

Study on Social Contracting to Civil Society Organizations (CSOs) to Directly Implement Service Delivery in the Philippines

May 2019



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ABBREVIATIONS

ADB	Asian Development Bank
AIDS	Acquired Immunodeficiency Syndrome
AMTP	AIDS Medium Term Plan
BAC	Bids and Awards Committee
BIR	Bureau of Internal Revenue
CBS	Community-Based Screening
CDA	Cooperative Development Authority
COA	Commission on Audit
CSO	Civil Society Organization
DBM	Department of Budget Management
DOTS	Direct Observation Treatment Shortcourse
DSWD	Department of Social Welfare and Development
FSW	Freelance Sex Worker
GOP	Government of the Philippines
IEC	Information Education Communication
IRA	Internal Revenue Allotment
LGU	Local Government Unit
MAC	Malaysian AIDS Council
MSM	Men who have Sex with Men
NAPS	National AIDS Programme Secretariat
NGO	Non-Government Organization
NSP	National Strategic Plan
OHAT	Outpatient HIV and AIDS Treatment
PCNC	Philippine Council for NGO Certification
PhilGEPS	Philippine Government Electronic Procurement System
PLHIV	People Living with HIV
PNAC	Philippine National AIDS Council
PO	People's Organization
PWID	People Who Inject Drugs
QCSAC	Quezon City STI/AIDS Council
SDN	Service Delivery Network
SEC	Securities and Exchange Commission
SWOT	Strengths, Weaknesses, Opportunities, and Threats
TB	Tuberculosis

INTRODUCTION

Social Contracting is generally understood to mean the process or practice of government providing funds and other resources to non-government organizations (NGOs) to implement programs and services. This practice does not intend to simply channel funds and other resources to NGOs and civil society organizations; instead, this requires policy, financial, and programmatic initiatives to ensure proper implementation.¹ Examples of these initiatives include relaxing permits and regulations in service delivery and outreach; providing technical and/or financial support to implement other social service delivery to achieve quality access to health services; or collaboratively implementing programs towards generating and increasing demand.

Social contracting mechanism is perceived to be an advantageous option in countries that seek to strengthen their health system particularly in the context of systematic transitioning out of external donor support². In the context of the HIV response in the changing external donor landscape, social contracting can be a potentially valuable approach towards financing community-led service provision and social mobilization.³ This would enable greater partnership between governments and civil society, wherein civil society could advocate for greater participation and accountability to ensure effective HIV programming.

A number of countries have instituted various forms of mechanisms that allow social contracting in the context of health service delivery. In Malaysia and Cambodia, for instance, government funds for HIV are channeled through well-established NGOs or Networks of NGOs like the Malaysian AIDS Council (MAC) and KHANA, respectively. The Ministry of Health in Malaysia earmarks a certain amount from its annual budget for MAC. Smaller community organizations can then access funds from these NGOs to deliver services to the communities.

In the Philippines, the Government Procurement Reform Act of 2003 or Republic Act 9184, provides for an avenue for NGOs to receive funds from government agencies to implement projects or services. However, the mechanism provided for in this law has yet to be maximized considering the limitations it poses for small NGOs and community-based organizations that may have the capacity to implement effective programs and services for vulnerable and key populations but are not eligible to bid for government-funded projects.

Having this policy framework, however, is an advantage because it does create an environment that allows NGOs to access government funds to deliver programs and services. There is, however, a need to explore how this existing mechanism can be made more accessible to NGOs.

The Department of Health initiated the development of a Transition and Sustainability Plan for the country's HIV response. This was done in the context of dwindling donor funding and the

¹ http://www.healthpolicyplus.com/ns/pubs/7190-7335_SocialContractingFactsheet.pdf

² http://shifhivfinancing.org/wp-content/uploads/2018/06/Social_Contracting_Report_English.pdf

³ https://apmghealth.com/sites/apmghealth.com/files/projects/docs/global_consultation_on_social_contracting-_background_paper.pdf

anticipated transitioning out of Global Fund support for AIDS, Tuberculosis and Malaria programs in the Philippines. Since a huge part of the country's HIV prevention program is implemented by NGOs using donor funds, the impact of Global Fund's exit from the Philippines falls heavily not only on the sustainability of these NGOs but on HIV prevention programs, as well. It is then imperative within the Transition and Sustainability Plan to explore a social contracting mechanism that is best suited for the Philippine context.

OBJECTIVE

At the end of this undertaking, ACHIEVE will recommend a social contracting mechanism that could be applied in the Philippines, specifically in the context of HIV and AIDS-related programs and services. To do this, ACHIEVE will explore various existing social contracting models from other countries, and analyze the Philippines' existing legal and policy landscape, to figure out the feasibility of recommending a social contracting mechanism that would suit the Philippine context.

METHODOLOGY

ACHIEVE conducted extensive desk reviews of social contracting policies and mechanisms from 14 countries (6 Latin America and the Caribbean, 7 Eastern Europe and Central Asia, 1 Asia Pacific) countries to study the policies that framed these mechanisms. It also conducted a desk review of references, including existing accreditation, procurement, and related laws and policies in the Philippines.

ACHIEVE also conducted in-depth interviews with 8 key informants from government, civil society organizations and the academe to gain insights on their experiences with regard to the existing legal and regulatory frameworks on CSO registration, accreditation, and procurement, including current government and nongovernment practices. The data gathered was analyzed relative to the needs of the HIV response and the realities faced by HIV CSOs. Two multi-stakeholder forums were also conducted. The first multi-stakeholder forum was aimed as an inception and introduction of the study to target participants from government, CSOs, and the academe; and to conduct an initial analysis of the current policy environment via SWOT in preparation for the in-depth review. The second multi-stakeholder forum aims to present the results and analysis from the data gathering, and to present the proposed social contracting mechanism based on the findings and gathering feedback among participants.

Considering all these factors, ACHIEVE will recommend for consideration a social contracting mechanism for the purpose of delivering HIV services in the Philippines.

REVIEW OF RELATED LITERATURE

Civil society has played a key role in the HIV response since the epidemic began in the early 1980s. Despite being marginalized and criminalized in many settings, men who have sex with men, transgender populations, sex workers, people who inject drugs, and people living with HIV (PLHIV) have been the first responders to the epidemic and are essential in the advocacy and towards a greater recognition of key population communities as part of the response⁴. Over the years, the role of key populations has been recognized in the national AIDS strategies and national AIDS policies and laws that govern the countries AIDS responses. The role of civil society is further recognized by Member States as adopted in the 2016 Political Declaration on HIV and AIDS, whereby governments commended the need to expand the coverage of all community-led service delivery of up to 30%, while investments for advocacy, leadership, and empowerment of key populations including people living with HIV must be ensured to at least 6% of all global AIDS resources. These targets are far from fruition, however; for instance, in 80% of PEPFAR-supported countries, CSOs involved in the HIV and AIDS response receive only a minimal 1-9% of domestic funding, far from the target of 30%⁵.

Many external donors, such as The Global Fund, have recognized the role of civil society organizations in the implementation of the various grants that they provide. Since 2002, civil society organizations have supported the advocacy, policy development, operations, and implementation of almost all Global Fund grants⁶. However, faced with the demand to scale up HIV responses, countries that become ineligible for funding will need to find ways to sustain not only the support that was provided by external donors but also the existing programmes being implemented by civil society organizations that contribute to the HIV response.

As countries transition towards domestic financing, it is imperative that part of this transition is to consider ownership of the interventions that are initially supported by external donors, and this includes the interventions being led and provided by civil society organizations. As such, countries face difficulties in terms of maintaining CSOs as service delivery partners due to fast turnover and lack of sustainability plans among CSOs. This is further impacted by the legal and policy environment that enables or disables services to be implemented through key population-led organizations, especially if they are criminalized.

One way of ensuring that the efforts of CSOs are sustained as part of the HIV response is through social contracting. The Global Fund and the APMG Health loosely define social contracting as the “process by which government resources are used to fund entities that are not part of the government (referred to as civil society organizations) to provide services”⁷. This mechanism aims for government funds to flow directly to civil society organizations to implement specific activities or services⁸. While this can initially be established as a mitigation

⁴ http://www.unaids.org/sites/default/files/media_asset/UNAIDS_JC2725_CommunitiesDeliver_en.pdf

⁵ http://www.healthpolicyplus.com/ns/pubs/7190-7335_SocialContractingFactsheet.pdf

⁶ <https://www.theglobalfund.org/en/civil-society/>

⁷ <https://plataformalac.org/en/2017/12/public-funding-of-civil-society-and-communities-in-the-response-to-hiv-and-tb-experience-in-six-countries-of-latin-america-and-the-caribbean/>

⁸ https://www.theglobalfund.org/media/5648/core_sustainabilityandtransition_guidancenote_en.pdf

scheme, the process of ensuring an effective social contracting mechanism is in place requires policy, financial, and programmatic initiatives to ensure successful implementation.

Health Policy Plus, in a study conducted in January 2018, identified key steps that need to be undertaken by CSOs, government, and external donors towards developing a successful country social contracting mechanism (see Table 1).

Table 1. Key Steps in Developing Government Social Contracting Mechanism

Steps in the social contracting process	Civil society organizations	government agencies and policymakers	external donors
Review and understand legal and regulatory needs for social contracting mechanisms	Support and engage in analysis on country ability to provide funding to CSOs	Determine which funding mechanism would be the most appropriate for the country context	Assist with the development of the social contracting funding mechanism
develop/adapt regulatory process for selecting CSOs for contracting	Advocate for transparency and accountability in the contract selection process	Develop transparent procurement and contracting processes	Provide best practices globally on transparent review and accountability processes
ensure domestic finances are available for social contacting mechanisms	Conduct analyses on funding sources for social contracting and advocate for annual predictable financing to be included as a budget line item	Ensure adequate predictable funding is available for social contracting to civil society	Provide send money for pilot initiatives of social contracting in country
provide quality implementation and monitoring of publicly-finances services	Strengthen capacity in organization for management, reporting, and technical monitoring and evaluation for public financing	Develop systems to fund and monitor CSO contract work	Assist CSOs and government on effective implementation and monitoring of work

Source: Health Policy Plus, 2017

Many countries have exercised similar subgranting mechanisms to CSOs even in the existence of external donor support. Some of these forms of support also come from the local government units or states. However, the aim of a social contracting mechanism is for the government to provide a consistent, annual budgeted line item in the government's annual

budget to be granted to CSOs. While some countries may already have some informal schemes of supporting CSOs through various granting schemes, the social contracting mechanism formalizes these and ensure that there is efficiency in the procurement process of the government to grant CSOs funds for the services that they provide. Essentially, a social contracting mechanism requires that a legally binding agreement be made between the government and the CSO, wherein the government agrees to pay a CSO for the service being rendered. At the same time, the CSO agrees to provide certain deliverables at a specific period of time, either as a service provided or a health outcome reached.

Findings from Experiences of 14 Countries with Social Contracting Policies and Mechanisms

All the countries reviewed are either in the upper-middle income or high-income economic classification. Despite its economic status, due to the concentrated HIV epidemic experienced among key populations, particularly among men who have sex with men, half of these countries reviewed have ongoing Global Fund support to their HIV response. A summary of the country's HIV epidemic, economic classification, and presence of Global Fund and other donor support is detailed in Table 2.

Table 2. Summary of Countries based on GNI Classification, HIV Prevalence, and External Donor Support

Country	GNI classification (2019)	HIV Prevalence	External donor support status
Argentina	High-income	0.4 (general), 11.4 (MSM), 2.7 (prisoners)	Non-PEPFAR, non-GF
Belarus	Upper-middle Income	0.4 (general), 7 (SW), 9.8 (MSM), 30.8 (PWID)	Non-PEPFAR, GF ongoing
Bosnia and Herzegovina	Upper-middle Income	0.1 (general), 1.1 (MSM),	Non-PEPFAR, non-GF
Brazil	Upper-middle Income	0.6 (general), 5.3 (SW), 10.5 (MSM), 5.9 (PWID)	Non-PEPFAR, non-GF
Colombia	Upper-middle Income	0.5 (general), 1.2 (SW), 17 (MSM), 2.8 (PWID), 1.4 (prisoners), 21.4 (TG)	Non-PEPFAR, GF ongoing
Dominican Republic	Upper-middle Income	0.9 (general), 3.7 (SW), 7.1 (MSM),	Non-PEPFAR, GF ongoing

Country	GNI classification (2019)	HIV Prevalence	External donor support status
Guyana	Upper-middle Income	1.7 (general), 6.1 (SW), 4.9 (MSM), 1.72 (prisoners),	Non-PEPFAR, GF ongoing
Kazakhstan	Upper-middle Income	0.2 (general), 1.9 (SW), 3.2 (MSM), 8.5 (PWID), 2.7 (prisoners),	Non-PEPFAR, GF ongoing
Macedonia	Upper-middle Income	<0.1 (general), 5.35 (MSM),	Non-PEPFAR, non-GF
Malaysia	Upper-middle Income	0.4 (general), 16.6 (PWID), 8.9 (MSM), 7.3 (FSW), 5.6 (TG)	Non-PEPFAR, non-GF
Mexico	Upper-middle Income	0.3 (general), 7 (SW), 20.7 (MSM), 2.5 (PWID), 0.7 (prisoners), 17.4 (TG)	Non-PEPFAR, non-GF
Montenegro	Upper-middle Income	<0.1 (general), 0.5 (SW), 12.5 (MSM), 0.5 (PWID),	Non-PEPFAR, non-GF
Serbia	Upper-middle Income	<0.1 (general), 1.6 (SW), 8.3 (MSM), 1.8 (PWID)	Non-PEPFAR, GF-eligible
Uzbekistan	Lower-middle income	0.3 (general), 2.9 (SW), 3.3 (MSM), 5.6 (PWID),	Non-PEPFAR, GF ongoing

Sources: <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>, <http://aidsinfo.unaids.org/>, <https://www.theglobalfund.org/>, <https://www.pepfar.gov/countries/>

The succeeding sections will focus more on the country case scenarios of their existing social contracting mechanisms.

Belarus

Policy Framework and Basis

NGO establishment, registration, and operation in Belarus is governed by the Civil Code⁹. In order for NGOs to legally operate, they must comply with requirements under this Code as well

⁹ <https://www.wipo.int/edocs/lexdocs/laws/en/by/by020en.pdf>

as in other related laws such as the Law on Public Association¹⁰, Decree of the President of the Republic of Belarus on Certain Measures to Regulate the Activities of Foundations. NGOs in Belarus are classified into three, with different expected mandates:

- Membership-based NGOs or public associations: can engage in income-generating activities by establishing separate for-profit companies (usually limited liability)
- Non-membership NGOs or foundations: can also engage in income-generating activities similar to public associations
- Non-profit (non-membership that are founded and financed fully or partially by the founder/s)

For the first two, the profit from their companies are taxed at a regular rate. Because of this, the income only reaches up to only 6% of their total funding.

All foreign funding received by the Republic of Belarus are registered with the Department for Humanitarian Activities at the President's Administration. This same Department also has the authority to refuse funding.

The HIV response in Belarus is governed by the "Law on prevention of diseases that pose danger to public health and HIV" passed in 2012¹¹. Part of this law is an explicit mention of cooperation between healthcare institutions and "non-commercial organisations" (term used in Belarus to denote NGOs). The Law on Healthcare, adopted in 1993, also recognizes participation of NGOs in the implementation of health protection activities; however, they are not recognized as service providers, both in terms of providing medical services and for educational services too.

According to the "Decree of the President of the Republic of Belarus on Licensing of Certain Types of Activities"¹², NGOs are not allowed to provide medical services including HIV testing unless they establish a for-profit entity, of which the government can provide license to provide medical services. Likewise, the "Education Code of the Republic of Belarus" is also unclear with regards to requiring NGOs to have a special permit to provide educational activities. Educational activities cover a broad range of activities to include training programmes, thematic seminars, popular lecture courses, and personal empowerment workshops.

The Social Services Law¹³ allows governments to co-finance services and projects implemented by NGOs and individual entrepreneurs as long as they are legally registered. Direct financing, which is non-competitive and operates as a direct financing or direct subsidy, is also provided. By definition, "subsidies" would mean any funding available through social contracting¹⁴.

¹⁰ <http://www.legislationline.org/documents/id/6405>

¹¹ http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=92740&p_count=100056&p_classification=15&p_classcount=21322

¹² <http://cis-legislation.com/document.fwx?rgn=59272>

¹³ Adopted in 2000 but only came into effect in 2013

¹⁴ http://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Belarus_web_V3.pdf

In Belarus, social contracting has been introduced to provide social services to “people in difficult life situation” and to increase accessibility and quality of social services except health services. NGOs that provide HIV services to key populations are, however, excluded from being co-financed by the government. These barriers as imposed in the Social Services Law are as follows:

- Subsidies only cover salaries. Moreover, outreach workers are not classified in the country’s “official job classifier”; therefore, could not be subsidized by law. Also, services that augment clients’ access to services may not be covered
- NGOs need to co-share at least 50% of subsidy, which might be difficult to small NGOs
- Definition of target beneficiaries limited only to “citizen of difficult life situations”, but does not explicitly mention PLHIV, MSM, sex workers, and PWUD
- The law does not cover healthcare services
- Clients who receive services from a subsidized service provider need to declare their identity. Since HIV services in Belarus need to be anonymous, service providers could not declare and file subsidy for the service that they have provided

In 2015, the Belarus government signed as part of its Framework agreement an obligation to legally introduce a social contracting mechanism as a prerequisite of Global Fund support. Prior to this, as early as 2013, The Global Fund already opened opportunities for NGOs working on HIV to become service providers when the Global Fund support in the country started granting NGOs as sub-recipients and participate in the implementation of the 2011-2015 State Programme on HIV Prevention. When this was replaced by a sub-programme Prevention of HIV Infection 2016-2020, NGO participation in the programme’s activities, subsidized through the State budget, was envisaged.

While the amendment to this legislation is underway, the government in 2016 already included in their 2016-2020 National Health Plan Sub-program 5 (Health of Nation and Demographic Security of the Republic of Belarus - HIV prevention) subsidies to NGOs to start in 2017. Similarly, the Law on Prevention of Socially Communicable Diseases and HIV was also being amended but did not happen come 2017.

Based on the 2016-2020 National Health Program, the scheme is for the Government of Belarus to share funds with Global Fund starting 2016, moving out of Global Fund support by 2019. By this time, it is expected that social contracting mechanism will increase by 30% in 2017 as the government transitions out of Global Fund support¹⁵. At the same time, The Global Fund support will cease to support the country fully by 2019.

Regulations and Procedures

¹⁵ http://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Belarus_web_V3.pdf

The regulations for social contracting in the local (oblast) level is detailed in the “Resolution of the Council of Ministers on Some Issues of Social Contracting”¹⁶. In this Resolution, subsidies are provided to compensate for staff salaries and details co-financing arrangements with NGOs of up to 50% of the total project cost. NGOs are required to co-finance themselves before applying for subsidy. Contracts of NGOs are often signed of up to five years; however, in practice, budgets are approved at the oblast level on an annual basis.

In the draft regulation titled, “Regulations on the conditions and procedures of social contracting in the area of socially communicable diseases and HIV prevention”, NGOs will be provided with subsidies from local budgets for services and/or projects aimed at preventing socially communicable diseases and HIV. A limit of partial co-financing will be implemented, which will be at 20%. Such subsidy will cover NGO employees’ salaries, overhead expenses, purchase of equipment and commodities, and project activity costs. In a way, this proposed regulation will expand the Social Services Law in place.

Apart from the requirements set above, NGOs who apply for bid will need to deposit up to 3% of the total value requested as security deposit. This will ensure that the bidder will not withdraw their application or refuse to sign a contract in case of winning. Another 15% maximum cost will also be requested as guarantee upon signing the contract.

With regards to accountability, service providers under contract with the government will need to submit main reporting documents (certificate of completion, which details information on number of target beneficiaries, hours spent by staff involved in service provision, and salaries as accounted for).

To be implemented in the local (oblast) level, the funds will be provided via government program (i.e. Government Program on HIV Prevention 2016-2020). The local healthcare committees will be responsible for announcing tenders, process the bids, and arrange contracts with the “winning” NGOs. Local authorities can then decide on whether funding can be provided through the procedure of procurement or through direct subsidy provision. It is up to the NGOs that will provide the service on who their target population of the NGOs will be.

NGOs in Belarus mainly support outreach and prevention programs, such as needle exchange programmes, condom distribution programmes, and awareness raising activities. It is important to note, however, that while NGOs implementing these activities can be subsidized by the government, the Law on State Procurement of Goods (Works, Services) (2012) may prohibit NGOs from procuring commodities by themselves since such transaction is considered an economic activity. The only condition for them to participate in such activity is if they set up a separate entity to provide the business for them.

Eligibility criteria

¹⁶ <http://mfa.gov.by/upload/123/Formal%20procedure.pdf>

For NGOs to be eligible for grants from the government, they need to be:

- Legally registered to the Belarus government
- Prove that the work experience of the organization is in the area of HIV or communicable diseases
- Proof of experience working with representatives of target groups (i.e. key populations)

Potential challenges and gaps

In the application at the oblast level, local authorities (e.g. health committee members) might not be ready to tender subsidies to organisations working with key populations due to stigma and discrimination against these groups. This is especially true if health committee members do not have previous background with HIV prevention work.

Legislators' understanding of social contracting might be difficult for legislators to adopt a sound social contracting mechanism policy, including ensuring a consistent annual budget for this mechanism.

The financial requirements, both deposit and guarantee, may be burdensome to small NGOs that may not have the sufficient funding. At the very onset, NGOs will already face difficulties to request for grants from the government.

Bosnia and Herzegovina

The country's Strategy for Response to HIV/AIDS in Bosnia and Herzegovina 2011-2016 and Action Plan details a multisectoral collaboration towards addressing the country's HIV response¹⁷. The Strategic Plan also identifies civil society as important partners in the implementation aspect of the Programme, in particular, stigma and discrimination reduction, capacity-building trainings, and HIV prevention programmes.

HIV services, in particular, needle and syringe programme (NSP) services, in Bosnia and Herzegovina have been mainly funded by the Global Fund grants since its implementation in the country in 2006 when the country was still eligible for Global Fund grants. While the government has supported some of HIV prevention services including Opioid substitution therapy (OST) and Methadone Maintenance Programme (MMP) under different cantons (local government units), The Global Fund's presence in the country shifted the support of the Global Fund to fund 90% of these services domestically by 2015.

Apart from NGOs providing services as part of the national and local government HIV programmes, NGOs are also part of the National Advisory Board (NAB) on HIV and AIDS. This multisectoral board is responsible for the approval and efficient implementation of grants that the government provides to private entities and NGOs. This eventually supported the

¹⁷ https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_173046.pdf

establishment of the CCM, in which one of the working groups still perform the duties of the NAB. This includes the monitoring of the implementation of activities supported by the government.

Policy framework

NGO registration in Bosnia and Herzegovina is governed by the state-level Law on Associations and Foundations of Bosnia and Herzegovina¹⁸. NGOs can voluntarily register at the state level. However, should they register at the entity (local government) level, they may be delimited to implement in other entities wherein they are not registered. Nonetheless, NGOs are not exempted from tax regulations whether or not they are registered under the law.

Currently, there is no social contracting mechanism available in the country. However, there are few mechanisms that exist wherein the government, through its cantons, have supported NGOs through small projects¹⁹. Under the Law on Public Procurement²⁰, NGOs are allowed to compete to provide services for the government, but they do not have separate procedures as other private entities. This poses some difficulties for NGOs to compete with private entities who may have more complete documentary requirements and application documents.

NGOs can also apply for grants under the Law on Social Care of Civil Victims of War and Families with Children and can provide social services at the community level²¹. However, since the government restricts provision of social services only among licensed social workers, this may hinder CSOs unless their staff are already licensed individuals.

Procedure

NGO granting takes place at the municipal and ministerial government level, wherein they publicize calls for proposals with a predefined set of themes and eligibility criteria, mainly defined under the ongoing Global Fund grant. However, because it is the municipal government that defines the theme of each round, the decision to identify themes are sometimes influenced by Bosnian conservative nationalistic parties, which excludes PWID, MSM, and sex workers, as well as activities such as condom promotion or harm reduction activities.

Guyana

The HIV response in Guyana is guided by the government's policies such as the Health Vision 2020, Health for All in Guyana, and the HIVision 2020, recognized under the law by the Occupational Health and Safety Act²². There are currently no laws that govern the national AIDS response of the country.

¹⁸ https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=99948&p_classification=02

¹⁹ <http://icaso.org/wp-content/uploads/2016/10/Bosnia-Case-Study.pdf>

²⁰ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/jpa_2016_39653_1_bih_strengthening_public_procurement_system.pdf

²¹ <https://www.osce.org/bih/107168?download=true>

²² https://pancap.org/pc/pcc/media/pancap_document/HIVision-2020-Guyana.pdf

Guyana's funding for its HIV programmes are mainly dependent on external donors, mainly PEPFAR, which contributes to around 70% of the total HIV funding as of 2015, according to the CDC²³. However, since 2010, as with most countries in the Caribbean, support from external donors has continued to decline and places the burden of sustainability on the government's internal mechanisms. In 2015, the Minister of Public Health in Guyana committed to shift towards greater domestic investment in health and transition to full local ownership. This includes absorption of 25% of PEPFAR-supported project staff and 85% of donor-funded staff under TB to government positions, as well as procurement of ARVs and other treatment commodities.

Policy framework

The establishment of NGOs in Guyana is governed by various laws in the country. The Constitution itself guarantees the right to freedom of association, and can assume legal personality and be registered under various acts, such as the following:

- Companies Act. Under this Act, NGOs can register under the corporate option, "private limited liability company with no share capital"²⁴. However, under this option, CSOs are not tax-exempt.
- Friendly Societies Act. This Act facilitates the registration of charitable or mutual benefit and relief organizations²⁵. Contrary to the Companies Act, the Minister can exempt organizations registered under this Act from tax requirements, as long as the organization can declare its non-income status.
- Incorporation by Act of Parliament
- Trust Deed. This Deed is possibly the simplest form of registering CSOs, since the only requirements are a list of trustees, their responsibilities, and the purpose for the establishment of the trust.

With regards to subventions (also known as government subsidies), the Fiscal Management and Accountability Act and the Ministry of Health Act allow government to fund CSOs through their Consolidated Fund, the central bank account of the government. These are further detailed in a number of Charts:

- Chart of Accounts 6321: "Subsidies and contributions to local organizations" that creates specific budget line item for CSOs
- Chart of Accounts 6301: "Education subventions and grants" wherein funding for CSOs would be directed from the Ministry of Education
- Chart of Accounts 6322: "Subsidies and contributions to international organizations"

²³ <http://www.healthpolicyplus.com/pubs.cfm?get=7179>

²⁴ <http://goinvest.gov.gy/wp-content/uploads/Companies-Act-cap8901.pdf>

²⁵ <http://www.guyaneselawyer.com/lawsoguyana/Laws/cap3604.pdf>

In 2016, a total of 251,918,000 GY\$ (1.2MUSD) have been downloaded to a number of CSOs, the highest being 65,000,000 GY\$ (around 300,000 USD). Regional governments can also provide subventions through CSOs operating within their territories. However, should CSOs engage in income-generating activities, the legal environment in Guyana limits such activities, and recommends establishing a separate private entity to engage in business transactions that make profit.

With regards to the implementation of the HIV response, CSOs are recognized as strategic partners in the implementation of the National HIV Strategy outcomes, dubbed as HIVsion 2020. However, the engagement of CSOs are only limited to implementation; they are not engaged in budget planning or policy development as well as in the review of the NSP. While CSOs sit as members of the National AIDS Programme Secretariat as members of Key Population Working Groups, CSO's membership are on an ad hoc basis, unlike other stakeholders who are required to meet quorum in order for the meetings to proceed.

NGO participation

CSO activities that can be funded under this grant are service delivery activities. Based on the consultation conducted by Palladium and Health Policy Plus, it was observed that there seems to be no restrictions about key population organizations receiving funding from the government through social contracting mechanisms. However, for a CSO to be able to provide medical services, the Health Facilities Act of 2007 requires them to undergo training and licensing. They must be trained and must adhere to the guidelines developed by the Ministry of Public Health National AIDS Programme. This enables the CSOs to provide services including prescriptions, and provision of ARVs and other pharmaceutical commodities as stipulated under the Pharmacy Practitioners Act.

CSOs in Guyana provide up to almost 75% of HIV programming in the country: from HIV counseling and testing, to home-based and palliative care, as well as in providing legal services.

Procedures

Any legally registered CSOs with a track record can be eligible for subvention from the government. Requirements for application are as follows:

- Written proposal on the nature of the activity and its alignment to the government's priority (i.e. specific stipulation under the National AIDS Strategy)
- Budget breakdown of the requested activity. Core costs can be included as part of the request, including staff salaries and overhead costs
- Audit reports, which includes projection of the organization's financial health

Requests for subvention must be communicated directly to the concerned agency (e.g. Ministry of Health or Ministry of Education) so that the latter can determine the activity's alignment with the government priority. The concerned ministry will then review the request, which will then be approved by the Permanent Secretary. This will then be endorsed to the Cabinet, which will review and recommend a decision for funding the applicant CSO. Upon approval, the CSO will then be informed of the decision before the fiscal year closes.

Restrictions and challenges

For CSOs to receive funding for service delivery, they are required to have undergone training and have license (i.e. a licensed doctor or a nurse) to provide service before funds are downloaded. Apart from this, the government selects CSOs whose activities are aligned with the government priority, particularly under the national HIV and/or TB strategies, and contributes to the National Strategic Plan's outcomes.

While most of the support being provided by the government are in implementation, there is limited support to build the capacity to influence national policies and budgets and to contribute to monitoring and evaluation frameworks.

While key population-led organizations are free to operate and be registered in Guyana, the lack of capacity in managing an organization without any access to support from the government to accommodate or augment the need for capacity make it difficult for these organizations to fully register. This is in addition to the lack of information about the documents and forms needed towards registration, as well as the procedures and benefits and liabilities required. Some key population organization also face unreasonable delays and denial of registration despite full compliance with the requirements. One example is the Guyana Trans United (GTU), whose registration was delayed unreasonably until a non-transgender person was included as a trustee member of the organization.

In relation to the application process, there is no transparency from the side of the government on how applications are approved as well as in the selection of CSOs to be funded. This puts some concern particularly among key population organizations who are criminalized in Guyana.

Kazakhstan

State funding through state social contracts are currently the most significant source of funding for NGOs in Kazakhstan. In 2011, total state funding to NGOs amounted to approximately USD13.5M.

Policy framework

The 1996 Law on Public Associations and the 2001 Law on Noncommercial Organizations regulate NGO activities in Kazakhstan. The 1996 Law on Public Associations protect the establishment and implementation of NGOs (called as 'non-commercial organization') in several

aspects that further the lives of the people in Kazakhstan, as long as they are not prohibited by the laws of the land. The 2001 Law defines the various noncommercial organizations that operate in the country:

- Institutions
- Public Associations
- Joint Stock Companies
- Consumers' Cooperatives
- Foundations
- Religious Associations
- Associations of Legal Entities in the form of Association or Union

In 2003, the government and NGOs adopted the Conception of Government Support of NGOs, which laid out the level of cooperation between these two entities. This document details the process by which the government, through its agencies, arrange partnerships with NGOs in implementing projects using State funds. By 2005, the Kazak government passed the Law On the State Social Order, which orders governments to implement NGO programs in solving the country's urgent problems, to include issues relating to public health. Because of this, NGOs are exempted from paying taxes, including the funds that they receive under state contracts.

Latin America and Caribbean countries: Argentina, Brazil, Colombia, Costa Rica, Mexico, and Dominican Republic²⁶

The establishment of NGOs are recognized as a freedom of association under constitutional laws as well as through lower-level laws in these six countries. This also applies to key population groups who intend to establish themselves as organized, registered groups. While forms and procedures vary with regards to the process of legal registration including tax declaration (or exemption), CSOs are required to register legally in their respective countries to ensure that their operations are within the bounds of the laws of the land.

In these six countries, CSOs working as part of the HIV response, particularly those who provide HIV and STI services, including medical services and counselling, are not barred from operating as long as their work ensures the application of normative standards of their countries, including confidentiality provisions. However, for the CSOs to operate, licensure is required in order for these countries to provide clinical services such as HIV testing or STI testing.

Policy framework

²⁶ <https://plataformalac.org/en/2017/12/public-funding-of-civil-society-and-communities-in-the-response-to-hiv-and-tb-experience-in-six-countries-of-latin-america-and-the-caribbean/>

Policy framework with regards to contracting CSOs differ across these six countries, depending on their government system. For Argentina, Brazil, and Mexico that are mainly federal states, several states may have different procedures of contracting CSOs as long as they are aligned with the national (health) strategy. On the other hand, countries like Colombia, Costa Rica, and the Dominican Republic, which are unitary states, all systems of contracting CSOs remain at the national level. The case is different, however, in Colombia wherein the execution of national strategies, e.g. HIV strategy, is decentralized. It is therefore the responsibility of the local government to implement the response at the local government level with the frame of the national policy or guideline.

Direct contracting takes places between the responsible agency and the CSOs. There are instances, however, wherein the CSOs are invited by the government agency to apply for a project upon the request of the agency. Various strategies in evaluating applicant CSOs have also been established. In particular, a blind evaluation process is conducted by multiple evaluators.

NGO Participation

Activities that can be contracted from the government fall under three categories:

- Service delivery: this includes HIV, TB, or other STI-related services, including testing and counseling
- Projects: these include outreach to key populations, support in community surveys, media campaigns, capacity-building trainings

While it is necessary for CSOs to be licensed and trained in order to receive funding from the government for HIV and TB services, these countries have implemented various supervision, assistance, and control mechanisms to maintain technical stewardship. This includes in-person training and skills-building training for health service providers to familiarize in various technical standards.

Procedures

For the States of Paraná, Brazil; Bogotá, Colombia; and Nuevo Leon, Mexico; annual public calls are announced on specific projects with detailed budget. CSOs will then apply through the state or local government with the necessary documentary requirements. Part of these documentation include a description of the technical experience and capacity of the organization that will provide the service, tax obligation reporting, and the number of trained staff that will be involved in the project.

Macedonia²⁷

In 2014, Macedonia lost its Global Fund eligibility because of its upper-middle income status. The eventual exit of the Global Fund transgressed the HIV efforts in the country, with NGOs becoming unfunded due to a lack of proper functioning mechanism for contracting since 2017. Civil society and key population organizations hence lobbied for the inclusion of funding NGOs into their National HIV Strategy for 2017-2021. Because of this, 54% of the annual budget of the Strategy implementation will be channeled to civil society-led and key population-focused services.

Policy Framework

Macedonia's Law on Associations and Foundations recognizes two types of CSOs: associations and foundations. In order to be fully recognized as a civil society, organizations can apply for a "public benefit status", however, it is quite unclear what this status incurs²⁸.

Contrary to other laws in other countries that govern CSOs, in Macedonia, CSOs can engage in economic activities as long as this is aligned towards the organization's statute and annual programme. Income generated from these activities are taxed, however. While CSOs can apply for tax benefits, the laborious administrative process of acquiring these benefits hinder organizations to apply.

Laws on social contracting of NGOs are not specific in Macedonia. CSOs can compete for procurement contracts for services being rendered with other private entities both at the local and national levels. Similar to other Eastern European countries, the Law on Concessions and Public-Private Partnership also allow CSOs to compete in procuring services as a form of partnership with the government²⁹.

The Law on Social Protection provides protection in the conduct of activities that involve provision of services for HIV prevention, including counseling³⁰. Because of this, CSOs who are interested to apply for contracts to render social services must have the proper registration and requirements prior to application.

Another possible source of funding for CSOs is through the lottery as stipulated in the Law on Lottery and Entertainment Games³¹. According to this Law, 50% of the proceeds can be utilized to finance programmes of associations that work on specific populations. However, key populations and those most affected by HIV are not indicated.

Procedure

²⁷ http://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Macedonia_web.pdf

²⁸ <http://www.icnl.org/research/library/files/Macedonia/maclaw.pdf>

²⁹ <https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Law%20on%20Concessions%20and%20Public%20Private%20Partnership.pdf>

³⁰ http://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Macedonia_web.pdf

³¹ <https://www.finance.gov.mk/files/u11/Law%20on%20games%20of%20chance%20and%20entertainment%20games.pdf>

For CSOs to be granted with funding from the state of municipal budgets through public tenders, they must be first registered under the Ministry of Labor and Social Policy to be eligible for application. Application requirements include:

- Organizational statute
- Work plan
- Reports of three implemented projects
- Financial report
- Official registration certificate

Apart from these, professionals who are deemed to provide social services must be licensed under the Institute for Social Affairs in order to maintain quality assurance.

Once registered, CSOs can then apply through the regular public calls that either the state Ministry, through the General Secretariat of the Government and its Unit for Cooperation With Civil Society Organizations or the municipal level government facilitates.

The government of Macedonia also offers state grants. Approved on an annual basis under the state funding, annual programmes for funding of CSOs are allocated. However, because this is not obligatory, there may be instances that these state grants are not present³². The procedure for state grants is similar with public tenders.

As of October 2017, the Ministry of Health has signed contracts with 17 NGOs to cover HIV services, which includes specific interventions via budget line for PWID, MSM, and sex workers. However, no specific social contracting mechanism is in place in the country. There is a possibility of the National AIDS Commission being reinstated and that this will absorb the proposed social contracting mechanism and will act as a monitoring body in the implementation of the grants between the government and NGOs.

Malaysia

Malaysia is among a small number of countries in Asia and the Pacific that are moving towards high-income status, making it non-eligible for Global Fund support in the coming years. Almost 95% of its financing for health is domestically financed, and where 17% of its expenditure for HIV has been spent on HIV prevention³³. However, its concentrated HIV epidemic and low HIV expenditures particularly among MSM and people who inject drugs, including programming expenditures such as needle and syringe programs (NSP), may allow some flexibility for the country's eligibility to receive country support for its HIV response.

³² Ibid.

³³

https://www.aidsdatahub.org/sites/default/files/publication/SHIFT_NSA_2017_report_on_HIV_Financing_in_Indonesia_Malaysia_Thailand_and_Philippines.pdf

Support for CSO-led responses, particularly on service delivery, in Malaysia are financed by the Ministry of Health through a government organization-established NGO, the Malaysian AIDS Council (MAC). Once the government approves of its annual budget, funds that are decided to be allocated to MAC through a trifecta of government agencies focused on HIV: the National AIDS Programme Secretariat (NAPS), the AIDS/STI Sector of the Disease Control Division, and the Ministry of Health.

A process has been set up between MAC and the Malaysian government wherein proposals from community-based organizations are reviewed by MAC's Internal Technical Review. The Panel will then recommend successful proposals to the Ministry of Health. In turn, the Ministry of Health will then work with the Ministry of Finance and Cabinet for the requested budget to be approved. Once approved, the Parliament will then inform the Ministry of Finance and Cabinet to proceed with the approved budget, which will then inform the Ministry of Health, which will then work with the community-based organization through MAC.

While this partnership model has worked in Malaysia and has provided opportunities for the community-based organizations working on HIV to receive funding from the government (i.e. negotiate for the requested budget for their activities), some HIV organizations are uncertain whether MAC is able to lobby with the government, given its long-standing relationship, to raise critical enablers and policy and legal-related issues. For instance, the multiple levels of stigma and discrimination towards MSM and people who inject drugs continue to hamper HIV programmes targeting these two populations; and while MAC has supported NSPs, it has not pushed for stronger legal and policy change that would reverse the country's war on drugs.³⁴

Montenegro

Because of Montenegro's disease burden classification and GNI status, in 2013, the country became ineligible for further Global Fund support for the 2014-2016 cycle³⁵. When The Global Fund exited in 2014, the government struggled to sustain its HIV response. The government did absorb its treatment programmes and commodities, as well as services on diagnostics and OST, but general HIV prevention for key populations were delimited to revenues from the Commission on the Allocation of Games of Chance. These commissions were, unfortunately, insufficient. This change in disease burden may be caused by the reduction of funding to support HIV prevention services of NGOs. In effect, its disease burden changed from "moderate" to "high" in 2016, making the country eligible again.

Policy framework

Towards the end of 2015, the Parliament of Montenegro adopted the "Law on Budget for 2016". This included an allocation of up to 100,000 Euros specifically for CSOs providing services

³⁴ <https://www.thestar.com.my/opinion/letters/2019/01/22/harm-reduction-the-way-to-go/>

³⁵ http://www.aidsplan.org/gfo_article/global-fund-supporting-stakeholders-montenegro-develop-social-contracting-mechanism

for support to people living with HIV and key populations. Funding for this allocation came from the National Health Insurance Fund. The disbursement of these funds was conducted via Lottery Fund to augment the previous Global Fund contributions, and seeks to fund HIV initiatives for sex workers, MSM, and people who inject drugs.

Another update that's worth looking forward to is the proposed amendments on their NGO Law that will decentralize funds to support CSOs in the national level. An additional update of this law is an earmarking of 0.3% of the national budget that has to be used to fund CSO-led projects.

Procedure

The mechanism to disburse these funds was through a public tender issued in accordance with the Montenegro Law on Public Procurement (with only NGOs being eligible to apply). In 2017, CSOs who were awarded through this procedure received funding for provision of institutional support for drop-in centers for PWID and sex workers, and for the delivery of harm reduction services to PWID, MSM, and Roma populations. Psychological support services for PLHIV was also supported.

Challenges

1. Paperwork can be burdensome to CSOs
2. Bank guarantee, making this mechanism friendly only to most private sector organizations and not to key population organizations who may not have a guarantor
3. Procurement of HIV-related commodities, particularly syringe and needles, can only be done through the national programme, as this is considered an economic activity

Serbia

Serbia became ineligible for Global Fund support in 2014, and as a result, a number of NGO services for key populations halted due to lack of international support following The Global Fund' exit, particularly among MSM population who contributes to 73% of new infections in 2016³⁶.

Policy Framework

Serbia's CSO environment is considered as decentralized and friendly. The registration process for CSOs, as stipulated in the Law on Associations require minimal requirements (e.g. minimum of three founders) and registration is also voluntary³⁷. Moreover, unregistered organizations can also operate and freely receive funding from local and external sources. For foundations,

³⁶ <https://www.lgbti-era.org/sites/default/files/pdfdocs/0082%202016%20ENG%20NGO%20Social%20Contracting%20-%20Case%20Report%20from%20Serbia%20.pdf>

³⁷ https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=85336

the Law on Endowments and Foundations provides similarly minimal requirements, including a small capital in order to be established³⁸.

Serbia's HIV response is laid out in the 2011-2015 Strategy on HIV Infection and AIDS³⁹. The role of CSOs in the AIDS response fall under the implementation component of the Strategy, which includes HIV prevention, treatment, and care. This includes conducting outreach work and "strengthening of public associations of people living with HIV for provision of services to people living with HIV". However, this does not provide information on whether PLHIV-led organizations will be provided funding domestically.

CSOs' role in the AIDS response are also supported by other related laws, such as the Law on Public Health (2009) and the Law on Protecting Citizens from Communicable Diseases (2004). However, it is unclear whether it is the mandate of the government to support CSOs involved in the provision of care and in the implementation of HIV-related services.

Several laws in Serbia have somewhat vague provisions when it comes to supporting CSOs. For example, the law on Social Care (2011) mandates local governments to provide funding for social services by establishing a specific service delivery institution or through public procurement, wherein CSOs can apply through public tender. Public-private partnership is also allowed. However, such public tender processes are not solely exclusive to CSOs and they will need to compete with other private entities. Moreover, the Law on Public Procurements (2012) adopted stricter rules that may be difficult for CSOs to comply, such as bank guarantees.

Eligibility

Apart from the requirements for registration to be eligible for application in public tenders as mentioned, CSOs will also need to be licensed in order to meet the standards for social services, including education services and palliative care for people living with HIV. This is perceived to be complicated and expensive, and may hinder access of public funds (UNDP, 2016).

Procedures

At the municipality levels (or Local Self-Governments [LSGs]), only CSOs based in the municipality can access local funds for HIV prevention. However, if an LSG does not have an allocation for HIV prevention in their strategic document, then it may be difficult for NGOs to access such funds.

State and LSG grants through annual budgets are also available for CSOs to apply for. However, Serbia's laws require that such activities must be considered as public interest and that private entities (including CSOs) are eligible for funding. By 2013, the Serbian government adopted the Simplified Decree on Funds for Stimulating Programmes or Cost-Share for Financing the

³⁸ <https://www.legislationline.org/documents/id/18303>

³⁹ <http://www.batut.org.rs/download/publikacije/Strategija%20o%20HIV%20infekciji%20i%20AIDS-u%20-%20engleski%20jezik.pdf>

Programmes of Public Interest Implemented by Associations. This particular Decree obligates the government to publish an open call for CSO funding with a possibility of co-financing, including co-financing by external donors⁴⁰. However, LSG levels have their own application terms for project proposals and would only announce competition that will cover one year (OSF, 2017).

Once granted, CSOs will have to provide a quarterly narrative and financial report on the implementation of the project through public funding.

Uzbekistan⁴¹

The country's HIV law is governed by the Law on Counteraction to the Spread of the Disease Caused by Human Immunodeficiency Virus (2013). The law details functions of CSOs as part of the national HIV response. These include:

- Carrying out measures by providing legal, information, and other support to PLHIV and key populations
- Providing information on HIV prevention that are based on customs and traditions
- "Other activities" aimed at preventing HIV

Uzbekistan's laws require CSOs to be registered in order to operate, implement projects, and receive funding from the government. The Ministry of Justice and its local departments administer the registration of NGOs.

Policy Framework

Operations of NGOs are governed by the Law on Non-Governmental Non-Commercial Organizations (1999). CSOs in Uzbekistan are classified into three:

- Public associations
- Public foundations
- Institutions
- Other forms envisaged by legislation

Procedure for NGO registration is detailed in the Regulations on the Procedure of State Registration of Non-Governmental Non-Commercial Organizations (2014).

The country first introduced the concept of social contracting in 2007 when it adopted the Law on Guarantees of Activity of Non-Governmental Non-Commercial Organizations. In this law, the

⁴⁰ <https://www.lgbt-era.org/sites/default/files/pdfdocs/0082%202016%20ENG%20NGO%20Social%20Contracting%20-%20Case%20Report%20from%20Serbia%20.pdf>

⁴¹ http://www.eurasia.undp.org/content/dam/rbec/docs/UNDP%20NGO%20Factsheet%20Uzbekistan_web_V3.pdf

State is mandated to provide support in the form of subsidies, grants, and social contracts. State subsidy comes in the form of financial or other material support from the State Budget or specialized funds. Grants are monies or material resources provided to NGOs on competitive basis for implementation of projects. Social contracts represent a state order to carry out work or to implement socially significant projects with the State.

This Law was complemented in 2014 by the Law on Social Partnership, which established the Public Fund for Support of NGOs and Other Institutions of the Civil Society of the Oliy Majlis of the Republic of Uzbekistan (a.k.a. as the Parliamentary Fund). Its role is to accumulate funds from State budget and other sources and channel them to support and strengthen capacity of NGOs in providing services.

The Parliamentary Fund is administered by the Parliamentary Commission, composed of members of chambers of Parliament, representatives of Ministry of Justice and Ministry of Finance, national NGOs, and mass media. The Commission reviews proposals from NGOs and other interested parties to the Parliamentary Fund on an annual basis, and determines funds to be proposed as part of the budget allocation of the national government. The Parliament, who prepares the annual budget, then approves the amount of funding.

NGOs are granted funding annually. Successful projects are, however, not continued after the agreement with the State expires, unless the NGO applies for and secures another round of grant. In addition to this, overhead costs are not included in these grants. This may pose burden on the organizations that will implement the project.

Procedure

Since 2008, the Parliamentary Commission announces call for applications for grants and social contracts for NGOs. According to the Parliamentary Fund, NGOs need to prepare a number of forms and materials to be able to access the funds. These include application forms, calendar plans, a copy of registration certificate, a copy of charter, contracts, and report templates. A special permission is required, i.e. license, to carry out specific services, such as medical or diagnostic services, according to the Law on Licensing of Certain Types of Activities (2000), “Parliamentary Resolution on the List of Activities requiring a License” (2001), and the Resolution of the Cabinet of Ministers on Improvement of the Procedure for Licensing of Medical Activity (2012).

The Parliamentary Commission oversees all implementation supported by the Parliamentary Fund. This includes preliminary monitoring at the stage of selecting applications, ongoing monitoring through programmatic monitoring of projects, and follow-up monitoring, which is through oversight on the spending of resources.

Summary of Findings and Challenges

In the 14 countries reviewed, it was found that the existence and operations of CSOs are governed by a number of laws that recognizes people's right to association. Some of these laws define the types of CSOs that exist and classifications should CSOs are required to register. However, in almost all of these countries (with the exemption of Kazakhstan), tax regulations govern CSOs and are required to meet their tax obligations.

Access to domestic funds by CSOs are usually, but not limited to, public tenders and annual budgets.

In public tenders, CSOs can apply for grants as stipulated in the national procurement laws. The only challenge in doing so, apart from ensuring that the proposed activity is aligned with the national strategic plan, is the requirements needed, as well as the relatively high competition. Under this stream, CSOs will need to compete with private entities and companies in order to be granted.

State budgets, on the other hand, run on an annual basis. As such, CSOs can apply annually through annual call for applications unless there are limitations in applying for two succeeding years. The process of application and the requirements are still almost similar with public tenders.

In some countries, CSOs can also access domestic funds through lottery funds.

While there are countries that allow CSOs to operate without registration, such in the case of Serbia, CSOs must follow regulatory frameworks in order to access domestic funds. These include registration documents, statutes, and in other cases, bank guarantees, which may pose difficulties for CSOs to comply. It is also required by some countries that the activities that will be required domestic funding must be aligned with the national AIDS strategy.

Apart from the regulatory requirements, CSOs that provide medical and social services are sometimes required licensure of its programmatic staff, which has specific requirements depending on the country's regulations. This adds another layer of burden in accessing domestic funds particularly for CSOs who do not have sufficient capital to pay for license acquisition. In addition, CSOs cannot also procure commodities (e.g. HIV test kits) as these are regulated by the national procurement systems of some of the countries.

Government's monitoring and evaluation of grants contracted to CSOs follow similar rules and regulations as with other government-owned corporations and institutions. This includes regular site visits to monitor progress of use of funds, audit and accounting documents, end-of-project or annual financial reports, and narrative reports that are submitted on an annual basis. This level of quality assurance may be a challenge to CSOs whose overhead costs are not covered, or whose projects only run for a few months. Without sufficient staff to implement and prepare the paperwork, meeting these requirements in order to be eligible for another round of social contracting might be difficult.

ANALYSIS FRAMEWORK

The analysis framework for this study draws its inspiration from the analysis of the legal and regulatory frameworks for social contracting conducted by Health Policy Plus in Guyana in 2017 (Cenac, McLeish, and MacInnis, 2017). The Guyana review looked into five legal and policy areas: (a) role of civil society organizations in the national HIV response, (b) legal and regulatory frameworks related to civil society registration and service delivery, (c) frameworks related to funding civil society organizations, (d) actual funding and procurement practices from the government, and (e) planning service provisions by civil society organizations in upcoming national health plans and policies.

For the Philippine context, it will be imperative to begin the analysis with **contextualizing the role of CSOs in the national HIV response** by looking into how national and local policies and strategies as well as plans have recognized CSOs as part of the HIV response and the extent of this engagement. We intend to look into this area more broadly beyond service delivery to identify other community- and civil society-led responses such as advocacy and community mobilization activities (UNAIDS and Stop AIDS Alliance, 2015).

The second area of analysis will be around laying out **existing legal and regulatory frameworks on civil society registration**. This component is important to unpack given that the legitimacy of participation of CSOs in State processes are only recognized through government registration.

As mentioned in the previous section on related literature, CSO registration opens a gateway for CSOs to receive funds from the government. However, unique to the Philippine context is the Philippine Procurement Law that governs the country in inviting entities to join in the government procurement process. It is thus contingent to this study to look at the procurement and regulatory requirements around government procurement and how CSOs participate in this process. It is also imperative to look at accreditation procedures that some government agencies and local government units require among CSOs even prior to registering as procuring entities. Thus, an additional component of the proposed framework looks at **the legal and regulatory frameworks around government accreditation and procurement**. This section looks at various procedures as well as the National Procurement Law and its processes in downloading funds to private entities (including CSOs).

Apart from the government procurement process, there are also **other existing mechanisms in which the Philippine government funds CSOs**. A separate component is then identified that explores other mechanisms wherein government funds CSOs for them to implement HIV-related activities. This section will look at frameworks, processes, and practices other than the government procurement, as well as the experience of CSOs in accessing funding through various channels.

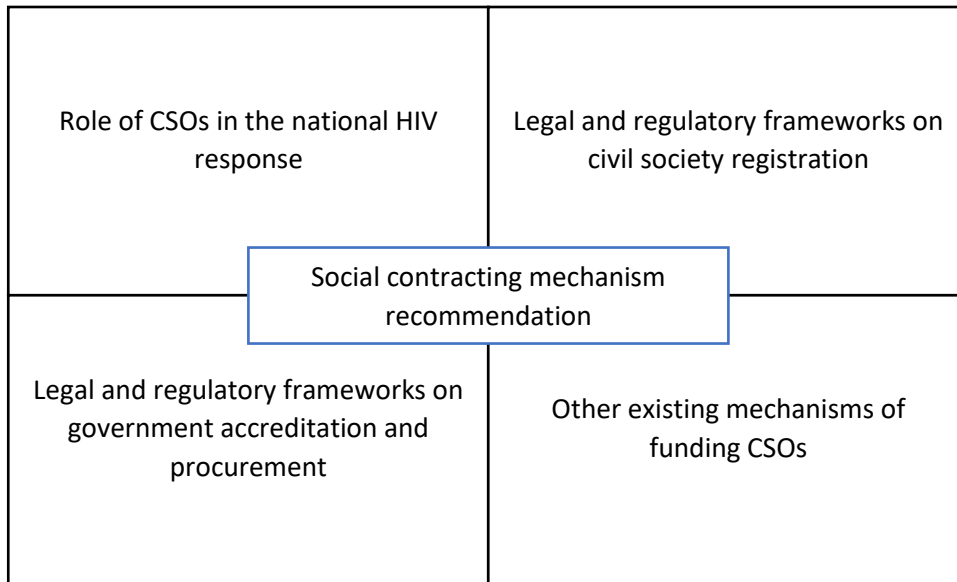


Figure 1. Social Contracting of HIV CSOs in the Philippines - Analysis Framework

The analyses will present results from the desk review and interviews, and will identify gaps and challenges as identified by CSOs through primary data sources.

Grounding from the existing legal and policy frameworks, practice, experience, and gaps, a social contracting mechanism is then proposed.

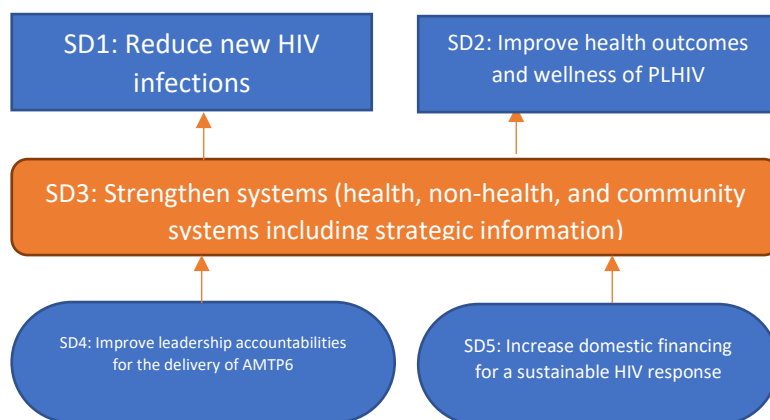
PHILIPPINES: RAPIDLY ACCELERATING HIV EPIDEMIC AND THE COUNTRY'S RESPONSE

The HIV epidemic in the Philippines is the fastest growing epidemic in Asia and the Pacific region, contributing to 7% of new HIV infections and 1% AIDS-related deaths in the region⁴². The epidemic in the country increased to more than 150% increase in new HIV infections since 2010⁴³. As of February 2019, total reported cases is 1,013 or 38 cases per day.

Almost 93% of new HIV infections are sexually transmitted and 80% come from men and men who have sex with men, driving this steep increase for the past decade. This is further fueled by the low level of information about HIV among key populations, such as men and men who have sex with men, transgender populations, sex workers, and people who use drugs; including young people from within these populations aged 15 to 24⁴⁴. Condom use and HIV testing, while increasing among some of the key populations, remains below the 90% target⁴⁵. Treatment coverage also remains low, with 51% enrolled on ART, of which only 23% have reached viral suppression in 2017 – far low than the 90-90-90 treatment targets⁴⁶.

Conflicting laws that impact people who use drugs and sex workers, further impede these populations from accessing much-needed HIV services such as needle and syringe programs and condoms. Laws that impede access to HIV testing and treatment among those who are below the age of 18 were also identified as a special concern.

To respond to this rapidly accelerating epidemic, the Philippines adopted an amended law and a new national AIDS strategy that frames the country's AIDS response. In May 2016, the Philippine National AIDS Council (PNAC) adopted the 6th AIDS Medium Term Plan for 2017-2022 that focuses on five strategic directions (Figure 2).



⁴² <https://aidsdatahub.org>

⁴³ Ibid.

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<https://static1.squarespace.com/static/5a150aa08dd04195b66c58c7/t/5b46eb39aa4a9969830c1948/1531374414138/6th+AMTP+Finalv4.3.pdf>

⁴⁵ Ibid.

⁴⁶ <https://aidsdatahub.org>

Figure 2. AMTP6 Strategic Directions

These strategic directions are concretely realized under its 4-pronged targets⁴⁷:

1. Increase knowledge on STI and HIV transmission, prevention, and services among 15 to 24 years old to 90%
2. Prevent new infections among 15 to 24 years old with special focus on key populations
3. Test 90% of estimated people living with HIV and treatment 90% of those who needed treatment
4. Eliminate mother-to-child transmission

AMTP6 was complemented with the enactment of the Philippine HIV and AIDS Policy Act in December 2018. Adopted to amend the former AIDS law, Republic Act 8504, and to strengthen the national AIDS response, Republic Act 11166 aims to mandate the government to a national HIV Prevention programme to educate the public about HIV and STIs; introduce the concept of mature minor, which allows those below the age of 18 to access HIV testing without parental consent and also allows those below 15 to have access via social worker consent; strengthening its confidentiality clause to cover non-medical confidentiality; mandate appropriations in accordance with the AMTP as well as separate annual appropriations for LGUs; and provide heavier penalties for violations. The revised law also strengthened the Philippine National AIDS Council structure of its existing multi-stakeholder collaboration by increasing NGO participation in its membership.

The local government units (LGUs) play a crucial role in ensuring that the national policies are implemented at the local level, particularly in the area of education, HIV prevention measures, and local government appropriations. Thus, LGUs have adopted local legislations to address HIV adaptive of their local epidemics. As of 2012, 23 local legislations (15 ordinances, 6 resolutions, 2 executive orders) have been passed in different provinces, cities, and municipalities across the country⁴⁸. Local AIDS councils, a localized version of the Philippine National AIDS Council, have also been established to oversee the AIDS response in these respective sites.

ROLE OF CSOs IN THE PHILIPPINE HIV RESPONSE

Citizen participation through civil society has come a long way in the Philippines. It draws its history from the establishment of secular organizations during the Spanish occupation, to the rise of the communist movement that began an era of rural development and local

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<https://static1.squarespace.com/static/5a150aa08dd04195b66c58c7/t/5b46eb39aa4a9969830c1948/1531374414138/6th+AMTP+Finalv4.3.pdf>

⁴⁸

https://www.researchgate.net/publication/320702352_National_and_Local_Policies_Related_to_AIDS_and_Drug_Use_Content_Review_and_Assessment_POLICY_REVIEW

democracy⁴⁹. The activism of NGOs came to fore during the Marcos regime in the early 1970s, paving the way to overthrow the dictatorial government. Post-Marcos and during the Aquino administration, many NGOs mushroomed as a result of the shift towards democracy and increased citizen participation in the government.

This type of activism has driven the participation of civil society in addressing HIV issues. When the first HIV case was recorded in 1984, a number of NGOs were eventually formed to respond to this impending epidemic. Peoples organizations (POs) and collectives composed of people living with HIV, women living with HIV, and key populations were also formed.

CSO participation in the HIV response is guaranteed in the country's legal framework. Drawing from the 1987 Constitution, the Philippine HIV and AIDS Policy Act mandates the government to adopt a multisectoral approach to the AIDS response, putting CSOs and people living with HIV at the center of the response⁵⁰. As such, the inclusion of CSOs is guaranteed in the Philippine National AIDS Council, providing nine (9) seats that can be occupied by NGOs working on HIV. These seats are:

1. Two (2) representatives from organizations of people living with HIV and AIDS
2. One (1) representative from a private organization with expertise in standard setting and service delivery
3. Six (6) representatives from NGOs working for the welfare or identified key populations

As PNAC members, they function similarly with the rest of the other PNAC members⁵¹:

1. Develop the AIDS Medium Term Plan (AMTP) and ensure its operationalization and implementation;
2. Strengthen the collaboration in the implementation of the national HIV and AIDS response, including the delivery of HIV and AIDS related services;
3. Develop and ensure the implementation of the guidelines and policies provided in this Act, including other policies that may be necessary to implement the AMTP;
4. Monitor the progress of the response to the country's HIV and AIDS situation;
5. Monitor the implementation of the AMTP, undertake mid-term assessments and evaluate its impact;
6. Mobilize sources of funds for the AMTP;
7. Coordinate, organize, and work in partnership with foreign and international organizations regarding funding, data collection, research, and prevention and treatment modalities on HIV and AIDS, and ensure foreign funded programs are aligned to the national response;
8. Advocate for policy reforms to Congress and other government agencies to strengthen the country's response to the HIV and AIDS situation;

⁴⁹ <https://www.adb.org/sites/default/files/publication/28972/csb-phi.pdf>

⁵⁰ Republic of the Philippines, *Philippine HIV and AIDS Policy Act*. (2018, Philippines).

⁵¹ Ibid.

9. Submit an annual report to the Office of the President, Congress, and the members of the Council;
10. Identify gaps in the national response on the part of government agencies and its partners from civil society and international organizations, in order to develop and implement the initial interventions required in these situations; and
11. Recommend policies and programs that will institutionalize or continue the interventions required in addressing the gaps identified in the national response to the HIV and AIDS situation of the country.

Apart from these, the Philippine HIV and AIDS Act also recognizes the contributions of CSOs to standard-setting of the government's HIV prevention and treatment programmes (RA No. 11166, Sec. 31). At the same time, the Law mandates utilizing the funds incurred through the penalties in violation of the law to consolidated into a Special Fund that "shall be used for initial interventions required to address gaps in the national response on the part of government agencies and its partners from civil society and international organizations" (RA 11166 Sec. 51).

The development and implementation of the AMTP also ensures the critical contribution and role of NGOs and PLHIV community. Not only has the AMTP involved the PLHIV community and CSOs in the development process through various level of consultations, it has also institutionalized in the recommended actions of the 6th AMTP the role of CSOs in both governance of the AMTP through the PNAC as well as in the implementation and accountability in the national HIV response.

These joint actions have been identified under each Strategic Direction in the AMTP and are summarized below.

Strategic Direction 1: Reduce new HIV infections

Under this Strategic Direction, CSOs are expected to participate in the assessment and development of various implementation policies around peer education, condom and water-based lubricant procurement and distribution, certification of laboratory equipment, and comprehensive package of interventions for each key population. CSOs are also expected to conduct mapping and organizing activities of key populations to make sure that the AIDS response remains participatory. CSOs are also expected to be engaged in the development of modules in building capacities of parents to engage in HIV prevention, of peer education for select industries, and in developing prevention messages using the strategic communication framework. CSOs are also expected to improve testing strategies by expanding the implementation of community-based services (CBS) and in establishing sundown clinics in burden areas nationwide.

Strategic Direction 2: Improve health outcomes and wellness of people living with HIV

Under this Strategic Direction, CSOs are expected to work with PNAC government agency members to develop policies on community-led case management in partnership with LGUs, policies in delivery of transgender population-specific health care and information needs, policy harmonization of burial of people with HIV, and policy development on breast milk donations

for babies of women living with HIV. This Strategic Direction also includes engaging with CSOs to be engaged in health and non-health service delivery for treatment, expanding services through satellite, social hygiene, and CSO-led clinics; and expansion of Outpatient HIV and AIDS Treatment (OHAT) Package for PLHIVs.

Strategic Direction 3: Strengthen systems including knowledge management and information system and referrals

Under this Strategic Direction, CSOs are expected to support the assessment and identification of capacity-building needs of LGUs, the development of capacity-building plan to strengthen the delivery of key population-friendly services, and the strengthening of CSO participation in accountability through guideline development. CSOs will also be engaged in increasing the capacity of PNAC members in the action planning, research, and policy development; as well as in community monitoring of ARV.

Strategic Direction 4: Leadership and accountabilities

Under this Strategic Direction, CSOs are expected to support the capacity of PNAC membership towards strengthening a multisectoral Service Delivery Network. They are also expected to engage with development partners and donor community to ensure that the AMTP is well-funded and that the cost-saving models are in place across all HIV interventions.

CSO ENGAGEMENT IN THE LOCAL AIDS RESPONSE

The success of the AIDS response relies not only in the success of the implementation at the national level but also how local government units, the stewards of local governance and autonomy, have implemented the programs and delivered the services at the local level. Thus, providing spaces for NGOs to engage with the city/municipality/provincial HIV program is integral in an effective local AIDS response.

Local government units work with CSOs in a number of instances. According to interviews, LGUs work with CSOs in a number of instances:

1. In the area of governance: engaging with NGOs by providing seats at the local AIDS council and inviting NGOs in their periodic programmatic reviews
2. In the area of partnership: accommodating NGOs and partnering with NGOs that has selected their city/municipality/province in the implementation of a particular project or initiative
3. In the area of service delivery: partnering with NGOs and linking them with their social hygiene clinics to ensure linkage in the HIV care spectrum from HIV testing to treatment, and working with NGOs to reach to key populations that are not covered by the current programs
4. In the area of capacity-building: supporting NGOs and participating in capacity-building trainings that are conducted by NGOs

5. In the area of advocacy: working with NGOs to identify policy gaps and improvements in the current local AIDS policy environment, and requesting for support from NGOs to push for specific advocacy agenda with the hope of closing HIV implementation gap or addressing specific HIV-related access barrier.

Quezon City's multi-stakeholder response to ending the city's AIDS epidemic

With a concentrated epidemic of as high as 5.5% among men and transgender women who have sex with men in the city, it was imperative for the Quezon City Health Department, a devolved Department of Health that operates within the city's jurisdiction, to work multisectorally to confront this epidemic.

Touted as a Fast-track City with regards to both its epidemic and its response, the Quezon City Health Department's HIV Programme works with various stakeholders in two fronts: the Quezon City STI/AIDS Council (QCSAC) and the Service Delivery Network (SDN). The QCSAC, guided by the Quezon City AIDS Ordinance, is responsible for the planning, integration, and coordination of programs and services on the prevention and control of STD and AIDS diseases being implemented by government organizations in the city. The Service Delivery Network (SDN) for PLHIV, launched in December 2013, was meant to serve as a "platform of delivery of a comprehensive package of health and related non-health services to people living with HIV, guided by the "Referral System for Care and Support Services for PLHIV and their Families in the Community" manual.

The Quezon City's HIV Program works closely with civil society organizations on various levels of implementation and governance of the HIV response in the city. CSOs advise on the Program's policy directions through the regular meetings of the QCSAC. On the other hand, NGOs that provide services to key populations and people living with HIV are linked through the SDN. There are also instances wherein the City Government contracts CSOs to implement some of its activities based on its annual workplan. For this to take place, the City Government enters into contract agreements with pre-identified NGOs who have been accredited by the Quezon City government.

Sources:

AIDS Society in the Philippines (ASP). (2014). Service Delivery Network for People Living with HIV (PLHIV) launched in Quezon City. Retrieved from <https://www.aidsphil.org/2014/01/service-delivery-network-for-people-living-with-hiv-plhiv-launched-in-quezon-city/>
Local Government Academy (LGA). (2011). Policy Review: The AIDS Prevention and Control Ordinances of Quezon City and Pasay City. Philippines: Local Government Academy.

With the level of expectations from civil society organizations to engage in the national and local AIDS responses, it is necessary for these NGOs to sustain themselves independently in order to participate fully as partners in the response. However, it was observed that over the past years, many NGOs have ceased to operate. This is mainly due to the lack of sufficient support to sustain the organization beyond its ongoing projects, which forces NGOs to lay off its staffing and cease its operations. While upcoming NGOs and community-based organizations working on HIV mushroom and expand at the same time, it is difficult to sustain the momentum especially when these NGOs have different priorities that are not aligned with the national AIDS response, i.e. AMTP.

Despite the establishment of Service Delivery Networks (SDNs) in a number of LGUs and the attempt to roll these out in other places in the country, the direction of implementation of work of some NGOs due to their project-based status poses duplication with ongoing HIV programmes, leaving important aspects of the HIV cascade unaddressed. This is becoming evident among NGOs who are moving towards test-and-treat strategies but leaving the HIV prevention programmes behind.

“And the challenge, sometimes some CSOs, for example, you’re working with MSM group who particularly wanted to do prevention programs and then you have a CSO working to improve the services among their community; sometimes both programmes do not align with each other. You need to put more services, bring those services among the community but then you forget the prevention aspect.” – QCHD

The impact of the pork barrel scam brought about by the Napoles case in 2013, wherein dubious NGOs were used as conduits of some politicians to syphon funding from the government created some levels of distrust to the NGO sector⁵². This is coupled with the Duterte administration’s attitude towards working with civil society and his ‘war on drugs’ that has suspended programmes that were critical to address HIV among people who use drugs communities⁵³.

LEGAL AND REGULATORY FRAMEWORKS ON CIVIL SOCIETY REGISTRATION

NGO registration in the Philippines is not mandatory; however, only registered NGOs can benefit from a legal entity that can transact financially and officially work with the government⁵⁴. In 2016, there were around 187,000 registered non-stock corporations considered active under SEC, registered as either an association or a foundation, with the latter having a requirement of a minimum contribution of at least One Million Pesos (PhP1,000,000.00)⁵⁵.

The Securities and Exchange Commission (SEC) is the national regulatory agency charged with management and supervision of registration of non-profit and non-stock organizations as part of its mandate. Created in 1936 under the Commonwealth Act 83 or the Securities Act, the Commission is tasked to regulate the sale and registration of securities, exchanges, brokers, and dealers. Subsequent laws were enacted to encourage more active participation in the affairs of private corporations and enterprises. Further, it is the Commission’s role to develop and regulate the corporate and capital market toward good corporate governance, widest participation of ownership and democratization of wealth.

⁵² <https://www.emeraldinsight.com/doi/full/10.1108/EEMCS-03-2014-0063?fullSc=1&>

⁵³ <https://nobox.ph/post/harm-reduction-saves-lives>

⁵⁴ <https://www.adb.org/sites/default/files/publication/28972/csb-phi.pdf>

⁵⁵ <http://shifthivfinancing.org/philippines/shift-2018-a-review-of-cso-laws-and-financing-mechanisms-philippines/>

Under the law, NGOs are classified as non-stock corporation. Non-stock corporations are defined as “a corporation with no authorized capital stock. It is organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agricultural and like chambers, or any combinations thereof.”⁵⁶ Requirements for registration requires minimum set of documents, particularly if registering as an association. However, should a group be interested to register as a foundation, they will need to prove a certification of bank deposit of contribution of no less than PhP1,000,000.00, and a statement of willingness to allow the Commission to conduct an audit⁵⁷.

Interested parties that want to be registered legally can also opt to register as a cooperative. According to the Cooperative Development Authority, a cooperative is “an autonomous and duly registered association of persons, with a common bond of interests, who have voluntarily joined together to achieve their social, economic, and cultural needs and aspirations by making equitable contributions to the capital required, patronizing their products and services and accepting with the universally accepted cooperative principles”⁵⁸.

The Cooperative Development Authority acts as the primary agency that registers all types of cooperatives in the Philippines. It is mandated to promote the viability and growth of cooperatives as instruments of equity, social justice, and economic development in fulfillment of the mandate in the Philippine Constitution Article XII Section 15 on self-reliance and independent national economy.

Contrary to organizations registered as non-profit through SEC, cooperatives enjoy several benefits from the governments. Apart from preferential treatment in shipping goods and services, with, or directly servicing government agencies, cooperatives are also entitled to loans with the Philippine National Bank, and the other financial institutions or development banks. Cooperatives are also exempted from pre-qualification bidding requirements, making their bidding to a government-led project of advantage as opposed to other private institutions.

To register, interested individuals need to form a group of 15 individuals minimum and prepare documents similar to registering at the SEC, such as articles of incorporation and by-laws. Unlike registering as a foundation, however, a cooperative will have to register with the name ‘cooperative’ in its name to qualify for CDA registration.

It was observed that while NGOs are not required to register, registration is an initially crucial step for CSOs to be eligible for accreditation, which will allow them to participate fully in accessing public funds, transacting with LGUs, etc. A registration will enable NGOs to eventually file for accreditation to operate legally as an accredited partner of either a government agency or within the jurisdiction of the LGU.

⁵⁶ <https://www.officialgazette.gov.ph/1936/10/21/commonwealth-act-no-63/>

⁵⁷ http://www.sec.gov.ph/wp-content/uploads/2015/01/Doc_Regts_NonStock.pdf

⁵⁸ Cooperative Development Authority (CDA). *Philippine Cooperative Code of 2008* (Republic Act 9520) (2008, Philippines).

CHALLENGE FOR CSOs

While the requirements for SEC registration are straightforward in terms of the needed documents (e.g. articles of incorporation, by-laws, list of incorporators), preparing these documents prior to registration can be cumbersome for NGOs and can take months to accomplish⁵⁹. If registered as a foundation, an NGO will need a certified deposit of an incorporator of not lower than 1,000,000.00 Pesos, and this poses significant burden to NGOs who are not profiting from their work that they are conducting. The annual renewal also poses another burden, with an additional requirement of audited financial statements to be submitted to the Bureau of Internal Revenue (BIR) that will add to the annual overhead expenses of the organization.

Early this year, SEC released an additional guideline for non-profit organizations regarding receipt of funding from external donors⁶⁰. In relation to the government's "heightened" monitoring of anti-money laundering and terrorist abuse, SEC is actively monitoring NGOs that are potentially at risk to such activities and will be requiring NGOs to disclose information about their external donors, amount of funds and purpose of funding. This action from SEC pose potential risks to NGOs that are supporting harm reduction and other HIV-related activities that the government can perceive as a threat, given its current position on the war on drugs and its active takedown of organizations that it perceives to be an opposition.

Having a SEC registration is not the only requirement for NGOs to operate. An NGO also needs to acquire business permits at their domicile, both at Barangay and City levels, which need to be renewed annually as well. This entails additional costs for the organization. NGOs that do not have initial funding to establish themselves and are not receiving funding for overhead and operational expenses may find it difficult to sustain these annual costs.

LEGAL AND REGULATORY FRAMEWORKS ON GOVERNMENT ACCREDITATION AND PROCUREMENT

Once organized, CSOs can begin to operate and receive funding from external and local donors to support the work that they are doing. But with regards to accessing government funds, registration with SEC alone does not suffice for an NGO to be eligible to receive funding. A number of layers and specific forms of accreditation are required before an NGO can formally implement their programs in their respective locality.

⁵⁹ <http://shifhivfinancing.org/philippines/shift-2018-a-review-of-cso-laws-and-financing-mechanisms-philippines/>

⁶⁰ <https://www.philstar.com/business/2019/01/11/1883957/sec-issues-guidelines-non-profit-organizations>

CSO ACCREDITATION PROCEDURES TO ACCESS GOVERNMENT FUNDS

Government accreditation of CSOs

“You get funding from the government, you should get certification from the government.” – Luis Morales, PCNC

The scandal surrounding fictitious NGOs that have received funding from the government in 2013 resulted in the Department of Social Welfare and Development (DSWD) to be mandated to adopt measures to accredit all CSOs that are receiving funds from the government⁶¹. However, this centralized approach was proven ineffective given that other government agencies have earmarked funds that CSOs may wish to seek funding for. Thus, in 2017 under the General Appropriations Act for the Fiscal Year 2017 or Republic Act 10924, a specific provision for fund transfer to CSOs have been enacted.

⁶¹ https://www.dswd.gov.ph/issuances/AOs/AO_2003-079.pdf

Section 65 of the General Appropriations Act for the Fiscal Year 2017 (RA 10924)

Sec. 65. Fund Transfers to Civil Society Organizations. A government agency may transfer public funds to a Civil Society Organization (CSO) only if all of the following conditions are present:

The CSO is either:

Implementing a government program or project jointly with the government agency, or

A beneficiary of a government program or project.

There is a specific appropriation in the General Appropriation Act or some other appropriation law for such government program or project.

The government agency has accredited the CSO in accordance with its guidelines; PROVIDED, that such guidelines shall include, as a minimum, the following requirements:

The existence or presence of the CSO in its stated address and area of operation has been validated;

The CSO has an identified membership and leadership and defined organizational structure;

The CSO is in good standing with all government agencies from which the CSO has received public funds;

The CSO is not in default or in delay in liquidating any public funds received from any government agency;

For implementing CSOs, the CSO must have a proven track record and good standing in undertaking civil society works; the CSO must not have any Director, Trustee, Officer or key personnel related within the fourth civil degree of consanguinity or affinity to any official involved in the processing of its accreditation, or any official of the government agency funding or implementing program or project to be implemented by the CSO; and the CSO must have proven legal existence; and

For beneficiary CSOs, the CSO must have the appropriate social preparation from the government agency providing the grant of financial assistance.

In the case of a cooperative who wishes to become a CSO partner, the submission of certificate of registration and certificate of compliance as issued by the Cooperative Development Authority specifically for that purpose including meeting the minimum requirements as stated herein shall be sufficient for it to qualify as a CSO partner.

Government agencies shall post the lists of their accredited CSOs in their respective websites, and shall update such lists quarterly.

The CSO has liquidated in accordance with existing COA regulations all fund transfers due for liquidation. Only CSOs with proven absorptive capacity and good track records to implement several projects at the same time shall be considered as implementing CSOs of multiple projects.

The CSO was selected by the government agency in accordance with all applicable rules and regulations.

To ensure that CSOs comply with all pertinent rules and regulations covering the transfer, use, liquidation and audit of public funds, government agencies shall put into place the needed monitoring, evaluation and reporting mechanisms. Government agencies shall remain accountable for funds transferred to CSOs in accordance with government accounting and auditing rules and regulations.

Government agencies shall prepare quarterly reports on funds transferred to CSOs. These reports shall indicate the names of the CSOs, the amounts transferred, and the government programs or projects involved. Government agencies shall submit these reports to the Speaker of the House of Representatives, the President of the Senate of the Philippines, the House Committee on Appropriations and the Senate Committee on Finance, and post these reports on their official websites.

Source:

Department of Budget and Management (DBM). (2017). General Provisions Fiscal Year 2017 [PDF]. Retrieved from <https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2017/Volumel/GENPRO.pdf>

This omnibus requirement of each government agency to accredit NGOs prior to seeking and downloading funds adds an additional layer of compliance among NGOs. This means that if an

HIV community-led organization intends to conduct HIV prevention education seminar to a school and provide HIV screening and funds will be coming from the Department of Education and the Department of Health, they will need to be accredited to both government agencies prior to granting of funds by these agencies.

While it is understandable from the side of the government to be protective of public funds, requiring NGOs to apply for accreditation to each agency that they will be working with would be cumbersome to NGOs, particularly to smaller NGOs. Depending on whether the HIV NGO is a beneficiary or an implementer, the requirements, such as compliance certificate from the regional DSWD office, certification or endorsement from a known individual in the community, and a proof of physical office domicile are required to be submitted as part of accreditation application. If an NGO has received funding from the government previously, they would also need to file a certification of good standing from the government agency as part of their requirements. These documents take time to compile given the bureaucracy that they need to confront and the offices wherein the certification needs to be secured.

It is also necessary and vital for the NGOs requesting funds from the government to know whether there is earmarked funding for a specific programmes and to which government agency, which is usually allocated during the budget hearing process.

“There are earmarked [funds], so they have to have specific funds for, for example, [HIV] prevention for training activities...it is already earmarked from the GAA, it will appear on the General Appropriations Act that these are earmarked for CSOs.” – Kathyrene Merza, Government Procurement Policy Board (GPPB)

This presents an opportunity for CSOs to engage with the respective government agencies during the budget cycle and propose activities they want to be included in the agency’s budget.

“[We] identify (sic) before that I need to do Gender and Age Sensitivity Training because that has a big gap with the Quezon City Council members. So I put it in as an activity and then the amount of the budget. *Naapprove naman yun* (It was approved). [We] have to defend it to the CHO, and then to the City Council.” – Dr Rolly Cruz, Quezon City Health Department

Local Government Unit Accreditation of CSOs

Beginning 2016, any NGO whose projects are implemented within specific geographical jurisdictions need to apply for a special accreditation from the LGU covering such area of implementation⁶². This implies an additional level of accreditation is needed for NGOs before they can seek funding from any local government system given its decentralized nature (i.e. City Health Office). The process of accreditation at the LGU level usually takes three months and

⁶² <https://www.dilg.gov.ph/issuances/mc/2016-Accreditation-of-Civil-Society-Organizations-and-Selection-of-Representatives-to-the-Local-Special-Bodies/2346>

NGOs will need to comply with the mandated requirements such as mayor’s permits, articles of incorporation, and audited financial reports⁶³.

On a positive note, acquiring an LGU accreditation has its benefits. According to interviews, an accredited organization can participate either as an observer or as a member in decision-making bodies at the LGU level. This presents an opportunity for NGOs to propose activities that are aligned with their organizational priorities.

“If you are an accredited organization, you will be engaged in health [planning]; you can ensure that you can see the investment and planning of LGU. You can question the priority of the LGU.” – Toots Rivac, GAYON

NGO Self-Regulated Accreditation

Several coalitions of NGOs also have their respective processes of self-regulation and accreditation to promote peer accountability and transparency. One particular entity that was formed for regulation and accreditation of NGOs is the Philippine Council for NGO Certification (PCNC).

PCNC is a non-profit corporation that certifies NGOs and other non-profit organizations to boost their financial management and system of accountability. Established in 1997 by six of the largest NGO networks in the Philippines, PCNC aims to provide a mechanism to certify NGOs that meet its established criteria of transparency and accountability, to incentivize private sector participation in social development, to integrate efforts of non-profit sector in its standards of service delivery, and to provide a system for greater GO-NGO collaboration and complementation⁶⁴.

In 1998, PCNC entered into a memorandum of agreement with the Department of Finance to act as a separate regulating body for NGOs interested in donee institution status from the Bureau of Internal Revenue (BIR).

As a regulating body, PCNC leads the certification process through its peer evaluators. The certification process begins with NGOs submitting registration documents such as audited financial statements, registration documents, and articles of incorporation to the PCNC Secretariat. Once these documents have been completely submitted, PCNC will schedule a visit to the NGO by a peer evaluator. The peer evaluator will then evaluate the NGO against a set of PCNC standards. The peer evaluator usually gives six months for the NGO to meet their deficiencies. Once done, PCNC Secretariat will then endorse the NGO’s application to their Board for approval. An NGO can be certified for one, three, or five years, depending on their compliance requirements. If in case the NGO would seek renewal of their certification, PCNC conducts another re-evaluation prior to the expiration of the certification status.

⁶³ [Ibid.](#)

⁶⁴ <http://www.pcnc.com.ph/>

Apart from certifying NGOs, the PCNC also conducts dissemination and information seminars among NGOs in partnership with their founding organizations. They can also refer consultants who could assist NGOs during the certification evaluation process but not to the extent of providing technical support to NGOs to strengthen their financial management and accountability systems.

While a PCNC certification is required by neither the government (that requires government certification) nor bilateral agencies (that applies their own standards), this adds up to the NGO's status in terms of its financial management and in terms of application for donee status.

“The PCNC certification adds value to the organization that they are trustworthy and the evaluation is a demonstration of their transparency, so that's what happens. I do not know although may I have been told that from the RH (reproductive health) [sector], which I think is a project in Cebu – there were two NGOs applying but because of the PCNC certification they won because of the extra guarantee that they are doing good as an organization.” – Luis Morales, PCNC

The payment for certification from PCNC may not be friendly to many small NGOs. Depending on the validity of the certification and current and non-current assets, a certified NGO would pay anything from PhP10,000 to PhP30,000 and will need to renew their certification on a regular basis to maintain their accredited status.

GOVERNMENT PROCUREMENT PROCESS

The Philippine Procurement Reform Act, or Republic Act 9184, provides the framework for the government procurement of goods and services from the public, including among CSOs.

According to the Implementing Rules and Regulations of RA 9184, this law was enacted “for the purpose of prescribing the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the Government of the Philippines (GoP).” Government procurement of goods, infrastructure projects and consulting services is guided by the principles of transparency, competitiveness, streamlined procurement process, accountability and public monitoring.

As a matter of policy, the Government procurement shall be transparent and competitive and as such shall undergo competitive bidding, unless otherwise provided for by law. The law provides an extensive description of the competitive bidding process, including the roles and functions of the Bids and Awards Committee (BAC), which is constituted by a procuring government entity. The BAC's functions include “advertising and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative.”

The BAC is also expected to make sure that the Procuring Entity abides by the rules and procedures prescribed in the RA 9184. The following steps in government procurement is stipulated in the Law:

1. Preparation of Bidding Documents
2. Conduct of Pre-Procurement Conference
3. Advertising the Invitation to Bid
4. Conduct of Pre-Bid Conference, unless otherwise provided in the Law
5. Submission and Receipt of Bids
6. Evaluation of Bids
7. Conduct of Post-Qualification Process
8. Notice and Execution of Award
9. Contract Implementation
10. Contract Termination



Figure 2. Procurement process in detail

Source: <https://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184xxx.pdf>

For NGOs to participate in the competitive bidding process, they will need to register first to the Philippine Government Electronic Procurement System (PhilGEPS). Registration is free through

the PhilGEPS online website for CSOs but they could only participate in PhilGEPS as observers, unless these CSOs have been identified under the alternative modes of bidding.

Should CSOs need to participate in the bidding process, they will need to upgrade their membership to Platinum, which means an annual fee of PhP5,000 as well as submission of the organization's legal documents, including mayor's permit, tax clearance, and other accreditation requirements to prove NGO's legitimacy.

There may be instances when the Government would resort to Alternative Methods of Procurement, subject to approval of the Head of Procuring Entity and justification as stipulated in the Law. There are five (5) types of Alternative Methods of Bidding. These are the following⁶⁵:

1. Limited Source Bidding – this is a direct invitation to bid by the concerned procuring entity from a set of pre-selected suppliers or consultants with known experience and proven capability on the requirements
2. Direct Contracting – this is a procurement process from a sole priority source (wherein patents and intellectual property limits the bidding from being conducted)
3. Repeat Order – this is a method of procurement wherein a good is procured from a previous winning bidder who have previously been awarded through Competitive Bidding
4. Shopping – this is a method of procurement wherein the procuring entity simply requests for the submission of price quotations for readily off-the-shelf goods to be procurement directly from suppliers of known qualifications
5. Negotiated Procurement – this is a method of procurement wherein there have been previously failed biddings and that a specific service is justified to be only contracted from a particular supplier

ENGAGEMENT OF NGOs IN GOVERNMENT PROCUREMENT

Non-government organizations may participate in any of the methods of procurement stipulated in the Law. However, due to certain realities and limitations experienced by NGOs, certain types of Alternative Methods of Procurement may be more accessible than simply participating in the competitive bidding process.

Certain eligibility requirements have to be met before NGOs can participate in Government Procurement. Basically, only NGOs that are legally registered can participate in this process. The following documents are required to prove a NGOs legal identity:

1. Securities and Exchange Commission (SEC) Registration
2. Latest Articles of Incorporation
3. Valid and current Mayor's Permit

⁶⁵ <https://www.gppb.gov.ph/downloadables/forms/GPM%20Volume%202.pdf>

4. Certificate of Philippine Government Electronic Procurement System (PHILGEPS) Registration
5. Tax Identification Number
6. Latest tax returns and tax clearance pursuant to EO No. 398, s2005⁶⁶

The following technical documents are also needed to demonstrate technical expertise:

1. Statement of all its ongoing and completed government and private contracts within the relevant period, where applicable, including contracts awarded but not yet started, if any in accordance with Section 23.1 (a) (iv) of the IRR97 of R.A. 9184⁶⁷
2. In the case of procurement of infrastructure projects, the prospective bidder's statement of:
 - a. Availability of its key personnel, such as project managers, project engineers, materials engineers and foremen, that may be used for construction contracts;
 - b. Personnel performing functions that are regulated by laws of the Philippines are registered professionals authorized by the appropriate regulatory body to practice those and allied professions;
 - c. Availability of equipment that it owns, has under lease, and/or has under purchase agreements that may be used for construction contracts, provided that ownership of equipment is not a requisite for eligibility.

Financial documents are also required to prove financial stability and capacity for financial management, thus the need to submit audited financial statements for the past three (3) years, stamped "received" by the Bureau of Internal Revenue or its duly accredited and authorized institutions, showing, among others, its total and current assets and liabilities.

The following examples illustrate the process that NGOs would undergo when participating in Government Procurement under the Alternative Methods of Procurement:

PUBLIC BIDDING LIMITED TO NGOS

If the procuring entity decides to award an NGO through competitive public bidding, it will advertise and post Invitation to Bid/Request for Expression of Interest in accordance with relevant section in the IRR of RA 9184. This Invitation to Bid or Request for Expression of Interest will also include the legal basis and the law or policy that reflects the amount that has been earmarked for NGO implementation, and that the project is limited only to NGOs.

⁶⁶ An executive order approved by the Arroyo Administration to direct timely and complete payment of taxes as a precondition for entering into, and as a continuing obligation in contracts with the government, its departments, agencies, and instrumentalities (see <https://www.officialgazette.gov.ph/2005/01/12/executive-order-no-398-s-2005/>)

⁶⁷ This details the eligibility requirements for the procurement of goods and infrastructure projects that government has awarded to private entities via public bidding (see <https://www.gppb.gov.ph/laws/laws/RevisedIRR.RA9184a.pdf>)

The eligibility of an NGO is determined based on the submission of the documents enumerated above. Also, the NGOs that bid under this specific bidding process will have to undergo the procedures prescribed in the Law.

NEGOTIATED PROCUREMENT

Under justifiable conditions and approval by Head of Procuring Entity, negotiated procurement may ensue but the process still has to follow those prescribed in the Law to ensure transparency, accountability and competitiveness to a certain extent. This means that an Invitation to Bid will still be posted and will still follow the required posting period. After that, the procuring entity will invite at least three (3) prospective NGOs to submit sealed price quotations for the project. These NGOs are also required to submit a complete project proposal, including feasibility studies, designs, plans, blueprints and budget.

“Sa negotiated procurement, we invite [NGOs] who will submit proposal for other government from other NGO’s. *Hindi ka na magcocompete with mayayamang NGOs pero depende sa classification ng NGO kasi may mga klase sa NGOs diba* (You will not compete with rich NGOs but it depends on the classification of NGO because there are various kinds of NGOs, right)? For example, if you need to accomplish, for example, education, so teaching, NGO will conduct a teaching, so you give them a number of months or on how long it will take and then they will provide you with the tasks. Depends how you will do it, for example at teaching so you will go to the community.” – Dr. Isagani Bagus, UP National College of Public Administration and Governance (NCPAG)

Following the procedure in the Law, the procuring entity will open the sealed price quotations to determine the Lowest Calculated Bid (LCB). Because this process pertains to NGOs, it should be stipulated that no profit will be included in the bid and the procuring entity will have to ensure that the NGOs bidding for the project did not include mark-ups for profits in their bids.

After determining that the proposal submitted by the NGO with the Lowest Calculated Bid complies with the technical requirements of the project, the procuring entity will then require the NGO to submit the documents to ensure its technical, legal and financial capacity. After these documents have been complied with to the satisfaction of the procuring entity, both parties can then enter into a Memorandum of Agreement (MOA), which includes the following:

1. Terms of Reference for the project;
2. Commitment to comply with technical requirements of the project;
3. Systems and procedures for project monitoring and implementation;
4. Timelines, such as, but not limited to, date of completion, periodic inspection or evaluation schedule, and reporting; and
5. Terms of payment

To guarantee its faithful performance, the selected NGO shall post a Performance Security upon the signing of the MOA. According to the IRR, the amount of the Performance Security shall not be less than the prescribed percentage of the contract price. The Performance Security will be returned to the NGO after completing all its obligations under the contract.

After performance of its obligations under the MOA, the selected NGO will also be required to submit a warranty security for an amount and period stipulated in the IRR. This will be returned to the NGO after the expiration of the warranty period, provided that all necessary requirements have been met.

FRAMEWORK AGREEMENT

A Framework Agreement arrangement can be set between the NGO and the Government Agency should a particular good or service necessitates for the latter to engage into a contract agreement but the exact time of its provision cannot be accurately pre-determined⁶⁸.

A Framework Agreement is a contract agreement between the procuring agency and the service provider wherein the latter is requested to provide a specific service or a good to the procuring agency within the agreed timeframe. The contract agreement for a Framework Agreement usually covers a minimum of one (1) year and can extend up to three (3) years. Framework Agreements is deemed to be advantageous for government agencies if a repeated good is required by the procuring agency without the hassle of repeated processing of service contracts based on cost-benefit and feasibility studies that have been presented; and if such arrangement will be the most economical, practical, and efficient.

“Yung framework agreement kasi parang one way of implementing procurement projects. You would procure a framework agreement for one year, *kung sino manalo, sya yung mag-susupply* (whoever wins will be the one who will supply). It is like an option contract: if you win [the bid] for that particular year, you will be the one to deliver. For services, there usually is a maximum number set, for example, 10 trainings per year. In terms of payment, As per training, you get paid after you deliver the training *kasi parang yun yong kontrata mo* (because that’s how your contract is), per call-off.” – Kathyrene Merza, Government Procurement Policy Board (GPPB)

The bidding process prior in the selection of service provider remains the same for Framework Agreement. The only difference is with regards to the contract agreement. While a regular service contract can be specific, a Framework Agreement needs to indicate the type of services that it requires under the Framework Agreement List. This List includes the following⁶⁹:

1. Type and nature of each item
2. Technical specifications or Scope of Work

⁶⁸ <https://www.gppb.gov.ph/issuances/Resolutions/Resolution%20No.%2012-2017.pdf>

⁶⁹ Ibid.

3. Maximum quantity of items or services
4. Estimated contract price per item of service
5. Total ABC including budgetary allotments per type of product or service
6. Expected delivery timeframe after receipt of a Call-Off; and
7. Other appropriate information as may be necessary

While no HIV CSOs that have been awarded with a Framework Agreement have been encountered during this study, such process may be of advantage for CSOs that would like to maintain a multi-year support from a government agency. The only challenge, however, is that the competitive bidding or the negotiated procurement may be opened for bigger, more stable NGOs that can provide a similar service (e.g. HIV prevention education, specific capacity-building expertise). Hence, the applicant NGO will need to justify and establish their legal entity and accomplishments to be able to successfully apply.

OTHER EXISTING MECHANISMS OF FUNDING CSOs

FUND TRANSFER

Fund transfers apply to the receipt of funds directly from a concerned government agency or LGU to an accredited NGO to implement a particular activity on behalf of the government agency or participate in the implementation of any government program or project⁷⁰.

Release of such funds require a number of documentary requirements, such as⁷¹:

1. Approved summary of budgetary requirements detailing the items of expenditures/disbursement to be incurred in the program/project
2. Priority projects that may be implemented by the NGO or PO published in the newspaper, agency website, bulletin board and the like
3. Registration of the NGO/PO by the Bids and Awards Committee (BAC) of the grantee agency
4. Results of evaluation of financial and technical capability of selected NGO/PO
5. Performance security for infrastructure project
6. NGO/PO proposal accompanied by SEC registration or CDA accreditation, audited financial report, articles of incorporation, annual reports, list or photographs of similar projects previously completed, etc.
7. Equity or bond
8. Memorandum of Agreement with the respective agency

⁷⁰ http://spmou.upd.edu.ph/spmo_docs/COA_C2012-001.pdf

⁷¹ Ibid.

Release of such funds is based on a time schedule approved between the NGO and the respective agency. However, it is clear in the guidelines that the release of funds after an initial fund transfer must be output-based.

There are limitations on how these funds can be utilized, and this excludes payment for salaries, honoraria, forms of allowance of personnel, purchase of supplies, materials, and acquisition of assets. A co-financing scheme of 20% is also required in the form of labor or overhead in order to tap into these funds.

CHANNELING GOVERNMENT HEALTH FUNDS THROUGH PHILHEALTH

Another potential procurement process wherein CSOs can acquire funding from the government is through the National Health Insurance Program (PhilHealth). This can be done when a CSO establishes itself as a primary healthcare clinic (PHC) that can provide any of the following⁷²:

1. Ambulatory surgery
2. Dialysis or hemodialysis
3. Maternity care
4. Newborn care
5. TB DOTS
6. Animal bite

While HIV is not included in this list, CSOs can apply to be disbursed of funding through Philhealth by applying as a clinic that provides any health-related services mentioned above (e.g. TB DOTS). Once the CSO has established itself, they can then apply for licensure or certification from the Department of Health (DOH) or other certifying bodies duly recognized by Philhealth, which can automatically accredit them within the Philhealth system.

An initial accreditation of three years of operation can be applied for by a health service facility, provided that they meet the required licensure or clearance to operate issued by DOH or pertinent government agencies. Otherwise, while they would not be able to acquire the three-year operation accreditation, a healthcare facility or institution can provide additional documentary requirements, which enables them to still be accredited by Philhealth. Such requirements may range from a proof of the health facility's work experience or a certification of completion of a Master's degree in Hospital Administration of a representative, specific certification from the LGU, or proof of ownership and acquisition, such as from SEC or CDA.

In 2018, a new Circular has been approved by Philhealth that aims to accredit HIV treatment hubs, satellite treatment hubs, and primary HIV clinics as providers of Philhealth Outpatient HIV/AIDS Treatment (OHAT) Package. Under this Circular, any health care institution that would

⁷² https://www.philhealth.gov.ph/downloads/accreditation/MOP_PEACHeS.pdf

like to access the reimbursements from the OHAT Package would need to be accredited by Philhealth by meeting certain requirements. Similar accreditation requirements such as a signed performance commitment and provider data record, participation fee of PhP1,000, electronic copies of photos of the facility, location map, and certification from DOH as a treatment hub/satellite treatment hub, primary HIV care facility or a copy of the latest DOH Department Memorandum listing the applicant treatment hub as part of DOH-accredited hubs.⁷³ In the duration of this study, however, Philhealth has not operationalized this Circular to date.

HIV CSOs that provide service delivery and would have the capacity to establish a healthcare facility can apply for accreditation from Philhealth as a standalone clinic if the facility includes a fully operational laboratory with the necessary equipment and can operate either as an HIG treatment hub or can provide other healthcare services such as TB DOTS. If successful, this would allow the facility to receive as much as PhP4,000 per case rate via TB DOTS Package, or as much as PhP30,000 per client per year through the Outpatient HIV/AIDS Treatment (OHAT) Package.

LGU'S COMMUNITY DEVELOPMENT FUNDS

Under the 2017 Joint Memorandum Circular of the Department of Interior and Local Government (DILG) and the Department of Budget Management (DBM), the Community Development Fund are appropriated funds secured through the LGU's Internal Revenue Allotment (IRA) that can be utilized for development projects. Every LGU has an appropriation of no less than 20% from its IRA for the Development Fund, in support of the Philippine Development Plan and Public Investment Program⁷⁴.

Utilization of these funds may depend on the LGU or more specifically, the Local Chief Executive (LCE). This can range from health infrastructures, purchase of medical equipment and ambulance, rehabilitation or evacuation centers, construction of Special Drug Education Centers and/or Treatment and Rehabilitation Centers including lot purchases, purchase of and development of lands for informal settlers, capital expenditures for livelihood and local economic development projects, as well as other environmental management projects.

This 20% allocation, however, cannot be utilized for personal expenditures such as salaries, payment for meetings and other forms of communication services, travel, administrative equipment, and other maintenance-related costs. However, based on interviews, the Sangguniang Panglungsod can justify and approve funds under the Development Fund, of which they can select an NGO and enter a service agreement or contract for them to utilize these funds as a government activity or purchase.

⁷³ <https://www.philhealth.gov.ph/circulars/2018/circ2018-0004.pdf>

⁷⁴ <https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2017/Volumel/GENPRO.pdf>

ALTERNATIVE FUNDING MECHANISMS FOR CSOs

Aside from the various mechanisms stated in the previous sections, HIV CSOs are able to find ways to tap into government funds through alternative means. This includes solicitation and public fund-raising, and honorarium.

Solicitations and fund-raising activities

Solicitations and fund-raising activities are activities initiated by the NGO to seek funding from the public to support a particular activity or the NGO's operations.

“We can request from the LGU because the LGU has funding for solicitation. CSOs can request solicitation *pero hindi regular kasi diba, imagine mo manghilingi ka sa* (but not regular because imagine, you beg your) LGU through solicitation. *Tapos minsan sa balsa pa ni Mayor kukuha ng pera* (Sometimes, the Mayor even reaches from his own pocket).” – Toots Rivac, GAYON

It must be noted that while solicitations can be an immediate, sometimes instantaneous activity of the NGO, such activities are covered by the Solicitation Permit Law, otherwise known as Presidential Decree 1564, and was eventually strengthened in 2001 by DSWD Administrative Order 147 that provides specific rules and regulations on solicitations⁷⁵. These rules and regulations covers NGOs that have registered as beneficiaries of DSWD, whereas any solicitation activity must undergo prior assessment from the Department before implementing any such activity. Any NGOs that have prior Memorandum of Agreement with DSWD are prohibited to conduct any solicitation activity unless they acquired a permit. On the other hand, non-accredited NGOs can conduct solicitation activities provided that they can provide DSWD with documents that show their “good track record”, such as⁷⁶:

1. Been operating for at least three years;
2. Annual accomplishment report for the last three years describing the NGO's program, services, and beneficiaries;
3. Duly audited Annual Financial Report for the past three (3) years reflecting the collections generation, proper utilization of budget and proceeds, including from donor agencies; and/or
4. If the organization has been operating for less than three years, a certification from the local Social Welfare and Development Municipal or City Office

Honorariums

From the government parlance, an honorarium is “a form of compensation given as a token of appreciation or reward for gratuitous services on account of one's broad and superior

⁷⁵ https://www.dswd.gov.ph/issuances/AOs/AO_2003-079.pdf

⁷⁶ [ibid.](#)

knowledge or expertise in a specific field for which going by custom, tradition or propriety.”⁷⁷ Honorariums do not have a fixed rate; however, DBM has set a formula to compute for the minimum and maximum honorarium for a group of fifty (50) participants.

There is a level of flexibility in coursing funds through honorariums as these are charged under specific appropriations in the GAA and/or from the local government funds. The concerned agency also can solely determine the individual that it requires for a particular activity.

While honorariums tend to be specific to a particular activity, NGOs and government agencies found ways to employ this mechanism to channel funds to NGOs for specific types of or portions of activities that they can support, wherein an individual will sign an honorarium on behalf of the organization. Such funds can be used as a service payment for an NGO in conducting a capacity-building activity for a government agency or office, for example. However, there is little legroom on how much funds can be transferred, hence, both the agency and the NGO have to think creatively in channeling such funds. There is also no sustainability in such transfers as regularities of this transfer, unless justified, can be brought to COA for questions.

CHALLENGES IN PROCUREMENT AND FINANCING FOR CSOs

The eligibility requirements seem straightforward enough. But there are numerous community-based organizations involved in HIV service delivery for marginalized key populations that may not have the resources to fulfill the eligibility requirements to be able to access government funding through the government procurement system. For instance, applying for a registration with the Securities and Exchange Commission requires funds for fees and legwork. Complying with the annual requirements to maintain the SEC registration also requires funds. SEC Registration is also not a stand-alone requirement. It also requires various other government accreditation or certification and local government permits, as well as Internal Revenue certificates. Moreover, the Government Procurement entertains only those entities that are registered in the PhilGEPS. This is not free and it is not a one-time registration. These are just some of the challenges faced by NGOs in terms of eligibility.

In the case of Philhealth accreditation, an NGO is required to have a laboratory or a health facility that service beyond HIV with corresponding licensure or certification from the DOH. NGOs that intend to apply must meet the same level of assessment as other private clinics that intend to apply for PhilHealth accreditation. As such, many peer-led organizations that conduct community-based HIV screening partners with Social Hygiene Clinics and/or LGUs and may be ineligible to apply for such support.

Compliance with these accreditations to remain fully active and eligible also poses additional financial burden to NGOs, especially if they do not have reserve funds.

⁷⁷ <https://www.dbm.gov.ph/wp-content/uploads/2012/03/BC-2007-1.pdf>

Even when NGOs are able to apply and acquire accreditation, there are additional hurdles that they face before they can actually receive funding from the government. Capacity to front-load the funds to implement projects or deliver services for the government, in cases of fund transfers is also a critical requirement. For many NGOs, securing a 20% equity or bond to become eligible may be difficult especially for small and community-based organizations who mainly rely on project funding to sustain their HIV-related activities. In such cases, government agencies would open their bidding processes to other well-funded CSOs or private entities that could meet their requirements, which may leave smaller CSOs out of the bidding process.

Although this is not explicit in the law, in practice, this is almost a certainty because of the nature of government bureaucracy. There is an expectation that the government pays only after goods or services have been delivered and it seems that way because it takes a long time to mobilize government funding through the system. The government bureaucracy also causes delays in both processing the documents prior to approval of a request and/or for the actual release of payments. In effect, CSOs will need to advance the funds to deliver the services until such payments arrive. This condition is not viable for smaller CSOs.

“We tried submitting a proposal pero at the present wala talagang response. For example, peer education program kahit pang-transpo[rtation] lang, hindi pa talaga nagagawa. Napagod na nga ako magpasa ng proposal. Ang sabi nila ni-review nila [yung proposal] pero until now wala man. Kaya ako, sabi ko, pagod na akong gumawa ng proposal to support peer education using our own template. Napapagod na ako e hindi naman nila binabasa.” – Enrique Patricio, KAGAYAN Plus

“We tried submitting a proposal but at the present we did not get a response. For example, peer education program, even only for transportation, they did not even do. I got tired of submitting a proposal. They said they would review [the proposal] but until now they have not. That is why I told myself that I am tired of writing a proposal to support peer education using our own template. I am tired because they do not even read it.” – Enrique Patricio, KAGAYAN Plus

It must also be noted that the HIV epidemic in the Philippines is concentrated among people who use drugs. However, with the ongoing ‘war on drugs’, programs for people who inject drugs that include provision of clean needles and syringes for a harm reduction program are impossible. In a way, the current political climate and the position of the Administration on certain social issues also affect CSO access to government funding.

These challenges, notwithstanding, there is a need to carefully consider mechanisms that allow government funds to flow to CSOs to deliver HIV programs and services. The Procurement Law provides the legal framework but it also presents barriers. The need to expand the delivery of HIV services through CSOs requires a review of existing policies and practices that govern non-government entities, procurement and budgeting.

With the existing laws and policies that surround procurement policies and eligibility to channel funds to HIV NGOs, coupled with the government's supposed plan to reverse the HIV epidemic, setting up a mechanism for social contracting that is accessible to HIV NGOs would have to take into account the realities in terms of practice relative to the government procurement system.

RECOMMENDATION: A MECHANISM TO CHANNEL FUNDS TO HIV NGOS

The civil society response to the HIV situation in the Philippines has accounted for a number of notable progress in the area of HIV prevention, treatment, and policy advocacy. One testament to this is the recent passing of the Philippine HIV and AIDS Policy Act that ensures protection and promotion of human rights-based approaches to HIV prevention, testing, and treatment of key populations and people living with HIV.

With the dwindling funds from donors and anticipated transitioning out of the Global Fund support, the sustainability of programs led by CSOs that focus on HIV will fall heavily on the Philippine government. Furthermore, CSOs implement the prevention component of the HIV response, which would be at peril with the donor funding leaving the country. In order to sustain both the HIV prevention program in the country and the CSOs that contribute tremendously to the HIV response, this study recommends a social contracting mechanism allow government funds to be channeled to qualified CSOs. This recommendation is defined by the existing laws and policies around CSO funding from the government, including the country's existing procurement rules and regulations.

Recommendation 1: Establish an HIV CSO network with an aim of consolidating all interested HIV CSOs operating in the country. It will form a Network Secretariat that will be the legal entity that will deal with government in behalf of all the CSOs that joined the Network. The Network Secretariat will then fulfill all legal requirements that will make it eligible to bid for government programs. If it gets awarded a project by a government agency, it will then open an application process for its membership to access project funds for implementation. The Secretariat's main function is fund management, standard-setting and monitoring.

This Secretariat will also serve as the main coordination mechanism on the CSO response to HIV. While this CSO network will not intend to streamline all existing HIV CSOs in the country, the Secretariat will also be responsible for the following:

1. Consolidate all interested HIV CSO organizations working in various areas of the response in the country.
2. Establish a Memorandum of Agreement (MOA) with relevant government agencies and GOCCs to recognize its role in the country as a centralized HIV NGO mechanism that will facilitate downloading of funds to relevant NGOs. Such MOA can also revolve around assisting relevant agencies with regards to establishing an HIV NGO Directory, streamlining registration, accreditation, and procurement processes. Part of this MOA must also ensure proper sufficient funding for the HIV CSO network to sustain its

intended work in partnership with the government by allowing a portion of the government funding to be allocated to the HIV CSO network's operations.

3. In collaboration with other CSO networks (e.g. CODE-NGO, Association of Foundations) as well as relevant government agencies, support training of HIV CSOs on registration and accreditation both at the national and LGU level.

Recommendation 2: Streamline documentary requirements for CSO registration, accreditation, and participation in the procurement processes. With the myriad of process pathways in place and the levels of registration and accreditation processes required before a CSO can access funds to the government, the risk of CSOs spending more time in meeting these requirements will discourage many key population communities to participate in this process. Government agencies and LGUs, in collaboration with the proposed HIV CSO network mechanism, must find ways to streamline the necessary documentary requirements. This can be done by reviewing all existing documents and setting up a minimum set of standardized documents without jeopardizing the transparency and accountability safeguards for applicant CSOs; centralizing all documents of CSOs through the HIV CSO network mechanism; or supporting the establishment of a one-stop shop mechanism (again, via the HIV CSO network) to ease the application processes.

Recommendation 3: Build the capacities of CSOs to engage in the budget cycle from the onset of the budget planning per government agency and per LGU up to monitoring and accountability. CSOs must maximize provisions in existing laws and policies, both at the national and LGU level, to participate in the budget hearing process even as an observer to make sure that budget allocations are inclusive of CSO priorities during the budget hearing process. At the same time, CSOs must participate as watchdogs in the utilization of these funds. This can be done by participating in relevant national and local councils. At the same time, the national HIV CSO network can also perform its own peer accountability process to ensure that its membership complies to the necessary accountability rules and regulations.

External donors and funders must also support these capacity-building initiatives to ensure the effective participation of CSOs during the budget hearing process.

Recommendation 4: Advocate for increased CSO participation in both governance and implementation of projects and initiatives wherein CSOs can access funds. The HIV CSO network mechanism can perform an arm in which they could lobby and advocate to ensuring that CSOs both at the national and LGU level can participate in the governance and management of funding by allocating seats and supporting the relevant national agency or LGU in developing mechanisms in identifying proper representation of CSOs into these spaces.

Recommendation 5: Setup a funding pool with the sole purpose of supporting HIV CSOs that will require frontloading of money but do not have the means to do so. Specific safeguards need to be put in place to ensure that these funds are utilized accordingly.

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ANNEX. LIST OF INTERVIEWS

1. Dr. Rolly Cruz, HIV/STI Coordinator, Quezon City Health Department
2. Dr. Gerard Belimac, HIV/AIDS, STI, Viral Hepatitis Programme Manager, National Center for Disease Prevention and Control, Department of Health
3. Dr. Isagani Bagus, Faculty of Management and Development Studies, UP National College of Public Administration and Governance
4. Toots Rivac, Director, GAYON
5. Enrique Niño Patricio, President, KAGAYAN Plus
6. Kathyrene Rose Merza, Head, Technical Working Group member, Government Procurement Policy Board
7. Dr. Mary Anne Remonte, Medical Specialist II, Philhealth
8. Luis Morales, Executive Director, Philippine Council for NGO Certification



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