

NONPROFIT AND CIVIL SOCIETY STUDIES
An International Multidisciplinary Series

COMPARATIVE THIRD SECTOR GOVERNANCE IN ASIA

Structure, Process, and Political Economy



EDITED BY
SAMIUL HASAN AND JENNY ONYX

Comparative Third Sector Governance in Asia

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An International Multidisciplinary Series

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Samiul Hasan • Jenny Onyx
Editors

Comparative Third Sector Governance in Asia

Structure, Process,
and Political Economy

 Springer

Samiul Hasan
United Arab Emirates University
Al Ain
UAE

Jenny Onyx
University of Technology, Sydney
Australia

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Preface

For the Asia Pacific Philanthropy Information Network [APPIN—an endeavour of the Asia Pacific Philanthropy Consortium (APPC): www.asianphilanthropy.org], we tried to map different aspects of philanthropy and third sector in a dozen Asian countries. Known variously as voluntary organisations, non-profit organisations, non-government organisations, people’s organisations, community-based organisations, cooperatives and civil society organisations, the third sector was seen to be growing rapidly in all the countries. The more we found out that the third sector organisations are increasingly being involved in societal governance the more we began to ask the obvious question ‘if the TSOs are to be part of governance, how about their own governance’? While their importance is widely acknowledged, their sustainability is not guaranteed and depends to a great extent on effectiveness and accountability of their governance. In all countries, our research partners showed interest in the topic and desire to go ahead with exploring the answer.

Then Suzanne Siskel of the Ford Foundation (the then Asia Office) made a generous offer to fund the project and the study kicked off. We record our appreciation for the Ford Foundation and Suzanne, in particular.

‘Governance’ is defined to mean the strategic leadership of non-profit organisations (Murray, 2001). For us third sector organisation governance refers to the completion of the following functions:

- Setting directions and strategies for the organisation.
- Identifying and ensuring the type and quality of goods and services the organisations offer.
- Ensuring responsible oversight of the use of financial and other resources of the organisation.
- Defining and maintaining relations between the ‘board’, staff, beneficiaries, and the fund givers, and other external stakeholders.
- Relating the organisation to its wider society: the government, the financiers, the members and other stakeholders.

In Northern countries, the performance of these functions is often seen as the role of the board of directors or the governing board. The fundamental purpose of this study was to research the current practices of third sector organisation governance in a range of Asian countries in order to document the variety of approaches

adopted, to determine the linkages between governance, accountability and performance, and to identify the features of effective approaches to third sector organisation governance. It was meant to draw the attention of Asia's third sector organisations to the importance of good governance. The project had three interrelated aims:

1. To generate the first systematic overview of the approaches to governance by third sector organisations in a number of fields of activities in a number of Asian countries, and identify the best features of third sector organisation governance.
2. Through this research and via a variety of dissemination strategies, to encourage Asia's third sector organisations to examine their own governance arrangements and to adopt best practice models.
3. To extend and consolidate a network of scholars in Asian countries with an interest in the third sector so that they can act as advisers and offer training programmes in governance to third sector organisations in their countries. Such a network will also help to entrench an interest in the third sector within several of Asia's leading universities.

The first aim is the subject of this volume. To address the second aim, in the course of the project, several partner countries embarked on major training/workshop programmes within their own country, and all published part of the research within their own country. The evidence for the achievement of the third aim lies in the variety of contributing authors to this volume. Most partners have become active within the ISTR (International Society for Third-sector Research) and have formed a variety of other collaborative arrangements.

The project intended to address the following research questions:

- Is there a widely accepted view among leaders from civil society, government, business and the international donor community of what constitutes good governance in the third sector?
- What importance is governance seen to have; is it seen to be related to accountability and/or achieving optimum organisational performance?
- Is there an 'Asian model' of third sector organisation governance—or do governance and accountability practices differ from country to country with different outcomes?
- Are there traditional forms of organisational governance and are these manifested in contemporary third sector organisations?
- Do governance practices differ across fields of activity or according to size or major source of income?
- To whom are the board members accountable, and how?
- Do organisations which are generally accepted as being good at what they do share a particular approach to governance?

This project attempted to address these questions for six different Asian countries with different cultural and political traditions and at different levels of economic development. The countries selected were China, India, Indonesia, Philippines, Thailand and Vietnam. The work was undertaken in each country under the leadership of a

senior academic. In China Professor Yuanzhu Ding at the Peking University led a team of researchers. In India Professor Yashavantha Dongre at the University of Mysore led the team with help mainly of Professor Ishwara Bhat and Dr. Shanthi Gopalan. In Indonesia Professor Thoby Mutis of the Trisakti University was the Chair of the Country team while Ms Maria Nindita Radyati was the principal researcher and the coordinator of the country team. Maria has also extended the research work a bit further to pursue her doctoral work at the University of Technology Sydney. In the Philippines Dr. Ma. Oliva Domingo of the University of the Philippines, under the guidance of Professor Ledivina Cariño, performed as the principal researcher and the research coordinator. Dr. Oliva has earned her doctorate for a part of this work titled (*Good Governance and Civil Society: The Role of Philippine Civil Society Boards*). In Thailand Professor Juree Vichit-Vadakan led a team of researchers at the National Institute of Development Administration. One of the researchers, Dr. Arpat Boonrad, has also earned a doctorate for her research work related to this project. Drs. Khuat Thu Hong and Le Bach Duong of the Institute for Social Development Studies jointly took the responsibility for undertaking the research in Vietnam. We gratefully acknowledge their work, enthusiasm and support for the study. We also record our gratitude to the colleagues and staff in Peking University, Trisakti University (Indonesia), University of the Philippines and the National Institute of Development Administration (Thailand) for being wonderful hosts in organising all partners meetings for the study at different times.

We record our appreciation to Professor Helmut Anheir of the Nonprofit and Civil Society Studies of the UCLA for his support for the work, and to Dr. Michael Edwards, Ford Foundation, for his initial encouragement for the project.

Our thanks are also to Teresa M. Krauss, Katherine Chabalko and other staff at Springer for patience and support.

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United Arab Emirates University
University of Technology, Sydney

Samiul Hasan
Jenny Onyx

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Contributors

Ishwara Bhat

Faculty of Law, University of Mysore, India

Ledivina V. Cariño

National Academy of Science and Technology of the Philippines and The University of the Philippines, The Philippines

Ma. Oliva Z. Domingo

Department of Public Administration, National College of Public Administration and Governance, University of the Philippines (UP-NCPAG)

Yashavantha Dongre

Faculty of Commerce, and Third Sector Research Resource Centre, University of Mysore, India

Yuanzhu Ding

Centre for Volunteering and Welfare, Peking University, Beijing, China

Le Bach Duong

Institute of Social Studies, Hanoi, Vietnam

Shanthi Gopalan

Third Sector Research Resource Centre, University of Mysore, India

Samiul Hasan

United Arab Emirates University, Al Ain, UAE

Khuat Thu Hong

Institute of Social Studies, Hanoi, Vietnam

Mark Lyons

Centre for Australian Community Organisations Management, University of Technology, Sydney

Jenny Onyx

School of Management at the University of Technology, Sydney (UTS), Australia

Maria R. Nindita Radyati
Trisakti University, Indonesia, and University of Technology, Sydney

Ian Nivison-Smith
Centre for Community Organisations and Management, University of Technology,
Sydney, Australia

Juree Vichit-Vadakan
Centre for Philanthropy and Civil Society National Institute for Development
Administration, Thailand

Chapter 1

Third Sector Organisation Governance: Introducing the Themes and the Chapters

Samiul Hasan, Mark Lyons, and Jenny Onyx

In the World Bank ‘governance’ model, organisations that are neither part of the establishment nor created to distribute profits among the owners/members have vital roles to play in the economic, and political advancement of a country.¹ These organisations are formed by people to offer a variety of services to themselves or to others or to advance a cause, but not to make money. They play a central role in public governance achieving and sustaining a prosperous economy and a just civil society. They are known variously as voluntary organisations, non-profit organisations, Non-government organisations (NGOs), people’s organisations, community-based organisations, cooperatives and civil society organisations. Together they constitute a third sector, being separate from both government and business. While these third sector organisations’ (TSOs) importance in public governance is widely acknowledged, their sustainability is not guaranteed and depends to a large extent on the effectiveness and accountability of their own governance. The World Bank, the Organization for Economic Cooperation and Development (OECD) and many advocates of improved public governance in countries of the South pin a lot of hope on the capacity of civil society or the TSOs to hold governments accountable; for that to work, the former must model the attributes that are associated with good organisational governance.

But what are such attributes? Is there a particular model of governance that if followed will ensure the virtues of transparency and accountability, as well as effective performance that the champions of civil society desire? Are TSOs similar to firms, so that models of good practice in the business world should be applied to them? And if governance implies a democratic rule, need the model of democracy followed be that of representative democracy—what of more participatory models? And if there is an ideal (or idealised) model of governance, is it widely followed, or widely ignored? This volume contains the first large-scale study of the practice of governance in third sector (or civil society) organisations in six countries in the most populous and the fastest growing region, Asia.

The study entails current practices of TSO governance in the participating countries in order to document the variety of approaches adopted, to determine the

¹These organisations primarily starts with social and development issues, anyway; see World Bank, 1992.

linkages between governance, accountability and performance and to analyse the political economy of TSO governance. In this chapter, the theoretical and methodological foundation of the study is highlighted. This chapter is divided into five major sections dealing with the third sector and Asia, the main aspects of third sector governance found in the current literature, rationale of the study, methodology and summary of the chapters.

The Third Sector and Asia

Hannah Arendt argues that authoritarianism can thrive only where individuals are isolated and atomised, each left to face the power of the state on his or her own. This is why the collective capacity to resist state authoritarianism can also encourage state responsiveness, increase the transparency of state and corporate activities and process and sometimes even produce organised dialogue (from Warren, 2000). This realisation has forced individuals in dynamic societies to organise themselves for goods and service delivery, or for advocacy for members and non-members. Thus a large ‘third sector’ has emerged everywhere (Salamon et al., 2003). Asia, the largest continent in terms of diversity and size of population, has witnessed exponential growth of the third sector in the past few years. In this section, we highlight major features of the third sector as relevant to the third sector in Asia.

What Is the Third Sector?

The third sector is composed of that vast array of organisations that are not part of government and not operated to profit their owners. The organisations that make up the third sector are the product of private collective action to provide goods or services for their members or for others. The generation of the largest possible profit on funds invested is not their primary objective and thus they differ in their behaviour from the conventional business organisation. Almost all specifically prohibit the distribution of profit directly to members or other stakeholders. Unlike conventional business organisations, most are democratically governed (Lyons, 2001). Others, however, have no members; they are, to use an American terminology, ‘non-owned organisations’.

‘Third sector organisations’ refer to the organised form of the third sector civil society,² and include organisations variously known as charities, foundations, NGOs,

²For a good discussion on and elaborate definition of the third sector organisation, see Lyons (2001).

associations, clubs, societies, unions, cooperatives, churches, temples, mosques and the like. Third sector organisations are important actors in many sectors, especially the social services, social development, health, education, arts and culture, sport and recreation. They advocate the interests of their members or other causes, such as the preservation of the environment or the elimination of poverty.

Although there are subtle differences in usage, the third sector is also called the non-profit sector or social economy or civil society. But whatever they are called, in most countries their numbers have grown greatly: since the 1960s in the West, since the 1980s in non-communist Asia, Africa and Latin America and since the 1990s in ex-communist regimes of Europe and Asia (Salamon, 1996). Recognition of the importance of this diverse set of organisations has been one of the more important public policy developments of the last quarter century (OECD, 2004; UNDP, 2004; Delors, 2004).

Third Sector in Asia

A myriad of terms are used in Asia to refer to these type of organisations that also include many traditional informal groups as well as large service (e.g. education, health) delivery institutions or NGOs with thousands of paid staff. Traditional local groups in Asia have existed since ancient times allowing people the scope of achieving security and other basic human needs collectively.³ In ancient India, there also existed ‘the workmen’s cooperative groups’ and guilds (*sreni*) embracing all trades and industries⁴ (Basham, 1967, p. 219). These traditional third sector, in the form of village councils or traders fora, survived the shocks of political revolutions over the years in spite of the absence of state guidance and support (Majumdar et al., 1967, pp. 75–76).

In the recent years as the fear of communist invasion receded following the cold war, and as the countries entering the ‘third wave’⁵ started to install democratic governments, the roles and importance of TSOs just as advocacy groups diminished; rather, the third sector became, on the one hand, the vanguard of democracy and monitor of the government’s activities and, on the other hand, an alternate source of goods and service delivery, in the process shifting the dynamics of its relationships to donor nations and/or organisations, and national governments.

³For example, *gram sabha* (village councils) in India dates back to around 1000 BC. There were *panchayats* (literally—five-manned group) assessing taxes, collecting revenues and delivering judgements on local disputes in small local communities in ancient India (Basham, 1967; Jathar, 1964; Kautilya, 1977; Hasan, 1991; 2001a, b).

⁴Eighteen very important crafts had their own guilds presided over by a foreman (*pramukh*), an elder (*jyeshthaka*) or a chief (*sreshthin*) (Majumdar et al., 1967, pp. 75–76).

⁵First, long wave of democratisation: 1828–1926 (with first reverse wave 1922–1942); Second, short wave of democratisation: 1943–1962 (with second short reverse wave 1958–1975), see Huntington (1991, p. 17).

Many governments provided tacit supports in the expansion of the third sector, and also in improving their capabilities. The functioning of the third sector through volunteers supported by domestic and overseas donations reduced 'pressure' on the government exchequer. The third sector also showed the potential of diverting a large number of conscious and liberal minded young graduates from getting involved in political agitation out of frustration (Hasan, 2001a).

As a result, the third sector has been growing rapidly. During the preparation for UN Conference on Women, the term 'NGO' was popularised in China (see Ma, 2001) These NGOs are 'issue-oriented social groups, rather than interest groups or pressure groups'.⁶ In Vietnam, since the *doi moi* (characterised by less state role in key areas of development and public services), and because of an increased demand for services by the people and for taking advantages of opportunities introduced by economic reforms, the third sector has grown rapidly. Realising its limited, and declining, capacity, the Vietnamese government also has acknowledged that many functions which used to be performed by states can be offered by self-established organisations and individuals, particularly in the field of welfare.⁷

In the past ten years, Asia has seen a growth in democratic institutions and increasing involvement of overseas funding sources. Because of an exponential growth of the third sector, governments in many countries became sceptic and more interested in monitoring TSOs and their activities. The limited available funds created leverage for the foreign donors as well as national governments to develop stringent rules for fund disbursement. This action encouraged competition among the TSOs to perform, to raise funds and to receive donations. Governments also framed new regulatory regimes. All these factors made the TSOs reflect on their governance and accountability, and this in part leads to the present study.

Third Sector Governance

Much of the talk about governance is from the English speaking, common law democracies in the North: especially the United States (US), the United Kingdom (UK), Canada and Australia. This is true of both public and organisational governance. The various international agencies, such as the World Bank and the International Monetary Fund (IMF) and the national governments of the OECD countries, are

⁶The 2008 Olympics bid for Beijing gave these organisations more importance. Two major 'genuine' popular organisations or NGOs, Global Village of Beijing and Friends of Nature, were co-opted to the official Olympics bid committee.

⁷However, with government's priority to maintain centralism, 'unlike most conceptions of civil society, Vietnamese active in the public sphere do not generally see themselves as asserting civic power against state power. Rather, they prefer to infiltrate the state, find informal allies, and build networks that may conceivably be seen as fulfilling state, public and private objectives simultaneously' (Marr, 1994 cited in Duong and Hong, 2006).

strong advocates of the transparent and democratic model of public governance, especially as a way of eliminating corruption.

The interest in governance is manifested as a push for a particular form of governance because the absence of good governance is seen as an important factor in the failure of states and of organisations. Thus the determination to push for democratic forms of public governance is based on recognition of the way authoritarian regimes are generally corrupt and fail to provide the right environment for economic growth. In a similar way, the heightened interest in organisational governance is the product of frequent failures of large economic entities, failures that rob investors, lenders and other creditors of millions, even billions of dollars.

Governance has become a much used term in this first decade of the new (Common Era, CE) millennium. Governance is much used in discussions about the behaviour of states, but also in discussions about the behaviour of organisations. In the first case, it is usually understood as public governance; in the second, organisational governance. In this section, the discussion relates mainly to aspects of governance in general as well as the TSO governance.

To What Does Governance Refer?

Governance refers to the way major (policy) decisions are taken, their implementation is monitored and outcome is evaluated for the analysis of effectiveness and sustainability of any organisation. At one level, it refers to the institutions and the processes of collective decision-making in a nation or a state. It refers to the process of government decision-making but includes the way governments are elected/selected and the way citizens' organisations (civil society) influence that process and the ongoing decision-making of the government, and also to the extent to which they are free (and have the capacity) to take decisions for their own membership without reference to government. It includes the way in and the extent to which governments are answerable to the people of that nation or state.

Similarly, governance of an organisation refers to the way decisions are taken in the organisation, especially the high-level decisions about the direction of the organisation and the processes that are followed to ensure the organisation is accountable to those who formed it, belong to it, support it and/or benefit from it. Most large organisations (whether non-profit or for-profit) have a formal board (of directors, of governors) or a committee who are responsible for setting the organisation's directions and for ensuring that the interests of various stakeholders are represented.

Governance is a term that encompasses not only the act of governing or ruling but also the relationship of the governors to the governed. In most instances, the term 'governance' implies a particular relationship, one of transparency and accountability, generally based on a democratic model whereby the ruled are capable of judging and recalling the rulers. Thus 'governance' carries an evaluative as well

as a descriptive reference. Sometimes, and properly, a distinction is drawn between 'governance' (descriptive) and 'good governance' (evaluative).

Governance refers to the arrangements and practices of governing, whether an organisation or a state. Totalitarianism is a form of governance, while anarchy is the absence of any form of governance. However, as noted above, because of the positive evaluation implicit in the term, in most discussion governance is tied to the practices of representative democracy. A well-governed country is one governed in the interests of the whole population. To ensure this, the governors should be accountable to the governed by regular, free and fair elections and their decisions should be open and transparent, and critically reviewed by independent source such as the media, so that people can cast an informed vote. In a similar way, a well-governed organisation is expected to be governed by a group of people accountable, either to its owners (shareholders or members) or to the wider public, in the case of non-owned organisations such as charitable trusts in the common law traditions or foundations in civil law countries.

TSO Governance

In Northern countries, the literature on organisational governance is largely normative and adopts either of two approaches. The older approach focuses on the fiduciary responsibility of the board, emphasising the board's role as steward of public funds and tax concessions provided to the organisation. The second, now more common approach, draws from the corporate governance literature and emphasises the role of the board in providing an organisation with strategic leadership. This model is being suggested for TSOs everywhere.

This model has two variations with different approaches to 'board' formation depending on the features of the TSO. There are those established to help provide services for others or for wider public good. In common law countries these are called charities; in civil law countries, foundations. Beneficiaries (clients/customers) of these organisations are different to those who provide their operating revenue. Such organisations might have a few members (a requirement of incorporation in common law countries) but in some cases they may have none at all. They are usually required to have a board (of directors or governors), but these boards tend to be self-appointing. Another large group of TSOs (associations, clubs, societies, cooperatives) are established to provide services or to represent the interests of their members. Their boards are generally elected and are responsible to membership.

Some of the same sources that advocate the corporate model of governance for for-profit entities⁸ advance a similar model as suited for third sector or civil society organisations. In this they are enthusiastically joined by the overseas aid agencies

⁸For example, the OECD.

of Northern governments, non-profit aid and development organisations (sometimes called NGOs) domiciled in those countries and large private foundations found especially in the United States. Some TSOs in Asia may have adopted the developed country model of TSO governance. However it is also possible that many have maintained a more traditional approach to governance. This traditional model is dominated by the patron–client form of governance involving respect and obedience to the elders of the community (Pye, 1999; Smillie and Hailey, 2001).

No comprehensive work is available on third sector governance in Asia. There are works dealing with third sector management and accountability. One such work found that in most cases a governing board of TSO is either non-existent or non-effective. For example, in south Asia, especially in the accidental NGOs,⁹ board members or trustees ‘were mostly friends and acquaintances whose primary function was to encourage the founders and offer what little assistance they could’ (Smillie and Hailey, 2001). Then where governing boards are independently and sincerely formed, the governing boards are confused about their roles. In some extreme cases, the governing board functions as the leader of the organisation providing strategic directions, credibility and thus income opportunity. But how do they function and what is the relationship between governance and performance, and how to explain the relationships in terms of political economy.

Rationale of the Study

Most research on the third sector has been conducted in North America and the United Kingdom. This is particularly true of research into the governance of TSOs. In some circles, there is a belief that the third or non-profit sector is a product of North American civilisation and that it is at its strongest there. The work of Lester Salamon and his collaborators have firmly laid that nonsense to rest (e.g. Salamon et al., 2003). There is a gap in exploring third sector governance in Asia. In this section, we justify our selection of the region and the six participating countries.

Why Asia?

Asia is the largest of the world’s continents, in terms of both area and population. It extends from the Mediterranean and the Urals to the Pacific, from the Arctic to the Indonesian archipelago. Asia encompasses the world’s two most populous nations, China and India, which are quickly becoming major economic actors. In many of its countries at least one of the major world religions are widely practiced: Buddhism, Christianity, Hinduism and Islam. It includes two countries whose

⁹NGOs those are grown gradually as opposed to premeditated NGOs, e.g. BRAC in Bangladesh, see Smillie and Hailey (2001).

regimes are still formally communist. It includes countries that were for more than centuries (in some cases), and until only 60 years ago, colonies of one of the major European powers (or the United States). To varying degrees, that colonial legacy lives on in institutions and laws.

Despite their manifest differences there is a tendency to talk of an Asian way (Clarke, 2000)—applied to the conduct of international relations and to business dealings. The reference point is generally East and South-East Asia. It seems unlikely that there is an ‘Asian way’ but a study of the TSO governance in several diverse Asian countries provides a different context to test if there is any validity in such a claim.

There is a growing literature on the role of TSOs in Europe, Latin America and increasingly in Asia. Much of that focuses on one set of TSOs—the development NGOs (e.g. Fowler, 1996). While valuable, there are many more organisations in the third sector than these; of equal value and interest. This volume hopes to add to knowledge of the third sector in Asia and also to the literature on the governance of the variety of TSOs.

Why These Six Countries?

In our initial thinking we identified forces and variables that would create different arrangements and practices in organisational governance and other forces and variables that would tend towards cross-national uniformity. These are treated extensively in the two chapters that follow, but are introduced here as important background that shaped the team’s approach to the project.

Among forces for variation we identified the radically different histories, cultures and current political regimes in the participating countries. Aware that many examples of TSOs could be found in each country many hundreds, even thousands of years in the past, we wondered how important the different historical experiences of our six countries might be in shaping different approaches to the governance of TSOs. China had a history as a great power stretching back thousands of years; so too did large parts of India, though the current Indian nation state was a result of decolonisation as were Indonesia, Vietnam and the Philippines (at least in their present borders). Four had been colonies of European powers (and in the case of the Philippines, later of the United States). Thailand had never been colonised, but had been formed around a thousand years earlier. Two countries, China and Vietnam, had experienced communist revolutions and were still ruled by communist regimes; others were democracies, though Indonesia and the Philippines had been ruled by dictators for some of the past 30 years (Thailand is still a constitutional monarchy, though). We expected to find that governments would more closely oversight and even be involved in the governance of TSOs in some countries and far less in others.

In terms of religion our six countries represented much of the variety of Asia. In all but the two communist regimes, religious practice is widespread. India is

predominately Hindu, but with a large Muslim, and small Buddhist and Christian minorities; Indonesia predominately Muslim, Thailand is Buddhist and the Philippines, Christian (Roman Catholic). In China the influence of Confucianism and the strength of ancestor worship had never died; and in Vietnam various traditional faiths contended: Buddhism, Confucianism and Christianity. Each of these religions is manifested via its own set of TSOs, each reflecting different approaches to organising; different relationships between religious leaders and their followers.

Partly related to religious traditions, but also to even more traditional norms, each country had strong norms covering interpersonal relations, and especially the importance of reciprocation, of respect and the preservation of 'face'. Although this manifests in different ways and to different degrees, we expected that this might be a factor encouraging similar approaches to governance across the six countries.

All countries had progressed some way along the path of economic development; to varying degrees all had embraced (and been embraced by) the economic transformation resulting from globalisation; several (Indonesia, Thailand and the Philippines) had also been damaged in the 1997 economic collapse. Economic development meant a huge transformation of traditional peasant economies as millions of people moved to manufacturing and service jobs, or to unemployment and the precarious informal economy in cities that had become huge. Nevertheless many still live in traditional village communities, or have transferred many traditional forms of social organising to the expanding suburbs (*barrios/kampungs*) of the cities. To the extent that economic development involved modernisation towards a common Western model of organising, we expected to find all but traditional and religious organisations to follow similar approaches to governance across our six countries. But to the extent that traditional forms of organising continued we expected to find traditional collective style of organising, in some other cases, where a single 'big man' ran a TSO to ameliorate the poor.

We expected to find that in each country there would be a set of laws that governed TSOs. In some cases these may be the transplanting to a country of laws borrowed from the colonial powers; in other cases they might be the product of communist regimes' desire to exercise maximum control or they might be inspired by a desire to establish legal forms to encourage the growth of private enterprise and attract foreign investment. But laws are one thing; whether they detail how an organisation is to be governed, whether they cover all TSOs and how they are enforced are further variables. We expected to find a strict system of coverage and supervision in communist regimes than the other countries. But we were also aware that a concern with governance and a favouring of a particular model of governance was particularly strong in the United States and the United Kingdom and other common law countries, while a variety of models were common in civil law countries of Europe. Two of our countries (India and the Philippines) inherited common law traditions while others, to varying degrees, operated civil law regimes. We wondered if these might affect approaches to governance.

Thus we selected six countries (China, India, Indonesia, the Philippines, Thailand and Vietnam). These countries provide a wide variety of Asian culture and

religion, historical and colonial past, legal and political tradition and affluence that have been vital in shaping the third sector in these countries.

Methodology

This volume draws on data collected in a large-scale study of the governance of TSOs in six countries: China, India, Indonesia, the Philippines, Thailand and Vietnam.¹⁰ The research was conducted in each country by a small team of researchers, in all but one case (Vietnam) based at universities in their respective countries. A small team at the University of Technology Sydney initiated and coordinated the project.¹¹

All of the researchers had undertaken other research into the third sector in their respective countries and in most cases had worked with the UTS team¹² and each other on other projects. The experience and understandings gained in these earlier projects helped shape the broad aims of the current project: it was designed to collect data on the actual arrangements and practices of governance and on the context which may have shaped these practices across the full range of TSOs in a range of countries representing the variety of political and cultural systems that could be found in Asia.

Data collected by each team was basically of three types. The first was a thorough study of the legal requirements imposed on TSOs in each country with questions like the following:

- Are groups of people who wish to form a voluntary organisation required to incorporate and/or to register with a government agency for their organisation to be legal?
- Are requirements about governance specified in these laws or regulations?
- How many forms are available for groups wishing to incorporate?
- How rigorously are these laws enforced?

¹⁰The field work was carried out between 2002 and 2004 and was funded by the Ford Foundation.

¹¹Dr. Samiul Hasan managed and worked as the international coordinator of the project, developed the theoretical and methodological basis of the work, and devised the method of data collection and analysis in association with other partners. Professor Mark Lyons of the University of Technology, Sydney was the overall supervisor of the project. Professor Jenny Onyx, as a part of the research team, provided theoretical and methodological input to the study.

¹²The most important of these earlier projects was the Asia Pacific Philanthropy Information Network (APPIN) project designed to construct a detailed overview of the third sector and philanthropy (history, legal environment, income sources and contribution of third sector organisations across different fields of activity) in thirteen countries (including all the countries participating in the present study) to post this on a dedicated website <www.asianphilanthropy.org>. APPIN was an initiative of the Asia Pacific Philanthropy Consortium (APPC).

Each team prepared a narrative report answering these questions. The findings of each of these country reports are summarised in Chap. 3.¹³

Data was also collected from a wide group of key informants in each country (that we named the key informant survey)—a total of 184 respondents in six countries.¹⁴ These were people of some standing in their communities with some knowledge of at least some parts of the third sector. We were interested to know the key informants' thoughts about the way the TSOs should be and are (or they believe are) governed in their country. We tried to discover if there was a general view, even a set of expectations, of the third sector and how TSOs should be governed.¹⁵ This data was collected in interviews, but before each interview informants were asked to complete a small questionnaire which provided quantitative data that was entered in an Excel spreadsheet for within and cross-country comparison.

Each country formed an advisory body with around 15 knowledgeable and expert people from different regions, sectors of activity, profession and minority groups representing both the sexes to help the research team. The advisory body helped the research team in identifying the dimensions and issues for the research work, show direction to the research work and the team, help select organisations following the method, and provide networks for conducting the interviews and case studies. The advisory body also helped interpret data and made comments on the preliminary draft of the country report.

All participating countries organised country workshops participated by selected influential and knowledgeable people, resource persons and people involved in some aspects of TSO governance in the country concerned. There were at least two workshops in all countries—the first one to understand the extent of the third sector, major issues of third sector governance, and the second one to validate and disseminate the analyses of the information and data.¹⁶

Finally, and most importantly, we collected organisational data from 492 TSOs across our six countries.¹⁷ We deliberately sought to obtain a wide coverage of organisations, to include organisations from eight different fields of activity (Box 1.1).

¹³ Each country report contains a major chapter comprehensively dealing with legal environment in the respective country. The legal chapter in India was so comprehensive that a complete version of it is being published as a separate book.

¹⁴ Including 42 people in China, 41 each from India and Indonesia, 27 in the Philippines, 13 in Thailand and 20 people in Vietnam. The key informants represented public officials (28%), indigenous third sector organisations (53%), representatives of overseas donor and aid organisations (7%) and the business sector (12%).

¹⁵ We also asked the senior third sector executives who were the source of organisational data similar questions, partly to discover if there were any differences between their views and those of our key informants. Since most countries failed to do it due to technical difficulties, we did not include this in the analysis except for highlighting certain distinct differences identified.

¹⁶ All these gatherings, including the one in China, received local media coverage, and were participated by influential policy makers.

¹⁷ With 81 TSOs in China, 98 in India, 83 in Indonesia, 79 in the Philippines, 70 in Thailand, and 81 in Vietnam.

Box 1.1 Fields of Activity TSOs and the Total Number of TSOs Selected in Each Country

1. Arts and culture and recreation: e.g. arts and culture or sports and recreation (41; 8%)
2. Business and professional associations: e.g. chamber of commerce, medical associations (40; 8%)
3. Education and research: e.g. formal and informal education, vocational training, think tank (59; 12%)
4. Environment: e.g. management and protection of the climate, flora and fauna (39; 8%)
5. Law and advocacy: e.g. advocacy groups, ethnic and minority associations, legal services (56; 12%)
6. Religious organisations (32; 6%)
7. Social and economic development: e.g. farmers and production cooperatives (103; 21%)
8. Social services: e.g. child welfare, women services, youth development (120; 25%)

The first figure in the parentheses represents number of TSOs surveyed in the field of activity; the second figure is the corresponding percentage in the total sample. *Note:* Follows the International Classification of NPOs developed by the Nonprofit Data Project headed by Lester Salamon and Helmut Anheir.

We sought to collect data from organisations that varied in size, from those that had no paid staff to those that had a few and those that had many. We also tried to ensure that as well as selecting organisations from the city (where our team was based in each country that turned out to be the national capital, except for India) we would try and collect data from TSOs in another major centre in a different region and from a rural area.¹⁸

We knew from our earlier research in each of these countries that TSOs were active in a wide range of field of activities. In some cases the TSOs were providers of services, often to poorer members of their communities; in other cases they were formed to serve the interests of their members or to advance other causes, such as that of the environment. In such cases they might advocate for reform of laws or to change public opinion. We were conscious that organisations which were primarily established to serve their members would operate differently, and perhaps display different approaches to governance compared with those set up to help others or to pursue a particular cause.

¹⁸To assist each team, at our second meeting we developed a matrix to select TSOs from different regions and fields of activity in each country. In the end, for some teams these requirements proved difficult to meet, but overall we obtained a wide cross-section of third sector organisations.

We were also aware of the old adage about pipers and tunes and we expected that those that received their income from membership fees or dues might have different approaches to accountability and governance to organisations that received most of their income from public donations or from government grants or from grants from overseas sources. We expected that organisations that received most of their income from international donors would be more likely to reflect in their governance models that were considered best practice in those donor countries.

But in addition to the way laws or funding sources might or might not enforce approaches to governance, there is a more diffuse factor, that of public opinion. We were interested in the extent to which those running organisations or who, engaged with the third sector as legislators, advisers, regulators, funders, reporters or users of their services, were concerned with governance; how important was it as a priority; indeed, how was it understood and how well was it understood? Or to put in another way: to what extent did TSOs operate in a culture where their governance was a matter of frequent reflection and discussion?

Finally, we were aware that TSOs, like other organisations change as they age, or as some scholars talk of it, go through a life cycle. New organisations perhaps need, or believe they need strong leadership and reflect this belief in the way they are governed, while once firmly established a more open form of governance might emerge. In addition, organisations that were perhaps a 100 or more years old may have deeply embedded traditional approaches to governance that might resist the unifying efforts of legal systems or funding bodies.

We sought data on the TSOs' age, main field of activity, sources of revenue and (positive or negative) growth over the previous three years. We sought information on whether it had a board or management committee and how that was constituted and selected; we sought information on how the organisation went about financial management, planning, evaluation of its performance and managing its external relations, especially its relations with stakeholders. We sought to discover the role of the board in performing these functions. We also sought to discover if there was a single person who was the driving force in the organisation and who this person was. Most of this information was collected on a pre-agreed questionnaire and entered into an Excel spreadsheet. Thus we had an extensive set of quantitative data from each country capable of being joined into a single data set for basic quantitative analysis in which the country was just one variable along with field of activity and age.

We tried to ensure that some of the organisations chosen had a reputation as being very good at what they did. We asked our key informants to nominate organisations that they believed to be have been performing well.¹⁹ Members from each

¹⁹Not all teams were able to do this while one, the Philippines, focused all attention on these organisations.

team visited each chosen organisation and collected information via a questionnaire and also by a series of open-ended questions. Each visit took several hours, sometimes a whole day.²⁰ We recognised that it would not be possible to collect data of the kind we were seeking from conventional TSOs from any traditional or village type organisations we might be able to identify. We agreed that each team would try and identify a few organisations that were operating along traditional lines, though we recognised that the data we collected from these could not be included in the main data set. Instead separate case studies would be prepared on these.²¹

While each country team could draw on all the data they collected to prepare country reports, a great deal of the information was prepared in a format to enable comparative study. Each country team prepared a report on the legal environment of third sector governance, each submitted questionnaire responses of key informants on a pre-prepared Excel format along with a report of the various views expressed in response to open-ended questions. And responses to an extensive questionnaire about governance practices, administered to each of the organisations included in the organisational survey, were also recorded in an Excel spreadsheet to facilitate comparative analysis.

However, it should be noted that while the sample in each country was approached in a standardised way, and covers the broad variety of TSOs, nonetheless the overall samples cannot be considered fully representative, nor are the samples for each country directly comparable. For instance, while some partners (for example Indonesia) attempted to sample equal numbers of small/informal organisations as well as those with a high profile reputation, other partners (for example the Philippines) only included the latter. India chose to include only those organisations which were incorporated within the survey analysis; non-incorporated organisations were subject to a separate, case study, qualitative analysis. No country was able to adequately assess the thousands of organisations located in small rural villages, or those which were not registered. So, we essentially have a sample of well established and officially recognized TSOs in six Asian countries. For those organisations we can build a picture of the way the organisation says that it operates.

Summary of the Chapters

This volume has 17 chapters divided in two parts—the first (after this chapter) includes nine comparative chapters arranged in three sections, and a concluding chapter and the second part includes 6 country chapters. The argument advanced is that while the legal environment pushes all but the smallest TSOs in all our countries

²⁰ Sometimes team members would arrive at the prearranged time to discover that their informant, usually the senior executive of the organisation, was too busy or had decided that he did not wish to reveal details about their organisation's governance. In such cases an alternative organisation was found.

²¹ In the end, only India, Indonesia and the Philippines were able to do this.

to adopt a board (corporate) model of governance, within that there are several variants. However, other factors, especially the requirement of foreign funding agencies, are pushing organisations towards the arrangements and practices associated with the corporate model of governance. Overall, while examples of traditional forms of governance can be found, the tasks of service delivery development and democratic public governance are carried by the TSOs that are little different in their governance from similar organisations in the North. Major features in the political economy in each country, however, influence the TSO governance structure and process differently.

But before detailing the argument and its evidence, the remaining three chapters of Section 1 in Part I (Setting the Scene) will lay some groundwork. Chapter 2 (Third Sector Growth and Governance: Contexts and Traditions in Asia) analyses relevant features of each country, its geographical, social and political structures, its economic transformation, its cultural tradition and what is known about the size and role of the third sector and the features of traditional approach to governance. The main purpose of the chapter is to focus on questions like: what is the basic political and governmental system and how does this influence the third sector in the country? How have the cultural and religious traditions, and political history and evolution, helped shape the third sector in the country? Have any recent events or governmental actions been instrumental in the growth of the third sector, and important in comprehending the TSO governance? The chapter also highlights the traditional forms of third sector governance in each country.

Chapter 3 (Legal Environment for TSO Governance: A Comparative Overview of Six Asian Countries) sets out the legal requirements of TSO governance in each, paying attention not only to the formal requirements but also to the extent to which they are enforced. The chapter identifies the formal laws of incorporation (introduced over the past 150 years mainly by the colonial powers) that became parallel and gradually have displaced the traditional system. It is argued that neither tradition nor the current legal regimes wholly explain the governance arrangements that prevail, but that both exert an influence. The chapter looks at the legal and administrative requirements affecting the role and composition of boards and accountability process of the TSOs, and the degree to which these requirements are complied with/enforced.

Chapter 4 (Perceptions of Third Sector Governance in Asia) draws on our key informant interviews to examine the climate of opinion and expectations regarding TSO governance. The discussion identified TSO governance in terms of a transparent system of answerability, democracy and leadership, good internal relationships, professionalism, and partnerships and networks concluding that for the respondents third sector governance is always good governance based on Asian values and cultures.

Section 2 Part I (Descriptive Findings and Analyses), in three chapters, sets out the arguments of and evidences from the study. The first of these three chapters, Chap. 5 (Asian Third Sector Organisation and Governance Structure), describes the organisations in our sample, their membership (if any), their staffing and sources of revenue and their boards: who constitutes them, their relationships with the chief executive officer (CEO) and, sometimes, the founder. Its focus is primarily

structure of governance and the personnel engaged in it (or should but do not). The discussion in the chapter revolves around the questions like do all TSOs have boards? If not, how are they run in how many different ways? What tools and bodies regulate the formation and functioning of the boards? How? What do the boards and the board members do inside and outside the organisations? Do the board members involve themselves in sustainability enhancement, e.g. fund-raising?

Chapter 6 (Third Sector Organisations and Governance Process) examines the extent that our sample of organisations engages in a series of basic organisational task: planning and decision-making, financial management and managing stakeholder relations. The chapter discusses three models of governance: the corporate governance model, the traditional Asian model and the democratic model. All three models of governance provide appropriate form of ‘good governance’ under specific circumstances. The question then is: what is the appropriate form of governance in TSOs as opposed to those in the other sectors. And what is the appropriate form of governance in Asian TSOs? As far as possible information concerning organisational practices drawn from the organisational survey results and the case studies are examined from the perspective of the three models. The data is also subject to statistical analysis to identify the effects on these organisational practices of incorporation or registration with government, membership and the presence of external funding.

Chapter 7 (Third Sector Organisation Accountability and Performance), following the same approach as Chap. 6, explores the way our TSOs review organisational (and executive) performance and how they practice accountability—to members, donors, users, governments and the wider public. A major point that the chapter makes is that the recent legal requirements for incorporation and/or being registered with the government, and the influx of foreign funds appear to be driving a major cultural shift within the Asian TSOs, away from traditional modes of local governance and towards more formalised governance mechanisms applied within the corporate governance model.

Section 3, Part I (Theoretical Analyses) contains a set of analytical chapters that seek to answer some of the questions that originally prompted our study. The main question Chapter 8 (Collective Governance: An Alternative Model of Third Sector Governance) deals with is to what extent the traditional models of governance have survived and/or have influenced TSO governance? It then highlights the features of ‘collective governance’. There are a great variety of approaches to third sector governance within each country and within each field of activity. In effect, except for a couple of minor variables, there are no significant differences between countries. While there is no single Asian model, there are a variety of models that can be found throughout six Asian countries. The chapter focuses, based on examples identified in different country reports for this research project, on a collective governance model comparing it with the corporate governance model suggesting that the models are not types but are probably points in a continuum and different TSOs choose to incorporate elements more identified with corporate governance, than are with other kinds.

Chapter 9 (Three Models of Organisational Governance in Asia's Third Sector) identifies the criteria of three different models of governance in Asia's third sector and tries to statistically place our samples into different models. A major conclusion the chapter draws is that TSOs practicing features of democracy within the organisation are more likely than other TSOs to report to the wider public and suggests that encouraging democracy is more important than prescribing a governance model.

Chapter 10 (Experiences of Third Sector Governance in Asia: A Political Economy Analysis) deals with a major question—to what extent have the differing political economies of our six countries shaped approaches to governance. The chapter looks at the relationship of the following with third sector governance: colonial and post-colonial administrations, politics and administration of laws and regulations, and stakeholder relationships. The chapter also highlights some intervening socio-political phenomena like the hierarchical community structure and patron–client relationships, and kinship primacy. It turned out that good governance emphasise democracy; but to many respondents, democracy is not about the process, it is about the purpose or outcome—‘greatest happiness of the greatest number’ based on the actions aimed at the ‘highest good’—*summum bonum*).

Chapter 11 (Governance Approach in Asia's Third Sector: Adapted Western or Modified Asian?) in the comparative analyses part draws some lessons for TSOs in Asia and elsewhere. Its basic conclusion is that governance is important, but deals with a difficult and contradictory set of tasks and responsibilities. There is no ‘one best method’, but rather a set of questions that each organisational leadership group needs to answer in order to ensure their organisation is balancing the interests of its key stakeholders (members, clients or patrons) as well as it can. The chapter summarising these various strands, attempt to answer our original question: is there an Asian approach to governance of TSOs? The answer to this question is simple: while there is no single Asian model, there are a variety of models that can be found throughout our six Asian countries. A similar mixture would be found in many other rich and low income nations.

Part II; *The country chapters*: The comparative analyses in this volume follow six country chapters. These chapters summarise and highlight the major points from the key informant survey, legal environment analyses and organisational survey. Each takes a different approach and concludes differently. The China chapter concludes that governance is a new concept in China, and means different things to different people—primarily internal management. The people appreciate the importance of government regulation but think that the legal framework that provides protection, encouragement, and guidelines but not just tend to control the TSOs needs to be created. The chapter suggests that there should be a transition from dominance to social governance through cooperation, negotiation and partnership between the government, business and the third sector for the establishment of a congenial environment for the third sector because that is what more important now to the TSOs than to work for transparency and accountability.

Governance as a concept is perceived to be comprehensive but also complex and time and space specific in nature. Therefore, the chapter on India suggests from the

study that there cannot be a common capsule indicator workable for evaluating governance in all types of TSOs. Indeed there can be diverse and multiple approaches to governance. This is especially relevant in the context of pluralistic societies like India, as found in the Indian study. The limited information derived in the Indian study on the informal/unregistered TSOs in India and the relevant governance practices signify the existence of undiscovered wealth of information that may help better explain the governance pattern revealed in the study.

The cooperative spirit inherent in the society has encouraged the growth of informal as well as formal TSOs in Indonesia. In different periods of Indonesia's post-colonial history, the political conditions have had a significant influence on the enactment and enforcement of the TSO laws. The government has been in the process of framing new regulatory mechanisms for the TSOs, but the study on Indonesia contends that it is unlikely to help achieve good governance in the TSOs until uniformity in the laws can be ensured. There is, however, a tendency among the surveyed TSOs to adapt the Western model with the sociocultural milieu of the society enjoying or benefiting from the best of the both worlds.

The Filipino society is collectivist in nature, thus the Philippines chapter based on Hofstede (1997) suggests that Filipino society may be characterised by 'large power distance' where power is associated with wealth and social/economic status, 'defined by existential inequality which is desired and manipulated in favour of the power holders, and accepted by the less-powerful as a determinant of right.' Filipino values also emphasise the need for social acceptance. This is manifested in different social norms and intended, according to the chapter, to maintain smooth interpersonal relations (SIR); which defines governance relationships in the TSOs as well.

The situation in Thailand seems to be similar. The Thai people, according to the country chapter, are concerned more about social legitimacy of the TSOs than those of transparency and accountability. Legitimacy depends on 3Fs—the founder (who), funds (how) and functions (what purpose). The credibility of the TSOs is not dependent on transparency, accountability and organisational effectiveness alone. Thai traditional values, belief and practices that place emphasis on charismatic leaders with high status and position, and on prominent figures with power and authority, are evident and adhered to in the case of the TSO governance.

Because of the increasing support of the foreign partners in different development projects, many TSOs in Vietnam are now capable of performing their works independently and effectively. Nevertheless, the TSOs' reliance on the government funds seems to be excessive and restrictive, especially when the government emphasises the financial independence of these organisations. The Vietnam chapter suggests that the more the TSOs become financially independent the more TSO governance in terms of accountability and performance monitoring will improve. We believe this contention is true for all types of TSOs in all our participating countries because competitions in resource mobilisation will create natural impetus for the TSOs to excel and become answerable to the stakeholders.

Chapter 2

Third Sector Growth and Governance: Contexts, and Traditions in Asia

Samiul Hasan

Human beings by nature are social beings and cannot live and exist nor achieve the full potential except through social organisations and cooperation. Thus human civilisation can be understood only by studying the organisational life of human beings (Ibn Khaldun in Lacoste, 1984; Baali, 1988). This volume intends to understand the third sector organisational initiatives in six Asian countries, and related governance practices and relationships.

In this chapter, the endeavour is to analyse the socio-political, economic as well as geographical contexts that may have influenced the growth and governance of third sector organisations (TSOs) in each participating country. This chapter describes the social and political structures, economic transformation, cultural tradition, social institutions and what are known about the size and role of the third sector in each country. This discussion revolves around questions like what is the basic political and governmental system and how does this influence the third sector in the country? How have cultural traditions, and political history and evolution, helped shape the third sector and its governance in the country? The discussion here may help us elucidate the overall findings of the study.

This chapter is divided into five major sections. The first three sections following this introductory part deal with geographical, political and economic influences on third sector development. We then examine how these influenced the growth of the third sector. The last major section delineates the relationship between the historical development of the TSOs and related governance potential in each participating country.

Geographical Influences on Third Sector Development

Old world civilisations were most developed between 19° and 36° latitude, due to the areas' natural potential in food production (agriculture productivity).¹ The influence of climate on economic development is an imperative and evident in the modern

¹Originally contended by Ibn Khaldun in *Al Muqaddima* (1989) written in the thirteenth century (also see Lacoste, 1984). Jared Diamond (1997) in his seminal work and documentary with the same title has explained it further. The present author, further analyzing their contentions, has come to conclude the later part of this paragraph for our six participating countries.

world. Interestingly enough, all our participating countries, except Indonesia, fall around this latitudinal location. Most part of India, the Philippines, Thailand and Vietnam fall almost within identical latitude enjoying similar biophysical features, and demonstrate analogous human behaviour, production system, and living style. Indonesia is a bit towards the equator; while China is further North from all the other countries, indicating harder life than other Southern contiguous countries in the Asian continent. The harder life and the consequent protectionist attitude manifested in the Great Wall has gained China a worldwide fame and dignity but also have helped it sustain its cultural norms and economic institutions for hundreds of years. But then Indonesia, being an archipelago, have always been moist and thus good for agriculture, especially spices, and attractive to the world for centuries.

Because of geographical location (especially on the latitude) all the areas under discussion here have been blessed with climatic conditions, availability of optimum level of sunlight, farm-friendly soil texture and river systems to have agriculture products to support a large number of people. Because of the high agricultural productivity, and proximity to navigable water bodies, people from all over the old world for centuries had travelled to all our participating countries, especially to India, Indonesia, the Philippines and Thailand.

Our six participating countries vary greatly in size and number of population with China (around 1.3 billion in 2006)² and India (1.1 billion) being the two largest. Vietnam and the Philippines are the smallest in terms of number of population: 80 and 86 million, respectively. Thailand (with about 110 million) and Indonesia (220 million) are in the middle. Historically, because of the lack of individual ownership of resources (land), slavery or exploitative system of labour, in general, did not develop in these countries. The community-based land ownership and farming system were attractive to outsiders on the one hand, and, on the other hand, the local inhabitants, being content with the resources and peaceful living, did not mind the arrival of new people. As a result, the area has become the most densely populated region in the world. Thus, on an average, the highest about 343 people live per square kilometre in India, followed by 276 in the Philippines and 264 in Vietnam. Around 130 people live per square kilometre in China, Indonesia and Thailand. (To place things in perspective only 3 people live per square kilometre in the 'new world' of Australia and Canada, and about 30 in the USA).³

The people are so much attached to the land in our participating countries that the annual net rate of emigration from Indonesia and Thailand is almost zero. Only 1 person in every 15,000 people emigrates from India every year. The emigration figure is higher in China (1/2,500) and Vietnam (1/1,000), and moderate for the Philippines (1/7,000).⁴ This attachment to the land and the community forces the people to be involved in mutually supportive economic and social activities.

²This figure does not include the Chinese living in the Hong Kong and Macao special administrative regions, and Taiwan.

³Figures are from CIA—The World Factbook: <https://www.cia.gov/library/publications/the-world-factbook/>

⁴See Footnote 3.

These people for centuries have been doing the same activities in groups or in informal and formal organisations. Organisational life and community-based production system create social solidarity ('partisanship', 'tribal consciousness', 'feeling of unity', etc.), and a sense of belongingness, and help society to sustain through good as well as bad days (Baali, 1988). This belongingness and related behaviour mould human progress, and are fundamental to human organisations.

The new immigrants moving to a new land tend to create a support system within the group, not necessarily being helped by the people in the receiving settlements. This process generated new bonds and group cohesion in the area. The religiously motivated people belonging to Buddhism, Catholicism, Hinduism, and Islam showed a natural propensity in forming religious institutions—monastery, church, temple, and mosque, respectively—centred on groups for mutual support. For the immigrating Chinese the preservation of culture and language in the 'new land', and acquiring knowledge and skills to survive in the new climate and occupational system, and supporting each other in that endeavour was the motivation for organised group formation.⁵ As a consequence, the expansion of TSOs in different forms involved in voluntary activities in all our participating countries has been very impressive.

Political Influence and the History of Third Sector Development

Traditionally in Chinese society decisions used to be a prerogative of the influential or respected individuals in the community, and not a product of laws or regulations. The Chinese term *guanxi* signifies the power of individual influence and is still a part of organisational life in China (Ding, 2005).

In 1911, the Qing Dynasty was overthrown and a republic was established in China. The Interim Constitution of the Republic of China reconfirmed the citizens' rights of association, expression and publication providing legal protection to the non-profit organisations (NPOs). However, for fear of social and political instability and losing control, the Communist Party and the Chinese government after 1949 tried to strengthen control over the TSOs. Following the enactment of 1989 Regulations for Registration and Administration of Social Organisations, the re-examination and re-registration of social organisations were conducted. One thousand two hundred of the existing 1,600 national social organisations and 180,000 of 200,000 provincial and local social organisations were allowed to re-register with the authority.⁶ The inspection tour to the southern China by Deng

⁵For example, Chinese underground schools in Bangkok and special education programmes in Jakarta have been the forerunner of quality education and development of non-profit educational institutions in these two cities.

⁶Between 1989 and 1992, TSOs were not active due to the influence of 1989 Tian An Man Square incident. For more see our work on 'philanthropy and third sector in China' in www.asianphilanthropy.org undertaken under the leadership of Professor Zhao Li Qing.

Xiaoping in 1992 created more favourable conditions not only for market-oriented reforms but also for the development of TSOs. After that, many new TSOs, including some privately created non-governmental organizations (NGOs), such as the Friends of Nature in 1994, and the Global Village of Beijing in 1996, were established (Ding, 2005).

India

India was consolidated as one entity (except some pockets of independent *maharajas*) during the British colonial rule of about 190 years (1757–1947). Before that the central governments did not wish to nor did have any control over all of India. For hundreds of years traditional local bodies existed and were controlled and operated by the local people. They offered security and other basic human needs collectively. References are found in Kautilya's *Aurthasastra*⁷ of *gram sabha* (village councils), dating back to more than 1000 BC, composed of the respectable households and responsible for the governing of the villages and making decisions regarding matters of public interests, and the administration of justice (Kautilya, 1992). These voluntarily formed village councils were later on replaced by (or evolved to) *panchayets* or village councils composed of five elderly persons of the locality. The *panchayets* are known to have existed even in 1000 BC, and were involved in important functions like the assessment of taxes, collecting revenues and delivering judgements on local disputes (Basham, 1967). These local organisations are still in existence and have been training grounds for the third sector operation in India.

In as early as the sixth century BCE, India had a series of 'republican' institutions in addition to the orthodox monarchies. These republics are believed to have originated either in 'tribes' or in the new settlements. The republics (or 'tribes'), unlike the kingdoms, which rose in the rich Ganges plain, were found in the hill areas and practiced democratic systems of electing leaders, and making decisions in assemblies (Chatterjee, 2002, p. 156). Further, the people in India organised themselves as a survival strategy for fighting the exploitative system and the 'nature'. In many places the people organised themselves in local groups to enhance their ability to survive against the 'system', especially during the colonial rule. For example, the local producers in India, being upset by the exploitative system of colonial administration, formed cooperatives to market their dairy products (Korten, 1980). This cooperative later on became one of the largest cooperatives in India (Hasan, 1991). The cities within the independent Indian republics for hundreds of years were noted for

⁷Literal meaning is 'the theory of money' and is believed to have been written during the Maurya period (fourth century BCE–third century CE) by one of the ministers of the dynasty, see the preface in the translated version used here (Kautilya, 1992).

its charitable institutions. There were public hospitals, nurseries, old people's homes, free cemeteries and help for the poor (Chatterjee, 2002, p. 157).

India's caste system has also had an important historic influence of the growth of specific types of caste-based organisations, again established for mutual support for a specific caste group. The nationalist movement and the independence created a new era for the third sector in India. Gandhian thoughts on trusteeship concept of property, community development and *sarvodaya* (universal or collective awakening) had a wide influence on variety of group activities. With a new impetus bestowed upon rural and agrarian development by the post-colonial government, the cooperative movement gathered momentum in India (Dongre and Gopalan, 2006).

The independent government's failure to respond to people's needs inspired the people to organise themselves in order to explore alternative methods for the fulfilment of their hopes and aspirations. The general populace's access to public goods and services became a matter of privilege or persuasion (political or material) and not of right. At the same time the system destroyed the aspiring young people's hopes of having a leadership role either through the access to a decent job or to the political system.

More recently, the governments in India provided tacit support for the expansion of the voluntary sector. It meant lessening of 'pressure' on the government exchequer. The benefit of a strong third sector to the government exchequer was so obvious that governments encouraged the expansion of the third sector through the provision of public funds, especially to the social service sector.

Indonesia

The democratic principle is in line with Indonesia's fundamental traditional values manifested in the motto of *musyawarah untuk mufakat* (i.e. discussions and decision-making by consensus, involving participation or suggestions from all the members) (Radyati, 2006). In traditional Indonesian village society, village affairs were, and still are managed through a series of democratic self-help organisations, for example for local water management. These groups operate on the principles of *gotong-royong* (working together collaboratively) under the guidance of village elders. In the meantime, social growth activities increased with the involvement of intellectual and religious groups. The social growth endeavours were primarily motivated by religious teachings, and traditional cultural values such as *paguyuban*.

During the colonial period in Indonesia, all NGOs (except the cooperatives) were under the jurisdiction of Article 1653 of the Civil Law promulgated in 1848 by the Dutch colonial government. As a result of the liberal political movement in the Netherlands, the colonial government relaxed restrictions on organisational activities in Indonesia, and many TSOs were formed. This period of National Resurgence since 1908 realised the importance of social and political awakening

through the offering of programmes on education, and arts and culture (Budairi, 2002, p. 68). During the early twentieth century, the growth process of TSOs coincided with the struggle for independence. In 1911, following the formation of a mass organisation of social movement, Sarekat Islam, that reached the lowest level of the society, the colonial government promulgated several rules and regulations to curb the development of these TSOs and thus any effort to organise the freedom movement. The Japanese colonisation era, at the defeat of the Dutch, dissolved and liquidated all the TSOs. All workers of these organisations became *romusha* (forced worker). Not a single NGO/NPO or any traditional organisation was able to survive.⁸

At independence in 1945, the TSOs emerged again. But in the old order era until 1965, Indonesia had a Guided Democracy (*Demokrasi Terpimpin*), where the most influential political party was the Indonesian Communist Party (PKI) that used the TSOs, especially the cooperatives and labour unions, for promoting the communist ideals. In the post-colonial era, the government's (mis)use of the TSOs to promote Communism in the country ended after a change in government and the TSOs suffered for 20 years or so. In the 1970s (during the New Order Era), the government increased its control over the TSOs by promulgating new rules and regulations. These rules and regulations allowed the government to dissolve any mass organisation if it was accused of disturbing and violating public order, or receiving financial support from foreign institutions.⁹ The third sector, therefore, was not able to grow smoothly (Radyati, 2006). During the 1980s, the grass-roots organisations (LSM/LSPM), with overseas funds, served as facilitators for people's movements by helping people to organise themselves to identify local needs and mobilise potential resources. The TSOs became more visible and vocal since 1997 at the collapse of the then government.¹⁰ During the reformation era (since 1998), the government has created 'space' for the creation of private organisations, and freedom of expressing ideas (specifically through demonstrations).¹¹ The Foundation Law 2000 was enacted (in August 2001) to monitor organisational, functional and financial integrity of the foundations.¹² Thus, the development of TSOs in Indonesia has been very uneven over the past 100 years.

⁸This paragraph is based on Radyati (2006). For detail references to the facts and contentions, please see the Indonesia Country Chapter, this volume.

⁹The Law of the Republic of Indonesia No. 8 of 1983 concerning the Social Organisation, especially Article 13.

¹⁰Later part of this paragraph is based on our work on 'philanthropy and third sector in Indonesia' undertaken under the leadership of Professor Thoby Mutis for www.asianphilanthropy.org

¹¹The first law specifically aimed at giving freedom in establishing labour union and professional associations and the other ruled the procedures for demonstration in terms of time schedule and place.

¹²See Footnote 8.

The Philippines

Filipino society is collectivist in nature, and Filipino families are closely knit. Members of the extended families are expected to care for and look after one another.¹³ This collectivism is often manifested in patronage where the kin gets preference over an ‘outsider’ for employment or for other favours (Domingo, 2006). Long before the Spaniards ‘discovered’ the Philippines in 1521 CE, the country already had an indigenous system of government, the *barangay*. Although the traditional system has not been abolished, Spanish and American values (individualism) have been superimposed on the traditional organisations.¹⁴

With the enactment of the Philippine Corporation Law in 1906 came the formation of formal non-stock corporations and the establishment of charitable and professional organisations. During this time, the growth of the sector was relatively slow. The ratification of a new Constitution in 1987 provided another impetus for the growth of the third sector. The Constitution mainstreamed TSOs in the societal governance process as a matter of state policy.¹⁵ The Local Government Code (LGC) of 1991 promoted this enabling policy environment for the participation of the TSOs in local governance ‘to ensure the viability of local autonomy as an alternative strategy for sustainable development’. The Code mandates local government units to promote the establishment and operation of such organisations (Section 34), and to render assistance, financial or otherwise (Section 36), to make them active partners in the pursuit of local autonomy (Domingo, 2006).¹⁶ This was another factor that led to the establishment of many TSOs.

At the end of an authoritarian period of 15 years, a new era of TSO growth ushered in the Philippines. The democratic space and the official attention and resources directed towards the TSOs became the reasons for the creation of a large number of TSOs. This period was also the ‘golden age of coalition-building’ for civil

¹³ Many children live with grandparents or great grandparents under one roof (Domingo, 2006). The India country report (Dongre and Gopalan, 2006) for this study also found five generations of people in one family living under one roof. The disadvantaged members of the extended families always expect financial and other supports from the well-to-do members of the family in times of need (while the latter group, most times, see it as an obligation or service to god).

¹⁴ The country was a colony of Spain for 333 years since 1565 until the Philippine Revolution of 1898 when it was ceded to the Americans. The Philippines was under American rule until it gained complete independence in 1946, with a brief period of Japanese Occupation during the Second World War. For more see our work on ‘philanthropy and third sector in the Philippines’ in www.asianphilanthropy.org undertaken under the leadership of Professor Ledivina Cariño.

¹⁵ Article II, Section 23 of the Constitution provides that ‘the state shall encourage non-governmental, community-based or sectoral organisations that promote the welfare of the nation.’ Article XIII secures the right of TSOs to ‘effective and reasonable participation at all levels of social, political, and economic decision-making’ (cited from Domingo, 2006).

¹⁶ The Code thus expanded the field of engagement of TSOs by requiring representation of the sector in local policymaking bodies. Representatives of the TSOs constitute one fourth of the membership of local policymaking bodies, executive committees and special bodies (*LGC Implementing Rules and Regulations*), (cited from Domingo, 2006).

society organisations, as exceptionally broad national alliances were formed around specific sectors and issues.¹⁷

Thailand

Traditionally Thai people have been involved in mutual support systems. Nonetheless the organised system for the third sector was monastery based. In Thailand, traditionally, but especially since the 1930s, the monarchy and Thai people have been inseparable. The government, after the Second World War during the Phibun regimes (1938–1944 and 1948–1960), promoted nationalism. A major TSO in Thailand, with the blessings of the King, was formed in 1967. As a result, many philanthropic organisations were established under the Royal patronage to receive funds from people's donation through the Royal family (Vichit-Vadakan, 2006).

Following the 1973 student coup d'état, the Thai people became politically active, but then a large section of the young people joined the Communist Party of Thailand to seek an alternative solution and the growth of the TSO in the 1970s and early 1980s was very 'slow'. In the late 1980s, due to an end of the Communist Party, and a presumed gap in the government's development efforts, the TSO started to grow.¹⁸ A major boost to the TSO growth came with the 1997 Constitution that guaranteed the people's rights to unite to form associations, farmer groups, NGOs, cooperatives or unions to 'conserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, maintenance, preservation, and exploitation of natural resources and the environment'. The Thai government in its Sixth National Development Plan (1986–1990) recognised the importance of NGOs in development and promoted local organisations in rural development.¹⁹

Vietnam

The societal organisation in Vietnam is defined by the country's traditional economic system—water–rice cultivation—which required village organisation with strong community sense and cohesion (to fight against flood and natural disasters, to alternate labour, etc.). In addition, numerous wars enhanced the tradition of mutual support.

¹⁷Based on our work on 'philanthropy and third sector in the Philippines' in www.asianphilanthropy.org undertaken under the leadership of Professor Ledivina Cariño.

¹⁸For more see our work on 'philanthropy and third sector in Thailand' in www.asianphilanthropy.org undertaken under the leadership of Professor Juree Vichit-Vadakan.

¹⁹For more see Vichit-Vadakan (2006), and our work on 'philanthropy and third sector in Thailand' in www.asianphilanthropy.org undertaken under the leadership of Professor Juree Vichit-Vadakan.

There were also several dimensions which formed a basis for the existence of the internal ‘democracy’ in the countryside: (1) mutual dependence in agricultural production among families created mutual respect, equality, and egalitarianism; (2) craft guilds (*phuong*) and associations (*hoi*) also created interdependence and mutual respect; (3) age groups/cohorts (*giap*)—with hierarchy as well as practices of egalitarianism within each cohort (and with the increase in age, any one would reach the higher ranks); and (4) the administrative organisation of village based on the triangle of advisory (*ky lao*), legislative (*ky muc*) and executive (*ky dich*) groups in which ‘*ky dich*’ contacted villagers through ‘*giap*’, a very stable and volunteer form of association. For hundreds of years, villages in Vietnam had their own laws (*huong uoc*) and governance (*hoi dong ky muc*). The adage that ‘the King’s rule stopped at the village gate’ reflected a sort of democratic dialectic relationship between the monarchy and the villages. Each village used to be ‘a republic’, as noted by the Indochina Governor General Paul Doumer. In the traditional Vietnamese society, based on a cooperative relationship between the state and the villages, the state did not intrude into village affairs, although with Chinese domination (over a 1,000 years) and cultural influence, this relationship was affected to some extent. In this state—society relationship, villages, particularly in the North, over centuries sustained a form of organisation which emphasised a high degree of autonomy and independence from the state, and an internal ‘democracy’ within, and sometimes across, villages (Duong and Hong, 2006).

With the introduction of socialist construction, first in the North since the mid-1950s, and then over the whole country after the national unification in 1975, a new socio-economic and political space has been established in Vietnam. Vietnam moved to a centrally planned economic system, and the third sector was initially structured through the establishment of government-led mass organisations, which are still under the Vietnam Fatherland Front (VFF). In this Socialist structure, mass organisations are broad-based institutions with wide participation of individuals from a wide spectrum of social groups with the key mandate of mobilising people and funds to achieve nationally defined goals.²⁰

Throughout the history of the region, attitudes of government to TSOs have been mixed. They have fluctuated from one period to another, sometimes recognising the social and economic benefits of a strong third sector, sometimes regarding it as a threat (Pye, 1999). That is the state is often taken to represent the surrogate father, or authoritative elder within the larger ‘community’. In this context, the discussion by Pye (1999) is particularly useful. He distinguishes between civility, social capital and civil society. Civility refers to basic core values and rules for interpersonal

²⁰ Currently, there are about 30-member mass organisations under the umbrella of the VFF. The major ones are the Vietnamese Women’s Union (VWU), the Vietnamese Farmer’s Association, the Vietnam General Confederation of Labor and the Vietnamese Youth Union involving millions of citizens as members. For example, the VWU has 12 million members across the country with a very well-organized structure linking its central, provincial, district and commune levels, cited from Duong and Hong (2006).

conduct which in an Asian context invariably include a formal respect for authority and an avoidance of overt disagreement, though not necessarily a respect for strangers. Because of the rules of civility, social capital networks tend to form around kinship, common origin (same village or school) and especially around patron–client relationships. Pye argues that there have historically been very weak formations of civil society, taking that term to refer to autonomous interest groups operating independently of the state, the market and the family. Certainly at the national level such groups have not flourished until recently. The majority of NPOs that operate in each Asian state may be seen as complementing the work of the state, particularly in areas of welfare services, but not challenging the state.²¹ Those that have spoken independently are often seen as a threat to the state. Because the state is equated with ‘community’, any pressure from civil society against state policy is seen as affront to the community and a subversive activity to be quelled (Pye, 1999).

In recent years, many countries in the developing world have been passing through a transitional phase from autocracy to democracy. More and more countries are entering this ‘third wave’ of ‘transition zone’ (Huntington, 1991) due to an improvement in the levels of urbanisation, education and resultant ‘decline in the size and importance of the peasantry, and the development of the middle class and an urban working class’ (Huntington, 1997). This transition also has been the result of globalisation ensuring free flow of technology, capital, and information about openness and liberalisation and their impacts, and a subsequent evolution of a social force to challenge the authoritarian regimes. The number of TSOs in all our participating countries has increased in the past years as a direct result of democratic development or transition (China, Indonesia, the Philippines, Thailand, Vietnam), or following the economic liberalisation and liberal policy in a democratic system introduced in 1991 (India).

Economic Development and Third Sector Growth

All our participating countries have been growing economically steadily in the recent past (except the 1997 market crash slowed the growth significantly in Indonesia, and moderately in the Philippines and Thailand) as shown in Table 2.1, with a constant 10% growth in China (the highest) and about 5% in Indonesia, the Philippines and Thailand (the lowest). Although the growth is the lowest in the Philippines, and Thailand, in terms of PPP\$ income per capita, these two countries fit comparatively well among the six participating countries. With a large population (1.3 billion), a large percentage of which is still dependent on agriculture, China still has a relatively low per capita income, despite its impressive economic growth. People in India, Indonesia and Vietnam with a very low per capita income are

²¹ For more see our work on ‘philanthropy and third sector’ on www.asianphilanthropy.org

Table 2.1 Comparative Economic Data for Six Asian Countries, 2005

Country	Per capita annual income (US \$)	Annual Growth rate (%)		Inequality (Gini coefficient)
		(per 1,000 live births)	Infant mortality	
China	7,600	10	23	44
India	3,700	9	54	32
Indonesia	3,800	5	39	34
Philippines	5,000	5	22	46
Thailand	9,200	5	19	51
Vietnam	3,100	8	25	36

mutually dependent for survival and functioning, and, in the process, create a large third sector which has also been appreciated and encouraged by the governments. For example, in Vietnam due to the increased demand of the economy, the government has acknowledged that many functions that were performed by the government institutions in the past can be performed by organisations created by private institutions (Duong and Hong, 2006), and so has allowed the growth and functioning of those organisations (or the third sector).

The developmental effects of the third sector in all these countries are evident in the health and education data. The governmental investment in all six countries is very low, but the data show that infant mortality rates are much better than in many other countries with comparable economic status (see Table 2.1). In all countries except India (60%) and Indonesia (88%), the literacy rate, among 15-year-old population, is about 92%. Even the inequality data (in access to income and expenses) in terms of Gini coefficient for all six countries (being the highest in Thailand of 51 and the lowest in India of 32) stand favourably with international comparison (world total 67) or countries like Brazil (64) or South Africa (66).²² While there is no direct evidence of the relationship between the existence of a large third sector and the success in human development, this can be inferred confidently from the international comparative data. For example the third sector in Africa with high infant mortality rates and low literacy rates is much less developed than the third sector in our participating countries. The relationship between economic achievement and the third sector growth is not new. In ancient India, when it was competing with the two other contemporary impressive economic powers—China and Egypt—there existed ‘the workmen’s cooperative groups’ to influence many people’s lives. These cooperatives ‘used to undertake large-scale enterprises such as the building of temples and houses’ and encouraged division of labour.²³ There were rules in the law books for the punishment of breach of contract by these cooperatives

²² The readers may like to visit http://devdata.worldbank.org/wdi2005/Table2_7.htm for the World Bank data, now available on the web.

²³ Thus one man would fashion the shaft of arrow, a second would fix the flights and a third would make and fix the point, see Basham (1967, p. 218).

or their individual members (Basham, 1967, p. 218). Hence a robust third sector, supported and organised by a democratic and accountable system of governance is believed to have existed in ancient India.

In those days there were also guilds (*sreni*) embracing all trades and industries. The guilds united both the craftsmen's cooperatives and the individual workmen of a given trade into a single corporate body, and had judicial rights over the members, recognised by the state. It had power over economic as well as social lives of the members. The guilds used to work as the insurance against members' sickness and acted as guardians of the members' widows and orphans, and as banks accepting deposits, and lending money.²⁴ The people involved in the guilds used to volunteer many hours of their times to help others.

The head of a guild (the Elder) used to be assisted by a small council of senior members. The office of the Elder was usually hereditary and held by the richest member of the guild. There are plenty of records (e.g. inscriptions) of guilds donating to religious causes of all kinds, the most famous being that of the Mandasar silk-weavers (Basham, 1967, p. 220). These traditional TSOs, in the form of guilds of the village communities and of the urban areas and of widespread commerce, survived the shocks of political revolutions over the years in spite of the absence of state guidance and support (Majumdar et al., 1967, pp. 75–76). There are evidences of their existence at least until the Mughal period in the region (from 1526 AD), when we saw the expansion of Muslim endowments like the *waqf* followed by secular educational and cultural organisations, and also Christian missionary organisations during the British colonial rule.

In the medieval period in China artisans formed guilds to protect their interests; fellow villagers and townsmen living outside their neighbourhoods often organised different types of cliques for mutual help and self-defence.²⁵ The Nationalist government (1911–1949) created, and helped in the operation of, many TSOs for the provision of academic, professional, public-welfare, religious and other services to assist the government agencies. The chambers of commerce, formed with private initiatives, however, were the most influential TSOs.²⁶ In Vietnam in ancient and medieval periods, there were village organisations with strong community sense and cohesion to support the agriculture sector and the cultivators in the rural areas, and *Phuong and hoi* in the urban centres committed to help each other with technical assistance or loans, in protecting the trade's secret, in keeping common price for similar products, etc. (Huong and Dong, 2006).

²⁴The guilds also functioned as trustees of religious endowments. Many pious people used to pay money to these for the performance of many rituals on behalf of the giver (Basham, 1967; Majumdar et al., 1967).

²⁵Since freedom of association was not granted by the emperors at the time, these privately developed TSOs could function only secretly, for more see our work on 'philanthropy and third sector in China' in www.asianphilanthropy.org undertaken under the leadership of Professor Zhao Li Qing.

²⁶For more see our work on 'philanthropy and third sector in China' in www.asianphilanthropy.org undertaken under the leadership of Professor Zhao Li Qing.

Growth of the TSOs

The first significant period of Chinese non-profit activity was from the ‘Spring’ and ‘Autumn’ Periods (770–472 BCE), through the warring states (475–221 BCE) and the Qin Dynasty (221–206 BCE) to the early years of the Han Dynasty (206 BCE–220 CE). Confucius and Mencius, the Taoism and the Legalist schools, being formed during the period, had been the pioneers of academic TSOs, and influenced the formation of culture and institutions in the Chinese society. During the same period, other types of TSOs such as political groups and religious organisations also were existent. Modern TSOs started to operate in 1908 when the last government of the Qing Dynasty installed Chinese people’s rights to associate. Under the Nationalist regime (1911–1949), the government created and governed many philanthropic organisations to engage in commercial, academic, professional, public-welfare, religious and other activities to assist the government agencies. Privately created TSOs in the above fields were also allowed to operate. At the collapse of the Nationalist regime in the Mainland China there were about 80,000 private TSOs.²⁷

In the recent past, a new form of TSO, private non-enterprise or non-commercial institution (*minban feiqiye danwei*), have been functioning in China.²⁸ At present there are more than 250,000 TSOs in China including 135+ thousand social organisations and 100+ thousand civilian non-enterprise institutions.²⁹ In addition, there are a large number of TSOs not registered (informal organisations) or are registered in the industrial and commercial administrations.³⁰

In ancient India there were cooperatives like ‘the workmen’s cooperative groups’, and guilds (*sreni*) embracing all trades and industries.³¹ There were also the *panchayets* or village councils, since 1000 BCE, known as little republics: self-contained and self-governed.³² A new form of third sector started to function in India with the coming of Muslims in the eighth century. These TSOs, *waqf* (or *awqaf*; endowment) or Muslim foundations, used to dispose a thing or property dedicating the usufruct right to some charitable end.³³ The

²⁷ Based on our work on ‘philanthropy and third sector in China’ in www.asianphilanthropy.org undertaken under the leadership of Professor Zhao Li Qing.

²⁸ Private non-commercial institutions (or enterprises) are self-governed organisations formed by private citizens, enterprises or other organisations using non-state assets to conduct not-for-profit activities (Ding, 2006).

²⁹ Jiang Li, Deputy-Minister, Ministry of Civil Affairs, at a speech at Shanghai International Seminar on the Development and Administration of the NPOs in China, cited in Ding (2006).

³⁰ Seminar on the Third Sector Organisations in China, RCVW, October 2002, cited in Ding (2006).

³¹ Eighteen very important crafts had their own guilds presided over by a foreman (*pramukh*), an elder (*jyeshthaka*) or a chief (*sreshtin*) (Majumdar et al., 1967, pp. 75–76).

³² According to the Greek Ambassador Megasthenes who visited the court of Chandragupta (the founder of Maurya Dynasty c.324 BC) (Jathar, 1964).

³³ For more please see Hasan (2007, Chaps. 8–10).

Christian missionary organisations formed in the early nineteenth century to offer some services like education, health, orphan care along side their preaching work were the first type of modern TSOs formed in India (Inamdar, 1987; Bhattacharya, 1987). During the post-independence era, boosted by many followers of the Gandhian movement who did not or could not join the government, a large number of Gandhian philosophy-based organisations were formed (Sen, 1996). The third sector kept on growing through the government's support for social service delivery organisations, emphasis on self-help-oriented rural development organisations, and cooperative movement.

There is no authentic figure available about the number of TSOs active in India. But logical estimates suggest that there could be as much as 1.2 million different types of TSOs in the country including about 590,000 registered TSOs and about 31,000 religion-based TSOs. There is thus about one TSO per 1,000 people. But then the organisational density in urban areas is much higher (almost double the national average) with 50% of the TSOs are believed to be in urban areas when only 25% of the population live there. These TSOs employ about 3 million people and get the service of 16.5 million volunteers creating about 6.1 million full-time equivalent employment in all (2.7 million paid). The TSOs have been very successful in self-generating 51% of its resources (PRIA, 2000).

The oldest TSO in Indonesia was established in 1848. In order to face the Western colonialism, the Indonesian people made hard efforts to establish several social movements as social protest against the colonial government. In the beginning of their development, the NGOs and NPOs were motivated by their members' willingness to solve the socio-economic problems of all Indonesians who were under the oppressive Dutch colonial government. In the 1970s, the third sector (LSM) became a sparing partner to the government, and due to the arrival of many international donor agencies its number, in the 1980s, started to increase exponentially.³⁴

The Philippine third sector predates the formal structures of government after independence from a series of colonial masters. Its origins may be traced to the sixteenth century organisations set up during the Spanish colonial period (Cariño, 2000, p. 13). They were traditional welfare, religious and service organisations.³⁵ It was during the 1960s that the sector experienced rapid growth. The third sector development around the world spurred the increase in number and variety of the Philippine TSOs. Following the imposition of martial law in 1972 a broad range of TSOs, commonly referred to as 'cause-oriented' groups, focused their efforts on the restoration of freedom, justice, and democracy. Since the 1960s, the attention and energies of the TSOs focused on the struggle against forces of repression, injustice, and martial rule, and subsequently to the challenges of re-democratisation and

³⁴The paragraph is based on the discussion by Radyati (2006) who refers to Budairi (2002); Poesponegoro and Notosusanto (1984) in her analysis.

³⁵The seeds of rebellion against the colonial rulers led to the formation of underground revolutionary movements and organisations that eventually resulted in the 1898 Philippine Revolution.

development. By the mid-1990s, as the pace of engagement with the state became less adversarial, the TSOs began to pay closer attention to their institutional development.³⁶

A comprehensive record of the TSOs operating in the Philippines does not exist. A PNSP study³⁷, however, estimates the total number of the TSOs to be between a low of 249,000 and a high of 496,000³⁸ (Cariño, 2002, p. 84). These TSOs have varied character and focus. Instead of temporary social movements – the characteristic of the 1960s through the 1980s, there are now more permanent social structures, a growing number of paid staff and increasing institutionalisation within the third sector.

The development of the TSOs in Thailand can be traced back to its 700-year history through the Sukothai, Ayuthaya and early Bangkok periods (1868–1910). In those days, Buddhism established the foundations of charity and propelled a socialisation process conducive to ‘merit-making’. Monasteries functioned as centres for intellectual, cultural, recreational and community life. The first formally recognised philanthropic organisation was formed in 1885 when King Rama V approved the establishment of a centre, Sapa Unalom Daeng, by a group of women, to care for the wounded soldiers and to provide medical and other supplies.³⁹ The early 1900s witnessed a rapid increase in the number and scope of mutual help and welfare associations.⁴⁰

During the King Rama VI (1910–1925), the Thai government introduced laws and regulations discriminating against foreigners for reasons of national security. The immigrant Chinese in order to help each other in promoting and protecting their language and culture formed speech-group associations. Another type of welfare association was the benevolent society formed widely in Bangkok. After the 1932 coup d’etat, that changed Thailand from an absolute monarchy to a constitutional monarchy based on democracy, modern philanthropic organisations emerged.⁴¹

³⁶For more see our work on ‘philanthropy and third sector in the Philippines’ in www.asianphilanthropy.org undertaken under the leadership of Professor Ledivina Cariño.

³⁷The Philippine Nonprofit Sector Project (PNSP), a research endeavour based at the National College of Public Administration and Governance, University of the Philippines, conducted a study to map out the size and scope of the third sector in the Philippines. This is a part of the international comparative study initiated by the Johns Hopkins University Center for Civil Society Studies.

³⁸As of May 2003, a Securities and Exchange Commission (SEC) list put the total of ‘non-stock companies’ at 120,789, with 117,638 considered as active. As of 31 December 2003, the Cooperative Development Agency (CDA) listed a total of 64,998 ‘registered’ cooperatives and identified 31,191 as ‘operating’, for more see our work on ‘philanthropy and third sector in the Philippines’ in www.asianphilanthropy.org undertaken under the leadership of Professor Ledivina Cariño.

³⁹The Centre later on became the Thai Red Cross.

⁴⁰In those days Buddhism established the foundations of charity and propelled a socialisation process conducive to ‘merit-making’, and the monasteries functioned as centres for intellectual, cultural, recreational and community life. For more see our work on ‘Philanthropy and Third Sector in Asia’, in www.asianphilanthropy.org, the Thailand segment was undertaken under the leadership of Professor Juree Vichit-Vadakan.

⁴¹For more see our work on ‘Philanthropy and Third Sector in Asia’, in www.asianphilanthropy.org, the Thailand segment was undertaken under the leadership of Professor Juree Vichit-Vadakan.

The first non-government development organisation formally registered with the government, Thai Rural Reconstruction Foundation (TRRF), was formed in 1967.⁴² The King later on accepted TRRF under his royal patronage and the influence of the non-government sector in rural development effort expanded. The Thai–Chinese relations gradually improved in the 1980s, and the clan and speech groups, especially for the Chinese, have been performing social activities creating opportunities for people of the same clan or speech group to enjoy community life. The Christian missionaries also have established many schools to provide education to disadvantaged Thai people.⁴³

In Vietnam, there were many traditional organisations at village level. There were also craft guilds (*phuong*) and associations (*hoi*) in the past urban centres. In fact, the old Ha Noi, the capital of Vietnam since 1010, was formed by 36 *phuong*s. Members of a *phuong* are committed to help each other in production of the goods, providing technical assistance or giving loan to each other. These groups continued to function during the French colonial period when, especially in the 1930s and 1940s, many civil society groups emerged. In the 1990s, following the *Doi Moi*, numerous local NGOs and other associations came into being. According to the Vietnamese government's statistics, as of July 2001, there were 240 nationwide associations and 1,400 local organisations. Thousands of private organisations are also operating in the districts and commune levels (Duong and Hong, 2006).

Third Sector History and Governance Potentials

Among the six of our participating countries, Thailand had never been colonised. All other participating countries have experienced different forms and lengths of colonial control. India was under British rule, Indonesia under the Dutch and Vietnam under French colonial domination. The Philippines was under Spanish rule first (for 333 years), and then the USA for about 45 years. China had experienced a brief Japanese invasion. Among the six participating countries, India and Thailand have experienced sustained system of government—the former a democracy and the latter a constitutional monarchy. The stable government in these two countries have allowed reasonable growth in the economy. In Thailand the third sector did not take off until it received royal patronage because the revered King is seen to be benevolent taking care of the subjects' needs, and any indication of

⁴²Formed by the then-director of the Bank of Thailand and president of Thammasat University. The King later on accepted TRRF under his royal patronage and the influence of the non-government sector in rural development effort expanded.

⁴³Some of these Chinese and Christian schools eventually have become landmarks of quality education in Thailand, especially in Bangkok. This paragraph is based on our work on 'Philanthropy and Third Sector in Asia', in www.asianphilanthropy.org, the Thailand segment was undertaken under the leadership of Professor Juree Vichit-Vadakan.

displeasure against the King in the form of creating organisations to take care of some of the state responsibilities until recently has not been welcomed.

The Philippines has been a democratic country since its independence in 1945 (except for a short period between 1972 and 1986). Indonesia started well, but faced military intervention in politics that lasted almost 30 years to take a toll on the economy. These two democratising (Indonesia) and re-democratising (the Philippines) countries now allow ample space for the functioning of the third sector.

The last two countries in our list have been in transition from a party-dominated bureaucratic system to more people-based systems. The Chinese State for the first 30 years (since 1949) was highly centralised taking a great role in social life, allowing no room for third sector development.⁴⁴ This situation started to change in 1978, and by 2001 the number of mass organisations reached 134,000 and that of civilian non-enterprise institutions reached 100,000 (Ding, 2005).

For hundreds of years, villages in Vietnam had their own laws (*huong uoc*) and governance (*hoi dong ky muc*). Each village used to be ‘a republic’, noted by the Indochina Governor General Paul Doumer (Duong and Hong, 2006). In the post-colonial period, Vietnam passed through a centrally planned economic system, and the third sector was initially structured through the establishment of government-led mass organisations. Mass organisations, still under the Vietnam Fatherland Front (VFF), are organised to mobilise people and money to achieve nationally defined goals. The government of Vietnam, realising the government’s limited resources and the capability of the declining funds for the bureaucracy as well as increasing demand from the society, has devolved many functions which used to be performed by the government institutions to self-established organisations and individuals, particularly in the field of research and application of science and technology, and research and application of economic, governance and social development policies. This has resulted in initial limited efforts by the government to legitimise a public sphere independent from the state (Duong and Hong, 2006).

There have been different approaches to third sector development in these participating countries. These include devolution (including intermediation and philanthropization⁴⁵) from a totalitarian state (China and Vietnam), or a dictatorial regime (Indonesia), or a monarchy (Thailand). On the other hand there are countries with a long established history of community involvement in service and programme delivery, including India, Indonesia, the Philippines, and Vietnam. For example, in India village *panchayets*, known also as ‘village republics’, for

⁴⁴Before the Great Culture Revolution (1966), there were less than 100 national social organisations in China including the mass organisations set up by the Party and the government, such as China National Youth Federation and All China Women’s Federation (Ding, 2005).

⁴⁵Two different types of devolution identified by Uphoff (1985, p. 56). Intermediation refers to the transfer of certain specific responsibilities by governments to some voluntary organisations that represent various interests in society and that are initiated and operated by members of these organisations; e.g. farmers’ cooperatives, credit associations and village development organisations. The second one refers to the transfer of planning and administrative responsibilities of some public functions to the TSOs, e.g. allowing the Red Cross/Crescent to plan and manage blood banks.

hundreds of years have taken care of service and developmental needs of the neighbourhood. In the Philippines scattered communities in the highlands had to be self-supportive for strategic reasons, and created grass-roots organisations. These grass-roots TSOs later on were acknowledged by the colonial as well as the (post-colonial) national governments. The third sector and related activities in the Philippines were under threat during the dictatorial authority (1972–1986), but the 1986 peoples' power (EDSA I – please see Chapter 15) movement freed it and produced a thrust for the creation of advocacy as well as service delivery organisations. These TSOs later on successfully lobbied a congenial environment for the TSO development in the Philippines.

The existence of local governments or local community-based organisations influenced third sector development and governance in the participating countries. Existence of local government and/or local community groups (in common property resource management, skills development and training, social development and exchange, as well as economic activities and benefit sharing) have been a boosting factor in the past for third sector growth. Local government and community experiences in the above activities helped people organise themselves in other parallel groups when frustrated or when something was not available in the mainstream. The TSOs and its governance in the participating countries thus must be seen in terms of their respective political and economic influences that have shaped society and the citizenry.

Conclusion

Three important things are related to the growth of the third sector in Asia. First, the people came from all over to settle in these areas so they needed social re-enforcement. Also, because there had never been a very strong and resource rich central government, the communities took over the responsibility for many aspects of social lives strengthening the societies. Finally, the central governments were engaged in self-promotion and economic build-up for themselves and had less time and concern for the public good—leaving this space for local social and religious organisations. Thus biophysical features, and the political customs and practices of the area, have tremendously helped shape the third sector in our six participating countries.

In the post-liberation period, the political avenues in many Asian countries failed to provide enough scope for political socialisation or interest articulation or interest aggregation. In the face of the political systems' failure to protect the interests of the underprivileged people, many voluntary and/or community organisations were formed to fill this gap. The socially conscious young people found it difficult to be a part of the political process and become a 'voice' in alleviating the problems of the people with less access to sources of power, property, education and earning. These disgruntled young people found the TSOs to have an appropriate platform to achieve their 'objectives'.

It seems that the liberal economic and political systems in India (except for the socialism favouring period of 1947–1991), Indonesia (except for 1968–1997) and the Philippines (except for 1972–1986) have been a major factor in the formation of a robust third sector and a democratic governance for the Sector in these three countries. On the other hand, the strict governmental system of controlling all non-state economic as well as social (in addition to political) activities in China and Vietnam for the 30 years since the 1950s thwarted the growth of the third sector, but failed to destroy the traditional enthusiasm that force the individuals into mutuality for social and economic achievements. Thailand, being a divine monarchy, at the beginning and a constitutional monarchy (since the 1930s) has been unique and until recently have not freed the people from seeing private actions in terms of its relationship to the monarch or the monks.

In the process of development ‘organisational resources are at least as scarce and valuable as capital, land and technical knowledge’ (cited in Hasan, 2001a). The fact that organisations are the weapon of the weak in their struggle with the strong is true for TSOs. An organisation becomes stronger with a better resource mobilisation and utilisation system, and accountability mechanism, and thus the way in which the organisation is governed becomes crucial. The conduct of a management committee or a board, and the way it relates to the organisation and its wider environment is essential for full and proper accountability. These aspects will ensure the organisation’s relevance and help attract resources to provide effective and appropriate services, and sustainability over time. In the rest of the chapters in this volume, our intention is to understand these relationships so that we can comprehend the issues of and the requirements for improved governance and TSO sustainability in the participating Asian countries.

Chapter 3

Legal Environment for TSO Governance: A Comparative Overview of Six Asian Countries

Ishwara Bhat and Samiul Hasan

A congenial legal environment is of great importance for the survival, growth and functioning of third sector organisations (TSOs). Since TSOs' relations with members, donors, beneficiaries, government and other TSOs are to be built on sound and enduring principles of accountability and integrity, just to satisfy the legitimate expectations of various stakeholders, a legal framework that can enable, guide, assist, regulate and even compel the TSOs towards these ends has crucial importance.

This legal framework, specifically framed to encourage as well as regulate the organisations, influence the structure and practice of governance in the TSOs. For example, the governance of a TSO is dependent on the legal requirements for incorporation/registration or the fulfillment of specific structural or procedural features (e.g. formation of a management committee, holding annual meetings) as a precondition for incorporation or registration.

Continuation of colonial law (Dutch Law in Indonesia, English law in India, French in Vietnam and Spanish and American in the Philippines; and German civil law in China¹), different modes and stages of experiments in modernisation, commitment to welfare goals point out the variations in TSO governance laws, regulations and practices in different countries. This chapter on the legal framework for TSO governance in China, India, Indonesia, Philippines, Thailand and Vietnam aims to identify these variations, and is based primarily on individual country's legal environment reports. It surveys the regulatory tools, bodies and processes of regulating, supervising and monitoring the TSO governance in these countries.

The chapter seeks to answer three sets of questions:

1. Are TSOs required or encouraged to incorporate or register? If so, how?
2. What, if any requirements, do these laws or regulations specify about the TSO governance in the participating countries?
3. How are these laws and regulations enforced?

But before the main discussions around the above three questions, the chapter highlights the sources and types of laws and forms of TSOs in the participating

¹The civil law system (the German Model) was first introduced to China in the nineteenth century by Japan, and continued after the socialist country was created in 1949 (Silk, 1999; Ding, 2005).

countries. This discussion is required for a better understanding of the nuances and differences in governance requirements along diverse types of TSOs. The rest of this chapter is divided into four sections, and deals with the structure, formation, registration and incorporation of the TSOs; internal structure and governance mechanism, external control and monitoring systems and internal and external financial accountability mechanism. While each section ends with a summary, the chapter offers some concluding remarks at the end.

Sources and Types of Law

The fundamental law (the constitution) of each country, by guaranteeing freedoms of association, assembly and expression, cultural and educational activities inspire collective human efforts for a multitude of objectives. Originally influenced by the socialist policies and German and Japanese civil law systems, the People's Republic of China (1949) formulated regulation for social organisation (Silk, 1999; Ding, 2005). The top level source of law in China is the constitutional law. The Constitution of the People's Republic of China aims at socialist modernisation and democratic and cultural advancement as a national task. It guarantees freedom of assembly, association of procession and demonstration (Article 35; see Ding, 2005). The state protects the lawful rights and interests of the urban and rural collectives and encourages, guides and helps the growth of the collective economy (Article 8; see Ding, 2005).

The Constitution of India (1950) guarantees to all citizens the right to form associations or unions, and the state guarantees no interference until there is evidence of breach of code of citizenship by such associations.² This right is not absolute, and subject to restrictions imposed under the law in the interest of sovereignty and integrity of the country, public order or morality. Restrictions are also imposed by other union (federal) and state legislations. The Indian law on organisations can be found in union laws like Societies Registration Act 1860, Co-operative Societies Act 1912, Multi-state Cooperatives Act 2002, Companies Act (Section 25) 1956, Trade Union Act, etc. The Indian Trust Act was enacted in 1882, Charitable Endowment Act in 1890, Cooperative Societies Act in 1904 and Trade Union Act in 1925. In addition, there were the *Mussalman* (Muslim) *Wakf* (Waqf) Act 1923 and Charitable and Religious Act 1920. All these regulatory tools are still valid and, in some cases, the only regulatory vehicle in India³ (Sen, 1996, p. 414).

² Article 19(1)(e) 'Right to Form Association' includes right not to form or join association, right to continue the association, right to keep the identity and composition intact and right to close down associations (Dongre, 2005).

³ There is also the Foreign Contribution (Regulation) Act 1976 requiring all TSOs receiving foreign funds to register themselves with the Home Ministry. The main purpose of this Act has been to keep surveillance on religious and extremist groups receiving foreign funds (Sen, 1996, p. 414).

After the introduction of the constitution, many states in India either incorporated amendments to the 1860 Act as applicable to them or enacted separate legislations containing similar legislative provisions (with greater details about methods and mechanisms for good governance and purpose compliance). Thus most states have their own legislations regulating the societies and the cooperatives. The central acts like the Charitable Endowment Act 1890, the Charitable and Religious Trust Act 1920 and the Indian Trusts Act 1882 and the Waqf Act 1995 govern foundations.⁴ State laws govern the societies entirely and the societies registered under the 1860 law are required to comply with the laws of the state prospectively (Bhat, 2004). Thus multiplicity of union and state legislations make TSO governance in India complex and its understanding difficult.

In Indonesia, most of the present day laws and regulations are inherited from the Dutch colonial period validated by the Indonesian Constitution (UUD 1945). Indonesia started regulating TSOs with the Dutch Civil Law of 1848. The Indonesian Constitution (1945) authorises the establishment of organisations, including political parties, with the main purpose of defending the independence, and offering people welfare and ensuring security. A presidential decree (in 1998) granted the rights for the establishment of labour union and professional associations. In Indonesia, associations and similar organisations are still subject to the Civil Law.

During the New Order Era, the first regulation based on the Indonesian Constitution was the enactment of the Cooperative Law (1958). This law formulated regulations that made cooperatives important sources of economic revenue.⁵ The next major legal instrument to regulate any type of TSOs was enacted in 2001 (the *Yayasan*, Foundation Law). The main law that regulates Self-Reliance Organisation (LSM) is controlled by the Law No. 6, 1974. LSMs involved in the provision of education and environmental conservation are regulated by respective departmental laws (Radyati, 2004). In practice, almost all LSMs in Indonesia are legally foundations and regulated by the Foundation Law. This law regulates some aspects of governance, such as board composition, responsibilities, accountability and transparency.⁶

The ratification of a new Constitution in 1987 in the Philippines provided an impetus for the growth of the third sector. The Constitution mainstreamed TSOs in the public governance process as a matter of state policy, with provisions of encouraging their participation in development efforts and programmes.⁷ According

⁴For example, state legislations on public trusts in Bombay, Gujarat and Rajasthan, and Hindu religious and charitable endowments in almost all the states have been governing the spheres of philanthropic institutions.

⁵For example, one of these regulations only allowed Koperasi Unit Desa/Village Cooperatives (KUD) to operate on the village level to which all rice and tobacco farmers were required to sell their crops (Radyati, 2005).

⁶Some aspects of the Foundation Law do not apply to the LSMs. For example, a foundation is non-membership organisation, while many LSM have members (Ibrahim, 2003, p. 10 cited in Radyati, 2004).

⁷Article II, Section 23, provides that 'the state shall encourage non-governmental, community-based or sectoral organisations that promote the welfare of the nation'. Article XIII secures the right of TSOs to 'effective and reasonable participation at all levels of social, political and economic decision-making' (Cariño, 2005).

to the Constitution of the Philippines, the State shall respect the role of independent people's organisations to enable the people to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means (Article XIII, Section 15). It also authorises the formation of unions, associations or societies for purposes not contrary to the law (Article III, Section 8, see Cariño, 2005).

By the mid-1990s, as the nature of engagement with the state became less adversarial, the TSOs had time to reflect on their operations and began to pay closer attention to their institutional development (Cariño, 2005). In the Philippines, the Corporation Code, Labour Code, Tax Code, Regulations of Commission on Audit and various guidelines issued by the National Economic Development Authority (NEDA), Departments of Social Welfare and Development, Education, Health and Foreign Affairs have provided for the TSO laws. Thus the Constitution and the ministerial regulations both have played major roles in the development and functioning of the third sector in the Philippines.

The 1997 Constitution of Thailand (Article 45) offers freedom to the people to form associations, unions, cooperatives, farmers' groups, non-governmental organisations (NGOs) or other forms of organisations. No law may restrict the freedom to associate except those laws which are made to protect the common interest, to maintain peace, protect public morals or protect against economic monopolization (Article 45, see Vichit-Vadakan, 2006). There are many types of TSOs, so are there varied legal tools.⁸

The Constitution of Vietnam (1992; revised 2001) provides a principal basis for the development of the TSOs that are established by citizens and independent from the government. Article 69 clearly states: 'the citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law'.⁹ The Constitution (Article 9) states that the Vietnam Fatherland Front (VFF) and its member organisations constitute the political base of people's power, and that the state shall create favourable conditions for an effective functioning of the Fatherland Front and its component mass organisations (Duong and Hong, 2006). Vietnam's TSO laws are available in the form of government decrees on various matters like the establishment of non-profit scientific and technological

⁸For example, the Civil and Commercial Code (1925), the National Cultural Act (1942), the Trade Commercial Association Act (1966), the Cremation Welfare Act (1974), the Labour Relations Acts (1975, 1991 and 2000) and the Cooperatives Act (1999) govern the TSOs in Thailand, see Vichit-Vadakan (2006).

⁹Realizing the decline in resources available for the bureaucracy as well as the increasing demand of the people, the government has undertaken steps to legitimize a public sphere independent from the state through many legal documents framed by the Parliament, the PM office, different ministries and government departments, please see the Chap. 17 on Vietnam in this Volume for more.

organisations,¹⁰ Regulations on Operations of International NGOs in Vietnam,¹¹ Exercise of Democracy in the Communes,¹² promotion, formation and operation of social funds and charity funds.¹³ There are also the Law on Science and Technology of 2000 and the Civil Law of 1996 enacted by the Parliament. The parliament as well as different government departments have developed legal tools for the TSOs.

Summary

As the supreme legal document, the constitutions in all the participating countries have inspired, facilitated and promoted the functioning of the TSOs. But policy thrusts vary from mere recognition of associational freedom to using them as instruments of social transformation, the provision of welfare or protecting human rights. In the next section, we would highlight laws these legal provisions translate into in the creation of different forms of TSOs and how the grounds are prepared, with what basis, for the TSOs' governance.

TSOs: Structure and Forms

TSOs in the participating countries, based on members and endowments, belong to three different legal entities—associations (membership organisations), foundations (endowment based) and cooperatives (a combination of membership and endowment). In addition, there are non-profit companies and religious trusts. We are here highlighting the major features of these different legal entities in order to delineate their governance relationships.

Membership-Based Organisations (Mainly Associations)

Membership organisations are known in different countries as associations, mass organisations and social organisation. Social organisations (*shehui tuanti*) are one of the two types of TSOs in China (see the next section). Social organisations are membership organisations aimed at realizing the common desires of the members. The examples of these types of organisations include: academic or research organisations,

¹⁰ Decree No 35/HDBT issued on 28 January 1992, please see Duong and Hong (2006).

¹¹ Decree No. 340/TTg 1996, please see Duong and Hong (2006).

¹² Decree No.29/1998/ND-CP, please see Duong and Hong (2006).

¹³ Decree No.177/1999/ND-CP of 1999, please see Duong and Hong (2006).

professional associations, trade or industrial associations (e.g. chambers of commerce), united organisations like federations, etc. Some social organisations are formed for public benefit as well.¹⁴

The Indian spectrum provides a kaleidoscope of organisations (PRIA, 2000). The sector includes religious and political institutions, organisations that have emerged from or been nourished by social movements, voluntary organisations, community-based or grassroots organisations, welfare wings of religious organisations, business associations and associations for the promotion of arts, science and culture (Sen, 1997). There also exist traditional associations in the form of caste associations, ethnic associations, kinship associations and modern associations such as professional associations of lawyers, doctors, engineers, nurses etc. They coexist with development organisations, which provide services to the poor people. Public advocacy, research and support organisations also exist in various forms (PRIA, 2000).

In Indonesia, associations and similar organisations are still subject to the Civil Law,¹⁵ and there is no other law regulating activity of the associations. There are three legal types of membership organisations in Indonesia, for example mass organisation (*Organisasi Massa*), association (*perkumpulan, perhimpunan, persatuan, ikatan* and other kind of organisations) and labour union (*Serikat Pekerja*).¹⁶ There are also grassroots support organisations (GRSO/*Lembaga Pengembangan Swadaya Masyarakat* or LPSM) and grassroots organisation (GRO/*Lembaga Swadaya Masyarakat* or LSM). There are service providing mass organisations (like the Indonesian Youth National Corps) regulated under a presidential decree,¹⁷ and interest associations or pressure groups (like *Muhammadiyah, Nahdlatul Ulama* (NU), professional associations, etc.)¹⁸ (Radyati, 2004).

LSMs, a popular term in Indonesia, have been growing steadily in number because of the strong motivation of some individuals to help poor people left out of the development efforts of the government (Budairi, 2002, p. 81). Until now, there are informal, traditional and not-for-profit organisations still in existence in

¹⁴ Political parties and religious organisations may form a separate category. Religious organisations in China are politically more sensitive, and have been under the supervision of the Administrative Bureau of Religious Affairs of the State Council, the Communist Party's United Front department and their branches. Please see China segment in the website: www.asianphilanthropy.org.

¹⁵ Particularly Book 3, Chapter 9, Article 1653 (or before the existence of Civil Law it was regulated by the State Gazette (Stb) 1939 No. 570). (Radyati, 2006).

¹⁶ The difference between mass organisations and association is in their respective purposes. Mass organisations have political objectives and may eventually become political party— a mass organisation is an embryonic of political party (Radyati, 2004).

¹⁷ UU RI No. 8, 1985 about *Organisasi Kemasyarakatan*.

¹⁸ No legal tool is available for their regulation. The government is working on different proposals— for example, the proposed Law of Association.

the country that exercise significant influence on people's lives such as *subak* (irrigation groups), *arisan* (credit groups), *mapalus* (mutual help in agriculture) and *tanggung renteng* (a form of traditional credit cooperatives) (Radyati, 2006).

The Constitution of the Philippines uses 'independent people's organisations'¹⁹ to refer to 'nongovernmental, community-based or sectoral organisations'. They roughly correspond to what would be referred to as units of 'civil society'.²⁰ There are no specific provisions of law that relate to the governance of these organisations, unless they register as non-stock corporations (Cariño, 2005).

Associations in Thailand are formed under the Civil and Commercial Code of 1925 (amended in 1992) to 'perform non-profit, communal activities' without personally benefiting any of its members.²¹ All types of associations and foundations need to obtain a permit from the National Culture Commission (NCC) under the Ministry of Education.²² There are also trade unions governed by the Commercial and Association Act 1966. A mass and unique membership organisation in Thailand is the cremation association functioning under the Cremation Welfare Act of 1974. The Labour Relations Act 1975 governs all labour unions.

Mass organisations constitute a pillar of the state structure, are the main type of membership organisation in Vietnam, and cannot be considered components of civil society.²³ Examples of the diversified social and economic activities organized by mass organisations include programmes that the Viet Women Union (VWU) is successfully organizing throughout the country, including the HIV/AIDS prevention programmes, revolving micro-credit schemes, supports for small-scale private enterprises, 'women help each other develop their household economy' campaigns etc. (Duong and Hong, 2006). There are also many community-based organisations (CBOs) established through projects and development programmes by the individuals for the provision of services for the members and the broader community (Duong and Hong, 2006).

¹⁹The term 'independent' occurs in the Constitution perhaps to signify the organisations' separation from the government. It is not used by organisations as a label for themselves or by the general society to refer to them (Cariño, 2005).

²⁰ Article XIII, Section 15 of the Constitution, 'Independent people's organisations' is defined in the Constitution as 'bona fide associations of citizens with demonstrated capacity to promote the public interest and with identifiable leadership, membership and structure'.

²¹ Article 78 of the Civil and Community Code.

²² Effective from March 6, 1966, as a result of a consultation between the Ministry of Interior and the Attorney General, the National Cultural Act of 1942 only applies to the associations with objectives related to the work of the NCC. After this Act was passed, several associations with objectives not related to the work of the NCC were established.

²³ Over the past few years, the role of the mass organisations has changed remarkably. From being political organisations with mandates to propagate the policies of the party and the government and to mobilize supports among citizens for implementation of the policies, mass organisations have moved to represent and protect the interests of their members in the decision-making process.

Endowments-Based Organisations

The main category of organisation in ‘this type’ is foundation or trust. In China, the term ‘foundation’ is understood in a composite sense to have both organisational entity and financial base. It refers to non-profit and non-government organisations, which are managed through the use of funds voluntarily donated by foreign or domestic social organisations and other groups, as well as the individuals. The social organisations have legal-person status.

The Indian law on foundation is spread over a multitude of central and state legislations. There are private and public trusts. Private trusts are of definite character, confined to limits prescribed in the settlement, and are regulated by the Indian Trust Act (1882). Public trusts are constructive trusts for public religious or charitable purposes or both²⁴ (Bhat, 2004).

At present in Indonesia, all regulations regarding the establishment of a foundation are stipulated in the *Yayasan* (Foundation) Law (2001). This law defines a *yayasan* as a legal entity with separate assets established for the purpose of dealing with social, religious and human affairs issues (Radyati, 2004). An important sub-type of non-stock corporations in the Philippines is the foundation. A foundation has no privilege over other non-stocks (Cariño, 2005).

In Thailand, the Civil and Commercial Code (1925) defines foundations as organisations that mobilise and utilise funds for philanthropic purposes, religion, art, science, literature and education, and do not distribute profits among the members. The foundations must be legal entities and require registration with rules and regulations in conformity with law. All foundations, like the associations in Thailand, are formed under the Civil and Commercial Code of 1925 (amended in 1992).²⁵

In Vietnam, funds and charities are non-governmental, not-for-profit organisations.²⁶ In the first two years after the foundation rules became effective in 1999, around 200 funds were established in Vietnam, mostly by associations.²⁷

²⁴Includes a temple, *maath*, church, synagogue, agiary or other place of public religious worship, a *dharmada* or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both registered under the Societies Registration Act 1860 [Sec 2 (13)].

²⁵ Article 78 of the Civil and Community Code.

²⁶ Funds and charities came in operation with the issuance of the Decree 177/ND-CP of the government on September 22, 1999.

²⁷ There are funds formed by government organisations, for example the Fund for Protection and Support of Children (formed by a ministerial-level government body– the Vietnam Committee for the Protection and Care of Children). Some funds are created by mass organisations (e.g. The Compassion Fund for the Vietnam Women Union). There are also funds under local governments (e.g. the Fund for Housing Development of Hanoi under the Hanoi People’s Committee).

Mutuality-Based Organisations

There are also mutuality-based organisations in our participating countries known primarily as cooperatives. Cooperatives in China have a long and cherished history and are guided by the social organisation laws. The Indian constitutional policy that ‘the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas’ (Article 43), and the thrust of the constitution towards social and economic justice prompted the use of cooperatives as instruments for desirable social change with extensive state involvement (Bhat, 2004). The Indian Cooperative Credit Societies Act (1904) enabled the formation of cooperatives for offering low-interest credit to the farmers (to protect them from the exploitative moneylenders). The Co-operative Societies Act (1925) expanded the sphere of cooperation and provided for supervision by the central agencies. The promotion of thrift and self-help among the agriculturists, artisans and persons of limited means has been the avowed purpose of the Act.

The Constitution of the Republic of Indonesia categorically mentions about cooperatives as a tool of economic development. As a result following the ratification of the Constitution, the first regulation that was enacted was the Cooperative Law 1958 (Radyati, 2006). As the constitutional definition of ‘people’s organisations’ in the Philippines seems to encompass the cooperatives,²⁸ NEDA suggests that cooperatives shall be considered as NGOs.²⁹ A cooperative is an association of at least fifteen (15) persons formed to encourage thrift and savings; systematic production and marketing; goods and services to the members or other similar activities.³⁰ Cooperatives are also existent in Thailand because the ‘people have freedom to gather and form associations, unions, cooperatives, farmers’ groups, NGOs, or other forms of organisations’.³¹

Non-Profit Companies

Countries as different as China and India have the provisions of forming non-profit companies. Existing companies complying with the restrictions on distributing profits may receive license from the central government to function as a TSO in India. Cooperatives and all other TSOs can be established under Section 25 of the Companies Act of India as a limited company for promoting commerce, art,

²⁸ ‘People’s organisations’ are community-based organisations of citizens which represent themselves when making demands of the state or when providing services for their constituents. They are usually contrasted with the ‘NGOs’ which are intermediary organisations often speaking for the citizens and groups that are not their members.

²⁹ NEDA (National Economic and Development Authority), 1989 cited in Cariño (2005).

³⁰ Republic Act No. 6938, Chapter 2, Article 6, see Cariño, 2005.

³¹ Article 45, Thai Constitution 1997 cited in Vichit-Vadakan (2006).

science, religion, charity or any other useful object. These ‘companies’ have to utilize the profits, if any, or other income in promoting its objects, and cannot pay any dividend to its members.³² The law insists on duty not to alter the object clauses of its memorandum, and provides for revocation of licenses after due hearing in case of deviance from statutory requirement.³³ The provision is also available and used in China, especially for those prospective organisations that fail to find a supervisory body in the government’s line agency.

Summary

In India, Indonesia, Philippines and Thailand, there are laws related to foundations (grouped in the Philippines under non-stock, non-profit corporations), associations³⁴ and cooperatives (except for Thailand). In addition, there are labour union laws in all the countries (except Indonesia), and *waqf* (Muslim foundation) laws in India and Indonesia. In China and India, there are non-profit distributing companies created under the company law. There is also cremation association law in Thailand.

The variability of legal frames and related requirements, as seen in the discussion in this section, is a challenge to governance and its study. In India, a truly, federal system, legislations, especially for the operation of trusts makes the system rather complex. Not only are there different types of legal instruments to deal with different structures and organisations aimed at different activities, there are variations within a single set of TSOs (e.g. public and private trusts in India) that are worth looking into. In this section, we endeavour to comprehend the structure, formation, incorporation and registration of different types of TSOs in the participating countries. The discussion will facilitate the understanding of TSO governance which is the main purpose of this chapter.

TSOs: Structure, Formation, Incorporation and Registration

In each of our participating countries there are several ways of incorporating TSOs. As in most developed countries, in our six participating countries as seen in the previous section, there are three basic forms of incorporation: as an association, as

³²The Central Government may, by license, direct that the association may be registered as a company with limited liability without addition to its name of the word ‘Limited’ or the words ‘Private Limited’ (Bhat, 2004).

³³Based on Section 25 of the Company Law, cited in Bhat (2004).

³⁴There is no specific law in Indonesia—associations are administered by the civil code and supervised by the local administration; in the Philippines the associations are known as independent people’s organisations.

a foundation or charity or as a cooperative. The latter two assume that the TSO has formed as a result of collective action and that it will have members who hope to benefit from their association. For example, members of a cooperative expect that it will produce economic benefits for them. By contrast, the first form (foundation) assumes that the TSO is the product of a desire to help others; it might or might not have members. As well, in some countries TSOs formed for a particular purpose, such as a trade union or for religious worship, may have a specialised form of incorporation. Finally, in several countries, TSOs may use the form of incorporation developed for for-profit firms to incorporate. In some cases, the company law permits a special type of non-profit incorporation; in other cases non-profits simply follow the rules for for-profits, but modify their own constitution or rules of association to retain the non-distribution constraint that characterises most TSOs. In this section, we deal mainly with the three main forms of incorporation: association, foundation and cooperatives (see Table 3.1). At the end the main features of the residual types are highlighted.

The Associations

The incorporation of a TSO in China provides it legal entity, representativeness and continuity but is not mandatory, unless the TSO intends to deal with public funds. All TSOs in China, however, have a legal entity.³⁵ No social organisation in China can register with the Ministry of Civil Affairs without the approval of the respective service-related supervisory agency. To be registered, a social organisation in China must first be affiliated with the government line agency (popularly called ‘mother-in-law’) to make sure that the proposed organisation targets to fulfil an actual social need, does not overlap with any other organisations, not to be formed in any area where there already exists a similar organisation, and have members with educational qualification and skills required to offer the proposed service(s) and effectively run the organisation. Different standards of requirements are fixed for organisations with 50 members or more and those with 30 members or more (For more please see Ding, 2005).

³⁵Except the eight organisations under the China People’s Political Consultative Conference (including the All China Worker Union, Chinese Communist Youth League, All China Women Federation, China Association for Science and Technology, All China Association for Returning Overseas Chinese, All China Association for Taiwan Compatriots, All China Association for Youth and China Association for Industry and Commerce); 2. The organisations approved by the State Council (including China Association for Literatures and Arts, China Association for Writers, All China Association for Journalists, China Association for International Communication and Friendship, Chinese People’s Association of Diplomacy, China Association for International Trade, China Association for Disabled, Song Qingling Foundation, China Society for Laws and Regulations, etc.; and 3. The organisations approved by government agencies, which run their business within their own agency system, like the China Association for Lawyers, China Society of Red Cross, etc. (Ding, 2005).

Table 3.1 Third Sector Organisations: Registering Laws and Agencies in Asia

Types	China			India			Indonesia		
	Laws	Controlling/ registering agency	Laws	Controlling/ registering agency	Laws	Controlling/ registering agency	Laws	Controlling/ registering agency	
Association or society	Regulation for Registration & Administration of Social Organisations 1998	Ministry or Department of Civil Affairs ^a	Societies Registration Act 1860 ^b	Registrar of Joint-Stock Companies	Civil Law Article 1653–65	Ministry of Justice & Human Rights			
Charitable/NP Company	State-owned NCI (Non-commercial Institutes) or NCE (Non-commercial Enterprises)	Regulations for the Registration and Administration of SONCI (State-Owned NCI)	Companies Act 1956	Registrar of Companies	NA	NA			
Cooperative	NA	NA	Cooperative Societies Act 1925	Registrar of Cooperative Societies	Cooperative Law No. 25, 1992	Regional Cooperative Council			
Foundation/trust	Regulating Ways for the Management of Foundation ^c	Ministry or Department of Civil Affairs	Indian Trust Act 1882 ^d	Charity Commissioner	Foundation Laws No. 16, 2001 ^e	Ministry of Justice & Human Rights			
Trade union	NA	NA	Trade Union Act 1926	Registrar of Trade Unions	NA	NA			
Waqf/Zakat organisations	NA	NA	<i>Mussalman</i> Wakf Act, 1923; 1954; Public Wakfs Act, 1959	Waqf Board	<i>Zakat</i> Organisations Law No. 38, 1999	Ministry of Religious Affairs			

Association or society	Corporation Code ^f (BP 68)	Securities and Exchange Commission ^g	Civil and Community Code ^h	Ministry of Interior ⁱ	Varied	The Ministry through the VFF
Charitable/NP company	Securities Regulation Code (RA 8799)	Securities and Exchange Commission	Civil and Community Code	National Cultural Commission, Ministry of Education	Decree 177/ND-CP 1999 and many others	The Ministry through the VFF
Cooperative	Cooperative Code of the Philippines (RA 6938) Insurance Code of 1978 (PD* 1460)	Cooperative Development Authority; Insurance Commission (for mutuals)	Cooperative Act BE 2542 (c. 1914 revised in 1999)	The Registrar of Cooperatives	NA	NA
Foundation/trust	Corporation Code (BP ^h 68)	Securities and Exchange Commission	Civil and Commercial Code 1925	Ministry of Interior The National Cultural Commission	Decree 35 of the Committee of Ministers	Ministry of Science, Technology, and the Environment
Trade union	Labour Code of the Philippines (RA 6715)	Department of Labour and Employment	Commercial and Association Act '66; Labour Relations Act '75 (for trade unions)	Ministry of Trade Ministry of Labour and Social Welfare	Trade Union Law 1990	The Ministry of Labour through the Vietnam General Confederation of Labour (VGCL)
Waqf/Zakat organisations	None	NA	None	NA	None	NA

(continued)

Table 3.1 (continued)

^aAll organisations are not required to register with a government agency but required to have a supervising agency (mother-in-law); Eight mass organisations, organisations approved by the state council and by government agencies do not need to get registration.

^bStates have their own laws specifying details of the control mechanism.

^cMany non-profit organisations (NPOs) (e.g. schools) register under the commercial enterprise law to avoid stringent administrative requirements attached to NPOs.

^dMainly for private trust; also Charitable Endowment Act 1890; Charitable and Religious Trust Act 1920; Official Trustee Act 1913; Bombay Public Trust Act 1950.

^eSelf-reliant community organisations (LSM) are regulated by the Ministry of Justice & Human Rights Instruction No 8, 1990.

^fAlso Securities Regulation Code

^gEach government agency determines accreditation and licensing requirements in its functional jurisdiction.

^hThere are the National Cultural Act for associations dealing with arts; and the Cremation Welfare Act 1974 for the cremation associations.

ⁱThe Office of Police Intelligence oversees TSOs in BKK, while the Department of Local Administration oversees those outside BKK. The cremation associations must register with the Ministry of Labour and Social Welfare.

^jRepublic Act.

^kPresidential Decree.

^lBotas Pembansa (Internal Law), made during parliamentary period of martial law.

NP: Non-profit

There are many laws in India for incorporating different types of TSO. Since independence in 1947, different states have passed laws adopting and adding to the requirements in the pre-independence laws.³⁶ Registration is a threshold requirement for legal governance of TSOs under specific statutes in India. The unregistered bodies, though are products of associational freedom, may not enjoy the advantages available to the registered bodies. For forming registered societies, seven or more persons associated for any literary, scientific or charitable purpose or for purposes of constituting charitable societies, military orphan funds, societies for diffusion of knowledge and political education, libraries, public museums and galleries may subscribe their names to a Memorandum of Association and file the same with the Registrar of Joint-Stock Companies.

In Indonesia, only associations obtaining legal entity through incorporation and registration with the government can operate (cited in Radyati, 2006). Mass organisations (or social organisations) located in the capital city, provincial cities and in the regency areas need to register³⁷ with the Department of Home Affairs, the local governor's office or with the regency government officer, respectively. The process of incorporation, among others, requires the submission of a constitution including the organisation structure and related roles, regulations and the decision-making process to be followed in pursuing the organisation's goals (Radyati, 2006).

TSOs in the Philippines in general are not required to register to operate. At least 15+ persons may decide to come together for any purpose under the freedom of association and assembly guaranteed by the constitution. Registration with/or licensing by the proper government agency is required only if a TSO expects something from the government, or wants to do something that is subject to regulation (Cariño, 2005). Registration is meant to determine if the organisation satisfies minimum requirement of seriousness of purpose, membership and funding, and is processed by the Securities and Exchange Commission (SEC) by furnishing only if the articles of incorporation, name clause, the required fee, registration data sheet, resolution of the board of trustees about compliance with the law, list of members and list of contributors are supplied by the TSO (Cariño, 2005).

In Thailand, the Civil and Commercial Code (1925; amended in 1992) provides for mandatory registration of associations. There are many legal instruments and government organisations regulating different types of TSOs in Thailand. In order to function, associations (Civil and Commercial Code) and foundations (Civil and

³⁶The major TSO-related legislation pre-dates the formation of the Indian states, for example: the Societies Registration Act (1860), the Co-operatives Societies Act (1912), the Trade Union Act (1926), the Charitable Endowments Act (1890), the Indian Trust Act (1882), the Charitable and Religious Trust Act (1920), and the *Mussalman (Muslim) Wakf (Waqf)* Act (1923). If there are both state and national laws affecting a particular form of TSO, then it is the state law that takes precedence (Bhat, 2004).

³⁷Under Law No. 8 of 1985, see Radyati (2006).

Community Code) need to follow a two-prong registration system: a permit from the NCC and registration with the National Police Office Bureau (for associations).³⁸ All the trade associations in Bangkok require registering with the Department of Internal Trade, Ministry of Commerce, while those outside Bangkok must register with the respective provincial governor. The founders of a TSO must be ‘people with good economic status and good behaviour’.³⁹

In Vietnam, the law of 2000 stipulates that the research and development institutions, scientific and technological service organisations could be established after being registered with the government. On the basis of recommendations of the relevant state agency or relevant line ministry, the cabinet approves the establishment of an association (Duong and Hong, 2006).

The Foundations

Formation of foundation in China requires filing of application with the relevant state agency. The registered foundations must eschew compulsory donations, practice democratic management, confine the use of funds for registered purpose and supervise fund utilization by the recipients.

In India, the Union law allows the establishment of private trusts for the provision of social services. It enumerates the rights and obligations of the trustees and beneficiaries and insists on purpose compliance, but does not grant regulatory mechanisms like direct supervision, submission of the annual report, government auditing or tenure limit of the board members.⁴⁰ Broadly, there are four methods of providing legal entities to these bodies: (1) formal registration before the Charity Commissioner under laws like the Bombay Public Trust Act (1950); (2) invoking the civil court’s interference to lay down schemes for governing the trust or for ensuring accountability⁴¹; (3) the government’s notification of a list of charitable trusts

³⁸ All types of associations must obtain a permit from the NCC under the Ministry of Culture. The applicants have to state that the organisation does not have any political objectives and ‘will not be involved in political activities’, to make sure that the associations preserve cultural heritage or provide humanitarian assistance, and are not involved with other issues (Pongsapich and Kataleradabhan, 1994 p. 36 cited in Vichit-Vadakan (2006).

³⁹ The registrar has the authority to reject an application if any of the board members are deemed ‘unqualified’.

⁴⁰ It is not just an oversight, rather an intended purpose of the law to be promoting not inhibiting the trusts because the law details the registration provisions like the disclosure of particulars about the origin, nature and objects of the trust, its place of business, names and addresses of the working trustee, list of moveable and immoveable trust property, average annual income and the mode of succession, etc. (Bhat, 2004).

⁴¹ This is done either under the Charitable and Religious Trust Act (1920) or under the Civil Procedure Code (Section 92), see Bhat (2004).

and religious endowments to control them⁴²; (4) the administration's obligation to survey such bodies to notify and control through specific regulatory bodies.⁴³ Sometimes, legislations have made the use of more than one model to deal with different classes of charitable or/and religious bodies (Bhat, 2004).

Only one individual can form a foundation in Indonesia⁴⁴, and get it registered with the Department of Justice and Human Rights through a notary decree/deed following the issuance of a formal ratification from the Minister of Justice and Human Rights.⁴⁵ Before a foundation authenticates itself by a notary decree, it must formulate its aims and objectives (Radyati, 2004). The law provides for compulsory registration of all *wakfs* (Muslim religious foundations) at the office of the *Wakf* Board disclosing necessary details about the *wakf*.⁴⁶

Foundations in the Philippines are registered with the SEC following the corporation code. Registration as a non-stock corporation confers non-profit status, which restricts the distribution of income among the members/owners. The corporate board structure is inevitable upon incorporation. In fact, the application for registration itself requires a board resolution (Domingo, 2006).

Prospective foundations in Thailand are required to have an endowment for particular charitable purposes such as religion, art, science, literature and education.⁴⁷ In order to be registered, the foundations, like the associations, in Thailand are required to obtain a permit from the NCC under the Ministry of Education.⁴⁸ The registration procedure for foundations in Thailand is different from other types of TSOs and requires that a foundation must demonstrate fulfillment of certain features. For registration, founders must submit an application form together with the (1) organisational objectives (2) rules and regulations and (3) list and qualification of board members to the local district office. The registrar may deny registration on the ground that the objectives break the law, are against good morals or threaten peace and stability (Vichit-Vadakan, 2006). The registration procedure of funds in Vietnam is similar to the registration procedure of the associations.

⁴²Through the Endowment Commissioner or Managing Committees as under the Charitable Endowments Act 1890 and various state laws on Hindu Religious and Charitable Endowments, see Bhat (2004).

⁴³Like the *Wakf* Board formed under the provision of the *Wakf* Act 1995, see Bhat (2004).

⁴⁴The minimum endowment required to establish a foundation is not mentioned in the law, however in practice, the amount is Rp1,000,000, or US\$100 (Radyati, 2004).

⁴⁵If there is more than one founder of the foundation, a written document is produced declaring each of the founders' assets separately that will form the foundation's initial assets.

⁴⁶The *mutawalli* (the trustee) has the responsibility of fulfilling *wakf* obligation and has control over the property under the supervision of the *Wakf* Board (Radyati, 2006).

⁴⁷Article 110 of the Civil and Community Code states that a foundation must have funds (US\$ 12,500 for regular foundations and US\$ 6,125 for those with public welfare objectives), see Vichit-Vadakan (2006).

⁴⁸The Civil and Commercial Code of 1925 (amended in 1992) cited in Vichit-Vadakan (2006).

The Cooperatives

A co-operative society in India for the promotion of economic interests of its members, may register with limited or unlimited liability, with at least ten adult members of the same locality, class, caste, tribe or occupation. For the registration of a multi-state cooperative consisting of only individual members the application must be signed by at least 50 persons from each of the states concerned. In the case of a secondary cooperative, the application has to be signed by authorized representatives of at least five such societies registered in different states (Section 6). Their main objectives shall be serving the interests of members in more than one state and their by-laws shall provide for social and economic betterment of their members through self-help and mutual aid in accordance with co-operative principles (Section 7) (Bhat, 2004). Each state law, however, differs in important respects from the others. As a consequence, there is now a national Multi-state Cooperatives Act (2002) which creates a legislative framework for cooperatives that operate in several states.

Cooperatives in Indonesia are very well grown⁴⁹ and are now regulated by the Indonesia Cooperative Council.⁵⁰ In Indonesia, the major requirements for establishing cooperatives are as follows: (1) minimum 20 persons for the primary cooperatives and (2) at least three cooperatives for the secondary cooperatives. The intended people have to apply to the Minister of Cooperatives for incorporation. The incorporation and the cooperative constitution are notified in the State Gazette. The mandatory Cooperative Constitution (AD/ART) also covers several important things such as membership, general meeting of the members, management and capital fund, duration of their existence, division of their surplus and sanctions.⁵¹

In the Philippines, cooperatives require articles of cooperation, by-laws, bonds of accountable officers, treasurer's sworn statement as to compliance with subscription requirements and a completed survey on the economic feasibility of the cooperative (Cariño, 2005). Although non-stock corporations have to submit a longer list of requirements, it may be observed that both cooperatives and unions must show some proof of the necessity of their existence which non-stocks are not required to (Cariño, 2005).

Summary

There are different laws regulating different aspects and types of TSOs, so are there different government departments administering these laws. These variations in legal tools result in varied government control regimes and mechanisms. For example,

⁴⁹ Because this is the only form of 'people's organisation' referred to in the Republic of Indonesia Constitution and that receives government supports (Radyati, 2006).

⁵⁰ As opposed to the Department of Cooperatives which is now abolished (Radyati, 2006).

⁵¹ This paragraph is based mainly on Radyati (2006).

the Chinese government has a more stringent supervisory control over the social organisations. No social organisation in China can register with the Ministry of Civil Affairs without the approval of the respective service-related supervisory agency (mother-in-law). These mothers-in-law control the social organisations politically and legally. In Vietnam, TSOs are under the management and supervision of the government, and should register with some umbrella organisations (state bodies) under the auspices of the VFF. Those umbrella organisations are required by the government to be in charge of the management and supervision of the TSOs under their coverage. Thus TSOs in Vietnam are more closely monitored, than their Chinese counterpart, by the respective agencies.

Except for the federal system of India, in all our participating countries the TSO laws are created by the national government. In India, the legal environment is very complex due to the fact that the states also have constitutional power to frame their own laws to deal with the TSOs.⁵² In all these countries, there are designated government departments or agencies to administer the TSO laws except in Indonesia where the Department of Human Rights and Justice is officially in charge of registering and monitoring the foundations (*yayasan*). In Indonesia, there is no detailed law on association; however, the local courts are responsible for registering these organisations. In Indonesia and India, local administrations are also to monitor TSO activities. Police intelligence (as in Thailand) is also playing the supervisory role, as in Thailand.

Third Sector Governance: Internal Structure and Mechanism

In each of our participating countries, the types and structure of TSOs are varied. In each country, there are different types of TSOs governed by different types of legislations with even varied types of government departments. It is thus highly likely that the variety of laws will have different requirements for governance structure and mechanism in the respective TSOs. The section highlights the main features of board composition and board's responsibilities as found in different legislations (see Table 3.2).

Board Composition

The TSOs in China do not require having a 'board', but if it has 'board', it should have its public meeting of members, board committee and a general secretary.⁵³ The public meeting of members is the highest organ of TSOs in China being

⁵² Except for the regulatory laws dealing with foreign funds received by the TSOs, known as the Foreign Contribution Regulation Act, FCRA of 1976.

⁵³ Based on the *Rules for Social Organisation Administration and Registration* and the *Model for NPO Constitutions* issued by the Ministry of Civil Affairs in 1998, cited in Ding (2005).

Table 3.2 Third Sector Organisations: Control and Management in Participating Countries

Country	Minimum requirements				Governing body			Special features
	Incorporation	Association	Foundation	Cooperative	Requirement	Shape	Task	
China	Mandatory with exemptions	50 people or 30 groups	Public/private non-commercial institutions	Supply marketing	Board is not required	Public meeting based	Guiding, authorising and monitoring operation	Not mandatory but if formed boards must follow certain regulations ^a
India	Optional	Seven	Varied	10 ^b	Board is required	Varied for trusts, cooperatives and religious organisations	Reporting to the registrar or as determined in the AGM	Board members found to be permanent
Indonesia	Mandatory	Unspecified	One person + Rp1m ^c	20; three for secondary cooperative	Board for all; also supervisory board for cooperative	Varied	AGM for policy, management, and regulating board	Regulation is flexible for all except the coops
Philippines	Optional	At least 15 persons	At least 15 persons	Unspecified ^d	Board	Variable ^e	Policy planning, accountability	Standard imposition by the PCNC with supports from DoF and Internal Revenue

Thailand	Mandatory	Unspecified	B200,000 ^c 50% cash; B500,000 ^e	NA	Yes	Open	Accountability	Cremation
								association boards- 7 members, all others can decide shapes, and functions; AGM must
Vietnam	Mandatory	Varied	Varied	NA	Central committee	Formed by the Congress for 5 years	Implement Congress' resolutions	VFF is the controlling body

^aFunctional government agencies function as supervising authorities.

^bMust be from 10 different families.

^cMust be registered with the Ministry of Justice and Human Rights and use 75% of assets for purely social activities.

^dThe registration requires to be shown a survey on the economic feasibility of the cooperative, and some proof of the necessity of their existence.

^eMaximum 15 members for non-stock companies, 5–15 for cooperatives.

^fFor foundations established by the government organisations to deal with social work, education, sports, religion, health service, AIDS research, etc.

^gAll other types of foundations, especially private.

responsible for amending the TSO constitution, selecting or recalling board members, considering the work report and the financial report of the 'board committee', for approving the constitution of the TSO, etc. In 'board less' TSOs, the public meeting has the role of guiding, authorizing and monitoring the TSO operation (Ding, 2005).

In India incorporated associations and the trusts are supposed to have boards. But the number of board members and the procedure for its formation are not specified in the laws. The members of the managing committee of the cooperative society are to be elected once in three years (after the first committee's term of five years) by the respective members. The size and composition of the management committee or board of trustees of the religious organisations are determined exclusively by the government, leaving no choice to the TSO except that they shall belong to the same religion. The non-profit companies shall have Board of Directors chosen by the general body. Non-profit companies in India are exempted from filing annual returns about membership, need to hold less number of board meetings (once in six months instead of three months for other TSOs), and have fund management authority.⁵⁴

In Indonesia, all foundations need to have governing bodies in the form of a board. There are management and supervisory boards in the cooperatives. The members of the Board of Management are elected, for a maximum of five years, in the general meeting. The Annual General Meeting of cooperatives has the highest authority to deal with the constitution, policy issues, management and business activities, election, appointment and dismissal of members in the management and supervisory boards, and the distribution of surplus etc. There are also *zakat* foundations with three governing boards: trustees (*Pembina*), management/directors (*Pengurus*) and supervisors (*Pengawas*) (Radyati, 2006).

The Corporation Code (*Batas Pambansa Blg. 68*) of the Philippines prescribes a corporate form of governance for all corporations. This requires the existence of a board, a set of corporate powers, the adoption of by-laws and auditing and accountability requirements. Labour unions are not bound to follow such a form of governance, but their officers must have similar qualifications and duties (Cariño, 2005). In the non-stock companies and cooperatives, the board members are elected by the members on a one-member one-vote basis irrespective of the number of shares held by the voter. The board of directors of cooperatives may have 5–15 members, each with a term of two years. No director may serve for more than three consecutive terms (RA 6938, Article 38). The board members may be removed from office, with or without cause, by a vote of two thirds of the members present and voting in a regular or special meeting. While labour union officers may be removed for loss of membership, officer of cooperatives may be removed for loss of confidence in the honesty and integrity of the officer and after due hearing.

⁵⁴ For example, making decisions to borrow money, invest funds or lend money instead of by holding meeting, cited in Bhat (2004).

Associations and foundations in Thailand are required to have management boards, and also many sub-committees. The law does not impose a specific size of the board or of election procedures (subject to rules of the individual organisation). As such, the laws regarding the internal governance of a registered TSO are rather open and flexible. All trade associations are required to have a board to represent and operate on behalf of the associations. Individuals must be ‘qualified persons’ to become a board member, and the government has the final say about a person’s qualification.⁵⁵ The new law requires each cremation association to have a board with at least seven board members, and to organize at least one general meeting every year (Vichit-Vadakan, 2006).

In Vietnam, the Congress (assembly of members) is the highest authority of each association, which meets every five years. It decides the policies, programmes and structure of the association. The central committee elected by the Congress for five years is the governing body responsible for implementing the Congress resolutions. It meets every six months and approves the annual plan and reports on activities and financial state of the association to the state agency. For large associations having a big central committee, a standing board may be constituted for five years. The board admits new members and organizes or administers the association’s office (Duong and Hong, 2006).

Responsibilities of the Board

In China, social organisations are required to conform to the constitution, laws and regulations and to safeguard national integrity and the unity of the nationalities and are forbidden from harming the interests of the state, society or collectivities or the lawful freedoms and rights of other citizens. They are also prohibited from engaging in activities aimed at making profit. The board, if formed, is accountable to the public meeting of members, is subject to supervision and control by the state agency, and the responsibility to comply with these principles (Ding, 2005).

In India, the governing body is responsible for the management of the affairs of the society in accordance with the rules and regulations. Filing the annual report, the list of the board members and an audited account statement with the registrar, defending and pursuing the society’s interest in litigation and maintaining the character of a not-for-profit organisation are a governing body’s primary responsibilities. In India, annual general body meeting of the societies is required to be held under most of the laws to approve, among others, the audited account statement and the balance sheet thereby ensuring transparency in governance. Policies relating to and leadership of the cooperative society are undertaken through a democratic process.

⁵⁵The Cooperatives Registrar has the final say on a person’s suitability to become a board member. A person is declined to be approved as a board member if the person ‘behaves badly or is deemed a threat to national economy and security’ (Vichit-Vadakan, 2006).

For the cooperative society, the final authority is vested in the general body of members, subject to application of the law (Bhat, 2004).

In Indonesia, the board of management is fully responsible for the management of the foundation in achieving the goals, and has the right to represent the foundation in or outside the court. The duty of the Board of Supervisors in a cooperative is to give suggestions to the Board of Management. The board of trustees in a *zakat* foundation in Indonesia is to approve the constitution, annual planning and general policy, and annually evaluate the foundation's activities. The board of trustees in Indonesian *zakat* foundations has the highest authority dealing with the appointment and removal of members of the management and supervisory boards⁵⁶ (Radyati, 2006).

The corporate powers available to the TSO boards in the Philippines are similar to those enjoyed by for-profit corporations.⁵⁷ The list of cooperative powers and capacities is also virtually the same for co-ops. The board of trustees are to exercise utmost good faith, honesty and fair dealing in all transactions relating to their duties to the organisation and its property and their dealings with and for the organisation; to exercise powers for the benefit of the organisation and not for their own personal benefit; not to make personal profit or acquire interest at the cost of the organisation; and not to evade responsibility in running the affairs of the organisation (Cariño, 2005). In Thailand, boards of a variety of TSOs have the responsibility of conducting the activities of the respective organisations without violating the law or without comprising national security (Vichit-Vadakan, 2006). In Vietnam, the central committee of an association is responsible to protect and uphold people's democracy, to admit members, implement the resolutions of the Congress, administer the office and not to violate law (Duong and Hong, 2006).

Summary

To be incorporate as a society, cooperative or (nonprofit) company, an organisation must pledge to be governed by a board or committee responsible to the members. Some legislations specify a minimum number of members: seven for societies and ten for a cooperative (from 10 different families). The various acts are far from consistent or thorough in instructing how relations between the board and members are to be conducted. In the societies' registration acts, the power of electing the management committee members and office bearers is vested with the members, but the tenure of office is generally not specified.

⁵⁶ Members cannot serve simultaneously in both the boards nor can a board member serve in the management of any business corporation belonging to the respective *Zakat* Foundation.

⁵⁷ Except only one (to admit members to the corporation which is specific to non-stock corporations).

The various pieces of legislation incorporating societies, cooperatives, companies and trade unions, as appropriate, ensure a basic form of accountability between governors (boards, senior managers) and members. All legislations specify that to retain the advantages of incorporation, all must hold annual meetings of members which have to approve annual audited statements which must then be submitted to the relevant registering authority. The requirements highlight the preeminence of the primary members that can ensure among other things transparency in organisational functioning and financial accountability.

External Control and Monitoring

There are three major tiers of supervisory system for social organisations in China with the Communist Party of China at the highest tier taking the most crucial role in regulating social organizations,⁵⁸ and the different departments under the State Council, for example the Ministry of Civil Affairs at the lowest tier. The State Councils, in the second tier, are responsible for making regulations, rules and other decisions that different departments are obliged to implement (Ding, 2005). So far more than 50 rules or regulations for TSOs have been framed by these agencies.⁵⁹ The responsibility for approving the provision of services is with the government-supervising agencies. Different government-supervising agencies have different standards to supervise the services of their respective social organisations based on their special professional work (Ding, 2005). In the ‘two-fold’ administration system in China, both registering and administrative authority and the government-supervising agency are responsible for the administration of TSOs.

Multiplicity of legislations is an important feature of the third sector in India. As a result, the Indian law has diverse policies about the extent of state supervision on TSOs. While the central law requires the ‘societies’ to file annual statements, many of the state legislations have introduced widespread governmental controls, such as the state’s power of enquiry and investigation on the working of the society; temporary suspension of the governing body; cancellation of registration and consequent dissolution of societies; suppression of governing body; appointment of the administrator; dissolution; and removal of outdated societies.⁶⁰ The supervisory legislation also varies across different states (Bhat, 2004). The legal frameworks clearly state governmental control mechanisms over the societies and cooperatives, and not over other types of legal entities.

⁵⁸ Chen Tingzhong, Interview report, 2002 (Ding, 2005).

⁵⁹ For more see our work on ‘Philanthropy and Third Sector in China’ done under the leadership of Professor Zhao Liqing, www.asianphilanthropy.org.

⁶⁰ There are also instances of state taking over of societies due to mismanagement (Bhat, 2004).

The Registrar of Societies as well as the judiciary has the power to monitor and control the foundation's operation in India.⁶¹ Foundations can also be terminated by the judiciary.⁶² The Registrar of Cooperative monitors and controls the cooperatives' governance.⁶³ In case of irregularity, misappropriation or fraud the committee or persons may be asked to rectify the identified anomalies. In case of failure, the registrar can order temporary suppression of the committee, appointment of a special officer, or issue mandatory directions.⁶⁴

The non-profit companies are supervised by the central government at two stages: at the time of permitting for the status of non-profit, and subsequently by issuing directions in national or public interest. The Registrar of Trade Unions may withdraw registration of a trade union if satisfied after any inquiry that it has contravened the provisions of the act or has obtained registration by fraud or misrepresentation. Penal sanctions may also be invoked for not filing annual returns.

For religious organisations, state-level boards and advisory bodies help in the supervisions, but the local administrators (e.g. the administrative chiefs of a division, district, or sub-district) act as the chief controlling authority in respect of all matters related to religious organisations. In case of mismanagement, government departments have authorities to take action (after hearing the defendants) to dissolve the committee and take over the management.

In Indonesia, the government tends to control the mass organisations offering general guidance, and technical guidance⁶⁵ and ordering the merger of organisations that have similar functions.⁶⁶ Some LSMs in Indonesia have characteristics of a foundation (i.e. founded by only one or several people), but have members so they are treated as associations. In this case, these LSMs are subject of the Foundation Law, Civil Law and LSM law (Radyati, 2004), and create problems in governance relationship. According to the Cooperative Law (No. 25 of 1992),

⁶¹ Seeking data related to a foundation's operation, and undertaking physical inspection of the foundation's operations (Bhat, 2004).

⁶² Through the request of the registrar, the attorney or any stakeholders if the foundation 1) is found to have objectives contrary to the laws, 2) undertakes activities that are against the laws or contrary to public order, good morals or the national security or 3) cannot operate for any reason or ceases to operate for more than two consecutive years (Bhat, 2004).

⁶³ The Registrar can hold or authorize holding of an enquiry into the functioning and financial condition of a co-operative society.

⁶⁴ Judiciary has limited the scope of suspension only to serious instances of irregularities or persistent defaults and negligence (Bhat, 2004).

⁶⁵ General guidance includes things like not to deviate from the Pancasila as the state way of life and ideology nor the constitution; and the technical guidance is related to the features of the TSO (Radyati, 2006).

⁶⁶ Governments at the district level and above have the authority to dissolve mass organisations proven to have violated the law (Radyati, 2006).

the government has plenty of scope in reigning in cooperatives and to control their activities.⁶⁷

In the Philippines, the Department of Social Welfare and Development (DSWD) regulates the TSOs through the licensing ‘to protect the trust of the people by promoting public accountability, transparency, professionalism and integrity in the delivery of social services’. Suspension of license for mismanagement of funds, violation of law, non-conformity with the standards of health and sanitation and any inaction against corrupt staff; and revocation of license for non-starting, immoral acts, exploitation, abuse, neglect and unworthy conduct of the TSO are the effective tools of external control. Specific machinery like the Inter-Country Adoption Board within the DSWD monitors the activities of the social service agencies in the field through accreditation and supervision. Different sectoral ministries or government departments have detailed guidelines for quality control and standardization in the TSOs. For example, the Department of Education has a detailed scheme and mechanism for ensuring quality education at various levels.⁶⁸

In Thailand, all TSOs have the obligation of filing the annual financial statement, keeping accounts and issuing receipts to the donors. The Ministry of Interior has a committee to monitor the operation of associations and foundations throughout the country to ensure compliance with laws and regulations. The Civil and Commercial Code (Articles 104–10) authorizes the Office of Police Intelligence to oversee the work of the TSOs in the Bangkok Metropolitan Area, and the Department of Local Administration (Ministry of Interior) to oversee the work of those outside Bangkok. So the TSOs active in Bangkok, having access to larger resources and networks, are under close scrutiny of the police intelligence, and risk termination for violating the laws.⁶⁹ The civil servants can monitor and control the work of the cooperative’s boards by directing them to adjust or improve their operation. The cooperative which fails to submit its balance sheet and annual report for three consecutive years or which performs ineffectively or operates in a way that causes damage to itself or the general public may also become liable for termination (Vichit-Vadakan, 2006).

The governmental control on associations in Vietnam, includes closure of those that act harmfully to the interest of the state or the people, oppose the laws and democracy, create disharmony, damage peace or preach war. Dissolution of associations

⁶⁷The cooperatives can be terminated if they do not meet all the requirements related to governance (stated in the Law No. 25 of 1992) or fail to implement their Cooperative Constitution or if the activities are considered, by the judiciary, to be contrary to the public order and ethics; or if the judiciary declares the co-operative bankrupt; or if the cooperatives do not undertake any activities for two years (Radyati, 2004).

⁶⁸This paragraph is based on Cariño (2005).

⁶⁹The associations are liable for termination for having objectives contrary to the law or against public order, good moral or the national security, and for failing to comply with the governments’ directives to rectify any identified faults or for being managed by people outside of its board (Vichit-Vadakan, 2006).

that are established without permission or that violate the laws and sabotage friendly relations with foreign countries are also contemplated (Duong and Hong, 2006).

Summary

It appears that the legal systems have assumed protective, facilitative and regulative roles with regard to the TSOs for their good governance. In all the legal systems under discussion, the concern for maintaining minimum discipline, rule of law, efficiency and national security and for ensuring purpose compliance has influenced the legal mechanism. The legal system provides enough discretionary authority to the government agencies to monitor and control activities of the TSOs.

The TSOs even in the contentious fields of development and environmental protection are free to perform any activity that is not against the law and do not affect good morals or state security. In practice, however, overseeing bodies are not overly strict in controlling the activities of these organisations as long as the activities do not break the law or are not a danger to good morals, public order and state security. For example, the Police Intelligence (as in Thailand) is supposed to be supervisory body for the TSOs, but then this overseeing body is very lenient until TSO is found to be 'breaking the law or are a danger to good morals, public order and state security' (Vichit-Vadakan, 2006).

Financial Accountability: Internal and External

Approval by the Department of Civil Affairs and registration by the relevant line authorities are required in China for establishing funds from donations, whether domestic or foreign. In China, social organisations and foundations have to submit the annual statement about their financial position to the Department (Ding, 2005).

Many aspects of financial accountability and foreign contribution are elaborately treated and emphasized in the Indian law. The general legal principle regarding property of a society is that, unless vested on trustees, the property shall be deemed to be vested on the governing body of such society.⁷⁰ Thus the governing body has a very important role to play. All the registered societies, cooperatives, non-profit companies and trade unions have to submit the annual audited account statement after placing them before a general meeting of members and getting their approval. They are prohibited from distributing

⁷⁰The Societies Registration Act, Section 8, see Bhat (2006).

profit to members. In the cooperatives law, there are stringent measures for ensuring financial discipline and for avoiding or remedying of any loss.⁷¹

The governmental control mechanism and transparency are intertwined in the financial accountability system of the TSOs in Indonesia, especially the ones receiving a large amount of foreign funds. The foundations in Indonesia must submit the audited financial statement (AFS) to the government after publishing it in a local newspaper, if they receive foreign funds of more than Rp500 million. In addition to submitting the annual report to the government, the labour unions and the LSMs require prior permission from the government for receiving foreign funds (US\$5000+) (Radyati, 2006).

Regarding financial reporting and auditing the Philippines law is very systematic. There is a general mandate upon TSOs to submit annual financial statement. If the organisations access public funds, they are regulated and audited by the Commission on Audit. One unique feature is that the NGO/NPO requires the beneficiaries to issue a certificate of acceptance for accomplished or completed projects. Each non-stock in the Philippines must submit a general information sheet (GIS) regarding its annual meeting within 30 days of that meeting, and an AFS within 120 days from the end of the fiscal year. Non-stocks with annual receipts of less than 100,000 pesos or total assets amounting to less than 500,000 pesos may submit an AFS attested or sworn by the corporate treasurer. Any amount above that has to be audited by an independent certified public accountant. This is a much more liberal rule than those applicable to stock corporations. The liberality extends to the scale of penalties as well. Fines imposed on the TSOs for non-compliance with reporting requirements or for late filing are generally only half of what a similar size stock corporation is required to pay (Cariño, 2005).

All TSOs in Thailand have to submit the financial report to the government agencies they are registered with. The government officials do not regularly monitor the TSOs' operations. The government's (appreciative) enquiry sometimes offers encouragement. For example, the government often tends to 'study' good examples of goods and service delivery options (Vichit-Vadakan, 2006). In Vietnam, associations are under obligation to submit the annual financial statement together with meeting minutes of the standing board to the respective umbrella organisations. Financial auditing, is not a requirement by the umbrella organisations (though it is practiced by most TSOs) (Duong and Hong, 2006).

The practices of preparing and submitting financial statement to the supervisory authority, compulsory auditing in most countries and approval by the members' meeting are prevalent and appear to be effective instruments of financial control in the TSOs.

⁷¹The trustee has the responsibilities of knowing about the trust property, of not having personal interest, of not delegating his duties, of not buying trust property, of not investing trust fund in impermissible investments and of not receiving remuneration.

Conclusions

There is a commonality in social atmosphere, public need and cultural relevance for TSOs in the participating countries. In all the participating countries, mutual dependence in agriculture, social protection, trade and cultural activities created space for community life. The tradition of collective life in religion, economy and social relations for a long time have welded the people into organisational subsistence. In the recent years, people's actions in needs fulfillment, struggle against oppressions, and mass socio-political participation have provided an excellent environment for TSO functioning. In the third sector's efforts of filling the gap between individuals and the state, laws have lent its force at different forms and scale.

The sources of TSO law in the participating countries range from substantive law to departmental orders. The position in India, Thailand and the Philippines is more normative and systematic than the other countries. The core philosophical domain of all the legislative systems to protect, facilitate and regulate the TSOs in their functioning and purpose compliance, however, appears to be the same. The constitutional guarantee of associational freedom has largely emerged as an ideological mark in majority of the countries rather than a strong benchmark for determining the legality of state intervention. By treating the association's right subservient to the citizen's freedom of association, even the Indian law (which has built a strong constitutional jurisprudence) has, in practice, allowed more state intervention. The tools employed and the degrees of state intervention vary owing to various factors and the diverse nature of political institutions.

Major differences in the legal environment in our six participating countries are between the common law countries and civil law countries. In common law countries (India, Philippines) no permission is required to form an association; in civil law countries (China, Indonesia, Thailand and Vietnam), in general, yes. In most of our participating countries specific government agencies administer the TSO laws. In Indonesia, however, the Department of Human Rights and Justice is in charge of registering and monitoring the foundations, while the local courts are responsible for registering associations. In Indonesia and India, local administrations are also to monitor TSO activities. Police intelligence is also playing the supervisory role, as in Thailand. Depending on the culture of the government organisations, their structure and mandates, and relationship with the people, the supervision by different types of offices affects TSO functioning differently in all countries. In practice, however, overseeing bodies are not very strict in controlling the activities of the TSOs as long as the activities do not break the law or are not a danger to good morals, public order and state security. Even if the intention of control is not there, the use of vague and broad terms like 'threat to social harmony, domestic economy and foreign relationships' provide enough leverage to the government agencies to create undue control mechanisms, in case of needs.

In all the six countries, to incorporate as a society, cooperative or a company, there is an assumption that the TSO will be governed by a board or committee responsible to the members. The various acts are far from consistent or thorough in

instructing how relations between board and members are to be conducted. The various pieces of legislation incorporating societies, cooperatives, companies and trade unions, as appropriate, ensure a basic form of accountability between governors (boards, senior managers) and members. The requirements highlight the preeminence of the primary members that can ensure among other things transparency in organisational functioning and financial accountability. The common feature of all these legal systems is insistence on accomplishment of the objectives of the TSOs, in compliance with the law ensuring accountability, transparency and integrity of the management and supervisory committees.

There has been much inconsistency in the features and applications of legislations related to different types of TSOs. If the government becomes strict with one particular type of TSO, organisations tend to deregister from that category and move around association law, foundation law or company law. Further, vagueness of the legal system and its arbitrary basis create problems for implementation, and hinder the creation of trust and a congenial relationship between the government and the TSOs. The lack of uniformity in the legal provisions and their applications may have significant bearings on the functioning of the TSOs with a transparent and accountable governance regime. The contention is proven in our analysis in this Volume.

Chapter 4

Perceptions of Third Sector Governance in Asia

Ma Oliva Z. Domingo and Samiul Hasan

In the early 1990s when the World Bank and the United Nations Development Programme (UNDP) emphasized good governance as a precondition for development in Africa and Asia, a Chinese scholar Dr. Yu Keping started to use the term ‘governance’ in his political writings, which were circulated among a narrow circle of mostly Western-educated scholars. In a communist regime this was a sensitive matter for he described governance as decision-making with public participation as a necessary ingredient—a major tenet of democracy. Later on, the advocacy for good governance mainly by the international community, the increase in research and training programmes and the expansion of the third sector made ‘governance’ more popular to the Chinese (Ding, 2005). Around the same time, the introduction of *doi moi* or market-based reforms in Vietnam increased the role of private organisations while reducing the role of government in key areas of development, especially in the field of welfare and social services (Duong and Hong, 2006). This followed the arrival of international organisations along with terms like ‘governance’.

The new Constitution of Thailand (1997), the Office of the Prime Minister’s guidance on ‘good governance’, and the Royal Decree on Good Governance (2002) placed the government as well as private organisations in Thailand on alert (Vichit-Vadakan, 2006). The beginning of the (re)democratization process in the Philippines (1986) and in Indonesia (1999) also brought pressure and promises of support for ‘good governance’ to thwart the re-emergence of authoritarian regimes in these countries and generated fervour for good governance. Although India has sustained its democratic tradition, the liberalization of economic policies in 1991 reinforced the call for good governance.

Thus, when our research work was undertaken, in all our participating countries, the term ‘good governance’ was being used (and misused) indiscriminately. In many instances the respondents seemed to have difficulty differentiating ‘governance’ from government or management. As a result, there has been a wide variation in the meaning, features and application of third sector organisation (TSO) governance within and across the countries.

This Chapter explores the meaning and perception of governance within the third sector in China, India, Indonesia, the Philippines, Thailand and Vietnam. It deals with questions like: given the differences in history, culture, religious practices,

economic development and political structures and processes, is there a wide variation in perceptions of attitudes towards and expectations of ‘governance’ within the third sector in these countries? What are the distinguishing features or elements of third sector governance in these countries (as perceived by the interviewees)?

To find answers to these and other related questions, two questionnaire surveys, imbedded in the methodology, were conducted in late 2003 and early 2004, with two sets of interviewees (referred to as respondents): (1) individuals knowledgeable about and influential within the third sector in the country, referred to as the ‘key informants’, and (2) the officials of the TSOs surveyed—referred to as ‘organisational respondents’.¹ The chapter is based on these two surveys, and is divided into three main sections exploring the respondents’ perception about (1) the meaning of governance; (2) indicators of good third sector governance; and (3) the normative and actual locus of responsibility for ensuring good governance, including the factors influencing governance in the TSOs.

Third Sector Governance: Meaning

To many respondents the term ‘governance’ signifies values—particularly those of efficiency, self-discipline (e.g. being firm with oneself), honesty (free from unethical practices), collective spirit, having a good reputation and democratic decision-making. In India, for example the most frequently cited components of governance are value-based, such as integrity, social binding, moral commitment, socio-economic justice and equity.²

In the following discussion, we are highlighting the meanings of TSO governance that are pointed out by most respondents: the setting of vision, mission and goals; good internal management; rational and accountable structure and process; and being guided by conscience and accountable to oneself.

Vision, Mission and Goals

Setting (and implementing) clear vision, mission, and goals (VMG) emerged as an important element of governance. For key informants in China, coordinating different interests and setting directions, mission and standards are essential in the meaning of governance (Ding, 2005). Indonesian respondents identify the formulation and implementation of the VMG of the organisation as a major aspect of governance. According to the organisational respondents, commitment to, and being guided by

¹For details of the research methodology please see Chapter 1 of this Volume.

²This is especially from the point of view of key informants from TSOs and academia (see Dongre and Gopalan, 2006).

the VMG are more important than having a clear VMG. These, however, require clarity, thus clarity of the VMG is seen as a major aspect of TSO governance in Indonesia (Radyati, 2006). Similarly in the Philippines, governance is primarily the formulation, clarification, refinement and regular review of the organisation's VMG and the translation, operationalization and implementation of these into policies and programmes (Domingo, 2006). Key informants in all countries, except Thailand, highlighted clarity and achievement of the VMG as a significant meaning of TSO governance.

Internal Management

Managing the internal affairs of the organisation well is another category of the meaning of governance. The term is relatively new and in most countries it is known only to academics and staff in the international organisations, thus many respondents use management and governance interchangeably. For example, the Chinese key informants frequently associated 'third sector governance' with internal management, specifically how organisations formulate and implement decisions and who makes decisions. This internal management mechanism, to the key informants in China, include the appropriate development of direction, robust mission, high quality leadership by a well-organized board committee, public meetings (increased public participation), transparency of finance based on strict rules, skilled staff and good relationship with government and donors, among others (Ding, 2005).

Key informants in Indonesia identified managerial functions of TSOs like organizing, decision-making and controlling, as well as management systems (e.g. working mechanisms, rules of the game, or ways of wielding power) as major aspects of governance (Radyati, 2006). For key informants in India, people's participation in decision-making, involvement of the target group in the planning process, and the emergence of educated stakeholders are manifestations of the new dimensions of governance (Dongre and Gopalan, 2006). Among the respondents in the Philippines, 'governance' revolves around the question of how TSOs function internally and how they relate with their environment (Domingo, 2006).

Structures and Processes

Another dimension of the meaning of governance is the presence of an accountable structure and process. In this sense, 'governance' also means having a rational power structure with quality leadership and staff, and the maintenance of good relationships with external stakeholders (especially with government and donors). Being accountable to the general public, the funding sources and the government are important components of governance noted by the key informants in India

(Dongre and Gopalan, 2006). For Indonesian key informants, external relations or linkages, that is developing and maintaining relationships with other stakeholders and TSOs, was identified as TSO governance. The organisational respondents in Indonesia make no references to management or systems in their perception of governance, though these are the most popular concepts associated with governance among the key informants. Nonetheless, the focus of governance to them is basically internal and related especially to the board, staff, VMG, decision-making, performance measurement and others (Radyati, 2006). For the respondents in the Philippines, having the capacity to generate resources and ensuring that resources are put to good use and properly accounted for are elements of governance (Domingo, 2006).

Values and Virtues

Governance also means being guided by one's conscience and accountability to oneself. To many informants in India, when one is responsible and accountable to oneself, either as an individual or as an organisation, (i.e. being true to one's conscience) the rest of the governance virtues fall in place automatically. Some key informants in India emphasize certain common factors of governance like accountability, transparency and democracy. They believe that the legitimacy that society confers upon the TSOs is a major aspect of governance because the aspiration for legitimacy forces the TSOs to keep themselves in check and be on track. Among the Chinese respondents, a TSO's social acceptance and evaluation by the community is more important than being accepted by the government (Dongre and Gopalan, 2006). In the case of Thailand, the meaning of TSO governance includes virtuous operation because the Thai public in general are more concerned with the issue of legitimacy (e.g. who founded and funded the TSO and for what purposes) rather than the issue of transparency and accountability (Vichit-Vadakan, 2006). The idea is that virtuous operation by good people and good funds (not only just being transparent) will ensure accountability in every possible way. In Indonesia, the respondents referred to downward vertical accountability (including to the public) as a major meaning of TSO governance. The organisational respondents (not the key informants) associate governance more with transparency and accountability, and how values should accompany actions within the organisation (Radyati, 2006).

The respondents also identified concepts or values like distributive justice, public benefit, equity, group spirit and mutual cooperation, and the adherence to cultural and religious values as important aspects of TSO governance. Although apparently Western, the notions of transparency and accountability emerged as important features of Asian TSO governance. It was only in the Vietnam study that transparency and accountability did not clearly emerge as a meaning of governance. Transparency (in thought and action) and accountability to clients, donors, government, other stakeholders and the general public enhance social acceptance—a highly prized

value that confers legitimacy to a TSO (Dongre and Gopalan, 2006). A TSO is legitimate in the eyes of the public that approves of its existence and finds its activities acceptable³ thus it is imperative that a TSO remains ‘open’ if it aspires for legitimacy.

Third Sector Governance: Indicators of Good Governance

A major question in the key informant survey aimed at identifying the indicators of good governance for the third sector. The respondents identified many of these indicators of good governance. Among those identified by the key informants are: the existence of a good evaluation and reflection system, mutual help, effective external interaction, existence of cadres, moral commitments and others. This section discusses the indicators that were more prominently identified by the respondents. This includes a transparent system of answerability, democratic leadership and decision-making, good relations between the board and the chief executive officer (CEO), professionalism and the maintenance of partnerships and networks.⁴

Transparent System of Answerability

There are various interpretations of accountability; and ‘answerability’ to a higher authority for one’s actions or behaviour is among them (Shafritz and Russell, 2003; Kearns, 1996; Lawry, 1995; Levine, Peters, and Thompson, 1990). Many key informants, mainly in India and Indonesia, highlighted accountability (a system that makes the ‘managers’ answerable to the stakeholders) as the most commonly held indicator of good governance. Interestingly enough in our participating countries, the vernacular term to mean accountability translates to ‘answerability’. Answerability implies standards and expectations of the one reported to. To be accountable is to be able to manage ‘the diverse expectations generated within and outside the organisation’ (Romzek and Dubnick, 1987: 228). Standards and expectations are then culture-bound and value-based. Thus, there cannot be a universal system of answerability (Lawry, 1995).

According to the respondents, the main type of accountability that is felt and adhered to in TSOs in India is the one related to funding sources (identified by 100% of the organisational respondents). Although over 90% of the respondents in

³Please see the chapters on India, and Thailand and also the chapters on China, Indonesia, the Philippines, and Vietnam at the end of this Volume.

⁴There have been overlaps between some interviewees’ understanding of governance and about the indicators of good governance. Aware of that, this discussion tried to avoid the overlaps.

India valued accountability to the general public as essential, only 31% perceived accountability to the government as important (Dongre and Gopalan, 2006). The Indian respondents also consider transparency of actions at all levels, including in the formulation of policies, as a requisite of accountability. A transparent and accountable system emerged as the most popular concept of governance among the key informants in Indonesia (Radyati, 2006) as well.

Considering their very traditional culture and religious values, the Thais place importance on the 'legitimacy' of the TSO, but believe that the TSOs should have a transparent accountability to stakeholders. Transparency in the accountability system is valued so much in Thailand that TSOs without prestigious, high-ranking, or wealthy persons as founders, or on their boards, tend to overcome this apparent 'handicap' by striving to be transparent and accountable towards their clients and to the public in general in all their actions. This enhances the credibility of the TSOs and enables them to gain social acceptance and legitimacy within Thai society. At the same time, these TSOs are well sought after by, and are able to comply with stringent accountability requirements of the donors (Vichit-Vadakan, 2006).

In the Philippines, key informants as well as the organisational respondents highlighted the need for accountability of TSOs in terms of fund use. Integrity of actions and programmes by TSOs in the Philippines is achieved through reporting, and open communication to the members, the government, the donors, the supporters, the boards, the (church) hierarchy, the owners (for cooperatives), the people to whom goods and services were promised, the constituents, the wider community and the supervisory body. Transparency in decision-making, in the sourcing and use of funds and in overall operations was all important to the respondents who thought these could be achieved by: making records accessible to members and stakeholders; publishing annual reports including audited financial statements, details of programmes and of programme financing; and the use of other publications, websites and newsletters (Domingo, 2006).

Adherence to and application of the principles of transparency to ensure accountability are important components of good TSO governance. This entails having mechanisms, structures and policies that promote accountability to various stakeholders and the wider public. An accountability system, as correctly identified by many key informants, is either dependent on or creates a democratic system.

Democratic Leadership and Decision-Making

Good TSO governance involves democratic, participatory, transparent, and accountable structures, processes and mechanisms where stakeholders can participate. There are high expectations of the leader but stakeholders are important players in TSO governance as well. A clear, well-defined structure is ideal but flexibility, founded on high standards of performance, under the guidance of a strong leader, is more practical.

For organisational respondents in Indonesia, a major indicator of governance is a democratic and participatory decision-making process—not necessarily with voting but may be with consensus (*musyawarah* or *mufakat*)⁵ among the stakeholders. In the Philippines, decision-making is generally by consensus rather than voting, where the value of *pakikisama* (being agreeable or accommodating) plays a big part (Domingo, 2006).

Participatory decision-making structures and processes enable broader involvement of various stakeholders in the governance process. This promotes a positive image of the TSO in society and enhances its legitimacy. According to the key respondents in Thailand, decision-making process, system and structure and the mission have the same rank as ‘legitimacy’. Decision-making is expected to be democratic, consensual and participatory (Vichit-Vadakan, 2006). This participatory system can be influenced by strong-willed leaders. Many aspects of a democratic system like holding public meetings (i.e. increased public participation) and high-quality leadership by a well-organized board or committee are important indicators of good TSO governance in China (Ding, 2005).

Governance involves the support and trust of the organisation members, donors and the general public to ensure sustainability—all these follow strong leadership in the TSOs. An accountable and responsive leadership is central to the understanding of governance in India (Dongre and Gopalan, 2006). In the Philippines, a major indicator of (good) governance is the capacity to lead the organisation and carry out its programmes. Leadership requires necessary skills for performing management roles because governance may also mean running the affairs of the organisation, its internal operations, programmes and projects. All these require a structure, specifically the organisational set up, delegation of powers and the allocation of work within the TSO. The structure for the pursuit of goals and objectives involves clear delineation of roles and responsibilities within the TSO—defined and guided by the leader (Domingo, 2006).

It is quite obvious from the key informants in Vietnam that TSO governance is closely associated with management or administration. The performance of these internal management functions is perceived to be the role of the leaders—directors, managers and boards. This requirement indicates decision-making through a superior leadership process (Duong and Hong, 2006).

The influence of traditional values is evident in the indicators of governance that emerged from the respondents. Many key respondents, as widely apart as in China and India, however, started to ponder about the concept of governance only as a result of our interviews. Those familiar with the term expressed their understanding of governance using the corporate governance perspective. Those unfamiliar with the term drew their ideas mostly from religion, philosophy and culture. In any event, organisational democracy shapes and, in turn, is influenced by internal relations.

⁵ It means decision-making with one voice by incorporating participation or suggestions from all the members. For more see Radyati, 2006 and Indonesia Chapter in this Volume.

Good Relationship Between the Board and the Executive

The question of leadership raises the issue of the board/committee's role in the operational aspects of the TSOs. The governing function of the board consists of formulation, articulation and regular review of the VMGs of the TSO, and the translation of these into well-defined policies, strategies and programmes for their attainment. Besides the policy-making function, governance also involves the management of financial, human and other resources for the fulfillment of the objectives. This is generally the realm of the executive and the staff, but there are expectations that the board assumes certain roles in this direction as well—although with a great caution so as not to be considered a meddler. In other words, despite the occasional warnings against micromanagement, there is an expectation that boards should be more actively involved in the implementation of certain policies and programmes. For instance, resource generation and building partnerships are not, strictly speaking, policy-making roles, but boards are expected to take an active part in these just the same. In reality then, the 'surgical cut' between policy-making and management is ideal yet not always operational or easy to implement (Domingo, 2006; Dongre and Gopalan, 2006).

More than just the existence of a board, a transparent board selection process is also important and enhances the role of the board in governance. The presence of a board, its independence, its role as a mechanism for 'checks and balance' vis-à-vis the executive and as a representative of the public and the conduct of regular self-reflection are important aspects of the 'board' according to organisational respondents in Indonesia (Radyati, 2006).

A working board performs policy-making roles while the CEO leads the day-to-day management of the organisation. A good working relationship between the board and the executive is thus important. Only 26% of the respondents⁶ (who commented about board-executive relationship), however, reckoned that there exists a pleasant relationship between the board/committee and the CEO. A greater number of the respondents, about 52%, thought that a good relationship between these two groups exists only sometimes. There have been fairly similar responses in the participating countries regarding this relationship, except the Philippines and Thailand. In the Philippines, 44% of the informants were of the opinion that the board/committee had very harmonious relationship with the executives (Domingo, 2006). The re-democratization process in the Philippines that begun in the mid-1980s, followed by the framing of a new constitution, created specific roles for the TSOs in local governance. This TSO role is seen to be precious and strategic and is protected by playing the games within the rules. Thus the board and the executives in the TSOs have developed mutually supportive, harmonious relationships in the Philippine TSOs. On the other hand, in Thailand, rules of the games are not defined. Further, the TSOs, being keen to raise their prestige, invite individuals

⁶No positive response from Thailand.

with high economic, social, or political stature to be on the board. The board members, in turn, vigilant in making sure that their names are not tarnished or that they do not unknowingly become involved in unscrupulous activities of any kind, ‘intervene’ in the operational activities of the TSOs, and cross the board-executive boundary. As a result, according to 54% of the Thai respondents, the relationship between the board and the CEO is rarely harmonious (Vichit-Vadakan, 2006).

Most key informants in China believe that the relationship between the managing committee/board/trustees and the CEO depends on the relationship between the head or the chairperson of the managing committee/board with the CEO. In China, this relationship is guided by the Chinese tradition of *guanxi*—a network of informal personal relationship that forms an invisible bond between the board/committee and the CEO (Ding, 2005).

The key informants in Indonesia suggested that the board-executive relationship is dependent on the size and age of the TSO. In relatively small and young TSOs, the relationship is always harmonious, and the board and the executive make most managerial as well as strategic decisions together. The board–executive relationship, however, becomes dissonant when the TSOs become large and start dealing with highly effective social programmes—being in such an effective, and thus popular and sought after, TSO, both the board and the CEO want to claim credit for excellence.⁷ One thing became clear from the key informant reports that a harmonious relationship between the board and the executive in the TSOs is a product of long-term friendships between the two.

Professionalism

Staff development, which includes having a human resource development plan, a succession plan and a reward system that aims to professionalize and ultimately leads to high staff retention levels is identified as an important good governance feature in Indonesia (Radyati, 2006). TSO governance in the Philippines, according to the key informants, involves better human resources or people management. Treating the staff, volunteers or members properly and keeping them satisfied by giving a fair and competitive pay, benefits or opportunities for self-actualization, as appropriate, are major aspects of professionalism, and the features of good TSO governance (Domingo, 2006).

Concerns for the welfare of the staff constitute another category in the various meanings of governance. This refers to quality of staff, their commitment to work and the level of remuneration and other benefits.

⁷The Indonesia Country Report (Radyati, 2006), and the Indonesia Chapter in this Volume provide excellent discussions about the board-executive relationships. Using Middleton’s (1987) ‘strange loops and tangled hierarchies’, (that create conflicts between the board and the chief executive also known as agency problem, cf. Gitman, 2003), these two items analyse the key informant survey in Indonesia based on the organisational data.

According to the key informants in India, Indonesia and the Philippines, good TSO governance also means the presence of systems and procedures. There should be clear rules, regulations and mechanisms for communication, monitoring and evaluation on funds and other resources and related activities. Better performance requires professionalism in terms of TSO operations, the attainment of the TSO's objectives, adherence to the mission and integrity of the purpose of benefiting the target clientele or society in general.

The issue of legitimacy also emerged in the responses. This is where concerns for an organisation's credibility and acceptability to society surface. Even in Thailand, where there is a large percentage of informal TSOs, the maintenance of a good reputation and a positive public opinion are important. Some respondents went further suggesting that the board and the TSO need to guarantee professionalism to ensure sustainability. Good TSO governance is, thus, in essence performance evaluation against a set of professional goals. The Indian key informants emphasized integrity and the importance of monitoring service and programme delivery so that the resources are not siphoned off for the TSO overheads. Professionalism does not only depend on internal mechanisms and/or support; it also is significantly dependent on external funds and technical support, which are easier to access through partnerships and networks.⁸

Establishing and Maintaining Partnerships and Networks

Many key informants are of the opinion that social acceptance of the TSOs takes precedence over acceptance by the government alluding to the issue of value subscription which is a major problem of TSO performance in many traditional societies like India. For example, programmes that address gender imbalance or power relationships in the respective society are subject to resistance and are required to be implemented through horizontal partnerships. A major aspect of good governance in the TSOs, therefore, is strategic partnerships of all three sectors of society (government, business and the third sector) in policymaking and implementation. Thus the key informants in India see the existence of partnerships and networks among the TSOs, and between the TSOs and the government as an indicator of good governance. Some key informants in India believe that since the TSOs need to operate according to the expectations of the government, developing linkages with the government is imperative for the TSOs (Dongre and Gopalan, 2006). This is true not only for external relationships. Some key informants also referred to internal relationships among the board and staff as well as with client groups as important features of good governance.

⁸ This paragraph is based on the key informant survey discussions in all the country reports undertaken for this study.

Among the key informants in Thailand, good governance is manifested in the establishment of networks for mutual cooperation among the TSOs and between the TSOs and other stakeholders (Vichit-Vadakan, 2006). For key informants in the Philippines, developing partnerships with the government, the donors and the stakeholders that help acquire necessary tangible and intangible resources is an indicator of good governance. A key informant from the academe highlighted ‘engagements with the local governments’ while another referred to how TSOs ‘help the government deliver services’ as indicators of good TSO governance. Others considered governance as ‘working in tandem with the government’ or ‘relationship with the government’ because it strengthens the negotiating power of the TSOs (Domingo, 2006).

The results of the interviews indicate that there is no single set of indicators for TSO governance in the participating countries. The range of indicators associated with governance, however, has primarily an internal organisational perspective.

Responsibility for Ensuring Good Governance

In addition to understanding the respondents’ opinions of and perception about TSO governance in their respective countries, we were also interested in analysing the respondents’ experiences. Six questions in the data collection instrument dealt with who should ideally and actually have the responsibility for ensuring good TSO governance. The extent and reasons of governmental control over the TSOs and the factors influencing TSO governance in the participating countries were likewise explored. This section discusses the responses under similar headings.

Governance Responsibility: Normative Views and Actual Practice

The respondents were asked who, in their opinion, should have the responsibility of ensuring that the TSOs are well governed. In China, 43% of the key informants said it should be the board’s responsibility, while 17% thought the government should be responsible. A majority of the respondents (62%) in Thailand believed it should be the board’s responsibility. Only 24% of the Indonesian respondents thought the board should be responsible for ensuring good governance in the TSOs, another 24% considered it the responsibility of the funding agencies, while 40% believed it to be the CEO’s responsibility.

The picture in the real world, as seen by the respondents in all countries, is however, different from the normative world. Fifty-two per cent of the respondents in China, 40% in Indonesia and the Philippines and 38% in Thailand thought that the CEO/ leader of the TSO is mainly responsible for ensuring good governance among the TSOs. The same percentage of respondents (21%) in both political party-dominated China and democratic India believe that it is the responsibility of the board to

ensure good governance. It is interesting to note that 38% of the respondents in Thailand believe that in their country, a corporate model of governance is in place in the TSOs, while another 23% find the existence of staff-based governance in the TSOs. Thus there is a wide variation not only among the countries but also between the key informant's normative view and the actual situation in the countries,⁹ with a major emphasis on non-board-based governance (62%).

The Extent of Government Supervision

Many respondents in the six countries claim that their respective governments tend to keep an ambiguous legal tool in place and implement this only as required without hampering the TSO functioning. For example, 40% of the key informants in China think that the government moderately controls the TSOs, while 56% of the respondents in Indonesia and 77% in Thailand reckoned that the government hardly supervises the TSO activities. They believe that the government regulations are there to curb the TSOs creating problems in the country but not to hinder the TSOs' normal activities. Sixty-two per cent of the respondents in China and 32% in Indonesia suppose that the main purpose of the government control mechanism is to ensure that the TSOs are not involved in politically subversive activities. The respondents in Thailand did not see political subversion as an issue, but thought that the government's supervision over TSOs is simply to ensure proper use of their funds (46%) and the integrity (31%) of their actions, that is, that they are involved in the activities they are set out to do. The TSOs' integrity (14%) and a proper utilization of funds (12%) are also important in China according to the key respondents there (Ding, 2005). The enabling environment in the Philippines leaves TSOs largely without government supervision. Only those suspected of being subversive are watched closely.

India is a successful democracy and has a reasonably free environment for TSO growth with a huge government support for the TSOs in social development. Nonetheless at least 20% of the informants in India believe that the main reason for government control over the TSOs is to make sure that the TSOs are not involved in politically subversive activities. Thus many respondents in most countries believe that the TSOs are eyed with suspicion. Many TSOs thus tend to protect themselves from any unwanted government intervention through good governance under the guidance of a strong board.

Third Sector Boards: Existence and Advantages

The study asked the respondents specifically about the board, even when this did not emerge in their perception of governance. The responses reveal that, in general,

⁹Please see the comparative analytic chapters of organisational data in the next section, and the country chapters at the end of the Volume.

in all the six countries the board emerges as a feature of TSO governance. The respondents, however, cited varied reasons and advantages for having a board.

Perceptions about the role of TSO boards in China are mixed. The informants consider the board as the decision-making body of the TSOs. Personnel decisions in the TSOs with strong government links, however, are usually sent to the respective line government office so some key informants see the government (and not the boards) as the decision-maker. A great majority of the TSOs in China, according to the key informants (and corroborated by the organisational survey), have a 'board committee', as they are usually called in China, especially the large TSOs and those located in large cities (Ding, 2005). The respondents in Thailand and Vietnam believe that every TSO, in their respective country, has a 'board' in different forms. The percentage of respondents who think that all TSOs in the country have a board is the lowest in India because there are thousands of informal TSOs (although a large number of them also have a board).

While 52% of the respondents in China presume that having a board in the TSOs is a legal requirement, all respondents (100%) in Thailand know that it is mandatory to have a board. Around 50% of the key respondents in these countries see the 'board' as the major decision-maker and a 'guide' for the TSO, believing that boards help set and achieve goals. It is very interesting to note that only 2% of the key respondents in India, 38% in China and an average of 27% in the six countries believe that the board brings intangible resources to the TSO. This is primarily because in China board members bring political connection to the TSOs, which become an objective force in the functioning for the TSOs. In other countries the board members benefit TSOs socially and in networking. In India, due to much resource constraints, board members have to be more than prestige enhancers and be involved in fund raising.

Monitoring efficiency and effectiveness received very little support as a major advantage for having a board from the perspective of key respondents—only 11% overall: only 7% (the lowest) in China and 20% (the highest) in Indonesia and Vietnam think so. The respondents see the existence of a board as necessary in setting and achieving goals. Seventy-three per cent of the respondents in Indonesia, 62% in Thailand, 60% in the Philippines and 53% in India (an average of 50% overall) think that boards help TSOs set, monitor and achieve organisational goals. Twenty per cent each in India and Vietnam believe that the board can and does monitor efficiency. In fact, in many cases boards exist to enhance prestige or as a mutual support mechanism (many CEOs and board members exchange positions in each others TSOs) and thus cannot have the independence to monitor or question activities, nor can have any credibility.

The Thai country report, for example suggests that board members are mostly volunteers and have little time to attend meetings or make meaningful contributions to the TSO, except occasionally donating large sums and offering professional advice to the organisation. They are usually individuals with high social and/or economic status and their concern for guarding their reputation makes them monitor the TSO staff closely to ensure that their names are not tarnished by any TSO activity. They cannot effectively censure the staff, however, because of Thai values

and traditions. Boards are sometimes derisively called the *'bod'* (the Thai word for blind) because many board members do not know (nor do they want to know) much about the TSOs. The management team and staff make the plans and set directions and boards are more like consultants rather than governing structures. Significantly enough, the most important role of the board is to lend their personal prestige to make the TSO credible and acceptable to the Thai society (Vichit-Vadakan, 2006).

TSO boards have to function within the socio-cultural political context of the country, but can create opportunities for the TSOs in terms of ensuring integrity, monitoring activities, generating and maintaining networks.

Factors Influencing TSO Governance

Key informants in the Philippines mentioned, among other things, that 'the general situation in which the TSOs operate' is the most important factor affecting governance. For example, the 'effects of the ENRON scandal spilled over the sector where there is now greater emphasis on accountability and transparency' than in the past. The third sector itself is seen to have influence on TSO governance. There is 'peer pressure from organisations that operate in the same domain, for example social development'. Alliances and networks 'define standards' of performance and operation, for example ethical behaviour of the member organisations and respective people. In the post-EDSA (Epifanio de los Santos Avenue people's power movement of 1986) period, TSOs have been reorganising and reorienting themselves to ensure better governance and accountability to their constituents as well as to the society at large. The EDSA people power effect seems to have influenced other countries as well.¹⁰

Many informants likewise thought that the friendly but reflective (as opposed to critical) environment in the organisation, good relations with the private sector, discipline and/or regard for discipline in the community, moral values of society and the existence of self-supporting groups under the TSOs concerned, positively influence TSO governance, irrespective of country conditions and community situation. On the other hand, the aspects like high density of funding agencies, efforts by the local governments and local implementation agencies in making sure the TSOs do not perform well (because that will restrict the government agencies' extra-legal practices), and the pressure from political organisations and/or groups negatively influence TSO governance in many participating countries.¹¹

If the government appreciates the contribution of the TSOs as complimenting government's efforts, stringent governmental measures can be taken in the positive

¹⁰This paragraph is based on Domingo, 2006.

¹¹This paragraph is based on the six country reports, but this aspect is discussed more in India Country Report, see Dongre and Gopalan, 2006.

light rather than as adversarial. In this context, Cariño (2005), referring to the Philippines government, states that the ‘long list of criteria for organisations collaborating with the government made by the National Economic and Development Authority (NEDA), and the similarly long list of qualifications drawn up for board members, would have been regarded as too restrictive were it not for the largely positive atmosphere’ in which the interaction between government and non-government organisations occurs. A friendly and congenial relationship created by the government is, in fact, important for ensuring better TSO governance. The fact is manifested in many responses in India, which suggest that the priority is not to promote governance for the third sector but to create a friendly environment for it (Ding, 2005; Dongre and Gopalan, 2006).

Concluding Remarks and the Importance of Values

The term ‘governance’ means varied things in the Asian third sector context. Although relatively new for some (e.g. the Chinese third sector), various meanings are associated with the term. It is often assumed to mean corporate governance (e.g. India and Indonesia). To many academics, public officials, as well as third sector officials, governance for the Asian TSO is clearly about managing organisations, as the respondent survey shows. This internal management perspective involves establishing and maintaining relations and partnerships with various stakeholders, including the government, but this is one dimension of Asian TSO governance. The survey also reveals that a ‘board’ may exist but with different names and forms. The study noted, however, that a TSO board could be inactive (as noted in some TSOs in China), ‘bods’ (or “blind” in Thailand), and may know very little about the organisation or its activities. Many board members may not be even aware of their duties and functions (e.g. the Philippines).

Besides satisfying regulatory requirements, the relevance of the board structure for Asian TSOs would be (1) to provide representation for members (especially true for large boards, e.g. China); (2) to serve as a mechanism for checks and balances for the executive and staff (e.g. India and the Philippines); (3) to acquire tangible and intangible resources from the external environment—funds, expertise, connections, advice and prestige (e.g. Indonesia and the Philippines); and (4) to promote transparency and accountability.¹²

Asian TSO governance derives its character both from Asian religious, cultural and traditional values and practices, as well as the concepts of Western origin. For example, as seen in the Philippines, due to the traditional norms of human relations, it is difficult to separate the role of the board (policymaking) from the function of the executive and staff (programme implementation) because it is important to maintain ‘smooth interpersonal relations’ or SIR. It is worth noting that social

¹²This paragraph is based on all country chapters in this Volume.

acceptance and maintaining SIR are of particular importance to the Filipinos. For the sake of SIR, it is not easy to call to task a board member engaged in micromanagement, nor is it easy to enforce formal rules (Domingo, 2006).

In Thailand, *dharma* (sincerity and honesty), *metta* (kindness and pity) and other Buddhist teachings define how leaders and staff must behave because *metta* may interfere in implementing sanctions for erring TSOs or staff. In the case of any deviation from the traditional norms, Thai TSOs resort to informal sanctions like social ostracism, exclusion from the joint activities and sharing informal blacklists with other TSOs and the donor agencies. These consequences are more debilitating for the TSO or the people concerned than any formal legal actions. To a large extent the values of *dharma* or *metta*, and other Buddhist teachings influence governance by determining leader, staff and client behaviour, and the interrelationships among them.¹³ Similar values and norms influencing the TSO governance are also existent in other countries. In addition to traditional values, TSO governance in Asia also refers to fairness or absence of discrimination against anyone, especially for political reasons. It involves the values of affinity, self-reliance and self-discipline. These values were evident in the discussions from China, India, Indonesia and Vietnam as fundamental to good TSO governance.

While governance can be good or bad (Cariño 2003 p. 75), the term ‘governance’ for the Asian TSOs stands for only what is good and desirable. It is not value-neutral; rather it promotes a culture of ethics and social responsibility of efficiency and performance of transparency and accountability to multiple stakeholders.¹⁴ The respondents attached value labels and included references to certain standards as they described various dimensions of governance, such as ‘proper’ structures; ‘prudent’ management; ‘integrity’ of leaders; and other positive values. The various categories in the meaning of governance must, thus, measure up to the highest standards of performance. In short, the assertion that the TSO ‘governance is not governance unless it is good governance’ (Domingo, 2005) found resonance, in general, among the respondents in six participating countries of our present study. Thus the emphasis on the evaluative (good governance) aspect rather than on the descriptive (governance) issues in the Asian TSO governance may be because the Asians in general are (value) judgmental.¹⁵

¹³The contents from Thailand in this paragraph is based on the Thai Country Report, see Vichit-Vadakan, 2006.

¹⁴This point is explicitly highlighted in the Philippines Country Report but imbued in all other country reports, especially India, Indonesia and Thailand (please see Country chapters at the end of this Volume).

¹⁵For more discussions on this line, please see Chapters 1, 2, and 10.

Chapter 5

Asian Third Sector Organisation and Governance Structure

Yashavantha Dongre and Shanthi Gopalan

The study of divisions, hierarchies and assignment of roles and responsibilities of an organisation helps understand the space available to different actors, and the governance process and practices in an organisation. The mode of formulating the policies, the execution of the action plans, the extent of participation, the flow of information and even transparency and accountability in an organisation tend to depend on the structures designed for specific purposes. The present chapter surveys the governance structure in selected third sector organisations (TSOs) in our six participating countries. Before the discussion on the governance structure, the chapter highlights some aspects of organisational dynamics of the TSOs in the 'Organisational Dynamics' section. This discussion highlights the legal status, major fields of activity, age, membership and staffing position of the TSOs. The 'Governance Structure and the TSO Growth Pattern' section looks at the governance structure, and growth pattern in the TSOs highlighting the role of the driving force. The 'Board Constitution and Roles' section analyses the internal dynamics of the TSOs, ie. the internal relation mechanisms, (non)existence of a board, the role of the chief executive officer (CEO), the participation of the membership in the organisation's activities, the presence of individual leaders, the role of the founders, and the relationship of the CEO with the board and the target group. The final section presents the unique governing practices of TSOs that do not have a formal structure. Such an analysis is vital considering the fluid structures and the role such structures play in shaping governance practices especially in informal or traditional organisations. Needless to say, this is of immense significance in understanding the governance process. The study is based on a survey of 492 TSOs in the six participating countries.¹ The findings are only indicative as to the nature of functioning of the TSOs in the countries under study.

¹Please see Chapter 1 in this volume for more on the methodology.

Organisational Dynamics

The legislations for TSO incorporation place some structural requirements. The compliance to these requirements in turn influences other features such as functional direction, financial governance, internal relationships, external horizontal as well as vertical relationships and so on. Organisational dynamics, for the sake of this chapter, is all about understanding the main features, and the governance, of the TSOs in our participating countries. The section is divided into six subsections, and deals with the legal status, the fields of activity, age, staffing patterns and membership positions in the selected TSOs. At the end, the section has a comparative analysis of the data discussed in the section.

Legal Status

The provision of rights to form association is strikingly similar in all the countries under our study.² The data from all the six countries indicate that at various stages of their history they have had non-invasive states providing space for the TSOs. The peoples' groups existed irrespective of the state of the economy and the nature of the political system. In some countries like India, the already existing civic initiatives were validated and endorsed through a constitutional rights to association while in some other countries like Vietnam, such rights became a part of the newly amended Constitution. The modern TSOs have appeared at different times of history in our participating countries. The first TSOs were created as early as in the 1800s (India and Indonesia) and as recent as 1946 (Vietnam).

In all the six countries, there are numerous informal and un-incorporated TSOs.³ For example, in Indonesia there are traditional TSOs like the *subak*,⁴ *arisan*,⁵

²For more please see Chapter 3 in this volume.

³We have used the term Incorporated and Un-incorporated organisations to denote the legal status. The term Informal Organisations refers to mostly modern but un-incorporated and those practicing informal methods of governance. There are incorporated organisations which also follow some informal methods that we have included under this category. Traditional organisations are those which generally represent religious institutions or organisations of indigenous people.

⁴Subak is a way of working together, found in Bali, concentrated in an irrigation area (cited in Radyati, 2006).

⁵Arisan is a gathering of people who know each other well to collect money and at certain periods they come together to draw lots in order to decide who has the right to borrow the money. This gathering is quite common in Java.

*mapalus*⁶ and *tanggung renteng*.⁷ But the present trend is to form formal, legally incorporated TSOs. Further, each country has developed its own mechanism to control, check and guide people's initiatives. In some countries, for example, China, Indonesia, Thailand and Vietnam, TSOs need to register with the government without seeking legal status.⁸

TSOs in India and the Philippines, however, are not subject to mandatory registration. India provides a greater space and choice for the TSOs to incorporate under one or more legislations or to operate as an un-incorporated initiative. The un-incorporated TSOs can hold bank accounts, receive government funds and even foreign donations (with permission from the Ministry of External Affairs).⁹ This has helped the un-incorporated TSOs to operate and sustain in India.

TSOs in the Philippines can operate without having to register with any government agency. However, only registered TSOs enjoy benefits like tax relief.¹⁰ To qualify for tax exemption, receive grants, do fund-raising, own property, or receive government subsidies, or even just to open a bank account, TSOs in the Philippines need to have a legal personality. This is conferred through the registration, which in turn enforces a specific governance structure—the Western corporate structure.

Both the key informants and the organisational respondents in all countries¹¹ noted that the legal entity brings recognition, creates opportunity for receiving external funds, and provides tax exemption and government support. Thus, many TSOs are willing to go for incorporation. But then the excessive bureaucratic intervention in the affairs of the TSOs (that follows incorporation), the overbearing nature of some political leadership, and the fear of co-option keep TSOs away from incorporating.¹²

It thus emerges that the constitutional provisions, legal regime, as well as the attitude of the government seems to be shaping the organisational dynamics of TSOs in all the countries under study. It is heartening to note that, at least technically, in all the six participating countries there is ample space for the TSOs to operate. The ground realities in our participating countries, as evident in other

⁶ *Mapalus* comes from Manado, North Sulawesi. It means 'Working and Helping each other' (cited in Radyati, 2006). *Mapalus* work together to achieve certain objectives, e.g. to grow rice, to have saving groups like the *arisan* in Java.

⁷ *Tanggung-renteng* is a system of women's traditional credit cooperatives. The membership in an organisation is based on friendship. If evidently one of the members fails to carry her obligation in paying debt, then the other members take over that obligation for the time being, and thus exercise significant influence on people's lives.

⁸ For details see Chapter 3 in this volume and the country chapters at the end of this volume.

⁹ For example, the un-incorporated self help groups (SHGs) get government supports like the seed capital or the bank loans.

¹⁰ In Lerma and Los Baños (1999a, pp. 241–242) cited in Domingo (2006).

¹¹ Please see Chapter 1 in this volume for a detailed methodology.

¹² This is based on the interviews with the TSO representatives and the key informants undertaken for the study. These seem to be the main reasons why TSOs prefer to work without incorporation in countries like India and Indonesia.

comparative chapters and in the country chapters, are different at varying degrees in various countries.

Major Fields of Activity

The range of issues that the TSOs address is enormous. They are found to be operating in almost all the fields that make human lives more meaningful and comfortable in society, and the human bodies to have dignified last rites e.g., the cremation society in Thailand. In the present study, the sample units are classified on functional lines based on the International Classification of Non-profit Organisations (ICNPO). There are nine major areas of activity identified and covered in the study: (i) Art and Culture, (ii) Business and Professional, (iii) Education, (iv) Environment, (v) Law and Advocacy, (vi) Religious Organisations, (vii) Social and Economic Development, (viii) Social Service and (ix) Others.¹³

Identification and classification of the TSOs on the basis of fields of activity was difficult for many TSOs under study in all the countries¹⁴ because the fields of activity seem to vary over time depending on the needs of the target group, changes in the sources of funds and other supports. The fields of activity do not seem to have any bearing on governance structure. It emerges that incorporation places the precondition for formal governance structure for the TSOs. Nevertheless, the data indicate that there are TSOs that are incorporated, but do not have a formal decision-making structure. Excepting the fields of law and advocacy and religious organisations, all other fields of activity, including 8% of the Business and Professional organisations, have TSOs that are incorporated, but do not have a formal governing structure (Table 5.1).

As noted earlier the multiple fields of activity in some of the countries have serious implications on governance of the TSOs. For instance, key informant's interview in India revealed that different funding bodies sponsor different activities and that the functioning and governing mechanisms of many TSOs depend on the activity and requirements of the funding agencies. This was found to be true in case of fourteen TSOs in Indian study. The organisations' representatives noted that the presence of multiple major funding bodies' support to the TSOs necessitates such practice. The TSOs with multiple donors have noted that they live from project to project, and each project coordinator addresses the governance issues (according to the project specifications) irrespective of (or often disregarding) the TSO's mission

¹³Each country had its own problem with this model. For want of an alternative that is workable to accommodate the requirements of all the six countries under study, this model was used.

¹⁴For example, in India and the Philippines, many respondents noted that the TSO had been involved in many equally important interlinked fields of activity (multi-faceted), and did not want to identify a single activity as the major field. They believe that the focus and programs of their respective organisations are multi-faceted.

Table 5.1 Fields of Activity, Legal Status and the Existence of Board

Number of (un)incorporated TSOs in each field of activity Boards exist→	Existence of boards in surveyed TSOs			
	Incorporated TSOs		Un-incorporated TSOs	
	Yes	No	Yes	No
Arts and culture; Inc: 31, Un-incorporated: 10	29 (94)	2 (7)	7 (70)	3 (30)
Business and professional; Inc: 37, Un-incorporated: 3	34 (92)	3 (8)	0	3 (100)
Education; Inc: 49, Un-incorporated: 10	47 (96)	2 (4)	4 (40)	6 (60)
Environment; Inc: 32, Un-incorporated: 7	30 (94)	2 (7)	6 (86)	1 (14)
Law and advocacy; Inc: 48, Un-incorporated: 7	48 (100)	0	4 (57)	3 (43)
Religious organisations; Inc: 26, Un-incorporated: 6	26 (100)	0	3 (50)	3 (50)
Economic development; Inc: 85, Un-incorporated: 18	80 (94)	5 (6)	14 (78)	4 (22)
Social service; Inc: 95, Un-incorporated: 25	86 (91)	9 (9)	9 (36)	16 (94)
Others; Inc: 1, Un-incorporated: 1	1 (100)	0	0	1 (100)
Total; Inc: 405, Un-incorporated: 87	382 (94)	23 (6)	47 (54)	40 (46)

Numbers in the first column represent is the total number of third sector organisations (TSOs) surveyed in each the field; the numbers within the parentheses in other columns represent respective percentages.

and philosophy. In such TSOs there seem not to have any horizontal cooperation or coordination among the project coordinators creating 'complex' governance practices for versatile TSOs. Thus, the sources of funds for a particular field of activity, and not the declared field of activity of the TSOs, are likely to impinge on governance practices of the TSOs.

Age of the TSOs

The respective socio-political dimensions have greatly influenced the TSOs' existence and survival, in each of our participating countries. In China and Vietnam, the state recognition and encouragement to TSOs is a recent phenomenon. For instance in Vietnam, even though legislative support was available, not many TSOs were formed until the late 1980s. With gradual decline in state control (in extent and kind), and the increase in citizen needs new TSOs are being formed.

On the other hand, the third sector activity has a very long history in the Indian context. It would be difficult to identify the oldest TSO, as the sector's actual

terrain is not known. In India, there are temples, churches and mosques that have been serving people for hundreds of years. The socio-political scenario in India changed with the advent of the British and this led to an expression of socio-cultural activism as early as the 1800s.¹⁵

The experience of Indonesia on the other hand reveals that the average life span of the large popular organisations (PO) is greater than that of the small and informal organisations (SIO). The latter TSOs are generally not incorporated, and not registered with the government either (Radyati, 2006). In the Philippines, many TSOs are well over 20 years old. The Philippines country report indicates that the TSOs that can overcome the struggles of their early years and live longer are perceived to be better performing and have a potential to grow further (Domingo, 2006).

The presence of a formal decision-making body in a TSO seems to have a significant positive relationship with its age. The TSOs under this study are generally formed by a single individual or a group of people of similar interests. As found from the organisational survey in India, Philippines and Indonesia, in many cases the founder, becoming the CEO and the chair of the board, tends to dictate all decisions. As TSOs age, they become more structured and formal, accepting different individuals as the board chair. Table 5.2 reveals that while in 46% of the young TSOs the CEO functions as the board chair, in more matured (20–49 years old) TSOs, in 80% cases the chair of the board is not the CEO of the TSO. The data also show that with age, TSOs tend to embark on a more formal governance structure. For example, only 78% of the younger TSOs (<10 years) have a formal structure of governance with a board/committee, whereas the older, 20–49 years or 50+ years, TSOs have formal governance structure in more cases (89% and 97%, respectively). It is, however, highly likely that TSOs with a formal structure of governance and an independent board tend to sustain over time than other types of TSOs. But then we do not have data to confirm or reject that assertion.

Table 5.2 CEO as the Chair of the Board in Relation to the Age of the Organisation

Age of the third sector organisation (TSO)	CEO as chair of committee/board		Total
	Yes	No	
Less than 10 years	48 (46)	57 (54)	105 (100)
10–19 years	33 (30)	77 (70)	110 (100)
20–49 years	17 (20)	68 (80)	85 (100)
50+ years	6 (23)	20 (77)	26 (100)
Total	104 (32)	222 (68)	326 (100)

Numbers within the parentheses represent percentages within the group.

¹⁵The oldest TSO covered in this study is about 140 years old and is un-incorporated.

Membership Status

Membership provides a TSO a greater democratic framework and opportunity for being more accountable and open. The roles of the members in the TSOs have been found to be varied in different countries, and along the fields of activity. At the same time they differ on the basis of the work that the TSO is addressing. In the countries under study religious organisations have a large number of devotees regularly donating and volunteering who do not consider themselves as members.¹⁶ In general, however, TSOs are found to be member-driven organisations. In the present study, all countries except Thailand have more member-based and member-serving TSOs than the non-member-serving TSOs. There is not a single TSO in the Vietnam survey list, that is, a non-member TSO. The field data reveal that in China the membership-based TSOs are predominant in regional cities and in the field of activity of business and professional.¹⁷

Membership in the TSOs tends to increase volunteering significantly. The country data show that the TSOs with no members depend more on paid staff, whereas the membership organisations' dependence on paid staff is relatively low. Of the member-based TSOs in the samples, 67% depend on paid staff for functioning; in the non-member-based TSOs the corresponding rate is 85%. This indicates that the member-based TSOs tend to have more volunteers to run the organisation. As Lyons (2001, pp. 161–162) notes 'for TSOs, members are, in effect, the owners of the organisation', and as such get motivation to 'run the show'. The more the people's participation, and the participatory development approach receive currency, the more the TSOs become stronger having more members.

Staff Pattern in the Sample TSOs

This study reveals that the membership-based TSOs tend to be less dependent on paid staff, and that the dependence on the paid staff increases with age of the TSOs (Table 5.3). For example, only about 65% of less than ten-year-old TSOs depend on paid staff for their functioning, but for more than ten-year-old TSOs this percentage increases to 78% (Table 5.3). In some countries, there is a visible positive relationship between legal status and staff pattern in the TSOs. Un-incorporated TSOs tend to depend more on volunteers whereas incorporated TSOs depend more on paid staff.

¹⁶This phenomenon is evident in India and Indonesia, please see Dongre and Gopalan (2006); and Radyati (2006), respectively.

¹⁷The China country report also notes that there is a new trend in developed areas such as Pearl River Delta and Yangtze River Delta regions where more men and women in business are forming self-governance organisations with members to protect the members' interests, rights and to negotiate with the government on policy matters. To increase the strength of their organisations they launch regular membership drive.

Table 5.3 Age-Wise Distribution of third sector organisations (TSOs) with Paid-Staff/Volunteer

Age of the TSO	Paid staff		Total
	Yes	No	
Less than 10 years	111 (65)	61 (35)	172 (100)
10–19 years	126 (78)	35 (22)	161 (100)
20–49 years	91 (75)	30 (25)	121 (100)
50+ years	28 (80)	7 (20)	35 (100)
Total	356 (73)	133 (27)	489 (100)

Numbers within the parentheses represent percentages within the group.

For example, whereas 83% incorporated TSOs in China and 76% in Indonesia depend on paid staff, only 39% and 9% respectively of the un-incorporated TSOs in these two countries depend on paid staff for their operation. In case of the Philippines, Thailand and Vietnam, irrespective of the legal status of the TSOs, the dependence on paid staff is greater than that of the volunteers; and also there is no significant difference between the incorporated and un-incorporated TSOs in this respect.¹⁸

It is worth noting at this juncture that it would be difficult to correlate the high dependence on staff and greater professionalism in the TSOs. As it stands, the people working in the TSOs in these countries mostly are part-timers without any relevant training. Most times local people are recruited because the TSOs require a local connection and ‘cheap labour’, and on the supply side, some local individuals may have inclination to solve some local issues by being associated with the TSOs operating in their area. Some case studies undertaken by the research team and the additional discussions the interviewers had with the organisational respondents in India reveal a trend in the staffing pattern of the TSOs that seems to be representative of all countries. In India, staff in 76% of TSOs are minimally paid employees who take the jobs because of a passion for the cause or a lack of a better job. The staff in 64% of the surveyed TSOs noted that they use TSOs as a spring board to gain experience and move to higher salaried positions.¹⁹ The TSOs, especially the small ones, thus face a major problem in retaining efficient and good staff. It could be a governance issue in the sense that many CEOs or committee of many TSOs tend to see the staff as just ‘workers’ without

¹⁸For example, while 80% incorporated TSOs in the Philippines, 87% in Thailand, and 73% in Vietnam depends on paid staff, 69%, 75%, and 67% un-incorporated TSOs, in these countries respectively are dependent on paid staff.

¹⁹For example, some young social work graduates informed the interviewer that the young graduates take a TSO job as a training ground with a minimal pay, hoping to move up to a higher pay and more formal organisations as they gain experience (Dongre and Gopalan, 2006).

appreciating their worth and valuing their passion, and not giving them any opportunity to fulfil their achievement needs or belongingness, and then expect them to stay with the organisation.

Comparative Perspective

This study was exploratory in nature with a small sample in each country. Thus, the findings cannot be generalised. Nonetheless, we have tried to provide a comparative perspective of issues related to internal dynamics, through the method of internal average comparison. Taking the average of the TSOs covered in the study as a basic parameter, the variations in the trend have been located. This comparison, it is hoped would help us better understand the situation at the regional level. The computations are presented in Table 5.4.

The average ratio of incorporated TSO to un-incorporated TSOs studied is 4:1. Taking this as the basis, if we compare the status of incorporation of the TSOs in different fields of activity, we notice a major deviation (12:1) in case of Business and Professional organisations indicating that such TSOs are more likely to be incorporated than those in other fields of activity. Similarly, we notice that younger TSOs exhibit a 2:1 ratio of incorporation to non-incorporation while this ratio is 5:1 in the case of more than 50-year-old TSOs. It is possible that many TSOs first start the initiative and think of incorporation at a later date depending on the needs. The

Table 5.4 Comparative Situation of Organisational Structure in the third sector organisations (TSOs)

Particulars (ratios)	Average position	Major trends
1. Incorporated: Un-incorporated	4:1	Business and professional 12:1
2. Incorporation: Age	4:1	Less than 10 years 2:1 20 years and above 5:1
3. Age: Field of activity (religion)	3:1	Less than 10 years 12:1 20 years and above 1:1
4. Legal status: Staff (paid: voluntary)	2:1	Incorporated 4:1 Un-incorporated 1:2
5. Field of activity: Staff (paid: voluntary)	2:1	Environment 5:1 Religious 1:1
6. Location: Incorporation	4:1	Large city/Urban 5:1 Regional city/Rural 3:1
7. Location: Field of activity	–	Art and culture—Large city 11:1, Rural 20:1 Social service—Large city 5:1, Rural 4:1

other major trend shows that the ratio of religious organisations is higher among the older TSOs (>20 Years) than among the younger ones (<10 years). There is a marked difference in the ratio of paid staff to volunteers among incorporated and un-incorporated TSOs. While there is one volunteer to every four paid staff in case of incorporated TSOs, this ratio is on the reverse with one paid staff for every two volunteers in case of un-incorporated TSOs.

In terms of the fields of activity, the TSOs working in the area of environment have more paid staff (5:1) while religious organisations have a 1:1 ratio of paid staff and volunteers. When the location is considered as the basis, we find that every five out of six TSOs in the urban areas are incorporated while their number is three out of four in rural areas. Similarly, every 1 out of 12 TSOs in urban areas fall under the art and culture category against a ratio of 20:1 in rural areas signifying less number of TSOs in this field of activity in rural areas. On the other hand, the ratio of social service TSOs in large cities and rural areas respectively is 5:1 and 4:1 indicating that social service TSOs are more likely to be found in rural areas than in urban locations with reasonably similar distribution. There is no uniform organisational dynamics for the TSOs. It varies along countries, and across fields of activity within each country.

Governance Structure and the TSO Growth Pattern

Organisational dynamics alone is not enough to explain the governance and growth pattern of the TSOs under study. Our assumption was that in each TSO in Asia there has been a driving force moving the organisation forward and ensuring its sustainability. But then the character of the driving force influences governance structure. Mapping the pattern of growth and expansion of the organisation in terms of activities, funding and the number of staff would also help understand the direction in which the TSOs move over a period of time. In this section an effort is made to present the comparative picture of the TSOs in terms of their growth, and its relationship to some selected aspects of governance structure influenced by the driving force. The discussion, however, begins with a note on the driving force—as revealed from the study.

Driving Force

The presence of a driving force in the TSOs has been found to be predominant in all (80% TSOs in China, 67% in India, 88% in the Philippines, 86% in Thailand and 77% in Vietnam) but the Indonesian TSOs (only about 17% reported the existence of a driving force). The extensive presence of a driving force in the sample units substantiates the fact that in most cases TSOs are formed because of the vision and commitments of a single individual or a group of individuals. In most cases the driving force is an individual ranging from a national ideologue (like Gandhi in India) to the chair or CEO of the organisation. Country wise breakdown shows that

in Thailand nearly all (93%) ‘driving force’ is the chair/CEO of the respective TSO, while in Indian samples chair/CEO in 72% cases is the driving force.²⁰

An individual driven TSO can be perceived as undemocratic. The India country report, from elaborate analyses, however, suggests that in nearly 60% of the TSOs in India, where the CEO/chair is the driving force, there is a nurturing of second line leadership with a good opportunity for different people in organisational hierarchy to create good public acceptability (Dongre and Gopalan, 2006). Thus, the study of TSO governance needs to consider regional and/or cultural expressions.

Expertise/competence of the person has been cited (by 42% of the respondents) as the main character of the driving force in all the countries under study. The good news is only when an organisation becomes professional in its approach and operation, people with the apt expertise become the driving force.

Organisational Dynamics and Third Sector Growth

Growth or expansion of activity is an important indicator of organisational performance. As the activity grows, governance becomes both important and complex. Thus, it is important to analyse how different aspects of governance structure influence the TSO growth in the countries under study. With 82% of the TSOs indicating growth in activities, only 64% and 51% of the TSOs recorded growth in funding and staffing respectively in the three previous years. It is of interest to note that the number of TSOs reporting growth in activities is much higher than those reporting growth in funding and staff strength. This trend establishes the fact that for some TSOs, activities are independent of funding and staff strength. It would be worth analysing the relationship of growth with some aspects of governance structure.

Table 5.5 reveals that there is a direct correlation between growth in terms of activity, funding and staffing in the TSOs and the existence of some governance mechanism in the form of committee, board, etc. Incidence of growth is much higher in the TSOs with a board/committee. The role of the founders seems to be a key factor in the third sector organisational growth in the countries under study. Activities of the TSOs have grown in 91% cases where the founder has the final say in the TSO concerned. Again, the performance is better when the founder remains as the driving force of the TSO. Nonetheless, the track record or experience has been a major factor in ensuring activity growth in the TSOs under study. The organisational performance is much higher when the track record and experience are the main features of the driving force—as is the case when organisational position makes the driving force. Thus, after all, in our sample TSOs professionalism does matter. The fact can be proven negatively as well in the sense that when political connection is the major feature of the driving force the growth in funding and number of staff is the lowest.

²⁰ According to the country data, in China in 80% of the sampled TSOs chair/CEO is the driving force, in Indonesia it is 82%, in Philippines 75%, and in Vietnam 62%.

Table 5.5 Third Sector Growth and Governance Structure Relationships

Governance structure	Growth of the third sector organisations (TSOs) in the previous three years (% grown)		
	Activity	Funding	Staff
Has a committee/board	85	67	56
Does not have a committee/board	71	56	45
Board has final say	84	67	55
CEO has final say	77	68	53
Founder has final say	91	75	71
Has a driving force	85	66	58
Does not have a driving force	82	72	51
Founder as driving force	88	67	60
CEO as driving force	83	66	62
Chair as driving force	86	67	60
Feature of driving force—expertise	81	65	53
Feature of driving force—political connection	88	56	56
Feature of driving force—track record	96	70	61
Feature of driving force—position	92	83	58

Board Constitution and Roles

The internal dynamics of an organisation relates to the decision-making body and its role, intra-organisational relations and in particular the relationship between board and the CEO, and the modes of intra-organisational communication. These aspects can determine both the process and quality of governance. The internal dynamics of an organisation would throw light on the willingness of the TSO to be transparent and democratic. In other words the analysis of internal dynamics refers to a study of ‘who is responsible for determining what they do and how well they do it’ (Lyons; 2001). In order to understand the above correctly we need to look at the board structures and roles first.²¹

We have noted earlier that all the countries under study have both incorporated and un-incorporated TSOs. The un-incorporated TSOs fall within the ambit of the general laws of the land, but need not follow a legally prescribed structure for decision-making and governance. It is mandatory for the incorporated TSOs, however, to have a formal body in place with the structures mandated by the relevant legislations.²² Constituting a board of management is one such legal compulsion. The legal status and the presence of the board are positively correlated

²¹ For discussions and analyses of other aspects of internal dynamics please see Chapters 6 and 7 in this volume.

²² In China, it is not mandatory for incorporated TSOs to have a board. But, if they have one there are conditions laid down as to how they should form them and what are the expected roles of the board, please see Chapter 3 for more.

Table 5.6 Incorporated Organisations with and Without Board

Country	Incorporated	Board/Committee				Total
		Yes		No		
		<i>f</i>	%	<i>f</i>	%	
China	Yes	54	93	4	7	58 (100)
	No	14	61	9	39	23 (100)
India	Yes	96	98	2	2	98 (100)
Indonesia	Yes	47	94	3	6	50 (100)
	No	5	15	28	85	33 (100)
Philippines	Yes	62	98	1	2	63 (100)
	No	13	81	3	19	16 (100)
Thailand	Yes	55	95	3	5	58 (100)
	No	10	83	2	17	12 (100)
Vietnam	Yes	67	86	11	14	78 (100)
	No	3	100			3 (100)
Total	Yes	381	94	24	6	405 (100)
	No	45	52	42	48	87 (100)

with 94% of the incorporated TSOs having a board/committee. Though not a legal requirement, 52% of the un-incorporated TSOs under this study were found to have a board/committee. The figure is much higher in China (61%), the Philippines (81%) and Thailand (83%) (Table 5.6).

All the countries under study have noted that public recognition is the strongest impetus for the TSOs to have a formal board structure. The TSOs seek to have a formal structure to enjoy the social and legal standing it brings them. The TSOs with board have noted that the board brings in clarity in shouldering responsibility and simplifies work. Organisations from the Philippines, India and Thailand have noted that having a board with proper people enhances a TSO's prestige, credibility and trustworthiness. This issue takes us to the question of the composition of the board. It is interesting to note that percentage of TSOs with government officials in the board is the highest in Thailand (much more than in China), and that is how TSO governance in Thailand is regulated (Table 5.6). It is also worthy of note that in percentage terms TSOs in China have more elected representatives than they are in Thailand. Again, in percentage terms more TSOs in the Philippines have elected representatives in the board than there are not. TSOs in India, the largest country with a sustained and successful democracy, are not far behind. Table 5.7 is thus a true representation of how democratic governance of a country influences TSO governance.

The size of the board is another issue examined in our study. The TSOs with a board size of up to six members constitute the majority (103 TSOs) whereas on the whole, the TSOs with a board size of up to ten members constitute more than 55% of those with board. The laws related to the TSO board size are varied in the participating countries. For example, in India each law specifies a minimum size, but there is no uniformity. The Philippines law stipulates a minimum of five members,

Table 5.7 Board Composition of the third sector organisations (TSOs) (Numbers)

Country	A		B		C		D		E		F		G	
	0	>1	0	>1	0	>1	0	>1	0	>1	0	>1	0	>1
China	51	17	45	23	40	28	57	11	53	15	60	8	44	24
India	95	6	89	12	53	48	76	25	72	29	94	7	59	42
Indonesia	37	6	34	9	28	15	33	10	42	1	40	3	33	10
Philippines	49	22	67	4	29	42	56	15	69	2	66	5	66	5
Thailand	40	25	23	42	38	27	35	30	57	8	59	6	51	14
Vietnam	44	26	40	30	65	5	65	5	66	4	66	4	70	
Total	316	102	298	120	253	165	322	96	359	59	385	33	323	95

A–Ex-officio members; B–Elected members/constituent; C–Appointed by the board/committee; D–Appointed by the CEO/board Chair; E–Appointed by stakeholders; F–Others.

while in Vietnam there is no such specification. The general trend is that Vietnam has more TSOs with small boards whereas China accounts for a larger share of the TSOs with large boards.²³ The TSOs under study from the Philippines, India, Thailand and China have more professionally qualified people on the board, while Indonesia has the least.

The board diversity is perceived as the best indicator of a healthier board. Diversity could be better understood by using the ‘inclusive board’ concept. A board that accommodates members drawn from different backgrounds will be able to address the governance issues in a holistic way. The existence of an inclusive board speaks of the analogous philosophy of the TSO. In this sense the use of parameters like presence of women and members from the disadvantaged section of the society in the board is important. The TSOs in our study indicate that except Vietnam and India the boards of majority TSOs in all other countries have women members. All TSOs from the Philippines have women members on the board. In India 28% of TSOs under study do not have women members on board while in Vietnam only two TSOs in our study have women on board. The limited space available to the members of the disadvantaged sections of society (ethnic, religious and linguistic minorities) indicates that boards under study are not really inclusive in nature.

Irrespective of the composition of the board, in many participating countries TSO boards seem to be enjoying its decision-making power with 42% reporting that most decisions are taken by the board as a whole. Vietnam stands out as an exception to this trend with the CEOs controlling majority of the TSO boards and also with the largest percentage of the TSOs where the Chair of the board is the CEO. Our analysis further reveals that not all members take active part in the decision-making process of the boards. Even if the final say is noted as that of the board, there are a good number of boards where the decisions are taken either by one

²³The China country report reveals that there are TSOs that have boards consisting of more than 100 members, see Ding (2006).

person or by a small subgroup within the board. This trend is more visible in India. With a good number of staff on boards the role of the mid-level management in decision-making in the TSOs in China, Thailand and Vietnam gets pronounced.

The sample TSOs with boards in all the countries under study indicate that nearly 95% of the boards meet on a regular basis, and makes decisions through a consensus. The boards offer space for dialogue and collective decision-making. Apart from the board meetings, 83% of the TSOs mentioned that they hold general meetings as well. India, Thailand and the Philippines exhibit higher frequency of such general meetings. The incidence of making available in advance the agenda of the meeting and preparing the minutes of the meeting is quite common in all countries. This is very high in India than in other countries. The only deviation is the TSOs in Indonesia where less than half of the organisations under study said that agenda is made available before the meetings.

Unique Governance Practices: Decision-Making Structure Without Boards

As perceived by a majority of the key informants, TSOs in the Asia Pacific region are initially the product of efforts of an individual or a small group of persons. These TSOs grow in scale and complexity; incorporate the formal organisational character required according to the different laws that govern them and evolve into formal structures. In spite of their formal structure, more often than not these organisations follow a great deal of informal and/or local mode of operation. All the countries under study have noted that there are informal governing mechanisms among the TSOs. These informal mechanisms are seen to be present both in incorporated and un-incorporated TSOs; the data, however, are not enough to make generalisations. Nonetheless, we have some glimpses of these practices from our participating countries.

The decision-making structure of the TSOs without a formal board, as revealed by our study, is fascinating. The structures recorded by these TSOs could be grouped under four categories, namely, autocratic individual leader centric, democratic individual leader centric, group centric and external board centric. The first category includes those TSOs where all the major decisions are undertaken by the same person—the founder. By dint of being the founder, this person acquires unrestricted authority in the decision-making process. Such individual centric TSOs are existent mostly in Indonesia as well as in India and China.²⁴

Under the ‘democratic individual centric’ approach leaders who are responsible mainly for the establishment of the TSOs have the final decision-making authority.

²⁴Facts taken from Radyati (2006), Ding (2005), and Dongre and Gopalan (2006).

Nevertheless, these TSOs follow a very democratic system of decision-making. For example, discussions are allowed on issues on hand, opinions are collected about, and the options that seem most suitable and receive the largest acceptance are adopted. However, this democratic process is often dictated by the individual who commands high respect so much so that the members tend to accept the leader's views beyond the democratic process. Vietnam, India, China and Indonesia have recorded instances of this model.

The group centric approach has been cited by many of the respondents as a major type of governing body. In many TSOs, a larger group comprising both the board members (if a board is present) and others becomes central to the decision-making process. The group cuts across hierarchy and all those who are seen to be capable of contributing would become part of this group. The elimination of unworkable suggestions and staying close to the issues at hand is the responsibility of the members within the group. Consensus and collectivity are the key phrases for such group endeavours. In some TSOs these methods are the common features whereas in some other, such mechanism is followed when a special issue needs to be handled. This is the case where a board is seen as a legal or technical requirement, while the collective effort remains the actual policymaking mechanism. This group approach takes many forms. Notable among them are the following: (i) the entire group is involved at all stages, (ii) the group formation is based on the members' interest and capability,²⁵ (iii) the individual leader develops the action plans and possible options available and place them for discussion in the group and the group approves the most acceptable way forward and (iv) the group develops the action plans and the leader or the board takes final decision and executes the plans.

In an external board centric approach a TSO may be incorporated without its own board being under the sponsoring TSO's board or a parallel board controlling more than one TSO at two levels. In case of China, India and the Philippines the TSOs that are formally incorporated but do not have board could be grouped under the external board controlled category. Sometimes one TSO may create and register another TSO with the same individuals in both the boards. In case of India four TSOs under the study noted this practice. Of the four TSOs three were established by one larger TSO (not in our sample) allowing the smaller TSOs to have its establishment, and its board members form a board with a new name. In India there are trusts registered as a private trust as well as a society, where the board members of the society controls the trust. This external board centric practice has great implications on funds mobilisation and in addressing issues the TSOs deal with.

The traditional/informal organisations too have very distinct mechanisms for governance. Though not covered in this study, the continued field investigation in countries like India has shown some very distinct decision-making and reporting

²⁵ Here groups are split into different sub-groups where decisions are taken and the larger group is then informed for its approval of the plans before implementation.

mechanism. There are TSOs, often very small, where all decisions are taken only in the presence of all the members. This is similar to making policy decisions by the general body instead of the board. Further, there are traditional TSOs which up till now practice an oral method of keeping records of policy decisions and financial reporting. For instance, a Tribal Youth Association and a Rural Women Panchayat in India have the practice of converting the proceedings into songs and singing to the absentee members and also in meetings for approval of the proceedings of the previous meeting. Community reporting through *Jan Sabhas* (public hearing) is another practice seen in some of the organisations.

It looks as though these practices are closely linked to harnessing the social capital base available in the region. The conception of governance, that of 'being true to oneself' held by many respondents in India, seem to be realised through the means other than the formal corporate governance structure. In any case, detailed studies would be required to be able to draw generalisations and evolve mechanisms of preserving such culture specific governance practices.

Conclusion

The structure or mechanism used in the process of governance is the determinant both of the nature and quality of governance. Most often we seem to think of only formal and typical governance structures for the TSOs. It is also true that our assumptions tend to draw heavily from the corporate structures, and, therefore, we consider that a board/committee is central to governance. Our exploration of governance structure in relation to TSOs in six Asian countries reveals that though such structures are very much visible, they are not the conclusive determinants of governance practices. Indigenous and broader mechanisms for decision-making, execution, reporting and even resource mobilisation are present, continuing and in fact play a major part in many of the TSOs included in our study.

Large, urban based and incorporated organisations clearly seem to have in place structures similar to the universalised patterns. However, even these organisations see such structures as mostly legal/technical requirements and actually use other mechanisms of governance. This demonstrates that the governance structures too are time, space and culture specific.

An external stakeholder, say international donors, may be interested in looking for structures that are familiar to them in their context. This could be problematic at two levels. First, expectation of particular structures and corroborating the quality of governance to the presence or absence of such structures, might give a totally wrong picture of governance. Second, such standardisation might go against the very idea of governance in some of the regions. It, therefore, seems necessary to think of alternative paradigms of understanding governance in the context of Asian countries.

The governance mechanisms of traditional/informal (mostly un-incorporated) TSOs are a dimension that needs greater academic scrutiny. Such mechanisms open up the possibility of understanding governance and its qualitative and region/culture specific contexts. It also saves us from the danger of universalising the mechanism of governance. Our study has indicated a need for further research. We need to build on these indicators and pursue broad based studies in this direction.

Chapter 6

Third Sector Organisations and Governance Process

Jenny Onyx

There appear to be several quite different discourses that may impact the governance processes of Asian third sector organisations. The first is the so-called ‘modern’ approach: the corporate governance approach derived from the corporate world of business. It refers to the capacity of the Board and management to drive the company forward within a framework of effective accountability (Pricewaterhouse Coopers). Notice the use of the word ‘drive’. This word implies giving direction from above, but also a sense of forcing the organisation to maximise its production.

There are a number of assumptions in this notion of governance (Onyx, 2002). It assumes that the organisation is performing a set of actions on behalf of an external set of shareholders or stakeholders. Those stakeholders will judge the performance of the organisation by observable outcomes. The responsibilities of governance rest primarily with the Board. The Board must be independent of management and be composed of people who are elected or appointed independently, that is neither by the government nor by the chief executive officer (CEO). It is the task of the Board to set the mission of the organisation, and to determine the broad strategic direction that the organisation is to take. The manager is then accountable to the Board for the successful operationalisation of these strategic directions. The principle aim of management is to make the organisation more efficient and effective, in order to maximise its performance with minimal cost. The organisation is concerned with the achievement of specified objectives. The objectives are concrete, specific, practical targets established to achieve the organisation’s larger mission. It is the manager’s task to make sure that the organisation meets its objectives (but not to set the mission). Work follows formal procedures and rules, all of which are documented in strategic plans, budgets, procedure manuals, job specifications, annual reports and so on. The work of the organisation is normally carried out by division in terms of specialisation of function (functional division) and hierarchy (ordered authority). The effectiveness of the manager rests with his authority. The manager obtains his position of authority by virtue of his skill and knowledge and demonstrated ability through competitive appointment. The manager does not own the property or product of the organisation.

While this approach to governance is generally regarded as the most appropriate and one that third sector organisations seek to emulate, a recent survey of American

non-profits found that only a minority of Boards were active in monitoring organisational programs and services (Ostrower, 2007). They were however, relatively more likely to set policy, maintain financial oversight, and evaluate the CEO.

A second and quite different approach to governance in Asian third sector organisations draws on traditional Asian perspectives. Here there is an emphasis on the values of respect for elders and for tradition (Pye, 1999). Social-capital networks tend to form around kinship, common origin and especially around patron - client relationships. Membership of the organisation is usually a given and does not change.

Within this approach to governance, the leader obtains their position by traditional means. The leader of a kinship group, for instance, will normally be the eldest male of a particular lineage. The leader of a village women's group will normally be a senior respected woman, perhaps the wife of the headman. The leader of a religious group will also normally be the male, who has reached a particular level of seniority, usually as appointed by an external authority. The position of patron is partly one of tradition, but also of wealth and power. In a modern, urban context, the leader or patron may be seen as charismatic with a demonstrated commitment to the mission. He (sic) may have founded the organisation in order to address that mission. There is not usually a democratic election of the leader or an independent process of advertisement and selection by merit.

Good governance in this case involves the responsible and ethical carriage of authority by the elder or patron. The purpose and direction of the organisation is usually a given; it is considered self-evident, and is based on traditional values and assumptions. The leader will from time to time reinterpret those values and organisational purpose as circumstances demand, but will not be expected to create or change the 'strategic direction' of the organisation. The members do not question the direction of the leader, but rather seek to contribute to maintaining internal harmony of the organisation. In return for their loyalty, the patron or leader is expected to support and protect the interests of the members. However all decisions will ultimately be determined by the elder or patron. Within the organisation, this leader is identified as 'the driving force' (see also the Driving force model in Chapters 5 and 9).

There is not usually a direct form of accountability. The leader may be accountable to some higher form of authority such as God or the state. At the local level, he may be accountable in an implicit way to the consensus of his people. But there is usually no formal or written form of accountability. From a modern corporate perspective, this approach to governance is less effective and open to abuse and potential corruption. However, from a traditional Asian perspective, it rests on time-honoured principles of personal integrity, tradition and the preservation of social harmony.

A third approach to governance involves participatory democracy. This may involve the election of Board members. But it is more likely to involve a form of direct participation. This requires a form of governance that involves the people, or members of the organisation in an open and participatory manner. The principles and practice of community development (McArdle, 1989; Kenny, 1994) can be articulated as follows:

- Decision-making by those most affected by outcomes of the decision: the subsidiarity principle;
- Personal empowerment and control by individual citizens over their own life: the empowerment principle;
- The development of ongoing structures and processes by which groups can meet their own needs: the structural principle.

A democratic form of governance requires some form of consensus of equals and transparency of process. While it is often held as an ideal, the actual mechanisms by which decision-making can genuinely occur in this way, is much more difficult to achieve. The requirements of good governance concern the genuine participation of all stakeholders in decision-making, including the setting of the organisational goals and strategic direction, a process of carrying-out the decisions that is effective and empowering for the members, and a form of accountability that is open and visible to all. The emphasis at all levels is on inclusivity.

If the organisation is small enough, then it may be possible for all decisions to be made by consensus, as in the traditional collective. This may happen in small village organisations. However, consensus becomes cumbersome and ineffective once the organisation becomes large and complex. Some sort of representative selection of core decision-makers may be used, perhaps with broad principles being endorsed through general meetings. Key stakeholders may be represented on smaller committees or action groups.

The challenge of good governance within the participatory democratic approach is to establish processes which genuinely empower the individual and which mobilise the social capital itself. One of the key tasks of the co-ordinator or facilitator is the provision of appropriate information in a timely manner to provide the basis for effective decision-making by the stakeholders involved. It is also necessary to recognise and mobilise local resources: financial resources but also local knowledge, trust and the voluntary labour of their members. These resources are less visible but equally important to the collective enterprise.

The participatory democratic organisation must also develop appropriate methods of accountability. Bureaucratic forms of line accountability will not suffice. Accountability mechanisms need to be consistent with the principles of participatory democracy itself, which are transparent and open and understandable to all. Like social capital, the mechanisms will foster trust, participation in networks and social agency. What is required is the accountability of transparency. This is a kind of communal accountability, not directed upwards to the controlling sponsor or patron, but a generalised accountability to all interested parties, including in particular the constituent community, and the organisation's clients.

All three approaches to governance provide appropriate features of 'good governance' under specific circumstances. The question then concerns the appropriate form of governance for third sector organisations as opposed to those in the other sectors. And, what is the appropriate form of governance in Asian third sector organisations? In this chapter we examine the governance processes used within Asian third sector organisations. Our data is drawn from the results of the organisational questionnaire survey, which was completed by 492 organisations over the six countries.

As far as possible the survey results and the organisational case studies will be examined from the perspective of the three approaches.

Method of Analysis

A detailed account of the methodology for this organisational survey is provided in Chapter 1. However, it should be reminded that while the sample in each country was approached in a standardised way, and covers the broad variety of third sector organisations, nonetheless the overall samples cannot be considered fully representative, nor are the samples for each country directly comparable. No country was able to adequately assess the thousands of organisations located in small rural villages, or those which were not registered. In some cases, particularly in India, the case studies shed some light on organisational processes in these small organisations. But, we essentially have a sample of well established, urban and officially recognised third sector organisations in six Asian countries. For those organisations we can build a picture of the way the organisation says that it operates.

The statistical analysis makes use of the statistical package for the social sciences (SPSS). Frequencies are determined for each question by country. In addition, several items of the questionnaire dealt with common themes of decision-making, planning, financial management, accountability and external relations. Within each of these topics, the data has been reduced to form coherent scales following a factor analysis, using principle component analysis and varimax rotation. This created a total of ten separate scales. Within each scale, each identified item was scored as one. The higher the number of activities identified as being undertaken by the organisation, the higher the score. The scale scores were then standardised so that the score on each scale had a minimum of zero and a maximum score of ten.

The scales were then examined for their relationship to the key independent variables of incorporation or registration with government, the presence of a membership base, presence of paid staff, the receipt of government, domestic, or foreign funding. This is done for each scale using multivariate analysis of variance and/or multiple linear regression equations.

Decision-Making

A key question of any organisation concerns how decisions are made and by whom. Comparative data is available that provides some answers to these questions for Asian third sector organisations. Table 6.1 summarises this data.

Of those surveyed, 87% of all organisations had some sort of management committee or Board. This varied from a low of 63% for Indonesia to a high of 98% for India. Board or committee meetings were held regularly with a mean number of Board meetings per year of 6.9 (median of 4). This suggests that on average, most

Table 6.1 Decision-Making

Organisation has a Board	87%
Board meets on a regular basis	80%
Agenda available before meeting	80%
Organisation holds general meetings	70%
General meetings open to the public	39%

Board/committees met every two months. However, this figure belies tremendous variation by country. In China, 37% of organisations met only once a year, while a further 31% met two or three times a year.

Board members were involved in regular meetings, but were often also required to provide professional advice; 83% overall did so. For Board meetings, an agenda is generally available before the meeting in 80% of cases (less often in Indonesia and more often in the Philippines). Decisions within Board meetings are made by consensus rather than voting in 72% of organisations. In 84% of cases, minutes of the meeting are taken.

General meetings, that is ones involving the whole membership, are held by 70% of the organisations, with a low of 58% in China and a high of 84% in Philippines and Thailand. For those with general meetings, the number of general meetings a year ranges from a mean of 1.3 for India, Philippines and Thailand to a mean of 3.3 for China and 7.3 for Vietnam (where they take the place of Board meetings). General meetings are open to the public as well as to members in 39% of the time. There are very large national differences here, with a low of 9% for China, 22% for Vietnam, 29% for Indonesia, 42% for Philippines, 51% for Thailand and a high of 60% for India. Decisions made at general meetings are by consensus rather than voting in 53% of cases, with a low of 40% for China to a high of 64% for Thailand. A written record of the general meeting is taken in 68% of the cases.

The presence of these mechanisms of ‘good practice’ are highest in India and Philippines which have largely maintained a democratic government since independence. The corporate-governance model requires active involvement of the Board, but not necessarily open general meetings. Those with regular general meetings are more likely to occur within the democratic model of governance. These are generally open to all members, but are much less likely to be open to the public anywhere. China and Vietnam are least open in terms of their decision-making mechanisms.

Many organisations across all countries acknowledged the importance of a ‘driving force’. That is, a single powerful person is seen to drive the organisation. Overall, approximately 65% identified a ‘driving force’. This person is likely to be the founder (33%) and/or the CEO (28%) or chairperson (25%). However, this person did not necessarily have the final say; this was the case in less than 20% of organisations. The presence of a ‘driving force’ suggests that even where a Board exists, the patron or client model of governance dominates. This is confirmed in several of the country reports (India, Indonesia, Thailand and Philippines). (See Chapter 11 for more discussion.)

The form of decision-making is heavily influenced by a number of internal and external factors, notably whether or not the organisation is incorporated or registered

with government, whether or not it receives external funding of various kinds, whether or not it has a membership base, and whether or not it has paid staff. These results are summarised in Tables 6.2–6.4. Most of these effects are significant at the .000 level, indicating that they have not occurred by chance.

Organisations are far more likely to maintain formal decision-making processes if they are incorporated (being registered has the same effect). Receiving foreign funding, or government funding, also makes a huge difference to the way in which the Board functions, but seems to have little effect on general meetings. The presence of paid staff also makes a difference to the formal decision-making processes. As we might expect, organisations are much more likely to engage in formal decision-making processes if paid staff are available to assist with these tasks, as indicated in Table 6.4.

Table 6.2 Influences on Decision-Making: Incorporation

Item	Presence (%)	Absence (%)	Significance
Has a Board	94	51	.000
Board meets regularly	88	44	.000
Professional advice	86	45	.000
Agenda available	86	45	.000
Minutes taken	90	46	.000
General meetings	78	42	.000
General meetings open to public	39	21	.000
Written record for general meetings	74	38	.000

Table 6.3 Influences on Decision-Making: Foreign Funding

Item	Presence (%)	Absence (%)	Significance
Has a Board	92	80	.000
Board meets regularly	88	70	.000
Professional advice	89	66	.000
Agenda available	86	71	.000
Minutes taken	90	73	.000
General meetings			ns
General meetings open to public			ns
Written record for general meetings			ns

Table 6.4 Influences on Decision-Making: Paid Staff

Item	Presence (%)	Absence (%)	Significance
Board meets regularly	88	60	.000
Professional advice	84	63	.000
Agenda available	86	61	.000
Minutes taken	89	65	.000
General meetings	76	60	.000
General meetings open to public			ns
Written record of general meetings	73	55	.000

On the other hand, the presence of a membership base becomes significant in relation to general meetings. Having members makes little difference to the functioning of the Board; in fact if members were present, Board members were less likely to provide professional advice. But membership makes it more likely that general meetings are held (76% vs 64%, $p < .005$), and that they are open to the public (40% vs 29%, $p < .01$). Again, this suggests that in these cases the democratic governance model is more likely to be in operation.

In summary, the majority of organisations that are incorporated, registered with government, that receive foreign or government funding and have paid staff, have well defined formal decision-making processes involving regular Board meetings and an annual general meeting. There are important regional variations. In general, India, Philippines and Thailand conform most closely to the northern corporate governance model of decision-making. It is hard to identify why this is so. In part, it may be a sampling error. But both India and Philippines have developed mature third sector or state relationships with strong influences from British/American institutions. China and Vietnam have only recently begun to form such structures. It is interesting to note that the presence of foreign funding appears to require a formal Board structure, but does not require a membership base or general meeting such as an AGM.

Small, Traditional, Un-incorporated Organisations

It is very difficult to make any definitive statement from the quantitative data concerning traditional organisations, except that they appear to be in the minority of this sample of Asian third sector organisations. Those organisations with members, and no foreign funding are less likely to follow the corporate decision-making model. While there is little evidence from the survey data concerning the more usual decision-making practice among traditional Asian organisations, there is some indirect evidence here, and some evidence from the case studies. Those with a membership base are much more likely to hold general meetings, open to the public. In addition, the majority of all organisations clearly preferred a consensus model of decision-making rather than voting, both for Board decisions (72%) and for general meetings (53%). This pattern is consistent both for the traditional (driving force) approach and for participatory democracy, but not for the corporate governance approach where the Board is expected to take a monitoring role.

We do know that those organisations that are incorporated or receive foreign funding are in fact the minority of Asian third sector organisations. For example, a survey of third sector organisations in India in 2000 found that there were about 1.2 million organisations, almost half of which were un-registered (Srivastaba and Tandon, 2005). Many of these are small, rural organisations, about which little is known. However, as part of the current study, a small group of 14 case studies were undertaken (Dongre and Gopalan, 2006). The study notes in part:

The 14 Third sector organisations without formal board are either membership based or community based organisations. They generally design a fixed programme on a collective basis on

the activity to be taken up during the year. Among these organisations, those having law and advocacy as part of their activity other than the identified tasks, will address the issues as and when they emerge. These TSOs have a collective decision-making and execution system. No single individual is important here. All decisions are taken collectively in the presence of members/or target group. Then based on the task to be undertaken, a group of representatives will be selected to execute the work. These groups are in charge for a year. Each year the groups change by rotation. ...The members attend the weekly meetings very religiously. A smaller group is formed to take decisions during emergencies when a meeting could not be convened or the other members could not be reached. (Dongre et al., 2006, p.9)

In the case of these informal organisations, the majority have a detailed form of documentation of the activities of the organisation, including the results of the general meetings. These can be in both oral and written form. Some use only oral documentation; this may be in the form of songs which are created in the meeting and sung by all members at the end of the presentation, and then passed on to others in the community.

A second example of informal organisations comes from Indonesia (Radyati, 2006). Here there are an unknown but very large number of *arisan* groups. These are un-registered and do not have a Board or other governing body apart from an elected chair and treasurer. An *arisan* is a group of people or families who know each other well, often, for example, coming from the same village (now living in an urban context), who meet regularly to form a kind of traditional micro-credit or savings scheme. Each month all contribute an agreed sum of money and the members draw lots in order to determine who may receive the total sum for that period. In many cases, especially in urban settings, the main purpose of the *arisan* has shifted to include a social objective, to maintain ongoing social bonds. The running of the organisation is based on trust. All members have a commitment to attend and contribute at all meetings until the round is finished and all members have had a turn to win. Decisions (such as amount of contribution, place of meeting) are made through open discussion and consensus. The chair has a co-ordinating role only, while the treasurer collects the money.

Planning

Planning is a special case of decision-making. The summary survey results are provided in Tables 6.5 and 6.6. A formal planning process was undertaken by 95% of third sector organisations across the region (there were no significant differences between countries; only Thailand recorded a lower rate of 86%). In the combined sample from all countries, 87% of organisations have a mission statement (somewhat less in Thailand and more in Philippines). Overall, 91% of organisations have written objectives (somewhat less in India and more in Philippines). Ninety-three per cent prepare plans before initiating major projects (no significant difference between countries). Written proposals are circulated to members before the Board meeting in 71% of organisations overall, ranging from a low of 46% in Indonesia

Table 6.5 Planning A

Has formal planning process	95%
Has a mission statement	87%
Has written objectives	91%
Prepares plans before initiating major project	93%
Proposals circulated to members	71%

Table 6.6 Planning B

Board involved in succession plans for CEO and/or Board members	67%
Has strategic/business plan	83%
Plan reviewed on a regular basis	76%
Board involved in development of plan	69%
Board approves plan	70%
Board involved in review of plan	65%
Plan available to members/constituents	63%

to a high of 90% in Vietnam. These items combine to form a Planning scale (Planning A). Organisations with a higher score for Planning A are more likely to be registered with government, but not more likely to be incorporated. There is little difference on this dimension for membership, paid staff, or foreign funding.

The other aspect of planning concerns the development of a strategic/business plan. The items concerning this aspect also combine to form a scale (Planning B). The overall results are summarised in Table 6.6. Most (67%) of organisations involve the Board in succession plans for the CEO and/or Board members (less in China and more in India). Even more (83% of organisations) prepare a strategic/business plan (less in Thailand and Indonesia, and more in Philippines and Vietnam. This strategic/business plan is reviewed on a regular basis in 76% of cases overall. The Board is involved in the development of the strategic/business plan in 69% of cases (from a low of 47% in Indonesia to a high of 86% in Philippines and Vietnam). The Board has to approve the strategic/business plan in 70% of cases overall (from a low of 45% in Indonesia to a high of 83% in Vietnam). The Board is involved in a review of the strategic/business plan in 65% of cases (from a low of 47% in Indonesia to a high of 89% in Philippines). This strategic/business plan is available to members/constituents in 63% of cases (from a low of 53% in Indonesia and Thailand to a high of 79% in Philippines and 83% in Vietnam). Strategic planning is generally considered an important mark of best corporate model practice. There are strong regional differences among the Asian organisations sampled, with strong evidence of strategic planning in Vietnam and Philippines, but less evidence in Indonesia and Thailand.

These items relating to the strategic/business plan (including succession planning) together form a planning scale, Planning B. This kind of planning is strongly influenced by a number of variables, as indicated in the linear regression of Table 6.7. These include being registered, having members, receiving foreign funding and having paid staff.

In summary, while nearly all third sector organisations (95%) are likely to engage in some sort of planning, regardless of their funding source and incorporation status, not all engage in a formal strategic planning procedure. Those that do so (about 70% overall) are more likely to be incorporated and registered, to have a membership base and paid staff and have foreign funding. We know little about the planning process in non-incorporated, traditional organisations. However, the case study material suggests that the collective process entails the collective development of the mission of the organisations, and specific events requiring advocacy action are thoroughly discussed by the full membership before a collective plan of action emerges, usually with one or more spokespersons/action groups also identified as part of the plan (Dongre et al., 2006).

Financial Management

Most organisations have a formal financial management procedure (see Table 6.8). A formal financial procedure is followed by 93% of organisations across the region, with no significant variation by country. Overall, 82% of organisations prepare a budget, less so in Vietnam and China, but more so in India and Philippines. Somewhat fewer produce monthly cash flow budgets: 74% overall, ranging from 42% in China to 87% in Philippines. Most organisations in all countries produce annual financial statements, less so in Vietnam and China, but more so in Philippines and India. Eighty-one per cent of organisations have an asset register, with similar regional variations.

These items together form the scale Financial Management A (see Table 6.9). This scale discriminates organisations according to whether or not they are incorporated

Table 6.7 Independent Variables Significantly Associated with Planning B Score

Variable	Coefficient	<i>p</i> -value
Constant	2.5	–
Registered	1.0	.005
Has members	1.5	.000
Receives foreign funding	0.9	.003
Incorporated	2.0	.000
Paid staff	1.1	.004

$R^2 = 18.6\%$

Table 6.8 Financial Management A

Organisation has formal financial procedure	93%
Organisation prepares annual budget	82%
Organisation prepares monthly cash flow budget	74%
Annual financial statements	88%
Organisation has asset register	81%

Table 6.9 Independent Variables Significantly Associated with Financial Management A Score

Variable	Coefficient	<i>p</i> -value
Constant	5.4	–
Incorporated	1.1	.001
Paid staff	2.0	.000
Receives foreign funding	0.9	.000

$R^2 = 22.1\%$

Table 6.10 Stakeholder Relations

Prepares submissions for funding	60%
Coordination with other organisations	78%
Makes representations to government	64%
Board involved in submission	44%
Board involved in representation	46%
Board seeks donations	49%
Board helps negotiate system	54%
Organisation has regular newsletter	48%
Organisation has website	44%

(those incorporated score higher). Whether or not the organisation has members makes no difference to their financial management, but the presence of paid staff makes the organisation significantly more likely to have financial Management procedures in place. The presence of foreign funding similarly makes it more likely that the organisation will have financial Management procedures in place.

The Financial Management scale provides reasonably strong evidence that those organisations which accept foreign funding and are incorporated will adopt some part of the corporate governance model, at least in terms of financial management practices. Those organisations that are least likely to adopt conventional financial management practices are those in Vietnam and China, where a strong communist state appears to adopt a different tradition of financial control.

Once again, we have little direct evidence of financial management among traditional groups. We do know, for example, among small, grass roots, micro-credit organisations such as the Indonesian *arisan*, that financial planning and disclosure involves the whole group on a consensual basis. Here money is paid and distributed each meeting, before the whole group, as part of the days proceedings, usually before the social part of the day which is likely to entail shared food.

Stakeholder Relations

Stakeholder relations include a number of functions. Part of it relates to accountability functions and the extent to which reports are made to various stakeholders (see Chapter 7). But stakeholder relations also include negotiations for external

funding, as well as networking with other organisations and other advocacy activities. As indicated in Table 6.10, 60% of organisations prepare funding submissions to government and/or other funding bodies. India (79%) and Thailand (76%) are most likely to do so, while Vietnam (37%) is least likely to do so. Coordination with other third sector organisations providing similar services occurs in 78% of cases overall, with a low of 46% reported in Vietnam, up to 95% reported in the Philippines. Across the region 64% of third sector organisations claim to make representations to government on matters other than funding, with a low of 38% in Vietnam and 48% in Indonesia to a high of 90% in Philippines.

The role of the Board is a vital clue to the overall governance of Asian third sector organisations. Overall, only 44% of Boards are involved in the preparation of submissions to funding bodies (less in Indonesia, more in Thailand). Overall, a slightly larger proportion (51%) of Boards approves such submissions (low of 25% in Indonesia to a high of 72% in India). Across the region, 46% of Boards get involved in making representations to funding bodies (30% in Indonesia to 64% in Thailand). Overall 49% of organisations claim that Board members seek donations from friends and acquaintances, ranging from 36% in Vietnam to 60% in Thailand. Fifty-four per cent of organisations claim that Board members help negotiate around the political system on behalf of the organisation. This varies from a low of 37% in Indonesia to a high of 77% in Thailand. In general, it appears that Board members are involved in public relations, including seeking funds, in about half the organisations questioned. By extrapolation, we may assume that such functions are carried out by paid staff in a further 20% of cases, and not carried out at all in the remainder (30%). This compares, for instance, with only 29% of Boards in the United States which claim to be very active in fund raising, and 35% were not involved at all. Similarly, among American non-profits, some 70% had no involvement in public policy and 30% had no involvement in community relations (Ostrower, 2007). This would suggest that many Asian Boards are in fact more involved in the actual work of the organisation than are American non-profits.

Organisations may also communicate to a broader constituency by means of a regular newsletter or website. As indicated in Table 6.9, 48% produce a regular newsletter, and 44% of organisations have a website. The external relations items clustered into three scales. The first scale, external relations A, includes five items dealing with having a formal mechanism for reporting, especially annual report, co-ordinating with other organisations and advocacy functions. The second scale, external relations B, comprises those five items dealing with Board/committee involvement in external relations. The third scale, external relations C, identifies organisations having a regular newsletter or website. These scales are further discussed in Chapter 7.

Re-Inserting Cultural Values

We did not ask about the cultural values within which each organisation operated. However, the researchers within each country reported orally that the obtained data should only be interpreted within the cultural values. That is, while the outward

form of the organisation may resemble the corporate approach, the actual way in which they operated was likely to be quite different. Perhaps the most informative example of this came from Thailand in which most organisations indeed conformed to the corporate model, but where for example, one organisation had a mythical spiritual entity as chair of the Board. In Thailand, governance has traditionally evolved from an absolute monarchy, now a constitutional monarchy. Within this system, the monarch, and indeed any patron or person in power, is expected to abide by the ten principles, based largely on Buddhism (Vichit-Vadakan et al., 2006). These principles include, for example, the values of generosity, integrity, non-violence and non-oppression. Most Thai third sector organisations are governed by a ‘driving force’ or patron, in a patron–client relationship, regardless of the formal structure of the organisation. However, the level of loyalty and commitment by organisational members and employees will depend largely on the extent to which the patron abides by the ten principles.

We also know from the country report from Philippines, that the distinction between management and governance (from the Board) should be treated with caution:

This response should be appreciated within the context of Filipino values, particularly the importance of social acceptance among Filipinos. These are manifested in the values of *hiya* (embarrassment; shame), *tayo-tayo* (we are one family), *utang na loob* (debt of gratitude), *paggaoang sa nakatatanda* (respect for elders), *Pakiramdaman* (being sensitive to the feelings of others) and *pakikisama* (being agreeable and yielding to others; being a team player). The objective of these is to maintain SIR (smooth interpersonal relations) and avoid disagreement. (Domingo, 2006)

What this reminds us of is the importance of building or maintaining social capital. The Filipino values are central to maintaining harmony within close-knit communities, of building the trust and mutually supportive networks that not only support the mission of the organisation but also help to weave wider patterns of collaborative relations within the community. In that context, it is regarded as a major crisis of trust for the Board or any of its members to openly challenge the leadership of the organisation.

Most countries in South-East Asia, and particularly Indonesia and Thailand have very similar cultural values. It therefore might be expected that where there is a Board that is separate from the staff and volunteers of the organisation, that every attempt will be made to ensure that there is a harmony of consensus over all operating and strategic matters. Under such circumstances, it is unlikely that the Board is able to determine the direction of the organisation, or to call to account the actions of those within it. What is less clear is the extent to which decisions and actions made within the organisation are transparent to all stakeholders. It does appear that, where the elders are trusted to make decisions for all, there is little expectation that proceedings be open to scrutiny by members or the general public.

It would be interesting, and I think crucial, to compare the kind of results we obtained in this survey, with a similar examination of the organisational practices of small, grass roots organisations, particularly those operating at village level. Again, the literature suggests that these organisations (such as traditional irrigation

management groups), by their nature, are totally transparent and democratic in their operations. Formal records and accounts may be rudimentary, but all households are represented in decision-making, meetings are public and financial transactions visible. We know less about the governance of religious organisations such as Mosques, Temples and Churches, which are likely to be governed according to their own traditional rules designed to safeguard the integrity of the religious community.

What we can conclude from this first comparative survey of Asian third sector organisations is that those which are most visible to the international community, and which have a reputation for being high performing, do indeed begin to approximate the organisational corporate governance practices that are the benchmark of most western organisations, particularly in terms of governance Board structure and financial management practices. This is less likely in the communist traditions of Vietnam and China. However, even those organisations that most appear to follow a corporate governance approach, as in Philippines, may do so in form only, and to the extent that that form can operate within traditional values of smooth interpersonal relations.

There are advantages to each approach to governance. The corporate approach to governance enables maximum flexibility and control over the direction of the organisation by a small group of people, and by the external funding body. It also provides a legal form and accountability mechanism, which minimises the possibility of corruption. But it does not guarantee freedom from abuse. Indeed, we can all tell tales of scandal and corruption that have involved the biggest third sector organisations including those which have adopted the corporate approach to governance, both in Asia and in the United States itself.

However, the corporate approach to management is not conducive to the development of social capital, or to the maximum empowerment of individuals within civil society. Those that seek to frame their organisation around the values of trust, empowerment, and the development of a stronger civil society need to consider forms of governance that go beyond the corporate approach. One option is to retain, or to return to the traditional approach. The traditional approach to governance may have been reasonably effective in mobilising social capital at the local level, and for some purposes, this may still be the appropriate approach. Change is not always useful. However, the traditional approach is unlikely to work over time at the national level, although it may have a role to play in the mobilising of 'people power' in the short term. And, the values of respect and civility are important in maintaining a national consensus.

The most effective approach to governance for the purposes of developing social capital and a strong civil society is community development, or the participatory democratic approach. This is the approach most likely to occur in small, local, traditional, grass-roots organisations across Asia. However, we have little direct evidence concerning the governance of these forms of organisation, or the effectiveness of their decision-making processes. While we have gained considerable knowledge of some governance issues in Asian third sector organisations, there remains much to learn.

Chapter 7

Third Sector Organisation Accountability and Performance

Jenny Onyxⁱ

Accountability is the state of being called to account, to provide an explanation or justification for one's conduct or duties, especially, but not only, for the appropriate and lawful use of finance. Few would argue that all persons and organisations should be accountable. For third-sector organisations (TSOs)—that is, for non-governmental organisations (NGOs) and community-based organisations (CBOs) alike, whose mission is to provide a service for the greater good—the imperative of accountability is especially strong. However, behind the 'motherhood' acceptance of the importance of accountability, much remains opaque. In particular, several important questions are left begging:

- To whom is the organisation accountable, and for what? (Leat, 1988)
- How is this accountability to be demonstrated, and what compliance mechanisms are available and necessary to ensure that the organisation remains within its accepted zone of conduct?
- Put another way, who has (or should have) the power to enforce compliance, and, if this is the state, does such power potentially curtail the capacity of the organisation to operate autonomously?

Within the literature, there are quite different uses of the concept of accountability. Narrow definitions specify an accountability relationship involving the right of an external authority to demand information and the right to impose sanctions (Cutt and Murray, 2000). In contrast, broader meanings of accountability include the interests of a wider set of stakeholders, who may or may not have the means to impose sanctions (Barrett, 2001; Cutt and Murray, 2000; Ebrahim, 2003).

Even within the simple corporate governance structure of many organisations, the question 'to whom?' is difficult to answer. The prevailing corporate model of governance provides clear lines of authority and, therefore, accountability up through the structured hierarchy of paid and voluntary staff to the Chief Executive Officer (CEO), and through him or her to the board. This is a form of internal accountability involving Board oversight of organisational processes. It requires

ⁱDetailed statistical work by Susan Hocking and Ian Nivison-Smith.

the Board to act independently of the management in order to be able to hold it to account (Ebrahim, 2003). But that leaves open the question: ‘to whom is the board accountable?’ There are several potentially conflicting answers to this question:

- The funding source, as surrogate shareholders. In the case of Asian TSOs, this may be a government body, but is more likely to be a Northern NGO.
- The wider membership of the organisation. This can be taken as a form of downward accountability.
- The founder or owners of the organisation.
- The constituency or client base that the organisation seeks to serve a broader public (another form of downward accountability).
- The legal framework provided by the state.

It is, of course, possible on examination that the board is self-appointed in perpetuity and is, in fact, accountable to no-one.

The answer of ‘to whom?’ is even less obvious when we consider the other, multiple stakeholders who are connected to the organisation: apart from donors, members, volunteers or clients they may include constituencies of those most marginalised in society and the wider public. This raises the issue of whether lines of accountability should vary among these multiple stakeholders (Fowler, 1996). Ebrahim for example distinguishes quite different accountabilities within service organisations, member organisations and networked organisations (Ebrahim, 2003).

Performance

The other issue concerns exactly ‘what’ is being accounted. Typically, the principal concern of the funding agencies, and perhaps of the general public, is the appropriate use of financial resources. However, increasingly, there is also a demand for performance, and, therefore, for identification of measurable outcomes. However, this raises the further question as to what kind of performance is to be measured. Financial growth of the organisation may be one sign of performance, but hardly gives information about whether the organisation is meeting its mission. Oster has observed that the performance delivered by the non-profit sector goes well beyond its financial performance and is usually based on the achievement of its social purposes (generally set down in a non-profit’s mission statement) and the satisfaction of donors’ desires to contribute to the cause that the organisation embodies (Oster, 1995: 139–143). The measurement of performance outcomes relating to the organisation’s mission is difficult, long-term, and usually qualitative rather than quantitative in nature. This is especially the case with advocacy organisations; what, for instance, would comprise an acceptable measure of success for an organisation advocating a change in government policy? What would those measures look like? Is it not enough that the organisation diligently represents and promotes the views of its constituency? How is that to be measured?

But the value created by non-profit organisations often goes beyond its social mission and the satisfaction of its donors. For advocacy organisations, performance measures could also include those that gauge how effectively they give voice to their constituents, perhaps based on the extent to which certain policies reflect the preferences of this constituency. To this, we can also add the contributions emphasised in the literature on social capital, where non-profit organisations' value also lies in their capacity to create and strengthen the networks of reciprocity and trust that make life enjoyable and facilitate the millions of transactions that make society function as a whole (Onyx, 2000; Putnam, 1993). In the context of the developing world in particular, we add the importance of organisations as empowering agents, and as schools of democracy (Edwards and Hulme, 1996).

Furthermore, there may well be a contradiction between different forms of performance. Edwards and Hulme distinguish between economic and political performance (Edwards and Hulme, 1996). While most of the focus on performance accountability rests with economic performance (maximising service at minimum cost), political performance is more problematic:

Effective performance as an agent of democratisation rests on organizational independence, closeness to the poor, representative structures, and a willingness to spend large amounts of time in consciousness-raising and dialogue...It is difficult to combine these characteristics within the same organisation.... (Edwards and Hulme, 1996, p. 6)

Three Accountability Models

Accountability is always vested in a relationship between two parties. Brown et al. (2003) identify three quite different forms of accountability relationships within TSOs. The principal/agent relationship subordinates the interest of the agent to that of the principal, who has the legal, economic and, perhaps, the moral right to demand an account from the agent. This is the typical form of external accountability normally imposed by government (or other) funding bodies on TSOs. Under this form of accountability, the agent (TSO) must comply with demands from the principal, but need not necessarily report to its own constituency. The terms of the accountability invariably include a financial account for the expenditure of funds provided by the principal. However, accountability demands may extend beyond this to a specification of target outputs as defined by the principal, and the agent may be required to include the use of resources not provided by the principal. Under such an arrangement, the capacity of the organisation as agent to operate independently may be severely compromised. In the case of most political regimes across Asia, this form of accountability can be and is used as a mechanism of political control of TSOs by the state.

However, there are other forms of accountability. A second form of accountability relationship entails a contractual relationship, which, at least theoretically, assumes a mutual and equal relationship based on a specific, and usually narrow, set of

agreed outputs. This is the ideal commercial arrangement, and one that is sometimes recommended for specific contracted services. It does not fit easily within the third-sector context, although it may be used by Northern NGOs as a form of contract for services (Fowler, 1996).

The third form of accountability relationship, according to Brown et al. (2003), entails a mutual relationship of equal trust, respect and influence, and involves a broad general commitment, usually based on the informal, moral suasion of peer networks. It involves a collective, negotiated accountability based on a commitment to mission, shared values, flexible operations and extensive stocks of social capital (Ebrahim, 2003; Onyx, 2000). The structure may approximate a co-operative or collective structure that requires the broad involvement of many stakeholders in the organisation's operation, and in these circumstances, lines of accountability will be broad, lateral and general. In this case, transparency is particularly important.

We now examine the survey data from the 492 organisations, in an attempt to identify the extent of organisational practices that signal what kind of performance measures occur, and what kinds of accountability are evident within Asian TSOs. As before, the data has been reduced to form coherent scales following a factor analysis, using principle component analysis and varimax rotation and examined for their relationship to the key independent variables of incorporation or registration with government, the presence of a membership base, presence of paid staff, the receipt of government, domestic or foreign funding. This is done for each scale using multiple linear regression equations.

Evaluating Third-Sector Performance Within Asian Organisations

Performance was an area of interest within the organisational survey. The extent to which organisations measure performance is indicated in Table 7.1. The performance measures indicated in Table 7.1 are those basic measures expected for internal accountability within a corporate governance system. Across the region, 79% of organisations do have some sort of system for measuring performance, ranging from a low of 62% in China to a high of 91% in India. There are various ways in which performance can be measured, and these vary from one country to another.

Table 7.1 Performance Evaluation A

Organisation measures performance	79%
Organisation has procedures manual	65%
Written job descriptions	71%
Regular performance appraisals of senior staff	58%
Organisation uses key performance indicators	64%
Evaluations of efficiency and effectiveness	75%

For instance, 65% of the total sample of organisations has a procedures manual, ranging from a low of 43% in India to a high of 87% in Philippines. Seventy-one per cent have written job descriptions for staff, ranging from 56% in China to 96% in Philippines. Fifty-eight per cent have regular performance appraisals of senior staff, ranging from 44% in Vietnam (47% in China and Indonesia) to 81% in Philippines. Sixty-four per cent claim to use key performance indicators, ranging from 37% in China to 92% in Philippines. Overall, 75% claim to carry out evaluations of the efficiency and effectiveness of its activities, ranging from 59% in China to 89% in India. China is least likely to make use of such formal performance measures, while India and Philippines are most likely to do so.

These items relating to formal performance levels together form a performance scale (Performance A). Whether organisations are incorporated or registered with government makes no difference to whether they have these performance mechanisms. Nor does membership make a difference. However, those with paid staff, and those organisations that receive foreign funding are significantly more likely to have performance measures in place ($R^2 = 10.4\%$).

Other performance items relate to the involvement of other stakeholders, apart from paid staff in the process of evaluation, as indicated in Table 7.2. These represent a form of internal accountability for performance. The items also form a scale (Performance B). Thus, 60% of organisations make use of client interviews in the quality assurance process, ranging from 31% in China to 84% in India. Fifty-six per cent of organisations involve the Board in approving the appointment of the CEO, though with huge national differences ranging from only 32% in Vietnam and 34% in Indonesia to 82% in Philippines and 86% in India. Overall, the Board is involved in reviewing the performance of the CEO in 52% of cases, again with large national differences ranging from 37% in China and 39% in Indonesia to 70% in Philippines. The Board is involved in the review of key performance indicators in 57% of organisations, ranging from 37% in China and 39% in Indonesia to 81% in Philippines. The Board is involved in reviewing quality assurance procedures in 50% of cases, again with big differences by country. The Board is involved in evaluating the efficiency and effectiveness of the organisation in 64% of organisations overall, ranging from 42% in Indonesia and 43% in China to 82% in India. There appear to be consistent national differences over this scale; in general Boards do not have this performance monitoring role in China or in Indonesia, while the

Table 7.2 Performance Accountability B

Use client interviews in QA process	60%
Board approves appointment of CEO	56%
Board reviews performance of CEO	52%
Board reviews key performance indicators	57%
Board reviews QA procedures	50%
Board evaluates efficiency and effectiveness of organisation	64%

QA, Quality Assurance; CEO, Chief Executive Officer

Table 7.3 Independent Variables Significantly Associated with Performance B Score

Variable	Coefficient	P-value
Constant	2.7	–
Incorporated	1.4	0.003
Paid staff	1.7	0.000
Receives foreign funding	1.1	0.002

$R^2 = 11.4\%$

Board appears to be very actively involved in formal review processes in India and Philippines.

The multiple regression results of Table 7.3 shows that the Board is more likely to be involved in formal performance review if the organisation is incorporated with government. Membership status makes little difference. Boards are much more likely to be involved in formal evaluation and performance review if there are paid staff and if the organisation receives foreign funding.

Accountability for Financial Management

As indicated in the previous chapter, financial management decisions may involve action of the Board. The extent to which this is the case is also indicative of internal organisational accountability. The extent to which the Board is involved is tapped by five questionnaire items which form the Financial Management B scale, as indicated in Table 7.4.

The committee/board is involved in the preparation of the annual budget in 52% of organisations, ranging from 41% in Indonesia and 42% in China to 63% in Thailand. The board reviews and approves the annual financial statements in 71% of organisations overall, ranging from 48% in Indonesia to 93% in India. The Board reviews the organisations performance against the budget at regular intervals in 58% of organisations overall, ranging from 40% in Vietnam and 44% in China to 71% in India and 75% in Philippines. The Board is specifically required to approve major expenditure items (such as purchase of major equipment) in 59% of organisations overall, ranging from 0% in Vietnam and 53% in Indonesia to 92% in India.

Table 7.4 Financial Management B

Board involved in annual budget	52%
Board reviews and approves annual financial statement	71%
Board reviews performance against budget regularly	58%
Board approves major financial expenditures	59%
Finance subcommittee for detailed review	34%

Table 7.5 Independent Variables Significantly Associated with Financial Management B Score

Variable	Coefficient	P-value
Constant	1.8	–
Incorporated	1.7	0.000
Paid staff	1.3	0.001
Receives foreign funding	1.4	0.000
Receives domestic funding	1.0	0.001

$R^2 = 19.5\%$

The Board has a finance/audit subcommittee to conduct detailed reviews of financial matters in only 34% of organisations overall, ranging from 0% in Vietnam and 12% in China to 66% in Philippines. Thus, while the majority of Boards are involved in some sort of broad scrutiny, particularly the review and approval of annual financial statements, relatively few are involved in a detailed and ongoing scrutiny of the organisations financial performance. This involvement varies tremendously across the region, with generally low Board involvement in Vietnam, China and Indonesia, and relatively high involvement in India and Philippines.

The extent to which the Board is involved in financial management is also influenced by external factors, as indicated in Table 7.5. Overall, those organisations with high scores on the Financial Management B scale are significantly more likely to be incorporated, to have paid staff and to receive foreign and/or domestic funding. Having members has an inverse affect, which is that those without members are more likely to have closer Board involvement in financial management. These results suggest that the internal accountability measures adopted by the Board may be directly related to the requirement for external accountability reporting.

Across the region, financial statements are audited by a qualified auditor in 74% of organisations, less so for Indonesia and Vietnam, more so in India. Financial statements are made available to members in 72% of organisations overall, less in China, more in Philippines. Financial statements are made available to the general public in only 50% of organisations overall, ranging from 24% in China and 33% in Indonesia to 87% in Philippines. This suggests that transparency of financial accountability to members and the wider public is limited, particularly in China and Indonesia.

Reporting Mechanisms

Finally, other clues relating to accountability regimes can be found in the extent to which the organisation engages with external stakeholders. The relevant questionnaire items form two scales, External Relations A concerning the preparation of reports and External Relations C, the presence of newsletter or website. These scales

Table 7.6 External Relations A

Organisation reports outside organisation	88%
Formal reporting mechanism	81%
Produces annual report	80%
Co-ordinates with other third-sector organisations	78%
Makes representations to government (not funding)	64%

provide further evidence of the degree of transparency within these organisations. The overall responses are provided in Table 7.6.

Overall, 88% of organisations report its activities outside the organisation. This ranges from a low of 74% in Indonesia to a high of 100% in Philippines. In most cases (81% of the total), there is a formal mechanism for reporting activities outside the organisation. There is less likely to be a formal mechanism for reporting in China (74%), Indonesia (65%) and Vietnam (65%).

There are a number of forms in which such reporting may occur. Most commonly, 80% of organisations produce an annual report, which is almost all of those who have any formal mechanism for reporting. Coordination with other TSOs providing similar services occurs in 78% of cases overall, with a low of 46% reported in Vietnam, up to 95% reported in the Philippines. Overall, 64% of organisations claim to make representations to government on matters other than funding, with a low of 38% for Vietnam, 48% in Indonesia, to a high of 90% in Philippines. In this case, it could be argued that the organisation is moving beyond the principle/agent form of accounting, to advocate on behalf of its constituents and thus to demand a form of reverse accountability from government. Note that this is highly variable between countries, being lowest in those countries without a democratic tradition.

Table 7.7 provides evidence of the significant effect on these forms of external engagement (External Relations A) from having paid staff and any kind of external funding. The direction of causality is the reverse of that assumed, that is those organisations with active external engagement policies are more likely to receive significant external funding. In addition, 48% of organisations produce a regular newsletter, ranging from 26% in Vietnam to a high of 62% in China. Across the

Table 7.7 Independent Variables Significantly Associated with External Relations A Score

Variable	Coefficient	P-value
Constant	5.1	–
Paid staff	1.4	0.000
Receives foreign funding	1.2	0.000
Receives government funding	0.7	0.009
Receives domestic funding	1.2	0.000

$R^2 = 20.4\%$

Table 7.8 Independent Variables Significantly Associated with External Relations C Score

Variable	Coefficient	P-value
Constant	0.9	–
Registered	1.3	0.001
Paid staff	1.3	0.001
Receives foreign funding	1.9	0.000
Receives domestic funding	1.3	0.000

$R^2 = 18.0\%$

region, 44% of organisations have a website, ranging from 12% in Vietnam to 61% in China. These two items form an independent scale, External Relations C, which seems to focus on a wider form of communication to a public. The extent to which these activities take place is related to a number of variables as indicated in Table 7.8, notably the presence of paid staff and external funding. It is interesting to note that China, which had low scores in terms of broad financial accountability, has the highest score on this external communication dimension.

In summary, those organisations with significant external funding, and particularly those with significant foreign funding, had higher management procedure scores for financial management oversight by the Board, higher performance evaluation scores and were more likely to make use of external relations functions. These organisations are particularly likely to have internal accountability mechanisms with Board oversight of financial management, and to have extensive external reporting involving Board oversight. The presence of a membership base made little difference to these relationships. We may conclude then, that these organisations with high scale scores do indeed approximate the Western corporate governance model with strong internal accountability mechanisms, at least on paper, and with significant external accounting particularly in the case of external and foreign funding. This external accountability conforms to the principle-agent form of accountability identified by Brown and others (Brown et al., 2003).

Accountability in Small and Informal Organisations

We know from the analyses presented above that those organisations that are not incorporated are far less likely to have formal accounting mechanisms, and far less likely to have internal accountability mechanisms involving Board scrutiny.

However, that should not be taken as necessarily indicating a lesser form of performance evaluation or accountability. As indicated in the previous chapter, the case study material indicates that if anything, small informal grass roots organisations have a more rigorous form of reporting and accountability involving public disclosure, often in oral form and involving both members and wider public. The

following report concerning Indian case studies of small and informal organisations illustrates the point:

Jan Sunwai (public hearing) is the most popular mode of accounting and reporting followed in 18 [of the 19] cases under study. The traditional mechanism of public accounting and auditing operates as a very effective controlling mechanism in these organizations.....The example of the silk weaver's organization will substantiate the point. The small silk weavers in West Bengal have been the victims of unfair trade practices.....The members to support themselves pooled their resources and began to organize other small weavers by way of performing street plays.[which] could be used to give account to the public of their activity.....they were questioned and appreciated on many occasions by the community and visitors of the fair. This also gave wider publicity to their cause and increased public trust in the group and hence strengthened the support base. Each case that they have fought and achieved and lost, programs taken up, the mode of operation, funds raised and spent, are all reported here. The surplus or the losses if any and the pains and the joys of the whole action are turned into skits and plays that they enact in the village gatherings, festivals and other occasions. (Dongre and Gopalan, 2006)

Similarly in Indonesia, the small *Arisan* or micro-credit groups operate without formal accounting, but with total public disclosure to all members of each financial transaction. That is, accountability is provided through the mechanism of collective decision-making and public actions, including the exchange of money. Total transparency to members ensures a very rigorous accountability, and evidenced review of performance. These conform to the third, or collective, negotiated form of accountability with broad transparency (Brown et al., 2003; Ebrahim, 2003).

Discussion

These are just a few of the findings that our statistical analysis and qualitative case studies reveal for the internal organisational governance practices for these organisations, particularly relating to performance evaluation and financial accountability. From the evidence provided by the data, we may conclude that the bulk of those incorporated and funded TSOs across the six Asian countries surveyed already follow a standard (Western) corporate governance model in relation to decision-making, quality assurance processes and financial accountability. What is particularly striking is that these corporate governance processes are most likely to occur among those organisations named as 'high performing' by the key informants. Corporate governance processes are significantly more likely to occur when the organisation is legally incorporated and/or registered with government, and they are significantly more likely to occur when the organisation receives significant foreign funding. It would appear that these events are driving a major cultural shift within the third sector in these Asian countries, away from traditional modes of local governance and towards more formalised governance mechanisms applied within Western corporate governance rules. It is clear that these organisations are focusing particularly on economic performance (Edwards and Hulme, 1996). It may well be

the case that the role of government in monitoring the performance of some NGOs is specifically designed to prevent organisational capacity for empowerment and democratisation, the 'political' performance function. This was noted in several country reports (China, Thailand and Indonesia).

In contrast, small informal organisations appear to be more likely to adopt a political performance perspective and Brown's third form of accountability, that is one of shared or communal accountability. These organisations appear to maximise achievement of secondary goals, those of social capital, democratisation and mutual support. But they are less likely to maximise financial growth or economic performance. There is some indirect evidence that organisations may be responding to multiple stakeholders with negotiated different forms of accountability, as Fowler suggests (Fowler, 1996). However, the evidence is far from clear on this point.

If it is correct that many Asian TSOs, especially those with foreign funding, are adopting the corporate governance model, then there are several major implications. On the positive side, organisations appear to be well protected from nepotism and misuse of resources, with clear and formal accountability/quality assurance mechanisms. However, this may be more apparent than real. The presence of a strong patron/client culture and values that emphasise respect for elders, and smooth interpersonal relations, makes it unlikely that the Board will adopt an independent scrutiny role over the staff and CEO. This was particularly emphasised in country reports from India, Thailand and Philippines. On the negative side, many Asian organisations appear to be losing their distinctive cultural stamp, or at least presenting an appearance of doing so to please their (foreign) masters. The latter case is particularly serious if the formal accounting mechanisms actually prevent the Asian organisations from independently advocating on behalf of their constituents, and instead are diverted from meeting an identified need to meeting the objectives required of the funding body (Edwards and Hulme, 1996). A great deal more evidence is required, especially relating to performance and accountability among small, informal grass roots organisations. We need to know more about the prevalence and importance of small, grassroots organisations, particularly in a village context, the kind of decision-making and accountability mechanisms that do occur in this context, the role of the traditional patron(s) in this context, and whether these organisations do indeed provide a greater level of advocacy and democracy than that obtained in the large, high performing, foreign funded organisations that make up the bulk of this sample.

Chapter 8

Collective Governance: An Alternative Model of Third Sector Governance

Ledivina V. Cariño

The prevailing picture of good governance in the third sector in Asia is similar to that of the West. Its organisations are formally constituted, complete with constitution and bylaws, and registered with the government agency designated to perform that function. They have a policymaking board and an implementing team including volunteer and paid staff. They conduct annual general meetings and strategic planning and submit themselves to regular audit. This project found this ‘corporate governance’ model as exemplifying ‘good governance’ according to most of the knowledgeable people we interviewed in China, India, Indonesia, the Philippines, Thailand and Vietnam.

Yet, many of our expert-respondents (referred to in Chap. 1 and elsewhere as ‘key informants’) conveyed to us a certain misgiving about this picture not being ‘the whole of it’. They would then cite organisations that seemed to be departures from the model. They often were unregistered and lacked formal elements, like boards and constitutions. Some had members but not formal officers, with leadership neither elected nor inherited. Some were flash-in-the-pan organisations, active for a short period and then never to be heard from again. Yet many endure for many years, even across generations, and are well-known, if not to the society at large, then at least to their little ‘neck of the woods’.

This chapter is an attempt at giving name, form and characteristics to these third sector organisations. It is based on the interviews and focus group discussions done by our research teams and the country report they submitted, supplemented by the literature in English on the third sector in these countries. This Chapter draws more from India, the Philippines and Indonesia than from the other countries in the Asian Third Sector Governance (ATSG) Project. The reliance on India stems from the Indian team’s special study of 19 unincorporated organisations (Dongre and Gopalan, 2006). The findings of this study give insights on the functioning of organisations that depart from the corporate governance model. These lead us to go beyond structures and forms in the quest for the essence of good governance.

I have also drawn from studies of specific organisations from India, Indonesia and the Philippines. The Indian and Indonesian organisations are described in their respective country report for the ATSG Project. Meanwhile, the Philippine cases were originally written for the study of the impacts of the third sector on the state

and the society. Whenever possible I have supplemented these main sources with information and insights from the reports of the other teams in the TSG project and other relevant publications.

I will start by describing the principal elements of the corporate governance model. Then, I will present examples of emerging elements of an alternative model that can be compared and contrasted with the more established corporate governance model by discussing a few third sector organisations presumed to be well-performing, but clearly not following corporate governance model. I end by presenting ‘collective governance’ that can be distinguished from the prevailing corporate governance model. Before moving into the main discussion, I would like to offer a caveat for the discussion.

Limitations and Resulting Strategy of the Study

The principal limitation of this study is that the TSG teams did not explicitly set out to study these ‘different’ kinds of organisations. Thus, despite the presumably large number of such organisations, we actually have very few well-researched examples. It was not that the project started with a pre-ordained idea of well-performing organisations as those practicing corporate governance. Its queries on structure and functions were open-ended enough to allow for other possibilities. However, it is indeed the case that the most prominent among the well-governed organisations clearly fell within that model. Moreover, our research strategy of asking our respondents to describe what they know to be well-performing organisations might have made them converge on those prominent examples. Perhaps also, the use of the term ‘governance’ suggested formal structures and functions that we did not intend.

Elements of the Corporate Governance Model

As this purports to be a description of Asian third sector organisations, the impression might be given that I am simply posing elements of Western organisations against their ‘non-Western’ counterparts. That is not my intention. Indeed, it is possible that some organisations in the West may fall under some of the types emerging from this study. To anticipate some of the examples to be more fully explained below, I am sure that many American and European organisations also have ‘sleeping boards’, just as some of these informal Asian organisations choose experts and not kin to be their leaders. In order to appreciate the ‘alternative’ model fairly easily, I endeavour to highlight below the major elements of the corporate governance model.

The elements of the corporate governance model are the following:

- Registration and state recognition
- Separation of policy from administration
- Collective leadership through a board

- Voluntary service in the board
- Implementation primarily by paid staff
- Formal accountability

Registration and State Recognition

Corporate governance organisations are created by private citizens and are institutionally separate from government. (In some cases, some of their organisers may be government officials, but they are involved in these groups in their personal capacity, not in official positions.) However, they have voluntarily agreed to be bound by government regulations through the act of registration with a government agency, or through getting permits or licenses for their operation. The limitation on autonomy that registration entails is something these organisations have consciously taken upon themselves because most Asian states do not require all organisations to register. In other words, an organisation can operate without need of telling the state of its existence. However, registration means state recognition, and that facilitates many organisational transactions—for instance, receiving grants, loans and contracts from government, the private sector, and international organisations, most of which will not provide funding to unregistered associations. Also, registration connotes seriousness of purpose, since most governments require a fee that is usually small, but is big enough to prevent those without any plans and programmes in mind to go through the process. Registration also assumes that an organisation intends to be in existence for some time, since anyone that registers must bear in mind that it has to provide annual reports and must usually inform the agency of its dissolution.

Separation of Policy from Administration

Corporate governance organisations are governed by a board, a group of people chosen by the organisation to set its vision, formulate its strategies, and lay out the policies that will guide its programmes and activities. The board is the policymaking body of an organisation and leaves to an executive director or president and the staff the tasks of carrying out its mission. This division of duties suggests a complex organisation where the board, as overseer and trustee, watches over the organisation proper to ensure that it is faithful to the mission and policies that this higher body imposes upon it.

Collective Leadership Through a Board

With a board, an organisation is guided by the ideas and judgement of a group of people, not of a single individual. Board members may be chosen from among the members of the organisation and from its principal supporters. Boards are usually

composed of people bringing different views to the table. In some cases, an organisation may consciously get board members to represent various perspectives important to it. Thus, an organisation may want to make sure that it has an adequate mix of persons of different genders, geographic origins, professions or other factors it considers important for its decision-making. Kinship with other board members or with the executive, however, is usually a negative qualification rather than a factor for selection. Some may ask one or two from the beneficiary community to have seats in the board. An organisation may also ensure both continuity and fresh views by staggering the terms of members.

Voluntary Service in the Board

The board members are expected to be the guardian of an organisation's mission and to take its purposes to heart. This is because, unlike a private corporation's board, a third sector organisation board is supposed to be powered by volunteerism and passion. Members are at most reimbursed for their expenses in attending meetings, but do not receive payment as board members.

Implementation Primarily by Paid Staff

Corporate governance organisations usually have paid staffs who undertake their day-to-day operations. Many of these, as in Weber's bureaucracy, regard their employment as a career, which they enter as relatively young people, and in which they progress up the ladder to greater positions of responsibility. Unlike other bureaucracies but in the tradition of Weber's idea of an office as a vocation, these staff members do not regard their employment as merely a job. Rather, they imbue their work with commitment to the cause to which the organisation is dedicated. The work of paid staff may be augmented by volunteers. Volunteers may come in regularly or they may assist the organisation occasionally, particularly when there are special events (such as anniversary programmes) or crises (such as disaster responses).

Formal Accountability

Corporate governance organisations, if only by virtue of their having registered, are accountable to the state and are supposed to provide it regular reports of its activities. This usually means annual textual and financial reports, in a form required by the registering agency. Audits by a certified public accountant usually accompany the financial report. With these requirements, corporate governance organisations enter the formal realm of programme reporting, accounting and audit. Many go one

step further by making these reports available to their funders, beneficiaries, partners and the public at large.

Alternative Governance Model: Traditional Organisations

In the participating countries, there are thousands of small and informal third sector organisations. For example, in India the total number of third sector organisations is estimated to be 1.2 million, almost half of which are small and unincorporated. It would thus be a grave omission to ignore the governance of these organisations. In fact, the findings from the country studies, especially the Indian, show some elements of governance different from those of the corporate governance model. These can provide us clues as to their functional equivalents as means to build up alternative models. Here, we are highlighting three different types of organisations: traditional guilds, multipurpose complex structure and project organisations.

Traditional Guilds

India has had organisations of persons in the same occupation for hundreds of years. The APPIN (Asia Pacific Philanthropy Information Network) study notes that guilds of pre-industrialised India have been mentioned in the Vedic literature, dating back to 2500–1500 B.C. Like the guilds of the Middle Ages in the West, these were organisations responsible for setting rules regarding work, wages, standards and prices for commodities. It was headed by a chief (called a *jesthaka*), who was assisted by a council of older members. Members paid dues and, with fines imposed on violations of rules, guilds were not only self-supporting but had enough resources to contribute to religious causes, and to lend money to merchants in need of funds. They had banners and emblems and might even have had armies to serve (or fight) the king when necessary.¹ Vietnam has similar guilds called *phuong* which may have existed in Hanoi as early as the eleventh century. They produced and traded goods of high quality and were most developed during the fifteenth to the seventeenth century.² However, they may not have been as powerful as their Indian counterparts.

The organisation of small silk weavers presented by Dongre and Gopalan (2006) is part of this guild tradition in bringing together persons in the same occupation,

¹ Information cited here is available in India: History of philanthropy in Philanthropy and the third sector in Asia and the Pacific APPC website Retrieved September 11, 2006. http://www.asianphilanthropy.org/countries/vietnam/history_third.html.

² Vietnam: History of the third sector in Philanthropy and the third sector in Asia and the Pacific APPC website: Retrieved September 11, 2006. http://www.asianphilanthropy.org/countries/vietnam/history_third.html.

and in pursuing the function of protecting and strengthening those who are in the same craft. It departs from it in that it is a reaction to a situation of weakness, that of being oppressed by the 'putting out' system in India. Instead of being in a position to set rules and standards, the present-day guild finds that it must fight the conditions of their employment which have been set by those outside the guild. These weavers have found that being out-contractors, they are not paid proper wages by the big master weavers in the formal sector.

Instead of a *jesthaka* (the head of the elders) and a council of elders, the silk weavers have organised themselves into a formal organisation with officers and members, although still without a board and paid staff. Finding the state and the market leaders as their antagonists, they have not registered their organisation. And as a means of reporting and accountability, they have harked back to the ancient modes that probably go back to Vedic times. To support themselves and to organise other small weavers, they have adopted the *jan sunwai* (listen and know), an oral means of telling the public what they have done during the year. It includes what they have fought for and achieved during the period, including how funds have been generated and spent. Similar to street theatre, they perform in community fairs and listen to the people's reactions to their report. The viewers then raise questions about what they have seen. In some cases, when the members of the audience are not weavers but have some experience in business, they give tips on market strategies and advise the guild on how to proceed. The *jan sunwai* gives wide publicity to the silk weavers' plight and has attracted community support.

Dongre and Gopalan (2006) report that of the 19 traditional/informal third sector organisations they have studied, all but one have used the *jan sunwai* method. In addition, ten have used it not only as a traditional public accounting mode but also as an awareness-building method, as the silk weavers have done.

Multipurpose Complex Structure

The Indian team studied 19 unincorporated organisations that have also been deemed well-performing by their key informants. All these organisations are unregistered and have no formal relationship with the state. In addition to the survey instrument, the team tried to capture the dynamics of their governance through mini-cases of some of the organisations.

Fourteen organisations have no boards, but follow a group approach to decision-making where all members may participate. The remaining five either have a committee or a formal board. Two have been formed by the founder or the head of the religious organisation, and the rest have been formed by the organisation's members. The boards are localised, small and participatory, with members aware of their responsibility to the organisation. Those without boards are either membership- or community-based and have a collective decision-making and execution system. Meetings of the total membership are frequent

(sometimes weekly). Inactive ('sleeping') members are dropped after three years of non-participation.³

Decision-making in unincorporated organisations tends to be by consensus, which is arrived at after long discussions. Voting by majority rule is generally avoided, this being regarded as divisive and with clear winners and losers. Instead, the discussions are regarded as a binding factor for the group where individual views are expressed and expected to be respected.

The term 'Chief Executive Officer (CEO)' is hardly used, and leaders are not usually construed as having offices or posts. Instead, they convene the groups, moderate meetings and are the spokespersons in dealing with other entities. Whether with boards or not, unincorporated organisations in the sample have been found to have trained second-line leaders, for the inevitable time when present leaders may have to depart. This is in keeping with the idea of these organisations as maintaining a collective identity, not a leader-centred group.⁴ This is confirmed in other studies where formal Indian TSOs have been found to be individual-centred, with some leaders holding the same position for years on end (for more detail, see Chap. 13).

Accountability is maintained in these unincorporated organisations with the use of oral modes, including all the members singing or performing a community theatre to inform the community about their activities. These are also means of passing on knowledge in the organisation. Without written records, institutional memory is preserved in the minds of community and organisation members through methods to which they have been exposed to since birth.

Project Organisations

The Arisan of Indonesia

The Indonesian *arisan* has a very simple structure befitting the simplicity of its project. An *arisan* is a rotating savings organisation. The members may be workers in the same firm or agency, old friends or relatives, or a mixture of these. The idea is that all will contribute a specific amount of money to a pool which will be given to one of the members in every meeting. For instance, a group may have 15 members

³By comparison, all the incorporated organisations have boards (not out of need, but for legality). The leadership of the founder seems more marked here, with the Board members, especially the original ones, being his or her close associates. As much as two-thirds of the incorporated organisations have Board members who may be called 'sleeping partners', lending their name to the board but not actively participating in it. Some of these may be eminent persons invited to grace the board's list. Since these boards meet only once a year, and only for a few hours, the day-to-day work is left to the founder or the CEO (often the same person). For more information, see Chap. 13.

⁴This is a higher percentage than in incorporated organisations where 75 out of 121 organisations do not develop future leaders.

who decide to save Rp1,000 (US\$.10) every week for 15 weeks. This means that at any given week, Rp15,000 will be in the pool, and this will be given to a member according to the schedule the group draws up by lottery.⁵ In each *arisan*, the members decide by consensus on a number of issues: how much to give, how often the sum will be distributed and what is the schedule of distribution among them⁶ (Radyati, 2006).

Each member must take the responsibility of promptly paying the weekly contribution, usually at a short meeting where the 'lucky one' is awarded the full sum of money for that week. Trust and responsibility thus play very important roles in keeping this little group together.⁷

A form of *arisan* exists in other countries in Asia as well as in Africa, in Latin America and even in some communities in the United States (Putnam, 1993). Each country's style varies, but the organisations have basically the same purpose, structure and rules. In the Philippines, the organisation is called '*paluwagan*' literally meaning 'a means to broaden', that is to give one a wider berth in his or her own financial resources. Strictly speaking, the *paluwagan* or *arisan* does not provide that, since it does not add anything to a person's own savings.⁸ However, the discipline and camaraderie of a group, not to mention, the shame to befall the person (and family) that skips payment, are compelling factors that strengthen one's ability to save.⁹

In Vietnam, *arisan* is known as *ho*, and is also a means of allowing members to accumulate a large sum for special events. The variation is that contributions to a *ho* may be in the form of rice, rather than money. Also, a member may get an earlier turn by contributing more rice to the person being overtaken. Members, 10 or 12, of a *ho* are usually close friends or relatives.¹⁰

⁵The structure of the organisation is very simple. A group of people may express the need to save money for some personal need, and they then decide that they can do so through an *arisan*. One member takes charge of the lottery and takes note of the order of distribution. This convenor or another person may then act as the treasurer who will collect the funds and give it out to the member supposed to get the pool at a given meeting. After the first round, the treasurer is in charge, and the convenor (if a different person) has very little to do, because the members remember when their money is due.

⁶At the end of the round, the members may decide to disband, continue the group, allow some members to drop out or accept new members. They may also decide to keep the contribution at the same level, or to increase or decrease it. The number of rounds is always dependent on the size of the membership.

⁷Although the business at hand is just to pay their share and see to it that the appropriate person gets to bring home the cash, the meetings are also means to cement the friendship of the members, and may be the starting point of joint projects, which would usually require the creation of an organisation different from the *arisan*.

⁸Arguably, if a person can contribute Rp1,000 a week and sustain it for 15 weeks, he can save Rp15,000 by himself.

⁹Paluwagan members usually specify a goal for the funds they will get, say, a kitchen appliance, a child's tuition fee or even a time deposit in a bank. They view it as 'fresh money', or a "windfall" rather than the practical result of a weekly saving.

¹⁰A *ho* is limited to ten to twelve persons so that one does not wait too long for one's turn. For details, see the "Third Sector: Overview" section under Vietnam in www.asianphilanthropy.org.

Robert Putnam has cited ‘rotating credit’¹¹ associations’ with *arisan* as the prime example of organisations that exemplify investments in social capital—the dense network of trust, reciprocity and other mechanisms that cement social solidarity. They defy the logic of collective action, especially since the state is not present to punish defection. Clearly, it is to a person’s economic interest to drop out once she or he has gotten the share, but the organisation would not function if the risk of such default is high. The members draw on each other’s honesty, reputation and their pre-existing connections which would militate against the *arisan*’s failure. With no risk of prison, defaulting members face social ostracism—a sanction so strong that offenders have been known to sell their daughters to prostitution or to commit suicide (Putnam, 1993, pp. 167–68).

The *arisan* differs from the corporate governance model in practically all its elements and shows instead the characteristics found in the earlier Indian examples. The state is out of the picture. Policy and administration are merged; any distinction between leader and member is hardly discernible. The whole organisation, not just leaders (since they are no different from ordinary members) makes collective decisions. All members have entered into their respective responsibilities voluntarily and are accountable to each other. This mutual accountability keeps the organisation going until the goal of each member is reached. Like modern projects, it has a single purpose, and has a clear beginning and end.

Philippine Fiesta Organisations (Gaffud et al., 2007)¹²

The Philippine fiesta organisation from one perspective is also just a project organisation, whose sole job is to mount the grand community project that year. From another view, it is an institution, active since Spanish colonial times, with clear succession procedures.¹³ Year after year, the fiesta is celebrated—but who organises it?

A fiesta organisation exists in every village or municipality,¹⁴ but they are not all alike. Local governments have taken over some fiestas, following a memorandum

¹¹ As my discussion shows, these are not credit associations, but savings associations. People do not borrow from the pool since it is their own money they are withdrawing, albeit earlier than their full contribution. Perhaps they have been called credit associations because they have been the nucleus of cooperatives in many countries where a variation of the *arisan* exists.

¹² Facts and figures related to the Philippine fiesta organisation follows Gaffud et al. (2007).

¹³ The fiesta organisation can be like an heirloom passed from one generation to another by the households of the community. However, the succession and annual organisation are traditional points of consensus of which there are many participants.

¹⁴ Each Filipino village has a fiesta, a religious holiday to commemorate the day of a patron saint. Each family participates by decorating their house and preparing a feast for everyone who drops by, friend or stranger. There are also community-wide activities: a religious procession with saints in full regalia in their own carriages, bands and candle-lighters. There may also be an agricultural fair, a circus and rides for the children, the crowning of a beauty queen by a national politician, and other events.

from the Department of Tourism to form a tourist council or office for such community activities as fiestas. In most villages, however, it is still the third sector that is in charge, but it is not run by the Roman Catholic Church, as may be expected, given that it is supposed to be a religious event.

The Philippine Non-profit Sector Project (PNSP)¹⁵ studied *fiestas* in Bulacan, which is the premier province of the country in terms of income. In San Juan, one of the *barangays* (villages) of the capital city of Malolos, the fiesta organisation is headed by an *hermano mayor* and an *hermana mayor*.¹⁶ These are the traditional names for the leaders of fiestas in the Philippines. They are chosen on June 27 of every year, three days after the current year's fiesta. The meeting is presided over by the outgoing *hermano mayor*. All married male residents may participate in the selection of the next *hermano mayor* and indeed any of them may vie for the position.¹⁷ Unlike in other villages, San Juan opens the position to non-Catholics, and, with its financial rules, to members of all social classes. The *hermano mayor* also becomes automatically the president of the council of elders of the *barangay*.¹⁸

The chosen *hermano* discusses the features of the programme and appoints members of the *komite de festejos* (committee of the feast): the usual vice president, secretary, treasurer and auditor plus the heads of sub-committees. These heads are responsible for collecting fees from the households of their geographic area.¹⁹ The share of each household is decided in a *barangay* assembly called later by the *barangay* captain (the local government head).²⁰ Because after religion, the main feature of a fiesta is music, the convention is to allot these contributions for the bands' fees.²¹ The funds received through the *resibaryo* are audited and are reported to the community before a new *hermano* is named.²²

¹⁵The PNSP is part of the Comparative Non-profit Sector Project based in Johns Hopkins University and composed of almost 40 countries. In the Philippines, the Third Sector Governance Project is a successor-project to PNSP.

¹⁶These are the Spanish terms for 'big or principal brother' and 'sister'. Most Philippine towns use the terms to refer to the person(s) in charge of the fiesta and other religious festivities.

¹⁷To give everyone an equal chance, the decision is made through an elaborate lottery. First, all willing to be considered must signify their interest, and then lots (called *pritiya*) are drawn to determine who will draw first. In the second round, lots three times the number of applicants are made, with a single piece marked *suerte* (lucky). All draw lots, following the order ordained by the first round, until that special piece is drawn. The next step is for all the lots to be inspected to make sure that only one actually has the lucky sign.

¹⁸Marriage, rather than age, is the principal qualification for membership in this council.

¹⁹The first duty of the *hermano mayor* (once elected, he is also called the *pangulo* or president) is to make repairs and enhancements to the parish church. He may shoulder all the fiesta expenses personally but his funds are usually augmented by the fees that his subcommittee heads collect and by other contributions.

²⁰Everyone who gives a share gets a small piece of paper called the *resibaryo* (the receipt of the barrio). Some cash comes in white envelopes (not given a *resibaryo* because unsolicited) while some families may opt to pay for candles, fireworks, flowers and food of the bands and dancers.

²¹If the fees are higher than the bands' costs, the *hermano* informs the village what he will do with it. The *hermano* may solicit other funds, but this is usually not necessary because donations pour in.

²²Personal expenses and donations, however, do not have to be made public.

The *fiesta* is a total community event, involving not only the religious groups but also other organisations and the local government of the area.²³ Given community cooperation and contributions, the financial status of the *hermano* is not a major concern.²⁴ Further, where certain actions and expenses are not a concern of the community as a whole, there is no community audit of that income or expense. Thus, the *hermana* mayor who is responsible for the religious aspects of the *fiesta* is not asked to report to anyone for her actions and expenses.²⁵

In Barangay Bulihan, the *fiesta* organisation is similarly run by the council of elders²⁶ (called here *Kapisanan Kilos Katandaan*, Organisation for the Activities of the Elderly or KKK). Where the husband is abroad or the wife is the more active parishioner, women may join the men in the KKK. Officers are elected every three years in a meeting held after the seven o'clock morning mass, the best attended mass in the village (about 20–40% of the residents). People are nominated for the posts of president, vice president, secretary, treasurer and auditor, and vote by the raising of hands.²⁷

The first task of the president is to call a community meeting (again, after a mass) where the first order of business is to decide whether to celebrate the *fiesta* or not.²⁸ If the decision is in favour of a *fiesta*, they then decide how much to contribute per household. Financial statements are posted in the chapel after the *fiesta*.²⁹ Aside from the KKK, youth organisations are also active, and they decorate the streets and the church, organise games, talent shows and contests, and arrange the carriages of the patron saints (recall that the last was done by the *hermana* mayor in San Juan). Bulihan has a unique organisation called *Samahan ng Mananayaw* (dancers' organisation). Dancers not only perform all kinds of folk dances during the *fiesta*; they are also the security force guarding the patron saints.³⁰

Meanwhile, in Baliwag, a town not far from Malolos, heading the *fiesta* organisation is closed to all but the elite of the village. For that matter, they are practically the

²³The *Lakas ng Kabataan* (Youth Power), the organisation of young people in the village, takes charge of decorating all the streets. The *tanods* (peace officers) take charge of the traffic changes and the *barangay* captain is on call 24 hours a day during the two weeks of *fiesta* programmes.

²⁴He usually incurs about P20,000 to P50,000 (US\$400–1,000) in expenses, a minimal amount which is affordable by anyone with a regular income. The system has been designed to make the *fiesta* not a showcase of the rich, but a total community effort.

²⁵She is in charge of cleaning the church for the whole year. She is the sponsor of the Virgin Mary whose image stays at her house for the year, and who is brought out appropriately bedecked, on Holy Days and the *fiesta* itself. She is left to herself, because she is not expected to have committees and assistants. In practice, her relatives and friends help, and she may also organise fund-raising activities like bingo raffles and solicitations.

²⁶As in San Juan, a person is considered “elderly” once married.

²⁷The sentiment in the village is to elect from the most active rather than the highly educated, since the latter usually have less time for community affairs. This opens the door for farmers and others in manual occupations.

²⁸In some years, people had opted for other projects like painting the chapel.

²⁹Any balance goes to the organisation's fund for other projects. In 2004, revenues ran as high as Pp65,000 (US\$700) of which 83% went to the band.

³⁰SNM is headed by a *banderada* (the person holding the flag) who covers the musicians' and dancers' food and drinks, with the aid of her fellow dancers.

only ones who can be selected since the new *hermana mayor* is chosen by lot from among the active parishioners who live in *barangay poblacion* (the village centre) where the rich residents live.³¹ Generally, too, the person selected is a woman (since women constitute a higher proportion of the most active parishioners).³²

The *fiesta* organisations differ, but all are unregistered. The state is not the most visible player, except when it takes over the fiesta for tourism purposes. There is some separation of policy from administration, although not in the same way as in corporate governance organisations. Here, policy is handed down by tradition rather than by a board, and implementation is made by a designated set of organisations. There is some semblance of collective leadership, although individual leaders are given specific tasks. Everyone is a volunteer; indeed, one contributes his or her own funds instead of drawing a salary or an honorarium.

Each community has its own method of accountability, with almost modern financial statements and auditing. However, some leaders seem exempt from these methods if only because they raise their own funds, and whatever contributions they garner are visible to the community in terms of the grandness of the year's fiesta. Accountability may also be noted in the elaborate means of choosing the leader; whether by lot or by voting, the selection process guards against self-selection and introduces a sense of responsibility to the community.³³ Also, despite its being steeped in tradition, a fiesta organisation can also depart from tradition—in using marriage instead of age as qualification for leadership; in opening leadership positions to the non-elite; in giving leadership to women, in allowing for an extended term and in giving the people a say on whether to have a fiesta or a community project, as Bulihan has instituted.

Fiesta organisations are clearly not following the corporate governance model, but it also varies from the traditional alternative. Although not registered, fiesta organisations are supported by the village government. There is no structure called a board, but principal policies are not handled by the chosen leader. Instead, they are derived from the specific community's tradition (on leadership selection and scope of his or her functions) and current decisions on major activities and funding are made by the community (although it may be a peculiar segment of that community, e.g. only those attending mass at a given time, or only those living at the central and richer enclave of the town). The chosen leader implements their decisions and makes his own decisions within the framework of the community's approved scheme. All work is voluntary and unpaid.

³¹ The *hermana mayor* is expected to pay for all the activities of the fiesta. Solicitations may be made, and contributions are not difficult to generate, but there are no community fees, and no audit. Her actual expenses would not be less than Php100,000 (US\$2,000) and usually border on something like Php700,000 (US\$14,000).

³² Interestingly enough, if a man is chosen, he is called *pangulo* (president) and not *hermano mayor*.

³³ Despite the religious origin and theme of the fiesta, it is interesting that one community is open to non-Catholics.

Interestingly, the mode of accountability delineates what is public and what is private: community contributions are public and must be publicly reported, while personal contributions are private and are not subject to public questioning. As stated above, each term is a project, but the fiesta organisation itself, steeped in local traditions and rules, is a permanent organisation, even institution.

Summary

The traditional organisations discussed here depict departures from the corporate governance model.

The silk weavers association can be classified as informal and traditional in that it is not registered. Neither does it have a board for policymaking nor staff for implementation. Leadership is diffused, not being centred on a single individual or group (board) but is more a community ownership. Those who perform the *jan sunwai* (listen and know) are its volunteers/members. But having existed since 1979, it is almost an institution. While using traditional modes for recruitment and accountability, it does not tackle ‘traditional’ issues like the fiesta organisation and the *arisan* do. Rather it is a part of the long arm of the global economy through the out-contracting system, as well as in the global political system through its struggle for labour and human rights.

In any event, the important features of these traditional organisations are: First, state recognition is not sought, although incorporation into community life is maintained through the use of traditional modes of community reporting and decision-making. Second, a board is not necessarily the central structure, but collective decision-making is maintained through greater participation by the members and decisions by consensus. Third, leadership is more diffused. The CEO as driving force is rare and a conscious effort at having the next generation of leaders is made. Fourth, everyone seems to be a volunteer from the board (if there is one) to the CEO and the staff. Fifth, accountability is not seen as a separate process, but permeates production and management of knowledge as well as the reporting of activities. Further, the weaning out of non-performing members may be regarded also as an accountability measure.

These elements of unincorporated third sector organisations are not restricted to these types of organisations, nor are they necessarily confined only to traditional organisations. Some of these features are evident in modern Asian associations also. The following section portrays some of the examples.

Elements of Alternative Model: Modern Organisations

In this section, I will present some examples of organisations that exemplify some of the departures from corporate governance found in non-traditional organisations. At the same time, this section also introduces new features of the alternate governance model, not identified so far.

Modern Cooperatives

Many modern cooperatives in Indonesia have developed from the traditional *arisan*. In Java, these cooperatives are called *tanggung-renteng* (TR; ‘sharing the burden’) and are usually micro-credit cooperatives of women. No one can become a member of a TR unless she has first shown her mettle in an *arisan*. Thus, the trust engendered in earlier *arisans* is an important factor in organising and running the cooperative. Loans are given only to people deemed capable of repaying the loans after discussing each loan application in monthly meetings. The membership’s approval is necessary because they take the responsibility of paying for the loan in case one of them defaults.³⁴

Some of these cooperatives started as small, traditional organisations but have expanded and become more complex over time. For instance, a TR credit union in East Java has 3,500 members, divided into 250 groups, each with at most 15 members. This TR credit union is no longer a simple organisation. As a cooperative, it has to register with government. It also has two layers of boards—the first at the group level and the second at the central office. Each board consists of a chair and a treasurer. They hire two sets of administrators—one to manage the business and the other to train and recruit new members into the cooperative. Decisions are still made collectively and as in the *arisan*, the leaders—now officially designated—preside over the meetings, keep a record of the payments and savings, and remind the others of their responsibilities for the next meeting. The TR has not strayed from its original meaning of sharing the burden. The chair of the TR in East Java avers that the organisation makes the members feel like one big family and teach them accountability, transparency and other governance principles (cited in Indonesian team report).

The TR cooperative embraces characteristics of both the traditional organisations discussed earlier and the corporate governance model. It is now required to register, has a board at two levels and reports using formal accounting and auditing processes. With the federation of several groups, the organisation can grow to be very large, as the East Java example shows. Nevertheless, the board remains simple, performing primarily the administrative tasks. Policy and other important decisions are still the province of the members who maintain a strong stake in the organisation by virtue of their joint liability for each other’s loans.

³⁴In the ensuing month, the defaulting member must pay twice the monthly amortisation in order to pay back those who had covered the loan in the previous month. This joint liability has been ingrained in the *arisan* rounds.

Modern Non-Governmental Organisations

The Refugee Organisation of Kolkata, India (Dongre and Gopalan, 2006)

Unlike the organisations described earlier, the refugee organisation is not a member-serving organisation. Instead, it is a non-governmental organisation (NGO), an intermediary group to represent the target beneficiaries (in this case the refugees) to the state and the local community in which they live. This organisation is not incorporated, does not have a board or a president and does not seek funds from other organisations (at home or abroad). Its purpose is to address the needs of the residents of a refugee camp who have been oppressed and degraded by the larger community. Confronting continuous abuse of the refugees' rights, the mode of decision-making by consensus was sorely tested by the fact that the organisation had members from a wide swath of the political spectrum. 'Left-leaning' members espoused redress and violence, while the more moderate members wanted to seek justice through non-violence. The espousal of different approaches to the problem forced a revisiting of the philosophy and mission of the organisation and showed that the membership held different values. In the course of the discussion, prominent outsiders were invited as resource persons and clarified some of the issues involved. Discussion was sometimes heated, but the group decided to uphold its practice of consensual decision-making instead of dividing the house. In the end, the organisation found that all but one of them preferred non-violence and he agreed to the approach with the satisfaction that his ideological moorings were respected. This is an instance where consensus seeking is both participatory and transparent, an aid to both decision-making and accountability.

This case shows that NGOs, being a modern creation, can also be constituted like a traditional non-formal organisation. Its collective decision-making encompasses the total membership and is not confined to a board. Its leadership is diffused, being shared not only by officers but also by all the members.

The Southern Tagalog Exposure of Laguna, the Philippines (Silarde, 2007)

This organisation is another NGO, this time organised in Laguna, a province in the Southern Tagalog (ST) region of the Philippines. It is a communications and theatre group that aims to expose rural and urban communities to problems of poverty and inequality. ST Exposure was created by eight young people who were close friends (gangmates) in college at the University of the Philippines in Los Baños. Continuing their joint projects and friendship after graduation, they presented community theatre, semi-underground films and drama in the ST to raise the people's consciousness and to transform them into participative, self-reliant communities.³⁵ They ploughed

³⁵Their work did not only move people; they also won theatre awards. Other NGOs commissioned them to create plays or short films depicting other instances of injustice or other victories active citizens in some towns achieved.

their earnings back into the organisation and the causes it espoused. Unlike the other case-organisations, after a few years, ST Exposure saw the need to register and they picked seven people to serve in their board. These are well-known people in arts and theatre who sympathised with their causes and admired their work but were not members of the organisation. They helped to open doors and to make the organisation less suspect as subversives.

Except for its registration, ST Exposure fits the description of the Refugee Organisation of Kolkata. Leadership is shared by the eight members, none of whom is in the board they created to achieve their formalisation as an organisation. All of them serve on a voluntary basis and hold day jobs to keep their families' body and soul together. They maintain formal accountability through their reports to the Securities and Exchange Commission, and the board but give greater weight to their credibility in the communities of ST to which they feel the greatest responsibility.

Umbrella Organisation/Coalition

The Congress for a People's Agrarian Reform, Philippines (Putzel, 1998).

The Congress for a People's Agrarian Reform (CPAR) was a coalition of 200 people representing 70 people's organisations of national farmers and fisherfolks, and NGOs, including church and business groups. Coming out of a church-based Rural Congress, CPAR was not dominated by NGOs and POs (people's organisations) influenced by the Communist Party, but managed to attract and keep organisations and leaders who were their sympathisers. Decision-making was based on a consensus of a national consultative council of 13 peasant federations, supported by a working committee of NGOs, academic institutions and the social action units of the Roman Catholic and Protestant churches. CPAR prepared 'The People's Declaration of Agrarian Reform', which was meant to be a draft of the law to transform agrarian reform in the Philippines.

CPAR had a full-time secretariat contributed by its component NGOs to provide support for the Council, prepare for its mass actions in the streets and activities towards maintaining unity of the disparate groups within the coalition, and make the technical work for Congress itself. This made unity-building an important aspect of CPAR's work, and it established an informal political caucus that regularly met to keep the diverse forces together (Putzel, 1998, p. 95). When the legislature failed to pass the bill they wanted, CPAR tried to push for a people's initiative, but it lost steam and the organisation, by mutual consent, soon disbanded.

CPAR shared many qualities with traditional organisations. It was a very prominent public organisation in its lifetime, but it never registered, although many of its component organisations followed the corporate governance model. Instead of a board, it had a consultative council, all of whose members served on a voluntary basis. However, they may have received salary from their parent organisations like

the secretariat. With its size, a delineation of policy and administration had to be effected, although it maintained decision-making by consensus. CPAR was accountable to its parent organisations as well as to the poor farmers, whether members of these organisations or not.

CPAR was not successful in getting its preferred bill enacted, but it was effective in forging and running a difficult coalition and maintaining its accountability to the peasants it purported to represent. Its organisational and decision-making structure was followed by other disadvantaged groups when they set out to get their own bills through the Philippine Congress. These other coalitions may be termed more successful than CPAR in that they won laws they could live with, having learned from CPAR to be more realistic about what they could get from an elite-dominated institution. Like CPAR, they also tended to disband after the passage of the law.³⁶

Towards an Alternative Model of Good Governance

The organisations described above constitute a very small sample of well-performing organisations that deviate from the corporate governance model. Nevertheless, they show the wide range these groups cover. It is perhaps expected that organisations tackling traditional concerns like the *arisan* and the *fiesta* will not embrace corporate governance. In addition to them, however, are a cooperative with thousands of members, a guild battling globalisation, and even intermediary NGOs (organised by people outside the target communities). They suggest that these models can be used to govern organisations facing today's complex issues and need not be relegated to the status of traditional, non-modern associations. With their emphasis on collective decision-making and participation by, and accountability to, the community and society, these groups follow what may be called the collective governance model. Before a discussion of their contrasts, it may be instructive to first talk about the characteristics this model shares with corporate governance.

The recognition of an alternative to corporate governance brings me to some basic elements that these differing types of organisations share. In each, nevertheless, they have important distinctions that I bring out in the discussion.

First, whether corporate or collective in governance, they are all largely citizen initiatives, and members of the organisation have been brought together by the need

³⁶ Among these organisations are the National Coalition of Fisherfolks for Aquatic Reform (NACFAR), the Coalition for Indigenous Peoples' Rights and Ancestral Domains (CIPRAD), the Urban Land Reform Task Force (ULR-TF) and the *Sama-Samang Inisyatiba ng mga Kababaihan para sa Pagbabago ng Batas ng Lipunan* (SIBOL, or United Initiative of Women for the Improvement of the Laws of Society), which worked for the Fisheries Code, the Indigenous Peoples Rights Act, the Urban Development and Housing Act and the Anti-Rape Law of 1997, respectively. All their proposals, like CPAR's, also suffered drastic amendments that ate into their supposed 'non-negotiables', but they did not give up on their bills. For a discussion of the role of these organisations in making these laws, see Cariño (2006).

to tackle supra-individual problems. In doing this, as Bozeman suggests, all organisations are public. This is true of the *arisan* where an individual seeks group support to a personal desire to increase resources, and is even clearer where the organisation tackles issues of community or society-wide importance.

While both are public in the sense of being situated in community and societal life, the level of 'publicness' differs between the corporate and the collective governance organisations. For the former, their 'publicness' extends beyond purpose and activity because they have sought formal public recognition through registration and incorporation.

Second, all the organisations are self-governing and are distinct entities. The corporate governance organisations are identified as separate groups by their registration, constitutions and by-laws. Moreover, policy and administration are dichotomised into the board and the CEO/staff. Meanwhile, the collective governance organisations have names and core activities, and the membership is involved in both policy and administration. However, their boundaries can be diffused and permeable by the outsiders or by the community at large. Every fiesta organisation, for instance, is first the council of elders, but it is always more than that, as the youth groups, women's groups and even local government officials join in leading part of the celebrations. Similarly, the silk weavers allow the participants at the *jan sunwai* to advise them on their next moves. ST Exposure underscores this quality in its having brought in outsiders as its board, even as its core organisation retained its original collective nature.

Third, like all civil society organisations, volunteerism is an important element of their associational life. Involvement in an organisation is not required of leaders or members, although it may arguably flow from the basic human need to belong and to make a difference. They provide the organisation free service without expecting any monetary or other gains. Because their boards are often contrasted to those of private sector firms, the volunteerism of third sector boards of the corporate governance type is much emphasised. Nevertheless, their officers and members may render voluntary work also. However, it is rare to find such an organisation without any paid staff who are in the career service of the third sector. In collectively governed organisations, volunteers participate in decision-making and implementation alike. Paid career staff would be very few if at all, especially since, without registration, these organisations are not likely to generate funding beyond their own contributions and fees.

Fourth, leadership is necessary for an organisation to set its vision and attain its mission. Leadership tends to be specialised in corporately governed organisations. Board members set policy and the CEO implements. Other officials would also have set functions. Meanwhile, leadership tends to be diffused in collectively governed groups, with the whole membership joining in efforts of setting and achieving goals. Where leaders are specified, the membership—and sometimes the whole community—sets complex rules for their selection (as in the fiesta organisations), as if to underscore the idea that any one of them can be so elevated. The diffusion is also evident in following tradition in important decisions like leader selection. When decisions have to be made on current issues where precedents are

no guide, consensus is sought. Consensual decision-making highlights the role of a leader not as supreme but as a moderator and facilitator, a participant in the process similar to the other members.

Fifth, accountability is an important element for the continued functioning of organisations. Formal accountability to the state is required by the rules of registration, and the methods used in corporate governance are modern accounting, auditing and reporting tools. Clear lines of accountability are drawn to the state and the sources of funds, with downward accountability to the members and the public being less emphasised. By contrast, accountability in collective governance is less formal, with oral the preferred mode in many Indian organisations. However, accountability to each other and to the constituency community seems to take up more time and be given higher precedence.

As we have seen, the organisations I have identified as falling into the collective governance model are not all alike. The qualities that differentiate them are ripe for further research and closer analysis. I have already pointed out differences between project organisations and permanent organisations or institutions. The collectively governed project types are significant for their successful fulfilment of purpose. While an organisation like the *arisan* is simple in structure, its ability to achieve its objective and to use and generate social capital can teach volumes to more complex organisations. In addition, it serves as a training ground for future involvement in other groups, and by that token must be able to promote values that ensure the effectiveness of organisations.

I do not expect the cell of project organisations to be filled only by *arisans*. Behold, after all, the Congress for People's Agrarian Reform, where unity and consensus were essential to keeping a group bound by so controversial a policy issue. In addition, there are many groups created for single, short-term projects, like a sports fest, disaster response or alumni jubilees. In what ways would organisations for these purposes behave and succeed like the *arisan*?

Collective governance organisations differ from the corporate governance model largely, as may be expected, in certain governance characteristics, as well as in their boundary-maintaining qualities. Table 8.1 shows the differences in governance characteristics of these two models.

Another element of differentiation is the closure of boundaries of the organisation. The *arisan* beyond being a project organisation tends to have clear and closed boundaries. So does the refugee organisation, which, with its varied membership, could not wish away the strong differences of opinion and ideology that the members brought to the table. But other collectively organised groups are permeable, so much so that the organisation itself is not sharply identifiable. The fiesta organisations come to mind as easy examples, where groups established for other purposes join in, without diminishing the leadership and accountability of the main organisation itself. This would be difficult to have in a formally incorporated organisation. By this token, perhaps fiestas are bound to be collectives forever. Nevertheless, it is not unimaginable to have other organisations with flexible boundary lines, such as the coalition of CPAR.

Table 8.1 Collective Governance and Corporate Governance Models: A Comparison of the Features

Characteristics	Corporate governance	Collective governance
Publicness	Registration and state recognition	Not registered, but tackling public issues also
Source of policy	Board	Tradition, membership
Distinctiveness as an entity	Self-governing with registration, constitution and by-laws	Self-governing, but with more permeable boundaries
Policy-administration relationship	Dichotomised: policy in board, administration to CEO* and staff	No break (integrated): membership involved in both
Mode of reaching decisions	Majority vote	Consensus
Collective leadership	Through a board	Through participation of all concerned
Volunteerism	Voluntary service in board, some implementers may be volunteers	Throughout organisation
Implementation	By paid staff, augmented usually by volunteers	By members and community
Accountability	Formal: to state, funders and members	Non-formal and mutual, to community served

*CEO, chief executive officer

Finally, it may be noted that the distinctions between corporate and collective governance organisations are not clear-cut. Some collective organisations have boards and a few have paid staff, although volunteerism and collective decision-making are more marked there than in corporate governance groups. Some of them would also exhibit formal accountability modes as the San Juan fiesta organisation did, with its clear delineation of what should be made public and what in an *hermano's* job is his private concern alone. This suggests that the models are not types but are probably points in a continuum. It would then be instructive to find out when an organisation chooses to incorporate an element that is more identified with corporate governance, and when it moves towards another kind. This analysis has tried to identify the defining characteristics of the corporate and collective governance models. The next step is to fill in the continuum, and to explain why and how certain elements are chosen over the others. That would be a major contribution to understanding the governance of third sector organisations.

Chapter 9

Three Models of Organisational Governance in Asia's Third Sector

Mark Lyons and Ian Nivison-Smith

This chapter draws on data collected from 492 of the third sector organisations (TSOs) in our organisational survey to explore the extent and distribution of three particular models of governing TSOs.

Our first model of interest is the corporate governance (CG) model. This model is strongly recommended for both corporations and TSOs in Northern countries, and is advocated strongly by Northern authorities as the most appropriate model for TSOs in the South as well. We are interested in the extent to which it has been adopted across the region.

Our second model is what we might call the dominant driving force (DDF) model. In this model there is one figure, often the founder of the organisation, who dominates it. It thus stands in direct contrast to the CG model. By CG standards, it is a bad model of governance. Yet, Smillie and Hailey (2001) have identified it in several Asian TSOs that have achieved a high reputation both within their own country and externally.

Our third interest is in TSOs that are democratically governed. These are of interest because if TSOs are to be encouraged as a way of building civil society and practising their members in democratic governance (DG) within an organisational setting, practices that might be carried over into the wider polity, then TSOs should be democratically governed. This DG model is also in complete contrast to the DDF model, but those that adopt a CG model may not be democratically governed and vice versa. Identifying the extent to which TSOs satisfy both CG and DG models is one of the tasks of this chapter.

In the chapter that follows, we will specify certain organisational variables collected in our survey to describe each model and then identify organisations that fit that model. Each model will be explored in turn. We will first describe the distribution of TSOs fitting that model by country and by field of activity. In order to more extensively explore the characteristics of organisations that fit the model, we look at their distribution across a number of other variables, such as age, whether incorporated, major sources of revenue and so on. To test if any relationships between our models and particular variables are statistically significant, we undertook two statistical tests. We first use a univariate analysis to test the significance of particular variables. This relationship is expressed as a relative risk (or chance or likelihood) that given one variable (e.g. age), the other variable (organisations conforming to our model) will also be found. The risk may be positive or, if expressed as a number

smaller than one, negative. We then put these significant variables into a multivariate analysis to test the significance of variables found significant in the univariate analysis against each other. This produces a smaller set of variables that can be said to have an independently significant relationship (either positive or negative) with a particular model of governance. These statistically significant relationships can suggest factors that might explain why some organisations have adopted particular models; they can also be a consequence of adopting a particular model. The results of these two tests are summarised at the conclusion of each section. In these summary tables we provide an R^2 ratio to indicate how much of the variation in the data is explained by the particular regression equation.

Corporate Governance Model

Organisational governance is a particular preoccupation of the English speaking democracies of the North: the USA, Canada, the UK, Australia and New Zealand. It has been a major concern of those who study, advise, regulate and comment on business for 20 years or more. For that reason, it has become a major concern of those who run (and govern) business. Interest in organisational governance waxes and wanes, but is particularly high after every set of spectacular failures of large corporations, such as Enron in the United States or the insurer HIH in Australia. Organisational governance is also a major concern of those who study, advise and comment on TSOs. This interest is primarily motivated by a desire to ensure that limited philanthropic resources are efficiently and effectively applied (Herman and Heimovics, 1991; Ostrower and Stone, 2006), but it is also a response to corporate failures and to failures of TSOs (Gibelman and Gelman, 2004).

Over the past two decades, there has been a good deal of convergence between approaches to governance advocated for corporate and for TSOs. Indeed, the most generally advocated model for third sector governance is often called the CG model. This is not surprising as in these English-speaking, common law countries company law tends to have a large influence on legal forms used to incorporate TSOs.

The currently popular approach to CG is to have a small board of between 8 and 12 governors or directors. In corporations the majority of these, including the chair, should be independent, meaning non-employees of the corporation; in TSOs, it is generally argued that they should all be independent. Their role is to set the strategic direction for the corporation, to ensure that the goal of such strategies is building value for shareholders, to ensure this goal is pursued single-mindedly, whilst ensuring that the company complies with all relevant laws and regulations and is perfectly transparent to the financial markets. In TSOs, the board's role is to set strategy, guided by mission, and ensure legal compliance and transparency (Fishel, 2003). In one popular non-profit formulation, developed by the Canadian John Carver, the board's role is to set goals or ends the organisation is to pursue and employ a Chief Executive Officer (CEO) to determine and pursue the means to those ends, but within limitations set and frequently reviewed by the board (Carver, 1997).

Within the third sector, the CG model argues for small boards with directors selected to bring a wide range of management or business skills to the board, and thus to the governance of the organisation. Boards of most big non-profits are comprised mainly of people with senior management experience in business or government. Generally directors are unpaid. If the TSO is also a charitable trust, the law may require that the directors are 'trustees' and be people of high repute and standing in their communities.

The law also reinforces the CG model's commitment to the independence of directors, requiring them to act in the interests of the organisation as a whole and not some constituency from which they may have been selected. However, there is a major difference between the application of the CG model to many non-profits and the way it is applied to for-profits. The difference is that while in the latter case the model recognises that the board must act in the interests of shareholders (i.e. the owners) and is responsible to them; in the case of charitable non-profits the model remains silent about any constituency. This is because charities, or at least charitable trusts, have no members. In the US terminology, they are non-owned organisations. The board's (trustees) responsibility is to an ill-defined public interest, or the objects or mission of the organisation or the will of its founding benefactor (if there is one). The other large group of TSOs, mutuals, are member-owned and in the theory of CG (and the law in countries such as Australia), members are equivalent to shareholders.

The CG model also embodies an expectation (embodied in law in some jurisdictions) that the financial accounts of the organisation are audited by qualified auditors, independent of the organisation. This is to give assurance to directors and to shareholders/members that the accounts they receive from management reflect the true state of the organisation.

We constructed our CG model via a two step process. Step 1 selected those organisations that satisfied necessary minimum conditions for corporate governance. These were that the organisation had

- a board or committee (Q 4.1) and
- that board or committee (or the membership that elected it)¹ had the final say in the organisation (Q 2.6).

Of our sample of 492 organisations, 403 had a board or committee and within this group 304 reported that the board or committee or membership had the final say.

The second step involved identifying organisations that could meet a further set of criteria that constitute the core of the corporate model of organisational governance. Five concerned board membership and four board or organisational procedures. These were as follows:

¹Question 2.6 allowed respondents to select one of six possible responses: board/trustees, CEO, founder, membership, donors/funders and government officials. We allowed organisations that responded either board or membership because although the literature on corporate governance insists that within the organisation it is the board that must have the final say on important decisions, in a strict legal sense, where there are members the board is responsible in turn to the membership which elects them.

- No fewer than 5 and no more than 15 members on a committee or board (Q 4.2). Boards with four or fewer members risk becoming subject to the CEO. The upper limit exceeds the ideal CG model, but organisations with a large and geographically dispersed membership may exceed the usual upper limit to ensure that there are useful numbers at any particular board meeting;
- Staff members are no more than 25% of board membership (Qs 4.3/4.2). Again, this involves relaxing the strict call for no staff as voting members of boards, but in practice the criterion achieves the same result;
- At least 75% of board members are elected by members or constituents, appointed by the committee or board or appointed by a stakeholder that was another TSO (Qs 4.4c, d, f/4.2). This is designed to assure that a board is responsive to members or to another TSO that established it, or, in the case of many charities or foundations, that the board is able to appoint a clear majority of its own members. The alternative (which would not fit the CG model) is that many board members are appointed by funders such as the government or are filled *ex officio*;
- No more than 25% of board or committee members are clients of the organisation (Qs 4.5b/4.2). Again, this criterion is designed to ensure that the board is independent of any particular stakeholder interests;
- Board or committee chair is elected by board or committee or is appointed by stakeholder (Qs 4.8b, c). The former is a core criterion of corporate governance, but is modified to accept cases where another TSO (such as a religious organisation) sets up and effectively ‘owns’ the organisation in question.

Procedural items were as follows:

- Board meets regularly, between 4 and 18 times per year (Q 4.9b). For the board to exercise effective control it needs to meet at least quarterly, but too frequent meetings suggest that it is inappropriately involved in management;
- An agenda for the meeting is made available to board or committee members beforehand (Q 4.10). In order to give members an opportunity to prepare themselves before the meeting—ideally it is accompanied by minutes of previous meetings and papers reporting or explaining particular items;
- Minutes are kept of meetings (Q 4.13). This is essential if board is to control the organisation; and
- Financial statements are edited by a qualified auditor (Q 6.6). This requirement is designed to give assurance to board (and to members) that these statements are accurate.

Only 28 organisations passed on all ten items. These TSOs, less than 6% of our total, met the criteria of the full CG model.

We then modified the test and identified all organisations that

1. passed the first step (i.e. had a board or committee that had the final say in the organisation) and
2. passed on at least eight of the remaining nine items.

A further 83 organisations met the criteria of the modified CG model. Thus 23%, almost one quarter of our sample could be said to meet a full or modified CG model.

As noted above, we were interested to discover if there were any particular features of organisations that met the full or modified CG criteria that distinguished them from the majority of organisations that did not adopt the CG model. To this end, we identified a number of variables where we might have expected CG organisations to be statistically different to the rest of our sample. We discuss each of these variables in turn and report and comment on the results of the statistical analysis. Tables at the conclusion of the section summarise these analyses.

Table 9.1 sets out the countries and the fields of activity where TSOs that meet all the criteria of the full CG models are to be found.

Table 9.2 combines those that meet the full model with those that meet our modified criteria and indicates where they are to be found.

If we examine the distribution of organisations that meet the full or the modified CG criteria, we find that they appear to be over-represented in the Philippines and India and dramatically under-represented in Indonesia, China and Vietnam. These appearances were confirmed as significant in the univariate analyses, but in the multivariate analysis, only the over-representation of India and the Philippines and the under-representation of Vietnam remained as significant. The latter finding is perhaps not surprising. Vietnam is in the process of emerging from decades of communist party dictatorship and while many TSOs are now largely independent of government and party, it is not surprising that they have not yet moved to adopt Northern models of governance. The same is true of China, but the process of liberalisation

Table 9.1 Distribution of Third Sector Organisations with Full Corporate Governance by Field and Country

	China	India	Indonesia	Philippines	Thailand	Vietnam	Total	% of all organisations
Arts and culture	0	0	0	0	0	0	0	0%
Business & professional	0	2	0	0	0	0	2	5%
Education	0	0	2	3	0	0	5	8%
Environment	0	1	1	0	1	0	3	8%
Law & advocacy	0	1	0	3	0	0	4	7%
Religious organisation	0	0	0	0	0	0	0	0%
Social & economic development	0	2	1	3	1	0	7	7%
Social services	3	2	0	0	2	0	7	6%
Total	3	8	4	9	4	0	28	6%
% of all organisations	4%	8%	5%	11%	6%	0%	6%	

Table 9.2 Distribution of Third Sector Organisations with Full and Modified Corporate Governance by Field and Country

	China	India	Indonesia	Philippines	Thailand	Vietnam	Total	% of all organisations
Arts and culture	0	0	1	1	1	1	4	10%
Business & professional	0	5	0	1	1	0	7	18%
Education	0	4	2	4	3	2	15	25%
Environment	1	1	2	2	2	0	8	21%
Law & advocacy	0	5	0	3	3	0	11	20%
Religious organisation	0	4	1	1	0	0	6	19%
Social & economic development	0	8	2	15	4	0	29	28%
Social services	7	11	2	4	7	0	31	26%
Total	8	38	10	31	21	3	111	23%
% of all organisations	10%	39%	12%	39%	30%	4%	23%	

started earlier and has moved faster than in Vietnam. The Philippines result reflects both the bias in the Philippines sample towards well-governed organisations but also the presence there of a well-publicised Philippines Council of Non-profit Certification (PCNC). Run by a group of Philippines non-profits only TSOs that have passed its stringent criteria can give their corporate donors a tax deduction. As a result, it has attracted a lot of publicity. It espouses a corporate model of governance. Any TSO wishing to receive funds from business must be endorsed by it, otherwise the business receives no tax deduction for its gift. Interestingly, a few years ago, India also moved towards a similar mechanism of certifying TSOs as well governed, but this seems to have collapsed.

When we look at adoption of CG models in particular fields of activity, we find that arts and culture organisations are under-represented. This correlation was not a strong one and in the final analysis was not significant.

Other variables we thought might be important were as follows:

Size. We do not have good measures of size, but we can distinguish organisations where the majority of work is done by volunteers and those where the majority of work is performed by paid staff. Although it is not an entirely accurate alignment, we can assume that organisations where the majority of work is carried out by volunteers are smaller than those where paid employees do most of the work. Applying the CG model requires a certain level of sophistication. Consequently, we expected TSOs that followed the CG model would be larger and more likely to be found among those that said paid staff did most of the work. That was not the case, but we may have found a connection if we were able to identify organisations with many (say >100) employees.

Incorporated. We expected that organisations adopting a CG model would be incorporated. Incorporation requires TSOs to present their constitution to scrutiny

by government officials; while our research into the legal environment of TSOs did not lead us to think this would be universal, we nonetheless believed that the process of incorporation would provide a certain prompt towards the CG model, perhaps via advice from officials or by the example of model constitutions where they were provided. This proved to be the case. Over 90% of organisations following a CG model were incorporated, compared with 82% of the whole sample. More importantly, only 8% of unincorporated organisations followed a CG model. The likelihood that a CG organisation would be incorporated remained significant in the multivariate regression.

High performing organisations. We expected to find that organisations that satisfied the CG model would be over-represented among those identified as high performing. This would follow if the claims about the benefits of CG were correct, but in addition, although the question asking key informants to identify high performing organisations focussed on what the organisations did, there may have been some who thought it was about how they were governed. We found that there was a significant relationship between following a CG model and being seen as a high performing organisation. However, that relationship lost its significance in the multivariate regression.

Growth. In a similar way, we expected to find that adopting the CG model would be correlated with success in gathering resources and therefore with growth in funding, staff and activities. Interestingly, the univariate analysis pointed to a significant relationship between organisations that had increased their activities over the previous three years and meeting the CG criteria, but this relationship did not hold for increases in funding or staff numbers. This leads to the puzzling conclusion that over the previous three years many CG model organisations were diversifying their services but using the same revenue and staff to do so. However, the relationship lost its significance in the multivariate analysis, meaning that it was not independently significant.

Sources of funds. This was a complex set of variables. The survey enabled us to identify organisations that received funds from one or more of four different sources: foreign, domestic (donations), governments (in their own country) and other (mainly from sales of goods and services and membership fees). In addition, we could identify organisations that received more than one third of their funds from a particular source and by a process of deduction, those that received more than two thirds of their revenue from a particular source (and which could be described as heavily dependent on that source). Our sample contained 170 organisations heavily dependent on a single source of revenue. By elimination, we could identify organisations whose funding came from at least three sources and describe them as having diversified funding.² Overall this gave us 13 possible variables. In our analysis, we used a univariate analysis to test the significance of each variable, but because of the inter-relationship of these variables, in the multivariate analysis we included only the variable that was the most significant.

²This group of 242 organisations includes those with more than 1/3rd but less than 2/3rds funding from a particular source.

Given the strong endorsement of the CG model among foreign funders, we expected that those of our sample that adopted that model would be over-represented among those organisations that received at least one third of their revenue from foreign sources. We found that there was such a positive relationship with receiving more than one third funding from foreign sources. However, the multivariate regression showed that this relationship was not independently significant.

In addition, because adoption of many of the features of the CG model would demonstrate the transparency and trustworthiness of an organisation, we believed that those with a CG model would be over-represented among those with more than one third of their revenue from domestic donations. We found this was not the case. However, there was a positive relationship between receiving some support from domestic sources (i.e. donations from people and businesses within the country) and having a CG model. However, this relationship was not independently significant.

We also expected to find a negative relationship between organisations that were heavily dependant on a single source of revenue and the adoption of CG model. This was because organisations that were led by independent boards would ensure that the TSO sought funds from several sources; that is that they would be aware that high dependence on a single revenue source reduces an organisation's independence. This proved to be the case for organisations that were heavily dependent on other sources of funding (mainly sales of goods and services). There was also a significant relationship between having diverse sources of funds and following a corporate model of governance. However, neither of these relationships was independently significant.

Management practices. We also explored three management practice variables that might be thought to flow from an organisation adopting a CG model. We saw these as likely consequences, rather than causes of adopting a CG model. One was that an organisation with a CG model would be likely to undertake formal financial procedures, particularly budgeting (i.e. that it responded yes to Qs 6.1, 6.2 and 6.4). A second was that it undertook formal planning processes such as strategic or business planning (yes to Qs 5.1, 5.4 and 5.7) while the third was that it had formal mechanisms for reporting to a wider public, including the production of an annual report (yes to Qs 8.s and at least one of 8.3, 8.4 or 8.5). All three of these mechanisms were significantly more likely to be found among our CG organisations than the rest of the sample, but only one of them, undertaking formal planning procedures was independently significant.

Table 9.3 sets out the effect of each of these variables in a univariate logistic regression with the significant variables in bold. Table 9.4 reports the results of a multivariate logistic regression, and identifies those variables that were independently significant.

We were surprised that even after relaxing the criteria of the CG model that barely more than 20% of our sample followed the approach urged in much of the literature and by Northern government and non-government funders. However, there is some evidence that a majority have adopted weaker versions of the corporate model of governance.

Table 9.3 Results of Univariate Logistic Regressions (i.e. Each Variable Entered in the Regression Equation as a Separate Procedure)

Response variable: Whether organisation conforms to the corporate governance model ($n = 111$)			
Variable description	Cox & Snell R^2	Relative risk	P -value
Paid staff do most of the work in the organisation	0.3%	1.379	0.2
Organisation is incorporated	2.5%	3.368	<0.01
Organisation is a high performer	4.5%	2.989	<0.01
Activities have grown in last 3 years	2.3%	2.853	<0.01
Funding has grown in last 3 years	0.5%	1.454	0.1
Staff has grown in last 3 years	0.3%	0.777	0.2
Receive funding from foreign sources	1.0%	1.641	0.03
Receive funding from government sources	0.2%	1.250	0.3
Receive funding from domestic sources	3.1%	2.479	<0.01
Receive funding from other sources	0.3%	1.343	0.2
Receive >1/3 funding from foreign sources	0.8%	1.578	0.04
Receive >1/3 funding from government sources	0.4%	1.496	0.1
Receive >1/3 funding from domestic sources	0.5%	1.467	0.1
Receive >1/3 funding from other sources	0.4%	1.388	0.1
High dependency on funding from foreign sources	0.1%	0.760	0.5
High dependency on funding from government sources	0.0%	0.912	0.9
High dependency on funding from domestic sources	0.0%	0.786	0.7
High dependency on funding from other sources	1.5%	0.421	0.01
Diverse (i.e. not highly dependent on funding from any one source)	1.5%	1.954	<0.01
Organisation follows a formal financial procedure	2.2%	2.771	<0.01
Organisation undertakes formal planning activities	2.4%	3.261	<0.01
Organisation has external reporting	2.9%	3.191	<0.01
Country: China	2.1%	0.328	<0.01
Country: India	3.4%	2.785	<0.01
Country: Indonesia	1.4%	0.418	0.01
Country: Philippines	2.7%	2.688	<0.01
Country: Thailand	0.5%	1.581	0.1
Country: Vietnam	5.2%	0.108	<0.01
Field: Arts and culture	0.1%	0.348	0.05
Field: Business/professional	0.1%	0.710	0.4
Field: Education	0.1%	1.197	0.6
Field: Environment	0.0%	0.877	0.8
Field: Law & advocacy	0.1%	0.821	0.6
Field: Religious organisation	0.1%	0.780	0.6
Field: Social/economic development	0.5%	1.467	0.1
Field: Social services	0.2%	1.271	0.3

Significant variables bolded.

Table 9.4 Results of Multivariate Logistic Regressions (i.e. Variables Entered in the Regression Equation Together)

Response variable: Whether organisation conforms to the corporate governance model		
Variable	Relative risk	P-value
Organisation is incorporated	2.877	0.01
Organisation undertakes formal planning activities	2.963	<0.01
Country: India	2.502	<0.01
Country: Philippines	2.795	<0.01
Country: Vietnam	0.140	<0.01

Cox & Snell $R^2 = 13.5\%$

In applying our test for the CG model, we found only 28 organisations met the full test, but when we softened the criteria slightly so that organisations met 8 of the 9 criteria in step 2, we added a further 83 organisations. If we were to soften the criteria further and accepted those that practiced 7 of those 9 step 2 criteria, we would add a further 76 organisations and if we allowed those that practiced 6 of the final 9 criteria, we would add a further 74 organisations. Thus 261 TSOs, or 53% of our sample, met the 2 basic criteria of having boards that had the final say in the organisation, and 6 of the 9 further criteria of board membership and board procedures that are deemed necessary by the for good governance by those who espouse the CG model.

This is an ambiguous finding. For some it might suggest that most of Asia's TSOs are trying to model their governance on best Northern practice, but are falling a little short. Many Northern organisations might fall short also. Others might find the fact that less than one quarter meets even a slightly modified model a deplorable failure. From another view point the isomorphic pressures towards the Northern model might be deplored as an inappropriate foisting of a model that even in its own environment is acknowledged as having significant contradictions (Ghoshal, 2005; Turnbull, 2002).

TSOs Governed by a DDF

There are many private corporations that are dominated by a single figure, often the founder who has steered the company from birth to successful growth. Some public companies (i.e. those with a majority of shares publicly traded on the share market), also display this characteristic. The dominance of a single figure or family group is said to be a particularly common characteristic of companies in East and Southeast Asia (Clarke, 2000). There is a suggestion that it is equally prevalent among Asian TSOs. Certainly, there are several examples of prominent, successful TSOs in Asian countries that appear to be run by a single dominant figure, often the founder. Smillie and Hailey (2001) mention several such organisations but suggest on the basis of careful study that such judgements are frequently superficial and that the dominant profile of a leader does not mean that no others are involved in decisions.

Examples of TSOs run by a single dominant figure can also be found in Northern countries as well. Such examples are often described as displaying 'founders syndrome' (Block, 2004; Block and Rosenberg, 2002).

Nonetheless, it is the conventional wisdom that organisations, whether they are TSOs or for-profit firms, which are driven by a single dominant figure who takes all the important decisions, are not well governed. Such an arrangement offends against one of the core principles of good corporate governance, which requires that the final say and oversight in an organisation is carried by a board that is not involved in the day-to-day running of the organisation. It is argued that an organisation that is dominated by a single figure is easily diverted from its mission and is less likely to be properly accountable to its stakeholders and the wider public (Block, 2004).

While it may not meet the criteria of good governance the existence of TSOs driven by a dominant person is readily understood. Many TSOs are begun as the result of the efforts of a single visionary, energetic and charismatic individual: an organisational or social entrepreneur. Without that person's vision and drive the organisation would never have started and would never have kept going through its challenging formative years. Indeed, it is that person and that person alone who attracts and holds supporters for the organisation and who generates the publicity that it needs to attract public support. The challenge for such a founder, and for the organisations key supporters is to know when and how to transfer power to a more diverse and conventional management and governance structure. This initial concentration in power is more likely to be found in charity or foundation type organisations and far less so in membership bodies, though there such an arrangement can emerge over time when members are satisfied with the services they receive and loose interest in the governance of the organisation. Under such circumstances a clique or often a single figure can emerge to dominate the decision making in the organisation.

Several questions were inserted in the organisational survey to identify any TSOs with a DDF and to explore the location and other features of such organisations. We asked each organisational informant whether the organisation had a driving force (Q 2.7), and what position that person held [CEO and/or chair and/or founder (Q 2.8)]. But we recognised that many organisations might have a driving force but still follow the principles of good governance practice. For example, an effective CEO might be seen as a driving force, but within a board centred governance where the board had the final say. So we also asked who had the final say (Q 2.6); only those organisations that were said to have a driving force and where the final say was held by the CEO or the founder (as opposed to the board or members) were classed as being governed by a single individual, a dominant driving force.

Ninety-six organisations, or just under one in five in our sample met these criteria. Table 9.5 sets out the distribution of these by country and by field.

It appears that in Vietnam TSOs governed by a DDF are over-represented among our sample. This over-representation may be a product of the slow and recent emergence of a third sector after some decades when no TSOs, that is organisations that met the criteria of independence, could legally exist. As a third sector

Table 9.5 Distribution of Third Sector Organisations with Dominant Driving Force by Field and Country

	China	India	Indonesia	Philippines	Thailand	Vietnam	Total	% of all organisations
Arts and culture	4	1	1	0	0	4	10	24%
Business & professional	4	1	0	0	3	2	10	25%
Education	2	4	0	2	1	4	13	22%
Environment	2	0	0	1	3	3	9	23%
Law & advocacy	4	1	0	1	1	1	8	14%
Religious organisation	1	0	0	0	1	2	4	13%
Social & economic development	1	7	2	4	1	5	20	19%
Social services	3	6	2	0	6	5	22	18%
Total	21	20	5	8	16	26	96	20%
% of all organisations	26%	20%	6%	10%	23%	32%	20%	

emerges, it may be that organisations with a strong leader, one with good connections with party or state, are more likely to form and to prosper. It should however be noted that while this over-representation was significant in the univariate regression, the multivariate regression showed that it was not independently significant.

The under-representation of DDF governed organisations among our sample from the Philippines and Indonesia is interesting. In the Philippines, it is likely a product of sample bias and it was not independently significant. However, the lower likelihood of finding TSOs with a DDF in Indonesia survived the multivariate logistic regression and so is independently significant. It is worth noting that Indonesia stood out from other countries in reporting far fewer organisations with a driving force, albeit not a dominating one (17% cf. 65% for sample). This may reflect a stronger commitment to collective decision in Indonesian culture.

Organisations with a DDF can be found in all fields of activity, and while they appear over-represented in the arts and to a lesser extent among business and professional and environment organisations and under-represented among religious organisations, none of these relationships are statistically significant.

In most cases, we were able to discover the position that the DDF held in the organisation, and whether he or she was the founder. In 67% of cases, the DDF was the founder. In most cases, the founder was also the CEO or in some cases the chair of the organisation. In that one third of organisation where the DDF was not a founder, he or she was most likely to be the CEO (or CEO and Chair combined).

We were interested to discover if there were any particular features of these TSOs that were governed by a DDF that led them to stand out. These features may have been consequences of their governance or may point to factors that explained their adoption of that model of governance. The variables were as follows:

Age. We thought that these organisations would be younger than the remainder. Often a TSO needs a dominant personality to get it started and hold it together during its formative years. Such a period may well last for a decade or more. We tested several age groups (<1–9 years, 10–19 years and <1–19 years) but there was no significant over-representation of DDF organisations among younger organisations.

Size. As noted above, we do not have good measures of size, but we can distinguish organisations where the majority of work is done by volunteers and those where the majority of work is performed by paid staff. We thought it unlikely that organisations with a DDF would be found among the few of our sample where the majority of work was done by volunteers. We found that 18% of our DDF type relied on volunteers, compared to 33% of the rest of the sample. This was statistically significant, but only in the univariate analysis. It was not an important difference in the more demanding multivariate regression.

Members. We thought that these organisations would be more likely to be found among organisations in our sample that had no members. It is easier for a dominant figure to retain their dominance if there are no members that can express censure of his or her leadership; if there are no elections of any kind at all. Alternatively, among organisations with members, we expected that those governed by a DDF would be over-represented among those with few members (often a token membership is required by incorporation), and under-represented among those with a large membership. Although it is unlikely that members will be drawn to change the leadership of an organisation if it is meeting their expectations, nonetheless we thought it would be more difficult for a DDF to retain control of an organisation with a large membership.

We found that organisations with a DDF were no more or less likely to have members than other organisations in our sample. This may be because organisations with no members are charitable trusts or foundations and the regulatory scrutiny insists on strong and independent boards. However, as predicted, among the 67% of organisations in our sample that had members, organisations with a DDF were more likely to be found among TSOs with fewer than 16 members, though the significance of that relationship did not survive in the multivariate analysis.

Board. We thought that such organisations would either not have boards or have boards that were appointed by the CEO, founder or chair. We also thought that if there were boards, they would be small as large boards tend to develop oppositional groups and lead to the reduction of a dominant leader's power. We found that 56% of our TSOs with DDF governance had either no board or boards where more than 50% were paid staff or appointed by the founder/CEO/Chair. This was a significant difference, applying in only 29% of the remainder of the sample. This was the most significant factor in our statistical tests. We also found no significant relationship between TSOs with a DDF and those with a board of less than 8.

Source of funds. Because of the strong endorsement of the CG model by Northern governments and foundations, we thought it unlikely that organisations which so dramatically defied the corporate model as did those with a DDF, would be wholly or largely dependent on foreign funds. By contrast, such organisations might be heavily dependent on government funding, if the dominant figure was well liked by governments or knew how to cultivate government support. Since our other category was mainly

revenue from sales of goods and services, which might be related to the mission of the organisation or be operated as a business venture to generate funds for the mission, we thought that organisations with a DDF might be over-represented among this group as they would be the kind of TSOs that would prosper under a DDF.

We had one surprise when we examined the data. It was that our DDF organisations were significantly over-represented among the 38 organisations in our sample that received more than two thirds of their revenue from foreign sources. Clearly not all foreign funders are perturbed by this form of governance, presumably if it delivers results. Perhaps they find it easier to trust an organisation with a DDF than one that is governed by a committee.

However, the multivariate analysis showed that this relationship was not independently significant. However, when we grouped organisations that were highly dependent on either foreign funds, government funds or funding from other sources (but not donations), we found that DDF organisations were significantly over-represented. This suggested that having a DDF leads to the likelihood that an organisation will have a close relationship with a single funder (foreign or government) or be entrepreneurial and highly dependent on funds from sales.

Growth. We expected organisations with a DDF to be growing on at least two of our three measures (activities, funding and staff). We thought that the success of organisations led by a dominant figure would be what helped sustain the leader; failure to grow or evidence of decline would likely to start various stakeholders to question the value of remaining with such a leader. Such conflict would likely lead to the departure of the driving force or the collapse of the organisation. However, there was no statistically significant relationship between having a DDF and growth over the previous three years.

High performance. If the conventional justification for the CG model was correct, organisations with a DDF would not be widely regarded as a successful organisation. By contrast, we suspected that many such organisations would be highly focussed on their mission and have a high profile. As a result, they might well be over-represented among the organisations regarded as high performers.

We found some support for the first hypothesis; that is organisations with a DDF form of governance were somewhat less likely to be identified as high performing organisation compared to the remainder of the sample (18–29%). However, the multivariate analysis showed that the relationship was not independently significant.

Management practices. As described above, for organisations following the CG model, we sought to discover if our DDF governed organisations were more or less likely than others to follow formal financial and planning procedures and to report to a wider public. We surmised that they might be marginally less likely to follow formal financial procedures and planning that they would be significantly less likely to engage in external reporting. However, we found no significant difference between our DDF organisations and the rest of the sample on any of these practices.

Table 9.6 sets out these variables in a univariate logistic regression, with the variables that were significant in bold. Table 9.7 reports the results of a multivariate logistic regression on the variables found to be significant in the univariate analysis.

Table 9.6 Results of Univariate Logistic Regressions (i.e. Each Variable Entered in the Regression Equation as a Separate Procedure)

Response variable: Whether organisation has a dominant driving force ($n = 96$)			
Variable description	Cox & Snell R^2	Relative risk	P -value
Organisation aged up to 19 years	0.6%	1.553	0.1
Paid staff do most of the work	1.2%	1.949	0.02
Board with <8 members	0.1%	0.868	0.5
No board or 50%+ board are paid staff or 50%+ board are appointed by CEO/founder/chair	4.7%	3.103	<0.01
Activities have grown in last 3 years	0.1%	1.167	0.6
Funding has grown in last 3 years	0.2%	1.233	0.4
Staff has grown in last 3 years	0.4%	1.383	0.2
High performer	1.1%	0.526	0.03
Organisation undertakes formal planning activities	0.2%	0.746	0.3
Organisation follows a formal financial procedure	0.2%	0.766	0.3
External reporting	0.0%	1.035	0.9
High dependency on funding from foreign sources	1.0%	2.324	0.02
High dependency on funding from government sources	0.3%	1.964	0.2
High dependency on funding from domestic sources	0.5%	0.267	0.2
High dependency on funding from other sources	0.3%	1.434	0.2
High dependency on funding from any one source (excluding domestic)	1.8%	2.039	<0.01
Members $n = 1-15$	0.8%	1.698	0.05
Country: China	0.5%	1.568	0.1
Country: India	0.0%	1.073	0.8
Country: Indonesia	2.9%	0.224	<0.01
Country: Philippines	1.2%	0.416	0.03
Country: Thailand	0.1%	1.267	0.4
Country: Vietnam	1.8%	2.303	<0.01
Field: Arts and culture	0.1%	1.369	0.4
Field: Business/professional	0.2%	1.419	0.4
Field: Education	0.1%	1.192	0.6
Field: Environment	0.1%	1.262	0.6
Field: Law & advocacy	0.2%	0.659	0.3
Field: Religious organisation	0.2%	0.571	0.3
Field: Social/economic development	0.0%	0.992	0.9
Field: Social services	0.0%	0.904	0.7

Significant variables bolded.

Table 9.7 Results of Multivariate Logistic Regressions (i.e. Variables Entered in the Regression Equation Together)

Response variable: Whether organisation has a dominant driving force ($n=96$)		
Variable	Relative risk	<i>P</i> -value
No board/board selectively appointed ^a	3.435	<0.01
High dependency on one type of funding ^b	1.762	0.02
Country: Indonesia	0.178	<0.01

^a No board or 50%+ board are paid staff or 50%+ board are appointed by CEO/founder/chair.

^b High dependency on funding from foreign, government or other sources (not domestic).

Cox & Snell $R^2 = 9.2\%$

Democratic Governance

It is often argued that the growth of TSOs should to be encouraged in Southern countries. The argument is that they are good for building democracy in these countries. Two characteristics of TSOs are adduced to support this argument. One is that TSOs can provide independent capacity to monitor the performance of governments, particularly their patterns of expenditure. It is argued that TSOs represent a variety of independent interests and will be trusted by the wider public as an independent watchdog. A further important strand to the argument is one that resonates with the judgements of the visiting French nobleman Alex De Tocqueville of the role of voluntary organisations in the United States in the 1830s. It is that members of TSOs obtain practice in democratic participation when they determine who is to govern the organisation and then when they to hold them accountable for their performance. That learning in turn can facilitate their participation in the wider polity. However, for that effect to be realised TSOs must be democratically governed. Many are not. Many charities or foundations, for example in all parts of the world are governed by self perpetuating boards and are not democratic. DG is more likely to be found among cooperatives and other mutual organisations such as professional and trade associations. It might also be found in other fields as well, including religion.

We sought to discover the distribution in our sample of TSOs that were democratically governed. We constructed a model of DG for our TSOs in the following way. To pass the first step of the test, an organisation had to have at least ten members (smaller than that gives little practice in negotiating and compromise, characteristics deemed important in a democracy). Of our sample, 331 organisations had members and 248 had at least 10 members. The next test was to discover whether these organisations were governed by direct or representative democracy, or were not democratically governed at all. The first step was to identify those with at least 10 members that had a board: 210 of the organisations with at least 10 members had a board, and 38 did not. We treated each of these groups separately.

Of those that had a board, we required that a clear majority (at least 60%) of the board was elected by the membership (Q 4.4/4.2) (otherwise the board

would not be accountable to the members). In addition, we required that the final say in the organisation was deemed to be the board or the membership (Q 2.6). Finally, those that met these criteria also had to demonstrate some basic democratic practices: to hold general meetings at least annually (Q 4.14/4.15) and to make financial statements available to members (Q 6.7). Only 51 organisations in our sample met all these tests.

Organisations with at least ten members that did not have a board might have been collectives, governed by direct democracy. To identify collectives among this set of 38 organisations, we required that the membership had the final say and that financial statements were available to the membership. Another eight organisations passed both tests. These were grouped with the other democratic organisations to make 59 which passed our test of DG. This was only 12% of our sample, a smaller number than we expected.

Countries and fields. Table 9.8 sets out their distribution across countries and fields. We expected to find Vietnam and China under-represented as many people have had no experience of democracy, and because that practice even in organisational governance, is still seen as threatening by the authorities. We found that to be the case, though the relationship between these two countries and the absence of DG was not independently significant. We found DG was far more likely to be found among Indian TSOs than among other countries in our sample, though once again, this relationship was not independently significant.

We also expected to find TSOs with DG over-represented among business and professional organisations and among those engaged in social and economic development (where most of the cooperatives in our sample were to be found). However,

Table 9.8 Distribution of Third Sector Organisations with Democratic Governance by Field and Country

	China	India	Indonesia	Philippines	Thailand	Vietnam	Total	% of all organisations
Arts and culture	0	1	3	0	0	0	4	10%
Business & professional	0	4	0	1	2	0	7	18%
Education	0	0	2	3	0	0	5	8%
Environment	0	1	0	0	0	0	1	3%
Law & advocacy	1	3	2	2	0	0	8	14%
Religious organisation	0	2	1	0	0	1	4	13%
Social & economic development	0	5	3	5	0	0	13	13%
Social services	3	7	2	2	3	0	17	14%
Total	4	23	13	13	5	1	59	12%
% of all organisations	5%	23%	16%	16%	7%	1%	12%	

we did not find any significant over- or under-representation of organisations with DG in any field.

Size. We recognised that there would be many large TSOs that would practice DG, but we thought DG would be particularly noticeable among smaller organisations, especially those that were dependent on volunteers. This did not prove to be the case.

Size of board. We thought that democratic organisations would be more likely to have boards of above average size, needed to represent the different interests that might be found among the members. We found that TSOs with boards smaller than six were significantly under-represented among TSOs with DG.

Incorporated. We anticipated that DG organisations would be rather more likely than others to be incorporated, because incorporation rules generally encourage democratic practices among those TSOs with members. We did not find such a relationship.

High performers. We anticipated that DG organisations would be under-represented among organisations described as good performers. It is sometimes argued that democratic practices tend to slow an organisations response time and distract its senior managers from focussing on mission and quality. As well, DG organisations are often member serving and irrespective of how effective they are, they are less likely to acquire a reputation for excellence among a wider public. To our surprise, we found that DG organisations were significantly more likely to be rated a high performer than were the far more numerous non-DG organisations.

Growth. We expected that we would find little difference between our DG organisations and the rest when it came to growth (whether of funds, staff or activities), and that proved to be the case.

Funding. Because we expected that DG organisations would be found among those that received revenue from members and sold services to members and to a wider public (such as cooperatives), we expected to find a positive relationship between receiving funding from 'other' sources and even significant funding from those sources. We found just such a relationship, with the relationship between TSOs receiving at least some funding from other sources being significantly and independently correlated with DG in the multivariate test. The relationship between more than one third of revenue from this source and DG was also significantly positive in the univariate analysis, but masked by the more general relationship in the multivariate analysis, suggesting that sales were likely to be an important component of the revenue (membership dues would be more than one third of revenue for only a few TSOs). A surprise finding was that there was a negative relationship between receiving funding, and more than one third of funding, from foreign sources and being governed democratically. The latter relationship was found to be independently significant, suggesting that foreign funders are not interested in encouraging DG in TSOs.

Management practices. When it came to management practices, we expected that DG organisations would be particularly committed to keeping their members informed and therefore more likely than other TSOs to follow formal financial

procedures, and to undertake formal planning activities (to allow members an opportunity to comment on plans). By contrast, because they were more likely to be focussed on accountability to their members, we thought they might be less likely than non-DG organisations to report to a wider public.

We found that our expectations that there would be a positive relationship between organisations that followed formal financial procedures and those that had DG were met but that this relationship was not independently significant. There was no significant relationship between following formal planning procedures nor reporting to a wider public and the adoption of a DG model.

Table 9.9 sets out the univariate regressions and Table 9.10 the more important multivariate regression.

Table 9.9 Results of Univariate Logistic Regressions (i.e. Each Variable Entered in the Regression Equation as a Separate Procedure)

Response variable: Whether organisation conforms to the democratic governance model ($n = 59$)			
Variable description	Cox & Snell R^2	Relative risk	P -value
Organisation passes 'corporate governance' criteria	4.6%	4.056	<0.01
Paid staff do most of the work in the organisation	0.2%	0.761	0.4
Small board (i.e. <6)	1.5%	0.285	0.02
Organisation is incorporated	0.1%	1.221	0.6
Activities have grown in last 3 years	0.0%	1.028	0.9
Funding has grown in last 3 years	0.1%	0.846	0.6
Staff has grown in last 3 years	0.4%	0.680	0.2
Organisation is a high performer	2.6%	2.857	<0.01
Receive funding from foreign sources	0.8%	0.570	0.05
Receive funding from government sources	0.4%	0.661	0.1
Receive funding from domestic sources	0.1%	0.843	0.5
Receive funding from other sources	1.6%	2.848	0.01
Receive >1/3 funding from foreign sources	1.2%	0.453	0.02
Receive >1/3 funding from government sources	0.1%	0.819	0.6
Receive >1/3 funding from domestic sources	0.2%	1.337	0.4
Receive >1/3 funding from other sources	2.0%	2.395	<0.01
High dependency on funding from foreign sources	1.0%	0.185	0.09
High dependency on funding from government sources	1.0%	0.000	0.9
High dependency on funding from domestic sources	0.1%	1.731	0.4
High dependency on funding from other sources	0.3%	1.461	0.3
Not highly dependent on funding from any one source	0.0%	1.147	0.6
Organisation undertakes formal planning activities	0.1%	0.794	0.5
Organisation follows a formal financial procedure	1.0%	2.449	0.05
Organisation has external reporting	0.4%	1.690	0.2
Country: China	1.1%	0.336	0.04
Country: India	2.6%	3.050	<0.01

(continued)

Table 9.9 (continued)

Response variable: Whether organisation conforms to the democratic governance model ($n=59$)			
Variable description	Cox & Snell R^2	Relative risk	P -value
Country: Indonesia	0.2%	1.466	0.2
Country: Philippines	0.3%	1.571	0.2
Country: Thailand	0.4%	0.524	0.2
Country: Vietnam	3.1%	0.076	0.01
Field: Arts and culture	0.0%	0.778	0.6
Field: Business/professional	0.2%	1.632	0.3
Field: Education	0.2%	0.650	0.4
Field: Environment	1.0%	0.179	0.09
Field: Law & advocacy	0.1%	1.258	0.6
Field: Religious organisation	0.0%	1.052	0.9
Field: Social/economic development	0.0%	0.960	0.9
Field: Social services	0.1%	1.297	0.4

Significant variables bolded.

Table 9.10 Results of Multivariate Logistic Regressions (i.e. Variables Entered in the Regression Equation Together)

Response variable: Whether organisation conforms to the democratic governance model ($n=59$)		
Variable	Relative risk	P -value
Small board (i.e. <6)	0.292	0.02
High performer	2.751	<0.01
Receive funding from other sources	2.360	0.04
Receive > 1/3 funding from foreign sources	0.413	0.01

Cox & Snell $R^2 = 6.4\%$

This discussion of DG raises a question about the relationship between DG and corporate governance. As noted at the beginning of this chapter, we believed there was likelihood that organisations that adopted a DG model would also meet the criteria for CG, though we also noted that many CG organisations would not qualify as democratically governed as they had no, or only a token membership. What we found was a strong relationship between organisations with CG and those with DG, at least the univariate analysis. The analysis showed that an organisation that adopted a full or modified CG model was more than four times as likely as non-CG organisations to also be democratically governed. Because the CG and the DG test shared one variable in common (board or membership must have final say) we did not test this variable in the multivariate regression. Despite this positive relationship, it should be noted that of the 111 organisations that passed the CG test, only 30 passed the DG test.

Summary and Conclusion

Several variables were found to have a significant relationship with one or two of our three models of governance. This final section seeks to interpret that relationship and where appropriate draw out implications.

Incorporation brings a TSO into direct contact with the state. It bestows a separate legal personality on the organisation. This enables the organisation to employ, enter into contracts and the like independently of its members or trustees. It thus relieves its members (the group of people that incorporate or join) of certain personal risks. The practice emerged in the medieval Europe and became more sophisticated in the nineteenth century when it was bestowed on European colonies (and adopted by countries like Thailand that remained free of European rule). Chapter 3 shows that laws incorporating TSOs in our various countries have only limited and varied requirements for their governance; nonetheless it would appear that incorporation turns organisations towards the CG model; certainly those that were incorporated were more likely to adopt a CG model than those that had not. It is likely that incorporation would have at least a prompting effect towards the CG model. However, if so it is not likely to be a strong prompt as there was no significant negative relationship between incorporation and following a DDF model of governance. Given that it is not necessary to have members, or many members to incorporate, it is not surprising that there is no relation between incorporation and DG model of governance.

Three variables were clearly consequential of particular models of governance. The composition of the board was related with the DDF and DG model both negatively and positively. Not surprisingly, the DDF organisations had boards with only a minority of independent directors, or no boards at all. By contrast, almost all organisations that met the DG criteria had boards and boards that had more than a token number of members.

Of the three formal management practices, only one, planning was significantly more likely to be found among organisations that followed only one of our models: the CG model. The relationship is presumably a consequential one. Indeed all three practices would be likely to be correlated with the CG model, but it would appear that following formal financial procedures and reporting to a wider public are just as likely to be found in the other two models. Given that DG organisations had less incentive to report to a wider public, it was surprising that there was not a negative relationship between external reporting and that form of governance. This absence suggests that DG organisations also seek accountability to a wider public.

Surprisingly, and supporting the previous conclusion, another consequential relationship, between our models and perceptions of high performance, was demonstrated only for those that were democratically governed. This suggests an interesting connection between public reputation for effective operation and the practice of organisational democracy, rather than following the criteria of good corporate governance.

Given that there is some truth in the adage that he who pays the piper calls the tune, a significant relationship between a particular funding source and models of

governance is likely to be a causal one; but only in the case where an organisation is highly or at least partly dependent on a particular source. It is possible that a funding source will favour organisations with a particular model of governance or will require it as a condition of providing funds. By contrast, the relationship could be a consequence of a type of organising that in turn predisposes a TSO towards the DG model. This appears the case in the significant likelihood that TSOs with DG will generate funds from membership dues and also from sales. Interestingly, they were significantly unlikely to receive funds from foreign sources, suggesting either that they were able to generate the revenues they needed from within their country or an unwillingness to fund DG organisations by foreign funders (note that it cannot be that DG organisations are found in fields that are of no interest to foreign funders, as TSOs with DG are not significantly concentrated in any particular fields or industries).

By contrast, the relationship between foreign funding and following a DDF model of governance is a strongly positive one. Indeed, the strong positive relationship between foreign funding and a DDF along with the negative relationship between that source of funding and DG is one of the most striking and surprising findings of this study. It suggests that despite the rhetorical support for good organisational governance and democratic practices by some of the more vocal foreign funders such as the World Bank, most foreign funders prefer to support TSOs dominated by a single person. Rather than using control of purse strings to encourage good practice governance (either CG or democratic practices), they prefer funding an individual, reinforcing the importance of connections over what in their own countries would be seen as good practice. This suggests a contradiction between what Northern funders espouse and what they practice.

This leaves us with the two basic divisions in our sample: industry or field of activity and country. Our results show no significant relationship (either of a positive or a negative kind) between the former and any of our models of governance. It is perhaps surprising that DG models were not more likely to be found among member benefit organisations in the business and professional fields and perhaps among those that in social and economic development, but they were not.

Particular countries however are significantly linked to the presence or absence of two of our governance models. TSOs following CG models are more likely to be found among those of our sample drawn from the Philippines and India, while Vietnam is significantly under-represented. Indonesia is under-represented among those organisations with a DDF; or to put it another way, TSOs with a DDF are significantly less likely to be found in Indonesia than any of the other five countries in our sample. It is difficult to draw conclusions from these relationships. Country is a proxy for a mix of deeper variables: culture (including religion), history (including colonial and post-colonial experiences), political and legal system. It is not surprising that Vietnam appears negatively related to CG model (indeed in the univariate analysis it was strongly negatively related to DG as well, but that relationship dropped out in the multivariate regression). Vietnam is slowly emerging from decades of communist party rule when independent TSOs were not permitted. The interesting finding is that similar negative relationships are not found for

China, suggesting that it has moved away from its authoritarian past. This in turn holds the prospect that Vietnam, which started its process of opening its economy and society later and has proceeded more cautiously, will similarly move towards the norm of our six countries.

This leaves us with the final question; one that we started with in this study: is there an Asian model of third sector governance? The answer is pretty clearly no. There is a variety of approaches or models and these can be found more or less uniformly in any or all of our six countries. It is likely that a similar examination of TSOs in other countries would find a similar diverse mixture. By contrast, there does appear a dominant approach to governance; one that uses most but not all of the criteria that are recommended in the CG model. Sixty per cent of our sample has a board or management committee which is taken to have the final say in the organisation. Just over half followed six of the nine criteria we had used to further define the CG model. We cannot say anything about trends, but the example of Vietnam and China in our data suggests that there is a slow movement towards this conventional Northern model of board governance if not corporate governance; a movement that might accelerate if Northern funders actually encouraged it rather than implicitly supporting the alternative DDF approach to third sector governance.

Chapter 10

Experiences of Third Sector Governance in Asia: A Political Economy Analysis

Samiul Hasan

Before the industrial revolution, all our participating countries, especially India and China, were in the forefront of economic development ahead of the European states. By the Middle Ages, China and India reached a technological level more advanced than that achieved by Europe before industrial revolution.¹ The advancement in these (and other countries in Asia) did not lead to something similar to European economic development. The advancement in productive forces alone does not (and did not) guarantee economic development, it has to be coupled with the existence of a bourgeois, a social class becoming powerful by dint of employment, education or wealth—and not by heredity—capable of coordinating the means of production and of bringing about fundamental structural transformations for innovations and investments.² Historically, Asia did not have a bourgeois class; the Asian Mode of Production (cf. Karl Marx) had a comprador class capable of exploiting the surplus production and the people but without necessarily owning land or labour. There was only the right to raise taxes, created mainly during the colonial control, without any right to the land (town merchants owned some, but not large enough). Because of the lack of land ownership, the dependent relationship was not feudal, and due to the close-knit village communities (having the control over the land), the slave system could not and did not exist in the area either (Lacoste, 1984).

The existence of close-knit neighbourhoods and also mutually supportive work forces (with freedom of association, unlike a slave system, not thwarted by the employer) is evident in associations like ‘the workmen’s cooperative groups’ in

¹ Andre Gunder Frank <http://www.hartford-hwp.com/archives/50/089.html>, a major proponent of ‘development of underdevelopment’ thesis points out that the core regions, especially of industrial production, before the European industrial revolution, were in China and India; and West Asia and Southeast Asia also remained economically more important than Europe. Frank finds out that Adam Smith was the last major [Western] social scientist to appreciate this fact writing in 1776 that ‘China is a much richer country than any part of Europe’, but then, quoting Fernand Braudel, Frank adds, following the colonization of Asia, ‘Europe invented historians and then made good use of them.’

²The European bourgeoisie was based on: private control of the means of production (as opposed to collective Asian and African system) a relatively rapid modes of production—the slave system, the feudal system and the capitalist system (slave system was not as prominent in Asia and Africa) (Lacoste, 1984).

India that used to influence the members' economic and social lives. There were rules in the law books for the punishment of breach of contract by these cooperatives or their individual members (Basham, 1967, p. 218). There were also the guilds³ (*sreni*) of very important crafts (Basham, 1967, p. 219; Majumdar et al., 1967, pp. 75–76). The guilds had power over economic as well as social lives of the members.⁴

In the Tang (618–907) and Shong (960–1279) dynasties in China—due to the maturing of agriculture and handicraft industry—artisans formed guilds to protect self-interests. Later (since fourteenth century), fellow villagers and townsmen involved in economic activities outside of their geographic areas often organised some types of cliques or guilds for mutual help and self-defence.⁵ During the Nationalist regime (1911–1949), due to economic growth, the most active non-profit organisations (NPOs)⁶ were the chambers of commerce.⁷ In Vietnam, there have been social organisations supporting the country's traditional economic system (water-rice cultivation) which require strong community sense and cohesion (to fight against flood and natural disasters, to alternate field labour, etc.). There also have been *phuong* and *hoi* in the urban centres.⁸ Members of these urban groups, essentially interest groups, committed to help each other with technical assistance or loans, in protecting trade's secret, in keeping common price for similar products, etc. (Duong and Hong, 2006).

Traditional cooperatives and saving groups, like *arisan*, in Indonesia have a long history and have been helping resource-poor people in achieving a decent living that they would not have without similar collective efforts. The governments, including the Dutch colonial power, over the years have encouraged these micro-level third sector organisations (TSOs) to function. During the New Order Era, the government formulated regulations that made cooperatives important sources of

³The guilds united both the craftsmen's cooperatives and the individual workmen of a given trade into a single corporate body, and had judicial rights over the members, recognised by the state (Basham, 1967, p. 219; Majumdar et al., 1967, pp. 75–76).

⁴The guilds used to work as the insurance against members' sickness and acted as guardians of the members' widows and orphans, and work as banks accepting deposits, and lending money (Basham, 1967; Majumdar et al., 1967).

⁵Since during that period, freedom of association was not granted by the emperors and the governments, these private organisations did develop but could not function formally or publicly. Secret societies and illegitimate political factions were powerful during that period. For more, see www.asianphilanthropy.org (China segment).

⁶The Nationalist regime (1911–1949) also created and governed many TSOs engaged in commercial, academic, professional, public-welfare, philanthropic, religious and other activities to assist the government agencies. For more, see www.asianphilanthropy.org (China segment).

⁷The National United Chamber of Commerce, established in 1914, joined the International Chamber of Commerce in 1931. For more, see www.asianphilanthropy.org (China segment).

⁸In fact, the old Ha Noi, the capital of Vietnam since 1010, was formed by 36 *phuong*s. These *phuong*s produced and traded goods of high quality, for example silk, jewellery, leather, metal goods including bronze, iron, and other different type of handicrafts. The names of all *phuong*s remain the names of the streets even until the present days (Duong and Hong, 2006).

economic revenue⁹ and due to the government's continuous support and the members' initiatives, only the cooperatives in Indonesia did not face the brunt of the economic crisis of 1997 (Radyati, 2006).

Although there is scanty documentary evidence, the third sector in the Philippines has long roots in the religious, as well as secular mutual aid organisations that flourished during the Spanish colonial period. The changing political economy and the growth of a professional and managerial class made possible the setting up of various trade or profession-based organisations (doctors, lawyers, craftsmen) during the American colonial period. The Filipino revolutionary tradition continued throughout the colonial and post-colonial periods and gave rise to social organisations of the marginalised sectors involving ideological organisations (by various socialist and communist parties having formed at the turn of the twentieth century) as well as the apolitical and church-based (often anti-communist) welfare organisations offering economic services to the target groups.¹⁰

In Thailand, the *devaraja* (divine king) used to be seen as a divine person with god-like characteristics deserving reverence and highly respected treatment. The people were involved in charity to show their respect to the monarch and earn the monarchy divine 'merits'. The Buddhist monks were also to be respected because they were representatives of divine beings. Although the King had been benevolent, he used to be under the guidance of the Buddhist edicts in the form of ten principles known as '*thotsaphitrajadharma*' (Vichit-Vadakan, 2006). The subjects loved and worshiped the King, due to their adherence to these principles, and never felt any gap that can be filled by the philanthropic organisations.¹¹ The modern era of TSO growth in Thailand did not take-off until the King accepted the first non-government development organisation under its Royal patronage in 1967. There is, however, evidence of early guilds or ethnic language groups.¹²

⁹One of these regulations allowed only the KUD (Koperasi Unit Desa/Village Cooperatives) to operate on the village level to which all rice and tobacco farmers were compelled to sell their crops which in turn used to be sold to the government through the Logistics Agency. The regulation allowed the government to dictate and determine fair prices of rice, tobacco and other commodities. (This note and the information in this paragraph is based on Radyati, 2006).

¹⁰Based on our work on Philanthropy and third sector in Asia, for more, see www.asianphilanthropy.org; the Philippines segment was undertaken under the leadership of Professor Ledivina Cariño.

¹¹In those days, Buddhism established the foundations of charity and propelled a socialisation process conducive to 'merit-making', and the monasteries functioned as centres for intellectual, cultural, recreational and community life. For more, see our work on 'philanthropy and third sector in Thailand' in www.asianphilanthropy.org undertaken under the leadership of Professor Juree Vichit-Vadakan.

¹²For example, the economic migrants from China were not a part of this tradition and being eager to protect their language and culture, formed underground societies which eventually became well sought after non-profit schools in Bangkok. For more, see our work on 'philanthropy and third sector in Thailand' in www.asianphilanthropy.org undertaken under the leadership of Professor Juree Vichit-Vadakan.

Since the mid-1980s, a combination of factors ensued economic reforms (*doi moi*) in Vietnam. These factors included the frustration and pressure from the countryside, the collapse of the Soviet Union and its Eastern European bloc (the major source of foreign assistance for Vietnam), and the impressive prosperity achieved by the Asian newly industrialised countries (NICs) following the strategic integration into the world economy (Duong and Hong, 2006). Thus, the integration of economic system to the world economy was seen as an imperative. The economic reform programmes also created congenial space for the TSOs.

While many of these pre-colonial forms of organising continued through the colonial and into the modern, post-colonial period, there were also radical changes and development with each form of public governance. The government in many post-colonial states became involved in goods and service delivery only to ensure state primacy in economic and social affairs of the country. To keep the radicals under check and to ensure low-cost delivery, governments in many post-colonial countries encouraged TSOs for service delivery offering them financial supports (e.g. Gandhian organisations in India to undertake rural development activities with government money; Sen, 1996). It is evident from our Study in general (as reported in all country chapters) that the above-mentioned economic and political traditions have influenced the third sector and its governance. Against the above backdrop, this chapter at the outset endeavours to analyse the influence of politics of the regulatory regime and stakeholder relationships influencing TSOs and its governance in the participating countries. We then examine the effect of the colonial influence on the features of the TSOs and related governance. A discussion on colonial and post-colonial influence in the next section is followed by a discussion of politics and the administration of laws and regulations, and stakeholder relationships influencing TSO governance. The last major section underscores some intervening socio-political phenomena that seem to have tremendous impact on the TSO and governance in our six participating countries.

Colonial and Post-Colonial Influence

Among the six of our participating countries, Thailand had never been colonised. All other participating countries have experienced different forms and lengths of colonial control. India was under British rule, Indonesia under the Dutch and Vietnam under French colonial domination. Philippines was under Spanish rule first (for 333 years), and then the USA for about 45 years. China had experienced a brief Japanese invasion. These colonial powers had different approaches and objectives of colonisation. The Dutch, French and Americans were interested in accumulating wealth as well as influencing culture and ensuring hegemony. While the Spanish and Portuguese colonial powers were interested also in spiritual conversion. The Filipinos in Asia, for example, embraced the Americans to forget Spanish excess. The British imperial power, by contrast, was interested exclusively in the wealth of

the colonies. Their approach was thus flexible and non-interventionist/minimalist and thus outlasted all other colonial powers (this paragraph follows Isbister, 2001; Easterly, 2006).

The far-reaching influence of the characters of the European colonial powers on the economy and society in Asian countries are demonstrated by the facts that the East Asian tigers (China, Japan, Korea, Taiwan and Thailand) were never under European colony. By contrast, the Asian tragedies like Cambodia and Laos were under French, and Timore Leste was a Portuguese colony.¹³ Among the six of our participating countries, Thailand (purchasing power parity, PPP\$9,000/capita) and China (PPP\$7,600/capita) have achieved much better economic progress than the other four countries. This economic progress combined with the influence and the perception about the Monarchy's sincerity in solving the people's problems in Thailand, and the Party's dominance on the peoples' lives in China delayed the TSO growth in these two countries.

Among the six participating countries, India and Thailand have, in the past 50 years, experienced a sustained system of government—the former a democracy and the latter a constitutional monarchy. The stable governments in these two countries have allowed reasonable growth in the economy. The colonial establishment and economic system under the British were reinforced by democratic governance in post-colonial India. As a result, TSOs have functioned relatively freely and operated with a reasonably good system where the decision-making or the fund management are open and answerable to the stakeholders. In the face of multiple military interventions in politics, the integrity of and loyalty to the Monarchy ensured economic growth in Thailand. The situation was compatible to TSO growth, but the reverence for the Monarchy and the monasteries' ardent involvement in charity delayed further TSO growth, beyond the monasteries. Again the above two aspects (in the form of a hierarchic structure) are manifested in the TSO governance in Thailand.

The Spanish destruction of the social fabrics and traditional organisations was reversed in the Philippines during the American colonial period, though the capitalist individualistic protective attitude was instilled in the mass. The Philippines has been a democratic country since its independence in 1945 (except for a short period between 1972 and 1986). Indonesia started well, following independence, but faced military intervention in politics that lasted almost 30 years; this took its toll on the economy and curtailed TSO growth during that period. These two democratising (Indonesia) and re-democratising (Philippines) countries have allowed ample space for the functioning of the third sector, and influenced the accountability systems in the TSOs.

China and Vietnam have been in transition from a Party dominated bureaucratic system to more a people-based system. The Chinese State for the first 30 years (since 1949), did not allow any scope for third sector development, instead the

¹³ Based on Easterly, 2006, especially Chap. 8.

centralised system endeavoured to take a great role in social life.¹⁴ This situation started to change in 1978. The economic expansion in the Pearl River Delta¹⁵ and the subsequent exposure to the outside world contributed to the creation of favourable conditions not only for market-oriented reforms but also for the development of third sector organisations there.¹⁶ During the political and economic reform programmes in both the countries the TSOs started to grow but with a strict governance system under the close supervision of the state agencies.

Thus, the history of the emergence of TSOs is quite different in each of the six participating countries; so is the approach to TSO governance. It is thus imperative that we try to analyse other factors that may have been the result of the historical development and which in turn influenced TSOs and their governance.

Politics and Administration of Laws and Regulations

A major challenge of the governments in our participating countries is to ensure that the TSOs do not violate the constitutional frame and regulatory regimes of the country. This challenge was first confronted by the colonial powers. For example, though voluntary and charitable organisations had been existent in India in the eighteenth century, many societies and associations were formed during the era of political and cultural awakening following the *sepoy* (soldier) mutiny staged in 1857 against colonial abuse and oppression. The Societies Registration Act 1860 was promulgated to register these organisations. The primary purpose of this colonial Act was to keep vigilance and control over the various societies and associations (Hasan, 2001a). Nonetheless, because of the existence of a large number of philanthropic people and tradition on the one hand and a large gap in service delivery on the other, the third sector continued to grow. The government legal system kept on reacting to the new challenges. Since the regulatory system has been essentially reactive, various legal tools were brought in place to deal with the new 'problems'. There are different laws regulating different aspects and types of TSOs, so are there different government departments administering these laws and regulations at the union (national) and state levels.¹⁷ Thus, variety of legal tools and

¹⁴ Before the Great Culture Revolution (1966), there were less 100 national social organisations in China including the mass organisations set-up by the Party and government, such as China National Youth Federation, All China Women's Federation (Ding, 2005).

¹⁵ Although the Beijing and Xian economic belts have long been regarded as a major economic engine in northern and western China, the Pearl River Delta Area has well developed civil society including various business associations possibly because of the latter's greater integration to international economy. Although it is true that Guangdong and Hong Kong adjoin each other, and due to a well developed transportation and communication system, a lot of Hong Kong volunteers and voluntary organisations provide services there (Ding, 2005).

¹⁶ Based on our work on Philanthropy and third sector in China under the leadership of Professor Zhao Li Qing, for more, please see www.asianphilanthropy.org.

¹⁷ Please see Chap. 3 in this Volume for details.

levels of implementation make the Indian government's third sector regulatory regime very complex to comprehend and difficult to monitor.

The Chinese government enacted the 'Regulations for Registration and Administration of Social Organisations' in 1989 (revised in 1998) with the main purpose of encouraging and keeping track of 'non-state' activities. Nonetheless, many TSOs do not have any legal status at all, because they organise volunteers, mobilise their own resources and do not deal with public funds. Further, many TSOs get registration (e.g. schools) as commercial enterprises in order to avoid the stringent administrative requirements attached to the running of a 'non-profit' entity. In India (a common law country), non-profit entities are formed also under the Companies Act. Thus, the variability of legal frames and related requirements is a challenge to governance, as found by this study.

The Chinese government has a very stringent supervisory control over the social organisations. No social organisation in China can register with the Ministry of Civil Affairs without the approval of the respective governmental line agency (mother-in-law) (Ding, 2005). These mothers-in-law help the government control social organisations politically and legally. In Vietnam, TSOs are under the management and supervision of the government, and should register with the respective umbrella organisation (a state body) created under the auspices of the Vietnam Fatherland Front. The umbrella organisations are required by the government to be in charge of management and supervision of the TSOs under their jurisdiction (Duong and Hong, 2006). Thus, TSOs in Vietnam are more closely monitored than their Chinese counterpart by the respective agencies. As a result, TSOs in China have grown much faster having been able to function beyond the government's registration regime.

The situation in the Philippines is very different and encouraging. No law forces TSOs in the Philippines to register, and the TSOs continue to have this freedom of choice. Further, the registration and accreditation procedures are simple (Domingo, 2006). Associations in Indonesia are loosely regulated entities and are under the jurisdiction of civil law, while the Foundation Law has introduced stringent regulatory requirements (Radyati, 2006). The changes, however, have not achieved the purpose of introducing a strict regulatory regime for the foundations because the associations in Indonesia still do not attract much government monitoring, and seem to be a good refuge for foundations under strict government scrutiny.¹⁸

Across the region, there seems to be a big gap between the legal requirements and actual practice of government supervision over the TSOs influencing the TSO governance. If governments become strict with one particular type of TSO, organisations deregister from that category and move around association law, foundation law or company law. Thus, vagueness of the legal system and its arbitrary basis (created by the bureaucrats without much or any stakeholder consultation) create

¹⁸ Since the enactment of the Foundation Law 2000, many foundations have registered as *Lembaga Swadaya Masyarakat*/self-reliant organisations (LSMs), deregistering from the Foundation Law which has a strict control mechanism, when the LSMs have none, see Radyati (2006).

problems of implementation hindering the creation of trust and congenial relationship between the government and the TSOs. Uniformity in the legal requirements in governance practices along different entities need not be identical but consistency in government guidelines for different types of TSO is highly likely to make the supervision regime effective.

Stakeholder Relationships Influencing TSO Governance

Because of their respective backgrounds, the third sector in each country relates to the governments in different ways. This relationship is further dominated by the constitutional framework, political activity, economic orientation and the level of economic growth. For example, in India, the third sector, due to the rolling back of the state, and the challenges posed to the state by different social movements (Dongre and Gopalan, 2006) has gradually gained leverage to influence national governance which in turn influences third sector governance.

The state political conditions in other instances, in the colonial as well as post-colonial period, did play a significant role in influencing the TSO governance. For example, during the Dutch colonial era, incompatible colonial laws were arbitrarily forced on the prevailing Indonesian situation. Further, in the post-colonial period in 1955 Communism promoted activities in the country influenced the cooperative and labour union laws. The concept of the cooperative was modified to accommodate Communist ideals and the labour unions were used as instruments for spreading communism (Radyati, 2006). The drastic state reaction not only destroyed the Communist invasion but also thwarted TSO growth and functioning. The TSOs re-emerged in the 1970s, began to grow fast in the 1980s (due to overseas support) and became very active after the fall of the authoritarian regime in 1997.

The end of authoritarian rules in many countries in the recent past has seen the creation of political space for TSOs like the Philippines in the 1980s, Indonesia (due to the above reasons) in the 1990s, China and Vietnam (due to respective economic and social reform programmes) since the 1980s.

This change may have been a result of economic growth and the advent of globalisation and the end of the cold-war, but also shaped by the advocacy and consciousness raising programmes undertaken by the TSOs with the availability of overseas funds and organisational support. Some governments viewed these third sector activities as political encroachment. For example, the Foundation Law in Indonesia, the Modified Registration Law in China and Foreign exchange regulation in India were all designed to contain the political influence of the TSOs. The regulatory regime in some cases contained the growth but has levelled the 'space', like in the Philippines or India. In Indonesia, however, the stringent nature of Foundation Law compared to, for example, the associations makes it ineffective. Nevertheless for the cooperatives, the self-imposed rigid monitoring mechanism and accountability practices are much stricter but appreciably more effective like the case in the Philippines. In the Philippines, the new self-regulatory system

initiated by the Philippine Council for NGO Certification (PCNC)¹⁹ is the toughest of all regulatory regimes, but still is being appreciated by the concerned parties because it brings tax incentives, prestige and immediate growth potential. In China and Vietnam, governments still have kept very strict and direct control over the TSOs. In China, the potential TSOs, which cannot get the government agencies' support, can register as a company to function—there is no such scope in Vietnam as yet. Thus, strict control mechanisms of the TSOs make them offer quality goods and services with integrity. The aim, however, should not be to restrict the TSO functioning or making the TSOs' supervisory or monitoring boards ineffective. A better governmental regulatory regime to promote, and not to obstruct, the TSOs is well appreciated.

The TSOs in many instances are expanding due to the availability of overseas funds. As we found in our organisational survey (Chaps. 6 and 7), those TSOs receiving foreign funding were much more likely to conform outwardly to those practices related to the donors' notion of the corporate governance model, with a functioning Board and strong accountability measures. However, this move to a corporate governance model may have been more driven by the initial organisational aim of appearing to be acceptable to the prospective donor. Once the TSO had established a reputation for effective performance, this form of governance became largely irrelevant. Indeed the grant-making bodies, in general, may not even check if there is a board, rather they consider the track record of the TSO (Domingo, 2006).²⁰ In the positive side, it may imply that the overseas funding agencies accept the fact that TSOs may perform well with a better accountability system without subscribing to the corporate model of governance. On the demand side, the problem is that that is not the case for all TSOs, on the supply side if there is no uniformity or coordination among the donor organisations the result of this approach cannot be desirable. 'Donor-density' increases 'exit-ability', and thus also creates problems for governance in the TSOs in countries like India (Dongre and Gopalan, 2006). If one donor takes a tougher approach on accountability and governance issues, the TSOs tend to move to some other donors with a lenient accountability requirement.

Some programmes, for example the empowerment programmes, often force the TSOs to deal with the local administration. The local administration and local bodies' relationship with the TSOs influence TSO governance in at least two counts.

¹⁹The PCNC, organized by six national NGO networks in partnership with the Department of Finance (DOF) and the Bureau of Internal Revenue (BIR), certifies NGOs and non-stock, non-profit corporations for 'donee' status after a stringent review of their qualifications. The certification allows the TSO to receive donee status from the BIR to receive tax incentives. For more, see www.asianphilanthropy.org, the Philippines segment was undertaken under the leadership of Professor Ledivina Cariño.

²⁰In most cases across the countries, the overseas donor agencies even at the negotiating stage never investigate about the board or the accountability process. Only on certain cases, the final agreement requires filling in forms with the name of the board members. Some donor agencies just stay away from the donee after the fund is disbursed—to avoid any allegations of interference or imposing agenda.

Many TSOs are developing their own code of ethics and the service quality control regime which is seen by these government authorities as a challenge to state authority. Second, there has been a lack of accountability in government organisations in many countries. It is highly unlikely that the local governments would like to see the TSOs excel in having a good accountability mechanism that would by default highlight the fallibility of the local government organisations' accountability system.

Not only the government agency officials but also many social and economic elites in our participating countries tend to discourage TSO programmes like the micro-credit, consciousness raising and advocacy in order to protect their own privileged status. This is a big challenge for the TSOs—do they survive and function within the socio-cultural realities irrespective of the achievement of the 'goals' (primarily of social emancipation) or take the risk of elimination by the local or national social and economic forces? In almost all countries, including India or Thailand, the TSO regulations mention that if any TSO is found to be planning or undertaking programmes that, according to the regulatory bodies, are deemed socially unacceptable that TSO can be ordered to rectify or cease to operate. The continuation of these 'norms' tremendously influences TSO governance by reinforcing a hierarchic system in the TSOs.

Some TSOs' programmes in many instances are creating conflicts with traditional ideas, attitudes and relationships.²¹ 'For example, 'empowerment' through 'financial solvency' resulting from TSO initiated activities brings a sense of security to the weakest—the women, but it 'destabilises' gender relationships by creating a voice for the women (especially the wives) in family decision-making (e.g. reproductive or even purchasing). This 'unwelcome' empowerment is antagonising traditionalists and undermining the programmes' potential. Thus, offering a consciousness raising programme for the programme beneficiaries' families (e.g. husbands of the micro-credit borrowers) or the local elites (e.g. traditional chief of the community) can improve sustainability of the TSO and related programmes, and allow the organisation social legitimacy.

As seen in some countries, for example in Thailand, TSOs strive for social legitimacy more than having a system of ensuring answerability (Vichit-Vadakan, 2006). The legitimacy suffers if the existing socio-economic norms are challenged or even questioned. A good answerability mechanism in such a situation cannot offer organisational sustainability. This is true for a democratic country like India (the caste system hardly can be questioned not to mention challenged), or even in a totalitarian system like China (e.g. TSOs that are explicitly seen not to be following the existing social norms lack a mother-in-law and thus legitimacy). The good thing is in both situations TSOs that do not subscribe to the existing social norms are allowed to function—in India, without any governmental funds, and in

²¹ For example, where women's venturing outside home alone is not even socially allowed (e.g. Bangladesh, India, Pakistan) the TSOs are encouraging women in employment outside home by providing them training and micro-credit, as appropriate.

China being registered under the Company law. The practice (or even perception) of a stricter regulatory regime for the TSOs may harm the TSO causes and influence its governance pattern.

Many TSOs in all these countries have grown over the years to react to the supply of funds and/or increase in goods/service demands. At the initial stage these organisations, having been small, started with boards of 'vetting friends and relatives' (Smillie and Hailey, 2001). Although they grew large, they did not change this character. Instead, many TSO leaders got involved in allegiance and support exchange by being in each others 'board'. As a result, the 'boards', in many instances, became ineffective. This phenomenon is evident in India, Indonesia and the Philippines. In China, boards/committees are associated largely with the establishment and have to follow the Party 'line'. Thus, stakeholder relationships in all the participating countries have been influencing TSO governance in different ways and at varied extent.

The Intervening Socio-Political Phenomena

In this Chapter, so far we have discussed some socio-economic and political phenomena that explain the nature of TSOs and TSO governance in our participating countries. In our comparative analyses and country chapters, we have highlighted some major findings of this study like the intertwining of management and policymaking functions as governance, accountability to public is more important than accountability to the government, the outcome and actors are more important than the process, etc. Now the question is what factors in these participating countries are responsible for these TSO governance related values? In our previous discussions, we have looked beyond the 'frame'; in this section, our endeavour is to identify some socio-political phenomena of the six participating countries that may explain the responses on the one hand, and provide hints on the other as to what factors help shape TSO governance in our participating countries (China, India, Indonesia, Philippines, Thailand and Vietnam). The socio-cultural features that seem to be common in all these countries are: hierarchic community structure and patron-client relationships, kinship primacy, and personal integrity and self-discipline.

Hegemony Bolstering Hierarchic Community Structure

The south Asian society in general is characterised as a 'domestic society' or a 'society of households' (*garhasthyapradhan samaj*), a society in which the strongest social bonds are centred on the authority of parents and other elders within the family (Chatterjee, 2002, p. 167). The other parts of Asia are no different. For example, according to Confucianism unequal relationships among people is normal

and required for a stable society. In practice, the suggestion that the superiors have ‘to act righteously’ also implies that those in positions of power should use their authority to further the welfare of their subordinates. Thus, the superiors have traditionally been expected to provide material benefits in return for an inferior’s support.

According to the Hindu doctrine, the main religion of people in India, there are three ends of life and individuals are to attain those: *dharma*²² (gaining religious merit following the Sacred law), *artah* (gaining wealth by honest means) and *kama* (pleasure of all kinds). The first one involves many religious duties and regular carrying out of Five Great Sacrifices (*pancha-mahayajana*) daily. These include the worship of the World-Spirit, ancestors and gods. But then the worshipping to God can be better (or only be) performed by the higher caste individuals. This strictly rigid hierarchic nature of religio-social practices enforce a patron-client relationship that is mutually supportive, and even influences TSO governance.

In some countries, for example Thailand, ‘governance’ has been ‘a state which is operated with virtue’ (Uwanno, 1998). Two Thai scholars (Uwanno, 2000; Panyarachun, 2000) opine that even when the governing system was absolute monarchy, there was ‘royal governance’ because the monarch possessed absolute ruling power, but was required to adhere to the ten Buddhist principles known as ‘*thotsaphitrajadharmma*’.²³ Thus, this relationship is hierarchic based on certain principles. At the micro-level, social order in Thailand has been, in most cases, achieved by means of patron-client system—a quasi-symbiotic relationship—that is the clients serve and respect the patrons, while the patrons protect their clients. In such a system, the mechanism, which ensures that the more-powerful do not take advantage of the less-powerful, depends for the most part on the conscience of the patrons. As such, the system cannot be “governance” in a true sense (Vichit-Vadakan, 2006).

A combination of Malay culture and Catholic Church allows the Filipinos to establish and nourish a hierarchic system in TSO governance frame. As highlighted by the participants in many workshops organised by the Philippines team undertaking this research that the TSOs prefer to include a *ninong* or godfather in the board ‘who can provide assistance in whatever way to a godchild’ (Domingo, 2006) depicts the feeling in the Philippines. Islam, the main religion in Indonesia, does not allow hierarchy among human beings (all having equal access to God without any intermediary). Nonetheless, the prominent traditional Javanese culture in Indonesia emphasises hierarchic divisions in society which is manifested in TSO governance. Further, Communist political tradition and Buddhist belief system in China and Vietnam emphasise discipline and subjugation to authority on a very strict vertical line.

²² The first one involves many religious duties and regular carrying out of Five Great Sacrifices (*pancha-mahayajna*) to be performed daily. These include the worship of the World-Spirit, ancestors and gods (Hasan, 2001a).

²³ The principles, based largely on Buddhism, are, for example, generosity, high moral character, non-violence and non-oppression (Vichit-Vadakan, 2006).

When the members of an informal social group subscribe and submit to the leaders—a patron-client relationship is born and sustained over time. The pattern is imitated in every aspect of the concerned individual's life. In a community, the leaders ensure their 'patron' status through positive and negative (humiliation and/or isolation) rewards. In our participating countries, the sources of production are meagre and economic institutions are not well developed. In such a situation, people have to strive to develop a patron-client relationship with individuals having (or even having access to) economic and social power. In fact, in most cases, out of gratitude (or frustration) the receivers tend to remain bound to the givers, often being submissive to the givers' exploitative desires. The phenomenon is abundantly reflected in TSO governance. Even in the TSOs, the patron-client relationship is ingrained in many different ways. For example, the TSOs dependent on overseas or government funds are divided hierarchically. Smaller TSOs need to establish and sustain relationships with large TSOs for reciprocal (unequal) exchange. Smaller local TSOs may receive funds through, or on the recommendation of, larger TSOs or the intermediaries.²⁴ In essence the hierarchic relationship where the people in the lower stratum accept their inferior and the others superior status reinforces what Gramsci termed 'hegemony'—where the interests of the elite is portrayed as 'common good' in that if nurtured it will serve the people with less economic and/or political power.²⁵ Hegemony in a society, in order to be self-supporting, creates kinship primacy.

Kinship Primacy

Pye (1999) suggests that the Chinese society showed little social integration beyond family, clan and personal relationships. In a similar vein, Fukuyama (1995) argues that those Confucian cultures which emphasise kinship over other ties have lesser capacity to develop trust among unrelated individuals. Confucianism in fact emphasises family and suggests that the family is the model for all organisations. The thought is the source of kinship primacy in China which finds resonance in other parts of the participating countries.

The Chinese term *guanxi* signifies the power of individual influence. In China, people with high social status (e.g. retired high ranking public officials, movie stars, famous entrepreneurs) give TSOs reputation and recognition by being in the TSO boards. Thus, the largest percentage of respondents in China thought that a managing committee/board brings tangible resources for the TSOs (Ding, 2005). The matter relates essentially to the Chinese system of *guanxi* or personal connections that extend to those who share a certain identity (village, town, province or alma mater).

²⁴ A good discussion on this phenomenon is available in White (1999).

²⁵ For a good discussion on hegemony and its impact on human relationships, please see Gjerde (2004).

In the context of TSO governance in China, the tradition of *guanxi* denotes a network of informal personal relationship that forms an invisible bond between the board/committee and the Chief Executive Officer (CEO; Ding, 2005).

In Thailand (a predominantly Buddhist society), there is the concept of *bun khun* (moral obligation or gratitude that one owes to others for money, advice, favour, assistance or even to the parents for giving birth). *Bun khun* must be returned regardless of time, space and frequency. The concept of *bun khun* reflects an internalised norm of reciprocity among family, kinsmen, friends and others who provide goods and services to a person. Whenever there is a chance to reciprocate *bun khun*, one has to do so, especially when those who do good need assistance (Tosakul-Boonmathya, 2001). Similar norms like the *utang na loob* (debt of gratitude) are evident and dominant also in the Philippines (Domingo, 2006). The TSOs cannot be formed without following these fundamental principles of community relationships, nor can TSO governance escape respective norms.

Then there is the concept of *Mengabdi* (subservient to family and friends) in Javanese (Indonesia) culture that is similar to Confucianism in the sense of human obligation to the family and community. The people with authority (economic or political) are supposed to provide unquestionable support for the people in need.²⁶ These strong local/traditional values/systems are manifested in the key informant surveys in all the participating countries²⁷ and are fundamental in the understanding of TSO governance in the participating countries.

In rural societies in Asia, people live in close proximity to each other emotionally as well as physically, forming units of social groups that Hasan (1988) calls 'shadow units' and 'shining units', respectively. The 'shadow units' comprise of nuclear groups (of meal sharing), extended family (name sharing), kith (ancestry sharing) and society (affinity groups—pride sharing). These units are able to create strong bond among the members because the members join these units for blood and marital relationships and not for just geographic proximity to each other. The members in these shadow units join together to form strong group solidarity through mutual dependence and a sense of security, and thus create bonding social capital (Gittell and Vidal, 1998; Putnam, 1993).

There are also some visible or 'shining' units of social living and solidarity formation, for example homestead, neighbourhoods or a village. People living in 'shining' units are not related to each other through blood or matrimony. Outsiders can see these units and their physical boundaries and relations. These 'shining units' of social relationships in Asian rural areas have weak bonds; nevertheless they form social capital through trust, belongingness and mutual hierarchy. These major internally generated groups reinforce kinship primacy in social and organisational life of the related individuals.

²⁶I attended meetings organised by our Indonesian partners to explore TSO governance in Indonesia with some TSO leaders. A TSO leader told me that many people now blame President Suharto for nepotism, but if he had not looked at the interests of his Javanese community, his kin group would have blamed him for betraying the 'norm' liable of being ostracised.

²⁷Please see the country chapters in this volume for details.

These ‘shining’ units of social relationships often played significant roles in the lives of new settlers in the area, who arrived for hundreds of years in search of prosperity.²⁸ The indigenous communities though tolerate ‘outside’ invasion for a broader future potential remain committed to kin loyalty. Being faced with this strong ‘wall’, the new comers in any society, while in the process of creating bridging social capital, can never ignore the need for kin dependence and supporting. Worth remembering, however, that a restricted access to resources (due to natural, physical, economic, cultural, political or technical constraints) poses a big threat to the individual’s existence in resource-poor countries like our participating countries, and related fear of deprivation create egocentricity and aggression among many individuals. This apprehensive state of mind precludes development of mutually respectful and cooperative relationships across kin and/or regional groups and thus among the TSOs.

However, these socio-political phenomena like the hierarchic structure and kinship primacy are likely to make any and every TSO dysfunctional (being self-promoting) and/or degenerate into self-gratifying cliques. Why has not that happened? The answer (as indicated differently in each of the Country chapters) seems to lie in the social norms that emphasise the importance of maintaining smooth interpersonal relations and social harmony on the one hand (see Chap. 4), and personal integrity and self-discipline on the other.

Personal Integrity and Self-Discipline

Asian values grounded on religion and tradition heavily influence the TSO governance processes, both positively and negatively. Emphasising duty to one’s occupation, *Vruitti Dharma* (the precursor of the caste system in India) binds Indian TSO leaders and staff to dedicate their work in a TSO as a personal commitment to God. *Vruitti Dharma*, found in Indian religious scriptures, was cited by 80% of the organisational respondents as a meaning of governance. This is an expression of a worker’s adherence to religious values. It is self-binding and therefore considered as the most effective and integral part of governance. Key informants in India associated ‘governance’ for the third sector with a set of values—integrity, moral commitment, equity, a bonding with society and socio-economic justice. Third sector governance, to many of the respondents in India emerges from the human values of justice, and self-check and thus to them being accountable to one’s conscience is also a strong feature of governance (Dongre and Gopalan, 2006).

As Thai society evolved from a highly individualistic society with the domination of the public sector as prime employer into a business/professionalised and yet less individualistic society, certain changes did occur. Where compliance is required and enforced, where personal negotiations, exceptions or exemptions are not expected to

²⁸ Please see Chap. 2 for more discussions.

rule the day. The essential criteria of rule of law, commitment to excellence, fairness, integrity and honesty are there to dominate professional behaviour even in the third sector. These standards are imposed externally on individual actors in a system where exceptions tend not to be allowed. People working in the TSOs in Thailand must have integrity in their professions since they work with the disadvantaged and may be tempted to indulge in corrupt practices to serve self-interests even with the public funds. The TSOs themselves are vigilant of each others behaviours and have developed mechanism for dealing with deviation of integrity.²⁹

Self-discipline has been important for many TSOs in China. For example, a large and very reputable TSO, the China Youth Development Foundation, considers self-discipline in the form of strict management and increased oversight are the two major reasons for TSO reputation in society (Ding, 2005). In the Philippines, respondents referred to governance as adhering to the values of integrity, social responsibility and social consciousness in personal and organisational behaviour (Domingo, 2006). The organisational respondents in Indonesia refer to values, and believe that governance must involve high ethical and personal moral values, including organisational ethics, fairness in decision-making, free from any discrimination, honesty, gender equality, efficiency and effectiveness (Radyati, 2006). Thus, personal integrity, moral uprightness and self-discipline have resonated in the understanding of TSO governance in all countries, and are the defining factors in TSO governance.

Conclusion

None of the three (public, business and the non-profit distributing) sectors can meet the complex needs of the modern society. Further, none of the sectors can achieve its best potential impact without the help of the other two sectors in a concerted way. The state, business and the third sector have to work hand in hand to maximise the impacts of all the sectors on society. It seems from this study that the government organisations have realised the fact as much as the TSOs have in different countries since the 1960s.

Nonetheless, the TSOs in our six participating countries have to deal with a more robust or interfering legal and administrative system than the Northern countries. But then again due to operational laxity and ambiguity of the arbitrarily created legal framework, the TSOs lose motivation for ensuring good governance and developing a better accountability system. A lack of uniformity in the legal framework also provides opportunities to the TSOs for entity shifting to avoid responsibility.

A major aspect required for the success of TSO governance is a friendly and congenial legal and political environment created by the government. A positive environment can ensure a better functioning of a stricter legal regime and TSO governance. In a congenial environment TSOs themselves tend to create a tougher and effective code of self-regulation. Nevertheless the absence of a transparent and

²⁹ This paragraph is based on Vichit-Vadakan (2006).

accountable local administration and local government systems creates challenges for TSO governance. In many countries, it seems, that because of the presence of overseas donor agencies many TSOs use the corporate governance tools of accountability; nonetheless 'donor-density' creates problems for governance in many donor-supported TSOs because the TSOs tend to move to the donors with less monitoring mechanism and regulatory requirements. Enhanced 'exit-ability' thus creates an unwarranted accountability gap in TSO governance.

Because of the above two major factors (lack of accountability in government organisations) and (lack of donor's interest in governance), many TSOs may ignore the importance of having a well-performing 'board' or any real transparency in their own governance. The challenge for governance is balancing act to survive and function within the socio-cultural realities (not taking the risk of being destroyed by the social forces or the establishment). But then the TSOs aspire for acceptable faces or a 'sale-value board'. Mutual support and allegiance between TSOs may be used to guarantee organisational continuity. This results in the formation of an 'allegiance and support exchange' board by the TSO officials who take positions in each other's 'board'. These 'sale-value' boards can hardly achieve the intending outcomes of good governance. These allegiance and support exchanging TSO leadership have been a hindrance to a good system of third sector governance. There also has been a popular belief that founder-controlled TSOs fail to institute professionalism and function with a slack governance and accountability system. But the organisational data in our study show that only a small percentage of TSOs has a founder-controlled governance system; so that is a good news.

A strong board can work to enhance the TSO programme of sustainability by attempting to influence the stakeholders. For example, many high impact empowerment programmes create 'financial solvency' of the 'vulnerable' that brings a sense of security and decision-making power. This can only be sustained through the organisation's initiatives in consciousness raising programme for the 'elite' who are keen to see that the TSO programmes do not jeopardise power relations founded on social and/or economic hierarchy. In most cases, in all our participating countries, however, boards fail to undertake such measures so as not to jeopardise their own relationships with external stakeholders. Many rigid cultural features impede governance efficiency because the intent of maintaining a relational status quo makes the boards ineffective and protect the social, class, gender and caste (in India) structure and relationships.

As seen in some other contexts, the TSOs in our participating countries have grown independently from political society, and it seems that these two so-called instruments of democratic governance have continued to follow a pattern of silo-growth.³⁰ This 'silo-growth' of democratic governance is a result of and reinforces

³⁰For example, Hasan, Lyons, and Dalton (2004) argue that in many Asian countries political parties and civil society emerged almost independently of each other and, despite successive free elections, these two so-called arenas of democracy have continued to follow a pattern of silo-growth, and many civil society organisations and political parties have also failed to develop a form of 'in-house' democracy. This 'parallel' and uncommitted path to democratic governance seems to be the major hindrance of TSO governance in our participating countries as well.

distrust and conflicts between the two. The third sector and the government institutions are claiming and protecting their 'turf', thus the government organisations (especially at the local level) do not encourage open or transparent TSO governance so that their own system does not look too bad.

State institutions in all our participating countries (due to low resource availability and different priorities) have proven not to be capable of fulfilling the citizens' every needs (in particular of the disadvantaged group), though the people have a very high achievement orientation (cf. Merton, 1949). This (perception of the) failure has reinforced people's particularistic obligations (Lipset and Lenz, 2000) guided by the commitments to the family, friends and network. This attitude or a sense of obligation (often beyond the institutional constraints designed by the rules) will continue to influence TSO governance like all aspects of social and political lives in our participating countries.

Asian third sector organisation governance is seen to be concerned with formulating, reviewing and realising the TSO's vision, mission and goals. This relates to decision-making processes and structures involving the board, leader and staff. Decision-making in the TSOs need to be democratic and participatory but need not necessarily be following the one man one vote norm—consulting the stakeholders and protecting everybody's interests may suffice, so far as some informants in the participating countries are concerned. Democratic governance in the TSOs is thus about good intention of equitable outcome by the CEO, leader or the members, and not about participatory policymaking predominantly by a democratically elected board. The ends-means schema is reflected in the peoples' (goods and services providers as well as receivers) perceptions of and attitudes towards third sector organisation governance in the participating countries; democratic or good governance in the TSOs appears not to be about means (i.e. by the people), rather it is about the ends (i.e. for the people—*summum bonum* or the greatest happiness of the greatest number).

Chapter 11

Governance Approach in Asia's Third Sector: Adapted Western or Modified Asian?

Samiul Hasan and Jenny Onyx

In the first decade of the twenty-first century, there are 50,000 international non-governmental organizations (NGOs) worldwide—some with grass-roots engagement. There are also about 7,000 microfinance institutions (MFI) in the world serving 16 million people. There are hundreds of thousands of undocumented small, traditional, non-incorporated organisations. Since the Second World War (WWII) the developed world has provided US \$2,300 billion in international aid, and at present around 10–20% of the annual ODA (Official Development Assistance) of US \$60 billion is disbursed through the third sector. Further, many Asian governments have been providing tacit supports in the expansion of philanthropy and the third sector, and also in improving the latter's capabilities for strategic benefits. The growth and functioning of the third sector and its contribution to development, however, depend on the stage of political infrastructure of the country concerned (cf. Davis and McGregor, 2000). There are vibrant and numerous third sector organisations (TSOs) in Asian countries, but due to a weak political infrastructure their impacts on development in these countries are likely to be minimal.

In recent times the third sector has been growing rapidly in many countries, even in China. During the preparation for UN Conference on Women, the term 'NGO' was popularised in China (Ma, 2001). These NGOs are 'issue-oriented social groups, rather than interest groups or pressure groups' (Zhao, 2001).¹ States even like China, with a centrally controlled system under party apparatus, may not be able to contain the growth of the TSOs, thus each state now allows TSOs to become partners in societal governance and, in turn, tends to influence TSO governance.

The six Asian countries that participated in our study have a strong and varied third sector. Despite differences in the culture, politics and recent history of these six countries, there was more variation within the third sector of each country than there was between countries. In each country, we found large and small TSOs in each of the fields of activity we had in our focus. Other studies suggest that TSOs will vary in the importance of their contribution to particular fields but they will be

¹The 2008 Olympics bid for Beijing gave these organisations more importance. Two major 'genuine' popular organisations or NGOs, Global Village of Beijing and Friends of Nature, were co-opted to the official Olympics bid committee (Zhao, 2001).

found in each field in each country.² The same story holds for the governance of TSOs. Once again there was considerable variation in the practice of governance within TSOs in each country but rarely did one country stand out from the rest for the presence or absence of a particular practice.

One of the questions that motivated this study was whether there was a common Asian approach to the governance of TSOs. In fact, given the huge differences in history, culture, political systems and level of economic development, we did not expect to find a common approach to the governance of TSOs across Asia. However, there were those who talked of an Asian way in conducting political relations while others criticised an Asian approach to the governance of corporations, so we sceptically reviewed our evidence to see if we could detect a common approach. So what have we learned from this research project?

Our basic conclusion is that TSO governance is important to our respondents as well as the participating countries in general, but deals with a difficult and contradictory set of tasks and responsibilities. There is no 'one best method', but rather a set of questions that each organisational leadership group needs to answer in order to ensure their organisation is balancing the interests of its key stakeholders (members, clients or patrons) as well as it can, and remaining accountable in a transparent way. This Chapter, by summarising and highlighting some contentions, attempts to answer our original question: is there an Asian approach to governance of TSOs? A related question by the many advocates of a corporate governance model: 'how does the corporate governance model play out on the ground' is also dealt with.

We begin this chapter with a review of the concept of 'governance' within Asian TSOs. We then re-examine the legal and legislative space within which Asian TSOs operate. Following a review of the Northern corporate governance model, we then try and identify specifically, what are the criteria of 'good governance' in Asian TSOs. Grappling with this question leads us to our final conclusions, which we see, not as an end point, but as the identification of unanswered questions, and the need for further research into the governance of Asian TSOs, the role of governments, of external funding bodies and of corruption.

Identifying 'Governance' for Our Context

The term governance is widely used by political leaders and policy makers and in the social science research community. It is not a term that is widely understood, even in those Northern countries that have done so much to advance its use. Our national collaborators found it difficult to translate 'governance' into their respective

²For example, please see our work on www.asianphilanthropy.org providing philanthropy and third sector data and information on 12 Asia Pacific countries including all countries participated in this study. Also see Johns Hopkins Comparative Nonprofit Sector Project (<http://www.jhu.edu/cnp/research/index.html>), in particular data on India and the Philippines.

languages. Rule seemed the closest English term that was easily translatable. It is also understood as just 'governing' or, in most cases, 'internal management'. Even then we found a great deal of variation in the understanding of governance and of who in the final analysis was responsible for it. This was as true among the organisational executives that provided the data for our organisational survey as it was for the social and political leaders that we interviewed for their knowledge of parts of the third sector. It appeared that for the men and women in their positions, the more common discourse on societal governance created puzzlement about the application of the concept to TSOs. Once again, while more of our interviewees in some countries shared the conventional understanding of the term than in others, this difference did not appear significant. Significant was the borrowing of the value position 'good' appended to societal governance literature (or norms?) by the World Bank and others. The authors of Chap. 4 thus comment that 'the emphasis on the evaluative (good governance) aspect rather than on the descriptive (governance) issues in the Asian TSO governance may be because the Asians in general are (value) judgmental'. This value position seems to be the defining factor not only in the understanding of TSO governance but in its application as well.

Third Sector Legal Space and Application in the Participating Countries

It is evident from the study that the devolved third sector 'territory' (e.g. in China, Thailand, Vietnam) opens up slowly but remains steady more than the evolved system like our other three participating countries (India, Indonesia and the Philippines). In the latter case, the trial and error approach creates distrust between the government and the TSOs. In any event, however, the legal instruments in all countries are reactive (problem shooting), and not proactive engaging instruments. Thus two major criteria that we discovered are purposive ambiguity and freedom restraining intentions in the legal documents; none of which can improve governance.

Purposive Ambiguity

We have seen a very restrictive third sector legal environment in Thailand, but the study revealed evidences of politicisation of TSOs in Thailand. The highly centralised political system in Thailand legitimises the control of the TSOs' activities, but then the elite centred or created TSOs are straightforwardly accepted and legalised. Thus the laws become more ineffective due to the double standards and discriminatory practices of the State Agencies (Anukansai and Boonrad, 2003). The problem may also be related to the social hierarchy as many of the elite (or even officials) find it unacceptable that an elite's programme, organisation or activity is turned down, monitored or chased by an official who has a lesser social status (Vichit-Vadakan, 2006).

Indonesia seems to have a different problem. In Indonesia TSO laws are activity based, and thus overlapping. For example, both an association and a mass organisation are member based, but regulated by different laws. Associations in Indonesia are loosely regulated entities and are under the jurisdiction of Civil Law³ because they are non-political. On the contrary, mass organisations (the so-called ‘embryonic political parties’, also known as social organisations) are regulated by Law No. 8 of 1985, and are closely monitored by the ministry and the local administration⁴ (Radyati and Fadjr, 2003). The problem is that the Law No. 8 gives the Minister of the Interior powers over mass organisations, which the Ministry interprets to cover all civil society organisations (Irish, 2003).

One of the major problems related to the legal environment regulating the TSOs in China is that it is based on executive documents (without any approval from the People’s Congress) or even oral ruling or unpublished documents that the TSOs may not be aware of. Some experts on Chinese law have pointed out that expecting the NGOs to follow regulations that are not legally coded or explicit or well known is an unlawful practice.⁵ If the government suddenly decides to act against the NGOs, the NGOs may not have any redress. The governments in countries like China, Indonesia or Thailand nurture vagueness in laws and the procedure, to have the upper hand on the TSOs, if needs be. This is not helpful in the establishment of good governance in the TSOs.

Growth Promoting vs Freedom Restraining Legal Environment

A country’s laws, regulations and their administration can both help and hinder the growth and sustainability of the third sector. Governments, with the help of the legislative frame, related to the incorporation, taxation, fund-raising and service standards and their administration can assist the third sector by recognising the distinct character of the third sector, facilitating its good governance, and encouraging public support. The legislative frame should also consider sustainability issues by regularly updating the laws and regulations to suit contemporary theory and principle. A well-functioning and supportive legal environment is of little value if the wider policy environment is hostile, or indifferent to the third sector.

TSOs in many nascent democracies have been involved in judicial activism to fill in the legal gap in the functioning of the TSO or defining their stakeholder

³Particularly book three, chapter 9, article 1653. Before the existence of Civil Law it was regulated by the State Gazette (Stb) 1939 No. 570 yo. 717.

⁴The mass organisations need to register with the Department of Home Affairs (if located in the capital city) or with the governor’s office (for provincial cities) or with the regency government officer (in regency area) (Radyati and Fadjr, 2003).

⁵For example, many rules governing the TSOs are based on the respective high officials’ speeches (cited in Ding, 2005).

relationships including with the beneficiaries and the government. For example, during the past quarter century, TSOs in India have made tremendous contribution to bridge the gap between constitutional aspiration and social reality (Bhatt, 2003). The legal environment is thus gradually evolving to expand the 'space' for the third sector but becoming ineffective because of the executives' disinterest in accepting and applying the judicial imposition (though legally binding).

The law becomes more appreciating and effective when the government, on its own accord, establishes a congenial relationship with the TSOs valuing the latter's activities as complementing the government's efforts. In such a situation, stringent governmental measures influencing internal as well as external organisational dynamics of the TSO, as seen in the case of the Philippines, for example, can be seen in good spirit and not as adversarial.⁶

The fact that a large percentage of the respondents in China identified political change to be essential for impacting the third sector's development suggests the interfering nature of politics. The Chinese government has a different approach to monitoring the TSO activities requiring all private non-profit units or non-government non-commercial enterprises with three or more Chinese Communist Party members to establish party branches to supervise the organisation's political behaviour.⁷ Further most social organisations in China are dependent on the government, and have a governance pattern influenced by the government. Priority in China, according to many respondents, thus is not to promote governance for the third sector, but to create a friendly legal environment for the third sector. Many foundations in Indonesia (commonly known as LSM—see Chapter 14) see the provisions of the Foundation Law 2000 as 'too much interference towards the internal organisation of foundations', and re-registering as 'associations' a better option to escape 'Foundation style' monitoring (Radyati and Fadjr, 2003). The problem is without a legal infrastructure that can appreciate and mesh in the strict regulations, the government of Indonesia, being pressured by the International Monetary Fund (IMF), as a condition of the new loan guarantee, enacted the *Yayasan* (Foundation) Law to 'provide adequately for the accountability and transparency of the *yayasans*'⁸ (Irish, 2003) with the use of corporate model of governance. To be effective, the laws need to be practical, symmetrical and encouraging the 'good' while still restricting the bad practices.

⁶The new regulations in the Philippines would have been seen as too restrictive were it not for the largely positive atmosphere in which the GO-NGO interaction occurs (Cariño, 2003).

⁷The official documents, relevant to the regulation, are explicit. On 26 Feb. 1998, the Chinese Communist Party Central Bureau and the Ministry of Civil Affairs (MOCA), Government of China issued a joint document regarding this.

⁸A foundation (*Yayasan*), with separate assets and objectives in the 'social, religious, and humanitarian fields', may be formed by one or more people (Leon E. Irish). The Foundation (*Yayasan*) Law 2000 was formulated to stop the previous practice of transferring funds from large corporations to foundations for the use of personal use (Nindita and Fadjr).

The Influence of the Northern Corporate Governance Model

When we turn to the arrangements and practices of governance we find most TSOs had a board and in most cases this board had the final say in the organisation. Our overall impression is that while there is a greater degree of variety in practices (a greater deviation from a norm) than might be found in a similar survey of TSOs in English speaking Northern countries, the majority of organisations differ little in their arrangements and practices of governance.

We conclude that the large number of common elements in the arrangements and practices of TSO governance in our six participating countries is a product of the broadly similar approaches of the colonial governments of most (and the imitation of European arrangements in the country that was not colonised, for example China).⁹ The colonial regimes set the basic legal frameworks that post-independence regimes mostly had little political interest or economic rationale to change. Overall, as our countries sought to join global markets and accept Northern technologies and cultural offerings, Northern practices of TSO governance, especially those in the United States, came to reinforce and in some cases modify existing practices. The two countries that adopted communism as part of their struggle for independence did suppress their third sector for several decades but in their subsequent opening they have sought to imitate Northern models of civil society, albeit with a little more control than is presently exercised in those model regimes. The opening up coincides with these two countries' reform programmes that began in the 1980s; thus the adoption of the Western model is more a declaration of 'joining the club' than appreciating the norms. In some other cases it seems to be an imposition.

There is a good deal of convergence between approaches to governance advocated for corporate and TSOs. Indeed, the most generally advocated model for third sector governance is often called the corporate governance model. This is not surprising as in the common law countries company law tends to have a large influence on legal forms used to incorporate TSOs.

There is however another legal form that influences thinking about, and practice of, the governance of both firms and TSOs: the trust. The governors of a trust, including a charitable trust, are the trustees (a term used in the UK to describe directors of many different types of TSOs). The responsibility of trustees is to preserve the trust and ensure it is applied to its founding purpose. Practices derived from the governance of trusts underpin two important components of the corporate governance model. One is the emphasis on what is referred to as the fiduciary responsibilities of directors; the second is the practice of the board determining who will replace retiring board members.

Within the third sector, the corporate model of governance argues for small boards with directors selected to bring a wide range of management or business

⁹The only exception Thailand seems to be creeping in.

skills to the board, and thus to the governance of the organisation. Boards of most big non-profit organisations are comprised mainly of people with senior management experience in business or government. Generally directors are unpaid. If the TSO is also a charitable trust, the law may require that the directors are 'trustees' and be people of high repute and standing in their communities. They also appoint independent auditors, but to save money these are generally asked to do the minimum level of audit required by the law. There is no equivalent of independent analysts, whose reports can be drawn on by members or donors.

When we look outside the confines of economically developed common law countries, we can see other cultural and political dimensions that would certainly challenge the assumptions built into the corporate governance model and make its applications questionable.

One such set of assumptions is cultural. This set of possible differences encompasses not only the obvious differences in religious tradition but also the differences in what Hofstede (1997) has called power distance and uncertainty avoidance. In some cultures patron–client arrangements are what enables the society to work; in some cultures, uncertainty and thus risk taking is to be avoided. Both of these characteristics, if present, will inevitably alter the way organisations are governed, and make the split-power arrangements built into the corporate model even more difficult to apply.

A second set of assumptions taken for granted by the corporate model of governance concerns the political system. The countries wherein it has emerged are among the oldest democracies in the world, where there are widely shared understandings of the role of political parties, legislators, the executive, administrators and courts. They are countries with low levels of corruption. In such countries TSOs can assume a high level of independence of government interference, provided they stay within what is generally a well-articulated legal and regulatory framework. Such assumptions cannot be made in most Southern countries where the political system is being made or re-made, where the legal and regulatory environment is more fluid and where corruption is an ever-present factor.

Arrangements and Practices of Governance in Asian TSOs

TSO governance is important in Asia, but deals with a difficult and contradictory set of tasks and responsibilities. There is no 'one best method', but rather a set of questions that each organisational leadership group needs to answer in order to ensure their organisation is balancing the interests of its key stakeholders (members, clients or patrons) as well as it can, and accountable with a transparent system of financial management and decision-making. Nonetheless, we explored several major themes that, in Asian eyes at least, are regarded as essential ingredients of a well-performing TSO.

The Importance of Final Say of the Board

Most surveyed TSOs had a board (87%) and in most cases this board had the final say in the organisation. One important thing resonates from the data: in many respects governance is effective when the board has the final say in the organisation. In our sample TSOs, boards with final say enhance mutual cooperation, and lead to better performance. Eighty-three percent of such TSOs coordinate with other TSOs as opposed to 68 and 67%, respectively, when the chief executive officer (CEO) or the members have the final say. Again 70% of the TSOs where the board has the final say (as opposed to 59% of the CEO-dominated board and 38% of the member-dominated board) are involved in representation to the government in matters other than fund-raising.

Boards with final say can help perform better by developing networks to negotiate 'political system'. For example, whereas only 44 and 43% of the TSOs where the CEO or the members (respectively) have the final say, the TSOs are involved in negotiating the political system for the organisation. But the political negotiation is much higher (61% of the TSOs) where the board has the final say in the organisation. Further, these boards (with final say) help high achievement by reviewing the organisation's performance more (67%) than the others (43% in case of CEO-controlled board or 46% in member-controlled board). Boards with final say lead to better attainment by quality assurance, and evaluating efficiency. For example, quality assurance is undertaken more (59%) in the board-controlled organisations than in the others (41% in case of CEO-controlled board or 43% in member-controlled board), and boards with final say evaluate efficiency more (73%) than the others (49% in case of CEO-controlled board or 57% in member-controlled board).

The Importance of Values and Social Capital

All country reports emphasised the importance of values in the maintenance of good governance. Third sector governance, to many of the respondents in India, emerges from the human values of justice, and self-check and thus means being accountable to one's conscience (Dongre and Gopalan, 2006). People working in the TSOs in Thailand are required to have integrity in their professions since they work with the disadvantaged and may be tempted to indulge in corrupt practices to serve self-interests even with the public funds. The TSOs themselves are vigilant of each others behaviours and have developed mechanism for dealing with deviation of integrity (Vichit-Vadakan, 2006). Self-discipline that creates and implements a very strict management regime has been important for many TSOs in China (Ding, 2005). For many respondents in the Philippines, TSO governance is adhering to the values of integrity, social responsibility and social consciousness in personal and organisational behaviour (Domingo, 2006). The organisational respondents in Indonesia believe that governance must involve high ethical and personal moral (Radyati, 2006). Personal integrity, moral uprightness and self-discipline

help understand TSO governance but are also features that allow individuals social legitimacy in collective life, and help achieve the common good. This emphasis on personal integrity is particularly important for the driving force, or the patron in the patron/client model, as much depends on his or her trustworthiness.

Other common espoused values concerned the maintenance of smooth interpersonal relationships and a spirit of trust and cooperation (see Chapter 4). Indonesia and the Philippines in particular emphasised the importance of mutual support within the local community and within the organisation itself. The idea that an organisation is only 'good' to the extent that it contributes to civil society reinforces the contention that third sector governance enhances social capital. Smaller organisations are in a much better position to create and use social capital than the larger ones. Large bureaucratically structured organisations have minimal decision-making input from the members or client/customers. Large bureaucracies hinder the creation of social capital, as do those that maintain any sort of vertical coercive sanctions. This is so because vertical structures generate dependent relations that discourage reciprocity and mutuality, in which choice is absent, and trust depends on the goodwill of the powerful (Onyx, 2003).

Discussion

Despite the wide presence of boards and good management practices, fewer than 6% of our sample adopted the full corporate model of governance, and only another 17% a slightly modified version of it. These facts at first glance may be surprising, given the large amount of emphasis to this model in the normative literature on the third sector, including the policy statements and recommendations of Northern governments and international agencies. Evidence that these practices had been absorbed by the third sector was provided by their adoption by the third sector accreditation regimes that had been formed in the Philippines and India. However, it would appear that most TSOs find it difficult or perhaps unnecessary to go the whole way.

Three aspects of current arrangements stand out: the limited extent to which our TSOs had adopted the model of corporate governance mandated as good practice by many commentators; the limited extent to which TSOs practised democratic forms of governance, and the strange impact of foreign funders on governance practices. We will reflect briefly on each of these in turn.

First, it is clear that the corporate model of governance is not self-evidently the only effective approach to governance of any form of organisation. The corporate model is based on a body of economic theory. It is designed to address a particular relationship, that between owners and paid staff (or principle and agent), that is problematised within that theory. It is not clear that it works well (Ghoshal, 2005). There are alternative ways of identifying the problems in the relations between boards and staff (Blair and Stout, 1999). Other models (for example those with two or more boards) operate with good effect in many Northern countries (Turnbull, 2002). The model creates an inevitable tension at the heart of board practice: between its risk adverse fiduciary duty and its role of ensuring the organisation is

pursuing the strategies needed to enable it best to realise its mission. It therefore makes sense that our sample organisations should adopt those aspects of corporate governance theory which appear to inform good practice in the Asian context, but avoiding those which do not.

In addition to a democratic decision-making process, three more features need to be available for good governance for TSOs: transparency, accountability and financial sustainability. A major requirement for all these is financial reporting and making financial accounts available to the public. In many cases, however, economic aspects cannot be identified and analysed because of the secrecy surrounding it in Asian TSOs. The secrecy is for the donors' genuine desire to remain anonymous from the belief that revelations may be tantamount to showing off and jeopardise the 'merit'. From the organisational donors' (local as more significant than overseas) perspectives low publicity can create less demand on their resources, and they can then pursue their agenda, if any, with a select few TSOs at the receiving end. Our partners in India, Indonesia and the Philippines confirmed this fact. In certain cases, some interviewees threatened to abandon the interview should the interviewer insist on questions like sources and size of funds or reporting mechanism.¹⁰ Non-transparency and elite centrality in TSOs (mainly due to the founder's connections) undermine accountability.

Second, if TSOs are to be part of and to help build civil society within their respective countries then it is particularly important that they practise democracy. It is worth noting that only 12% of our sample or 18% of organisations in our sample that had members actually practised democratic forms of governance. These were more likely to be identified as good performers and to be accountable to a wider public. In the context of building social capital and a strong civil society, this failure of democratic process is significant and of major concern. It is likely that more participatory democratic processes are entailed, for example in the small informal non-incorporated organisations such as the Indonesian *arisan* or the Indian traditional *panchayets*. However, democratic practices are largely lacking in the larger, formally incorporated TSOs of our sample. This is particularly striking in the context of the dominant driving force, where a dominant patron makes most of the decisions. Indeed the patron/client model is not conducive to the construction of social capital or democratic processes. Bonding social capital generated in homogenous organisations (e.g. caste-based organisations in India) may be stronger than that in heterogeneous organisations; the other side of the social capital coin is its exclusionary impact. Thus development of social capital within a narrow base may have a negative effect on the generation of social capital across the wider community. Further, apparent social capital generated in a hierarchical society, dominated by the powerful patron(s) and where the people at the lower social strata accepts the 'inequality' as a given is also not helpful in TSO governance, or the wider community.

¹⁰In an earlier work from the Philippines, Aldaba (2001) found out that though 90% of the surveyed NGOs were registered with the Securities and Exchange Commission, most did not fulfil the government's requirements of annual reporting.

During authoritarian regimes, TSOs were seen as opposition-downsizing and social activism neutralising mechanism and encouraged, irrespective of their governance relationships. The contention is true even for party-dominated system of China and Vietnam where the TSOs have been allowed to grow because of their non-intervention in political structure and/or ideology. As a result of their movement in a relatively unguarded legal space, the TSOs have self-selected membership, and representation, and almost no competition of (or challenge to) ideas and/or leadership. Thus a large number of the TSOs that claims to be using a democratic model, in fact, demonstrate no competition among ideas and/or leaders.

Third, the role of foreign funders is important but not always positive. When we began this study, we imagined that we would find a strong correlation between organisations that were at least partly dependent on foreign funds and good corporate governance model. After all, some of them were amongst the strongest proponents of the view that civil society becomes stronger with the strengthening of the third sector. Some at least appeared as champions of the corporate model of third sector governance. We did indeed find some supporting evidence for this. The presence of foreign funding in Asian TSOs meant that it was more likely to be incorporated, to have a board and to practise good financial and accountability practices. On the other hand, we also found that the TSOs that had a dominant driving force, that is, that failed to follow either a corporate or a democratic model of governance, were significantly more likely to be dependent on foreign funds. TSOs with a democratic model of governance were significantly unlikely to receive foreign funds.

The encouragement of democratic governance should be espoused by those international agencies that have contributed so much to the growth of a strong third sector in our six countries and still exercise a considerable influence, far broader than their financial writ. But our findings about the role of foreign funders suggest that they will have to change a good deal before they encourage the good practices and outcomes that they espouse.

Five TSOs in India were found to be working as subagents for larger TSOs, which would take all the decisions pertaining to the course of action and assign the implementation work to these TSOs. Thus, these are nothing but the paid agencies for discharging the work for others, like a paid labour force on contract. As against this trend, most (93%) of unincorporated organisations¹¹ have been found to be working in a single chosen functional area. This fact indicates a possibility of the TSOs moving towards the functional areas for which funding is available, rather than focusing on a particular area of their concern and strength. Unregistered/informal initiatives do not look for outside funds and hence are more committed to and focused on a single activity.

¹¹The study uses data drawn from 14 unincorporated TSOs to provide insights into different process of governance practices, a study undertaken to understand the governance practices of unregistered initiatives in India by Third Sector Research Resource Centre (unpublished).

Conclusions

In the recent past, the third sector has been growing steadily all over the world. There are two important aspects related to TSOs that call for better governance, control and efficiency. Donor countries and international organisations are emphasising more third sector involvement in overseeing state activities. Thus TSOs should set their homes in order first. Second, with the drying up of overseas funds TSOs will have to depend on indigenous funds. The more credible the TSOs are, being efficiently managed, the more likely they are to raise more funds.

The research found that there is a movement towards the corporate model of governance. Although there is little clear thinking about governance in any of the six countries, there is a basic acceptance that a TSO must have a board and that board plays an important role in its governance. There is a widespread acceptance of many of what would be classed as good practice governance and management in Western countries, but the complete model is only followed in a few cases. There are two reasons for this isomorphism: one is the mandating of board model of governance in almost all pieces of legislation incorporating TSOs. (Some of these date back to colonial times). But, secondly, the pressure to adopt more complete 'good governance' practices is strongly driven by the international funding agencies. There is a significant link between good governance practices and being recognised as a well-performing organisation, even after size is taken into account. However this is particularly true of the larger economically significant organisations. In a few of our six countries there are still many organisations that are run on traditional lines, in other cases there are still vestiges of traditional practice. There is some evidence of a life cycle; organisations are dominated by a founder for the first decade or two and have weak ineffective boards but as the organisation grows and as the founder moves out of the driving seat, the conventional forms of governance become more important.

Asian TSO governance is seen to be concerned with formulating, reviewing and realising the TSOs' vision, mission and goals. This relates to decision-making processes and structures involving the board, leader and staff. Democratic governance in the TSOs is thus about good intentions for an equitable outcome by the CEO, leader, or the members, and not about policymaking by the democratically elected board. Democratic or good governance in the TSOs appears not to be about means (i.e. by the people); rather it is about the ends (i.e. for the people).

In summary, then, it appears clearly that the corporate model of governance, whether in its corporations' governance version or its non-profit/third sector version, is far from being self-evidently the best model available. So why is it being pushed onto TSOs in the South by government aid agencies, the Organization for Economic Cooperation and Development (OECD) and private foundations, both grant-making and technical support providing?

The answer to that question is probably for the same reasons that the corporate model of governance is being urged for Southern companies as well. The Northern advocates have funds to invest (or to grant) and feel a great deal more secure if the recipients of these investments (grants) behave in ways they are familiar with.

This may also explain their preference for a charismatic driving force with whom they have developed a personal relationship. As well, they stress the importance of transparency to make their work of judging whether their funds have been applied to the organisations' mission and determining the success of that mission, that much easier.

There are two other reasons why the corporate model and particularly one of its key attributes, transparency, is being urged on TSOs in the South. Both are to do with the claims that parts of the third sector make to be the voice of civil society. Many international organisations, such as the World Bank, that have accepted these claims and wish to use these organisations to keep the governments honest necessarily have to insist that the third sector models transparency in their governance. Others, including some Southern governments and TSOs representing business interests, frequently claim that these TSOs wield far more power than their narrow constituency base warrants. They argue for third sector transparency, especially of membership numbers and processes to demonstrate constituency support for positions advocated. Interestingly, as noted above, organisational democracy is not a matter of great interest to advocates of the corporate model.

So, to end with a question, should the corporate model of governance be advocated as the best and most appropriate form of governance for TSOs, whatever their purpose and wherever they are found? The answer to that question can only be: no, at least not until we know a great deal more about the way TSOs actually are governed in other countries because while the corporate mode of governance has not been found to be flawless, and other approaches seem to be achieving similar or better outcome.

We need to know a lot more about the way, in different Southern countries, deep-seated cultural factors affect the governing of organisations. In all countries there is a tradition of collective voluntary action, and forms of TSO that are hundreds, even thousands, of years old. How have these adjusted to the forces of modernisation and globalisation? We need to know about the way governments interact with TSOs, not only through legal and administrative processes but also the sorts of rules and practices attached to funding and the ways various forms of corruption might affect the operation of organisations. We need to know whether and how officials of political parties and local power brokers create a difficult environment for TSOs and the various methods they use to negotiate these difficulties.

Chapter 12

Third Sector Governance in China: Structure, Process and Relationships

Yuanzhu Ding¹

Third sector governance is a new term for Chinese people as well as for government officials,² researchers and grass-roots non-governmental organizations' (NGOs) leaders. The term is, however, increasingly becoming popular because 'it is important that NGOs are accountable for their actions'. Given the nature of their organisation and the work, the accountability process and the regulations for its compliance are complex because the NGOs 'need to be accountable to many different parts of society' (Watson, 2002). Dr. Yu Keping (2003), one of the scholars who have used 'governance' in their political writings, see the term as a means of decision-making process in which public participation should play a very important role.³ Dr. Yu also distinguishes 'governance' from 'government' on two aspects—from public participation and control perspective (i.e. governance means public participation and government means a small group that controls public), and the location of decision-making (governance is a bottom-up process, i.e. decision-making on the basis of public meetings) (Keping, 2000).

The exponential growth of the non-state organisations in the past couple of decades has also enhanced the significance of dealing with third sector governance in China. The increase in the number, size, capacity and influence of the third sector organizations (TSOs)⁴ has been the result of economic transition of China and the

¹The research work was undertaken at the Research Center for Volunteering and Welfare (RCVW), Peking University under the leadership of Professor Yuanzhu Ding. Data entered by Ms. Guo Lin. Other researchers (all at the PKU) included: Yongping Zhou, Associate Research Fellow, RCVW, Xin Qi, Department of Sociology, Liping He, Department of Social Work, Lin Guo, Program Assistant, RCVW, and Carmen Xu, assistant, RCVW.

²This is not only because of increased advocacy from international community but also because of speedy government reform in China.

³He used the term even in the mid-1990s, when 'governance' was very sensitive, because it had something to do with democracy. So far the political issue is concerned, around that time various social organisations begin to emerge and the villagers' 'self-governing system' based on civil organisations was gradually implemented. The dissemination of Dr.Yu's ideas was limited to a small academia—but small pioneering scholars most of whom were Western educated.

⁴The Department of NGOs Administration of the Ministry of Civil Affairs, on Mass Organisations, September 2003.

expansion of governance, telecommunications, globalisation and economic integration. The United Nations, other international agencies like the World Bank and the Asian Development Bank and international NGOs like the Ford Foundation and the Asia Foundation also have been playing a very important role in promoting the third sector and the improvement of its legal environment by providing funds, ideas and knowledge.

This chapter discusses the political system and regulatory regime in China; the legal system highlighting registration and administration process and requirements, and its influence on TSO governance; the key informants' perception about TSO governance including TSO governance responsibility; and the results of the organisational survey focusing on the profile, staffing and funding of the TSOs, decision-making structure and process, and planning and financial management processes. Finally, the chapter looks at the performance evaluation and external relations mechanism of the TSOs in China and draws some conclusions.

The Political System and the Regulatory Regime

Before the reform programmes initiated in the 1980s, the Chinese State had a highly centralised power and regulated all aspects of citizens' life. Except for a few mass organisations set up by the Party and the government (e.g. China National Youth Federation, All China Women's Federation, some non-profit institutions), there was no room for private, social, or non-governmental organisations. At the advent of the Great Culture Revolution (1966), there were fewer than 100 national social organisations in China. According to statistical data from the Ministry of Civil Affairs, the total number of TSOs rose to 230,000 in 2001 (with 134,000 social organisations and 100,000 private non-enterprise or non-commercial institutions or *minban feiqiye danwei*).⁵ In addition, many of the TSOs are not registered with the government (informal organisations) or are registered with the industrial and commercial administrations (as profit-making entities).⁶

This growth in the third sector has been the result of supportive activities at different levels of government. The top level, constitutional laws, formulated by the National People's Congress, includes three sections: laws, decisions and constitutional documents. The *Constitution of China* (1982) grants freedom of association to its citizens. The Communist Party of China (CPC) takes a crucial role in regulating the development of social organisations. For example, the CPC decisions in 1994 created a favourable political environment for the formation of professional organi-

⁵ Jiang Li, deputy minister of Ministry of Civil Affairs, Speech at Shanghai International Seminar on the Development and Administration of NPOs, November 2002.

⁶ Seminar on the TSOs in China, RCVW, October 2002.

sations.⁷ In addition, the growth, functioning and governance of the TSOs are influenced by the Penal Code, the Tax Code, the Donation Law, etc.

The second level includes State Council regulations (including rules and other decisions) formulated by the State Council. For example, the *Rules for Social Organisation Management and Registration* and the *Provisional Regulations for the Management and Registration of Civilian Non-Enterprise Institutions* were issued by State Council in 1998. There are also four specialised regulations for the third sector.⁸ These four regulations construct the primary framework for third sector administration and registration in China today (Yong, 2003). Apart from the TSOs formed under the above regulations, some of the TSOs are established on the basis of Civil Law or other sectoral regulatory laws.⁹

The third level includes regulations and policies issued by different departments under the State Council, including the Ministry of Civil Affairs' regulations.¹⁰ Sometimes, two or more departments jointly issue the regulations.¹¹ The Ministry of Civil Affairs has more than 50 rules or regulations for the TSO administration. In addition, the Ministry of Civil Affairs, Ministry of Finance, State Economic and Trade Commission, State Taxation Administration, State Industrial and Commercial Administration also formulated rules and regulations related to tax, finances, etc. of the TSOs. The fourth category of laws regulating the TSOs and its governance includes the laws, regulations, policies, rules and other guidelines by the Provincial People's Congress, Provincial Government and departments under provincial government.

These regulations and rules in general permit citizens to form associations—social organisations or civilian non-enterprise institutions, but the government still places restrictions on social organisations with political or religious purposes.

⁷Chen Tingzhong, Interview report, 2002. In 1994, the Fourth Session of the 14th National Congress of Communist Party approved the Several Decisions on Establishing Socialist Market System, in which the Party recommended the creation of more room for developing professional associations. The Political Report of the 15th National Congress of Communist Party reaffirmed the role of professional associations in establishing socialist market.

⁸Such as Rules for Social Organisation Administration and Registration (1998), the Provisional Regulations for the Administration and Registration of Civilian Non-Enterprise Institutions (1998), the Provisional Regulations for Foreign Chamber of Commerce in China (1989) and Rules for Foundation Administration (1988).

⁹These laws include the Law on Corporation, the Rules on Private Firm Registrations, Law on Individuals to Run Business in Partnership, Rules for Health Care Management, the Rules on Social Forces to Create Educational Organisations, the Law on Promoting Civilian involvement in Education Development, the Law of the People's Republic of China on the Protection of Disabled Persons, Law of Lawyers, Law of Relic Protection, Solution on China Association of Returned Oversea Chinese, etc.

¹⁰For example, Rules for Managing Official Seal of Social Organisations, the Ministry of Civil Affairs Circular for Re-checking Social Organisations.

¹¹Such as the Circular of the Ministry of Civil Affairs and State Industrial and Commercial Administration: Rules on Social Organisations to do for Profit Business (1991).

Social organisations' registration can be cancelled if the leaders/the organisation move to these restricted territories. In 1998, the Organisational Department of CPC Central Committee and the Ministry of Civil Affairs jointly issued the Circular for Establishing Party Branches in Social Organisations. The registered social organisations with three or more party members should establish CPC branch under the leadership of the party organisation in the respective government-supervising agencies. This is to ensure the realisation of the Party's line, principles and policies through the functioning of the TSOs, as well as monitoring of the TSO activities.

In recent years, for promoting economic development, the government has created more room for the development of professional associations. In addition, in order to meet grim challenges of human development, such as aged, unemployed, poverty, etc., the government encourages the TSOs to deliver social service (Yunsong, 2003).¹² It is noteworthy, however, that the Chinese government has not specially formulated regulations to address the fiduciary responsibility, transparency and accountability of the TSOs. The existing legal and administrative system for the TSOs may spur the fiduciary responsibility, transparency and accountability more or less, in either direction.

Third Sector Legal Environment: Registration and Administration

There is no department of the State Council in charge of social administrative affairs, but one department under the Ministry of Civil Affairs is in charge of the TSOs. The TSOs should register in the Ministry of Civil Affairs or local civil affairs departments, and are issued a certificate of body corporate if the application is approved. Three types of social organisations are exempted from registration:

1. The eight organisations in the China People's Political Consultative Conference¹³ or their local branches.
2. The organisations approved by the State Council.¹⁴

¹²For example, Shanghai Municipal Government is creating a friendly environment for community organisations as well as aged home care organisations to deliver social service.

¹³Including All China Worker Union, Chinese Communist Youth League, All China Women Federation, China Association for Science and Technology, All China Association for Returning Overseas Chinese, All China Association for Taiwan Compatriots, All China Association for Youth and China Association for Industry and Commerce.

¹⁴For example, China Association for Literatures and Arts, China Association for Writers, All China Association for Journalists, China Association for International Communication and Friendship, Chinese People's Association of Diplomacy, China Association for International Trade, China Association for Disabled, Song Qingling Foundation, China Society for Laws and Regulations, etc.

3. The organisations approved by the government agencies, which run their business within their own agency system.¹⁵

A social organisation must first be affiliated with a government line agency which is to make sure that the proposed organisation targets to fulfil an actual social need, does not overlap with any other organisations, is not formed in any area where there already exists a similar organisation, and have members with educational qualification and skills required to offer the proposed service(s) and effectively run the organisation. When all these requirements are fulfilled, the proposed social organisation becomes eligible to register with the Department of Civil Affairs. In this twofold administrative system, both registration and administration authority, and the government-supervising agency are responsible for managing the TSOs. Based on the *Rules for Social Organisation Administration and Registration*, the responsibilities of registration and administration authority include registration, annual check and taking administrative disciplinary measures to the TSOs that violate regulations or rules.¹⁶

Mass organisations are an important component of the political life in China. The mass organisations listed in this section mostly are quasi-official in nature. The 'Procedures on the Registration of Social Organisations' stipulate that to set up a social organisation, the organiser must produce a document of approval from the department overseeing its operation. Such a department may be an organ or agency of the people's governments at and above the county level or those that have been delegated with the right of giving approval. In reality, the social organisations are placed under the administration of such departments.

A lot of grass-roots TSOs in the past failed to register as formal TSOs, because the government-supervising agency declined to take any responsibility for the TSOs' political views. Thus some famous grass-roots NGOs, like the Green Earth Volunteers, the Global Village of Beijing and the Friends of Nature had to register in the departments of Industry and Commerce, as for-profit organisations.

From the perspective of modern Chinese history, the development of China's TSOs has progressed through three stages. The first stage is from 1911 to 1949. Various NGOs emerged in this period because of the social factions and civil strife (Ming, 2001a). From the 1950s to the 1970s, there were only a few mass organisations in China. In the early 1950s, there were '44 national mass organisations and fewer than 100 in 1965, and there were 6,000 local mass organisations during this period' (Zhongze, 1996). In the third stage, since 1978, the number, size and capacity of the TSOs in China have increased exponentially reaching a total of about 230,000 registered and thousands of unregistered TSOs in 2001.¹⁷

¹⁵ Like China Association for Lawyers, China Society of Red Cross, etc.

¹⁶ State Council and Ministry of Civil Affairs, the Administration of Social Organisations, China Societal Publishing House, 1999.

¹⁷ See note 5.

The Legal Environment's Influence on TSO Governance

The *Rules for Social Organisation Administration and Registration and the Model for NPO Constitutions*, issued by the Ministry of Civil Affairs in 1998, require the TSOs to have a board, public meeting of members, legal person and a general secretary. According to the Rules, the public meeting is the top organ of the nonprofit organisations (NPOs), in charge of approving and amending the chapters of the TSO, selecting or recalling board members, considering the annual and financial reports of board committee, etc. Secondly, the board of directors is the executive body of the public meeting and in charge of routine work. Thirdly, a standing board of directors is available for the larger TSOs with many board directors, and plays a crucial role during adjournment of board of directors.¹⁸

Under the above-mentioned twofold administrative system, it is very difficult for the TSOs to have a genuine independent board or independent decision-making mechanism. The survey conducted by Tsinghua University found: less than 30% of the TSOs selected their leaders on the basis of regulations (more than 60% of the TSO leaders were appointed by the government-supervising agencies or nominated by the government supervising agencies). Secondly, almost half of the TSOs did not have a formal decision-making system, only 11% could make decisions on the basis of the formal procedure (Ming, 2001b).

At present, the government is more careful to deal with the TSOs, because China is entering a difficult time of transition with more and more unemployed (Ding, 2004). In order to punish the TSOs that violate regulations, new measures to supervise the TSOs have been introduced recently.¹⁹ For example, before running important events such as training programmes, workshops, conferences and international trips, the TSOs are now required to submit proposals and work plans to the government-supervising agency. The TSOs also should submit an annual report to the government-supervising agency for approval (before March 31 every year).

Third Sector Governance: The Key Informants' Perception

In China, especially in academia, different terms like the TSOs, NGOs, voluntary organisations, social organisations, religious organisations, unions, cooperatives, etc. are used at different times by different people. The government, however, has

¹⁸The Ministry of Civil Affairs, the Rules for Social Organisation Administration and Registration and the Model for NPO Constitutions, 1998 (in Chinese). Chairman of the board of directors is the legal person of organisation who signs important documents on behalf of the TSO and organizes and chairs the meeting of the board directors. The secretary general is responsible for daily work, nominating deputy secretary general and the heads of different departments and recruiting staff.

¹⁹The Ministry of Civil Affairs, The Rules for Social Organisation Administration and Registration, the Provisional Regulations for the Administration and Registration of Civilian Non-Enterprise Institutions, Beijing (in Chinese).

no interest in using the term ‘NGO’,²⁰ and promotes ‘social organisation’ as the official term. Some international organisations, such as the United Nations, like to use ‘civil society organisation’, for example in promoting these organisations’ role in the achievement of the Millennium Development Goals in China.

The top six terms used in China are (in proper order) social organisation, civilian-enterprise institutions, NGOs, associations, voluntary organisations and religious organisations. In the past few years, the term ‘NGO’ ‘is being disseminated by media, academia as well as the government sectors’ (Tuan, 2003). Interestingly, however, the key informant survey found that people from different regions have different preferences. In North (Beijing) and West (Xian) China, social organisations are more popular than the other terms. It may be, because, as we mentioned earlier, ‘social organisation’ is the official term, defined as ‘nonprofit organisations (NPOs), organised voluntarily by citizens, which conduct activities according to their charters in order to realise the common desires of their members’.²¹ In the recent past, the government also has been using terms like ‘civilian non-enterprise institutions’. In reality, ‘social organisation’ or ‘civilian non-enterprise institutions’ in China are not equal to the NPOs in the West or even in any other Asian countries.

People in the South (e.g. Guangzhou), however, are very familiar with other terms like ‘voluntary organisations’. Guangzhou, in the Pearl River Delta area, has well-developed export-oriented economies, attracts much foreign investment and has access to outside information. The Beijing and Xian areas lag far behind Guangdong in foreign funds or export-oriented industries. The Pearl River Delta Area has a well-developed civil society, including business associations (to protect the members’ interests through dialogue with the government), Hong Kong-based volunteer programmes and voluntary organisations working in Guangdong, or the volunteer programme organised by the Oxfam Partnership of Community Development. A very interesting thing in Guangdong is that a ‘volunteer’ there is called ‘*yigong*’ (be willing to contribute their time and energy to the people who need), which is different from North China (e.g. Beijing) where volunteer is called ‘*zhiyuanzhe*’ (be willing to contribute or are forced to contribute time and energy to the people who need).²² So the TSOs in the South are different from the North.

Governance is a public decision-making mechanism, in the sense that all directors take part in the decision-making for organisational development. The objective of governance is to make use of power to guide, control and institutionalise the various activities of citizens and maximise public benefit in the various institutional

²⁰ Because the government considers that ‘NGOs’ have some political meanings and assumes that the NGOs are antagonistic to the government organisations.

²¹ Comments made by Mr. Chen Guangyao, a former director of Department of NGOs Administration under the Ministry of Civil Affairs, see Zhao Liqing and Carolyn Lyoya Irving, eds., *The Non-Profit Sector and Development*, Hong Kong Press for Social Science Ltd., 2001.

²² The Central Committee of the Chinese Communist Youth League had requested Guangdong to use *zhiyuanzhe* instead of *yigong*, but was refused. Guangdong would like to have their independent options on understanding volunteerism.

relationships. From the perspective of political science, 'governance refers to the process of public administration' (Keping, 2002).

The Research Centre for Volunteering and Welfare, Peking University, organised three workshops in the summer of 2002 in three different places (Beijing, Guangdong and Shanghai) to discuss TSO governance. Most participants in these workshops were not familiar with governance issue, but they knew that grass-roots NGOs should well manage their funds and should keep a good organisational efficiency. But for many key informants for the study, governance is 'transparency', 'public participation and public supervision', 'high quality of leaders', 'rational power structure', etc.

Many respondents believe that accountability/answerability, as aspects of 'governance', require the use of funds for earmarked purposes only, in a transparent way seriously implementing the annual work plan and decisions made by the board. Thus the whole concept of governance refers to two main things: financial transparency and key roles of 'board' in decision-making. Many key informants thought that the integrity of and commitment to the missions are key indicators of third sector governance. They also identified good relationship between the chair of the board and the chief executive officer (CEO), holding of regular meetings of general body, board, and standing committees as well as high efficiency and good performance of the TSO as indicators of good TSO governance. In China, political background and political change are very sensitive not only for the TSOs but also for all people, that is why many people opined that political change will have significant impact on the TSO's development in China. The key informants also suggested that public recognition and support, good relations with the government, public supervision including media and the government significantly influence TSO governance.

TSO Governance: The Government's Responsibility and Relationships

The key informants were also asked about who should have the responsibility of the TSO governance, the extent of and reasons for government supervision of the TSOs. It seems, most people (43% of the respondents) in China think that board committee or management committee should have the main responsibility to ensure that the TSOs are well governed. Another 31% of the respondents think that the responsibility should be with the leader/CEO. It is interesting to note that 52% of the informants believe that, in practice, however, the leaders or the CEOs have the responsibility for ensuring that the TSOs are well governed because sometimes, in some organisations, board committee and management committee exist in name only without much responsibility. A handful of the respondents, however, think that the responsibility of ensuring that the TSOs are well governed should rest on the government (17%). In reality, however, at least 19% of them believe that the responsibility is with the government any way because some social organisations (with strong government supports) are required to have major decisions approved by their line administrative body.

Most key informants in China (41%) think that the government moderately supervises the activities of the TSOs, while only 21% think that the government has a great deal of supervisory system over the TSOs. It is worth noting in this regard that there is not much difference between the responses of the government officials and that of the TSO officials in their understanding of the extent of government supervision on the TSOs. Twenty-one per cent of the government officials and 26% of the TSO respondents thought that the government supervises the TSOs a great deal, while 36 and 37% of them, respectively, thought that the government moderately supervises the TSO activities. Most of the informants point out that the role of the government in monitoring and supervising could not be ignored, but then the extent of monitoring and supervision varies on the basis of the TSO's types and activities. Interestingly enough, however, 29% of the respondents (including 42% of the TSO respondents and 33% of the government respondents) did not respond to this question.

Only a tiny percentage of key respondents in China believe that the government supervision of the TSOs is to ensure the integrity of the TSOs (14%) and to make sure that the money is not diverted to undisclosed activities (12%). A very high percentage (60%) of respondents in China (including 57% of the government respondents and 68% of the TSO respondents) thought that the main reason for government supervision of the TSOs is to make sure that they are not involved in any politically subversive activities. Actually, the Chinese Communist Party, and the Chinese government's attitude towards the TSOs is self-contradictory. On the one hand, with increasing social problems, such as unemployment, aging population, disability service and rural migration, the government hopes that the TSOs can play an active role in delivering social service and other public welfare. On the other hand, the government worries that the TSOs may get involved in political activities, especially, anti-government activities like the Falungong movement. In their general strategy, the Party and the government give priority to social stability and economic growth. Before the reform and open-up policy, the Chinese government had borne responsibility for all the public affairs including aged insurance, health insurance, unemployment insurance, social welfare, relief, and special care for disabled and family members of the revolutionary martyrs, etc. However, with the reform of state-owned enterprises and the economic system, and the transition from the planned economy to market economy, the government is not able to bear these burdens any more. At the same time, more problems like environmental pollution and expansion of vulnerable groups are challenging the government. Therefore, the government is shifting its responsibilities to society, including the community organisations and social organisations. In 2000, the CCP (Chinese Communist Party) and State Council promulgated the *Decisions on Promoting Community Development*, in which, the Party and the government deemed the community as a crucial force for delivering social service in helping the unemployed, aged and disabled (Hao and Ding, 2002). Community organisations in China have received more action space than the other social organisations.²³ Thus as revealed by the key respondents the TSOs without any political motive are likely to grow further receiving the government's support.

²³ On May of 2001, the State Council launched the Project Star with US\$600 million to promote aged service in urban community.

In China, most of the TSOs have a management/board committee—usually called a board committee; the fact is corroborated by 86% of the respondents. In particular, the larger TSOs, like the China Youth Development Foundation, China Charity Federation, China Poverty Eradication Foundation, have their board committees. The committees consist of retired officials, famous scholars and famous entrepreneurs, etc. The Chairmen of most organisations with strong government background are retired officials. Usually, those organisations also have their administrative rank. The retired officials thus can still enjoy their administrative perks, including official transport, housing, secretary, etc. Generally, the CEO or the secretary-general plays an acting role in these organisations.

The respondents, however, were not sure about the laws governing the ‘board’. Only 52% thought that having a board in the TSOs is a legal requirement. In fact, *The Rules for Social Organisation Administration and Registration and the Model for NPO Constitutions*, issued by the Ministry of Civil Affairs in 1998, require the TSOs to have a ‘board’.

According to the key respondents, the major advantages of having a managing committee/board committee in the TSOs are that it brings tangible resources (power, prestige, connections) for the TSO (38%), it sets the overall direction and goals of the organisation and helps achieve those (36%), monitors efficiency and effectiveness of the organisation (7%). ‘Traditionally in Chinese society, decisions were taken by influential or respected individuals, rather than through laws or regulations. The Chinese term *guanxi* signifies the power of individual influence’.²⁴ In China, high-ranking retired officials, movie stars and famous entrepreneurs, among others, give the TSOs a high reputation and recognition; these are the greatest invisible resources for the TSOs. It is thus not surprising that the largest percentage of respondents thought that a managing committee/board committee brings tangible resources for the TSO, what is surprising though is that only 2% of the respondents thought that the managing committee/board committee can raise funds for the TSO.²⁵

Most informants think that the relationship between the managing committee/board/trustees and the chief executive of the TSOs is sometimes harmonious, the next is always harmonious, only a few people thought it is rarely or never harmonious. Usually, the relationship between the managing committee/board/trustees and their chief executive in the TSO relies on the relationship between the head of the managing committee/board with the CEO. This is the Chinese tradition, as we mentioned above, of *guanxi* that denotes a network of informal personal relationship that forms an invisible bond between the board committee and the CEO.

So far in this chapter we have discussed the legal environment of third sector governance and the perceptions of key informants about third sector governance

²⁴ UNDP, *China Human Development Report 2002*, p. 67.

²⁵ Whereas, it is revealed from our organisational survey (please see later) that 54% of the TSOs’ committee/board members seek donations from friends and acquaintances for the organisation.

in China. In the next part, we would like to analyse how these two relate to the actual situation in the field—based on the organisational data we collected for this research.

Profile, Staffing and Funding of the TSOs Surveyed

In this survey, the largest proportion of the sampled TSOs is in social service (41%); the lowest (04%) in religious activities.²⁶ The other types of organisation in the sample are fairly evenly divided, arts and culture (20%), business and professional (19%), education (27.2%), environment (11%), Law and advocacy (17%), and social and economic development (15%).²⁷ The TSOs we surveyed included a 103 year old and one that is only a few months old, but the largest number was 10 year old (50%) and 3 year old (25%).²⁸

Seventy-two per cent of the surveyed TSOs have legal status and only 26% do not. The survey also found that there is no strong relationship between location and legal status. More social service offering TSOs have legal status than the TSOs in other sectors. As mentioned earlier, due to the government's preference, it is easier to be registered as social service organisations than other types of the TSOs. The largest percentage (74%) of social service delivery organisations are either in civil affairs departments or in industrial and commercial departments. Further, a lot of grass-roots non-profit organisations could not register because any TSO should have a government-supervising agency, and the government agencies, in general, are not willing to take the responsibility of these organisations.

Sixty-one per cent of the surveyed organisations consist of members, and we found that the relationship between location and organisation's membership is very strong. Regional cities have more membership organisations (80%) than metropolis areas (43%). Membership in business and professional organisations are higher than in education organisations. A trend new in developed areas such as Pearl River Delta and Yangtze River Delta is that more and more business people are joining

²⁶ These social service delivery organisations are encouraged by the government and have more activity space than any other type of social organisations. Further, because of the political factors, the number of organisations involved in religious activities is also the lowest.

²⁷ It is worth pointing out in this survey, most of the TSOs only have one field of activity, and only 18 of the TSOs have two or more than two fields of activities. This survey is not based on a strict random survey, either.

²⁸ We failed to find or reach over the phone many identified organisations based on the sampling framework. This is either because they had moved and the address is not updated or they disappeared. The TSOs in China are not stable owing to the legal environment changes in financial support as well as personnel non-availability. Unemployed people form the TSOs only to leave those as soon as they get a better job, so the retention and commitment of the human resources are other challenges that the TSOs in China are facing.

self-regulating organisations as members to influence the market, protect their rights and to negotiate with the government on policy issues. In order to expand their organisations, business and professional organisations make great efforts in recruiting members in various ways. The survey found that most of the organisations with membership have between 100 and 499 members. While Friends of Nature has around 1,000 members, there is no correlation between field of activity and organisation.

Seventy per cent of the surveyed TSOs rely on paid staff and 28% on volunteers for achieving their mission. Paid staffs run proportionately higher number of business and professional organisations than organisations in other fields of activity, and play a key role in complementing the organisational mission. Fifty-four per cent of the organisations surveyed for the research do not receive overseas funds, while 44% do. In those organisations that receive foreign funds, in 56% cases overseas funds accounts for more than one third of their total revenue. Then again organisations located in the capital or large cities are more likely to have access to overseas funds than those in regional areas. Almost none of the regional cities have any access to foreign funding, and almost none of the business and professional organisations receive any foreign funding. Whereas, almost all surveyed organisations involved in the field of education and environmental protection have some access to foreign funds. But, interestingly enough, among all fields of activity, organisations in law and advocacy have the highest proportion of their funds sourced overseas.

The government provision of funds for the TSOs in China is worth noting. Fifty-six per cent of the organisations in this survey receive funds from the government, while 43% do not. The government support for these organisations is reasonably significant because funds from the government amount to at least one third of their total revenue. There is obvious regional variation in this regard. Seventy per cent of the organisations in this survey receive domestic donations. Almost all the TSOs in Beijing and all over the country in the business and professional category receive domestic donations. Apart from the three above mentioned funding sources (overseas, government and domestic donations), 68% of the surveyed TSOs have other funding resources, with at least in 62% cases amounting to one third of respective total revenue. This is more evident in regional locations and business and professional organisations where the funding source is primarily membership fees or service delivery fees. The data show that at least 50% of the law and advocacy organisations in this survey have no other funding resources, nor do the religious organisations and social service organisations. In the first two cases, they cannot have membership or service delivery fees; in the last cases, money was in such abundant supply from the first three sources that they do not need to mobilise other funds.

The activities and funds of the surveyed organisations have increased in the three years prior to this survey for most surveyed organisations. The survey found that 88% of the activities of organisations over the past three years have grown, whereas 12% of them maintained the same. The increase has been consistent across the board with no significant variation among regions or among fields of activity.

The above facts only corroborate the claim that interests of the government, funding agencies (local and overseas) and the people all are in the rise in China. The cooperation among the three sectors, for example state, market and the TSOs, could remove the negative impacts from marketisation. Practices have shown that each of them could not fully promote economic growth and social development, and could not solve all social problems alone. In order to promote economic growth and social development, the three sectors should work together and to formulate suitable policies and concrete measures. In the next sections of this chapter, we try to look at governance processes and external relationships of the TSOs to suggest measures for improvement for the above.

TSO Governance: Decision-Making Structure and Process

The survey found that, usually, board or trustees play the key role in decision-making, and 52% of the organisations surveyed have this power structure. The CEO or founder of the organisation also has the final say in 17 and 14% cases, respectively. In this regard, we have not found any difference in the location of the organisation or the field of activity of the organisation. But, in some TSOs in Beijing, the founders do have the final say. But, with organisational development or where the founders are not in the prime of life and with no vigour of youth, the organisations lack motivation or lose members and become weak.

Seventy-nine per cent of the TSOs surveyed have a driving force. We found 49% of the driving force is the founder, and in 26% of the surveyed TSOs it is the CEO. Generally, the proportion of driving force being the chairperson of the organisation is much higher in social service organisations than in organisations involved in other fields of activity, e.g. arts and culture.

In the open-ended questions, our interviewees listed the driving force as (in accordance of occurrences): president, secretary-general, legal person, chairman, dean, director, chairman of board committee, CEO, executive president, vice-president, board director, coordinator, founder, etc. Expertise and competence (41%) are the crucial reasons for these people to become the driving force, while political connection (17%), charisma/personality (14%), integrity/moral uprightness (9%), performance/track record (4%), position (7%) and fund-raising (4%) also have been the reasons for their becoming the driving force. In the regional cities, comparatively more TSOs recognise political connection, charisma/personality, performance/track, position and fund-raiser as reasons for being the driving force. In the capital city, according to the interviewees, expertise and competence make the 'driving force'. Social service organisations give importance to political connection, charisma/personality, integrity/moral uprightness, position and fund-raiser. Business and professional organisations prefer political connection, performance/track record and position. Organisations in other fields of activity recognise expertise and competence as the main features of the driving force.²⁹

²⁹ We also have confirmed these relationships through statistical tests.

Almost all of the organisations in the survey (except 15%) have committee or board. The proportion of the organisation that has committee or board in the capital city or large regional cities is higher than in small cities. The size of the board differs from up to 9 members (27%) to 10 to 49 (36%). But we also found the TSOs with 100+ members in the board. There is no obvious difference in location and sector in this regard. Paid staff seem not to have much say in these organisations—only about 50% of the organisations have paid staff in the board but accounting for not more than 10% of the board members (in 14% of the surveyed TSOs paid staff occupy about 50% of the board positions).³⁰ Although almost 90% of the surveyed TSOs have women in the boards, they usually account for 10–50% of the total board positions. The members come from disadvantaged groups within the wider society, and ex officio officers of the organisation are no more than 10% in most of the organisation in the survey (around 69% missing). Most board or committee members are elected by members/constituents; the proportion of elected members is higher in regional cities than in the capital or large cities. The proportion of the other members like government officials, appointed by the committee/board, appointed by the CEO/founder/chair and appointed by the stakeholders (e.g. another TSO) is no more than 50% of the board or committee members, in which the member appointed by the CEO/founder/chair is the least—less than 10%.

The survey also found that in 37% of organisations, the CEO is also the chairperson of the board committee (about 43% missing) with a lower percentage in social service organisation. But a higher proportion exists in social service, in which the chairperson of the board comes from the stakeholders (about 46% missing). The respective board selects its chair, and almost all the TSOs have a board committee. We found only about 6% of members regularly donate funds to their organisations, but 77% provide suggestions to their respective TSO, and there is no obvious difference among regions and sectors. Thus apparently board members bring their expertise to the board, not the cheque book.

Around 65% of the TSOs meet on a regular basis (25% missing responses) with up to five meetings a year (one organisation holds weekly board meetings), 17% do not. Those that are located in large or the capital city hold more meetings than those in other locations—presumably board members in large cities are more conscious, interested, and eager to contribute than their regional counterparts and make it happen. The TSOs in education, social and economic development, and social services hold more regular board meetings than organisations in other fields of activity with business or professional organisations organizing the least numbers of regular meetings.

Irrespective of the numbers of meetings held, decisions at these meetings are generally made by consensus (61%) (with voting in 22% cases). Seventy-five per cent of the respondents said that minutes or a written record of the meetings are kept (only a few do not: 7%). More TSOs in metropolis or large regional centres keep minutes or a written record than organisations in other areas. Only 58% of the

³⁰There was the highest 54% missing responses for this question.

TSOs, however, hold annual general meetings—22% do not. Again more public meetings are organised by the TSOs in metropolis and larger regional centres than those in local areas. In short, general meetings are common in most TSOs, and in most cases prohibit public participation, and make major decisions and keep minutes or a written record.

Many of the TSOs in our sample did not have boards. In those organisations, the head of the organisation drafts project plan and sends it to the higher rank leader for approval. For example, in Guangzhou, there is an informal organisation with a neighborhood committee as the ‘mother-in-law’ (approval and supervisory body), responsible for the organisation’s work plan and decision-making. In some other TSOs, the major decision-making is undertaken by the staff with universal participation. For example, in the Labor Right Protection Center (East China Law and Political University), the head of the TSO outlines proposed activities and the secretary-general along with the staff draft detailed proposals for the Head’s approval. In some other cases, the decision process is more democratic. For example, the Head puts forward a proposal and the participants approve it (e.g. Youth Studies Society of Xuanwu District) or smaller groups propose resolutions, while the final decision is made by all members (e.g. Organisation of Social Gender and Development). There are also instances of democratic centralism where the decision-making is vested at the top (e.g. Beijing Yuanmingyuan School) or the organisers put forward proposals to the purpose-built committee for approval (e.g. China Foundation of Literature). Except for one or two cases, the TSOs without any board do not hold annual general meetings.

TSO Governance: Planning and Financial Management

The Survey found that 95% of the TSOs undertake formal planning activities, to achieve the missions enshrined in the Statement (93%), and 90% prepare plans before initiating major projects. In 70% of surveyed organisations, the board regularly checks the implementation of the plan and strategy. Eighty-five per cent of the TSOs have their business strategy plan, without any significant differences across fields of activity or location. In about 50% of the TSOs, the board/committee gets involved in succession plan for the CEO or member of the board (36% do not get involved in the planning). More board committees in the capital and larger cities get involved in the succession planning for the CEO and for the board members than the TSO board committees in other regions.

Committee/board in 61% of the TSOs take part in strategy/business plan formulation, only 19% do not. Business and professional organisations’ committee or board gets less involved in strategy/business plan formulation than the TSOs in the field of law and advocacy, economic and social development. The data also reveal that the strategic plans in most of the TSOs (72%) are approved by committee or board (not in 10%), without any significant differences along sectors. Again in 54%, the TSOs’ committee or board participates in regular examination of the strategic

plans (while 26% do not). The committee or board of the TSOs in the metropolis has more involvement in these activities than the TSOs in other locations. In business and professional organisations, the board is involved less in the regular examination of the strategic plans than in the TSOs offering educational services. One obvious reason for this is while overseas or government funding for the business and professional organisations is the lowest, most of the TSOs in the field of education receive largest proportion of their funds from these two sources.

The TSOs that do not undertake any formal planning activities informed that decisions are made in different ways. For example, in some cases the higher-level authority makes decision for the TSOs (e.g. Guangzhou Association of Light Industry), the TSO itself arranges activities based on the regular policy instruction from the higher-level authority (Guangzhou Young Volunteers Association), the TSO arranges activities based on the guidelines of the umbrella body (e.g. Youth Studies Society of Xuanwu District) or the TSO decisions are made by the District Government (e.g. Xi'an Disabled Person's Association). In some other cases, members work together to draft (e.g. Organisation of Social Gender and Development), or base their work plans on the national education development outline as well as the concrete conditions of the school (Beijing Haidian Yuanmingyuan School), or plans are approved by the ad hoc board committee (China Association of Literature).

Almost all the surveyed TSOs (90%) follow the required financial procedures. Further, 78% of the TSOs prepare annual budget, while all the TSOs in the education sector prepare it. Forty per cent of the TSOs have monthly cash flow budget. Proportionately, more TSOs in regional centres prepare cash flow budgets than do those in the metropolis. More business and professional organisations are involved in monthly cash flow budget than the TSOs in any other field. Eighty-four per cent of the TSOs, without much difference among regions and field of activity, offer their annual financial reports for public viewing. Seventy-six per cent of the TSOs (including 100% of the TSOs in education) have asset register. The survey found that 65% of the TSOs get their financial statements audited by a qualified auditor, but the TSOs in the metropolis do it more than the TSOs in the regional areas. While business and professional organisations arrange auditing of their accounts by qualified auditors, the TSOs in education, environment protection, art and culture, and social and economic organisations have a higher incidence of involving qualified auditors than the TSOs in other groups.

It is interesting to note that most (67%) of the TSOs do not release their detailed financial reports to the public, only 24% do but then the TSOs in metropolis areas release it more than the TSOs in regional centres. In only a small percentage of the TSOs (42%), the committees/boards get involved in annual budget preparation. The committees/boards in educational organisations have more involvement in budget preparation than the TSOs in other fields of activity. But the committees/boards in more TSOs (59%) get involved in approving annual financial reports, without much difference among regions and fields of activity.

Some committees/boards (40%), more in the TSOs in the metropolis and in the educational organisations, monitor organisational performance regularly. The boards/committees are more involved in approving financial reports (56%),

especially, in educational organisations. Most of the organisations have established a special committee like financial department or auditing committee to deal with the preparation and approval of financial statements, especially, in environmental organisations.

Where the TSOs do not have a formal financial procedure, the higher-level authorities of the TSO arrange funds or resources and also manage these resources and funds (e.g. Guangzhou Young Volunteers Association). In some cases, financial procedure is managed by the mother-in-law (e.g. Youth Studies Society of Xuanwu District), or controlled by the mother-in-law (e.g. Guangzhou Association for Disabled Persons). Some other TSOs establish a special foundation to raise and use funds where the founders play a key role (e.g. Light House in Guangzhou). In some other TSOs, the chief of the TSO makes the decision (e.g. China Study Society of Younger Crime), and in yet others all members collectively prepare, and monitor the budget regularly (e.g. Organisation of Social Gender and Development).

TSO Governance: Performance Evaluation and External Relations

The survey found that 62% of the TSOs have a performance evaluating system; among these more TSOs in education, environmental protection, law and advocacy, and social service have performance evaluating system than the TSOs in business and professional. Around 54% of the TSOs have a procedure manual. The proportion of the TSOs with a procedure manual is higher in law and advocacy than in the other TSOs. Fifty-six per cent of the TSOs have a written job description, with the highest in social service than in the other organisations, such as law and advocacy.

Forty-seven per cent of the TSOs undertake performance appraisal on a regular basis, while 37.0% of the TSOs have key performance indicators. More TSOs in environmental protection have key performance indicators than in other organisations. Thirty-one per cent of the TSOs have quality assurance procedures, such as client interviews. Fifty-nine per cent of the TSOs in all fields of activity carry out evaluations of the efficiency and effectiveness of their activities, but the TSOs rank the lowest in social and economic development—which is an unexplainable surprise. In short, although over half of the TSOs have a performance evaluating system, they look at it from different perspectives and the degree of performance evaluation is much lower than expected because of a controlled system of social activities in China.

In 44% of the TSOs (with 38% missing), the committee/board approves the appointment of the CEO. The proportion of the TSOs approving the appointment of the CEO in regional areas and in arts and culture and social service is higher than those in the large cities and in other fields of activity. Only in 37% (about 38% missing) of the TSOs, the committee/board reviews the performance of the CEOs, in terms of the key performance indicators, at regular intervals—the highest in the social service organisations than in other TSOs. Statistical analysis found there is

not much difference among regions and sectors. In 33% (about 41% missing) of the TSOs, the committee/board gets involved in reviewing the quality assurance procedures, while in 43% (about 40% missing) of the TSOs, it gets involved in evaluating the efficiency and effectiveness of the organisation. In short, a large number of the TSOs opted not to respond to most questions under 'performance and evaluation'. Thus the TSOs require much effort in improving the institutional systems because there is a strong correlation between the institutional building and the committee/board performance evaluation.

The TSOs that do not have a formal performance evaluation system handle the requirement in many different ways. For example, the performance evaluation system in some of the TSOs is controlled by the respective line department of the government (e.g. Health Care Authority for the Guangzhou Society for Red Cross) or by the respective higher-level authority (e.g. Guangzhou Association for Disabled Persons), or is monitored by the mother-in-law (like Guangzhou Light Industry Association). In some other TSOs, the CEO allocates responsibilities (e.g. China Association of Folk Photographs), the responsible project officials take the initiative individually and then report to the organisation, and the secretary-general implements the tasks (e.g. China Cultural and Economic Foundation for Returned Chinese Overseas), the team leader undertakes the task (e.g. Xi'an Shangyiyu Community Dancing), and the committee implements the tasks on the basis of the government's policy (Shanxi Provincial Association of Islam), through professional committees and different departments (e.g. Guangzhou Association for Constructive Materials), under the leadership of the secretariat various professional groups play their role (e.g. Guangdong Auto Industrial Association) or under the leadership of the secretary-general the departments play their roles (e.g. Guangdong Security Association).

Sometimes, the mother-in-law also can guarantee the daily work of the TSOs (e.g. Guangzhou Society of Red Cross). In most cases, however, the TSOs are controlled by higher-level authority (e.g. Guangzhou Light Industry Association), hand in monthly report to the higher-level authority (e.g. Guangzhou Young Volunteers Association), report to the secretary-general (e.g. China Economic and Cultural Foundation of Returned Overseas Chinese), hold regular meetings, prepare regular reports and hold regular discussions (e.g. China Foundation for the Prevention of STDs and AIDS), or manage the organisations on the basis of the government's policy (e.g. Guangzhou Association of Disabled Persons). In some of the TSOs, the experts are responsible for professional work, preparation of the monthly reports, and implementing the project on the basis of the work plan (e.g. Guangdong Provincial Chain Business Association), or regularly contact the beneficiaries who evaluate, provide their comments and suggestions (e.g. Social Work Group at China Women's College).

Ninety-one per cent of the TSOs under this survey report their activities outside the organisation, while 74% have a formal mechanism of reporting activities outside the organisation (17% do not). All of the art and cultural organisations, social and economic development organisations have a formal mechanism of reporting activities outside the organisation. Seventy-seven per cent of the surveyed TSOs produce an annual report, 62% produce a regular newsletter and 61% have a website. The survey found that more educational TSOs have website than the TSOs in other

fields of activity. Sixty-seven per cent of the surveyed TSOs prepare funding submissions to the government and/or other funding bodies. Eighty-one per cent of the surveyed TSOs coordinate with the TSOs providing similar services. The survey found that all of the social service organisations coordinate some of their work with other TSOs providing similar services. Sixty-nine per cent of the TSOs make representations to government on matters other than funding for their organisation. In short, most of the organisations have a formal mechanism of reporting activities outside the organisation, which shows that they pay close attention to external relationship and their own image.

Fifty-nine per cent of the TSOs' committee/board gets involved in the preparation of submissions to funding bodies. The proportion of the committee/board getting involved in the preparation of submissions to funding bodies is higher in law, advocacy, social and economic development TSOs than organisations in other fields of activity. Forty-seven per cent of the TSOs' committee/board members approve submissions to funding bodies; 38% of them get involved in making representations to the funding bodies. Fifty-four per cent of the TSOs' committee/board members seek donations from friends and acquaintances for the organisation. Sixty-nine per cent of the surveyed TSOs' committee/board members negotiate or help negotiate around the political system on behalf of the organisation. The survey found that the proportion of the committee/board members who negotiate or help negotiate around the political system on behalf of the organisation is the lowest in educational organisations. In short, the committee/board has less participation in dealing with external relationship of the TSOs. On the other hand, the committee/board plays a great role in seeking donations from friends and acquaintances for the organisation and negotiates or helps negotiate around the political system on behalf of the organisation.

If the funds of the TSOs that do not have a formal procedure come from the government, organisations should report to the government. All important projects have to be reported to the government in advance and to be evaluated after completing them. The TSOs receiving overseas funds should report to the donors about the use of donations, report the implementation of work plan and budget two times every year (Guangzhou YMCA, women), or provide an annual report to the mother-in-law (e.g. China Study Society for Juvenile Crime), or report directly to the government, instead of preparing a written report (e.g. Youth Studies Society of Xuanwu District). Most of the surveyed TSOs make their activities known to the public by media including press conference (e.g. China Foundation for the Prevention of STDs and AIDS.), or media, website and brochures (Beijing Sun Special Children Assistance Center).

Conclusions

Governance is a new concept in China, and people are not familiar with it. It can mean different things to different people. Until now, the TSO governance is more popular in the TSOs than in the government, although some government departments have become conscious about the matter. But to many TSO governance refers to

internal management, (including ‘who’ and ‘how’ of making decisions). However, since 2002 there have been changes in governance and institutional structure because international organisations and donors request good governance as preconditions for funding; the concept of governance is disseminating among the TSOs because of increased research and training programmes; the rules and regulations instead of rule of man is improving self-regulation among the local TSOs; and a gradual shift from the government’s functions to societal functions.

In recent years, TSO development and governance have become key topics in China. In order to fulfil their mission, the TSOs need to create a better internal and external environment and build up a good image. In this research, by analysing different organisations, we intended to have a deeper understanding of the internal governance and accountability mechanism of the TSOs in China looking at the decision-making, financial management, planning, performance evaluation, external relationships of some selected TSOs. While, due to the legal requirements, it is highly expected that the registered TSOs will follow a corporate model of governance, many TSOs have devised their own model of governance—different variation of the model.

The research findings lead us to make some suggestions for improvement in Chinese third sector governance:

First, the TSO registration system needs improvement and taxation policy for the TSOs needs improvement. The TSOs require enhancing their capability, independence, self-governance and self-support.

A suitable legal framework for the development of the third sector in China, and laws that consider protection, encouragement and regulation of the TSOs but not only regulate them, needs to be created.

A new pattern of relationship on the basis of partnership and positive interaction between the government and the TSOs needs to be built up.

There should be a transition from dominance to social governance through cooperation, negotiation and partnership between the government, business and the third sector.

In order to create a better environment for the development of the third sector in China, the relationship between the TSOs and the government should have a fundamental transformation, that is (1) from direct administration to indirect regulation (by law, regulations and taxation policy, etc.); (2) from direct to indirect provision of public goods and services; (3) from dominated–subordinated relation to partnership; and (4) from singular administration to broad social governance with a tri-participation (including government, business and the third sector, etc.).

Various of the TSOs should also work to strengthen internal governance in order to improve accountability and capability: (1) increasing the organisational transparency and make their information of organisational structure, programmes and finance known to the public; (2) complying with some ethics, values and principles; (3) enhancing their management and functioning capability; (4) being good at using and opening up various resources, especially civil or social resources; (5) borrowing the experience of business management and improve the efficiency of functioning; (6) and striving for understanding, support and participation from the public.

Chapter 13

Third Sector Governance in India

Yashavantha Dongre and Shanthi Gopalan

The third sector in India is unique because it represents a public space where social aspirations converge in a vast, complicated and heterogeneous terrain through the work of incorporated bodies, unregistered organisations, informal groups and non-formal community initiatives. The best organized and most familiar forms of voluntary initiatives include the cooperatives and non-government organisations (NGOs), whereas self help groups, community organisations and associations of indigenous people are less formal, unregistered but have a wide geographic and functional coverage. The third sector in India has a long history, varied sizes and diverse structure and functions—complementing the vastness and cultural intricacies of the country.

The growth of the third sector in India has a lot to do with the socio-religious features of the country. Faith-based giving has been deep rooted in the Indian culture. In India, the concept of *Daana* (giving/charity) goes back to the Vedic period. The *Rig Veda* (a sacred ancient text) makes ample references to charity as a duty and responsibility of the citizen and the benefits that one earns through an act of charity. The first half of the nineteenth century in Indian history witnessed the emergence and rise of social reform movements with the advent of the British rule¹.

Immediately before and after the independence, a favourable government attitude towards the voluntary agencies existed in India promoting the activities initiated by the followers of Gandhi. There was also enthusiasm of the bureaucracy to contribute to the development process which gave impetus for the formation of the third sector organisations (TSOs) during the post-independence period (1950s). Although in the early years of independence, there was recognized space for the TSOs allowed by the government, the space disappeared very soon. The government and the third sector were in a virtual confrontation during the late 1970s because the latter was perceived to be supporting the anti-government movements. The situation began to improve again in the 1980s, and in the Sixth Five Year Plan (1980–1985) the federal government made budgetary allocations to provide financial support to voluntary organisations. The government identified new areas in which voluntary organisations as ‘new actors’ could participate. Under the Seventh Five Year Plan (1985–1990),

¹For more see, ‘Philanthropy and Third Sector in India’, in www.asianphilanthropy.org.

the Indian government envisioned a more active role for voluntary organisations in making the communities as self-reliant as possible. This was in tune with the participatory and empowerment ideologies, which were gaining currency in the developmental discourse at that time. The phenomenon continued in the Eighth Five Year Plan (1990–95), where a nation-wide network of voluntary organisations was sought to be created. The proactive state support to the TSOs, through a series of Union (federal) and State legislative measures, enlarged the reporting needs. The Constitutional provision for right to association ensures that the voluntary organisations enjoy adequate autonomy in terms of their management and governance.

In the ground, as a result, there is a kaleidoscope of TSOs. There are traditional associations like the caste associations, ethnic associations, kinship associations and modern associations such as the professional associations of lawyers, doctors, engineers, nurses etc. There are also informal and unincorporated community initiatives and associations of indigenous people. These TSOs coexist with the NGOs providing services to the needy and poor. Public advocacy, research and support organisations also exist in various forms (PRIA, 2000).

The exact number of the TSOs and the scale of their operations in India are not known. It is very difficult to make an estimation of the third sector in India because of the size, variety, informal nature and uncertain life span of the TSOs. A study conducted by the PRIA (2002), however, estimates that there could be as much as 1.2 million TSOs in India of different types and characters with nearly a half thought to be unincorporated. Those which are registered under any of the existing legislations generally fall under the category of trusts, societies, trade unions, cooperatives or joint-stock companies.

The third sector in India is predominantly rural based. More than half of the known initiatives in the country operate in rural areas. The vast majority of them are small, with only volunteers or one or two paid staff (PRIA, 2002). Given the fact that the TSOs' contribution in terms of monetary gains and development achievements is very large, the role of the TSOs is increasingly seen to be important in the recent past. With the declaration of the Millennium Development Goals (MDGs), the space for TSO activities has widened and has become more pronounced than ever before. The TSOs have a crucial role to empower people to participate in the democratic political processes and to be part of the decisions that have a bearing on their lives.

Because of the recent restructuring of social systems with the global integration of Indian economy, the activities of the third sector are more visible now. The state and the business sector in India have started attaching greater importance to partnering with the third sector. At present the third sector is considered to be an equal partner in the process of development with tri-sector collaboration being the *mantra* of the policy makers.² This has on the one hand made the functioning of the third

²The Agenda Bangalore Task Force, a committee formed by the government in collaboration with the third sector and the corporate sector representatives to work out the urban infrastructure development and to address the migrant population problem, slum clearance and security issues was a planned tri-sector partnership. The success of this partnership has been tried out in other cities too.

sector acceptable in the public realm, while on the other the need for and interest in the issues of accountability and credibility of the third sector has also considerably increased. Therefore it is pertinent to inquire into the governance practices of the TSOs to understand their social validation in terms of sustainability and survival in the public space.

This chapter is divided into five sections dealing with different aspects of TSO governance in India. The section following this introduction highlights the major aspects of the legal environment for the third sector. The discussion deals with the incorporation under, implementation of and the compliance with the legal provisions, and the implications of the legal environment on TSO governance in India. The next section briefly reports the main aspects of the key informant survey on the study focusing on the respondents' perceptions about TSO governance, indicators of TSO governance, supervisory nature and responsibility of TSO governance in India, and the TSO managing committee or boards' responsibilities in India. This discussion follows two sections dealing with the structure and functioning of the TSOs in India, and the TSO governance structure, process and issues in India. The last section deals with some observations and conclusions.

Legal Environment for the Third Sector Governance

India is a common law country, and has a legal system largely influenced by the British laws. There have been amendments and replacement of laws, nonetheless the basic structure and premise of legal framework remains largely similar to the British colonial laws. Further, the Indian Constitution (1950) has enshrined 'rights to association' as a basic right of all citizens.³ These two factors seem to have tremendous influence on the structuring of the laws related to the third sector.

Multiplicity of legislations is an important feature of the Indian legal system. It provides various options for TSO incorporation based on the nature and functions of the organisation, and the type of management system the members/promoters wish to have. The variety, however, leads to complexity in understanding the legal requirements, and forming a TSO.

Incorporation Under, Implementation of and Compliance with the Legal Provisions

The laws related to the incorporation intended to provide a legal personality for the TSOs are varied and include statutes on societies, co-operative societies, non-profit companies, trade unions, trusts, endowments and *wakf*. Legislations like the Income

³The Constitution provides that any group could freely form associations and the legal bodies will not intervene until there is evidence of breach of code of citizenship by such associations.

Tax Act and the Foreign Contribution Regulation Act are important as fund-regulating legislations. A brief overview of the major provisions and the thrusts of these legislations are presented in Table 13.1. The table provides a platform to understand how the law influences the governance of TSOs in India.

In the case of almost all the legislations, for incorporation or fund regulation, the implementing agencies are generally administrative officers appointed by the government. The registration process emphasizes that the competent authority has to be satisfied that all the conditions of registration are fulfilled. The requirement of periodic submission of reports, details of activities, accounts and audit statements ensure documentary provision for scrutiny by members or interested persons. This requirement guarantees transparency, and helps combat various types of oppressions and abuses through timely intervention by the implementing agencies. The policy makers devised implementing machinery with adequate safeguards against abuses. The implementation process, however, depends on the persons in the implementing agencies, and varies with changes in the personnel. The empirical data gathered from the field survey highlight this issue. The Societies Registrations Act 1860 (a federal or Union Act) provides a very loose skeletal framework for incorporation. This act does not detail the control mechanisms to be adopted. In view of its very wide scope and generic nature, all the states have passed State Acts within the wide framework of the Union Act. The state laws and rules provide for detailed controlling mechanisms.

The regulations under the state society registration acts are also nominal, for example the minimum number of members required to form a society is prescribed but the upper limit is not. The state acts nevertheless provide for details of conducting annual general body meetings (AGM) and roles and responsibilities of the members. These clauses envisage that the societies' purpose compliance is dependent on members' democratic participation in the society. In our study, nearly 40% of the societies did not have members other than the board members. These board members often have been holding positions (being re-elected every year) for many years since the inception of the organisation.⁴ All TSOs under the survey hold general meeting once a year to elect board members, scrutinize and approve the financial statements, etc.

Worth noting is that in about 50% of the member-based societies, only a few members attend the AGM though no serious deliberations are held at the meeting, anyway. In the other 50% member-based societies, the members are allowed to contribute to the major deliberations of the TSOs. Irrespective of the member influence in organisational deliberations, many societies (95%) did have sleeping or inactive boards where the secretary was responsible for making and implementing all decisions. Having a board and filing of annual income tax return are mandatory for the societies; it was, however, observed that at least one society had no board and four societies did not file their income tax returns. With all the above facts and data, it can be concluded that the compliance of societies' governance responsibilities, and its monitoring have been slack.

⁴The re-election provides a façade treatment of a legal requirement that the board has to be reconstituted periodically.

Table 13.1 Legal Tools for Third Sector Governance in India: Scope, Administration and Applicability

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
1 Charitable trust acts						
1.1 Indian Trust Act, 1882	Registration/incorporation Rights and duties of trustees and beneficiaries	Private trusts – either for charitable or other lawful purposes	Creation of trust, duties, liabilities, rights and powers of trustees Rights of the beneficiaries (not applicable to Jammu & Kashmir wakf)	Beneficiaries can compel trustee through legal proceeding to execute the trust and avoid breach of trust	–Facilitates creation of trusts-codifies rights and duties of trusts and beneficiaries –Less state control	–Lack of remedies outside the courts –Lack of state supervision
1.2 Charitable Endowments Act, 1890	Vesting and administration of property held in trust for charitable purpose	Public trusts for charitable purpose	–Defines charitable purpose –Constitutes treasurer for charitable purpose	Treasurer can use trusts property for the purpose of trust deed	State's involvement in ensuring proper use of trust property	Skeleton like legislation without elaboration for peoples' participation
1.3 Charitable and Religious Trusts Act, 1920	Effective control over charitable and religious trusts	Charitable and religious trusts	–Trustee to disclose object, income and value of trust	–Judicial interference in proper management	–Transparency by disclosure clause –Judiciary remedies breach of trust	–No extensive administrative control –Preventive mechanism is inadequate

(continued)

Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
1.4 Bombay Public Trusts Act, 1950	Detailed measures for governance of public trust in the state of Maharashtra	Public trusts	<ul style="list-style-type: none"> -Superintendence of public trust by charity commissioner -Quasi-judicial adjudication by charity commissioner 	<ul style="list-style-type: none"> -Suspension or dismissal of trustee by charity commissioner for injurious acts -Prevention of waste, damage or improper transfer of trust property -Special audit 	<ul style="list-style-type: none"> -Transparency -In-built checks by charity commissioner -Purpose compliance is effective -Economically more effective 	<ul style="list-style-type: none"> -Not much insistence on democratic governance -Workload on charity commissioner -Over dependence on charity commissioner
2 Society acts						
2.1 Society Registration Act, 1860	Regulation, incorporation, improving the legal condition of societies	<ul style="list-style-type: none"> Societies registered for the promotion of literature, science, fine arts, diffusion of knowledge, education, charity, political education, libraries -Non-profit bodies 	<ul style="list-style-type: none"> -Requirements for registrations -Annual returns about governing body -Legal personality of society 	<ul style="list-style-type: none"> -Purpose should be lawful -Alteration of purpose or dissolution only by general body by special vote 	<ul style="list-style-type: none"> Least intervention by the State -Facilitative role of law recognized 	<ul style="list-style-type: none"> -Loosely refers to democratic framework -Purpose compliance mechanism and financial discipline scheme ineffective

2.2	Andhra Pradesh Societies Registration (SR) Act, 1959 Karnataka SR Act, 1960 Madhya Pradesh SR Act, 1973 Meghalaya SR Act, 1983 Rajasthan SR Act, 1958 Tamil Nadu SR Act, 1975 Travancore-Cochin Literary, Scientific & Charitable Societies Act, 1955 Uttar Pradesh SR Act, 1976 West Bengal SR Act, 1963	Regulation, incorporation, improving the legal condition of societies within the state.	Societies established for promotion of charity, education, science, literature, fine arts, sports, foundation or maintenance of libraries, reading room, collection of natural history –Non-profit bodies	–Requirement for registration –Democratic framework of managing committee –Authority vested with general body –Control over transfer of property or use of funds –Extensive power of the registrar –Financial discipline	–General bodies' control and accountability –Annual audit and other reports to be placed before general body –Registrar's power of enquiry, investigation, surcharge and superseding appointment of administrator –Judiciary or registrar's power of dissolution and cancellation of registration	–Systematic democratic organisation –Well-conceived financial discipline –Effective scheme for purpose compliance –Laws are both facilitative and regulative	–Excessive governmental intervention amounting to regimentation –Freedom to disassociate is difficult to exercise
3	3.1	Co-operative society acts	Facilitating voluntary formation and democratic functioning of co-operative societies with membership from various states	Registration, authority with general board of directors from and able to general body, registrar's power of enquiry and surcharge	–Democratic functioning –Financial discipline –Central registrar's power of supervision	–Effective purpose compliance effective, financial discipline and economic efficiency –Emphasis on education on co-operation	Arbitrators' qualification not prescribed –Higher state control

(continued)

Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
Conventional						
3.2 A) Andhra Pradesh Co-operative Societies Act, 1964	Organizing the co-operative societies as democratic institutions and achieve the object of equity, social justice and economic development	Co-operative societies for promoting the economic interests or general welfare of its members or of the public	Registration, authority vested with general body, committee from and accountable aid to general body, free and fair election, and registrar's extensive powers	<ul style="list-style-type: none"> -Purpose of social justice insisted -Democratic functioning -Registrar's power of supervision 	<ul style="list-style-type: none"> -Regular, free and fair election -State aid -Democratic governance -Financial discipline -Dispute settlement through arbitrator 	<ul style="list-style-type: none"> -Excessive state control -Government actions encroach autonomy -Arbitrators' qualification not prescribed
B) Karnataka Co-operative Societies Act, 1959						
C) Kerala Co-operative Societies Act, 1969						
Mutual Aid type						
3.3 A) Andhra Pradesh Mutual Aided Co-operative Societies Act, 1955	Recognition, encouragement and voluntary formation of mutually aided, wholly owned self-reliant and self-help co-operative societies	Co-operative societies and federal cooperatives	Registration authority with general body, elected board of directors, no state aid, control by federal cooperatives, financial disciplining, co-operative principles well articulated	<ul style="list-style-type: none"> -Simple procedure for registration -Democratic framework -Dispute settlement by arbitrator 	<ul style="list-style-type: none"> -Conducive to liberal economy -More autonomy -Self-reliant -Less state intervention -Supervision by democratic body -Emphasis on cooperative education and equal participation 	<ul style="list-style-type: none"> -Arbitrators' qualification not prescribed
B) Karnataka Southardha Sahakari Act, 1997						

4 **Religious endowment acts**

4.1	Religious Endowment Act, 1863	Transfer of government's power of management to trustees	Endowments of mosques, temples and other religious establishments	Rights of trustees, appointment of regional committee members, members of regional committees, trustees duties,	<ul style="list-style-type: none"> -Trustees to give accounts -Committee to supervise -Suits for breach of trust 	<ul style="list-style-type: none"> -Autonomy to endowment -Concept of elected body of the committee -Control over trustee 	<ul style="list-style-type: none"> -Life tenure of committee member
4.2	A) Madras Hindu Religious and Charitable Endowments Act, 1951 B) Travancore-Cochin Hindu Religious Institutions Act, 1950	Administration and governance of all Hindu public religious institutions and endowments in the concerned state	Hindu public religious institutions and endowments including Mutts	Formation, rights and duties of trustees, powers of authorities	<ul style="list-style-type: none"> -Supervising powers of authorities -Religious qualifications and duties of trustee -Financial accountability for proper use 	<ul style="list-style-type: none"> -Systematization in temple administration -State authorities in purpose compliance 	<ul style="list-style-type: none"> -Lack of democratic framework for devotees' participation
4.3	Andhra Pradesh Charitable and Hindu Religious Institution and Endowment Act, 1966	Administration and governance of all Hindu public religious institutions and endowments in the concerned state	Hindu public religious institutions and endowments including Mutts	<ul style="list-style-type: none"> -Registration -Vesting of property in the institution -Appointment of board of trustees, rights, powers, duties and dis-qualifications of trustees -Powers of authorities 	<ul style="list-style-type: none"> -Requirement of giving accounts, audit and budget -Regulation on investment of funds and use of surplus funds 	<ul style="list-style-type: none"> -Trustee chair elected by the board -Elaborate measure about Tirupati Temple 	<ul style="list-style-type: none"> -Lack of democratic framework for devotees participation

(continued)

Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
4.4 Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997	Administration and governance of Hindu public religious institutions and endowments in Karnataka other than Mutts and institutions of religious denominations	Hindu religious institutions and charitable endowments other than Mutts and denomination institution	<ul style="list-style-type: none"> -Formation of committee for each notified institution -Advisory committee at state level -Powers of authorities 	<ul style="list-style-type: none"> -Requirement of giving accounts, audit and budget -Regulation on investment of funds and use of surplus funds -Power to suspend improperly working committee -Proper administration of common pool fund 	<ul style="list-style-type: none"> Extensive measures for financial discipline 	<ul style="list-style-type: none"> -Exclusion of Mutts and religious denominations -Lack of democratic participation of devotees
4.5 Wakf Act, 1995	Better administration of wakfs, superintendence and control of wakfs	Wakfs or permanent dedication by a Muslim, of any property for any purpose recognized by the Muslim law as pious, religious or charitable	<ul style="list-style-type: none"> -Formation of Wakf board -Distribution of power between Wakf board and Wakf commissioner -Appointment of executive officer of Wakf board -Restrictions on powers of mutawalli 	<ul style="list-style-type: none"> -Restrains on powers of mutawalli -Restriction on misuse of property -Executive officer's role -Wakf tribunal's interference 	<ul style="list-style-type: none"> Semi-democratic composition of Wakf board -Protection against misuse of mechanism for purpose compliance is effective 	<ul style="list-style-type: none"> Beneficiaries are not given any opportunity in decision-making

5	Trade union act					
5.1	Trade Unions Act, 1926	Registration, rights and liabilities of trade union	Trade unions	<ul style="list-style-type: none"> -Wakf tribunal -Prevention of misuse or improper transfer of property -Arrangements and requirements about registration of trade unions -Immunity from civil suits and from criminal liability -Funds, amalgamation dissolution 	<ul style="list-style-type: none"> -Registrar's power to cancel registration -Annual returns -Access to registrar 	<ul style="list-style-type: none"> -Scope for election of office bearers and democratic framework -Competence to involve in collective bargaining -No check against outside /political interferences -Purpose clause usually vague
6	Act related to non-profit companies					
6.1	Indian Companies Act, 1956 Section 25	Registration of non-profit companies/institutions	Not-for profit companies	<ul style="list-style-type: none"> -Arrangement and requirement about registration -Corporate entity -Privileges of limited company 	<ul style="list-style-type: none"> Acts done in violation of memorandum of associations are invalid, directors are answerable 	<ul style="list-style-type: none"> -Enables a corporate personality -General body meetings control policies and leadership

(continued)

Table 13.1 (continued)

Legislation	Purpose of the act	Organisations covered	Functional coverage	Measures for purpose compliance	Strength	Limitations
7 Fund regulating legislations						
7.1 Income Tax Act, 1961 (relevant provision)	Exemption from tax liability for business activities of non-profit organisations B) Tax treatment to voluntary contribution	Non-profit organisation	Activities for promoting public utility service or for earning profit to be used for charitable purpose are entitled to tax exemptions, and contribution to Charitable Trust (CT) is eligible for tax exemption, if the contribution forms the part of the corpus of CT	Income tax authorities are bound by mandatory duty Mandatory application of Income Tax law	Supports charitable acts Supports charity	
7.2 Foreign Contribution Regulation Act (FCRA) 1976	Exemption from tax accorded to foreign contribution to definite associations	Associations having definite cultural, economic, educational, religious or social programme, which are recognized by the central government	Permission to receive and exemption from tax, provided all particulars are furnished	Mandatory application of the Act	Supports charity	The process of recognizing association as fit for getting statutory benefit is cumbersome and not transparent

The cooperatives and endowments have been performing much better in accomplishing governance responsibilities. The Co-operative Societies Act and the Endowment Act under the Trust Registration Act provide for directions for financial management, detailed job descriptions of supervisory positions, as well as detailed directions for day-to-day activities of the organisations. Our sample TSOs, which are registered under the Co-operative Societies Act, notified and formed as charitable and religious endowment trusts did not show any deviations from the regulatory provisions. Their number is less than that of the societies, and there have been periodic monitoring by the competent authorities, which could be the reasons for better compliance.

Under the Company's Act (Section 25), non-profit distributing private business entities can be formed for promoting charitable and socially useful objectives. These organisations are formed as business entities and are run professionally complying with the legal requirements. Among the TSOs in our sample for this study (please see later), only one company was found to have deviated from the laws.⁵ In India, all 28 states have private trusts except for Maharashtra, Gujarat and Madhya Pradesh where trusts of public nature are also registered under the Private Trusts Act. These public trusts function like the 'societies' and maintain accounts like a 'private trust'.⁶

The trusts in our sample had 15 to 5,000 members.⁷ The trustee is required to fulfill the purpose of the trust by conforming to the directions enumerated at the creation of the trust (The Indian Trust Act, Section 11). The trusts have been very particular in observing this regulatory dimension, and in almost all (13 out of 16) trusts the final say rests with the Board of Trustees.⁸ All of these trusts have bank accounts and follow manual or computerized accounting system. Nine out of the 16 trusts, however, provide regularly (or if sought) financial details to the beneficiaries and general public, the rest do not.⁹

The absence of a central legislation for public trust covering all states has left a gap in the provisions of forming and controlling public trust. To overcome this, some states have enacted state legislations (e.g. Bombay Public Trust Act, Madhya

⁵The organisation does not hold AGM, though there are about 300 voting members. Nor does it provide the members with the details of meetings and other documents of the proceedings. This is a gross violation of the Law because the members have legal rights to have access to all the documents by paying a stipulated fee.

⁶The Indian Trust Act 1882 (ITA) is essentially applicable to Private Trusts. In the absence of a 'Public Trust Act' in many states, a large number of non-profit initiatives seek registration under this Act. Section 3 of the ITA clearly distinguishes between the public and private trusts, but does not mention the controlling mechanism for them.

⁷The ITA is silent about the minimum and maximum members of a trust.

⁸In three trusts, in our study, the founder still has the final say.

⁹These two are major transparency requirements for the trust. 'A trustee is bound a) to keep clear and accurate accounts of the trust-property, and b) at all reasonable times, at request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property' (The ITA, Section 20).

Pradesh Public Trust Act). The Public Trust Act (PTA) passed by different states works as an improvement over the ITA in checking and streamlining the Trusts' dealings. For those states where there is no separate act, an organisation working on or for the public has to register under the ITA, but they will be referred as public and charitable trusts.

Since the Bombay Public Trust Act (BPTA, 1950) is a pioneering and time-tested legislation, the other states, while enacting public trusts act borrowed the BPTA in its totality with some minor variations to suit the specific state needs. Public trust includes a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act 1860 (The BPTA, 1950, Section 2–13). It is due to this clause, five out of 18 organisations under this category in our survey, had registration both as a trust and a society. The size of membership of the trusts in our sample varies from zero (in 13 trusts) to 150,000.¹⁰ This is a positive development in the working of the trusts.

Availability of agenda to the board members before the meeting is a legal requirement and 16 out of 18 public trusts circulate the agenda to the members before board meetings. All the 18 public trusts noted that on an average, more than 80% of the board members attend the board meetings. The written objectives and its fulfillment are very important for a public trust's formation and continued existence. Accordingly, 17 out of 18 trusts had written objectives. The government is very keen on ensuring the trustworthiness of the trust and has a Charity Commissioner (CC) to monitor and enforce the legal regulatory provisions. The CC can declare a trust closed, if it fails to fulfill the objectives it was set for, the trusts are aware of this and abide by the legal requirements. Thus the TSOs appreciate a sincere purpose complying regulatory body, and abide by the rules.

The Trade Union Act (TUA) regulates the incorporation and organisation of the trade unions, and their rights and liabilities. Seven or more members of the TU may, by subscribing their names to the rules of the TU and by otherwise complying with the provisions, apply for registration as a TU (TUA, Section 4). No TU, however, shall register under any other societies, cooperative or company acts¹¹. The TU members, however, can form separate societies and cooperatives for the welfare of the members (TUA, Section 14).

In funds management, the Income Tax Returns (IT) and the Foreign Funds Clearance (FC, FCRA) are two important legislations that are used to very closely monitor the TSOs' accounting procedures. Hence, most TSOs have clear records pertaining to the IT and the FC. All the above noted incorporated bodies, except the non-profit companies have an open-ended provision. It could be either an Instrument of Trust or Societies Memorandum or the Rules Book of the TU. All these instruments give wide scope for the initiators to state what they really want to

¹⁰The BPTA 1950 does not indicate anything specifically about the membership and their rights.

¹¹These include The Societies Registration Act 1860, The Co-operative Societies Act, 1912, The Companies Act, 1956, etc.

do, how, and with what mechanism. Whatever is stated in the instrument is binding on the trustees and the members. The only open clause is that this instrument of trust, memorandum of societies and the rules book should not be against the interest of the beneficiaries and the law of the land. This indicates that the state has been providing enough space for the TSOs to function.

Legal Implications on Governance

The legal environment governing the third sector in India has donned the mantle of facilitative, protective and regulative roles by virtue of the country's inherent inclination for welfare democracy and orientation towards human rights. Although its interventionist posture is on the higher side and rather frustrating, the possibilities of abuses of organisational strength, especially because of the absence of countervailing forces, have called for an extensive framework of regulation. In-built mechanisms ensuring social justice, human rights and democracy have given both legitimacy and justification for the functioning of the regulatory system. The Indian system avoids the unhealthy extremes of both regimentation and licentious liberty. The analysis of different legislations and their provisions and empirical details pertaining to actual compliance with these laws and governance practices of TSOs reveal the following:

1. There exist multiple legislations, giving a wider choice for TSO incorporation.
2. TSOs can function without incorporation; incorporation increases opportunities of getting support from the government and donor organisations.
3. Relevant legislations address practically all aspects of governance such as democratic structure, participatory decision-making, financial accountability, external reporting mechanisms etc.
4. Implementing machinery is in place for all legislations (with substantial power – appointed mostly by the states) like for example, the Commissioner of Charity, Registrar of Societies.
5. The implementing agencies cannot pursue the compliance mainly due to inadequate number of staff to deal with proportionately large number of TSOs.
6. The implementing agency and/or judiciary investigate compliance failure only when a complaint is lodged.
7. Compliance with the provisions of the legislations is to ensure good governance. There are loopholes through which many TSOs can demonstrate their technical compliance without following the spirit of the law.¹²

¹²The Society Registration Act indicates that the board be formed by electing members from among the general members group and lays down the minimum size of the board; thus the spirit of the law is highly democratic. But many organisations have dishonored this spirit by limiting the membership to the minimum number of people required to form the board. In such situations the board members continue in the same position for a very long time.

8. The legislations give adequate space for the general public to keep an eye on legal compliance of the TSOs and to voice irregularities.
9. There are wide disparities in the adherence to the provisions of law partly because of the complexities of the provisions and partly because of the casual approach by the TSOs.
10. There is a need for streamlining the legal environment mainly to deal with complexities created by multiplicity of legislation.

On the whole, ‘choose a straight line of valid purpose, and sincerely follow it’ is the loud and clear message of the law to the third sector. Appreciation and internalization of this message both in letter and spirit tend to enhance TSO’s credibility.¹³ The Indian states seem to be keen to address the issue of TSO governance more through a policy framework than legislative mechanisms. Therefore, a National Policy for Voluntary Sector¹⁴ is drawn by the Voluntary Action Cell, Planning Commission, Government of India and is placed for the approval of the government and is expected to address many of the issues of governance for formally structured institutions.

Perceptions About Governance

As a part of our study, an attempt was made to understand how people who are associated with or have the capability of influencing the third sector perceive TSO governance. The key informants¹⁵ were asked to comment on their perception of governance, their thoughts about TSO governance responsibility, the extent of the government’s supervision and control, and the role of any managing committee/board trustee’s responsibility in TSO governance.

Conception of Governance

Majority of the key informants felt that understanding ‘governance’ in the context of a vast country like India is a difficult task. They are of the view that governance may mean different processes to different types of organisations. Governance is generally

¹³Yashavantha Dongre et.al. 2005. TSO Governance in India: Internal Governance Practices and Issues for Capacity Building, Paper presented at the UN Conference on Engaging Communities, Brisbane.

¹⁴This Policy is a commitment to encourage, enable and empower an independent, creative and effective voluntary sector, with diversity in form and function, so that it can contribute to the social, cultural and economic advancement of the people of India. <http://planningcommission.nic.in/data/ngo/npvol07.pdf>.

¹⁵Forty one knowledgeable people randomly chosen from across the country including the CEOs of some TSOs and third sector leaders were interviewed for this purpose. For details of the methodology please see Chapter 1 of this Volume.

recognized as an exercise of political, economic and administrative authority in reaching the identified goals or objectives (34%). Majority of them (52%) felt that organisational efforts are always challenged by conflicts existing within various groups, which undermine the legitimacy of the efforts to deliver and they should be minimized. The fulfillment of this condition might lead to good governance.

The key informants conceptualized governance generally in an abstract manner, focusing on certain qualities such as responsibility and accountability (89%). It was noted by nearly 40% of the key informants, that the concept of governance should include within itself economic equity as well as human dignity. It emerged from the discussions that governance must relate to the issues pertaining to entitlements and autonomy of groups and individuals along with the descriptive and normative concerns (61%). Governance to 41% of the key informants is not just governing document (i.e. the constitution, statutes or by-laws) but also the relationship among people and parts of the organisation.

Governance is also understood as a process by which communities move towards a more humane condition leading to democratic participation of people in matters concerning their life (58%). The key informants were of the opinion that along with the existence of issues like transparency in thought and action at all levels, accountable, responsive and responsible leadership becomes the basis of governance (83%). Devising effective means of achieving the goals and objectives of a TSO is an integral aspect of governance (81%).

Most of the key informants (86%) felt that governance is the capability of the people or the group to exercise socio-political power to increase the potential of achieving the long-term goals and at the same time minimizing the contradictions and tensions in an accounted manner. Eighty-one per cent identified the mode of accounting as the key element in governance. Public responsibility, integrity, social binding and moral commitment are noted as more important than sheer record maintenance. Governance, to many key informants (71%), is the process which provides equity, social justice and human dignity. Many respondents also noted that the mechanism adopted to empower people is governance. It emerges through the discussion that governance can also be understood as the process involved in public decision making about the use of public resources for public good.

Perceptions of key informants who are familiar mostly with large NGOs bring forth the idea that governance for the third sector is nothing, but the way corporate governance is understood and operationalized. To them it is the existence of a board and functioning of this board according to the laid down conditions (22%). It was noted that governance refers to an economic, legal and institutional environment that allows organisations to diversify and grow so that they reach larger groups who need their support.

The key informants were generally of the opinion that, 'governance' is highly subjective and time and space specific in nature. Therefore, it is very important to note that there cannot be a common capsule indicator workable for evaluation of governance in all patterns of organisations. It is felt that the indicators of good governance for the TSOs need to be evolved based on the type and target groups of the organisations.

TSO Governance Responsibility

In order to have efficiency and effectiveness, there has to be someone to own the governance responsibility in the TSOs carrying out the major policy making tasks shaping the TSO orientation and programmes. This responsibility may rest with a group or with a particular individual. Thirty-two per cent of the key informants were of the opinion that the board should have this responsibility, and 31% noted the CEO/leader. Some mentioned that the target groups (16%), staff (11%) and the organisation as a whole (10%) should be responsible for TSO governance. None of the key informants considered that either the government or the funding body should be vested with such a responsibility. The key informants, however, think that in reality, however, in India TSO governance responsibility lies mainly with the leader/CEO (50%), or the board (19%).

Extent of the Government's Supervision and Control

The government may involve directly with the functioning of the TSOs by being on the board and participating in the decision-making and implementing activities or may involve moderately by giving external support. The degree and nature of the government's direct involvement in TSO governance is dependent on the type of incorporation (sometimes being non-existent). Thirty-two per cent of the respondents noted that the monitoring and supervisory involvement of the government is of a 'great deal' in cooperative, 'moderate' in a society, and 'hardly at all' to 'non-existent' in the case of a trust. Twenty-six per cent respondents noted that the government moderately monitors the activities of the TSO. Eighteen per cent of the respondents were of the opinion that the government hardly monitors the activities of the TSOs.

Managing Committee/Board/Trustees

Board/committee/trustees occupy an important place in the present day TSOs. Most of the TSOs have board/committee/trustees. Only those TSOs which work as unincorporated entities do not require a board/committee/trustees to function. In our survey, 84 per cent of the key informants noted that board/committee/trustee do exist in the TSOs they are familiar with. Five per cent did not have any idea about it. Nonetheless they all felt that the board/committee/trustees have a major role to play in the governance of the TSO.

Existence of a board/committee/trustee in a TSO in India to a large extent depends on the legal requirement under which a particular organisation is incorporated. Some legislations, for example the Societies Registration Acts and the Public Trust Acts, clearly stipulate the need for a board/committee/trustee, and its functions. Eighty-two per cent of the respondents reported familiarity with this legal requirement.

It is important to note that the key informants' perception of 'governance' and the responsibility of governance in the TSOs are as diverse as the sector itself. It is true that the legal environment has its influence in determining many of the operational issues, but there is no consensus that it is the primary determinant of mode of governance. This phenomenon becomes much clearer when we look at the governance practices of the TSOs in our study, discussed in the next section.

Structure and Functioning of the Surveyed TSOs

In this section, we will provide a brief overview of the various issues related to the structure and functioning of the TSOs surveyed for this research in India. These trends are not based on any statistically validated sample survey, but are to be taken as explorations of trends available in the organisations studied by us. In all we have studied 98 registered organisations. Of these, 56 organisations were suggested by the key informants as well performing and the rest were chosen randomly. Further these organisations are drawn from the urban, semi urban and rural areas of different parts of the country.¹⁶ This section deals with field of activity that TSOs are involved in, age, and staffing and funding of the TSOs.

Major Fields of Activity

TSOs are found to be operating in almost all the fields to make people's lives more meaningful. They provide education and health care facility, work as support groups to the aged and the children, support the labour force and raise voice against injustice. They provide entertainment to all age groups and run drama houses and stage educative street plays. They run religious institutions and provide places for worship. They often work with the government and provide services on behalf of, or complementing, the government. They are also found operating in areas where they have to question and resist the course of action taken by the government (Lyons, 2001). For the purpose of this study, we have used the International Classification of Non-profit Organizations (ICNPO)¹⁷ categories and classified the TSOs into eight fields of activity. They are Art and Culture (5%), Business and Profession (7%), Education (12%), Environment issues (4%), Law and Advocacy (13%), Religious bodies (9%), Socio-economic development (22%) and Social service (27%).

The TSOs do not generally work with one field of activity. In our study only five TSOs have one field of activity. Ninety-three TSOs work in a minimum of four

¹⁶For details of the research methodology, please see Chapter 1 in this Volume.

¹⁷The International Classification of NPOs developed by the Comparative Non-profit Data Project of the Johns Hopkins University. We added cooperatives to the original list.

fields of activity and of these 12 TSOs are engaged in as many as nine fields of activity each. Almost all the organisations in the study including some religious bodies have education, social service, and development and health issues as their important areas of work. The second set of popular functional area is issues related to women and children and HIV/AIDS. In case of about 20% of the TSOs, the fields of activity were not closely linked to one another. Different funding bodies sponsor each activity and the functioning and governing mechanisms depend on the activity and the requirements of funding agencies. Five TSOs were working as subagents for larger TSOs, which would take all the decisions pertaining to the course of action and assign the implementation work to these TSOs. Thus, these are nothing but the paid agencies for discharging the work for others, like paid labor force on contract. As against this trend, most (93%) unincorporated organisations¹⁸ have been found to be working in a single chosen functional area. This fact indicates a possibility of the TSOs moving towards the functional areas for which funding is available, rather than focusing on a particular area of their concern and strength. Unregistered/informal initiatives do not look for outside funds and hence are more committed to and focused on a single activity.

Age of the Organisations

We have noted earlier that the third sector activity has a very long history in India. It would be difficult to identify the oldest TSO working in the country. There are organisations and initiatives, which have been active for hundreds of years. Among the organisations studied an unregistered TSO was 140-year old. However majority (72%) of the TSOs in our sample are in the age group of 11 to 50 years (34% fall within 11–19 and 38% in 20–49 categories.) Of the 26 TSOs with social service as the main field of activity, 30% are in the age group of 20–49. The presence of a driving force for the organisation is more pronounced in the age groups 10–19 (41%) and the 20–49 (39%) as against the younger TSOs, that is between 1–10 years of age (8%).

Staffing and Funding

The surveyed TSOs depend heavily on the paid staff (80%) to carry out the work. While 13% of the organisations depend on the members to carry out the works of the organisation, only in 3% cases, most work is done by volunteers. It is important to

¹⁸The study uses data drawn from 14 unincorporated TSOs to provide insights into different processes of governance practices, a study undertaken to understand the governance practices of unregistered initiatives in India by the Third Sector Research Resource Centre (Unpublished.).

note that even though they are paid staff, the staffs working in voluntary organisations, in general, are called volunteers. Obviously, the salary paid to them would be much less compared to that paid to those working in the for-profit organisations.

It seems very difficult for the TSOs in India to depend on only one source for funding. Only 7% TSOs receive funds from a single source. Fifty-six per cent of the organisations covered under the study receive funds from foreign sources (more than one-third of the total income for 36% of the TSOs come from foreign sources). Financial support by the government is received by 51% of the TSOs surveyed (more than one-third of the total income for 23% of the TSOs is made up of government funds). It is interesting to note that as opposed to the above two categories, domestic funds raising for 53% TSOs have been very successful with more than one-third of their total income constituting this source (though 69% raise funds domestically). Equally impressive is the fact that 81% of the TSOs under survey earn a reasonable income from 'other sources' (i.e. funds raised through membership fees, service charges etc.), while 58% collect more than one-third of their income from this source.

In fact, unincorporated initiatives to a great extent depend on domestic funding sources and member contribution. Eighty per cent of the unregistered TSOs in our survey raise funds from different domestic sources and supplement it with the membership fees, provision of services and sale of goods. Most unregistered organisations (75%) do not receive funds from the government. Flow of funds from the 'domestic' and 'other' sources have been growing as well. Sixty-seven per cent of the unincorporated TSOs have noted an increase of their funds in the last three years. This indicates that generation of funds domestically is very much possible, if the agenda on hand is convincing.

Seventy-four per cent of the TSOs in the study noted that their funds had grown in the three previous years, while 22% did not see any change in funds inflow. Four per cent of the TSOs faced a decrease in funds during that period, and were considering restructuring and changes in the field of activity, at the time of the survey, to secure the support of the available donors.

Most organisations hesitate to disclose the sources of funds.¹⁹ The issues of transparency, extensive competition to get funds, government interference and desire of the funding sources to remain anonymous are some of the reasons for this hesitation. As majority of the unincorporated organisations depend on the membership and other sources of funds for their activity, they were not as secretive as the incorporated TSOs, and were more open and willing to disclose their financial information.

Maintaining a steady flow of funds for the third sector was seen as a main problem by 72% of the TSOs. Still government funds seem to be unattractive. Ninety-three per cent of the TSOs noted that they go to the government, only if they cannot raise funds adequately from other sources. Fifty per cent of the organisations that

¹⁹ Asking questions about the size and source of funds was the most sensitive part of our field survey. Five TSOs (incorporated) were very annoyed with the research team for asking the sources of funds and threatened to end the interview if the information was insisted upon.

receive funds from the government expressed the despair and pain that they undergo in dealing with the government funds. They claimed too much interference from the government officials. Twelve per cent of the TSOs noted that many government officials claim undue advantages including the demand for being included in the TSO board as a precondition for processing the approved grants.

Growth in Activities

It is interesting to note that nearly 90% of the incorporated organisations noted that their activity has increased in the last three years; whereas 8% noted no change. All unincorporated TSOs recorded growth in activity as well. In case of about 80% of the organisations studied, there was a positive correlation between increased funding and increased growth in activities. Interestingly, the data also reveal that in most cases where the funding has increased, the domestic sources, revenue from sale of goods and services and membership fees have contributed more than the foreign funds. But, in our study the age of the organisation and the activity growth do not register any significant correlation. Thus it seems that the outcome and the network, not the age, matter in funding growth.

Governance Structure and Process

In this section we present some of the key issues related to the structure and process of internal governance practices of the TSOs studied. Practices related to decision making, funds management, role of board, external relations etc. are analyzed here.

Decision-Making and the Driving Force

The survey found that, usually, board members or trustees (85%) play the key role in decision-making. In 15% of the TSOs, the chief executive officers (CEOs) have the final say. Nevertheless the decision-making process in the TSOs varies widely. In our sample, of the 96 TSOs with board, only one organisation noted that the board did not meet regularly. But what is important to note is that in 55% of the TSOs, the board members meet only once a year. The key role played by the intermediary level staff is seen to be present in 60% of the TSOs where the board generally agrees to the proposals and ratifies them. It is found that only in 22% TSOs the board works as a unit, with all members of the board actively taking part in the decision-making activities. Nonetheless, only in 14% of the TSOs the board follows exemplary governance practices. The board, having the final say, has created an effective rapport with the staff and the volunteers in many TSOs. The board members are

highly informed and are not alienated from the ground realities. Hence, the policies and the decisions taken are more need based.

In 85% of the TSOs, board members take part in evaluating the performance of the organisation against the annual budget, and in 66% TSOs they actually take part in annual budget preparation. Eighty-nine per cent TSOs have board members involved in the evaluation of the efficacy and effectiveness of the organisation and in 43% TSOs board members negotiate around political system on behalf of the organisation. In nearly 55% cases board members do not get involved in fund raising or seeking funds for the TSO. They expect the CEO to attend to the fund-raising activity. Forty-three per cent of the TSOs noted that the 'organisation was known' to the public not through the board but through the individuals in the board.

In our study, we tried to understand who in the TSO is the driving force and may have the final say in all decisions. Sixty-seven per cent of the TSOs under study have the driving force, and in 52% of the TSOs it is the founder. The CEO or the chairperson is seen to be the driving force in 30% and 18%, respectively, of the TSOs surveyed. Expertise and competence of the person has been noted as the characteristic feature of the driving force in 31% of the TSOs under the study. Charisma and moral uprightness are noted by 12% and 11% TSOs, respectively, as the forces behind the driving force. Interestingly, lineage, wealth and political connections are noted by only 1% of the TSOs. None of the surveyed organisation noted fund raising as the main character of the driving force.

Planning and Financial Management

Planning activities depend on a clear 'Vision and Mission' of the TSO. The study reveals that 96% of the incorporated organisations have formal planning mechanism. A written Mission Statement is available in 74% of the TSOs. However, our field observations revealed that in case of 30 out of these 82 organisations many board members and staff did not clearly understand the Mission. Irrespective of the legal status, geographical location and the size, most TSOs undertake planning. The planned proposal for the major project gets circulated before the board meeting in 71% organisations, while 29% do not do so but orally notify the issue to the members of the board. The scene is the same with the unincorporated organisations. These organisations depend heavily on the oral mechanism. The empirical data reveal that a written statement of Mission or Objectives is not very common among the TSOs but planning of some sort is invariably found in most of these TSOs.

In our study not all but two organisations followed formal financial procedures. Of 12 unincorporated organisations 83% have formal financial procedures. Further, 92% of the incorporated TSOs prepare annual budget and 8% of them prepare a budget as and when they get the projects, and not an annual budget. Among the unincorporated organisations, those who have formal financial procedures also follow the annual budgeting practices while the other two TSOs make financial budgeting as and when the funds are available. The preparation of the monthly cash flow

budget was noted to be practiced by 71% of the incorporated organisations and 63% of the unincorporated TSOs. Preparation of the annual financial statement is undertaken by 97% of the organisations and 3% prepares it on a quarterly basis to submit it to the funding agency. They compile the quarterly reports and submit the same to the government annually. All the unincorporated organisations prepare the annual financial statements but follow different practices.

The financial statements are audited by qualified auditors in 99% of the incorporated organisations (one TSO undertakes internal auditing). Five unincorporated organisations undertake auditing by qualified auditors, six have internal auditing by members and one undertakes public auditing. In case of the incorporated organisations, the details of the financial statement are made available to members by 88% of the organisations and 53% make it available to the general public as well. Ten out of 12 organisations provide the financial details to the members and undergo public auditing where all the financial accounts are made public, and both members and the public can scrutinize the same. Involvement of the board in the preparation of the annual budget is found in 63% of the organisations and 37% noted that it is the CEO who needs to attend to it. The board in 92% of the TSOs reviews and approves the annual financial statements, while in 5% of the organisations board never gets to see the annual financial statements for reviewing or for approving. The CEO attends to it and informs the board about it. In 83% of the unincorporated TSOs, 'board' like structures take part in the preparation and reviewing of the financial statements.

External Reporting

Ninety-six per cent TSOs report their activity to people outside the organisation using different methods of reporting. The most popular methods are the paper hand-outs, public displays and the folk singing and street plays. Though 86% of the TSOs produce annual reports it is only for the official purposes, which never reach the public (and the public they interact with can hardly understand the financial and activity report in the written format). Even among the unregistered organisations, 50% produce annual report and other written reports, though mainly for internal use. Public reporting and external relations become very important when the TSOs start looking for funds through outside support especially from government and foreign funding sources.

Observations and Conclusions

The term governance seems to have become familiar to the third sector players in India through the international funding agencies and the corporate houses. With more funds flowing from large funding houses and more corporate houses establishing

foundations to support the TSOs, governance in the TSOs seems to look similar to the corporate governance code of conduct.

There is a tendency of the TSOs to formalize their structure and functioning modes to come within the brackets of these established codes of governance. This notwithstanding, there are still a large variety of governance practices pursued by different types of TSOs. These are more pronounced in the informal or unregistered organisations. Thus we may infer that the registered TSOs are increasingly falling in line with the corporate governance model when it comes to following certain procedures and maintaining documents. Nevertheless, there still exist informal modes of governance in actual practice, even among many of these TSOs.

There are wide disparities in the adherence to the provisions of law partly because of the complexities of the provisions and partly because of the casual approach by the TSOs. The implementing agencies cannot pursue the compliance mainly due to the inadequate staff size to deal with a large number of TSOs. The judiciary in India gets in to action only when there is an explicit case made out against a particular TSO in regard to violation of the provisions of law. It is however important to note that the judicial activism has been on the increase and the judiciary some times on its own initiates proceedings on TSOs not complying with the law.

Governance as a concept is perceived to be comprehensive but also complex and time and space specific in nature. Therefore, there cannot be a common capsule indicator workable for evaluating governance in all types of TSOs. Indeed there can be diverse and multiple approaches to governance. It is time we look in to them and take governance discourse away from 'corporate governance paradigm' and 'structure centered' approaches. This is especially relevant in the context of pluralistic societies like India. It is therefore necessary that we generate more extensive data on the informal/unregistered TSOs in India and examine their governance practices. This might help us in evolving an indigenous mode of governance which could be a more suitable model in the Indian context.

Chapter 14

Third Sector Organisation Governance in Indonesia: Regulations, Initiatives and Models

Maria R. Nindita Radyati¹

In the last few years in Indonesia, as the discourse on good governance became widespread², the third sector that provides goods and services to people and places not reached by the first and the second sectors, has realised the need for good governance in order to gain the trust of society and donor agencies. Most LSMs (*Lembaga Swadaya Masyarakat*/self-reliant organisations) in Indonesia, the largest group of third sector organisations (TSOs), rely largely on foreign donors (Baswir, 2004; Saidi, 2004), and have to comply with the foreign donor agencies' requirements for transparency and accountability (Jani, 2004). In reality though, there have been reports of mismanagement and lack of transparency in funds management. In addition, there is a lack of professionalism and social credibility of the LSMs because many people have taken advantage of the liberal political environment of the recent years and formed LSMs in order to secure project funds available from the donor agencies³ (Halim, 2004; Jani, 2004; Mustofa, 2004; Saidi, 2004). It is for these reasons that many well-established LSMs have been active in formulating and developing their own governance principles.⁴ Co-operative organisations have also been undertaking vigorous discussions on governance.⁵

¹ This work has been a team effort. Professor Dr. Thoby Mutis was the Chairman of the Country Team. Data collectors were Danny Indriyanto, Dien Fadjar, Sri Vandayuli, Rosna Harahap and Maria C. Widiastuti. Statistical Data Processing was done by Danny Indriyanto. Belen Ponferrada Thirkell was the English text consultant. The author wishes to record her thanks to these colleagues, the respondents of the study and the participants of the workshops.

² Good governance has been a significant issue in Indonesia since 1993 when the International Monetary Fund (IMF) made government restructuring as a condition of financial assistance.

³ Critics also talk about the loss of trust of the people because of the latter's notion that the LSMs are 'agents of capitalists' receiving funds for programs dictated by the donors.

⁴ Several works, including the 'LSM Code of Ethics' incorporating governance principles, especially transparency and accountability, a book about self-reflection on practices and past actions, have been published.

⁵ On 13 December 2003 in Jakarta, BK3I Foundation (Credit Union Coordination Body) held a seminar on 'Good Governance for Credit Union'. In July 2007, through focus group discussions, some experts of the credit unions (CU) formulated the governance for CU in Indonesia. The results will be published by the end of 2007.

This research was conducted with this backdrop. In an attempt to comprehend how TSO governance is understood in the country, a questionnaire of open and close-ended questions was used to seek information from forty-one (41) key informants (KIs) (see Chap. 1 for more on the methodology). To understand and analyse governance practices in Indonesian TSOs, one key individual each in eighty-three (83) TSOs also were interviewed with a separate questionnaire (that also had some open-ended questions to record the ‘variations’).⁶ This chapter, divided in five sections, highlights major findings of the study. The first major section following this introduction deals with the evolution of the third sector in Indonesia and issues that may influence its governance. The second section deals with different types of incorporations available to the TSOs, and related regulatory requirements. The third major section discusses the recent initiatives of TSO governance underscoring the legal requirements for TSO monitoring, supervision and accountability. The following section discusses the KIs’ perception about TSO governance in Indonesia. The second last major section deals with the results of the organisational survey of TSO governance, and the last section uses this data to analyse governance models the TSOs in Indonesia use. A concluding discussion of TSO governance in Indonesia ends the chapter.

Evolution of Third Sector and Governance Issues

The history of the third sector in Indonesia goes back to the social protest movement organised against the [Dutch] colonial power (Poesponegoro and Notosusanto, 1984). At the initial stage, the organisers and members of the non-government organisations (NGOs) and non-profit organisations (NPOs) maintained the traditional community spirit and people’s willingness to offer public service aimed at solving socio-economic problems of all those oppressed by the colonial government in Indonesia. The oldest recorded TSO in Indonesia was established in 1848, and regulated by Article 1653⁷ of the Civil Law (enacted in 1848).

The ‘*Boedi Oetomo*’, the first LSM in Indonesia, was organised in 1908 by Dr. Wahidin and Dr. Sutomo (Budairi, 2002), pioneering the National Movement Era (1908–30).⁸ Apart from becoming a voice for self-rule, *Boedi Oetomo* undertook activities in education, arts and culture. A mass social movement in Indonesia, *Sarekat Islam*,

⁶In this discussion, the names of the respondents are revealed only if the permission to do so was granted.

⁷This article states that the government will permit any organisation formed with purposes, mission and vision that are not against the Indonesian Constitution and decency.

⁸In this era, the Dutch colonial government applied ‘ethics politics’ in Indonesia as a result of the prevailing liberal political condition in the Netherlands (Poesponegoro and Notosusanto, 1984). This encouraged many young Indonesian scholars who were studying abroad to fight for freedom through organisations (see Budairi, 2002).

was established in 1911 (Poesponegoro and Notosusanto, 1984). Sarekat Islam was able to reach the lowest level of the society because of its attractive objectives. It worked to improve the trade relationship between the indigenous Indonesians and the Chinese traders, to educate and improve the economic condition of, the indigenous people and to promote Islamic teachings and fight against any teachings and rules contrary to the Islamic principles (Poesponegoro and Notosusanto, 1984).

The period was also known as the ‘Youth Movement Era’ because, following the lead of Sarekat Islam, several youth organisations emerged in the islands of Java and Sumatra aimed at promoting education and raising awareness of the richness of the cultures of these two regions.⁹ At the Second Indonesian Youth Congress held in October 1928, all youth organisations agreed to form one big mother organisation, the ‘*Indonesia Muda*’ (Young Indonesia), legalised in 1930 (Poesponegoro and Notosusanto, 1984). After realizing that most of these organisations’ ultimate goal is to struggle for independence, the colonial government promulgated several rules and regulations to curb the development of the LSMs (Poesponegoro and Notosusanto, 1984). Following the defeat of the Netherlands in the World War II, Japan occupied Indonesia, dissolved all types of TSOs, and ordered many people to become *romusha* (forced worker).

TSOs in Indonesia re-emerged only after the independence in 1945 because Soekarno, the first president of the Republic of Indonesia, supported TSOs by encouraging the establishment of political parties for the purpose of defending independence, protecting national security and promoting welfare of all Indonesians. In the Old Order Era (1955–65; as it is known), Indonesia witnessed a ‘guided democracy’ (*Demokrasi Terpimpin*) wherein the political parties took central role. The Indonesian Communist Party (PKI)¹⁰ was the most influential party at that time and it used all TSOs, especially the cooperatives¹¹ and labour unions¹² as tools for promoting communist ideals in the country (Cahyono, 2005; Setiawan, 2004). The TSOs that did not support communist ideals, such as the religious organisations, were abolished.

Following the transition to the New Order Era (1966–1998), the government streamlined the political activities in the country.¹³ The governmental initiatives to

⁹The first Youth Movement Tri Koro Dharmo, established in 1915, followed by Jong Java in 1918, and Jong Islamieten Bond, Pasundan, Jong Sumatranen Bond, Jong Minahasa, Jong Batak, etc. (Poesponegoro and Notosusanto, 1984).

¹⁰PKI was established in 23 May 1920, which is the substitute of *Indische Sociaal-Democratische Vereniging* (ISDV) established on 9 May 1914, a political organisation that espoused communism. The official change of name was made in December 1920 (Poesponegoro and Notosusanto, 1984).

¹¹The Law of Cooperatives (No.14, 1965) also included articles to establish Communist ideals in the cooperatives. For example, one of the articles stated that the Board of Directors should consist of people from the Communist Party (Poesponegoro and Notosusanto, 1984).

¹²The Ministerial Regulation No. 90 of 1955 stipulated that all the labour unions should be registered. This was for the purpose of monitoring members who may be communist sympathisers (Poesponegoro and Notosusanto, 1984).

¹³All political parties were united into three big parties, that is *Partai Persatuan Pembangunan* (Development Unity Party), *Golongan Karya* (Functional Group) and PDI (Indonesian Democracy Party).

this effect included banning of labour unions from participating in political affairs¹⁴ and considering the cooperatives an important source of [government] economic revenue.¹⁵ The LSM activists considered this as a violation of human rights (Nusantara, 1997). During the 1970s, the number of LSMs increased because of the development partnership with the government, and the availability of funds from donor agencies. The government's development policies in reality, however, were top-down (Budairi, 2002). The government's motives became evident in several rules and regulations introduced in the 1980s, for example the dissolution of any LSM perceived to be 'disturbing and violating public order', or receiving overseas financial support.¹⁶ The growth of the TSOs was thus thwarted.

At the onset of the Reformation Era (since 1998) the third sector started to gain a new space. A presidential decree [No.83] recognised the right to establish organisations¹⁷ and of freedom of expression and demonstration.¹⁸ The Cooperative Department was also re-organised under the Ministry of Cooperatives intended to return the autonomy of the cooperatives (Soedjono, 2003). The Foundation Law 2000 (enacted in 2001) has introduced mechanisms to ensure that all foundations are involved in public service, and manage their funds responsibly with transparency.¹⁹ Irrespective of the intent and extent of these laws, the Reformation Era has created a climate that allowed TSOs to increase very rapidly.

Political conditions play a significant role in influencing the content of the laws for TSOs. This is particularly true for laws introduced during the Dutch Colonial Era that were incompatible to the prevailing Indonesian situation, but were strictly enforced. In 1955, the pinnacle of communist activity in the country influenced the cooperative and labour union laws. The co-operative system was modified to

¹⁴Some New Order activists in 1973 established a Federation of Labour Union in order to unite all the existing labour unions. Finally, in 1990, the government established *Serikat Pekerja Seluruh Indonesia* (SPSI) as the only labour union. Nonetheless, this organisation was perceived as a failure in advocating and defending the needs and interests of the labour sector, and became, instead, a political means to support the benefit of a particular group (Damanik, 2006; Khakim, 2007).

¹⁵For example, one of these regulations only allowed KUD (*Koperasi Unit Desa*/Village Cooperatives) to operate on the village level to which all rice and tobacco farmers were compelled to sell their crops. These were in turn sold to the government through the logistics agency. This regulation ensured that the prices of rice, tobacco and other commodities were determined and dictated by the government (Soedjono, 2003).

¹⁶Please see the Law No. 8 of 1983, Republic of Indonesia, on Social Organisation, Article 13.

¹⁷The law is specifically aimed at allowing the establishment of labour unions and professional associations.

¹⁸The law stipulates the procedures for demonstration in terms of time schedule and place. The people became aware of their rights in venting their disagreement with the government through mass protests, which the government clearly intended to control.

¹⁹Prior to the enactment of the Foundation Law, contrary to the statutes and rules governing foundations, many foundations were operating for profit, using donations to channel funds to political campaigns or business activities, and avoided reporting their financial standing to the government (Wahyono and Margono, 2001).

accommodate communist ideals; and the labour unions were used as instruments for spreading communism. The democratic environment since 1998 has established rights for the TSOs and at the same time created obligations for adhering to the laws, ensuring transparency in their activities (especially in funds management) and increased accountability. Thus, this is an appropriate time to examine how TSOs in Indonesia are doing in terms of governance. Before moving to that discussion, in the next section, we illustrate the major types of TSOs in Indonesia.

TSOs and the Regulatory Mechanism in Indonesia

The incorporated TSOs in Indonesia belong to one of the six legal entities (*Badan Hukum*), like the (1) *Yayasan* (Foundation); (2) *Perkumpulan* (Association); (3) *Koperasi* (Cooperative); (4) *Serikat Pekerja* (Labour/Trade Union); (5) *Organisasi Massa* (Mass Organisation); and (6) *Badan Hukum Pendidikan/BHP* (Education Legal Entity) (Radyati, 2004). The majority of the Indonesian TSOs deal with advocacy and community development programmes and are known as NGOs or LSMs. Almost 90% of the LSMs are legal foundations (*Yayasan*), though a few are associations (*Perkumpulan*).

In Indonesia, foundations are non-membership organisations established by one person.²⁰ A membership organisation, an association, is subject to Civil Law²¹ (stipulated in Book Three, Chapter 9, Article 1653) (Ali, 1999), and can be established by registering with the local judiciary.²² The Cooperative Law is the first TSO law in Indonesia ratified in 1958 because the Constitution of the Republic of Indonesia recognises that the cooperatives are a major instrument in ensuring economic development of the country. The cooperatives are required to register with the Ministry of Cooperatives and Small and Medium Enterprises or its representatives in the regional offices.²³

Trade unions in Indonesia are composed of trade unions, federations and confederations each formed by ten primary members, five trade unions and three federations of trade unions, respectively (Article 1, Sekretaris, 2001b). These trade

²⁰The founder submits a notary deed that includes the by-laws of the organisation (Organisation Constitution) to the Ministry of Justice and Human Rights The RI Law No. 16 of the year 2001 concerning foundation. Jakarta: CV. Novindo Pustaka Mandiri. The ratification is endorsed by the Minister Sekretaris Negara (2001).

²¹Before the existence of Civil Law, the associations were regulated by the State Gazette (*Staatsblaad*) 1939 No. 570. An updated version of the Association Law is currently under consideration in the Indonesian Parliament.

²²The founders must prepare a notary decree and should submit its constitution stating the name, place and objectives of the Association; its activities; its board of management and their financial responsibilities; prerequisites to obtain membership and the rights and responsibilities of members; how funds are to be used in the event of dissolution of the Association and method and condition for dissolution.

²³The responsible minister can also approve the registration of a cooperative.

unions are registered with the Department of Labour. A mass organisation, an organisation of members of the same or related profession (Article 1, Sekretaris, 1985) is registered with the Ministry of Home Affairs or the local government office under its jurisdiction.²⁴ The Educational Legal Entity²⁵ (BHP) is for educational TSOs formed by the government or by individuals such as an association. A TSO under this category is required to register with the regional judicial office.²⁶

It is, thus, reasonable to conclude that many government agencies at the ministerial level to the local government offices and local judiciary are involved in regulating different types and levels of TSOs. Through these regulatory mechanisms, the government ministries and agencies tend to influence TSO governance in Indonesia.

TSO Governance: Recent Initiatives

This section deals with the legal instruments existent in ensuring TSO governance in Indonesia. It looks at the legal requirements for the TSO board's composition and responsibility, and transparency and accountability mechanisms. At the end, it highlights some aspects from indigenous literature dealing with normative governance principles, and some recent initiatives by the TSOs to improve governance.

TSO Governance: The Legal Instruments

There are laws and regulations related to TSOs in Indonesia dating back to the colonial as well as the post-colonial period that have persisted, unchanged, over the years (e.g. the Civil Law). Some old laws have continued through revisions and amendments (e.g. the Cooperatives Law). New laws and regulations also have been created in the recent past (e.g. the Foundation Law, 2000; *Zakat*²⁷ Law—*UU Zakat*). Only two laws, the Foundation Law (2000) and the Cooperative Law (1992) specifically address governance, particularly board composition, function, responsibilities, the procedure for transparency and accountability that the TSOs covered within the respective law are required to follow. Some other laws for the

²⁴For example, a mass organisation in Jakarta must register directly with the Ministry of Home Affairs, while those in provincial areas should do so with the offices of their respective governors or regents.

²⁵Article 53 of the Law on National Education System (*Sistem Pendidikan Nasional*) No. 20 enacted on 11 June 2003.

²⁶The procedure for registering an Educational Legal Entity is similar to that of the Association, that is an application letter should be submitted to the District Court Office using a notary deed.

²⁷*Zakat* is the compulsory charity, known as the fourth Pillar of Islam, requiring the payment of 2.5% of income (or savings based on individual choice) towards 'God's cause' including helping the poor and destitute. (see Hasan, 2007, Chapters 6 and 7).

TSOs such as UU RI No.13 (2003) (*tentang Ketenagakerjaan/Trade Union*) and UU RI No.8 (1985) (*Organisasi Kemasyarakatan*) only regulate general matters such as the procedures for incorporation and registration, organisational function and funds management.²⁸

Board: Composition and Responsibility

In Indonesia, the respective laws do not stipulate structure or responsibilities of governing body for associations, labour unions or mass organisations.²⁹ Rather, each TSO can create its own by-laws regarding these requirements. The Foundation Law, however, provides for three types of policymaking, supervisory and monitoring bodies for the foundations: Board of Trustees (BOT) (*Pembina*), Board of Management/Directors (BOM) (*Pengurus*) and Board of Supervisors (BOS) (*Pengawas*). The BOT has the highest authority as it can change the 'Organisation Constitution' (also known as 'Articles of Association'); recruit and dismiss the members of BOS and BOM; determine the general policy of the organisation; and give consent to annual working programmes and annual budget. It can also decide the amalgamation or dismissal of the foundation (Article 28, 2001a). The main tasks of the BOS are monitoring and giving suggestions to the BOM (Article 40, 2001a). The BOM consists of a chair, a secretary and a treasurer, and has the main duty to manage the operation of the foundation. The chief executive officer (CEO) in a foundation presides over the BOM, and is assisted by a secretary and a treasurer (Article 32, 2001a). This means that the CEO has the responsibility of effectively managing the resources, especially financial resources, and is accountable to the BOS. The rules and regulations for the composition and function of the board are also applicable to the *zakat* institutions.

The supervisory board in the cooperatives, however, is more regulated and consists of General Meeting of Shareholders/Members, a management board (elected by the General Meeting for a maximum of five years),³⁰ and a supervisory board. The responsibilities of the BOM are regulated by the laws and, include managing the cooperatives and its activities, implementing the resolutions and ensuring financial reporting.³¹

²⁸Governance principles are now incorporated in the proposed law on BHP (*Badan Hukum Pendidikan*), particularly, board responsibilities, internal control, accountability and transparency.

²⁹The structure and process of governance are generally described in the TSOs' respective constitution [Article of Association/*Anggaran Dasar and Anggaran Rumah Tangga (AD/ART)*].

³⁰The Cooperatives are allowed some flexibility. For example, the pre-requisites for membership in the Board of Management are found in the Cooperative Constitution.

³¹It can also accept or refuse new members or dismiss a member in accordance with the Cooperative Constitution.

In the proposed BHP Law, the composition of board consists of the BOS (*Majelis Wali Amanat/MWA*), BOT or the University Senate (*Senat Perguruan Tinggi/SPT*), BOM with the Rector as Chairman/President of the University, and the *Sidang Paripurna* (Article 8). It is also stated that the community comprises the stakeholders of the university. The MWA consists of representatives from the BOM, University Senate, the chairperson, lecturers, administrative staff, students, alumni, experts and professionals in the community, businesspersons and students' parents (Article 9).

Transparency and Accountability

There are strict regulations ensuring a foundation's accountability and transparency. When a foundation receives funds from the government or from foreign donors amounting to more than Rp 500 million (\pm \$54,000) or when its assets exceed more than Rp 20 billion (\pm \$2,150,000), the audited annual report must be published in a local newspaper and submitted to the Ministry of Justice and Human Rights (Article 52 of *Yayasan Law*).

In cooperatives, the authority to ensure that the principles of transparency and accountability are practiced, as stipulated in the Cooperative Law, is vested on the General Meeting of Members/Shareholders. The law requires all plans made by the BOM to be reported to the General Meeting of Shareholders (GAM) (Article 31). The supervisory board is also responsible to the GAM (Article 38) for their activities and is required to have a transparent system. Furthermore, the general members of a cooperative have the right to ask a public accountant to audit their cooperative (Article 40). In BHP, the annual report of a university should consist of both the academic and financial reports and must be presented in a plenary session. Further, a public accountant must audit the financial report that has to be approved in a plenary session (Article 24).

TSO Governance: As Perceived and Practiced by LSM and Cooperatives

Accountability in Indonesian context has two principal elements: democratic internal governance and constitutionalism (*konstituensialisme*) (Saidi, 2004). There are also external accountability and general accountability. External accountability is composed of (1) regularity or compliance accountability (compliance to laws and regulations); (2) managerial accountability (carrying out the managerial roles effectively and efficiently); (3) programme accountability (accountability to achieve the goals of each project); (4) process accountability (the responsibility of achieving social prosperity through completion of the organisation's activities) (Santika, 2004). General accountability refers to the: (1) democratic accountability (accountability to the target society) or (2) professional accountability or accountability in line with ethical professionalism.

A group of LSMs and cooperatives in Indonesia has developed their respective codes of ethics to reflect the above accountability requirements. The LSM groups have formulated the LSM Code of Ethics, which, among other things, regulate their relationship with the stakeholders, the government and the private sector.³² It emphasizes transparency and accountability in the operation of the LSM. The LSM groups have also formed an association to encourage and enforce compliance of the Code of Ethics.

According to Soedjono (2003), governance for the credit union (CU) should encompass (1) a comprehensive and transparent operation system such as rules, process and procedures; (2) protection of the members' rights in monitoring the decision-making process; and (3) accountability of the cooperative's operation. The International Cooperative Association (ICA) has endeavoured to enshrine these principles in the ICA Co-operative Identity Statement (ICIS).³³ Some CUs in Indonesia have started to take steps to attain transparency and accountability in its management³⁴ and it is reasonable to assume that, in as far as governance is concerned, the cooperatives have undertaken certain measures to meet good governance requirements. Unfortunately, this practice is not widespread and only a few of Indonesia's cooperative boards practice this in its operations (Soedjono, 2004).

TSO Governance: As Perceived by the KIs

As mentioned earlier, forty-one influential people who are either directly or indirectly involved in TSOs in Indonesia with respect to regulation, funding, reporting, researching were interviewed for this research. This section reveals the outcome of these interviews in five sub-sections dealing with the meaning of governance, indicators of good governance, board–executive relationships, governance responsibility and the external factors influencing governance.

³²The Code of Ethics was drafted in several regions in Indonesia such as Surabaya and Jakarta. Some of the aspects that are regulated in the LSM Code of Ethics in Jakarta are: 1) characteristics; 2) transparency; 3) independence in decision-making; 4) non-violence; 5) gender equality; 6) external relationship; 7) control mechanism.

³³This statement describes the definition of cooperatives—a gathering of people who come together deliberately to meet their economic, social and cultural needs. The values of cooperatives are also stated such as self-help, responsibility, democracy, equality, justice and brotherhood. Also, the principles of cooperatives are laid out: (1) free and open membership, (2) democratic control by all members, (3) members' economic participation, (4) autonomy and freedom, (5) education, training and information, (6) cooperation among cooperatives, (7) paying attention to the needs of the community.

³⁴These measures are incorporated in *Jati Diri Koperasi* (Cooperatives Identity). This consensus was legalised in International Cooperatives Association (ICA) meeting in Manchester in 1995 as the manual to guide cooperatives in the world, including CUs in its operations. The delegation from Indonesia's CU attended the congress and was involved in the agreement (Soedjono, 2004).

Governance as a Terminology

Most KIs in Indonesia perceive governance as *'tata-kelola'* (managing system). This is perhaps because corporate governance as a term is commonly used by the government and the corporate sector. The second most popular answer is *'tata-pemerintahan'* (governing system)—a term that is also used by the government. To some other KIs 'governance' is *'tata-manajemen'* (management system). The latter is attributable to some KIs' understanding that governance is primarily concerned with managerial functions. The KI's perception of governance can be grouped into (1) internal and external governance; (2) governance process; (3) managerial functions; and (4) integrity of the vision, mission and goals (VMG).

1. Internal governance is associated with how a Board maintains its relationship with internal stakeholders. The KIs stated that a Board should be able to maintain close relationship with the executives. The TSOs are thus required to formulate a set of rules that regulate Board–CEO relationship, as well as internal relationship with other parts of the organisation. In addition, the Board should deal with human resources development, reward system, as well as prepare a succession plan. 'External governance' refers to maintaining good relationship with external stakeholders such as the communities, the donor agencies, the government and other TSOs. To attain this, the TSOs must make rules regulating external relationships, accountability to the public, accommodating the constituents' aspirations and providing good services to the community.
2. Governance process is concerned with arrangements that enable organisations to act in an exemplary way. This includes the organising system, working mechanism, rules of the game, as well as the process of executing power.
3. According to some KIs, managerial function is related to organising, decision-making, as well as the control mechanism.
4. Integrity in achieving the VMG means being committed to the VMG, and devising methods for achieving them.

Indicators of Good Governance and Local Wisdom

The KIs identified many indicators of good governance in Indonesian context. Among the 30 different indicators identified by the KIs, the following nine indicators are noteworthy for consideration and emphasize incorporating local knowledge and wisdom. It is worth noting, however, that most KIs-mentioned transparency and accountability as major indicators of good TSO governance.

- Democratic principles in decision-making
- The importance of having BOS
- Control from stakeholders
- Ethical values

- Sustainability
- Succession plan (preparing the cadres)
- Gender equality
- Providing positive impact to society
- Trust from society and donor agencies

‘Democratic principle’ is in line with the traditional process of decision-making in Indonesia—*musyawarah untuk mufakat* (i.e. collective decision-making). In the traditional system, all suggestions from the members are taken into account to arrive at a final decision. The KIs stated that this principle is not solely for meetings but for all decisions in the organisations.

The existence of a board of supervisors (BOS; as dictated in the *Yayasan*, Foundation, Law) is seen by the KIs as a major indicator of good governance. The KIs, including some TSO officials, witnessed possible paradigm shift with the creation of open and transparent TSOs within the state regulatory framework controlled by a democratically elected government.

The KIs opined that good governance is achieved by the TSOs if all organisational members respect and practice ethical values. The ethical value is related to tolerance (*tepa selira*) of differences, absence of discrimination against any ethnic and religious groups, respect for each other and mutual help (*gotong-royong*). In fact, these values, especially the last one, are deeply ingrained in Indonesian traditional custom, and are still practiced in rural as well as urban areas. As such, this particular indicator incorporates local wisdom with modern knowledge of governance.

Often in Indonesia, TSOs discontinue to operate with the drying up of donor funds. Therefore, to many KIs, a well-governed TSO should be able to sustain good programmes, human resources and funding by diversifying programmes and funding sources. Sustainability of the TSOs also depends on a good succession planning and this is an important factor in achieving good governance. Unfortunately, this is absent in many TSOs. The duality of function of the CEO as a board chair and executive is found in some popular and well-known good performing organisations (referred to as POs afterwards). Many of these CEOs are the founders of their respective organisations, and tend not to prepare future leaders.

Gender equality in decision-making and managerial position in organisation as well as in programme orientation and focus (in particular, concern for women’s welfare and well-being) is seen as a major indicator of good governance in TSOs.

Apart from the above-mentioned structure and operation-based aspects of good governance, many KIs highlighted the outcome-based aspect of good governance suggesting that positive impact of TSO activities is an indicator of good governance. They explained that some organisations simply carry out the programmes based on the donor agency’s agenda without accommodating the constituents’ needs. According to them, the availability of a system that helps accomplish the goals being true to the mission is a major indicator of good TSO governance.

Since the concept of good governance is now widely discussed and understood, many TSOs are in the process of changing their organisational culture incorporating operational transparency and accountability. These changes are important for

gaining society's and the donor agency's trust. For some KIs, involving the community in the TSO's governance process, such as electing board members from or inviting the community members to general meetings are good strategies for gaining society's trust. Donor agencies view these in a positive light and trust those TSOs that deliver, irrespective of the organisational system. For some KIs, the donor's trust is a key indicator of good governance in the TSOs.

Board–Executive Relationship

Twenty-two per cent of the KIs thought that in Indonesian TSOs the board and the executive always have a harmonious relationship, while 77% thought that the relationship is sometimes harmonious. The KIs opined that the board–executive relationship is dependent on the size and age of the TSOs. In relatively small and young TSOs, the relationship is always harmonious and the Board, in conjunction with the executive, makes the managerial and strategic decisions. The board–executive relationship strains when the TSOs become popular and attractive to the donors due to their successes in effective social and/or economic development programmes. In such circumstances, both the parties (board and executive) vie for attention and acclaim, and come in conflict. It will not be out of place to discuss the issue a bit further and to analyse what the TSOs in Indonesia do to minimise this conflict to maintain harmonious board–executive relationship.

The CEO, being in charge of the day-to-day operation of many programmes, is fully knowledgeable about the difficulties and accomplishments of the programmes, and may not necessarily share this information with the Board. Without access to this information, the Board is constrained in making strategic decisions—a situation that Middleton (1987) called 'strange loops and tangled hierarchies' where the executive has more information than the Board, which creates conflict between the two.

Conflict of interests prevails where an executive has a need for status and recognition, and he/she may contest with the board members aspiring for the same. This conflict of interest is also known as agency problem (Gitman, 2003) where executives try to secure their positions and careers by performing activities for personal gains rather than in the interest of the organisation. To prevent this from occurring, the organisation may bear the agency cost, or any cost disbursed to ensure that the executive acts in the organisation's interests. In a company, the agency costs can be in the form of managerial compensation and audit cost to monitor the executive activities (Ross, Westerfield and Jordan, 2006). Managerial compensation is tied to the company's financial performance or related to job prospects, and is not applicable to the TSOs since its performance is measured by the accomplishment of the organisation's missions (Herman, Renz and Heimovics, 1997; Jackson and Holland, 1998). The latter is more likely to be implemented in a TSO since it is in the form of promotion for those who perform better. Our findings indicate that the TSOs undertake activities to ensure the loyalty of the executives, consequently creating agency costs.

Table 14.1 TSOs in Indonesia: Internalising Agency Costs

Item no.	Activity that create agency costs	Per cent of TSOs undertaken
1.	Audit financial performance	84%
2.	Regular appraisal for senior staffs	65%
3.	Create and develop key performance indicators	82%
4.	Create and develop quality assurance procedures	65%
5.	Carry out evaluation of efficiency & effectiveness of organisational activities	92%
6.	Regular review of CEO performance	77%

TSOs, third sector organisations; CEO, chief executive officer

The figures in Table 14.1 show that most of the organisations in our sample bear agency costs. The data also demonstrate that most boards are aware of the importance of retaining their executives to prevent agency problems.

TSO Governance and Government Control

The responsibility of ensuring good governance in an organisation lies with the Board (see Ingram, 1998; Lyons, 2001). Most KIs in Indonesia also subscribe to this idea and opined that the board should have the main responsibility of ensuring that the organisation is well governed. Most KIs are aware that the laws for TSOs such as the *Yayasan* Law require a Board, and most organisations that the KIs are acquainted with have a Board. Most KIs understand the advantage of having a Board in that it sets the overall direction and goals of the organisation. In practice though, the KIs assert that the Executive/CEO in the TSOs carry out this role. When the CEO takes on this task, then the conflict might arise in the form of 'strange loops and tangled hierarchy' discussed above.

The question is does government supervision improve TSO governance? Most government officials and employees among our KIs (60%) claimed that the Indonesian government hardly supervise the TSOs at present. Most KIs from indigenous TSOs (62%) support this assertion. In fact, since 1998, the government has relaxed its grip on the TSOs, and thus 22% of the KIs think that the government never carries out supervision, and 12% of them opined that the level of supervision depends on the type of organisation (12%). The last answer is evident in the governmental regulations and actions dealing with certain types of TSOs more than the others. The government might rigorously supervise and monitor the activities of mass organisations (often functioning like a political party) with thousands of members representing one particular group. It is not a surprise thus that the largest (32%) of the KIs opined that the government supervision is to make sure that the TSOs do not become politically subversive (as opposed to only 16% who thought that the supervision is to ensure functional integrity or financial accountability—7%).

TSO Governance: The Influencing Factors

The KIs identified some positive factors that can help the TSOs achieve good governance. These factors, based on the frequency of responses, are: (1) the government's image; (2) stable political, social and economic condition; (3) an international social order that links good governance with development aid; (4) role of society; (5) donor funds; (6) private sector support; (7) sustained information technology development; and (8) Code of Ethics for the NGO.

Many KIs stated that the government should set a good example and practice clean government, without KKN (*Korupsi, Kolusi, Nepotisme*/Corruption, Collusion and Nepotism) which appears to be embedded in all levels of government hierarchy. The KIs thought that the NGOs/LSMs are aware of the importance of monitoring or supervision and expect to be monitored by the government, as well as by the donor agencies in a legal and supportive way. The private sector support is also valued as part of their corporate social responsibility initiative. Availability of information and development of technology by the private sector are also considered positive factors because they help the TSOs deal with new issues and current development trends. The society's role is also most important in supporting the TSO activities. A KI emphasized the importance of society in positively influencing the TSOs³⁵ and identified the following roles of the society:

1. Society as definer—identifies the indicators of TSO performance.
2. Society as informant—helps the TSOs know the contemporary social problems.
3. Society as evaluator—groups TSOs according to the social impacts of their programmes and activities.

There are also negative factors perceived to be hampering good governance in the TSOs, for example (1) unsupportive government and donor agencies, (2) lack of trust from society and private sector and (3) poor relationship with other NGOs. The government pressure on and distrust of NGOs hinder TSOs' performance. Imposition of agenda by the donor agencies that is inconsistent with the VMGs hinder good governance in TSOs as well. Lack of trust from society and from the private sector also hampers organisational sustainability and governance. Conflict with other TSOs also prevents TSOs from practicing good governance. In all these cases, the TSOs concerned also have much to undertake or achieve. In the next section, we would like to analyse, from the organisational survey, what some TSOs are doing to deal with these issues.

³⁵The KI is Indah Suksmaningsih from YLKI (*Yayasan Lembaga Konsumen Indonesia*/Foundation of Indonesia Consumers).

Third Sector Governance: Organisational Survey

Eighty-three TSOs were surveyed for this study using a structured questionnaire. The list included 41 TSOs identified as high performing and popular by the KIs, and 42 small and informal organisations (SIOs) selected randomly. The popular organisations (POs) identified by the KIs are large and operate like corporations following a Western style of management. Thus, we selected some small, new and informal organisations to represent all types of TSO. The purpose of this selection and survey was to find out whether there is a unique governance practice in Indonesia, which incorporates local values and wisdom. The discussion here is based on this questionnaire survey and the detail discussions the interviewers had with some respondents in regards to the open-ended questions in the questionnaire.

Organisation Characteristics

The TSOs perceived by the KIs as having good performance record have been active for a long time (between 6–10 years) and operate like a corporation. The SIOs, on the other hand, are new (1–5 years old) and set up informally by the members. The POs, depending on their location and functional objectives, are registered with the government agencies like the ministries of justice and human rights and cooperatives, and the departments of domestic affairs, social service and manpower, as well as the regional courthouses. The SIOs, in general, are not incorporated or registered with the government.

Final Decision and Driving Force

In 68% of the POs, final decisions rest with the Board, while in the SIOs, the important decisions are in the hands of the CEO and the members. The CEO is responsible for making final decisions in most (40%) of the SIOs, but only in 24% of the POs. The members in many SIOs (36%) make the final decisions while only about 7% of the POs the members are involved in decision-making.

Only a small percentage of the TSOs (15% of the POs and 19% of the SIOs) surveyed asserted that the TSOs have a driving force. Nevertheless, in most cases (50% of the POs and 63% of the SIOs), the founder is the driving force. In the POs, the expertise, the position of influence inside and outside the TSO, as well as fund-raising capability of the persons concerned are the main reasons for their being considered the driving force. In addition, charisma, integrity, record of accomplishment and personal wealth were also identified as important traits of the driving force. The SIOs, on the other hand, search for people with leadership qualities and personal traits like charisma, integrity and an unblemished personal and professional record as the driving force. Fund-raising

capability of the driving force is not important to the SIOs because most of them are member-based organisations relying mostly on membership dues.

Staffing and Funding

In the majority of the POs (88%), paid staff performs most of the work while in the SIOs volunteers are responsible for the work. The POs generate funds by providing services to the beneficiaries such as consultancy, training and sales. Nevertheless, foreign funding is the primary source of income for almost 80% of the POs. In addition, they may also receive funding from the government and from domestic sources. Most (86%) of the SIOs, however, rely not on foreign funds³⁶ but on membership dues, sponsorships, service fees provided by the members or the constituents, and from organising bazaars and other fund-raising activities.

Board Characteristics

All POs in the sample have a board, while most SIOs do not. The size of the board in both types of TSOs is quite small— between one to four people, but most organisations have boards comprising of two members. In both types of organisations, there is only one paid board member. The composition of volunteer board members in the POs is more diverse compared to that of the SIOs. The volunteers in the SIO board consist of professionals and women. In the POs, the board is composed of professionals (40%), clients (12%), women (54%) and people from disadvantaged groups (20%). The latter group includes individuals from minority ethnic groups, religious groups as well as people with disability. It is apparent that most of the POs involve professionals who usually have public influence to benefit the organisation in terms of networking and resource mobilization.

It appears that the boards in the POs (being elected by the members or the constituents) are more democratically elected than the boards in the SIOs—only one SIO elects its board. Further, in 30% of the POs and 50% of the SIOs, the board chair concurrently holds the position of the CEO. This fact supports claims made by some KIs that in many TSOs there is no separation between board chair and CEO. Apparently, this phenomenon is more prevalent in ‘SIOs’. This fact also corroborates with the KIs’ observation that preparing future leaders, one of the indicators of good governance, is not a priority in most TSOs because of the duality of functions of the CEOs in some of the POs and most of the SIOs.

The election of the board chair by the members/constituents in 50% of the TSOs in both groups substantiates claims by many of the KIs that communities are usually

³⁶ Some SIOs receive foreign funds not exceeding one third of the total income.

involved in the organisation's process. This fact suggests that most TSOs make an effort to become accountable to the public.

Meetings

The board meetings in the popular organisations (POs) are more open and structured than those in the (SIO). All project proposals and agenda are distributed before the board meetings in the POs but not in the SIOs. Nevertheless, in the SIOs, like in the POs, the meeting agenda is prepared jointly by the board chair and the CEO.

There are differences in frequency of board meetings in these two types of TSOs. Board meetings are held every two months (32%) or once a year (29%) in most of the POs, while in most (43%) of the SIOs, they are held twice a year. Irrespective of the number of times the boards meet, decisions are made by consensus and minutes are recorded in most of the POs (95%) and SIOs (75%).

As a rule, general meetings are held once a year in most (78%) of the POs and the SIOs (50%). In about 56% of the POs and 38% of the SIOs, the meetings are open to public/constituents. In both types of TSOs, decisions are made by consensus in 95% of the POs and 100% of the SIOs; minutes are kept and made available in almost all these cases. These figures indicate that the POs appear to be more accountable and transparent to the public than the SIOs surveyed for this research.

Planning Activity

Many SIOs have written mission statements (21%) and written organisational objectives (24%). Because of their simple organisational practice, however, most SIOs have no strategic plans. Popular organisations, on the other hand, prepare formal plans for all activities (93%), and have strategic plans (100% of the POs) and written organisational objectives (93%).

Financial Management

The TSOs seem to have a well-organised financial management system as evidenced by the existence of annual budgets (93% of the POs), monthly cash flow budgets (88%), annual financial statements (100%) and an asset register (100%). The existence of these financial management instruments, however, does not or cannot ensure accountability, which requires independent auditing. Independent qualified auditors audit financial statements of 78% of the POs, overseen by a special committee of the board. About 50% of the POs make financial statements available

for scrutiny by the members or the public. It appears that the POs are keen to achieve transparency in their organisational functions—more than the SIOs are (only one SIO from the sample drafted a financial statement that was made available to its members but not to the public).

In most of the POs, the board plays a significant role in drafting annual budgets (73% of the POs), reviewing financial statements (83%) and approving major expenditures (88%). In the SIOs, the board rarely gets involved in the preparation and reviewing of financial statements, but reviews the organisation's performance (12%) and approves major expenditures (17%).

Performance Evaluation

Most (85%) popular organisations have a system of measuring performances such as key performance indicators (76%) and quality assurance procedures (63%). Many (78%) POs have established standard operating procedures (SOPs) and written job descriptions (83%). The board has the authority of approving the appointment of the CEO (66%); reviewing CEO's performance on a regular basis (71%); and evaluating the organisation's efficiency and effectiveness (73%). It is apparent that the board plays a significant role in ensuring good organisational and executive performance in most of the POs. On the other hand, the SIOs have no system in place for measuring performance or for SOPs.

External Relations

Both types of TSOs have mechanisms to report organisational activities to external organisations such as annual reports (88% of the POs and 17% of the SIOs), newsletters (71% of the POs and 14% of the SIOs), as well as formal mechanism of reporting to the government and other funding bodies (90% of the POs and 19% of the SIOs). Many POs (88%) and SIOs (19%) have also established working relationships with other similar TSOs.

Third Sector Governance Models: A Discussion

There are a number of governance models introduced by social researchers, for example the 'voluntary association model', 'collective model', 'corporate management model', and 'volunteer control model' (Lyons, 2001). Chapter 9 in this Volume discusses these models further and offers a comparative analysis of the data in terms of the models. In this section, we intend to deal with the data at length to see how the Indonesian TSOs fare, and in which model do the features of some

Indonesian TSOs fit in. The discussion suggests variation of the models depending on the Indonesian situation; for example the existence of a voluntary collective model instead of a voluntary association model.

Voluntary Collective Model

According to Lyons (2001), voluntary association model is characterised by small organisations with no employees, with members dividing the tasks among themselves and with a member working as the treasurer and another, the chair. The chair is appointed to ensure that all individuals with responsibility in the organisation are doing their assigned task/s. The treasurer ensures that financial matters are in order. In a collective model of governance, the decision-making is the prerogative of a group of people, instead of a select few. Most cooperatives follow this model (Lyons, 2001).

In Indonesia, the organisation that follows some of the characteristics of a voluntary association model is the *arisan* group. *Arisan* is a gathering of people who personally know each other well enough to pool money at regular intervals and periodically draw lots in order to decide who gets the money at a given time (Radyati, 2006). This system is quite common in Java. In a *arisan* group, the members select a chairperson who sometimes functions as the treasurer as well. There is no paid staff. The duty of the chairperson is to preside over the meeting and supervise the lottery, while the treasurer collects the money from members at every meeting—generally held once a month. The treasurer also ensures that all members attend every scheduled meeting or deposit the scheduled payment to the chairperson before the meeting begins. These informal TSOs, not registered with any government agency, have been very influential and popular within many communities. A form of traditional micro-credit and money-saving scheme, *arisan* has been a common practice all over Indonesia for a long time.³⁷

In *arisan*, decisions are made through consensus from discussions (*musyawarah untuk mufakat*). The group members decide almost all the issues collectively including the deposit amount, place of meeting and amount of contributions for organisational cash saving. The chairperson does not have the final word on decision-making nor is he/she the driving force. It is trust in each other and commitment to the group that has helped *arisan* survive in modern times. The unique feature of *arisan* related to volunteer control model is that members make the final decisions, thereby making it a cross between voluntary association model and collective model. Hence, the process in *arisan* group can be categorised as voluntary collective model.

³⁷ In recent times, however, especially in urban areas, the main purpose of *arisan* has shifted. It is now a means to tighten the bonds of friendship or kinship, especially for those who rarely see each other. In many cases, the meeting is held every two or three months. The running of the organisation is based on trust and a commitment is expected of all members in the form of regular meeting attendance until the round is finished and all members get a turn to take the contributed amount home.

Collective Model of Governance

In Indonesia, there are two types of cooperatives, modern and traditional. These organisations follow several attributes of collective governance model. Modern cooperatives operate like any other cooperatives in the world where general members' meeting is the highest authority. The board consists of a chairperson, a treasurer and a secretary. The board employs a CEO and staff. The mechanism of saving and lending is similar to banks, and at the end of the year the members receive patronage refund—the share of surplus gained by the cooperatives from lending activities.

In the island of Java, traditional cooperatives such as *Tanggung-Renteng* (TR—literally means 'sharing the burden' or Mutual-Liability) are women-led micro-credit groups registered with a government agency as cooperatives. This type of organisations applies the *arisan* system in lending activities. Members in one TR are divided into many groups. For example, one TR CU in East Java, *Citra Lestari*, has 3,500 members divided in 250 groups (with a maximum of 15 members in a group). The members, live in a single geographic area, and know each other. A new member needs a recommendation from someone known to the CU to ensure that the loan is given only to people who are known to be honest and have the capability to repay. The loan amount is approved only at the members' monthly meetings. Each member must explain the reason for loan application so that the other members can discuss and approve the request. In case of a member's failure in repaying an installment due to financial difficulty, other members take the responsibility of paying the defaulting members' repayment.³⁸

The TR Cooperatives, unlike other cooperatives, have two layers of boards and two types of CEO. Two boards in the first layer belong to the main office: BOS and BOM. There is also a Group Board, in each members group, comprising of a chair and a treasurer with responsibilities similar to those of the *arisan* group described before (i.e. administering members' savings and loans, as well as presiding over the meetings). The members make the decisions in the Group Board.³⁹

There are Group CEOs and Business CEOs. The Business CEO's role is to manage the lending and borrowing as well as the cooperative business, for example selling goods in a cooperative-owned store. The other is a group of executives composed of group trainers (*petugas pelatih lapangan/PPL*) whose duty is to assist in group members' meetings and recruit more people to join the cooperative.

The important feature of this traditional cooperative is the system of sharing the burden (Mutual-Liability—an age-old value that promotes togetherness, thoughtfulness,

³⁸In the following month, the defaulting member pays back the money to the other members as well as the monthly instalment payment.

³⁹The group board keeps a record of defaulting members and reminds him/her to honour and meet all payments in the following month(s). The group trainers keep a record of the total savings and loan made during the group meeting and brings the money from each group that she/he administers to be deposited in the main office.

openness, discipline, tolerance and honesty). The group members care for and show concern for each other, and remain responsible to pay back the loan amount temporarily on behalf of a defaulting group member. The system binds members in a relationship that compel them to look out for each other and make each one feel part of a big family.⁴⁰ Some of these values follow some governance principles and are documented in the literature on transparency and accountability (OECD, 2004; Tjager, 2003; Wallace and Zinkin, 2005).

Modified Corporate Management Model

Corporate management model for NPOs (Lyons, 2001) draws from the business world, where board members are elected and act on behalf of the organisational members. The board appoints the chief executive, formulates vision and mission, monitors organisational performance and appoints certain board members to audit committees to ensure risk minimization.

In Indonesia, TSOs with the above-mentioned features are mostly large (huge assets and funds) are long-standing (often 20+ years). Many of these organisations are established to accommodate the interests of the founders (in particular, their concerns for a specific group of people, and for the provision of assistance for livelihood, health and general well-being). Some have broader missions such as preserving the environment and natural resources, as well as preparing other TSOs in coping with the rapid transformation in the political process at the onset of the Reformation Era. The founders are usually successful business people, ex-senior government officials, or committed to working in the TSOs and mobilise their own funds to finance the organisations. These founders then form the board that determines the organisation's vision, mission and strategic plans. They select the executives to deal with management issues and employ administrative staff.

The survey reveals that in most TSOs that follow the corporate management model, the CEO is the chair of the board with a major role in decision-making. The CEO is also considered to be the driving force by the organisations' members. Apparently, many of this type of CEOs are the founders of the organisation. In addition, expertise of an individual is another criterion, which enables someone to become the driving force. The board members in this type of TSOs also seek funds to maintain organisational sustainability.

In sum, some TSOs surveyed follow the modified corporate management model that relies on certain people to make final decisions. These decision-makers are also the founders and leaders, and are looked upon to uphold the organisational life.

⁴⁰ According to the chairman of the biggest *tanggung-renteng* cooperative in East Java, Yoos Lutfi (2006).

Volunteer Control Model

Another type of governance model that exists in many other TSOs in Indonesia is volunteer control model. According to Lyons (2001), in a volunteer control model, volunteers who are members of the organisation are involved directly in management and in administrative matters, although the organisation may employ staff to perform administrative tasks.

Most TSOs in this survey comprising of individual members and organisations follow this type of governance model. Associations usually have members who share the same hobbies or interests or areas of specialization. In a hobby association, the main purpose of the organisation is to serve as a gathering point for people with similar interests, for networking, and to know each other for mutual help in the future. In this type of TSO, the members make the decisions, and the organisational members select the board comprising mostly of a chair, vice-chairman, a treasurer and a secretary. The organisations usually employ one or two staff, and use membership fees to pay their salary. In smaller organisations, the board sometimes consists of only a chairperson and a treasurer; therefore, frequently they are also involved in administrative tasks. The board members are volunteers, and they perform their duties in their own time. The motivation is that they develop a network and get along with a variety of people who they believe might benefit their personal or private business in the future.

Included in this survey is a large organisation or a confederation that calls itself a 'society' with individuals and organisations as members. The main purpose of this confederation is to assist its members in coping with the rapidly modernizing world to deal with such issues as social transformation, globalisation, economic crisis and political changes. Its main activities are consultation, capacity building and fund-raising. Several boards serve the organisation—the BOT (*Dewan Wali Amanah*), BOS and Board of Directors. The highest authority is the BOT consisting of representatives of the organisational members. The selection of the members in the Board of Directors is through election held in the general assembly meeting comprising the three boards. The role of the BOT is to formulate vision, mission and strategic plans and make major decisions. The BOS' main task is to monitor the Board of Directors. The Board of Directors deals with the management tasks and coordinates the running of the programmes. It is accountable to the BOT. Each board comprises a chairperson and several members. The volunteers control and perform the core work in the organisation, while the paid staff performs the administrative work.

In Indonesia, most organisations following the volunteer control model are member-serving associations. Therefore, the members have an elevated position in the organisation, and play a significant role in the organisation's sustainability.

Conclusions

The cooperative spirit inherent in Indonesian society has encouraged the growth of informal as well as formal TSOs in the country. The long Dutch occupation resulted in a colonial legacy that has not been entirely shaken off—there are colonial laws that still apply today even in the case of TSO regulation. In different periods of Indonesia's post-colonial history, the political conditions have had a significant influence on the enactment and enforcement of the TSO laws.

Only two laws (the Foundation Law and the Cooperative Law) specifically address governance issues, in terms of board composition, function, responsibilities, and of the procedure for transparency and accountability. The laws for other types of TSOs only regulate general matters such as the procedures for incorporation and registration, organisation function and source of fund. Many individuals in the LSMs (almost 90% of which are foundation), in our study, thought that the government unfairly targets and unduly interferes in the internal matters of the foundations. Accordingly, many LSMs have or are planning to become 'association'. Thus, it seems the recent reformation of the Foundation Law seems to be self-defeating. It is unlikely to achieve the purpose until uniformity in the laws can be achieved.

Nonetheless, the study reveals that though every TSO law states that the concerned government agency has the right to dissolve the organisation if it presumes any TSO to be associated with or undertaking activities contrary to the law, the respondents in all types of TSOs opined that, in reality the regulation is rarely enforced. These same individuals are of the opinion that sanctions should not be aimed only at the TSOs, but also to the government itself, if it fails to enact the regulation aimed at good governance.

The Indonesian TSOs, in any event, depending on the objectives, scope, size and age follow different governance models. The small and relatively new organisations tend to follow the voluntary association model while larger organisations use the volunteer control model. The old and well-established organisations use the corporate management model and membership-based organisations, for example the cooperatives follow, mainly, the collective model. The survey reveals that though the TSOs in Indonesia follow different governance models, not a single model stands out prominently. There is, however, a tendency among the surveyed TSOs to adapt the Western model with the socio-cultural milieu of the society enjoying or benefiting from the best of the both worlds.

Chapter 15

Governance in the Philippine Third Sector: Highlights from the Country Study

Ma Oliva Z. Domingo

One of the most vibrant in Asia, the Philippine third sector has a long history that goes back to the Spanish colonial period. Pre-colonial Philippines consisted of small kingdoms and a combination of families and clans and thus there were no separate state, market or third sector organisations (TSOs) (Cariño & Fernan, 2002, pp. 29–30).

The earliest known TSO is associated with Spanish colonialism.¹ It is rooted in the cultural traits and Filipino tradition of collectivism and closely knit family system where people in general expect care from others in the family, support from groups, and protection from the organisations they belong to. During the Spanish colonial period between the seventeenth and the nineteenth century, Filipino Catholic religious organisations created and maintained orphanages, schools, asylums, hospitals and other welfare institutions (Alegre, 1996).

The EDSA People Power Revolution of 1986 followed by the mandate of the 1987 Constitution helped create a legal space for the third sector and its role in local governance.² The Aquino government (since 1986) and its successors encouraged non-governmental organizations (NGOs) to actively participate in governance and the democratization process and opened up arenas for participation. Large coalitions of TSOs were born to promote the sector, for example the Caucus of Development NGO Network (CODE-NGO). The CODE-NGO had a major role in the development of a self-regulation system through an NGO certification process to standardise and monitor NGO activities and improve their credibility. The third sector's role in public governance in the Philippines has expanded in the last twenty years and continues to explore other areas of engagement.

Our work is a timely endeavour for the Philippines. It involves an understanding of the third sector legal environment, comprehending perceptions about and under-

¹ The Sociedad de Artes y Oficios was formed in 1869 to promote awareness in the arts and crafts (see Alegre, 1996; Cariño and Fernan, 2002).

² The 1986 people's power movement against the then government of the Philippines was organised on the Epifanio de los Santos Avenue (EDSA) of Metro Manila; hence this name. The 1987 Philippines constitution recognises NGOs and people's organisations as the extension of 'people's power' and enshrines their right to participate in all levels of decision-making. All post-EDSA governments' development policy and plans have taken actions to implement that (Cariño and Fernan, 2002).

standing of third sector governance from the point of view of influential people in the country and analysing some selected TSOs. The main section in this chapter highlights major features in these three areas of our research and other related issues. Before proceeding to these, a brief section on the country, people, government and the third sector in the Philippines, followed by a section on the methodology set the study in perspective.

The Philippines: The Country, People, Government and the Third Sector

The Philippine archipelago located between the South China Sea and the Philippine Sea consists of 7,107 islands spread over 300,000 square kilometers (115,000 square miles). The country is a predominantly Christian nation (around 94% Catholics) inhabited by approximately 88 million people. Fifty per cent of the population is urban. The adult literacy rate for ages 15 and above is 93% (UNDP, 2004, p.140).

Since gaining independence in 1946, the Philippines had been a democratic republic. This was interrupted by an authoritarian regime in 1972 that ended in 1986 following mass agitation on the streets by the people, known as the bloodless People Power Revolution of 1986, or later as EDSA 1.³ Except for these historical events, the transfer of power in the Philippines has been through regular elections. The Philippines is a unitary republic with three equal branches: the executive, legislative and judiciary⁴ run by a directly elected president.

The unitary system of government provided for in the 1987 Constitution resulted in the establishment of strong local government bodies. The Local Government Code of 1991 defined in unequivocal terms state-sanctioned roles of the TSOs in local governance. The Code provides for membership of the TSOs in local special bodies, sectoral representation in local councils and processes, and partnership with government in development projects. The Code also has provisions for state funds and technical assistance for the third sector. As a result, the third sector in the Philippines has grown rapidly. The terms ‘third sector’ (TS) and ‘third sector organisations’ are not commonly used in the Philippines. ‘Civil Society’ (CS) and ‘civil society organisations’ (CSOs) are gaining currency but ‘non-government organisations’ (NGOs) is more commonly used. The general practice in the Philippines is to distinguish NGOs from people’s organisations (POs). NGOs generally refer to intermediary organisations that provide a range of services usually for the benefit of other sectors, classes, or organisations, such as POs. The POs are community, sector, or issue-based membership organisations at the grass-roots level (Domingo, 2005, p. 3). Since it is a part of a comparative study, this chapter will use ‘third sector’ and ‘TSOs’.

³ A similar exercise in 2001, now known as EDSA 2, deposed a president charged with corruption and installed a new president. An EDSA 3 followed shortly after this organized by the masses.

⁴ The Supreme Court heads the independent judiciary, which includes lower courts, a court of tax appeals and an anti-corruption Sandiganbayan.

Philippine TSOs are of various types. They include church-initiated or religious groups, community-based or sectoral organisations, educational institutions, labour unions, social welfare organisations, intermediary and developmental organisations, independent POs, social clubs and civic groups, professional and other associations, foundations, charities, federated or networked NGOs, and all other organisations registered as non-stock and non-profit organisations, and cooperatives (Domingo, 2005, p. 5). From few religious organisations during the Spanish colonial period, the sector has grown over the years. In 2002, a study estimated the number of TSOs to be between a low of 249,000 and a high of 496,000 (Cariño, 2002, p. 84).

Methodology

The primary source of data for the Philippine study to explore concepts and issues on TS governance was interviews. The qualitative method (free from any leading questions) ensured that the point of view of the interviewee emerged. Primary and secondary data aided in interpreting the interview results. There were no predetermined sampling categories in the study. Rather, the data collection procedures were flexible and emergent.

The first level in the emergent sampling design involved key informant interviews. The initial interviewees or key informants were the eight members of the Advisory Board of the Philippine Project Team.⁵ These interviewees assisted the Project Team in identifying specific informants from a wide spectrum of people—government, business and the third sector. The sample of 30 key informants thus emerged in the process.⁶

The second layer in the emergent sampling design was based on organisations rather than individuals and thus is referred to as the interview of the organisational respondents. Just like the Reputational Survey, the research teams asked the key informants to identify TSOs that they thought were performing well. The key informants identified about 270 TSOs, 79 of which eventually became part of the study.⁷ These TSOs are spread in four major parts of the country: the National Capital Region (NCR); Bicol in Luzon, Visayas and Mindanao.

Sixty-two (79%) of these TSOs are registered with the Securities and Exchange Commission (SEC) as non-stock, non-profit organisations; eight are registered cooperatives; three are public corporations originally created by law but do not receive

⁵The list included experienced, active, knowledgeable and influential practitioners in the Philippine Third Sector including current heads, officers or board members of reputable TSOs.

⁶The list included nine officials or volunteers of TSOs, three senior government officials, two senior political figures, one business leader, CEOs of two large foundations, one senior fund-raising consultant, four academics, one senior representative of a foreign donor agency, leaders of seven TSOs (outside the organisational survey) and one leader of a people's organisation.

⁷Some TSOs were mentioned more than once, some could not be located, some others were not available for interviews, or declined to be part of the study.

funding from the state; five are peoples' organisations; and one is an outreach programme of a religious order. Forty-three TSOs (54%) are from a large city. Twenty-nine (37%) have up to 10 paid staff, while 41 (52%) have between 11 and 100 paid staff. Of the 79 organisations, 50 (63%) have members. The 50 member-based TSOs have varying numbers and types of members ranging from less than 40 to more than 16,000 or up to 200,000 or even more (The Girls Scouts of the Philippines has more than two million members). Some TSOs have individuals as members, some have organisations and still others have both types of members. One TSO has families as members. Of the 79 TSOs in the study, 70 (or 89%) provide services.

The initial results of the interviews were presented to the interviewees and other resource persons in a one-day Validation Workshop. The objective was not to generate consensus but simply to confirm whether the data accurately captured and reflected the intended meanings and perspectives of the interviewees and exchange views with the participants in the context of our analyses. This enhanced the validity of the findings.

The discussion in this chapter is based on the above sources of information, and is meant to highlight the main findings of the study in terms of legal environment; meaning of and responsibility for TSO governance as seen by the respondents; governance structure in terms of boards, staffing and planning; the governance process in terms of decision-making, financial management, and performance management; and the establishment and maintenance of stakeholder relationships.

Third Sector Legal Environment

The 1987 Constitution of the Philippines expressly provides that 'the state shall encourage non-governmental, community-based or sectoral organisations that promote the welfare of the nation' (Article II, Section 23). The Local Government Code of 1991 promotes this enabling policy environment for the third sector by requiring representation of the sector in local government bodies. As a result, in the recent past, TSOs in the Philippines have grown exponentially.

The regulatory environment for the Philippine Third Sector is supportive and encouraging. TSOs can exist and operate without having to register with any government agency. Registration, however, confers legal status that brings with it certain privileges not available to non-registered TSOs, such as tax exemptions, qualification to access government funds or participation in the government's projects, and other benefits (Lerma and Los Baños, 1999, pp. 241–242).

TSOs may formally be registered with any of a number of government agencies. To have legal status, organisations are encouraged to register with the SEC as a non-stock, non-profit corporation. Cooperatives register with the Cooperative Development Agency (CDA) and labour unions or employee organisations register with the Department of Labor and Employment (DOLE).

Table 15.1 shows the list of government agencies that register, accredit, license, or grant permits to the TSOs. The TSOs dealing with sensitive issues or public

Table 15.1 Government Agencies that Register/Accredit/License/Grant Permits to TSOs

Agency	Scope	SEC/CDA registration
SEC	Non-stock corporations	
CDA	Cooperatives	
CHED	Higher education institutions	SEC registration required
COMELEC	Citizen's arm for electoral	SEC registration required
DepEd	Educational institutions from elementary to high school; Parents-teachers associations and parents-teachers community associations	SEC registration required
DENR	TSOs involved in DENR programmes	SEC registration encouraged SEC, or CDA or DSWD registration required
DOH	Hospitals or medical facilities	SEC registration required
DSWD	Social welfare development organisations and childcaring and child-placement agencies	SEC or CDA registration required
HLURB	Homeowners and community associations	No need for SEC registration
ICAB	Foreign adoption agencies	Note: local childcaring and child-placing agencies must be licensed and accredited by the DSWD
Insurance Commission	Mutual benefit association	SEC registration required
NCCA	Arts and culture groups participating in their programmes	SEC, or CDA, or DOLE, or BIR registration required
PHILHEALTH	Hospitals	SEC registration required and must be licensed by DOH
TESDA	Educational institutions offering technical vocational courses	SEC registration required

Source: Domingo (2005, p. 16).

service provisions are required to register with the line agencies as well as the regulatory bodies. For example hospitals or health centres require licences from the Department of Health (DOH) to operate, but may or may not opt to be accredited by the Philippine Health Insurance Corporation (PhilHealth). The community and homeowners associations register with the Housing and Land Use Regulatory Board (HLURB). Elementary and secondary schools and parents-teachers associations must get an authority to operate from the Department of Education (DepEd). The tertiary educational institutions must likewise secure permission to operate from the Commission on Higher Education (CHED). The arts and culture groups may get accreditation from the National Commission on Culture and the Arts (NCCA). The foreign adoption agencies must secure permits from the Inter-Country Adoption Board (ICAB), after getting a licence from the Department of Social Welfare and Development (DSWD). The TSOs participating in government programmes must be accredited by the agency involved, such as the Department of

Environment and Natural Resources (DENR), the Commission on Elections (COMELEC), the Department of Science and Technology (DOST) and others. There are multiple agencies that a single TSO needs to deal with depending on the public services they offer.⁸ Multiple multilayered regulatory requirements make the governance process in TSOs complex.

Third Sector Governance: Perception, Scope and External Influencing Factors

The interviews identified local equivalents for the term ‘governance’, such as

- *pagpapatakbo ng organisasyon* (running an organisation)
- *pamamalakad, pamamahala ng isang grupo o organisasyon* (managing and administering a group or organisation)
- *magandang pamamalakad* (good management)
- *tamang pamamahala* (proper administration)

The organisational perspective is clearly evident in the understanding of ‘governance’ in the Philippine Third Sector. Governance, as seen by the key informants, refers to structure and process, based on values, personal traits, sharing of responsibilities, and partnerships to achieve organisational goals. Box 15.1 captures the meaning of ‘governance’ for the Philippine Third Sector.

The study also asked the respondents to identify indicators of good TSO governance. Box 15.2 identifies the indicators that emerged, including items related to structure, clarity and integrity of the vision, mission and goals (VMGs), leadership, values, and a transparent accountability procedure. A unique feature of the Philippine Third Sector is the certification provided by the Philippine Council for NGO Certification (PCNC), which received special mention as an indicator of third sector governance. The PCNC issues a ‘certificate of good housekeeping’, after analysing different features of the TSO, including that of governance.⁹ It is also a mechanism of ensuring professionalism, transparency and accountability in the TSOs.¹⁰

The study clearly showed that the respondents’ perception about who should be responsible for ensuring good governance is different in practice from what is

⁸These are not mutually exclusive and are often overlapping, that is, one TSO may register with one agency and then get a licence to operate from another.

⁹Organised by six national NGO networks in partnership with the Department of Finance (DOF) and the Bureau of Internal Revenue (BIR), the PCNC certifies NGOs and non-stock, non-profit corporations for ‘donee’ status after a stringent review of their qualifications. The certification then becomes the basis for the BIR’s granting ‘donee’ status to the TSO certified. Local donors are given tax incentives when they provide assistance and/or largess to donee institutions (for more, see information on the Philippines philanthropy and third sector in www.asianphilanthropy.org).

¹⁰The PCNC has signed a memorandum of agreement with the Philippine Institute of Certified Public Accountants (PICPA) for the latter to provide financial management training and free auditing services to small NGOs to build their financial management capacities (for more, see information on the Philippines philanthropy and third sector in www.asianphilanthropy.org).

Box 15.1 Governance: Meaning and Scope

Governance:

1. reflects the history of the Filipino struggle against dictatorship and marginalization by emphasizing inclusive, democratic, participatory, transparent, and accountable structures, processes, and mechanisms; **(structure)**
2. involves the formulation, clarification, and review of the VMGs and the translation of these into policies and strategies, and the management of financial, human, and other resources to realise the goals; **(process)**
3. is both policymaking and policy implementation (or management) where delineation of roles and functions must go hand in hand with Filipino values of reciprocity and SIR; **(policy formulation and implementation)**
4. is not value-neutral but rather promotes high standards of behaviour and performance; **(values)**
5. is an extended family system where responsibility is shared among an active board, a competent executive, a capable staff, but ultimate authority and legal responsibility rest with the board, a relevant governance structure for Philippine CSOs; **(shared responsibility)**
6. encourages partnerships and coalitions with a variety of stakeholders; **(partnerships)** and
7. is the performance of governing functions within an organisation. **(goal achievement)**

Source: Domingo (2005, p. 226).

Box 15.2 Good Governance Indicators for the Philippines TSOs (According to the Respondents)

- Clarity and integrity of VMGs;
- A well-defined (but not overly centralised) structure;
- Clearly written policies, procedures and mechanisms (to ensure democratic participation);
- Capable, effective, dedicated and morally upright leadership;
- Effective delivery of programmes and services;
- Concern for staff through human resource management and development;
- Accountability;
- Effective financial management;
- Transparency in decisions, actions and funds management;
- Networking;
- Accreditation, certification, recognition, and reputation of the organisation—the certification process of the PCNC is specifically mentioned here;
- Sustainability; and
- Growth and development—an expanding membership base, increase in programmes, more clientele, and improvement in capacity and skills.

considered ideal. Ideally, the board should be primarily responsible for ensuring that a TSO is well governed. The chief executive officer (CEO) comes next, followed by the members, if there are any. According to the respondents, however, TSO governance, in practice, in most instances rests with the CEO (or the leader).

The government is perceived to have no significant role in ensuring good governance of TSOs, whether ideally or in practice. In fact, the perception is that government leaves the TSOs largely to themselves. The government closely monitors only the TSOs 'suspected of being subversive'.

The meaning of governance and the indicators of good governance specifically mention the presence of the board. The board is indeed an important structure for Philippine TSOs. According to the respondents, the board is relevant because it is a mechanism for accountability; it sets the direction of the TSOs; and it protects the integrity, credibility, and legitimacy of the organisation. The board is a source of professional and technical advice, a venue for representation of stakeholders, and a network (it helps establish an extended network) for raising funds. It is an advocate for programmes and an image builder. According to some respondents in the Philippines, however, board meetings are 'an executive director show' and the board is just a token part of the TSO structure. Thus, irrespective of their functions and impact, TSO boards have yet to move beyond tokenism, value adding or credibility enhancement.

Irrespective of the board function and influences, certain external factors affect TSO governance. According to the respondents, these factors include: the changing times; politics and politicians; the economy; government policies, rules and regulations; limited resources; peace and order, and security; technology; globalization; natural phenomena, e.g. climate; culture and values; the media; partners; beneficiaries; and donors. For the TSOs that desire to maintain a good image, public perception keeps them in check. Most importantly, however, the respondents believe that the third sector itself affects governance because there is competition among the TSOs in programme development and sourcing of funds. Self-regulation through TSO networks require adherence to reporting guidelines, and enhances good governance.

Governance Structure

The Board

The board structure is relevant and inevitable for Philippine TSOs, especially for those that are formally registered. Among the 79 TSOs in the study, 78 have boards or their equivalent.¹¹ The SEC requires a minimum of only five board members for non-stock, non-profit corporations. Table 15.2 shows, however, that a great majority

¹¹ The outreach programme run by a religious order does not have a board but the hierarchy of the religious order performs roles boards commonly perform.

Table 15.2 Profile of Sample Organisations by Age and Size of Board

Age of organisation (in no. of years)	Size of board						Total
	15+	15	10–13	9	6–8	5	
0–5		1	1	2	1	1	6
6–10		3	2	3	3	1	12
11–15		3	2	2	2	1	10
16–20	6	3	2	3	6	3	23*
21–30	2	2	2		2	1	9
31–40	1	2	3	1	1		8
41–50		2		1			3
51–100	4			1		1	6
100 above		1					1
	13	17	12	13	15	8	78

Note: Not included in the Table is one organisation without a board run by a religious order with its own hierarchy of superiors providing direction to the organisation.

of the sample organisations (90%) have more than five members. The most frequent board size is 15 members (22%), then 9 and more than 15 (16% each). This accounts for a total of 63% of the sample indicating that the Philippine TSOs, particularly those considered well-governed, tend to prefer large boards. Large board seems to be a matter of age of the TSO. Table 15.2 also shows that among the 16- to 30-year old TSOs 17 of 32 (53%) have over 10 board members, while only 11 of 28 TSOs (39%) of the less than 15-year-old TSOs have over 10 members in their boards. Board size is positively related to the performance of boards of the Philippine TSOs. Larger boards are likely to contribute more towards organisational effectiveness. This implies that boards are not there simply to fulfil regulatory requirements. It can be said, therefore, that the prevalence of boards among the Philippine TSOs derives less from statutory or legal requirements and more from the demonstrated benefits of having them, such as credibility enhancement and possible resource mobilization opportunity.

The study found that the sector imposes very high standards for the board members. Besides personal attributes, expertise, skills, attitudes, availability, influence, character and values, the board members are also expected to access funds, or at least be able to raise resources. They are also expected to bring with them their linkages with relevant publics. Aside from complying with what is required by the Articles of Incorporation, the choice of the board members should be in accordance with the law. For membership organisations, only members in good standing should be chosen as the board members. To avoid conflict of interest, the board members should avoid also being in several TSOs. Box 15.3 presents the seven broad categories of criteria for board members.

The board members do not receive any pay in 47 (57%) of the TSOs. A fraction of the board members receives pay (either per diems or allowances) in some of the TSOs. In 17% of the TSOs the chair of the board is also the CEO of the organisation. The chair is elected by members of the board among themselves in 62 TSOs

Box 15.3 Major Criteria for the Board Members

1. Capacities, skills and other attributes—expertise, skills, availability and influence;
2. Values, orientation and Character;
3. Funds/Resources—has access and knows how to raise funds;
4. Representation—a mix from different sectors;
5. Linkages, networks—has connections and links with relevant publics;
6. As mandated by the Articles of Incorporation and rules of the country; and
7. Other: no interlocking directorates and member in good standing.

Source: Domingo (2005, p. 189).

(79%) and appointed/elected by members/constituents in the others. The study shows that at least 91% of the TSOs hold regular board meetings, and a similar percentage of the TSOs makes the agenda available before the meeting. In almost all (94%), the agenda is prepared jointly by the chair and the CEO.

The SEC requires that boards hold an annual meeting in April unless any other date is fixed by the respective by-laws. The cooperatives require holding monthly meetings unless otherwise provided for in the by-laws. Table 15.3 shows the number of board meetings held by the TSOs per year. It reveals that boards of most of the TSOs in this study meet more often than the required minimum. Thirty-two (40%) TSOs held four meetings a year. Eighteen boards (or 23%) held twelve meetings yearly, and one TSO had 24 board meetings. Meetings are not generally open to the public but many TSOs said they accept requests to attend, except when sensitive issues are on the agenda. It seems, however, that cooperatives are less particular about the regulatory requirement of meeting every month, but they are under more stringent monitoring by the members as well as the regulatory bodies than are the other TSOs. It is the general perception and relationship with the government that matters more than the number of meetings.

Most TSOs in the study (77%) have paid staff doing most of the work. Volunteers undertake most of the work in only 12 (15%) TSOs. The others had a combination of

Table 15.3 Number of Board Meetings Held Per Year by Different TSOs

		Board meetings per year							No answer	Total
		1	2	3	4	6	12	24		
Organisation type	Non-stock	1	6	4	28	2	12		10	63
	PO	1	1		1		2			5
	Coop				3	1	3	1		8
	PubCorp		1				1		1	3
	Total	2	8	4	32	3	18	1	11	79

both. The number of staff has grown over the past three years for 40 of the TSOs (51%), remained the same for 26 (33%), and decreased for 10 (13%).¹² There appears to be a relationship between increase in staff and size of the board as well as number of meetings. Thirty-four (55%) of the TSOs with 5–15 board members increased the size of their staff over the past three years. Among those that increased the number of staff, 51% held regular board meetings, 54% kept minutes of the board, and only 4% did not have annual financial statements (AFS).

All (except 2) TSOs, included in the study, have a formal planning mechanism in place, a clear mission statement, written objectives and a system of preparing plans before proceeding with major projects. Circulation of proposals to the members before the meetings is also a common practice. Having a review process for strategic or business plans is widely practiced. Board members are actively involved in developing, approving and reviewing strategic plans. The TSOs rarely make strategic plans available to the members.¹³

Another area where the TSOs score low is in the area of successor planning. This finding corroborates other related literature (Abella and Dimalanta, 2003) on the absence of a tradition for preparing a successor generation. This study, however, reveals that efforts to address the problem are increasing since boards of 61% TSOs in the study are already involved in this.

Governance Process

Decision-Making

Forty-three (55%) of the TSOs indicated that their boards make the final decisions in the organisation, while nine (11%) claimed that it is the CEO and seven (9%) respondents said that the decisions are made by the members. For the rest, it is a combination of all three. Decisions during board meetings are usually arrived at by consensus in most of the TSOs (77%), and voting is resorted to only occasionally. Sixty-five TSOs (82%) said they keep minutes of the meetings. Holding regular meetings, preparing an agenda and keeping minutes are the qualities of good board management which most TSOs seem to follow.

Fifty-eight (73%) identified the presence of a driving force in their respective TSOs. The driving force may be the CEO, founder, board chair, staff, officer or a combination of two or more of these. The largest number of the respondents (25 or 32%), however, believed that in their TSO the CEO is the driving force, while in ten (13%) it is the chair and in five (6%) the founder is the driving force.

¹²Three TSOs in the sample did not give a categorical response.

¹³The common explanation for this is that these are readily available upon request but not routinely given out to all members.

In 21 TSOs (27%), expertise or competence is the primary characteristic of a driving force, while 12 TSOs (15%) consider integrity or moral uprightness as the important trait. For five of the TSOs (6%), the person's position in the TSO is what makes a driving force, followed by track record (4 TSOs or 5%) and charisma (2 or 3%). Lineage or family heritage as well as the capacity to raise funds were also mentioned as features of the driving force, insignificantly though (by 1% each). None of the respondents considered wealth or political connections as a characteristic of a driving force.

Financial Management

Of the 58 TSOs receiving foreign funds, 41 (52% of the total sample) claimed that it forms one third of the organisation's total budget. The second largest source of funding is the government which provides more than one third of the budget of 42 TSOs (53%). Others also received government funding but not more than one third of their budget. Thirty seven (47%) of the TSOs do not receive government funding at all; and only 18 (23%) do not receive funding from the domestic sources. Of the 61 TSOs (77%) that receive domestic funding, 13 claimed it to be one third of their budget.

A significant number (86%) of the TSOs said their activities have grown over the past three years. Only 8% admitted that there was a decrease in their activities, while it remained the same for the rest. A major cause of the reduction in activities is decreased funding. While funding increased for 73% of the TSOs, it decreased for 17% of the sample and remained the same for 10% TSOs. There is a positive correlation between increase in funding and increase in activities. In 52 TSOs (67%) where funding increased, activities also increased. With increase funding, the activities remained the same or decreased only in an insignificant number of TSOs (3 and 4% each). Even for nine (12%) TSOs with reduced funding or for 7 (9%) whose funds remained the same, activities increased.

There is a very high incidence of observance of sound financial management processes and procedures in the surveyed TSOs. At least 96% of the TSOs follow a formal financial procedure; 94% prepare annual budgets, and 87% have monthly cash flow budgets. At least 93% also have asset registers or inventories.

The board, however, is not very much involved in the preparation of the annual budget in these TSOs. It is usually done by the staff and the CEO and then simply presented to the board for approval. The data in the study show that the board has delegated much of its authority to the staff in the area of approving expenditures, except for large investments like building construction. At least 67% of the TSOs reported that their boards conduct detailed review of financial statements. This may be because these statements go through a financial audit anyway in 92% of the TSOs.

The SEC requires the submission of financial statements within 120 days of the end of the fiscal year. It also requires the AFS of the TSOs with gross receipts of less than ₱ 100,000 (approximately US\$2,000) or assets of less than ₱ 500,000 (approximately US\$10,000) to be attested to by the Treasurer of the corporation.

Otherwise, the AFS should be audited by an independent certified public accountant. The CDA requires the publication and auditing of the AFS according to generally accepted auditing standards, principles, and practices. In most cases, it seems, the TSOs oblige.

Performance Measurement

At least 87% of the TSOs in the study reported the presence of a system of measuring performance and the availability of a procedures manual. Written job descriptions are available in 96% of the TSOs and 81% claim that the performance of senior staff members is subject to regular appraisals based on key performance indicators. The respondents also reported a high incidence of evaluations of efficiency and effectiveness (80%) and the conduct of client interviews to determine quality service (77%).

The board performs a major role in ensuring quality performance among the TSOs in the study. In 65 (82%) of the TSOs, the board appoints the CEO, although only 55 (70%) actually conduct a regular review of the performance of the appointee. The board reviews the performance of the organisation in terms of key performance indicators in 64 (81%) of the cases but only 39 (49%) report that the board is involved in reviewing quality assurance procedures.

Governance Relationships

Relationships with the Stakeholders

All TSOs in the study report that they have a formal mechanism of external reporting. There is a high incidence of preparing annual reports—only seven (9%) did not produce annual reports. Fifty-eight per cent of the TSOs have regular newsletters¹⁴, and websites.

In 54% of the TSOs the board members make representations for the organisation with the government agencies or help the organisation negotiate around the political system. Of the 72 TSOs that have mechanisms for reporting their activities to the external bodies, 43 (60%) have board members helping them negotiate the political system.

Less than half (47%) said that the board members help the organisation seek donations from their friends. The contribution of the board is less in financial terms, either as donors, making representations with funding bodies or encouraging others to contribute, but more in terms of their technical expertise and advice.

¹⁴Others said they used to have one but had to discontinue this for lack of funds.

Conclusion

The Philippine Third Sector is complex and highly differentiated. It consists of membership and non-membership organisations. Some have paid staff; others do not have staff at all but are run by volunteers. Some provide direct services, while others engage in indirect services to help build the capacity of other people or communities. They vary in size from the small, self-funded advocacy groups to the large fee-for-service schools and hospitals with their own bureaucracies (Domingo, 2005, pp. 5–6). A major characteristic of the Philippine Third Sector is the frequent and continuous collaboration and partnership among various TSOs, across types, mission, history, size or location. It is not uncommon for the third sector executives to be involved in one way or another with other TSOs.

The board structure is very relevant for Philippine TSOs. While owners of private enterprises determine the line of business where they invest their money, the TSOs have no real owners. The purported ‘owners’ are the public who benefit from the services but do not actually invest their money nor determine the ‘line of business’. It is the board then that plays the role of owners. The board is expected to define and redefine the TSO’s public purpose to make the TSO and its activities focused, clear and socially relevant. It is thus an important governance structure. Although not the owner, it is vested with legal authority and must be able to translate the mission into policies and strategies to guide implementation. It uses collective wisdom and experience to illuminate the direction the organisation takes.

The purpose, origin, size and role of the boards vary. The most common impetus for the creation of boards is for regulatory compliance, i.e., a TSO that wishes to register or get accredited must organise a board. The study revealed that some TSOs put a lot of effort to determine size, composition and role of the board even before formal registration. Some boards come into existence long after an ‘informal’ organisation has been in operation. The prevalence of boards among Philippine TSOs derives less from statutory or legal requirements and more from the demonstrated benefits of having them, including their role in defining VMGs, and the resources they are able to contribute or mobilise.

Boards of Philippine TSOs have formal, legal responsibility for the Organisation. They, however, seem to gladly share this responsibility with the executive and staff. Perhaps this is more because of the benefits of democratic and participatory processes and less because of abdication or ‘shirking’ of responsibilities.

The Board character and relationship is a manifestation of Filipino social values. Philippine values and culture make it difficult to separate policymaking (the role of the board) from policy implementation (the role of the CEO and staff). While a board is expected to focus on policymaking and to leave implementation to the staff, an airtight separation between the two is not easy. One who oversteps the bounds of duty and scope of activities is tolerated and not usually called to task in the name of smooth interpersonal relations (SIR)—a highly held value for Filipinos.

The Filipino society is collectivist in nature. Filipino families are closely knit and extended. Family members are expected to care for one another; they also expect protection from the organisations and groups they belong to when in trouble. Although not as pronounced as it had been in the past, Filipinos still show a great deal of respect for elders and those in positions of authority. Hofstede refers to this as power distance (Robbins, 1993, pp. 75–76) or the extent to which the less powerful accepts that power is distributed unequally (Hofstede, 1997). Based on Hofstede’s analysis, Filipino society may be characterised by ‘large power distance’ where power is associated with wealth and social/economic status, defined by existential inequality which is desired and manipulated in favour of the power holders and accepted by the less powerful as a determinant of ‘right’. Filipino values also emphasise the need for social acceptance. This is manifested in the values of *hiya* (embarrassment or the need to save face), *utang na loob* (debt of gratitude), *paki-ramdaman* (feeling one’s way around and not initiating action until one gets a sense of the sentiments of others), and *pakikisama* (being agreeable or yielding to the will of the majority or the leader). The objective of all these is to maintain SIR and generally to avoid confrontation and disagreement. These values govern Filipino relationships in general and make formal, organisational interactions more complex (Domingo, 2005, pp. 104–105).

Within this complex structure and process of governance, there are high expectations of the board, though the awareness of their roles is low. This fact explains intricacy in board performance and highlights the importance of board member training. Table 15.4 identifies the areas for board member training. The TSOs in the Philippines will be able to perform its constitutional roles and fulfil the members’ and the general public’s aspirations if some of these programmes can be undertaken within the auspices of the TSO self-regulatory regime or mutual support mechanism.

Table 15.4 Training Needs for Board Members

No.	Areas for training
1	Roles/responsibilities and conflict of interest
2	General management/strategic management
3	Raising funds and resources/financial management (micro-finance)
4	Networking
5	Human resource management
6	Organisation development
7	Visioning and policymaking
8	Values and culture
9	Legal background/understanding laws governing TSOs
10	Specific knowledge and skills
11	Workshops for best practice sharing

Chapter 16

Third Sector Organisation Governance in Thailand: Regulations and Perceptions

Juree Vichit-Vadakan

Living in a social group is an attribute of being human; social groups have to maintain their cohesion in some ways so that their members can stay alive (Beals and Hoijer, 1979). In modern societies, rules and regulations are used to shape the members' conduct in a society. In democratic societies laws, in general, are administered and enforced by a group assigned by the people. Those abiding by the laws are watched and expected not to do what the laws forbid. Those enforcing the laws are also subject to follow the laws as well. In other words, they are required to be watched. To maintain equal power related to these two 'watching', which leads to societal equilibrium, some kind of mechanism is needed in the form of a checks and balance. Those who enforce laws or govern are expected to govern well, while those who are governed are expected to follow the laws. In the literature this checks and balance mechanism is commonly known as 'governance'.

The most recently created legal mechanism to enhance good governance in Thailand is the Royal Decree on Good Governance (2002).¹ The law requires state organisations to perform their functions with five main principles like the (1) rule of law, (2) morality, (3) transparency, (4) participation, (5) accountability (to be responsible to the society as well as to the self for one's action) and (6) effectiveness (to maximise benefits gained from a limited amount of resource).

Private organisations in the recent years are required to and have tried to adopt some of the above virtues of good governance. Many third sector organisations (TSOs) also re-examined their governance system because the economic crisis obviously affected their funding. As funding decreased and more people needed their help, these organisations were automatically forced to work in the most effective way to sustain. Many turned to improved 'governance'. Since the nature and the purpose of the TSOs differ from those of the private and public sector organisations, the concept of 'governance' cannot be applied in the TSOs the same way it is in the other two types of organisations. It is worth exploring the variety and character of governance in the TSOs.

This chapter highlights the major findings of the important aspects related to TSO governance in Thailand. It specifically reviews research done on 'governance' in

¹Before the enactment of this royal decree in 2002, such law was applied only in the Office of the Prime Minister (since 1999).

Thailand, the legal environment of TSO governance and the outcome of interviews undertaken with 13 people in Thailand called the key informants—selected because of their past or present influence and/or involvement with TSOs in Thailand.²

TSO Governance in Thai Publications

The content in this section covers different forms of governance and their respective purpose. It outlines forms of governance diachronically. In essence, governance in Thailand has been used as a means to maintain a personal power and group cohesion, and a means for TSO management. Governance can also be seen as a means of achieving good administration in the public sector, and crisis salvation. These discussions highlight some basic features of Thai society that are worth remembering in any analysis of governance issues.³

Governance as a Means for Personal Power and Group Cohesion

In Thailand, a mechanism, claimed by some to be ‘governance’, has been used since the beginning of our history. Scholars such as Uwanno (1998) and Panyarachun (1999) agree that even when the governing system was absolute monarchy, there were certain means to ensure that cohesion was maintained. The two scholars indicate that the monarch who possessed absolute ruling power was required to adhere to the ten principles known as ‘*thotsaphitrajadharmā*’.⁴ These ten principles, though not forced on the monarch, were crucial if he wanted to legitimise his absolute power. Incidents did exist when the monarchs did not see the importance of the principles and abused their powers; they were challenged and, in some cases, dethroned. On the other hand, those who adhered to them were loved and worshiped by the subjects. As such these principles are related to governing, and Uwanno (1998) considers them ‘royal governance’. At the micro level, social order in Thailand has been, in most cases, achieved by means of patron-client system. These two parties are entangled in a quasi-symbiotic relationship—clients serve and respect their patrons, while patrons protect their clients.

From the two cases mentioned, one can readily see that the term ‘governance’ is used loosely to mean any governing way that is based on virtue. Coming from this perspective, Kamhasengkitiron (cited in Uwanno, 1998) defines governance as a state which is operated with virtue.

²For a detailed discussion on methodology for this research work, please see Chapter 1 in this volume.

³For more please see, Vichit-Vadakan, (2006).

⁴The principles, based largely on Buddhism, are, for example, generosity, high moral character, non-violence and non-oppression.

Then again corporate governance is a process that aims to direct and control the management of a company on a strategic level, leading to greater shareholder value and aligning the shareholder's beliefs with concerns of business ethics and quality of life of the society (Honcharu, 2002). For Nikomborilak and Chimannaidham (2000) crucial elements of corporate governance are 'just' and 'transparent' management, 'accountability' to the shareholders and careful consideration of all the stakeholders.

Governance as Crisis Salvation

When the major economic crisis hit Thailand in 1997, many came to realise that prosperity they had earlier enjoyed (due to the rise of stock prices, real estate prices, etc.) was indeed calmness before a big storm. Examining the causes and looking for someone to blame, the government, economists and the Thai people alike found that non-transparent practices (e.g., bribery, nepotism, fraud) were common among corporations listed in the stock market. The term corporate governance slowly emerged and later became a buzzword. This time, scholars introduced the concept of governance as used in a more universal sense (not as a means to maintain group's cohesion). Thechavera (1998 cited in Vichit-Vadakan, 2006), for instance, clarifies that governance can be categorised into autocratic, liberal and communitarian types depending on specific contexts in which it is used. Rather than detailing what each type is, this section focuses on works which look at governance as economic crisis salvation.

When the economic crisis broke out, the private sector was first to be blamed and hence scrutinised. Collapse of business was said to be caused by 'lack of good corporate governance'—operating without fairness, transparency, accountability and responsibility. Structural and procedural reform measures were quickly suggested to remedy the problems and to prevent further downfall. Not clearly understanding the concept (since, admittedly, many of the listed corporations grew out of traditional family business), the business houses needed to reform and defined the concept differently. As a result, different practices emerged. A major study undertaken on the issues identified five problems: concentration of ownership, high level of diversification, weak market incentives, lack of protection for minority shareholders and inadequate accounting standard.⁵ These findings demonstrate that the concept (which people believed could salvage the situation) was not firmly understood, and clarification was needed.

Scholars such as Honcharu (2002) and Nikomborilak and Chimannaidham (2000) were among a few who defined the concept. To Honcharu (2002), corporate

⁵For example, a policy study on 'Thailand's Corporate Financing and Governance Structures' conducted by the Alba, Classenssens, and Kjankov, see Uwanoo (1998).

governance is a process that aims to direct and control the management of the company on a strategic level, leading to greater shareholder value and aligning shareholder's beliefs with concerns of business ethics and quality of life of the society (in which the business is conducted—parenthesis added). Nikomborilak and Chimannidham (2000) indicate that crucial elements of corporate governance are just and transparent management. To them, decision-makers or the management must be accountable to the stakeholders and treat all the stakeholders' interests equally without any double standard. A board must be there to oversee that the management conduct itself according to the principles. While the scholars were engaged in defining the concepts and attributes, the Thai Security and Exchange Commission (SEC) and the Stock Exchange of Thailand (SET) established a Good-Governance Sub-Committee to improve the situation. The sub-committee defines governance as 'an organised system of relationship between the board, the management and shareholders in order to increase competitiveness, growth and long-term value added for the organisation'. In short, all definitions mentioned above emphasise fairness, transparency, accountability and responsibility. The sub-committee clarifies each as follows:

Fairness requires that all shareholders and creditors be protected and treated fairly by inside shareholders against fraud and misconduct.

Transparency requires that the company discloses accurate and timely information on its operations (both financial and non-financial) in its annual reports. This includes adopting International Accounting Standard (IAS).

Accountability requires that the company set up a structure of duties for the board of directors and executives to make them accountable to shareholders and creditors.

Responsibility requires that the company have responsibility to the shareholders and stakeholders including employees, consumers, suppliers, creditors, the government and the community. As a corporate citizen, the company has responsibility to pay taxes and protect the environment and the health and safety of the stakeholders and the community.

The aim of the elements listed can be said to be a behavioural as well as a structural reform. It is behavioural in the sense that corporations are given a list of things to do. It is structural in that they are required to have a board to oversee the management. But in terms of underlying ideology, Sujaritkul et al. (2000) Vichit-Vadakan, (2006) states that it is most important that corporations have respect for shareholders' rights (to information, to decision-making process, etc.). Similar to Sujaritkul et al. (2000), the Good Governance Sub-Committee itself stresses the importance of ethics, like 'self-control' (the most basic principle of Buddhism) that includes honesty, integrity, promise-keeping, trustworthiness, loyalty, fairness, concerns for others, respect for others and law abiding. Elements from the Western concept of governance like the commitment to excellence, leadership, reputation, morality and accountability were also emphasised. Concretely itemised in this way, governance becomes a concept which can easily be practiced.

Governance as a Means to Achieve Good Administration in the Public Sector

Wongkul (1998) indicates that 'governance', as underlying potential concept, has existed in Thailand and in the West for over a thousand years. For Thailand, 'governing with *Dharma*' has been used. The idea has not been recognised by any scholar because adherence to *dharma* by one person, ie. the leader, cannot result in an effective governing system.

Despite an apparent lack of effective governing system, attempts were made to bring about the betterment of the system. Comparing the Western with the Thai concept of governance, Uwanno (1998) uses the dichotomy of 'personal interest vs. public interest'. Uwanno states that lack of governance in the Thai system in the past was largely due to the fact that the old system put emphasis on 'personalisation of power'—power which results from competence and capability of the leader. As such, the leader was entitled to privileges. In the Western concept, on the other hand, focus is not on the 'person'. Rather, it is the 'position' that a person can occupy for a period of time. The distinction between 'person' and 'post' or position is clear. According to Uwanno (1998), King Chulalongkorn endeavoured to separate 'person' from 'position'. From the top, the position of 'crown prince' was institutionalised and rules were issued to guarantee peaceful succession.

As far as privilege and abuse of power was concerned, King Chulalongkorn separated 'royal treasury' (the money used for public administration) from the 'crown property' (the personal property of the royal family). As for the administrative officials, the position of the so-called 'lords' who 'ruled' were changed to 'government officials' who 'administered' on the basis of the framework determined by the state.

Old habits die hard, and culture (the way of thinking) is even harder to obliterate. The understanding that 'position' was a place where one could gain 'privilege' still lingers. It results in (1) the lack of understanding that 'conflict of interest' is a taboo (using position and power to gain personal benefit is still thought of as entitlement in the Thai system) and (2) the continued existence of 'patron-client' behaviour (Uwanno, 1998). Thus the structure of Thai society itself is not conducive to having the Western model of governance.

Being in the state of flux without any structure, according to Wasi (1998), the lower level of the society opens itself to being taken advantage of by the upper structure. The advantage taken can be the deprivation of resources the people are entitled to, or the withholding of information which may help people to understand how to contend their advantage-seekers. The result is corruption.

Further, the existing laws and regulations instead of promoting good governance can, in turn, inhibit it. Uwanno (1998) states that laws and regulations drafted and passed by the traditional paradigm give government sole rights to run the country. Emphasis was on rights rather than duties of officials. With such existing structure, the result, therefore, is that there is no compatibility between the Thai society and the Western-made concepts of governance.

Notwithstanding the engrained habit of the Thais which leads to the incompatibility of the administrative system and the Western concept of good governance, it does not mean that governance is not essential to Thailand and should be disregarded. Scholars and social activists such as Wasi (1998) points out that the concept just lies on different premises. To the Thais, the leaders and the power holders are expected to rule with '*khunnadharmā*' (sense of rightness). The external environment (such as formal auditing procedures) did not (or cannot) exist to make leaders have '*khunnadharmā*'. It has to come from within the rulers themselves. If something is done wrongly, the (good) leaders are to feel 'guilty'. It is on the basis of 'good conscience' that leaders at different levels rule. As such, the mechanism for checks and balance is unnecessary, and the system (with goodness of the leaders) will maintain its equilibrium. Uwanno (1998) argues that this 'goodness' is institutionalised. At least at the highest level, the King is prescribed to rule with the ten Royal principles stated earlier. However, the term 'institutionalised' does not imply that they are enforced. What Uwanno probably wants to mean is to 'codify'.

Governance as a Means for TSO Management

As far as studies on good governance in the third sector are concerned, Vichit-Vadakan (2003) in her work on '*Governance, Organizational Effectiveness and the Nonprofit Sector*' points out that the Thai people in general are more concerned with the issue of legitimacy of the TSOs than those of transparency and accountability. Legitimacy entails such issues as how the organisation is founded, by whom and for what purposes. Imbued with the concept of legitimacy, the question of how the TSO is funded has been recently raised by people.

In Vichit-Vadakan's analysis (2003), the credibility of the TSOs is not dependent on transparency, accountability and organisational effectiveness alone. Thai traditional values, belief and practices that place emphasis on charismatic leaders with high status and position, and on prominent figures with power and authority, are still evident and adhered to. As a result, well-known names and personalities lend prestige and status to many TSOs' boards or committees.

Vichit-Vadakan (2003) also describes some informal measures that the TSOs employ to deal with the TSOs that exhibit questionable behaviour and low integrity. These are as follows: (1) informal social sanction, (2) informal social ostracism, (3) exclusions from all joint activities, (4) blacklisting the TSOs, (5) sharing the 'blacklist' with other TSOs as well as with the donor agencies and (6) truthful revelation, if asked.

Vichit-Vadakan et al. (2003) explores and examines the concepts of governance and legitimacy as they relate to the TSOs in Thailand which may or may not coincide with those found in other sectors and countries. The study argues that, viewed in the context of the Thai cultural/value system, the concept of 'governance' will be a local one, and this concept inevitably leads Thai Third Sector to view

'legitimacy' differently from the West. In addition, the paper argues that such a view (on governance and legitimacy) depends largely on the nature of each organisation (informal, formal, big and small). The theoretical questions addressed then are: whether the form of accountability systems (in the Western sense) is adequate and justifiable in view of the vast differences and stages of development among the TSOs, and whether or not 'governance' in the Western sense is the only indicator which determines if an organisation is a legitimate one. These two questions cannot be answered without establishing at the outset the nature of the Thai Third Sector and what they, in general, understand by the term 'governance'. 'Governance in the Thai sense', in turn, cannot be pinpointed without considering Thai culture and the Thai worldview. This chapter will endeavour to do just that. Before the main discussion, in the next section, we underline the major laws and regulations affecting TSO governance in Thailand.

Laws and Regulations Affecting TSOs

The Thai Constitution, 1997 guarantees the Thai people freedom to form associations, unions, cooperatives, farmers' groups, non-governmental organisations (NGOs), or other forms of organisations. No law may restrict the freedom to associate except the laws made to protect the common interest, to maintain peace, protect public morals or protect against economic monopolisation (Article 45). The freedom to associate is governed by various laws depending on the type of association. The two main types of TSOs in Thailand are foundation and association. A foundation must have endowment funds, formed for charitable purposes (like religion, art, science, literature and education) for the community and must not benefit any founders or those associated with its management.⁶

An association is 'a group established to perform non-profit, communal activities' without personally benefiting any of its members.⁷ The Civil and Commercial Code of 1925 (amended in 1992) provides for registration of associations and foundations. All types of associations and foundations need to obtain a permit from the National Culture Commission (NCC) under the Ministry of Education.⁸ Following the receipt of the permit from the NCC, all foundations are required to register with the Ministry of Interior, while associations must register with the National Police Office Bureau. There are also trade associations which must register with the Ministry of

⁶ Article 110 of the Civil and Community Code states that minimum endowment for a regular foundation should be US\$12,500 and US\$6,125 for public welfare foundations.

⁷ Article 78 of the Civil and Community Code.

⁸ Effective March 6, 1966, as a result of a consultation between the Ministry of Interior and the Attorney General, the National Cultural Act of 1942 only applies to associations whose objectives are related to the work of the NCC. After this act was passed, several associations whose objectives are not related to the work of the NCC were established.

Trade, the cremation associations with the Ministry of Labour and Social Welfare, labour unions must register with the Ministry of Labour and Social Welfare and all political parties are to be registered with the Election Commission.⁹

The associations and foundations are required to have an administrative board, and a sub-administrative committee, as required. The board's size, election rules and responsibilities are subject to the individual TSO's choice and are not imposed by the respective laws. As such, the laws regarding the internal governance of a registered TSO are rather open and flexible.

Regarding administrative laws and regulations affecting governance of the TSOs, the Ministry of Interior issued a code (#92/2519) and formed a committee to act as an enforcement agency. This committee oversees the operation of the associations and foundations throughout the country to ensure that those organisations comply with laws and regulations. In addition to this code, the Civil and Commercial Code 104–110 authorises the Office of Police Intelligence to oversee the work of the TSOs in the Bangkok Metropolitan area, and the Department of Local Administration, Ministry of Interior to oversee the work of the TSOs outside Bangkok. These offices are responsible for checking whether an association or a foundation is properly registered and whether it is operating within the relevant laws and regulations. If a TSO is found to be breaking a law, the Civil and Commercial Codes (#60–69) provide details of actions to be undertaken or penalty to be applied.

Overseeing bodies in Thailand are, however, not overly strict in controlling the activities of these organisations as long as their activities do not break any law or are a danger to good morals, public order and state security. Services such as health care and childcare do not require a special license. The organisations that are engaged in development and environmental protection are also free to perform any activity that is not against the law and does not affect good morals or state security.

Thus the TSOs are not subject to the same degree of scrutiny as organisations in the for-profit sector. Further, there are associations which are not registered with the government, but operate openly.

The Key Informant Survey

As a part of the study, the research team in Thailand like in the other participating countries interviewed influential people. The focus of these interviews were to comprehend the respondents' understanding of the TSO governance related issues like the importance of governance in the TSOs, the respondents' perceptions about TSO governance, meaning of good governance in the TSOs, external factors affecting

⁹The relevant governing laws are Commercial and Association Act (1966), the Cremation Welfare Act (1974), the Labor Relations Act (1975) and the Political Parties Act (1999), respectively.

good governance in the Thai TSOs, and relationships between the board and the CEO as existent in the Thai TSOs.

How Essential Is Governance in the TSOs

Similar to Viravaidhaya (Vichit-Vadakan, 2003), some of the key informants see the importance of the TSOs being accountable, transparent and thus legitimate. One key informant, involved in a development TSO, opined that good governance is a very important feature of organisational management because it means transparency, accountability, quality and guarantees the achievement of the TSO's objectives.

Another key informant in an advocacy organisation shares a similar view adding the importance of having a good information system (implying that nothing is being concealed). He suggested that the TSO's accounting system and work plan should be transparent. Another informant clarifies that accountability means responsibility to the clients as well as the public in general, while transparency means not discriminating against anyone because of political or business reasons.

A somewhat different view comes from an informant who works for the Foundation of the Children. This informant indicated that everything the TSOs does is legitimate and that good governance is a matter of individual practice rather than a set of codes of conduct that all have to adhere to.

From the above discussion, it can be said that to all the key informants TSO governance is important since it works as a checks and balance mechanism. Whether the mechanism should be within an organisation or come from outside the organisation depends on the individuals. To some, governance is an end that the TSOs need to achieve to gain trust. To others, it is a method of management, which leads to effective management (thus high output). To yet others, it is a personal issue of ethics. If individuals conduct themselves well, they will gain trust and their works will be supported.

TSO Governance: Perceptions of the Key Information

The study found that TSO governance consists of five elements: (1) accountability, (2) transparency, (3) counter-corruption, (4) participatory management and (5) strict legal framework. In achieving accountability, according to Agere (Uwanno, 2002), the organisational members must be responsible for their actions and decisions which affect the public. The actor must justify their decisions or actions. As far as transparency is concerned, Agere (Uwanno, 1998) states that any organisation must open itself to public scrutiny. All deals must be open to all and everybody must be entitled to equal opportunities and subject to the same treatment. Counter-corruption is to be taken seriously. Corruption entails abuse of power for personal gains as well as causing harm to the TSO intentionally. Participation requires involvement of the

stakeholders in decision-making processes. It also involves decentralisation of power to stakeholders of all levels (management to the grassroots). A strict legal framework is essential detailing in unambiguous terms what needs to be avoided and how the wrongdoers should be punished.

While some of our key informants agree with the Western model of governance, others think that there is more to TSO governance than the five above mentioned elements. From individuals in the key informant survey who are involved in various types and sizes of NGOs, certain indicators of good governance emerged. At one extreme, we found few who consider the five elements mentioned above to be crucial for achieving governance (and thus legitimacy). At the other extreme, we found a few who consider non-profit work (of TSOs) to be inherently clean (thus should not be subjected to any scrutiny). In the middle, we found most who think that a checks and balance mechanism is needed if the TSOs are to be professionalised but it does not have to be formally instituted as a part of the process.

From the above discussion, it is apparent that the majority of the TSOs in Thailand are fully aware of the importance of governance (as an end to gain funding, as a means to good management, or as a set of principles to establish themselves internationally). Even with the full awareness of this, the touch of 'Thainess' precludes some from totally adopting the governance model of the West. As a result, these TSOs are caught in the dilemma between a concrete code of conduct and interpersonal trust, formal structure and leadership-based management, and between goal-oriented operation and process-oriented operation (Vichit-Vadakan, 2003).

Meaning of Good Governance

To some key respondents the TSO 'governance' means governing with *Dharma*—everyone involved in the operation must be sincere and honest. They must work for the benefit of the people they set out to help. Benefits must not go to the individuals who work for the organisation. People must work because they want to help other people. To ensure that people are joining the organisation for the correct motives, there must be a process of selecting. If the organisation is required to have a board, then the board member selection process must be transparent—there should be no nepotism at all that may undermine the board's effectiveness. Good governance means having a good system consisting of transparency, good information system, effectiveness and accountability. A 'good system', encompasses accounting system and a work process that is always explainable.

Another important aspect of good TSO governance is flexibility. Social issues change all the time, and the TSOs need to adjust to the changes. Now TSOs should not only concentrate on charity for the less advantaged groups, they also should help them to become self-reliant through education, training or other kinds of support.

Moreover, network is important to good governance because the highest achievement is gained through mutual cooperation and participation among various parties such as government agencies, other NGOs, parents, the people concerned and the

donors. Teamwork (both internal and external) is crucial for high performance. For many unregistered organisations, good governance means ‘a management system that leads to organisational objectives using the least resources possible’. It is a ‘just’ management system.

Indicators of Good TSO Governance

To many key respondents a good TSO governance system promotes an organisational culture of shared values that allow participation in every level of decision-making and encourage ‘quality’ in every work process. At the same time each person must have integrity and be responsible for his/her work and must be committed to achieve public interest. The TSO also should create situations for the board to collaborate with the management for the success of the organisation. In a TSO the board and the management get along well if the staff members do their homework identifying the problems confronting the TSOs, and the board develops a sense of belonging in the organisation.

According to some key informants, a fair recruitment system with a fair pay can establish good governance. The rewards and punishment must be based on a person’s ability and performance, and not on the management’s feelings. The procurement procedure must be transparent and undertaken for the maximum benefit of the TSO.

According to the key informants regular reporting to the donors is an indicator of good governance. It is undeniable that there might be some gaps in reporting but the TSOs must uphold honesty and ethical behaviour of the staff members. But then the donor organisations provide funds to many TSOs and one TSO receives funds from many donors. Thus it is really very difficult for the TSOs to report to all donor agencies following every donor’s requirements, and for the donor agencies to monitor all the recipients. Irrespective of the difficulty, the TSOs should strive to achieve a good reporting system because the TSOs are monitored by society, and if donors are not satisfied, they will stop making donations. The public reporting system enhances trust among and satisfaction of the beneficiaries and, according to many key informants, is an indicator of good TSO governance.

Many famous people, being on the board, due to the concerns for their own reputations, tend to monitor the behaviour of the TSO staff very closely. This close monitoring makes the TSOs accountable to the board and the donors. The TSOs’ social gathering also helps them to exchange concepts, ideas, and experiences. Listening to diverse opinions help the TSO personnel overcome their limitations and monitoring themselves. Membership in an interest group also helps the TSOs to be on the track, and also becomes an automatic deterrent of bad conducts.

An acceptable record keeping system is a must for the TSO functionality, continuity of the donor support, and beneficiary satisfaction. All monetary transactions, irrespective of the volume, must have a documentary support. Records of complete financial data also must be kept systematically. There should also be occasional auditing of the balance sheets and the transaction records. Financial records of the TSOs must be presented to the board for review and consideration.

Although most key informants saw important and direct roles of the boards in TSO supervision, a different and interesting perspective about the board came from an organisational respondent who tend to perceive the board as a consultant rather than a governing body. To this respondent the board members (busy with their profession) are volunteers so they cannot fully contribute to the organisation. The TSOs that rely too much on such board may have trouble later because the board is like 'Bod' (blind in Thai)—they do not know much about the organisation.

External Factors Affecting Good Governance

The key informants were asked to identify the external factors that they think are affecting TSO governance in Thailand. There have been many responses, but factors like governmental rules and regulations, monitoring by the government, government funds and peer pressure and social sanction were found to be most common. To many key respondents the legal rules and regulations mostly influence TSO governance because the registered TSOs have to follow certain regulations that shape their governance structure and process.

Many respondents opined that the government should support the TSOs not only supervise, lead, control, or dictate them. The government agencies need to organise regular meetings to prevent unwanted things from happening, instead of taking actions when some problem occurs. Because of ambiguity in the laws and a lack of transparency in the procedure, sometimes the district level government officials tend to monitor some TSOs' work closely, only when the officer dislikes certain organisations or develops conflicts with them. This situation is unwarranted.

Sometimes, the TSOs are used as political tools. Many government organisations offering attractive benefits, allure the TSOs to activities not originally intended. Thus the TSOs often become the government's tools for achieving certain goals. At other occasions, government agencies intend to use the TSOs in many governmental programs to enlist the formers' support. Many TSOs tend to compromise their ideology to be involved in such activities, if some potential benefits are identified. The problem, however, is that the government agencies tend to employ the 'divide and rule' strategy by providing funds to some TSOs and not to the others.

Peer pressure and social sanction to many key informants are major external factors influencing TSO governance. For example, an informant, known among the TSOs working on women's issues, indicated that good governance comes from peer pressure rather than from regulations or monitoring agencies. She stated that the TSOs have a wide network, and monitor each other through social gatherings and organised networking. When they work with each other, they learn about and follow the regulations. If someone in one TSO does something bad, the word spreads around. Similarly, the manager of a foundation working to support democracy said that civil society is a small society. Donors and fellow organisations will know about an organisation's bad behaviours sooner or later and they will refrain from interacting with and supporting the TSO.

Although the third sector does not often apply harsh measures against bad TSOs, there is evidence of self-monitoring within the society. A female TSO leader said that the TSOs look after each other in the Thai way. If one TSO is bad, it will be on the blacklist. The information will be passed around and soon that organisation will be excluded. Thus there is the ‘folk way to enhance good governance. We will not associate with them or talk to them if we think they are bad’—said a respondent.

Relationships Between the Board and CEO

According to the key informants the board ought to monitor the activities but in many TSOs, the board does not have a significant role because the power is in the hands of the managers/directors, and the current monitoring system does not work. Further, the TSOs’ work is initiated from the people’s heart so they feel ‘*krengjai*’ (feeling of not wanting to offend others). In addition, to some other respondents, ‘Thai people are often *kuo jai* (understanding)’, therefore when one TSO conduct inappropriate action, others may not say anything to their face. Thus the presumed checks and balance system, according to some respondents, as discussed earlier, may not occur.

Another major problem of TSO governance in Thailand is the existence of the patronage system that is reflected in the seniority, elite system etc. Many TSOs have tried to involve the middleclass in their movements without any success. Thus there is a big hierarchic gap between the TSO staff and the board members that often hinders the development of a good congenial relationship between the board and the CEO.

Good governance means management system that enhances the organisation’s ability to obtain its objectives. The problem, however, is most board members are very idealistic, while the TSO workers are very practical so there are collaboration problems. According to some key respondent, it is a problem for almost every TSO in Thailand.

Conclusions

The Thai indigenous concept of governance deviates from the post 1997 definition to a certain degree. While the concept of ‘good’ or ‘desirable’ governance existed in traditional Thai society, the elements that constituted traditional good ‘royal governance’ emphasised attributes like generosity, high moral character, non-violence, non-oppression, fairness etc. Good governance, as derived from Buddhist precepts and teachings which were further highlighted by the hierarchical social structure of patron-client system in traditional Thailand, focused on the ideal characteristics which a patron should possess. They are compassion, non-oppression, non-violence, generosity and benevolence. The ‘inferiors’ (the clients), were equally

bound by a set of principles such as gratitude, loyalty, knowing one's position, obedience etc. Since most individuals simultaneously held two positions, as a patron to someone lower in status than oneself or as a client to someone of higher status, the principles for both a patron and a client were well understood, socialised, internalised and inculcated in the Thai people. As such, social order and social stability could be maintained by members of Thai society who knew their prescribed social roles and status.

Whereas traditional principles called for generosity, kindness and compassion from the rulers and the elite members as patrons, these principles have lingered in Thai society until today. Rich people and high status persons are looked upon with the same respect and are expected to fulfil the role of good patrons.

Perhaps continuity in terms of culture and values from the past remain tenacious but more covert than overt. In spite of the trappings of 'modernity' and 'Westernisation' in Thai society today, we find that patron-client system has its strong influence which permeates in all arenas of Thai life. We find little understanding or appreciation of basic fundamental principles in democratic values like equality, human rights, rights to participate, for instance. Similarly, the principles of contemporary 'good governance' principles are not getting through easily into the mindset of most Thai people.

Accountability and transparency in business transactions and in administration remain somewhat (to most people) like an intrusion into the 'privacy' or 'inner domain' of institutions or organisations. In particular, there is great 'unease' and 'disquiet' about being questioned or examined by someone with lower status than the one questioned. In addition, to some other respondents, 'Thai people are often *kuo jai* (understanding), therefore when one TSO conduct inappropriate action, others often keep quiet'.

As Thai society evolved from a highly individualistic society with the domination of the public sector as prime employer into a business/professionalised and yet less individualistic society, certain changes did occur. More 'universalistic' criteria began to surface in business/professional management and even public management. They are rule of law, commitment to excellence, fairness, integrity, honesty and etc. Such principles are standards imposed externally on individual actors in a system where exceptions tend not to be allowed, compliance is required and enforced, and where personal negotiations, exceptions, or exemptions are not expected to rule the day.

If we contrasted the 'modern' governance requirements to the traditional ones we will begin to see that the difference lies in the internally imposed versus the externally imposed systems. Traditional Thai principles tend to gravitate towards the internally imposed or the required end of the dichotomy, whereas the 'modern' governance principles gather towards the externally imposed end of the dichotomy.

As an example, kindness, compassion, loyalty, generosity and trustworthiness could hardly be legislated or imposed on individual members of a society. These requirements are open-ended, non-conclusive, subjective and subject to personal interpretations. The motivating force for such behaviours, including the monitoring

mechanism, are in general internally propelled by the individuals' personal socialisation and hence conscience. The standards of measures and criteria of transparency, accountability and the rule of law, however, could be legislated and clearly imposed by society. It is noteworthy too that the traditional criteria of good governance depended on society's shared value system where legitimisation, acceptance, tolerance and endorsement of existing patterns of social and status differences were taken as 'given' and non-problematic.

It is also worth mentioning that as Thailand journeys from the traditional to a modern form, there are inevitably diverse hybrid forms of value systems co-existing. This would include governance forms as well. Perhaps there will be many forms always. Although the Security Exchange Commission and the SET try hard to educate, regulate and punish those who deviate from good corporate governance system, many investors and companies are engaged in a 'cat and mouse' game with the authorities.

The 'public' in general appears not to be concerned with or involved in issues, like good governance, reflecting perhaps a lack of absorption of these principles. Generations of 'passivity' and 'non-involvement' as a way of life imposed on the masses/citizenry may need time, due effort, or perhaps a revolution of value change to resurrect them into active and participating members of the society.

We would also like to point out that even the third sector, which is considered proactive and non-mainstream, does not engage in active sanctioning of their own members. As mentioned in the chapter, the TSOs can be gentle with their own members. They do not resort to sanctioning one another—at least not openly. They can be vocal and open about addressing social injustices and inequities. They may oppose the state and 'powers that be'. But not unlike other institutions and practices in Thai society, open confrontations and challenges are not eagerly subscribed to; rather, they are used only as a last resort.

In Thailand, people are still more concerned about legitimacy of the TSOs than those of transparency and accountability. Legitimacy depends on who, how and what of the TSOs. The credibility of the TSOs is not dependent on transparency, accountability and organisational effectiveness alone. Thai traditional values, belief and practices that place emphasis on charismatic leaders with high status and position, and on prominent figures with power and authority, are evident and adhered to in the case of the TSO governance. As a result, well-known names and personalities lend prestige and status to many TSOs' boards or committees. In sum, TSO governance in Thailand still seems to be subservient to the personalised power relationships that still dictate social values and relationships.

Chapter 17

Third Sector Governance in Vietnam

Le Bach Duong and Khuat Thu Hong

With the introduction of a socialist system, a new socio-economic and political space was created in Vietnam in the 1950s. The system was characterised by a highly centralised system with three pillars: the Party, the government and the mass organisations. The Party's all encompassing power has waned in the recent past, and a clearer boundary between the roles and the responsibilities of the Party and that of the government has emerged. The mass organisations, under the umbrella of the Vietnam Fatherland Front (VFF), with wide participation of individuals from a wide spectrum of social groups, are organised by the state with a clear mandate, among others, of mobilising people to achieve nationally defined goals.

The idea of centralised authority, originated from the legacy of the imperial court and the Confucian ideology, continued during the French colonial period because of its need for concentrating power in the General Government of Indochina, and later reinforced by Leninist ideology of democratic centralism. The notion that the state should limit operations to what it can do best, or what others in society refuse to do, was alien even to the intellectual elite in Vietnam.

The economic structure also reinforced the centrality of power. As the economy was structured around the state and the collectives—with the government being the sole employer, there was little room, if any, for associations of individuals seeking things beyond state interests. Society was designed to be unidirectional and homogenous. In such an environment, it was hard to talk about the existence of a civil society, even in a nascent form.

Nevertheless, the needs for local participation was appreciated, and allowed by the government to be met by the mass organisations. Thus, although being organised and funded by the government, and not considered as non-governmental organisations (NGOs) in a conventional sense, the mass organisations, in the recent past have been playing an important role in voicing local interests and needs to the government.

The decade of the 1990s witnessed the mushrooming of local third sector organisations (TSOs) and other forms of associations. According to the Vietnamese government's statistics, as of July 2001, there were 240 nationwide associations, 1,400 local organisations and thousands of private associations in the district and commune level. In the face of the government's preference for a centralised system, however, unlike most other systems people in Vietnam engaged in the public

Table 17.1 Political Structure and the Third Sector in Vietnam

Level	Communist Party (CP)	Legislative body	Executive body	Mass organisations
Central level	Central Committee of the CP	National Assembly	Government	Central committees of the Vietnam Fatherland Front, Ho Chi Minh Youth Union, Women's federation, trade union, farmers' association and other mass organisations
Provinces	Provincial Committee of the CP	Provincial People's Council	Provincial People's Committee	Provincial committees of mass organisations
Districts	District Committee of the CP	District People's Council	People's Committee Services	District-level mass organisations
Communes	The CP cell	Commune People's Council	Commune People's Committee	Commune mass organisations

sphere do not generally see themselves as asserting civic power against state power. Rather, they prefer to infiltrate the state, find informal allies and build networks that may conceivably be seen as fulfilling state, public and private objectives simultaneously (Marr, 1994). Table 17.1 shows the relationship and status of the TSOs vis-à-vis the state organisations.

Many sceptics insist that there are no NGOs in Vietnam because all voluntary organisations are placed under the leadership of the Party and under the management of the state (cited in Duong and Hong, 2006). In fact, many of the associations and groups are state affiliated. Thus, it may be more appropriate to discuss about a third sector, known variously as voluntary organisations, non-profit organisations, NGOs, people's organisations, community-based organisations and co-operatives, than civil organisations, or civil society, as being conceptualised in Western literature. For the purpose of this chapter, these organisations are mediating groups, or mediating organisations but as in the rest of the book, will be called TSOs.

This chapter will highlight the major findings from the literature survey, review of the legal environment, interviewing of key informants, and the interviewing of key personnel in 81 TSOs. The chapter is divided into five major sections (after this introductory part) dealing with the structure of the third sector in Vietnam, legal framework of the third sector, the third sector governance impact of the legal framework, a profile of the TSOs surveyed and governance practices of the TSOs surveyed.

Structure of the Third Sector in Vietnam

In the context of centralism, the TSOs in Vietnam can be classified into the following forms:

- Mass organisations
- Popular and professional organisations

- Research/Training professional centres (donors-called NGOs)
- Community-based organisations
- Funds, charities and supporting centres
- Others

Group 1—Mass Organisations: As mentioned earlier, the mass organisations in accordance with the legal framework constitute a pillar of the state structure of Vietnam, thus cannot be considered as components of civil society. Nevertheless, considering their recent transformation and subsequent involvement in collective actions, the mass organisations are playing increasingly important roles in the civil society of the country. Over the past few years, the mass organisations from being the political organisations with the mandate of disseminating the Party and the government’s policy to all groups of society, mobilise supports from citizens for implementing policies have shifted more towards representing and protecting the interests of the members in the government’s decision-making process.

Under the umbrella of the VFF, currently there are about 30 member mass organisations with millions of members.¹ For example, the Vietnam Union of Science and Technology Associations is a mass organisation under the VFF, and has about 650,000 members (ie. about 50% of the total Vietnamese intellectuals—defined as university graduates). The research centres and institutes (that the donors call NGOs) are registered under the Vietnam Union of Science and Technology Associations (VUSTA).²

Further, the Vietnam General Confederation of Labour (VGCL), an important mass organisation, has more than 76,000 grassroots trade unions and about four million members. In general, the central unions of the mass organisations are state-led institutions. The close integration of the mass organisations with the government and the Party ensures that the business of state and citizens are interwoven from the top to the bottom of the government chain. Thus the integration allows the mass organisations to influence the government—an important entry for policy advocacy. The organisational culture of accepting the authority, and the reliance on the government funds, thwart the mass organisations’ effectiveness in representing their members.

Groups 2—Popular and Professional Associations: There are different types of popular and professional associations. Some associations run their own research centres as well as private schools and universities.³ Many member associations have

¹The major ones are the Vietnam Women’s Union (VWU), the Farmer’s Union, the Federation of Labour and Youth Union which involve millions of citizens. For example the VWU has 12 million members across the country with a very well organised structure linking its central, provincial, district and commune levels. The Ho Chi Minh Communist Youth Union has 3.5 million members.

²VUSTA has four elements: the central organisation of VUSTA, its member professional associations, its province-level unions and the centres and research institutes (donors-called NGOs) registered under VUSTA.

³For example, the Association of Economics under former Vice Minister Tran Phuong administers a private university named the Hanoi University of Business Management. The Association of Physics runs a private university named Dong Do, and the Union of Technology and Science Associations of Hanoi runs yet another private university named Phuong Dong.

responsibility for their own finance. The Vietnam Gardener's Association (VACVINA) under the VUSTA is a good example of a popular association. The VACVINA has a central body as well as local branches in 61 provinces.⁴ The VACVINA is a member association of the VUSTA but has established direct relationships with the state structure, especially with the ministries of Agriculture and Rural Development, Fisheries, Education, Finance, Planning and Investment, and Science, Technology, and Environment, and the Party structure. It also works with other popular associations such as the Association of Fertiliser Producers and the Association for Vietnamese Planters. The VAC model developed a systematic coherence and was adopted as an economic model (*kinh te VAC*). During the third phase of its development that began in the mid-1990s, it has become the baseline for advice and evaluation of other rural models of development.

Group 3—Research/Training Professional Centres (also known as NGOs): Within the current institutional framework, the mass organisations such as the VUSTA and the government agencies such as the institutes and universities have set up many professional research/training centres. Donors working in Vietnam appreciate these organisations' level of autonomy from the government and consider them as local NGOs or Vietnamese NGOs. These organisations are involved primarily in research and consultancy covering a wide range of economic, social and cultural dimensions of development. Since there is no other regulatory instrument for these NGOs, all these organisations are affiliated with the government's science, technology, education, training, or environment institutions. They also have to register their operation with the Ministry of Science, Technology, and Environment (MOSTE) according to the Decree No. 35 of the government.

Group 4—Community-Based Organisations: Community-based organisations (CBOs) in Vietnam are numerous and growing.⁵ The CBOs are established through projects and development programmes, and by the community for the provision of services to themselves.⁶ Those groups are usually formed to respond to a specific need of a community. They operate on a self-reliant and democratic basis. This type of organisations has developed rapidly particularly in the rural areas since the services of government agencies have not met the demands of the fast developing rural market. The agricultural extension club (AECs) in southern Vietnam is an important type of CBOs. The farmers voluntarily join these clubs to share their experience and information on the markets of agricultural inputs and outputs, or to be a party of these credit and saving groups.

⁴It also runs five centres and three companies that support the promotion of the VAC ecosystem. The five centres are the Center for Rural Communities Research and Development, the Center for Marine Products, two centres responsible for the transfer of technology and one centre responsible for consultant work.

⁵Examples of this type of CBOs are the Commune/Village Development Boards (CDB/VDB), or the Project Management Committees at the commune and village levels. Typically, members of these groups are selected from grassroots elected bodies and representatives from community population.

⁶Examples of these organisations are agriculture/aquaculture extension groups, water user groups and credit-savings groups.

Group 5—Funds, Charities and Supporting Centres: Funds and charities have been operational in Vietnam since 1999.⁷ According to the regulations, funds and charities should be non-governmental, not-for-profit organisations. In 2001, there were about 200 funds in Vietnam, set up by the associations. There are also funds formed by many government organisations.⁸ There are also hundreds of social supporting centres under different associations.⁹ These centres register their operations with the local government directly or through the umbrella body.

Group 6—Organisations of Other Forms: There are many organisations in Vietnam which cannot be classified in the above categories. Most of these organisations are informal or un-registered.¹⁰ Some of these organisations, like the professional organisations, can influence local authorities and state departments. For example, advocacy groups in some localities request development agencies and business communities to pay attention to the environmental impact of their activities.¹¹

Legal Framework for the Third Sector in Vietnam

The first legal document that guarantees individual rights to form associations is Vietnam's Constitution.¹² The Constitution also provides a principal basis for the establishment of organisations independent from the government.¹³ A legal framework, however, is yet to be developed to facilitate an effective interpretation and implementation of these constitutional principles. For now, the VFF and its member organisations constitute the political base of people's power.¹⁴

Realising its limited and declining subsidies for the bureaucracy as well as the increasing demands of the economy, the government of Vietnam has come to acknowledge that many functions which used to be performed by the government institutions can now be performed by organisations created by private individuals. This is particularly so in the field of research and application of science and technology, including the research and application of economic, governance and social development policies. This has resulted in initial limited efforts by the government to legitimise a public

⁷ With the issuance of the Decree 177/ND-CP of the government on September 22, 1999.

⁸ An example is Fund for Protection and Support of Children, formed by the Vietnam Committee of Protection and Care of Children—a ministerial-level government body in charge of children issues.

⁹ For example, a number of centres for orphans were formed under the Association for Protection and Support of Disabled People and Orphan Children.

¹⁰ These include self-help clubs, association of schoolmates, association of chess players, informal credit groups, cultural/religious/ethnic organisation, etc.

¹¹ As a result, one factory had to install air filter to improve the discharged airs and the other factories had to be relocated (O'Rourke, 2000).

¹² Issued in 1946 and were revised in 1959, 1980, 1992 and 2000.

¹³ Article number 69 clearly states that 'the citizen shall enjoy freedom of opinion and speech, freedom of the press, the right to be informed and the right to assemble, form associations and hold demonstrations in accordance with the provisions of the law.'

¹⁴ Article 9 of Vietnam's Constitution of 1992 (and revised in December 2001).

Box 17.1 Laws and Regulations Controlling TSO in Vietnam

- (i) The Government Decree No. 35/HDBT issued on 28 January 1992 on the establishment of non-profit scientific and technological organisations.
- (ii) The Regulations on Operations of International NGOs in Vietnam promulgated in accordance with Decision No. 340/TTg dated 24 May 1996 of the Prime Minister.
- (iii) The Regulations on the Exercise of Democracy in Communes in conjunction with Decree No. 29/1998/ND-CP.
- (iv) Decree No. 177/1999/ND-CP of 22 December 1999 promoting organisation and operation of social funds and charity funds.
- (v) The Law on Science and Technology of 9 June 2000.
- (vi) The Civil Law of 1st June 1996 by the Parliament.
- (vii) The Joint Circular 195-LB of November 1992 of the Ministry of Science, Technology and Environment and the Government Commission for Organisation and Personnel promulgating the implementation of regulations for registration and activities of scientific research and technology development organisations.
- (viii) Resolution number 08B/NQ-TW of 27 March 1990 on 'renovating public mobilisation policy of the Party, strengthening the relation between the Party and people's community'.
- (ix) Circular No. 143/TB-TW of 5 June 1998 on comments from Standing Committee of Political Bureau on organisation, operation and administration of professional associations.

sphere independent from the state. Box 17.1 lists the most relevant legal documents issued by the state.

Decree No. 35 (Item 1, Box 17.1) is considered as the most important legal basis for the existence and operation of the research and development centres classified as local NGOs by the international donor community working in Hanoi and Ho Chi Minh City.

The Law on Science and Technology¹⁵ (Item 5, Box 17.1) stipulates conditions for establishing scientific and technological organisations, the organisations' rights and obligations. Some local government laws (Decree No. 29, Item 3, Box 17.1) are considered as the first legal basis for strengthening the participation of local communities at the local level.

In addition to these recent laws, there is the 1957 Association Law. The Association Law is a substantive proof of the Party/Government's persistent effort in building a democratic country with a strong civil society. This 1957 Association

¹⁵ Considered to be a replacement of the above-mentioned Decree number 35 on organisation of scientific and technological activities.

Law could be an important reference for the formulation of a new Law on civil society organisations.

A major conclusion that can be drawn from the review of the TSO legal environment is that the laws and regulations are too general and do not provide detailed instructions on the implementation and enforcement of the laws. The procedures for establishing the TSOs are unclear and complicated, and create difficulties for the TSOs. Further, the laws are often made by the bureaucrats without consultation or support, and have low feasibility. Though many rules and regulations have been created in the recent past, the basic laws are not regularly reviewed, and have low applicability to the rapidly changing third sector in the country.

The Legal Framework and the TSOs Governance

At one level, governance of the TSOs is defined, shaped, or influenced by the laws and policies introduced by the state. The above-mentioned legal framework, however, only provides legal sanction for the TSOs to operate. It does not elaborately define and regulate how the TSOs would be managed and governed.¹⁶

Some specific requirements to the effect, however, exist. For example, most of the legal documents mentioned above, provide guidelines on roles and responsibilities of these organisations which form the legal foundation for their operation and activities. The regulations require these organisations to establish management boards through democratic ballot at the organisations' meetings. The concerned individuals of any proposed organisation need to submit the agenda, the internal rules and regulations for approval by the umbrella organisations before they are issued the license.

These umbrella organisations are required by the government to be in charge of management and supervision of the TSOs under their reporting, and there is no single body to supervise all TSOs. The government or the respective umbrella organisation does not have enough financial and institutional capacity to closely and regularly manage and supervise the operations and activities of the organisations. Only when a serious problem arises the state bodies undertake investigations and cancel the licence or even prosecute those found guilty, as appropriate. Currently there is no legal and administrative document that specifically defines service quality offered by these organisations.

It is worth emphasising that in the past, the government approved associations used to receive operational subsidies and be under close supervision of the state. Nowadays, the government only provides partial funds to cover costs related to the administration, and co-ordination of the large unions and associations. Most associations and organisations however are self-financed. Thus, the government does not have much influence over these organisations (as long as they do not violate the laws).

¹⁶ At present, the Ministry of Home Affairs (MOHA) is assigned to revise all related policies and to prepare for development of a more comprehensive law on the third sector, that can enhance state supervision and enforcement apparatus.

Presently, many TSOs get funds (for independent or joint projects) from many international NGOs. For many years, international donors did work exclusively with government agencies. Recently they have paid more attention to the TSOs.¹⁷ In the United Nations Development Programme (UNDP)-funded project on Administrative Reform, there is a component aimed at strengthening 'civil society'. International NGOs working in Vietnam have also increased their collaboration with domestic NGOs to implement projects in various areas including health, HIV/AIDS prevention, poverty elimination, etc. Thus relaxation by the government of supervision or supervisory regime has created space for third sector activities which also have drawn life supports from donor organisations.

Because of the creation of 'space' by the state and the Party on the one hand, and the various supports by international organisations the third sector in Vietnam has been growing. Nevertheless, the management and supervision mainly by the umbrella organisations at present is very loose and irregular. It is in this context, our work has been crucial. It will provide understanding of the functioning of the TSOs and the governance dynamics as well as identify the gaps in governance relationships. In the next section we highlight the main features of the TSOs we surveyed to comprehend TSO governance in Vietnam.

A Profile of the TSOs Surveyed

In total, 81 TSOs were surveyed for the study. Nine or ten TSOs were selected in each of the following fields of activity: art and culture; business; education; environment; laws; religion and social services. Given the high concentration of the TSOs, 16 TSOs involved in economic and social development were chosen for the study (please see Chap. 1 for details of the methodology).

Years of establishment: As previously discussed, market reforms have resulted in the formation of many TSOs. Although the Constitution guarantees the people's rights to establish TSOs, no TSO was created up until the late 1980s. The study finds that 70% of the TSOs were established in the past ten years, of them 34% were established in the last five years.

Staffing: All TSOs have 'official' members. These members are paid workers of the TSOs. In addition, there are other paid staff who share basic civic interests in the TSO's mission and endeavour to fulfil these goals by operating their TSOs as paid workers. Indeed, official members can also work part-time as well, if they find it appropriate.

Given the fact that the country's third sector is still in its nascent stage, most TSOs are very small. Many TSOs do not receive any financial support from the government and have to be selective in staffing. About a quarter of the total TSOs have only five or less official members (including the head). Close to 60% of organisations

¹⁷The World Bank, the AUSAID and the governments of Netherlands, Finland and Sweden, for example, have given grants to support Vietnamese NGOs to strengthen their capacity through development and implementation of socio-economic development projects.

have no more than ten members. Only 16% of the TSOs have more than 20 members. The official members perform most of the tasks of the TSOs, as reported by 73% of the surveyed TSOs.

Sources of funding: TSOs have to rely on many sources of funding for survival. Some TSOs however, depend exclusively on foreign sources of funding, and some on the government support. About 27% of the TSOs surveyed received funds from foreign sources like the Asian Development Bank, and the UN agencies. One of the key priorities of the donors, as expressed in their Consultation Group meetings held regularly, is the involvement of the local NGOs in development activities. Many surveyed organisations have good technical capacity that meet the high requirement of the international organisations, and receive 57% of their revenue from foreign sources. While about a third of the organisations surveyed are dependent mostly on government funds, around 50% organisations received one-third of their revenues from the government.

It is not uncommon for many senior government officials, upon their retirement from the government positions, to establish their own NGOs with the hope that their experience, and more importantly, their connections with the ministries and state agencies will attract revenue and work. One fifth of the TSOs surveyed for the study receive donations, either from their staff or from outside sources; for example religious groups receive regular donations from their followers.

Development dynamics: The dynamic of the expanding third sector in the country can be partly reflected in the surveyed organisations over the past three years of operation. According to the field data, close to 80% of the organisations reported a growth in their activities.¹⁸ Only 5 out of 81 (6.2%) of the TSOs experienced a decline in their activities over the last few years; while the total funds of 70% increased, that of 20% TSOs remained constant. Seven (or 8.6%) TSOs experienced a decline in their funds. In the three years before the survey, the number of staff in more than a half of the TSOs increased, and more than a third remained the same.

Governance at the TSOs Under Survey

Earlier in this chapter, we have discussed macro impacts of the laws and policies on the nature and performance of the TSOs, including their governance. This section deals with governance in the TSOs under the study. As required by the current laws, all registered TSOs in Vietnam should have a director and/or a formal board of directors, and/or a board of trustees/founders responsible for the establishment of the organisation, defining the organisation's directions, objectives, leading their operations as well as creating and developing relationship with the stakeholders.

¹⁸ As both the government and the donors now consider the TSOs as important partners, there has been a steady increase not only of the number of TSOs but also their active participation in various development projects and programmes, ranging from consultation to direct intervention at all levels from central down to community.

The directors and the board members also actively work to enhance the organisations' sustainability, especially in seeking funds for the organisations to operate. As the government does not, in principle, provide operational funds, having enough external funds is crucial for the TSOs to sustain. Leaders of the TSOs thus have to rely on their social and political network to draw resources from the government, international organisations and the private sector.

The survey findings show that of the total 81 organisations under the study, up to 70 (86%) have management boards. The rest of the organisations are operated under the leadership of the organisation heads or directors. There is no explicit legal requirement of a minimum number of board members, thus as most of the surveyed TSOs are small, the boards comprise of two to ten members. The directors and/or board members in most cases are professionals in the related areas and help the organisations in achieving their respective goals. Thus the directors and/or board members should have sufficient knowledge, skills and experiences in the activities that the organisation is established for. Names and resumes of the proposed directors/board members have to be submitted for consideration before the TSO is approved, or for already established organisations permission for reorganisation of the board is granted by the respective umbrella organisation. For established TSOs, the members can be chosen or nominated from within or outside the organisations. In most cases, the directors and/or other board members select the new board members, sometimes in consultation with the organisation staff, or sometimes even through voting.

In the study, composition of the board is found to be relatively complex, reflecting to a certain extent the nature of the formation of the TSOs in the country. As revealed by the study, a large number of the TSOs (37% or 30) have government officials, (some retired) as board members. The low percentage of the TSOs where the board is elected by the members and constituents, or appointed by the board, CEO/founders/chairs or by the stakeholders (6.7%, 5.4% and 5.4%, respectively) indicate that the common practice in selecting board members found in many other countries are still new and rarely adopted in the Vietnamese TSOs. Very often (about 50%) the board collectively decide the chair of the board. Only in 32% of TSOs this decision was made by all members of the organisations.

The directors and/or the boards are held responsible for the TSOs' activities before the umbrella organisations, and ultimately the government. Each organisation has to submit to their respective umbrella organisations an annual report, explaining in detail their activities, achievements, difficulties, sources of funding and staffing issues. However, in most cases, these reports are simply a list of items without qualitative descriptions for each area. Thus, it is hard for the respective umbrella organisation to understand what actually happen at the TSO and how they are governed. There is basically no monitoring and evaluation of the TSO's activities.¹⁹ In cases of reports on mismanagement leading to serious financial or political damages, the state intervenes and the TSOs become liable of being charged for the offences, if found guilty.

¹⁹ Monitoring and evaluation, if any, are confinemainly to projects funded by overseas donors or international organisations.

Depending on the situation of each organisation, the board (in a third of the surveyed organisations), the directors/heads (35%), or collectives of official members (28%) can have the final say in the TSO. Irrespective of who has the ‘final say’, most organisations, in general, have a ‘driving-force’—who is the founder of the TSO (38%), or the head or director of the organisation (30%), or the manager/CEO of the organisation (31%). The expertise of the person (in 52% cases) is perceived to be the key factor in him becoming the ‘driving-force’.

In addition, in about one-third of the cases personality and/or charisma is the main factor for the creation of the ‘driving-force’. The voluntary basis of most of the organisations requires the ‘driving-force’ to have personality that appeals to the volunteers. Finally, and to some extent related to the first qualification, performance of the ‘driving-force’ is considered important by 8% of the surveyed TSOs. Other features, such as political connection, integrity, moral uprightness of the ‘driving-force’ were mentioned by just a few respondents.

Planning and Decision-Making at the Surveyed TSOs

Planning: Planning is undertaken almost invariably in all the TSOs (98%) covered under the study. From the beginning, the TSOs always put forward missions and objectives for their activities, as reported by 92% and 99% of them respectively. In fact the umbrella organisations require the TSOs to undertake planning. The plan is prepared mainly by the board and is circulated to all the board members, as in the case of 93% of the surveyed organisations, for its implementation. Strategic, or long-term, plan was prepared in most of the TSOs (94%) and regularly reviewed by the board (97%). Often these strategic plans are produced collectively by the board (95%) and finally are approved by the board itself (91%). The review of the strategic plan is also the responsibility of the board, as being undertaken in 86% of the TSOs under the study. In most cases (91%) the long-term plans are circulated to all members of the board.²⁰

Decision-making: Decision-making is crucial for the functioning of any organisation, and is done primarily through the working of the board. In order to manage and lead the organisations, the board holds meetings to make decisions. Only 4% of the surveyed TSOs hold weekly meetings, and 35% monthly meetings of the TSOs. Quarterly meetings were held by close to one-third of the TSOs. Those meetings were usually for reviewing the TSOs’ operations and making important decisions, and the agenda is prepared and made available to the members in 91% of the surveyed TSOs. The drafting of the agenda is prepared almost exclusively by the organisation director or head. Voting on options available at the board meeting is not a common practice, as it is being done in only three TSOs. The popular way (97%) is arriving at consensus among the board members.

²⁰ However, it is not necessarily the case with other constituents of the organisations, as they themselves consider these plans as internal to the organisation staff, or in some cases to the board.

Besides the board meeting, the TSOs under the study also hold general meetings (96% of the organisations). Close to 5% of the TSOs hold weekly meetings²¹, one fifth of the TSOs hold monthly meetings and slightly more than one tenth of the organisations hold quarterly meetings. Nearly one-third of the TSOs organise biannual meetings, and up to 10% hold only one general meeting a year. Often the general meetings are open to the staff only, and never to the public. Similar to the board meetings, the decisions at the general meetings are reached through consensus of all (or the majority of the participants).²²

Financial Management at the Surveyed TSOs

As a condition of their registration with the umbrella organisation, all TSOs are required to strictly follow financial rules and regulations provided by the Ministry of Finance, and to declare in their charter that they will follow this financial conduct. This study however, found that some TSOs (10%) under the survey do not follow such a formal financial procedure because the procedure is complicated and hard to follow,²³ or in a number of cases the TSO did not receive the detailed guidelines of these rules and regulations. Thus it seems the government organisations, though supposed to, are not very particular in monitoring the TSOs' financial procedures.

Given the precarious condition of the work in the third sector, it is not always easy for the TSOs to prepare their annual budget. Most TSOs in our study did not receive regular government funds. Many had to rely on donations or funds provided by the international donors or organisations. As a result, financial management in many TSOs is very much project (or task) based (37%). Still, about 63% of the TSOs (primarily those with continuous commitment of funds) did prepare their annual budget. As cash is widely used, even in large transactions, the practice of making cash flow budget was not considered as something different from other budget making. About 78% of the TSOs reported preparing a cash flow budget.

Financial statement is a requirement from the umbrella organisations, and about 80% of the TSOs furnish it regularly. However, auditing is not a common practice either by the organisations themselves or by the umbrella organisations. Around 60% of the surveyed TSOs over the past few years had some sort of auditing.²⁴

²¹ These are the organisations of small size where decisions can be reached quickly with all staff.

²² Of the 81 TSOs under the study, only one organisation reached decision through voting. Taking minutes of the general meeting was common, as found in 85% of the organisations.

²³ According to them the rules are more applicable to state ministries rather than to those operating in the third sector.

²⁴ There are some foreign auditing companies operating in Vietnam, such as KPMG or WaterHouse Price Cooper. These big firms however work mainly on large projects. Their high fees are not affordable to most of the local NGOs thus these firms are rarely asked by the TSOs to perform standard auditing. There are also state-owned auditing agencies, but at this stage they focus mainly on state organisations and projects.

Asset registration is also poorly undertaken and supervised in Vietnam, and about 30% of the TSOs did not do so. Many TSOs did not find the circulation of financial statements to all the official members of the organisation necessary, mainly because low transparency is a common practice in the government as well as the TSOs. The results of the survey revealed that about 35% of the sample did not send financial statements to all the stakeholders and 40% did not make their financial statements available to the public. It is also revealed that the management board actively get involved in the preparation of the annual budget (57%), reviewing and approving annual financial statements (46%), reviewing the organisations' performance against budget at regular intervals (52%), approving major financial expenditures (62%), but not in all TSOs. Thus the TSOs have a very low financial transparency that tends to hamper the quality of the TSO performance.

Performance at the Surveyed TSOs

It is clear that not all the surveyed TSOs have an established and clear system of measuring performance of their staff (74% do). The evaluation of the staff's performance is often subjective, and based on observations only. While close to 70% of the TSOs reported that they have a procedures manual, this affirmation has to be taken with caution, since its contents and quality are not publicly available. In most cases, the manual can be a simple list of tasks that staff was asked to do in their daily work. This can be partly reflected in the low percentage of the TSOs (44%) where the staff receive job descriptions, or terms of reference, with details of what they are to do, and how.

In about 60% of the surveyed TSOs, the performance appraisal of the senior staff is undertaken. Much lower (43%) was the number of organisations where performance indicators are produced. As such, it is hard for the managers to comprehend the effectiveness and efficiency of their organisation operation. It also reduced competency of the staff as there was no clear mechanism of incentives and disincentives to be used for staff development.

The relatively high percentage of TSOs (72%) having quality assurance procedures do not actually mean these were built-in component of the organisations' management system. Very often these procedures were simple supervision of senior staff over the works of the organisations in their daily management. These management problems are again reflected in the very low number of TSOs which carried out regular evaluation of the effectiveness and efficiency of their institutions (less than one-third).

As the data show, the involvement of the board in the overall management of the organisations was not very strong, as reflected in the involvement of the board in the reviewing of the CEO's performance at regular intervals (in 61% of the TSOs), in reviewing quality assurance procedures (44%) and in evaluating the efficiency and effectiveness of the TSOs (73%).

Stakeholder Relationship at the Surveyed TSOs

A major aspect of organisational governance is external relations in order to assure accountability and transparency of the TSO. External relations in TSOs in Vietnam have been poorly managed. The study shows that, while close to 80% of the TSOs mentioned involvement in external reporting, in reality the reporting has been to the respective umbrella organisations, except for a few that were obliged to report to the auditing institutions. In fact, some umbrella organisations require the TSOs within their jurisdiction to prepare annual reports (compiled in only 63% of the organisations), and this is the only, and vertical, mechanism for the TSO reporting. Nonetheless, the number of TSOs which disseminate their internal activities to the public or relevant institutions, through newsletters (30%) and websites (12%) has been growing. Networking is new but has become a relatively common practice among many TSOs (46% of the surveyed organisations being involved). Finally, the board of directors have been involved in all the tasks relating to stakeholder relationship, including seeking funds and donations, representing the TSOs as well as in negotiating with state bodies at all levels.

Conclusions

Doi moi, or market reforms, have resulted in fundamental transformation of Vietnam's economic and social structure. Some of these changes have had ample implications for the development and functioning of the third sector. With the downsizing of the state sector, the provision of state-subsidised and -organised welfare and social safety nets through collective or planned systems has increasingly been declining. The impacts of the regional financial crisis further undermined incomes and reduced the capacity of the government to continue the welfare services. Starting from the late 1980s, the government has switched to a fee-based system for many social services. These changes, and the relative decline in the capacity of family networks or informal mechanisms to provide alternatives, have created pressures on individuals to make provision for economic and social services for themselves.

At the same time, society is now opened to numerous opportunities for individuals and communities to actively participate in economic, social and political affairs. Also increasingly, the government has come to realise its changing role and the importance of having a strong third sector to provide (partly) alternate services which used to be the government's sole responsibility although hesitation in delegating full power to this sector is still prevalent because of the concerns of political instability.

The decentralisation programme and the sanction of 'grassroots democracy' have created an enabling environment that significantly increased non-state organisations' involvement in various economic, social and political affairs at different levels in Vietnam. The governments need to develop a state with a 'rule of law', social equality and equity, wide participation and sound governance clearly require

the contributions from civic organisations and the private sector. In addition, challenges of regional and international integration (e.g. to participate in the ASEAN, the AFTA and the WTO) also reinforce the third sector necessity. Finally, growing involvement of international organisations and donors has given more impetus for the growth of this sector.

As a result, since the 1990s there has been a mushroom growth of TSOs. The recently issued relevant legal documents, notably the Decree Nos. 29, 35 and 177 provide necessary, though still insufficient, legal framework for the establishment and operations of the TSOs.

Thanks to their increasing collaboration with foreign partners in different development projects, many TSOs are now capable of performing their works independently and effectively. Such progress offers an optimistic view of future development of the sector. Still very often the TSOs' reliance on the government funds is excessive and unjustifiable, especially when the government emphasises the financial independence of these organisations. The more the TSOs become financially independent the more TSOs governance in terms of accountability and performance monitoring will improve.

In any case, as it seems, the TSOs will continue to demonstrate their necessity in socio-economic and political development of the country. Being backed up by macro processes, together with government's growing recognition, the TSOs are firmly on their way to become professional. Thus, though at present the TSO governance have a weak performance record, with the people's demand and vigilance, and the government's need to create a well performing third sector, the TSO governance in Vietnam will keep on improving gradually.

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