prevents the SEC from conducting the necessary verification of the information contained in a TSO's application, such as the names of incorporators, place of office, and the like. One of the facts revealed during the investigation of the PDAF scam is that the officers of the TSOs were either fictitious or were real persons who were either unaware that their names were being used or allowed themselves to be used for some consideration. Many of the TSOs implicated in the scandal had almost the same set of officers or individuals.

Considering therefore that the credibility and legitimacy of the entire Third Sector is eroded when a few TSOs engage in fraud, what measures should be put in place to safeguard the Sector? Self-regulation? More regulation?

The PCNC self-regulation mechanism of the Philippine Third Sector is a globally recognized innovation. The data show, however, that self-regulation has had a very limited scope in the Philippines. Out of an estimated half a million TSOs the PCNC certification has reached only 283. This dismal record requires serious reflection to identify alternatives that would make self-regulation more inclusive. For instance, the Sector could explore the possibility of the PCNC extending its services to become an information hub, which provides various types of information on TSOs, not only on

those it has certified. TSOs could support this initiative by voluntarily furnishing necessary information for the database.

TSO federations and associations could also institute self-rating mechanisms, which can become a basis for verifying the track record and performance of its members. This would not only facilitate the accreditation process but protect the Sector as well against fly-by-night organizations.

Some Philippine TSOs believe that regulation would benefit the sector but others resist more of it. Bothwell (2004) notes that Third Sector scandals have occurred in the United States despite strong regulation.

There is no lack for laws, administrative issuances, criteria, guidelines, and procedures governing TSO registration and accreditation in the Philippines. What appears to be the problem is that the agencies involved put their guard down and failed to be more aggressive and proactive in monitoring the TSOs, which they register or accredit. They must exercise their authority to deny, suspend, or revoke registration or accreditation and even impose sanctions as necessary. Registering and accrediting agencies must exercise due diligence to prevent similar occurrences in the future and thereby protect the sector.

It is necessary that steps be taken to ensure greater coordination among the registering agencies—SEC, CDA, DOLE, HLURB, DSWD, and NYC. A central coordinating body should assume the role of maintaining an integrated database and serve as a clearinghouse of all registered, accredited, licensed, or certified TSOs. This would not only facilitate verification of the history, status, and performance of TSOs. It could as well develop standards that would result into a rating system for TSO. At the same time, it would enable TSOs to get information on the criteria and procedures governing the operation of TSOs as a one-stop-shop.

Finally, the consolidation and codification of the separate laws governing TSOs should be attempted to standardize requirements and procedures, facilitate monitoring and compliance, and eliminate overlaps. This would enhance the regulatory environment for TSOs, promote their capacity to effectively participate in the governance process, and promote the public interest.

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