

Provincial Council Statutes of Sri Lanka: a Comparative Analysis

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Map of Sri Lanka



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Centre for Policy Alternatives

INTRODUCTION

In the latter half of the previous year a significant event occurred which made all Sri Lankans renew their focus upon, and closely analyze the current status of and the political, economic, and cultural evolution of the country. This was the military defeat of the LTTE leading to the ending of the prolonged war which had continued for not less than three decades and affected the entirety of Sri Lanka. Accordingly this was the most critical time for carefully designed interventions leading to political reforms required in the post war situation.

The most notable approaches can be listed as follows:

- An All Party Representative Committee which includes most of the Political Parties in Sri Lanka
- Assurance of the effective functioning of the recently appointed Eastern Provincial Council
- Manifestos of the two main Political Alliances which participated in the 2010 Presidential and Parliamentary Elections
- A mechanism including formal investigation regarding lessons learnt during the conflict and reconciliation between ethnic communities.

That in the post war situation all such approaches should be given very careful consideration is not an exaggeration. Similarly such approaches have become more prominent from time to time in response to various factors in the local context.

When scrutinizing the current functioning of these decisive processes and their future path a number of factors become clear.

The All Party Representative Committee (APRC)

As his predecessors (J.R. Jayawardene and R. Premadasa) had, with the aim of proposing solutions for the National issue, the current Leader President Mahinda Rajapakse put forward the concept of the All Party Representative Committee. The Chairman selected was Prof Tissa Vitharana, a left party leader in the Ruling Alliance. After meeting for 63 times during the period of one and a half years, on 23rd January 2008 the Chairman Prof. Tissa Vitharana presented a hastily prepared interim report to the President. Some members of the APRC argued that this was not common consensus within the APRC, and expressed their disagreement with the report. The opinion of representatives of other Minority Parties was that it was a hurried compilation drafted and delivered hastily under the duress

of the President. Either way the second and third parts of the document compiled thus without a proper consensus, contained a number of recommendations on ways of improving effective functioning of the 13th Amendment. ¹

However there were no urgent steps taken or even formal discussions on this subject, by the Government. The APRC itself faced a number of other internal problems, the most dominant of which was that the Panel of Experts set up to advise them, issued unexpected reportage of their own. This was in the form of two separate reports namely Committee Report A and Committee Report B. Parallel to this, Chairman Prof Tissa Vitharana and another member of the Panel of Experts issued their own separate reports. This does go to indicate that very important characteristics of such a process were lacking: the courage to accept diverse input, and the humility to accept responsibility for mistakes and readiness to correct them. ²

To add to this one of the main characteristics of the Committee, from the beginning, was a very heated atmosphere of debate. Two of the Committee members Nisham Karriappar(SLMC) and R. Yogarajan(UNP) subsequently released to the media the final report (too) which had hitherto not been made available. ³

Even though there was no official dissolution of the APRC after the war ended, there was no clear indication as to its outcome; the final report presented (though) in this situation, led to large scale public discussion, and then died down to a deep silence again.

1.2. Steps necessary to permit Maximum Devolution of Powers to Provinces under the 13th Amendment

- 2.1 The Government should endeavour to implement the 13th Amendment to the Constitution in respect of legislative, executive and administrative powers, overcoming existing shortcomings.
- 2.2 Adequate funds should be provided by the Government to facilitate effective functioning of the Provincial Councils.
 - 2.2.1 The Centre should hereinafter route all finances in respect of special projects undertaken by the Centre in the Provinces, if they are on subjects under the purview of the Provinces, through the respective Provincial Administrations.
3. Special Arrangements necessary to permit Maximum Devolution of Powers to the Northern and Eastern Provinces under the 13th Amendment
 - 3.1 The APRC is of the view that conditions in the Eastern Province are conducive to holding elections to the Provincial Council and that elections should be held immediately.
 - 3.2 Conditions in the Northern Province are far from being peaceful. A free and fair election in the North will not be possible in the near future. Hence an alternative arrangement is required in the Northern Province to enable the people of that Province to enjoy the fruits of devolution.
 - 3.3 As it is not possible to hold elections in the North, the President could make appropriate order to establish an Interim Council for the Northern Province in terms of the Constitution.
 - 3.4 The Interim Council of a Province will aid and advise the Governor in the exercise of his executive powers, and will function until Provincial Council elections are held in that Province.
 - 3.4.1 The Interim Council should reflect the ethnic character of that Province.
 - 3.4.2 It is proposed that the Interim Council for a Province should consist of individuals who have political experience and an abiding interest in the development of the Province and in its people and be acceptable to the people of the Province. A person to qualify for appointment as a member of an Interim Council should have a thorough knowledge of the particular Province.

Extracted from the Interim Report Submitted by Prof Tissa Vitharana Chairman of the APRC 23rd January 2008

2 Peace Monitor , January 2009 Pg 3 CPA Colombo

3<http://www.groundviews.org/2010/07/21/all-party-representative-committee-aprc-final-report-executive-summary/>

Assurance of the Effective Functioning of the Newly Elected Eastern Provincial Council

The Eastern Provincial Council has now been in operation for more than 2 years. The Provincial Council System was established, according to the Indo Lanka Accord, which itself aimed to help resolve the ethnic conflict; this being said, the most crucial provinces were the North and East.

With the cessation of hostilities following the defeat of the LTTE in July 2007 in the Eastern Province, Eastern Provincial Council Elections were called by the Government, in May 2008.

During the entire duration of this election, State media gave publicity to the effect that this provincial council was to be elected and established, with the objective of safeguarding the democratic rights of people of the region including specially war affected minorities and of expediting their relief and reinstating their democratic rights. This was to be an exemplary Provincial Council in the country. This was to be the most exemplary Provincial Council. However in the present time what is happening can be considered a totally contradictory development. Similarly what is actually happening is not devolution but an indirect strategy to regain the powers given. (Refer to *Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions, 2008-2010*, Centre for Policy Alternatives, 2010)⁴

Manifestos of the two main Political Alliances contesting in the 2010 Presidential and Parliamentary General Elections

The Manifestos of the two main contestants in the 2010 Presidential Election and the parties which contested the Parliamentary General Elections, the UPFA and UNF is another main factor to be considered.

Sri Lankans do not have much faith in the election manifestos presented by the political parties in this country during the Post Independence era, and the carrying out of the promises made. Even in this background, there is a reason why the above manifestos, which were brought out during this time, require such serious attention.

This is due to the fact that these were the first decisive National Elections after the end of the protracted 30 year long war. Although not stated specifically these two ruling alliances, and the two main Presidential candidates, pledged during the elections, their commitment to ensure a more democratic and durable peace.

Whilst the Freedom Alliance candidate promised a country in which all diverse identities are represented within a unitary framework,⁵ the UNF candidate promised that the main democratic institutions in the country would be strengthened through national integration.⁶ However major contradictions become obvious when examining the proposed and the stated political reforms.

⁴ Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and public perceptions; 2008 -2010 hereafter referred to as " Welikala ,A, Devolution within the Unitary State 2010,CPA,Colombo"

⁵ Mahinda Chinthana –Vision for the Future 2010

⁶ Sarath Fonseka - Believable Change 2010

A mechanism including formal investigation regarding lessons learnt during the conflict and reconciliation between ethnic communities.

In such a situation, whilst numerous voices continuously requested such a broad mechanism – the President appointed an 8 member "Lessons Learnt and Reconciliation Commission"(LLRC). It is too early come to a conclusion about this committee. However emerging situations do not seem to be favorable. At the very onset, intellectuals and representatives of minority groups expressed their concern at both the composition and the suitability of the members of the commission. Methods of appointment, as well as the partisan nature of members were also questioned. Apart from this, disturbingly some of the most active international observer institutions refrained from commenting on this.⁷

If the government shows commitment towards implementing at least one of these among the outlined factors here, with true political will and genuine commitment, then the effort to work out a solution to the national question will be made easier.

Among the above mentioned factors the first three factors refer directly to the 13th Amendment or its resultant Provincial Council System. In regard to the fourth factor, Minority representatives and intellectual opinion makers have already testified before the LLRC a number of issues regarding the 13th Amendment as grievances.

Regardless political critiques on the Provincial Council system emerge in various phases, from time to time, as has been the experience of people during the last 20 years.

There is a broad range of critiques of the Provincial Council System, between the extremes that it should be completely abolished on the one hand, to the view that full constitutional powers should be given as required. Some political analysts express the opinion that inherent weaknesses of the Provincial Councils Act should be removed through a newly introduced amendment.

With the Indo-Lanka Accord 1987, there has been rejection of the Provincial Council system claiming, as a common example, that the Provincial Councils are a white elephant. The basis for this was that service provision is inefficient or income generation is inadequate and this system requires substantial expenditure to be carried forward. On the surface of it, this seems to be a reasonable argument, but one can say that this is only available for debate, and there is no actual substance to this.

⁷ www.transcurrents.com/te/2010/10/full_text_amnesty_hr_w_icg_join.htm/

On this note- and this is a matter discussed more broadly in another section of this analysis-one of the answers that is put forward here, is that the actual white elephant is not the Provincial Councils System but the Central Government

In any Provincial Council, out of the recurrent expenditure, the major proportion spent is inevitably on Education and Health Sector wages and this is expenditure which has to be spent regardless. This essentially recurrent amount continuously has negative impact on the total running cost of the Provincial Council. In spite of showing such large recurrent expenditures, if Provincial Councilors really had the determination and if such an effort was not impeded by the Central Government, this attitude could be totally changed.

Apart from the political will required in this regard, from the Government, one of the main steps proponents of the Provincial Council system should carry out, is to ensure that the powers vested in Provincial Councils by the Constitution are utilised to the maximum for the development of the Provincial Councils. In particular, innovative income generating methods should be designed for the Provincial Councils. To give a simple example, the Special Economic Zone in Dambulla, has emerged without the intervention of the Government or any Agency, instead it has evolved due to circumstances. Whilst a very sizeable monetary daily turnover occurs in this centre, in ideal circumstances a proportion should remit to the Central Provincial Council. However in actual fact it receives not a cent and such revenue is claimed by the Central Government as a matter of course.

Consider the case of Trincomalee District in the re-awakening Post War Eastern Province which is fast developing into a tourist attraction due to the unique natural beauty of Trincomalee. Due to factors such as the current institutional structure of the Eastern Province, the receipt of any of the resultant extra income generated is doubtful.

To date in the short history of the Eastern Provincial Council, only 4 statutes have been passed. Whilst two of these refer to day to day activities of the Provincial Council, the other two are on subjects in the Provincial Council list. In such a situation, as mentioned previously, relevant statutes have to be introduced for the income received through tourism in future to be actually channelled to the Eastern Provincial Council. Due to the indifference currently surrounding this process, it cannot be assumed that this will happen in the near future.

Accordingly it can be questioned as to what the purpose is, of maintaining Provincial Councils if they are incapable of productivity in income generation or provision of services. Provisions to better facilitate income generation and more effective service provision, have been made in the Provincial Councils Act; what is needed is political and administrative leadership which can carry out this work in the face of challenge.

Centre For Policy Alternatives (CPA) has during the course of the last few years initiated a number of study and research reports, analytical documents,

programmes and events on the theme of the 13th Amendment, and particularly the Provincial Council System. An important initiative was the "Programme on Strengthening of Provincial Council System" held in 2008⁸. In that year, marking the 20th year since the initiation of the Provincial Council System, the aim of the CPA was to present a final set of recommendations towards further strengthening of the Provincial Council System. This programme was enriched by the participation of provincial councillors and officials including Chief Ministers, and Chief Secretaries of all Provincial Councils who contributed their various inputs. Further to this during the Provincial level workshop series, key personnel of PCs were selected to provide input to the National Level Seminar, and contributed towards the final set of recommendations namely the Provincial Council Common Final Recommendations (annexure 1).

A number of other timely programmes were also organised by CPA on the theme of Provincial Councils, including, a comprehensive analysis in the latter part of 2010.⁹

In almost every such programme, a crucial factor which stood out was that it was important to focus on alternatives to broaden the space required for further strengthening the Provincial Council system, within the current constitutional framework of powers given to Provincial Councils. CPA identified that a study was thus required on the subject of the Provincial Council Statute Making Process.

⁸ *Strengthening the Provincial Council System: Thematic Report of Workshop Deliberations (Centre for Policy Alternatives, Colombo, 2008)*

⁹ *Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions 2008-2010*

CHAPTER 1

The Provincial Council System and the Requirement for Making Statutes

1.1. Background

There have been a number of studies analysing the subject of the 13th Amendment and the Provincial Council System following its commencement. Outstanding among these is the *Asoka Gunawardane Committee Report*¹⁰ which is considered a landmark report. Through all such efforts, positive points were made in various ways which strengthened the highly debated Provincial Council system. Nevertheless the factor one must really give most serious attention to is the extent of public faith in this system. As discussed in another section of this analysis, national and provincial media developed a leaning towards seriously neglecting the subject of the Provincial Council system. This became clear in a recent workshop held by the CPA titled the "*Role of Media in Local Governance*". Furthermore another two studies¹¹ carried out by CPA revealed more particulars on this subject.

¹⁰ Provincial Council: Operational experience of Devolution (1996) Report of the Committee to study the operation of provincial council in Sri Lanka Colombo: unpublished (The Asoka Gunawardane Committee Report) 1996

¹¹ The Eastern Provincial Council: An Assessment of a newly Elected Council, Lionel Guruge, Center for Policy Alternatives, Colombo , 2010

1.2 The Peoples Trust

Along with the identification of the Provincial Council system as a broad and formal mechanism for devolution in Sri Lanka, a dangerous nationwide situation of insurgency and tension arose, as is well known. Opinions, some from within the Provincial Council system itself, nevertheless pushed for its abolition and for broader administrative decentralisation to re structure democratic governance in Sri Lanka.¹²

Leaving aside opponents of the Provincial Council system, (some within the system itself) the government stance as displayed by media¹³, may lead us to conclude to some extent that, there is an effort to take Provincial Council powers indirectly to the centre. Apart from this, it is important to note that the attitude developing among the general public regarding Provincial Councils is not very positive¹⁴. A factor which further confirms this is the low voter turn out, and general lack of interest in voting throughout the history of the Provincial Council elections¹⁵. Parallel to all these factors it can be observed that attitudes to the Provincial Council system and local government are not sufficiently positive in National and Provincial media.

In the mainstream Sinhala and Tamil national newspapers, more than 90 percent of coverage is allocated to news and information on the Central Government or related agencies, whereas only about 8 percent is devoted to reportage on Provincial Councils and Local Government institutions.¹⁶

Though the culture of New Media is becoming more popular, people still have more faith in national newspapers; therefore the factors such as the above are disturbing.

"We spoke on the topic of the holding of tuition classes on Sundays and Poya Days and in truth there were more important issues in our agenda- but in the papers the next day most had only covered the tuition issue although we had discussed it for only a duration of 5 minutes.."¹⁷

The above was quoted by Minister Sarath Ekanayake¹⁸ Chief Minister of Central Province, referring to the nature of coverage regarding policy decisions taken, as reported in mainstream Sinhala media following recently concluded Chief Ministers Federation Sessions.

¹² Discussion with Minister Udaya Gammanpila, WPC at the preliminary discussion series of statute formulation Programme

¹³ Minister Ratnsariri Wickremanayake, Minister of Public Management and Reforms presented to the Cabinet Circular No. 10/2222/412/004, forwarded by the secretary to the cabinet for all PCs

¹⁴ The Eastern Provincial Council: An Assessment of a Newly Elected Council, Lionel Guruge, Center for Policy Alternatives, Colombo, 2010

¹⁵ Monitoring of Elections Provincial Council Elections Final Report of Centre for Policy Alternative's (CMEV) Jan 2010

¹⁶ Manjula Gajanayake, Final Report on Role of Media in Local Governance (Unpublished) Centre for Policy Alternatives 2010

¹⁷ Discussion with Sarath Ekanayake CPC at preliminary discussion series of statute formulation Programme 2nd June 2010

¹⁸ 27th Chief Minister Federations Session June 5th 2010 at Club Palm Bay Hotel, Marawila

It is true that it is difficult to prevent the rapid diminishment of the public faith in the Provincial Council System due to such negative trends in thinking. This may not be due to an actual loss of faith, but instead that people are not properly aware of the Provincial Councils System, due to lack of awareness of the real nature of the governance system in this county.

Whereas the devolution process is no longer a concept alien to society or to the governance mechanism of this country, it is not easy to demonstrate the effectiveness of the Provincial Council System because of the lack of an established administrative and political culture. The inter-governmental relationships that should have evolved between Provincial Councils, Central Government, and various political stakeholders along with the implementing of the 13th Amendment, have not in fact transpired. With the gradual devolution of powers towards the peripheries, a mechanism is required to collect representative ideas from all areas. In the Indian experience, this has been effected to some extent, in spite of the central government retaining power over the states, due to a political culture evolved towards collective decision making by the states.

Among the factors contributing to this, is the fact that regionally based political parties are politically very strong at a regional level in India¹⁹. When considering the geographical area of a province in Sri Lanka, regionally active local political actors, are rare. Additionally, the few examples of such, generally aspire to join a main political party and enter the national political arena, moving on to becoming focal characters at a national level. This background is not very positive for the continuing of the Provincial Council System. Additionally it is not very easy to expect positive change to this political culture. To give an idea of the obstacle this trend poses to the functioning Provincial Councils System, not just the inability to secure recognition of individual regional political actors, but the entire Provincial Council as a whole is unable to even garner suitable media coverage for its activities²⁰.

Nevertheless, if Sri Lankan Provincial Councils are to give sufficient priority to the tasks of drafting Statutes, using the powers vested constitutionally and through the Provincial Councils Act, it will be possible, as mentioned in this analysis, to take steps to strengthen the Provincial Council system. Accordingly leaving aside ideals which are currently difficult to achieve, the time has arrived where all Provincial Councils should give more attention to measures that can in fact be taken in the current scenarios.

(b) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case²¹.

¹⁹ Memorial Lecture delivered by Prof. Jayadeva Uyangoda, 25th November 2007, New Art Gallery Colombo

²⁰ Manjula Gajanayake, Final Report on Role of Media in Local Governance (Unpublished) Centre for Policy Alternatives 2010

²¹ 154G(5)(b) of the Constitution

According to the Supreme Law of the Land, the Constitution, this specific provision holds that if at any time Parliament intends to pass a law regarding any of the subjects covered in List (II) or the Provincial Council List, then in such a situation, Parliament must initially consult the Provincial Councils. In spite of this provision there are many instances when this requirement has been ignored by Parliament. Whereas the Local Government (Special Provisions) Act 2008 was presented to Parliament two years ago, without any kind of consultation with Provincial Councils, this faced last minute challenges in the Supreme Court for this very reason.²² As anticipated the Supreme Court ruled that said provisions were to be followed. Due to serious objections made against the Bill, by the then Eastern Provincial Council, the Government did not even hold a parliamentary debate on the Bill. However Sri Lankan political parties changing their policy on key issues from time to time, within a very short period of time is a fascinating feature of politics in this country.²³ Due to the fact that such policy decisions affect the composition of the Provincial Councils, and in an instance where Parliament takes unconstitutional steps regarding a subject coming under the PC, it cannot be expected that the PC will stand against such.²⁴

The reason for closely analysing this current situation is to demonstrate that the various alternatives that can be taken to further strengthen the Provincial Council System are quite difficult. Furthermore it is also to show that a keener attitude in drafting statutes will contribute to a stronger Provincial Council system

1.3 Methodology.

As seen above, the drafting of statutes can be considered one of the main methods of strengthening the Provincial Council system. Nevertheless it is important to remember that in the Provincial Councils themselves this initiative is not carried out to a satisfactory level. Generally even an updated Statutes Registry is maintained by only by a few of the Provincial Councils. In the case of the Western Provincial Council (WPC) the current update is available in English, Sinhala and Tamil on the WPC website and full texts of the documents can be downloaded²⁵. A number of the Provincial Councils also maintain the Statute name lists on their websites (without content) but if full texts are required for any purpose it is quite difficult to obtain copies. Circumstances such as these contributed to the methodology planned by CPA.

Preliminary Discussions

All provinces except for the Northern Province were visited as planned for the first phase of the programme. The Chief Minister, Board of Ministers and selected Provincial Councilors as well as selected officials, including Chief Secretary

²² Supreme Court decision on Local Government (Special Provision) Bill 2008

²³ Composition of the Parliament and PCS changed rapidly after General Election of 2010. this development affected directly to the decision of PCS

²⁴ CWC and SLMC still not stated the party decisions regarding Local Government Election (Amendment) Bill – 2010

²⁵ www.wpc.gov.lk

and Council Secretary were consulted and in depth discussions were held²⁶. These discussions were in held the form of combined meetings, group discussions, and individual interviews as circumstances required.

Draft Comparative Analysis of the Statutes of Sri Lanka

Added to the findings of the discussions, all relevant resources were collected and together with the findings of the literature review fed into the Draft report. During preparation of this drafting when various questions were encountered, the relevant officials were consulted for clarifications.

Presentation of Final Draft to Provincial Councils

The unedited version of the Comparative Analysis resulting from the above two steps, combined with the research and observations of the researchers, was presented to all stakeholders in the Provincial Councils.

Production of the Final Draft of the Comparative Analysis of the Provincial Council Statutes of Sri Lanka

This draft document was completed with the feedback received from Provincial Councils. An important point to note is that: although there has been sufficient literature available to the public as of late, particularly on constitutional and legal aspects of the 13th Amendment and the Provincial Council System, these have mostly been written for academics and intellectuals. This methodology has been used to produce a simple guidebook on the subject of statute making aimed at the general public as distinct from relevant Provincial Council personnel. In an attempt to retain the interest of these target readers, CPA aimed as far as possible to avoid complicated legal jargon and technical terminology.

²⁶ All preliminary discussions held in PC Auditoriums during the time period between May 2nd – September 31st. All Chief Ministers and Chairman of PCs contributed enthusiastically to the success of this discussion series.

CHAPTER 2

The Legislative Powers of Provincial Councils

2.1

The Provincial Council system introduced via the 13th Amendment suggested, for the first time, a formal mechanism for devolution of power. It was most significant because it recommended devolution within a unitary framework with a dominant Centralized governance system.

In General the structure of a devolution mechanism would have the following features.

1. The provinces in a State are independent bodies. Accordingly these are only minimally subject to control of the state or can be institutions which are not at all under such control
2. The Local Government Institutes are clearly and legally identifiable as having geographical limits and under these limitations they can exercise their powers and carry out public activities.
3. Whilst Provincial Councils have corporate status and have the potential for obtaining required resources towards accomplishing targets.
4. With the distribution of powers, local governance develop as an institution. This means getting work done by such governmental Institutions through

exercising power over these in such a way that objectives are accomplished.

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From this it is obvious, that a government, by delegating certain legislative powers can create a unit which functions somewhat autonomously. This means that the unit created will not be entirely autonomous, but can function with the powers delegated.

Accordingly it is important to identify the basis of the powers the Provincial Council System has received to date.

Acts of Parliament relating to Devolution

The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

Provincial Councils Act, No. 42 of 1987

Provincial Councils Elections Act, No. 2 of 1988

Provincial Councils (Payment of Salaries and Allowances) Act, No. 37 of 1988

Provincial Councils Elections (Amendment) Act, No. 55 of 1988

Provincial Councils (Consequential Provisions) Act, No. 12 of 1989

Police Commission Act, No. 1 of 1990

Attorney Generalrarian Services (Amendment) Act, No. 9 of 1990

High Court of the Provinces (Special Provisions) Act, No. 19 of 1990

Provincial Councils (Amendment) Act, No. 27 of 1990

Provincial Councils (Amendment) Act, No. 28 of 1990

Provincial Councils Elections (Amendment) Act, No. 29 of 1990

National Transport Commission Act, No. 37 of 1991

Greater Colombo Economic Commission (Amendment) Act, No. 49 of 1992

Transfer of Powers (Divisional Secretaries) Act, No. 58 of 1992

Provincial Councils Elections (Amendment) Act, No. 7 of 1993

Provincial Councils Pensions Act, No. 17 of 1993

²⁷ See: Introduction to the Provincial Council. written by Prof. Shirani Bandaranayake and Prof Tracy Leitan , (Centre for Policy Research & Analysis, Colombo University) 1995

Irrigation (Amendment) Act, No. 13 of 1994

Provincial Council Turnover Taxes (Limits and Exemptions) Act, No. 25 of 1995

High Court of the Provinces (Special Provisions) Act, No. 10 of 1996

Soil Conservation (Amendment) Act, No. 24 of 1996

Sri Lanka Institute of Local Governance Act, No. 31 of 1999

High Court of the Provinces (Special Provisions) (Amendment) Act, No. 54 of 2006

As mentioned here, the 13th Amendment was incorporated into the Constitution of Sri Lanka after 11th Nov 1987 debate in Parliament. The Provincial Councils Act was introduced through this Amendment. These are most applicable in Provincial Council operations of the Provincial Council System.

Therefore the whole Provincial Council system is based on the 13th Amendment and Provincial Councils Act. The other Acts listed affect operations of Provincial Councils to a greater or lesser extent.

It is not the objective of this analysis to study the effects of these Acts on the Provincial Council System. For further details on these the following sources can be referred to:

- Centre for Policy Alternatives (2010) Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions; 2008-2010 Colombo, CPA),
- L. Marasinghe & J. Wickramaratne (Eds.) (2010) 13th Amendment: Essays on Practice (Colombo: Stamford Lake) and L. Marasinghe & J. Wickramaratne (Eds.) (2010) Judicial Pronouncements on the 13th Amendment (Colombo: Stamford Lake)

2.2 Ninth Schedule

Provincial Councils derive their power mainly from the 13th Amendment and the Provincial Councils Act. The detailed annexure which covers this matter within the 13th Amendment is the Ninth Schedule which outlines powers and functions of the Provincial Councils.

1 List I

This contains 37 subjects which are devolved to the Provincial Councils.

2 List II

This is called the Reserved List and contains 13 subjects. Provincial Councils do not have any power over subjects in this list and cannot pass legislation regarding them.

3 List III

This is also called the Concurrent List and contains 36 subjects.

A notable point here is that according to circumstances, the Provincial Council and the Central Government can both legislate in these subjects. But when a Provincial Council legislates regarding these subjects it must consult Parliament. Parliament if it requires legislating in one of these subject areas is expected to consult with Provincial Councils but need not necessarily incorporate the opinions received.

Accordingly the powers vested with Provincial Councils can be categorized into different areas:

- a) Statute making Powers
- b) Carrying out of Judicial Duties
- c) Functioning of the Provincial Public Service and Public Service Commission

The procedures to be followed in the preparation of statutes is outlined in the Constitution as follows:

154G. (1) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule (hereinafter referred to as "the Provincial Council List")²⁸

What is clear from this is that Provincial Councils have the power to legislate on the subjects in the above mentioned List I.

In the case of List II (the Reserved List) Provincial Councils cannot legislate, only the Central Government can legislate, and furthermore as stated in the Constitution:

(7) A Provincial Council shall have no power to make statutes on any matter set out in List II of the Ninth Schedule (hereinafter referred to as "the Reserved List").²⁹

Regarding subjects in List III or the Concurrent List, Provincial Councils can draft statutes, but within limits.

" Parliament may make laws with respect to any matter set out in List III of the Ninth Schedule (hereafter referred to as "the Concurrent List") after such

²⁸ Article 154 G of the Constitution of Sri Lanka

²⁹ Article 154 G (7)

*consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case*³⁰

As mentioned there, the formulation of Statutes on subjects in the Concurrent list is very complicated and prone to legal problems. Nevertheless Provincial Councils should in fact initiate this task. Whilst this complicated situation is a reason for the general apathy in regard to this, this subject is revisited in a later parAttorney Generalraph.

"A Provincial Council shall have no power to make statutes on any matter set out in List II of the Ninth Schedule (hereinafter referred to as "the Reserved List"

³⁰ Article 154 G (5) (b)

CHAPTER 3

Nature of the Process of Preparation of Statutes by Provincial Councils; Common Guidelines and Accepted Methods

3.1

Common Features of Drafting of Statutes

All Provincial Councils have engaged in the process of drafting of Statutes as mentioned in the previous chapter, based on Article 154 of the Constitution and the 1987 Provincial Council Act No 42.

A common formal procedure or guideline for this process has not been formulated to date.

However various Guidelines have been created at the Provincial Councils level. In the Western, North Western, Southern and Uva Provincial Councils these include the procedures which should be followed in the task of drafting and enacting Statutes. Apart from this, the Legal Advisor attached to the Ministry of Provincial Councils and Local Governance, Mr. S.M.H. De Silva³¹ presented to Provincial Councils some time back, a *Draft Guideline on Preparation of Statutes* (annexure 2 &3). Apart from this there is no common guideline applicable among Provincial Councils for regulating this process. Nevertheless in the discussion the CPA held with the Provincial Councils (except for the Northern) confirmed that there are no serious

³¹ All Provincial councils follow this document as a common guideline.

discrepancies in the approaches adopted by individual Provincial Councils for Statute formulation.

This analysis is not only for those who draft Statutes or study the process but is also for the awareness of the general public³². For this purpose the Guideline formulated by the North Western Province has been selected as exemplary³³.

With establishment of the NWPC, this was ahead of the other Provincial Councils in the making of Statutes. Apart from this other Provincial Councils too made efforts to legislate under most subjects available in the Provincial Councils List.³⁴

North Western Provincial Council (NWPC) Guideline on Statute Formulation:

1. Legal Background
 - i. Constitution of Sri Lanka Article 154 G
 - ii. Provincial Council Act 42 1987Sec 24,27,28,29
 - iii. Procedure Manual Section Nos 33,34,35,
2. Details of List I or the subjects allocated to the Provincial Councils
Role of the Secretary to the Ministry in Statute Preparation
 - i. Obtain advice from the relevant Minister regarding the requirement for preparation of a statute.
 - ii. Preparation of required Draft Statute so as to fulfill the need and objective addressed. (a format of a currently approved Act of Parliament or Statute can be used)
 - iii. Prepare and submit a memorandum and background paper to the Board of Ministers.
 - iv. If approved by the Board of Ministers submit draft statute to the Governor through the Chief Secretary
 - v. Based on the Governors advice, prepare tri lingual drafts.
 - vi. Prepare an announcement on behalf of the relevant Minister and submit to the Chief Minister for gazetteing.
 - vii. Following the gazette publication, if there is public feedback, submitting this to the Minister and if necessary to the Board of Ministers for approval to incorporate such feedback.
 - viii. Through a letter containing the ministers signature, this Draft Statute with Procedure No 33(1) (a), (b) should be submitted to the Council Secretary. 75 copies are required in all three languages.
 - ix. Submitting to a Provincial Council Session Agenda, a copy of the Draft Statute – clarifying justifications and requirement for

³² Centre for Policy Alternatives facilitated a number of programmes including Transparent Accountable Local Government (TALG) 2007-8 which focused on increasing people participations at Local Authority Level

³³ Former Council Secretary S. Hirimuthugoda drafted this guideline. Ideas given by Mr. Lalith Kannangara were referenced in the preparation of this chapter.

³⁴ North Western Provincial Council passed many statutes relevant to the regional identity of the PC under the PC List.

- statute, aims and content, participating in the Provincial Council Session to make the case for this , and informing the Minister
- x. Participating in Legal Committee meetings with the Minister when it is submitted to the Legal Drafting Committee by the Council,.
 - xi. With or without the recommendations of the Legal Drafting Committee, participating with the minister in Provincial Council Session on the date set for discussion of this case and helping the minister to answer any requirements clarifications or questions
 - xii. When notified by the council secretary , that this has passed, for an approved Statute, any amendments have to be prepared and submitted in the form of 5 copies and a Computer Diskette,
 - xiii. any further steps to be taken subsequent to the publication by Gazette.
 - xiv. Making available the statute documentation to interested parties

Role of the Council Secretary

- i. Upon receipt of a draft Statute for approval at the Council, drawing attention to procedure number 33(1).³⁵
- ii. Presenting the Draft Statute to the Chairman, incorporating this matter into the Provincial Council Agenda, and forwarding copies to the Ministers
- iii. Submission details of the date of presentation of the Draft Statute for publishing in the Hansard
- iv. Notifying the Legal Drafting Committee to meet to review the Draft Statute and provide their recommendations, for the Council.
- v. Forwarding any amendments of the approved statutes to the relevant ministry Secretary and when corrected, obtain 5 copies of the full text, including translations in three languages.
- vi. Along with the confirmation of the Chairman, sending this to the Governor for his assent, under 154 G of the Constitution.
- vii. On receipt of the Governors approval, giving the go ahead for Gazetting.

Role of the Secretary to the Governor

- i. Taking required action to obtain the Attorney Generals advise on Statutes or Draft Statutes

³⁵ This number has been change according to the procedures passed by each PC.

- ii. Submitting the Draft Statute for the Governors approval as soon as possible.
- iii. if such approval is given, inserting the date of the Order
- iv. According to 154 of the Constitution, if such approval is received, notifying this to the Council Secretary.

3. Making Amendments to Statutes.

If it is found necessary to change an already existing Statute or to change a section or sections of an existing Statute, this is carried out as below:

- i. The Ministry Secretary with the memorandum of the Board of Ministers will present a report on reasons justifying such an amendment.
- ii. Upon receipt of approval of the Board of Ministers , if it is deemed necessary to obtain the Attorney Generals advise, will submit it to the Governor through the Chief
- iii. After having ensured that the relevant amendment is formatted according to a previously available standard format and is produced in all three languages, this has to be gazzetted in the name of the relevant Minister.
- iv. The further steps 2 No VII onwards, must be carried out.

4. Drafting of Statutes in subject matters included in the Concurrent List

- i. Steps 2 I-X must be taken.
- ii. Taking into account the recommendations made by the Legal Draftman's Department taking a Statute which is approved for the second time for soliciting opinions of Parliament. 410 copies in three languages have to be sent by the Council Secretary to the Secretary of Parliament.
- iii. Upon receipt of the Opinions of Parliament by the Council Secretary, these need to be highlighted and forwarded to the relevant Minister.
- iv. the Minister can inform the Board of Ministers if necessary
- v. If there are amendments to the Statute these need to be incorporated and then returned to the Council Secretary, and entered to the Council agenda. (if it is deemed necessary it may have to be sent to the attention of the Legal Drafting Committee again)
- vi. after for a final time when the Council approves the Statutes the steps above from 2 –(XI) can be carried out

A Standard Format ³⁶for Statutes to be presented to the North Western Provincial Council

01. Statute Name:

³⁶ There are no serious differences between formats used by other PCs.

The Statute ----- Bearing No. ----- of ----
----- (Year) of the North – Western Provincial Council.

02. Long Title:

The facts that should be included:

- I. For the accomplishment of what objectives?
Should also be included
- II. What are the main objectives?
- III. When it is connected to a certain Act/ Procedure the said Act should be mentioned and if there is some relationship/ reference in line with another Statute, the Official text introducing such a document eg Be it passed by the Western Provincial Council of the Democratic Socialist Republic of Sri Lanka as follows....

03. Enacting Procedures:

“Thus enacted by the North - Western Provincial Council of the Democratic Socialist Republic of Sri Lanka”

04. Short Title of the Statute

05. Operating Procedure:

.....

37

06. Sectioning

- i) section number
- ii) section...etc

07. Part I

If on an occasion of establishment of a Department / Authority / Institution
The name of the institution
Formalities of Establishment
Objectives
Duty
Powers

08. Part II

Consultative Committees / other Committees / Institutions
Composition
Appointment and Removal of Members
Functions
Provisional procedures needed

09. Part III

Offenses and Punishments
Offenses under the Statute
Punishments for the Offenses

10. Part IV

Common Procedures
Assets
Financial Grants
Administrative Report
Auditing
Powers of the Minister
Enacting of Orders
Consequential (Provision) Amendments
Transitional Procedures
Interpretation
Language provisions
Appendixes

11. ----- : ----- which indicates briefly the content of an article
“----- and the date of operation”

30 -----

If section 30 is interpreted, then the side note too needs an interpretation. if section 30 is shown in any other way except for the direct interpretation

Side notes

Summary of the contents of the section, summarized in Side Notes
Insertion of Side Notes

Short title and Effective Date

(PART IV (A) - GAZETTE EXTRAORDINARY OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA - 23.03.2010 (“Minister” means the Minister in-charge of the subject of Cultural Affairs of Western Provincial Council) unless otherwise referred to as etc

Numbering of the sections of the Statute

- 1 Main Section should be numbered as 1,2,3 without zero
- 2 Sub sections: 1(1)
Paragraph : 1(1) (a)
Sub Paragraph : 1(1)(a)(i)
1(1)(a)(ii)

- 3 In the case of extra parts being added to a section, following amendments, sections are numbered
9a , 9b, 9c
9a(1) , 9b(2), 9b(2), 9b(2)(a)(1)

Amendments to Sections in a Statute

- 1) the original format of the Statute should be used as".....(Amendment) Statute

Extended (Long) Title

Amendment Statute to Statute No 6 1990 Provincial Council (Staff of the Provincial Council Secretariat)

Provisions for Enactment

Democratic Socialist

Short title

This Statute.....

- 2) Instances of Amendments

- I. In the main Statute if section 4 is removed/ voided /abolished/, instead of this the following section is inserted

Whilst Section of the Main Statute has been removed the below section has been incorporated

- II. In an existing section if the words are removed, and other words inserted

(.....instead of

- III. In an existing section, an additional insertion whilst the below paragraph is included following section 9 that in the main Statute is 9a, 9b, 9c and 9d

- In each of the Provincial Councils the methods utilized there are no considerable differences but, a few points should be mentioned about the common tradition that these "should" be submitted to the Attorney General to check for constitutionality. As per the above mentioned guideline regarding Provincial Councils methodology including that of the NWPC it is not compulsory that the draft Statute should be submitted to the AG. Nevertheless the following is stated in the Uva Guideline.
- it is more suitable to obtain the advice of the Attorney General
- The draft Statute should be formulated according to the legal advice received.

Although this is covered as above in the guidelines, what became clear from discussions with officials of the Uva Provincial Council (UPC)³⁷ was that it is

³⁷ Preliminary Discussion with all provincial councils May1st – Sept31st 2010 at the PC Auditoriums.

not a routine procedure to submit to the AG. The unanimous observation of personnel involved was that the submitting of the Draft Statute to obtain advice from the Attorney General was an extremely unpleasant exercise. According to the constitution although the approval of the Attorney General is not a mandatory requirement for Statutes the Governors approval is required

No Bill for the amendment or repeal of the provisions of this Chapter or the Ninth Schedule shall become law unless such Bill has been referred by the President after its publication in the Gazette and before it is placed on the Order paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference³⁸

Furthermore it is stated in the constitution,

In the event of receiving such Draft Statute for approval the Governor³⁹ if the constitutionality of such draft is open to question, can submit it to the Supreme Court through the President.

3.2

The Attorney General and approval of Draft Statutes.

One reason for the sudden change in the above outlined constitutional process was a decision taken by former President R. Premadasa. It was informed through a circular issued on July 8th 1991 that all draft statutes passed to the Governor should be submitted to the Attorney General and his approval obtained. In any case a tradition of submitting draft statutes to the Attorney General had evolved at the beginning of the Provincial Council system because officials had not much experience in the processes. This continued for a short time. However the issuing of the circular had a serious impact on the process making it in effect a compulsory requirement. Whereas the Attorney General is the person who gives legal advise to the Central Government and ensures that it adheres to constitutional provisions, traditionally he is bound to defend the Central Government. This requirement for approval for Draft Statutes naturally becomes another means for the Central Government to interfere indirectly in Provincial Council powers. Even leaving this aside, the reason for Provincial Councils reluctance in submitting draft statutes to the Department of Legal Draft, is the inordinate delay in receiving approval. There are currently a number of such Draft Statutes awaiting approval or at least acknowledgment submitted to date by the Provincial Councils including the WPC⁴⁰. In various Provincial Councils, too there are a number of discrepancies and

³⁸ Article 154 G (1) of the Constitution of Sri Lanka

³⁹ 154 H 4 of the Constitution states upon presentation of a statute to the Governor under paragraph (3), the Governor may assent to the statute or reserve it for reference by the President to the Supreme Court, within one month of the passing of the statute for the second time, for a determination that it is not inconsistent with the provisions of the Constitution. Where upon such reference, the Supreme Court determines that the statute is consistent with the provisions of the Constitution, the Governor shall, on receipt by him of the Court's determination, assent to the statute. Where upon such reference, the Supreme Court determines that the statute is inconsistent with the provisions of the Constitution, the Governor shall withhold assent to the statute.

⁴⁰ While Governor of Central Province continues to retain many important statute without

inconsistencies in the granting of approval for what are in effect Statute of similar natures submitted by different provincial council S. A comprehensive discussion of The Agrarian Services (Amendment) Act 1991 by L. Marasinghe and J. Wickramaratne (Eds) (2010) is given in "*Judicial Pronouncements on the 13th Amendment*"

The Southern Provincial Council at one time drafted a Statute regarding Obtaining Tea Plantation Producers Compensatory Payment with the objective of recouping compensation to be used for repairs and maintenance following the extra damage to roads caused by heavy vehicles operated by Tea Producers. However the Attorney General rejected this submission on the grounds that it is the Central Government which should collect taxes from the Plantation industry. Such an obscure decision is discouraging to other provincial councils which may consider similar legislation in their areas.

Whereas at the onset of the Sri Lankan Provincial Council system, the North Western Provincial Council (NWPC) prepared a Draft Statute for the purpose of establishment of a cultural centre, approval for this was only given three years later. Furthermore it took three years to obtain permission for a Training Institution for a Regional Centre. In such circumstances the negative repercussions are definitely felt by the citizens of the province. The reason being that in the preparation of a Statute the definite aim is the generation of income or formal establishment of a service provision mechanism. Decisions to delay such as this, could contribute to instability in the functioning of the Provincial Council.

"In the Provincial Council about one and a half years went for election work. After that another time period went for this subject to be studied. Only now have such tasks such as Statute Drafting been initiated. If officials are given the required support in this area it is not such a difficult task. For me too it took a certain time to read the 13th amendment properly, gain an understanding of it and begin this work. I would like to obtain the help of any organisation that helps in these types of matters, and at least to the extent that my scope is protected, to draft as many Statutes as possible⁴¹ –

Quoted by North Central Province Minister of Health Peshala Jayaratne

The point to be noted here is that before the 5 year term of the Provincial Councils is over, the process of drafting of a Statute, obtaining relevant approval and enactment of the statute should be completed.

However what happens is that politicians who should thus advise on the perpetration of Statutes, as stated by the minister, are busy with other duties, and due to the very little time available for working on preparing Statutes, and the fact that the Attorney General too takes so long to give his approval, often before the

giving his consent, the Governor of Western Provincial Council has promptly given his approval for statutes presented by the Western PC.

⁴¹ Preliminary Discussions of the Facilitating Statute drafting programme, North Central Provincial Council 16th June 2010

process is complete the Provincial Council term comes to an end. In any Provincial Council, an unfinished draft is automatically invalid when a Council is dissolved.

A statute pending in a Provincial Council shall lapse on a dissolution of the Council –⁴²

Accordingly if it becomes impossible to pass the Statute, within the relevant term due to the considerable time taken to draft the Statute and time taken for the Attorney General to approve of a draft, then there is no way of considering it in the next term.

However according to the Provincial Council Act when a Statute is in fact passed, even if the Provincial Council is dissolved the next day, this Statute will still have force as a Provincial Law.⁴³

3.3

The Governor and Approval for Statutes

The role of the governor deserves serious attention from anyone studying or analyzing the 13th Amendment. The main reason for this is that up to even the day to day administrative matters of the Provincial Council, the Governor can intervene and is placed in a central position in this mechanism.⁴⁴ Whilst appointed by the President⁴⁵ and able to remain there only “at the pleasure of” the President, the governor is appointed for 5 years subject to provisions for dismissing him or her stated in the Constitution.

Out of the executive powers deriving to the Governor by the Constitution the most important can be seen as those allowing him to summon, prorogue or dissolve the Council, as well as requiring his assent to the statutes passed by the Council before they can become law.

Powers of the Governor in regard to approval of Statutes are stated as follows in the Constitution.

No Bill for the amendment or repeal of the provisions of this Chapter or the Ninth Schedule shall become law unless such Bill has been referred by the President after its publication in the Gazette and before it is placed on the Order paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and –

(a) Where every such Council agrees to the amendment or repeal, such Bill is passed by a majority of the Members of Parliament present and voting ;or

(b) where one or more Councils do not agree to the amendment or repeal such Bill is passed by the special majority required by Article 82⁴⁶.

⁴² Article 14 (2) of the Provincial Council Act

⁴³ "A Statute pending in a Provincial Council Shall not lapse by reason of the Prorogation of such Council 14 (1) of the Provincial Council Act"

⁴⁴ Welikala, A, Devolution within a Unitary State (Centre for Policy Alternatives, Colombo) 2010

⁴⁵ Article 154 (1) and 154 (1)

⁴⁶ Article 154 G (2)

With this mechanism for obtaining approval, the Governor becomes an integral part of the statute making process of the Province.⁴⁷

According to many political analysts the assumption of this provision is that it would make the legislative process in Provincial Councils more efficient and to check the powers the Governor has, to supervise.⁴⁸

From the initial stage of the Provincial Council system and in the subsequent time period, this power given to the Governor, by means of the Constitution, to thus approve of Statutes, was not overly questioned. Among a number of factors which could be considered as contributing to this are, the attitude of the person in the Executive Position in the country towards devolution, the professional experience of the person appointed to the post of Governor and the relationship between the relevant Chief Minister /Board of Ministers and the Governor.

An example would be the Governors of the Western Province appointed to date.

Justice S Sharvananda, D.M. Swaminathan K Wignarajah , Justice P. Ramanathan served in this position in that order, the current Governor is Alavi Moulana. The former persons are highly respected and nationally outstanding professionals. The current Governor, Alavi Moulana who stood for Workers Rights, has a strong political tradition. According to the official records of the Western Provincial Council not one of these Governors retained a draft Statute beyond a reasonable time period, as reported. (The Constitution does not clarify the time period within which approval should be confirmed)⁴⁹

One can assume that a reason for this is the background of professionalism and political experience of the above named.

What becomes clear when comparing the current situation to this, is that various Governors are retaining a large number of draft Statutes which are, for some reason or another not being given approval. If an analysis of the thus retained Statutes is carried out, one main point that can be assumed is that there is no political will by the Government to regionally devolve power and support autonomous power in the Provincial Councils, and therefore the hindering of this process may be deliberately engineered by Governors. However there are cases where this may not be the reason for retaining Draft Statutes. With reference to the four Statutes passed in the EPC , analysis of this situation shows the time taken for the Governor to approve them. Within a space of 2 years, the EPC has only passed 4 statutes – the time taken for approval of the Statutes regarding Financing even led to a problem in the Provincial Council. Whereas the Governor gave his approval to three statutes within a very small space of time, the more decisive issue of Financing took much more time. A reason for this may be that Financing is much more important for a Provincial Council . Taking more time that reasonable in this case would have been more a factor to directly benefit the future advancement of the EPC. This was also the first Statute regarding finance to be examined in this Provincial Council which was established with much optimism.

⁴⁷ Welikala, A, Devolution within a Unitary State (Centre for Policy Alternatives, Colombo) 2010

⁴⁸ Welikala, A, Devolution within a Unitary State (Centre for Policy Alternatives, Colombo) 2010

⁴⁹ Discussion with Mr. Lalith Kannangara, Council Secretary, Western Provincial Council, June 2nd 2010

The number of Draft Statutes retained by the governors of a number Provincial Council including the Central Provincial Council is quite large. In the case of the Central Provincial Council, one such statute reportedly was even sent back and fourth many times due to a small technical error.⁵⁰

CHAPTER 4

4.1 The Requirement for Statutes

The following analysis examines all Statutes passed from the time of the establishment of the Provincial Council System, island wide excluding only the previously merged North Eastern Province. The objective of the powers given to make Statutes is to provide a more efficient service to service recipients within the parameters of the Provincial Councils. It must be remembered that the Central Government would have legislated in all these subject areas previously and Laws enacted in Parliament are available in these cases. Accordingly if Provincial Councils are to carry forward methodical work in the areas delegated to them, whereas the drafting of statutes becomes necessary, nevertheless, even if this is not done, there is no restriction of the powers constitutionally devolved.

4.2 Provincial Councils (Consequential Provisions) Act No 12 1989

Some officials in various Ministries and other Departments of the Provincial Councils do not recognize the importance of making statutes and do not make any effort to initiate this process.⁵¹ They are of the opinion that, as previously mentioned

⁵⁰ Discussion with Hon. Saliya Bandara Dissanayake, Chairman, Central Provincial Council, Kandy 12th June 2010

⁵¹ Based on comments made by Provincial Council Officers at Preliminary Discussions of the Programme of Statute Drafting Formulation 2nd May –31st Sept 2010

in the Consequential Provincial Acts, Provincial Councils can in fact operate without needing to make statutes. One of the reasons for this may be the fact that the Provincial Councils (Consequential Provisions) Act No 12 1989 and any law enacted in Parliament when used together are sufficient for effective functioning. Based on these theories Statute drafting is sometimes not considered a serious requirement. Nevertheless the main point to be considered here is that for devolution to be effected as was envisaged at beginning during the establishment of Provincial Councils, drafting of Statutes is an almost integral requirement.

Where previously Central Government personnel enforced Laws designed by the Central Government, the subsequent monitoring of these by Provincial Council personnel is not a meaningful action.⁵² For any Provincial Council to carry out its work, formally and with legal backing Statute formulation is a must.

The Provincial Councils (Consequential Provisions) ACT NO 12 1989 is a temporary Provision introduced so as to interpret Acts passed by Parliament prior to Nov 17th 1987, (the date the 13th Amendment was legally appended) in any subject area mentioned in List I (Provincial Council List) of the Ninth Schedule of the Constitution of Sri Lanka.⁵³ The importance of this Act was that it aimed to assist officials who were somewhat unfamiliar to this system and smoothen the course of their work. Nevertheless within the first 5 years of the establishment of the Provincial Councils system, there was a more positive attitude than expected and the willingness to work with this system. Whilst it is estimated that about 600 Statutes have been passed by Provincial Councils, about half of this were prepared in the early stages of the establishment of the Provincial Councils, ironically in the later stages, the opposite was the case and far fewer Statutes were introduced.⁵⁴

4.3 The Requirement for a formal administrative mechanism

As a result of the relative indifference towards utilization of the powers devolved to Provincial Councils, their effectiveness is perceived as compromised by proponents of the system.⁵⁵ Whereas this is also true it needs to be analyzed as to whether a suitable mechanism has evolved towards this aim. Before the establishment of the Provincial Council system, subjects given according to List I and subjects in the Concurrent List were entirely administered by Ministries of the Central Government with the assistance of their various Boards, Corporations and Departments. With the commencement of the Provincial Council System, responsibility for goods and services in the above areas was allocated to PCs. Along with this the most important duty of the Provincial Council was to formulate the necessary mechanism to ensure that powers were assigned to PCs through the 13th

⁵² See Lalith Kannangara & Deepthi Wijethunga (Eds), “Operational Experience of Provincial Council under Sri Lankan Administrative Structure” pg 143-164WPC 2010

⁵³ Ibid

⁵⁴ Table No 4

⁵⁵ Strengthening the Provincial Council System: thematic Report of Workshop Deliberations (Centre for Policy Alternatives Colombo, 2008)

Amendment. However, the Provincial Council system which is now past its second decade in existence had not been able to come up with the relevant administrative structure to date.⁵⁶ This becomes particularly clear when analyzing the administrative mechanisms created by many Provincial Councils relating to the subjects in the List assigned to PCs. Education, Health and Agriculture for example were broad areas administered on an all Island basis by the Central Government prior to the setting up of Provincial Councils, after which the requirement came up to assign these as Provincial Services. What should be done in this case regarding services provided by such departments as Government Line Ministries is to gather this province-wise and bring them under the auspices of one department of the Provincial Council. However the making of statutes is necessary to formalize the Administrative structure providing services on a Provincial Council level. If attention is focused only on the three most essential subjects, which as far as the citizen is concerned are Health, Education and Agriculture it can be seen that even in these areas, statutes have not been made as speedily as needed by Provincial Councils.⁵⁷ In such a situation, required powers have not been received by departmental heads of provinces, neither has the required legal foundation been provided. Another important step in the formalizing the Provincial Administrative structure, is regularising procedures under which Provincial officials can work.

The table below demonstrates how the Administrative Framework is formulated, on the subject of Health which is relevant to both Central Government and Provincial Councils.

In relation to other subjects too, the Administrative Framework is somewhat complicated as below

CONSTITUTIONAL PROVISIONS ON DEVOLUTION OF THE SUBJECT OF HEALTH

According to the Ninth Schedule to the 13th Amendment

Provincial Council List	Concurrent List	Reserved List
<p>2. Planning – Implementation of provincial economic plans.</p> <p>11. Health 11.1 the establishment and maintenance of public hospitals, rural hospitals, maternity homes, dispensaries,</p>	<p>1. Planning : 1:1 formulation and implementation of plan implementation strategies at the provincial level 1:5 The presentation of relevant data in the achievement of plan targets</p>	<p><i>National policy on all subjects and functions</i></p>

⁵⁶ Lalith Kannangara & Deepthi Wijethunga (Eds), Operational Experience of the Provincial Council under Sri Lankan Administrative Structure, Western Provincial Council, Colombo, 2010.

⁵⁷ Some Provincial Councils have not made Statutes even in such crucial subject areas.

<p><u>(other than teaching hospitals and hospitals established for special purposes)</u> 11:2 Public health services, health education, nutrition, family health, maternity and childcare, food and food sanitation, environmental health. 11:3 Formulation and development of Health Development plan and of the Annual Health Plan for the province 11:4 The provision of facilities for all institutions referred to in 1 above, within the Province, <u>excluding the procurement of drugs</u> 11:5 Awarding of scholarships for post-graduate education within Sri Lanka to personnel attached to the Institutions specified in 1 above.</p> <p>12 Indigenous Medicine – Ayurveda, Siddha and Unani 12:1 Establishment of ayurvedic dispensaries and hospitals, grants to such dispensaries and hospitals. 12: 2 Establishment and maintenance of herbaria</p>	<p>1:9 Nutritional planning and programmes</p> <p>9. Health 9:1 Schools for training auxiliary medical personnel 9:2 The supervision of private medical care, control of nursing homes and of diagnostic facilities within a province 9:3 Population control and family planning 9:4 Constitution of Provincial Medical Boards</p> <p>17 Irrigation 17:2 Services provided for inter-provincial land and irrigation schemes, such as those relating to rural development, <u>health</u>, education, vocational training, co-operatives and other facilities.</p> <p>36 Drugs and poisons 35 Prevention of the extension from one province to another of <u>infectious or contagious diseases or pests affecting human beings</u>, animals or plants.</p>	
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Another point needs to be mentioned here: State employees, who previous to setting up of Provincial Councils provided island wide public services, were subsequently left with only the duties relating to subjects in the reserved list. With the setting up of Provincial Councils, the Divisional Secretaries and Grama Sevaka Officials, who carry out a considerable administrative service in Sri Lanka, were assigned to the Provincial Public Service. However according to the 1992 Transfer Of Powers (Divisional Secretaries) Act (No. 58) these officials were reassigned to the Central Government. According the Circular Provincial Council/DU/29/1 issued on Jan 1 1991 by the Permanent Secretary to the Ministry of Public Administration and Home Affairs, Grama Sewaka Officers were reassigned to the Central Government. The main point to be noted here was that the above decision was taken merely on the basis of the above Administrative order.

4.4 Statutes Passed by Provincial Councils in Sri Lanka

When considering Provincial Council legislation, statutes are the basic legal document upon which to base a measurement of the operational capacity of a Provincial Council. Proponents of the 13th Amendment & Provincial councils System and interested parties thereof will always study the situation with regard to statutes. However, in practice, it is not easy to obtain so much as the name lists of past statutes from a central source. Whereas a very few Provincial Councils maintain a comprehensive website containing details about statutes,⁵⁸ many Provincial Council websites have very limited information available to them.⁵⁹ Furthermore the readily accessible websites containing legal documents and references in Sri Lanka are not updated.⁶⁰ Considering the ease with which it is possible to store, access and distribute information through the internet, and the fact that in practice updating Provincial Council websites with necessary information should be a relatively inexpensive exercise, the fact that it is so difficult to obtain copies of Statutes through the relevant websites goes to demonstrate some indifference toward the concept.⁶¹

Statutes Passed by Provincial Councils in Sri Lanka

Year	No. of Statutes	Name of Statute
North Western Provincial Council		
1989	1	Appropriation statute
1989	2	Contingencies Fund
1989	3	Salaries and Payments
1989	4	Appropriation
1990	1	Local Authorities Powers of Administrative Supervision
1990	2	Chief Ministers fund
1990	5	Self Employment
1990	6	Secretary to the Provincial Council (Staff)
1990	7	Appropriation

⁵⁸ www.wpc.gov.lk

⁵⁹ www.sy.gov.lk /www.nep.gov.lk/ www.ep.gov.lk

⁶⁰ www.lawnet.lk/ www.austlii.eda.au/ actspg/acts2006.htm

⁶¹ Sabaragamuwa Provincial Council has provided laptops with internet connections for all Provincial Councillors

1990	8	Finance
1990	9	Secretariat Staff
1990	10	Entrepreneurs
1990	11	Industrial Service Affairs
1990	12	Environment
1991	1	Local Government
1991	2	Finance
1991	3	Local Government
1991	4	Finance
1991	5	Appropriation
1991	6	Supplementary Estimates
1992	1	Finance
1992	2	Janakala Foundation
1992	3	Public Transport Service
1992	4	Sports
1992	6	Appropriation
1992	7	Supplementary Estimates
1992	9	Machinery Authority
1992	10	Appropriation
1993	1	Development Authority
1993	2	Appropriation
1994	1	Human Resource Development
1994	2	Finance
1994	3	Transfer of stamp fee
1994	4	Court fee transfer
1994	5	Appropriation
1994	6	Supplementary estimates
1995	1	Appropriation
1995	2	Appropriation
1995	3	Appropriation
1995	4	Passenger Transport
1995	5	Co-op Employees Fund
1996	1	Appropriation
1996	2	Appropriation
1996	3	Appropriation
1996	4	Supplementary Appropriation
1996	1	Appropriation
1996	2	Appropriation

Uva Provincial Council

1989	1	Contingencies Fund
1989	2	Social Welfare
1989	3	Appropriation
1990	1	Social Welfare and Rehabilitation

1990	2	Local Government salaries
1990	3	Local Government salaries
1990	4	Education
1990	5	Finance
1990	6	Local Government institute
1990	7	Provincial Council staff
1990	8	Finance
1990	9	Public transport
1990	10	Religious and cultural Development Fund
1990	11	Appropriation
1990	12	Appropriation
1991	1	Provincial Council Staff
1991	2	Hindu cultural Affairs
1991	3	Hindu cultural Affairs Development fund
1991	4	1992 Appropriation
1991	5	Co-op Employees
1992	1	Uva Navodaya Fund
1992	2	Finance
1992	3	Public Transport
1992	4	1993 Appropriation
1992	5	Amendment Co-operative Commission
1993	1	Buddhist Affairs Development Board
1993	2	Chief Minister's Fund
1993	3	1994 Appropriation
1993	4	Finance
1993	5	Finance
1994	1	Vote on account
1995	2	Transfer of court fines
1995	3	1995 Appropriation
1995	4	Supplementary Estimate Arrangements
1995	5	1996 Appropriation
1996	1	Business Registration
1996	2	1997 Appropriation
1996	3	1996 Supplementary Estimate Appropriation
1997	1	Uva Transport's
1997	2	Sports
1997	3	Appropriation

Sabaragamuwa Provincial Council

		Payment and salaries to Provincial Council Chairman and
1989	1	Deputy
1989	2	Salaries and Payments to Provincial Council
1989	3	Contingencies fund
1989	4	Appropriation

1989	5	Appropriation (Amendment)
1989	6	Supervision of Local Government
1989	7	Appropriation (Amendment)
1990	1	Payment of taxes
1990	2	Appropriation
1990	3	Public Transport
1990	4	Industrial Development Authority
1990	5	Provincial Council Secretary's Staff
1990	6	Finance
1990	7	Sabaragamuwa Employment Trust
1990	8	Business Registration
1990	9	Appropriation
1990	10	Appropriation (Amendment)
1991	1	Appropriation (Amendment)
1991	2	Local Government special Provision
1991	3	Local Government staff
1991	4	Financial Statutes (Amendments)
1991	5	Finance (Amendment)
1991	6	Appropriation (Amendment)
1991	7	Appropriation
1992	1	Public transport Service
1992	2	Appropriation (Amendment)
1992	3	Finance (Amendment)
1992	4	Chief Ministries Fund

Eastern Province

2001	1	Finance Statute
2009	2	Transport Authorities Statute
2010	1	Pre School Education, Statute
2009	3	Provincial Council Procedure statute

Southern Province

1989	1	- Appropriation
1989	02	- Poverty Alleviation Fund
1989	03	- Salaries and Payments (Chairman and Deputy)
1989	04	- Contingencies Fund
1989	05	- Provincial Secretary's Staff
1989	06	- Salaries and Payments to PP SC
1989	07	- Appropriation

1990	01	- Sports
1990	02	- Local Government (Special Provisions)
1990	03	- Finance
1990	04	- Supervision of Local Authorities
1992	05	- Appropriation (Amendment)
1992	06	- Appropriation
1992	01	- Finance (Amendment)
1993	02	- Trans for of stamp fees
1993	03	- Appropriation (Amendment)
1993	04	- Appropriation
1993	05	- Housing Development Fund
1989	01	- Appropriation
		- Payment of salaries to Provincial Council
1989	02	Chairmen and Deputy
1989	03	- Chief Minister's Fund
1989	04	- Provincial Public service
		Commission chairman & members salary and payments
1990	05	- Vote on account
1990	06	- Appropriation

North Central Province Council

1989	01	- Supervision of Local Authorities
1989	02	- Contingencies Fund
1989	04	- Health
1990	01	- Appropriation
1990	02	- Education
1990	03	- Irrigation
1990	04	- Agriculture Produce and Marketing
1990	06	- Finance
1990	07	- Crown lands
1990	08	- Crown lands (recovery of possession)
1990	09	- Agrarian Service
1990	10	- Local Government Staff
1990	11	- Development of machinery Agencies
1990	12	- Local Government Authorities (spe.prov)
1990	13	- Levying of taxes and Rates
1990	14	- Provincial Council Secretarial staff
1990	15	- Development of machinery Agencies
1990	16	- Chief Ministers Fund
1991	01	- Appropriation
1991	02	- Appropriation (Advances)

1991	03	- Salaries and payments
1991	04	-

North Central province

1991	04	- Crown Lands
1991	05	- Crown lands (Recovery of possession)
1991	06	- Appropriation
1991	07	- Imposition of Rates and taxes
1992	01	- Business Registration
1992	02	- Passenger Transport
1992	03	- Agriculture Produce and marketing
1992	04	- Salaries and Payments
1992	05	- Chief Ministers fund
1992	06	- Appropriation
1993	01	- Appropriation
1994	01	- Finance
1994	02	- Stamp Duty
1994	04	- Land Development
1994	05	- Land
1994	06	- Co-op Pension and Social security benefit Fund
1994	07	- Transfer of Court fines
1994	08	- Transport Authority
1994	09	- Co-op Employments commission fund
1994	10	- Excise
1994	11	- Appropriation
1995	01	- child care fund
1995	03	- Chief Minister's Fund
1995	04	- Appropriation
1996	01	- Appropriation
1996	02	- Stamp Duty
1997	01	- Planning Division
1997	02	- Appropriation

Western Provincial Council

1988	01	- Appropriation
1989	01	- Payment of salaries
1989	02	- Transport
1989	03	- Appropriation
1989	04	- Road Development Authority
1989	05	- Contingencies Fund

1989	06	- Finance
1989	07	- Appropriation
1990	01	- Passenger Transport
1990	02	- Payment of salaries to Provincial Council
1990	03	- Housing Development Fund
1990	04	- Registration of Business
1990	05	- Education
1990	06	- Finance
1990	07	- Local Government special Provisions
1990	08	- Appropriation
1990	09	- Appropriation
1991	01	- Local Government staff
1991	02	- Passenger Transport service
1991	03	- Local Government Housing
1991	04	- Finance
1991	05	- Appropriation
1991	06	- Transport
1991	07	- agriculture Development Fund
1991	08	- Appropriation
1991	09	- Passenger transport service
1992	01	- Appropriation
1992	02	- Appropriation (supplementary Estimate)
1992	03	- Finance
1992	04	- Stamp Duty
1992	05	- Appropriation
1992	06	- Education
1992	07	- Education
		Re amendment of secretaries and Deputy Secretaries salaries
1993		
1993	1	- Sports
1993		1992 Advance account
1993	02	- Appropriation
1994	03	- Public Transport service
1994	04	- Appropriation (Supervision Estimates)
1994	01	- Co-operative Commission
1994	02	- Industrial Development Authority
1994	03	- Tourist Board
1994	04	- Court Fines
1994	05	- Appropriation Supervision estimate
1994	06	- Appropriation
1994	07	- Appropriation Supervision Estimate 11
1995	01	- 1995 Advance Accounts
1995	02	- Road Development Authority
1995	03	- Appropriation supervision Estimate

1995		- New Advance Account 1995 Finance Reports II
1995	04	- Appropriation
1995	05	- Appropriation
1995	06	- Appropriation
1995	07	- Public Transport service
		- Chief secretary's creation of Advance account
	01	- Appropriation supervision Estimate I
		- Advance Account
		- Advance Account
1996	02	- Appropriation
1996	03	- Appropriation Supervision Estimate II
1997	01	- Appropriation Estimate I
		- Advance account
		- Supplementary Estimate III – 1997
1998	01	- sports
1998	02	- Library
1998	03	- Co-operative
1998	04	- Appropriation Estimate I
1998	05	- Rural Development
1998	06	- Motor Vehicles
1998	07	- Advance Account – 1997

Above statute list includes Statutes and amended Statutes up to 31st August 2010

CHAPTER 5

Specifics and Challenges in the Statute Making Process

5.1 Scope of Enacted Statutes

A very special feature of the Statute making process is that effort at devolution built up within the unitary framework in this country is made more effective within Provincial Councils with the legal tool of statutes. Up to this time the power to legislate laws covering the whole country had solely been solely held by Parliament, and then certain power was now devolved to Provincial Councils, a relatively new phenomenon for citizens of Sri Lanka who only had experience with parliament making laws.

Table -1

Provincial Council	North Central	Uva	Southern	Eastern	Western	Central	North Western	Sabaragamuwa
Total No. of Statutes passed	49	62	63	04	59	42	96	92
Related to Administrative / Finance	16	36	35	02	14	20	68	64
Related to Social Development	07	10	09	-	10	03	06	05
Economics	12	02	11	-	17	03	18	04

Data Collected By Outreach Unit CPA⁶²

5.2 Statute Making Process and Limitations

As mentioned previously the Ninth Schedule to the 13th Amendment contains details of the divisions of subjects between the Central Government and Provincial Councils. Careful inspection of this schedule reveals that the number of subjects allocated to the Provincial Councils are inadequate and certain items which clearly should be in the Provincial Council list are included in the Concurrent List. List II begins with the sub heading:

*National Policy on all Subjects and Functions*⁶³

According to this provision the unlimited powers available to the Central Government are clear even if power is devolved to the provincial council. The common consensus among experts on this subject is that the three lists in the Ninth Schedule are not at all comprehensive. The main reason given for this is that in any case the Parliament can legislate on any subject.⁶⁴

One point which becomes clear when considering the statutes enacted by Provincial Councils is that the number of statutes made under the Concurrent List is very limited indeed. Whereas legislation can be enacted regarding subjects in this list, both in the form of Laws enacted by Parliament and of Statutes enacted by provincial councils, the 13th Amendment states as follows:

*(a) Parliament may make laws with respect to any matter set out in List III of the Ninth Schedule (hereafter referred to as "the Concurrent List") after such consultation with all Provincial Councils as Parliament may consider appropriate in the circumstances of each case.*⁶⁵

*(b) Every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter on the Concurrent List, after such consultation with Parliament as it may consider appropriate in the circumstances of each case.*⁶⁶

The point to be noted here is that whilst Parliamentary legislation on subjects in this list should be "*after such consultation with all Provincial Councils*" this provision is, in reality, rarely adhered to.⁶⁷

⁶² Also see: R.Samaraweera, Provincial Councils After Twenty Years: Successes, Failures and Constraints, Institute of Professional Public Administrators, Colombo, 2007

⁶³ Ninth Schedule of the Constitution of Sri Lanka

⁶⁴ Welikala, A, Devolution within a Unitary State, CPA, 2010.

⁶⁵ 154G(5)a

⁶⁶ 154 G (5) b

⁶⁷ Supreme Court decision on Local Government (Special Provision) bill 2008 reinstates this provision

In the case of parliamentary legislation on matters on the Provincial Council list, whilst provincial councils should be consulted for their opinions on these, if one or more Council do not agree to pass such a bill, a special majority is required.

In the 13th Amendment it is seen that where Parliament drafts legislation on one of the subjects within the Provincial Councils list, prior to thus drafting, the President will refer this to the Provincial Councils and within a specified time period if even one provincial council does not agree this should be passed through a special majority in parliament.⁶⁸

Unfortunately in numerous instances such clearly stated constitutional provisions are in fact breached.

The Land Ownership Bill and Water Services Bill are two Bills which were thus submitted to Parliament without any consultation with Provincial Councils. Due to this itself the constitutionality of these two Bills was questioned in Supreme Court. The relevant decision was that constitution provisions had been clearly violated in the presenting of these two Bills.

Statutes enacted by Provincial councils categorized by Subject

Table -2

Subject	Current Status								
	North Central Province	Uva Province	Southern Province	Eastern Province	Western Province	Central Province	North Western Province	Sabaragamuwa Province	Total
Provincial council List									
1. Police and Public order	-	-	-	-	-	-	-	-	-
2. Planning	1	-	-	-	-	-	-	-	1
3. Education	3	2	2	1	2	1	1	3	15
4. Local Government	3	2	3	-	5	4	3	3	23
5. Housing and Construction	1	-	-	-	1	1	-	1	4
6. Road	2	1	1	-	2	-	1	-	7
7. Social Services and Rehabilitation	1	2	5	-	2	-	-	2	12
8. Passenger Transport	3	4	3	1	9	3	2	4	29

⁶⁸ (3) No Bill in respect of any matter set out in the Provincial Council List shall become law unless such Bill has been referred by the President, after its publication in the Gazette and before it is placed in the Order Paper of Parliament, to every Provincial Council for the expression of its views thereon, within such period as may be specified in the reference, and -

(a) where every such Council agrees to the passing of the Bill, such Bill is passed by a majority of the Members of Parliament present and voting; or

(b) where one or more Councils do not agree to the passing of the Bill, such Bill is passed by the special majority required by Article 82:

Provided that where such reference, some but not all the Provincial Councils agree to passing of a Bill, such Bill shall become law applicable only to the Provinces for which the Provincial Councils agreeing to the Bill have been established, upon such Bill being passed by a majority of the Members of Parliament present and voting.

9. Agriculture and Agrarian Services	2	-	-	-	-	2	-	-	4
10. Rural development	-	1	1	-	1	-	1	1	5
11. Health	1	-	2	-	1	1	-	-	5
12. Indigenous Medicine	-	-	-	-	-	1	-	-	1
17. Co- operatives	3	2	1	-	2	5	4	2	19
18. Land	2	-	-	-	1	-	-	-	3
19. Irrigation	1	-	-	-	-	-	1	-	2
20. Animal Husbandry	-	-	-	-	-	-	1	-	1
21. Agricultural Industrial commercial and Trading Enterprises	-	1	-	-	-	-	-	-	1
25. Libraries, Museum and others	1	1	1	-	1	1	-	-	5
29. Sports	-	1	1	-	2	1	1	1	7
34. Electricity	-	-	1	-	2	-	-	-	3
36. Revenue	6	2	3	-	6	2	3	7	29
37. Protection of the Environment	-	-	-	-	4	-	2	-	6
Contingency / Supplementary / Chief Minister or Governor's fund / Staff of provincial council and PSCC Staff / provincial council Procedures / Others	16	36	35	2	14	20	68	64	255
Development/ Self Employment / Employment Foundations / Human Resources / Machinery Authorities	1	1	2	-	-	-	5	2	11
Industrial Development	2	-	-	-	1	-	2	1	6
Fisheries	-	-	-	-	-	1	-	-	1
Concurrent List									
1. Religious / Cultural / Arts	-	4	1	-	2	-	1	-	8
2. Tourism	-	-	1	-	1	-	-	-	2
3. Information Technology	-	-	-	-	1	-	-	-	1
Total	49	60	63	4	60	43	96	91	466

- Data Collected by Outreach Unit of CPA

5.3 National Policy

As mentioned previously the first point in the Provincial Council List introduces and covers National Policy on all subjects and functions.

What can be interpreted from this is that it is the responsibility of the Government to decide relevant National policy in the case of a specific point relevant to the peoples of all Provinces. Whilst this constitutional provision is controversial, the opinion of many political experts is that this is the undermining of powers which have been constitutionally granted to Provincial Councils. Asanga Welikala, in an in-depth analysis states as follows:

"...The three lists of subjects in the Ninth Schedule should not be regarded as an exhaustive enumeration of the legislative powers of the state, because Parliament retains the residual legislative power to legislate on any matter whatsoever.⁹⁸ Parliament expressly retains

the right to legislate on the Provincial Council List, albeit subject to the procedural restraints of Article 154G (3). Moreover, the first subject in the Reserved List – ‘National Policy on all Subjects and Functions’ – empowers Parliament to enact national policies even on those subjects in the Provincial Council List into law, which then bind Provincial Councils. This is altogether an easier method by which the central government may make inroads into the provincial sphere. This provision has been used by the central government to enact laws in relation to devolved subjects such as agrarian services and surface transport. These actions are clearly contrary to the principle of devolution⁶⁹

Although it may be possible to address the expectations of the general public through this provision, the serious negative consequence of this is that, the faith and support of people in the provincial councils may suffer due to this. In around 1990 the Cabinet of the Central Government decided

to formulate National Policy on the subjects allocated to the Provincial Councils without delay – and to obtain a national policy approved by the Board of Ministers, which was to be disseminated to the Governors and Chief ministers of provinces via the Cabinet Secretary, and that provincial councils should incorporate them into their work.⁷⁰

However a point that should be noted here is that, although this intention was stated as above, no such national policy was formulated at any time by the Cabinet.⁷¹ In many situations the experience of this National Policy idea is very negative to Provincial Council officials. The reason for this is the tendency of Central Government representatives to be constantly encroaching into the area of Provincial Council subjects. Often such circulars are received to PCs under the heading of Government Directives. Whilst many Provincial Councils consider this as a violation of the constitution the following example demonstrates a policy decision taken by the NWPC in such a situation.

According to the 13th Amendment to the constitution, in list II, otherwise known as the Reserved List, the first subject is National Policy on all Subjects and Functions, and only Parliament can legislate in this regard.

The NWPC decided to the effect that, apart from decisions within laws enacted by Parliament, according to the 13th Amendment or the provincial councils Act 1987 No 42, or such legal instrument, it will NOT recognize any national policy informed by any other means, which reduces the power or scope of the NWPC.⁷²

⁶⁹ Welikala, A, Devolution Within a Unitary State, Pg 33, CPA, 2010

⁷⁰ Lalith Kannangara & Deepthi Wijethunga (Eds), “Operational Experience of Provincial Council under Sri Lankan Administrative Structure” pg 155 Western Provincial Council, Colombo, 2010

⁷¹ Ibid

⁷² Minute of Western Provincial Council N0.19952/95/109

5.4 Increasing Provincial Revenues via Statutes

According to financial powers allocated to provincial councils through the 13th Amendment, statutes can be drafted regarding a number of subjects. There are a number of sources of income and methods of increasing revenue which a provincial council receives.⁷³ Enacting a statute can be a source of income to any provincial council. Whereas there are some provincial councils which do not take advantage of such straightforward opportunities open to them, the following table illustrates main points of the past performance of provincial councils in this regard. (See annexure 4 &5).

Table on Status of Statutes of Taxes/Fees

Table 3

Items	Description	Western	Central	Southern	Eastern	North Western	North Central	Uva	Sabaraga muwa
1 36.1	Turnover Taxes	✓	✓	✓	x	✓	✓	✓	✓
2 36.2	Betting	x	✓	x	x	x	x	✓	✓ ²
36.2	Prize Competitions	x	✓	✓	x	x	x	✓	✓ ²
36.2	Lotteries	✓	✓	✓	x	✓	✓	✓	✓
3 36.3	License taxes, arrack, toddy rents, tapping license fees, liquor license fees	✓	✓	✓	x	✓	✓	✓	✓
4 36.4	Motor Vehicle License fees	✓	✓	✓	x	✓	✓	✓	✓
5 36.5	Licenses on drugs and chemicals	x	x	✓	x	x	x	✓ ²	✓ ²
6 36.6	Stamp Duties	✓	✓	✓	x	✓	✓	✓	✓
7 36.7	Toll collections	x	x	x	x	x	x	x	x
8 36.8	Fines by Courts	✓	✓	✓	x	✓	✓	✓	✓
9 36.9	Fees under Medical Ordinance	x	x	✓	x	x	x	✓	✓
10 36.10	Fees Under Motor Traffic Act	✓	✓	✓	x	✓	✓	✓	✓
11 36.11	Departmental fees	x	x	x	x	x	x	x	x
12 36.12	Fees under Fauna and Flora Ordinance	x	✓	✓	x	x	x	✓	✓
13 36.13	Fees under LDO and CLO	x	✓	✓	x	x	x	✓	✓
14 36.14	Court Fees and Stamp Fees on Court document	✓	✓	✓	x	✓	✓	✓	✓
15 36.15	Regulator charge under Weights & Measures Ordinance	x	✓	✓	x	x	x	✓	✓
16 36.16	Land Revenue	x	x	x	x	x	x	x	x
17 36.17	Taxes on Lands an Buildings	x	✓	x	x	x	x	✓ ²	✓ ²
18 36.18	Tax on Mineral Rights	x	✓ ¹	✓	x	x	x	✓ ²	✓ ²

⁷³ See Also the Operational Experience of Fiscal Devolution and Provincial Finance in Sri Lanka: Institute of Professional Public Administrators. Colombo, 2007.

19	36.19	Licensing fess on possession, transport, purchase, sale of intoxicating liquors	✓	✓	✓	x	✓	x	✓	✓
20	36.20		x	x	x	x	x	x	x	x

Notes: 1 Act passed but rates are still to be gazetted
2 Act passed but Regulations not gazetted

Data Collected by Outreach Unit, CPA⁷⁴

5.5 Limitations and Challenges faced in the preparation of Statutes

The entire provincial council system has been fraught with challenges from the very beginning, the matter of Statutes being no exception and these are closely intertwined.

“Towards defending the provincial council system in Sri Lanka I would like to recommend two main actions: establishing the Exams Department provincially. The other point is a Legal Draftsman's Department for each Province”⁷⁵

Whilst there were a number of such recommendations highlighted at the “Workshop on Strengthening the Provincial Council System”, held by the CPA, the above was stated by Vijith Wijayamuni Soysa, former Chief Minister, Uva Province. He made this statement when recounting many case studies demonstrating the difficulties faced by citizens of the Uva Province. In the measurement of the operational capacity of a Provincial Council the number of statutes enacted is one of the foremost factors that is considered by anyone. In general it can be said that not even half of the required statutes have been passed within the 22 year history of the provincial council system in Sri Lanka.

The idea of establishing a legal draftsman’s department at all provincial councils is put forward so as to overcome the biggest challenges to legal drafting including those in Statute formulation, namely the inability to appoint qualified legal professionals. Although it is difficult to imagine that the Central Government will agree to establish legal departments in all provinces, it is difficult to understand why it is not possible to appoint suitably qualified legal consultants. From the inception of the provincial council system there has not been an administrative provision to recruit such legal professionals. Nevertheless, from the start, the Ministry of Provincial Councils had appointed a number of Legal advisors to assist provincial councils in these matters. However that service was discontinued within a short period of time. From this time forward provincial councils faced a serious challenge. Nevertheless the opinion of Southern Provincial Council Chief Minister Shan Wijeylal De Silva on this is as follows:

⁷⁴ Ibid

⁷⁵ Vijith Wijayamuni Soysa, Former Chief Minister Uva PC, in a Key speech at the Inaugural Session, Seminar of Uva PC Programme on Strengthening the Provincial Council System, Galle, 2008.

"The Southern Provincial Council always tries to find solutions thought Statute making for common problems affecting the public, however there are various obstacles. The experiences from other provincial councils is important to us. Whatever happens I never ask for power. What is important is to make maximum use of the existing powers."

Another opinion was

"We are interested in obtaining the long term support of senior legal professionals recommended by the LDD- however it is better to have full time persons or persons assigned to this purpose rather than obtaining their services from time to time. We also suggest that selected legal graduates among qualified youth from our own Provinces train and work under such a person, attached to the provincial council . We will bring this up within the provincial councils soon"⁷⁶

Whilst the above statement by Hon Mahipala Herath, Chief Minister of the Sabaragamuwa Province, is common consensus among the Provincial Chief Ministers, the keenness to work at examining urgent issues towards making of new Statutes, is apparent among the key personnel consulted.

Statute making is an extremely complicated task. The reason for this is that even a single erroneous word or technical error can lead to challenge before Court.⁷⁷ For this reason, a pool of well experienced suitably qualified expert resource persons is required within the provincial councils.⁷⁸ Yet, all provincial councils highlight this as a serious shortcoming.

The intergovernmental relationship expected between the provincial councils which are considered a second tier, and the Central Government, does not show evidence of having been established. In formulating decisions affecting the public brought up at a provincial council level a common consensus is rarely reached. This is due to the indiscriminate agreement of provincial council representatives to decisions made at a national level by political parties. This kind of situation would not arise if an intergovernmental relationship existed. Some of the decisions taken by the Central Government, even though detrimental to provincial councils have been unconditionally accepted at the provincial council level; the reason being the negative repercussions feared in the event of any opposition to these.⁷⁹

⁷⁶ Discussion with Minister Peshala Jayaratne, Minister of Health, North Central Provincial Council, Anuradhapura, 18th June 2010.

⁷⁷ Senior Legal advisors are not available in many PCs even today.

⁷⁸ At the commencement of the PC system, a legal Advisory Unit was operational in the Ministry of Provincial Councils and Statute drafts were made by its Officers

⁷⁹ Chief Minister Sivanesathurai Chandrakanthan of EPC and the EPC criticized the Local Government Special Provision (Amendment) Bill 2008 which introduced by the Government, which led to the dismissal of this Bill by the Government. . Subsequently on 21st October 2010 a very similar Bill was tabled . Many political experts point out that this bill negatively affects Minority Parties Rights. But the Chief Minister whilst acknowledging the unsuitability of this bill states that he will not vote against the Government, to maintain Government goodwill.

Nature of Statutes Passed by Provincial Councils

Table 4

Time Period	No. of Statutes enacted by Provincial Councils in Within Particular Time Periods							
	Sabaragamuwa Province	Western Province	North Western	Central Province	North Central Province	Southern Province	Eastern Province	Uva Province
1989-1995	51	28	41	36	35	28	-	37
1996-2000	7	10	20	6	5	11	-	9
2001-2005	16	7	21	-*	6	10	-	14
2006-2010	17	14	14	-*	3	14	4	2
Total	91	59	96	42	49	63	4	62

* Data Collected by outreach unit of CPA

Among these one of the main problems is that there is no proper examination of the direct legal provisions that affect the provincial council including the PC Act, and in particular that the 13th Amendment was not fully enacted.

Another highlighted problem is the inability to properly coordinate the various sections of the provincial councils, in the making of new PC Statutes. In such an action the Chief Secretary's office and the Council Secretary's office should maintain effective communications. However in some cases the Office of the Council Secretary is actually unaware of a draft being formulated until the draft documents reach them from the Office of the Chief Secretary.⁸⁰ Although such notification is not officially required, such complex processes would naturally require continuous effective communication between all sections.

"There should be a free service to provide Government Gazettes and other official publications to Provincial Councillors regularly. Currently only the Board of Ministers in our provincial council is receiving these. To find some of these documents sometimes we need to travel to Colombo and face many difficulties. For ministers to get better services from provincial councils, such publications should be made available "says NCP Provincial Councilor Anil Ratnayake.⁸¹

In some provincial councils even the copies of the enacted statutes are not available in one designated archive. In this regard the experience of the Central

⁸⁰ Preliminary Discussions Series of the "Facilitating Statute Formulation Programme" 2nd May – 31st Sept 2010

⁸¹ Hansard report, North Central Provincial Council .July 2010.

Province was disheartening in that out of the Statutes enacted to date copies of about seven of these could not even be located. The reason for this has been that the officials previously involved in this had not archived them. What can be gathered from the previous comment and the above is that there should be a method to preserve and archive documentation of this sort. The recently held Provincial Council elections resulted in selection of many younger representatives. It is important to garner their support for such activities as Statute Enactment, and assign them responsibilities in this regard.⁸²

Whilst every provincial council has a Statute Sub Committee, the most important steps undertaken in the exercise of Statute Formulation are undertaken by this Committee. However in most provincial councils the understanding and experience in this area held by members of this Committee are inadequate.⁸³ A notable exception is the Committee members of the Western provincial council. This is because a number of them are in fact legal professionals. Such a composition comes out more successful in the matter of Statute formulation as it is more qualified in overcoming the various legal hurdles involved.⁸⁴

In any case it cannot be expected that personnel in all such committees would show the same level of commitment toward this end. In some cases there are personnel who have never attended a single consultation on the subject of Statute reviews.⁸⁵ Whereas such personnel should be encouraged to participate and contribute in these sub committees, there are also inherent weaknesses in the system such as geographical factors, for eg while the sub committee meetings for the EPC are usually held in Trincomalee, if a representative from Ampara is to attend this, he must travel for hundreds of kilometers;⁸⁶ when considering councillors workload and available resources, this is a difficult task. It was discovered that this problem was common in the case of Central and Uva provinces too.⁸⁷ The most notable conclusion from this is that in general the attendance at monthly Council Sessions is way below satisfactory.

⁸² Sub Committee of Law and Statutes of Provincial Councils play a very important role in the Statute Making process and would benefit from an increase in youth members.

⁸³ Preliminary Discussions Series of the "*Facilitating Statute Formulation Programme*" 2nd May – 31st Sept 2010

⁸⁴ Majority of Members of the Sub Committee of Law & Statute of WPC are Councillors who have a legal background but in some PCs this particular committee never met even once for the whole year.

⁸⁵ Preliminary Discussions Series of the "*Facilitating Statute Formulation Programme*" 2nd May – 31st Sept 2010

⁸⁶ Preliminary Discussions Series of the "*Facilitating Statute Formulation Programme*" May 2nd – Sept 31st 2010

⁸⁷ Representatives of the Central Province stated if they can provide honararium/perdium for sub committee meetings it will be a incentive.

CHAPTER 6 Statute Creation and its Social Impact

Considering the negative attitude generally held by people regarding the Provincial Council system, it is difficult to expect any specific interest in the statute making process. However there is ample opportunity for Councilors and the Media to increase interest in this subject. Unlike in Municipal Councils, Urban Councils and Pradeshya Sabhas have the facility to include citizens in the Advisory Committees.⁸⁸ Although gallery spaces in Provincial Councils are open to the public, there is no evidence that this taken advantage of by civil society or community based organisations. If there was such a practice, it would be possible to obtain productive critique from the general public regarding a Statute within the time period given for opinions after Gazetting. Similarly whilst a Statute is a tool which can help in service provision to the public,⁸⁹ the relevance, effects, as well as the importance of the topic area considered should be analyzed in public debate instigated by provincial councils.

When we passed a statute disallowing Tuition Classes on Sundays and Poya days, everyone seemed to accept this. However there was some tension among certain tuition class teachers. After we had discussions

88 Urban Councils Advisory committees in UCs (half of which will be composed of Representatives) can include citizens. In Pradeshya Sabhas there are Four committees under four subjects-in which citizens can participate

- 1, Financial & Policy making
- 2, Housing & community Development
- 3, Industrial Services
- 4, Environment & amenities

⁸⁹ The objective in gazzeting a Draft Statute is to get the ideas of the Public/Stakeholders but in practice the expected feedback does not occur.

with them they agreed to this. They stated that if they had been consulted previously they would have supported the move⁹⁰ the Western Province too needs to make tuition classes more orderly. Currently we are discussing this with the relevant stakeholders and accordingly we will be taking action.⁹¹

When considering the above statement by the Chief Minister of the Sabaragamuwa Province Hon Maheepala Herath, what becomes clear is that, not only in a provincial council, but any democratic institution, when initiating legislation on any subject relevant to the public, what must be done first, is to select representatives of the community and engage with them in prior discussion. In discussions held in provincial councils one point which was repeatedly queried by this research team is as to whether before introducing a Statute discussion of its justification and relevance is carried out among the public or selected representatives of civil society groups. What became obvious was that there was not such mechanism which was confirmed by the research. It was identified that even the limited space available for citizens in Local Authorities is not available in provincial councils.⁹²

6.2

Draft Statutes Proposed by the provincial councils

Following the recently concluded Elections, and the new provincial council terms, a dialog on the drafting of new statutes has begun. A number of proposed statutes originating from many years ago are still being discussed. In yet more provincial councils there are follow up sub committees to review Statutes which have already been enacted to date.⁹³ In particular the NWPC is ahead in the matter of the making of statutes.⁹⁴ In particular considering the environment and

⁹⁰ Maheepala Herath, Chief Minister, WPC, Preliminary Discussions, 19th August 2010.

⁹¹ Prassanna Ranatunga Chief Minister WPC, at the Preliminary Discussions Series of the "Facilitating Statute Formulation Programme" May 2nd – Sept 31st 2010

⁹² Report of the Commission of Enquiry on Local Government Reforms 1999 (Sessional Paper No 1 of 1999 pg 237-246, Colombo. Government of Sri Lanka), also known as the "Abhayewardhana Report" after its Chairman. This report gave many recommendations on increasing people participation but was not considered seriously by any government.

⁹³ Western Provincial Council has established a Follow-up Committee on Statutes and its focus is to analyze all passed statutes, review and give recommendations.

⁹⁴ At the very beginning North Western Provincial Council, ahead of other PCs, passed important statutes which were relevant to regional identity and requirements of that Province.

commerce, NWPC stands out as with notable Statutes created by the Environmental Authority and the Human Resource Development Authority.⁹⁵

Draft Statutes in Progress and Proposed Statutes

North Central Provincial Council

Statute on:

Cultural affairs

Community Relief

Dairy and Establishment of the Dairy Development Authority

Library and Documentation

Irrigation Management

Environmental Protection

Animals and Animal Products

Women's Affairs

Rural Development

Industrial Development

Housing Development Fund

North Central Province- Health Services Amendment

Indigenous Medicines

Indigenous Development

Sports

Development Centre

Day Care and Children Home

Child Development

Rural Infrastructure Development

Fisheries

Sabaragamuwa Provincial Council

Education Amendment

Cultural Affairs

Library and Documentation

Probation and Child Care

⁹⁵ Human Resource Development Authority, Statute No 01 OF 1994. North Western Province Environmental Statute, No. 12 of 1990. The Southern PC too passed Statutes on Environment but assent was not given.

Southern Provincial Council

Sunday school

Road Development

Housing

Environmental Protection

Fisheries

Uva provincial council

Education

Local Government Supervision

Passenger Transport Service

Ayurveda and Indigenous Medicine

Child Care

Sports

Rural Enterprises, Small Industries, Cottage Industries, Monitoring and Development

Social Service

Protection of Tenants and Enforcement of Rents

Electricity and Alternative Energy

Housing Development

Agriculture Development

Animal Products

Health

Irrigation Management

Western provincial council

Banning of Polythene

Irrigation

Environmental Protection

Agricultural Services Authority

Bio Diversity Authority

Trishaws

Health Preservations

Beauty Culture Centres

Central Province

Dairy and Dairy Development

Library and Documentation

Environmental Protection

Animals and Animal Husbandry

Women Affairs

Rural Development

Industrial Development

Eastern Provincial Council

On the advice of the Chief Minister, the main Ministry of the EPC is currently in the process of drafting a number of Statutes while a number more have been already sent for the Governors assent.⁹⁶

6.3

MEDIA

Whilst provincial councils maintain a gallery with all conveniences, and journalists are given ample facilities to report when provincial council sessions are in progress, in general there is a definite room for improvement in the reporting of matters relating to provincial councils. To the extent that such reports are rare, even if such were made, matters regarding actual Statute enactment remain generally almost un-reported.⁹⁷ Whereas there are a number of factors which contribute to this, popular media culture trends and the deterioration of political culture could be two reasons.

Media habitually continues to highlight extremely critical, shocking or frivolous stories in politics to a larger or lesser extent, but in the case of an intellectual debate the coverage of involvement of politicians is less popular.⁹⁸ Furthermore, provincial councils have to have the capacity to convince the people that the making of statutes is actually advantageous them. But there does not seem to be any such effort or initiative to thus develop this understanding. A while ago the Chief Minister of the EPC travelled abroad and national papers even presented editorials on this controversial debate arising; the consequences of this sort of attitude can be quite serious, when considering that more than the supposed personal gain to be obtained as a tourist, the experience and knowledge gained from such a trip to personally observe the Indian Governance System, is a benefit for all citizens.

⁹⁶ Officials of EPC revealed that there were many statutes in the process of being drafted in the Main Ministry under the advise of Chief Minister . Unfortunately the research team was unable to consult Chief Minister S.Chandranathan on this important topic.

⁹⁷ this chapter is based on findings in the Final Report on the Role of the Media, by Manjula Gajanayake, CPA 2010 and the state opinions of PG Alahakoon, Chief Secretary ,Central Province, 8th June 2010,Kandy

⁹⁸ During the previous Presidential & General Elections 2010 Print and Electronic Media highlighted this to a large extent, particularly Electronic media.

This media trend negatively targeting Councillors will naturally be misconstrued⁹⁹ Considering that compared to the Parliament, the Provincial Councillors who have thus travelled abroad is much less, this sort of unfair criticism and the arousing of unnecessary controversy can be avoided if a Statute is drafted, for example similar to the Safeguarding of Privileges Act. However not a single of the provincial councils has made such legislation.

6.4 Political Parties

A common idea that many have about Provincial Councils is that when a Ruling Party Politician becomes Chief Minister in a particular provincial council there will not be any action taken to secure the legally available rights within that provincial council.¹⁰⁰ Regardless of the truth of this conception, no political party has ever taken a policy decision to retain powers vested in provincial councils through for example making of Statutes. Generally whichever political party there is in any provincial council if there is a more active, efficient Chairman, the subject of Statute making will be better facilitated.¹⁰¹

*"in a situation where there is no Ethnic Conflict, if the provincial council system was designed based on the existence of a "terrorist Problem" we as a political party reject it . Broad Administrative Decentralization within a Unitary State would provide a better public service. "*¹⁰²

Stating the JHU view, Minister of Environment Udaya Gammanpila, of the Western Provincial Council, describes this as a generally unnecessary and wasteful burden in the Governance structure and justifies the JHUs lack of direct contribution to the statute formulation process.

Apart from that the JVP which has actively enlisted popular mass demonstrations against the system, is today a party with a very low number of seats in provincial councils.¹⁰³ According to the only JVP councillor in the UVA provincial council, leave aside making of Statutes, even a productive debate session cannot be carried on for more than two or three hours due to a clear lack of motivation of councillors.¹⁰⁴

One common factor evident from this, is that Provincial Councillors seem to be working on the basis of short term planning and changing national politics

⁹⁹ Some main Newspapers, in their Editorials criticized Provincial Councillors tours including that Chief Minstrer's tour of India, eg Divaina Newspaper June 28th 2010

¹⁰⁰ This trend changed during the time of Former Chief Minister Gamini Jayawickrama Perera in NWPC, and during a few other instances.

¹⁰¹ the Chairman of the PC plays a very important role in the Statute Making Process .The process can be either speeded up or slowed down based on his support, efficiency and involvement.

¹⁰² Minister Udaya Gammanpila, Minister of Environment,WPC,Preliminary Discussion,17th September 2010.

¹⁰³ In the previous (4th) Provincial Council term of Sri Lanka, the JVP had many representatives in the PCs whilst in the 5th Term there were much fewer

¹⁰⁴ Sudath Balagalla, Provincial Councilor JVP, during Preliminary Discussions 23rd May 2010

instead of considering the identity, diversity and autonomous functioning of their relevant provinces and creating relevant statutes to address issues.

CHAPTER SEVEN What can be done to better facilitate statute formulation and strengthen Provincial Council?

7.1 The Way Forward.

Provincial Councils become institutions with the ability to legislate through the process of statute formulation. Whereas people-friendly and timely legislation can be carried out by provincial councils as part of the devolution process, a limited geographical area means that the peoples support can easily be garnered to this process. However because provincial councils are a new experience in devolution, there are certain inherent weakness and furthermore a lethargic nature has infused this process from the start.

To date officials involved in formulating statutes are working with the minimum of facilities but delivering excellent services. They should importantly be given further training. It is important for a country which has lot of experience in this area to offer assistance with such training. Furthermore young law graduates from the provincial council level should be selected to participate in this process statute development process.

At least one Legal expert should be permanently assigned to each provincial council, recognized by the management service department.

There does not seem to be a serious need for attitude change, the reason being that existing Chief Ministers have accepted the importance of and requirement for statute creation.¹⁰⁵ The Concurrent list of the 13th Amendment, National Policy and the Governor are sometimes a barrier to smooth functioning of the statute making process, while the PC Act and other relevant constitutional provisions should be amended. Since it is difficult to imagine that such a situation will arise, open discussion between the Chief Ministers Federation and the Governors, towards establishing formal procedure, in particular, on the subject of Statute formulation will be more practical.

¹⁰⁵ Whilst the team observed that there is a definite enthusiasm for the creation of Statutes some Chief Ministers are criticized that they give priority to making Statutes for their ministries before other areas are considered . Furthermore according to Secretary EPC, Mr V.P Balasingham a better co ordination should be made between Representatives and Officials to speed up these processes. According to the Session Summary Report (5/2/2000-6/10/2007) of the Chief Ministers Federation, the First Session Recommendation (2/5/2000) regarding Policy and Legal Functions, was the Making of Statutes in subjects assigned to the PCs to be achieved by sharing experiences, including common formats among PCs and preparing an updated Registry of Enacted Statutes. The Second Session (22/4/2000) decision was taken to establish a Legal Division in the Province.

Since in a provincial council such as UVA the translation of Draft statutes is a difficult task a determined and capable national level institution /organization should partner with the provincial council to facilitate the required translations¹⁰⁶

Considering that the extra responsibilities of the members of Statute Formulation Sub -Committees are very serious, geographical factors should also be considered and perhaps a contribution made towards their additional expense and time of the participants.

Statute formulation is not a strengthening of infrastructure. It is also not a means for political gain. However in the small space available in the provincial council level this is a simple mechanism to garner citizen participation and media attention should be utilized by provincial council representatives. It is a duty of Provincial Council representatives to prove that the drafting of statutes is a mechanism towards better service provision to the public.

¹⁰⁶ Neil De Alwis, Deputy Chief, Secretary (Admin and Training) NCPC, says that whilst workshops and seminars etc are useful in the making of Statutes, what would be most effective would be to take a certain time period, gather together all relevant personnel and finalise one Statute based on identified requirements, as an exercise. This would be more practical than merely training sessions.

Decisions of the Superior Courts relating to Devolution

Some of the cases cited below have been reported in the official Sri Lanka Law Reports, while others have so far been unreported. However, all except *Greater Colombo Economic Commission (Amendment) Bill* (1992) and *Bandara v. Arawwawala* (1996) are now conveniently reproduced in L. Marasinghe & J. Wickramaratne (Eds.) (2010) **Judicial Pronouncements on the 13th Amendment** (Colombo: Stamford Lake).

Agrarian Services (Amendment) Bill (1990), SCSD No. 9 of 1991

Agrarian Services (Amendment) Bill (1991), SCSD No. 2 of 1991

Alawwa v. Katugampola Multi Purpose Co-operative Society (1996) 1 SLR 278

Bandara v. Arawwawala (1996), CA Writ App. No. 483/95, 24th May 1996

Dhanapala v. Provincial Director of Education, North Central Province (1997) 1 SLR 400

Ghany v. Dissanayake (2004) 1 SLR 17

Greater Colombo Economic Commission (Amendment) Bill (1992), SCSD No.1 of 1992

In re Local Authorities Housing Statute of the North Central Provincial Council (1997) 3 SLR 344

In re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill (1987) 2 SLR 312

Kamalawathie v. Provincial Public Service Commission, North-Western Province (2001) 1 SLR 1

Land Ownership Bill (2003), SCSD Nos. 26-36 of 2003

Local Authorities (Special Provisions) Bill, SCSD No. 12 of 2003

Local Authorities (Special Provisions) Bill, SCSD Nos. 6 and 7 of 2008

Madduma Banda v. Assistant Commissioner of Agrarian Services (2003) 2 SLR 80

Mahindasoma v. Senanayake (1996) 1 SLR 180 (CA)

National Transport Commission Bill (1991), SCSD No. 8 of 1991

Nimalaratne v. Assistant Commissioner of Agrarian Services (2000) 3 SLR 184

Jayathevan v. The Attorney General (1992) 2 SLR 356

Parameswary Jayathevan v. Attorney General (1992) 2 SLR 356

Podinilame v. Mathew (1996) 2 SLR 82

Premachandra and Dodangoda v. Jayawickrema and Bakeer Markar (1993) 2 SLR 294 (CA)

Premachandra v. Jayawickrema (1994) 2 SLR 90 (SC)

Provincial Councils (Amendment) Bill, SCM 14th June 1990

Provincial Councils (Consequential Provisions) Bill (1989), SCSD No. 11 of 1989

Ranjani Priyalatha v. Provincial Public Service Commission, Central Province (2009), CA Writ App. No. 775/07, 3rd November 2009

Ratnayake v. de Silva (1999) 3 SLR 57

Rent (Amendment) Bill (2002), SCSD No. 8 of 2002

Rev. Seruwila Saranakithi v. The Attorney General (2004) 1 SLR 365

Re Transport Board Statute of the North-Eastern Provincial Council (1990), SC (Spl) No. 7 of

1989

Senanayake v. Mahindasoma (1998) 2 SLR 333 (SC)

The Police Commission Bill (1989), SC (Spl) No. 14 of 1989

Water Services Reform Bill (2003), SCSD Nos. 24 and 25 of 2003

Weerasinghe v. Dissanayake (1997) 1 SLR 406

Wijesekera v. Attorney General (2007) 1 SLR 38

Wijewardana v. Director of Local Government (2004) 1 SLR 179

Acts of Parliament relating to Devolution

The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978

Provincial Councils Act, No. 42 of 1987

Provincial Councils Elections Act, No. 2 of 1988

Provincial Councils (Payment of Salaries and Allowances) Act, No. 37 of 1988

Provincial Councils Elections (Amendment) Act, No. 55 of 1988

Provincial Councils (Consequential Provisions) Act, No. 12 of 1989

Police Commission Act, No. 1 of 1990

Agrarian Services (Amendment) Act, No. 9 of 1990

High Court of the Provinces (Special Provisions) Act, No. 19 of 1990

Further Reading

Gunawardena S. Asoka, **Beyond Legal & Administrative Constraints Confronting Provincial Councils: Issues in Devolution & Governance Change in Sri Lanka**,(2007)(Colombo ,Sri Lanka Institute of Local Government)

Centre for Policy Alternatives (2010) **Devolution in the Eastern Province :** Implementation of the Thirteenth Amendment and Public Perceptions; 2008-2010 (Colombo, CPA)

Centre for Policy Alternatives (2008) **Strengthening the Provincial Council System: Thematic Report of Workshop Deliberations** (Colombo: CPA)

L. Marasinghe (2009) **The Provincial Governor: Rights and Duties under the Thirteenth Amendment** (Colombo: Sarvodaya)

L. Marasinghe & J. Wickramaratne (Eds.) (2010) **13th Amendment: Essays on Practice**(Colombo: Stamford Lake)

L. Marasinghe & J. Wickramaratne (Eds.) (2010) **Judicial Pronouncements on the 13th Amendment** (Colombo: Stamford Lake)

Provincial Councils: Operational Experience of Devolution (1996) Report of the Committee to study the operation of Provincial Councils in Sri Lanka (Colombo: Unpublished) (the Asoka Gunawardane Committee Report (1996)

Y.R.Amarasinghe,(Ed.) **Devolution Experience in Sri Lanka** :The Administrative and Fiscal Implications (1988-1998),National Integration Programme Unit (NIPU),(Colombo,2000).

The operational experience of fiscal devolution and provincial finance in Sri Lanka:

Challenges and options in getting to devolution and multi-level governance,
(2007)(Colombo, Institute of professional public administrators).

Samaraweera R ,**Provincial Councils After Twenty Years Successes, Failures and Constraints**, (2007)(Colombo,Institute of professional public administrators).

Annexures

Annexure 01 : Provincial Council Common Recommendations

Annexure 02 : Common Guidelines which following Provincial Councils

Annexure 03 : Nature of Statute Drafting Process

Annexure 04 : Expenditure Assignment

Annexure 05 : Assignment of Taxes, Rates & Levies

Annexure 01 : Provincial Council Common Recommendations

Provincial Council Common Final Recommendation

Despite the misgivings in relation to the Thirteenth Amendment to the Constitution, it should be recalled that the original objectives of establishing the Provincial Councils were the resolution of the ethnic conflict and the creation of a provincial level tier of government to address regional development.

Why did neither of these objectives come to fruition? The consensus among elected members and officials of Provincial Councils is that there are common issues affecting all provinces as well as other issues that pertain uniquely to some provinces.

This report does not present the opinions of the academics and experts who were part of the deliberations that culminated in this report. Instead, it reflects the recommendations of members and officials of the Provincial Councils themselves, which were prepared by five member committees representing all provinces.

These recommendations highlight the salient factors arising out of the experience of twenty years that cannot and should not be ignored in the full implementation of the Provincial Council system.

The province-specific aspects were discussed in depth. This report highlights the essential recommendations for reform by the provincial tier as a whole, as well as the recommendations of each province. It is hoped that this report will generate a constructive dialogue and debate among key stakeholders including the President, central government ministers and officials. It is also hoped that it will encourage a broader debate within civil society and the media on the issues confronting the full implementation of the system of devolution through Provincial Councils.

Twenty years Experience: Issues & Alternatives

Constitutional Issues

Non-implementation of powers devolved on Provincial Councils by the Thirteenth Amendment

1. Concurrent List
2. Replication
3. Need for Attorney General's advice / approval on provincial legislation

Transfer and fully implement powers devolved on Provincial Councils

A Memorandum of Understanding in respect of devolution until constitutional amendments and statutory changes are introduced

Abolition of central government ministries which replicate the functions of Provincial Councils

Administrative Issues

1. Central government consent is required for provincial level recruitment and appointments.
2. Removal of Divisional Secretariats
3. Central government circulars on functions that have been devolved on Provincial Councils without consultation or consent

Chief Ministers to be made legal members of the central Cabinet of Ministers

A Legal Department to be established for each Provincial Council

Appointment of more officials and ministers required for Provincial Councils through full implementation of Thirteenth Amendment and the Concurrent List functions.

Converting the offices of Chairperson and Deputy Chairperson of Provincial Councils to the provincial Speaker and Deputy Speaker, respectively.

Standardising criteria for the recruitment of officials and making required appointments of each province through the respective Provincial Public Service Commissions.

Alternatives

Bringing Provincial Council Management Services under a Director.

Devolving powers over the transfer and location within provinces of seconded officials from the national administrative service.

The central government should not intervene in functions devolved on the provinces.

Financial Issues

Powers are vested with Provincial Councils for the provision of public goods and services. However, the corresponding powers to generate income and taxation revenue have not been devolved. Therefore an alternative framework for financing the Provincial Councils needs to be devised.

Functions of the Finance Commission

No provincial representation in the Finance Commission.

The Finance Commission is unable to enforce recommendations based on provincial needs and preferences.

The central Treasury subjects Finance Commission recommendations in respect of provincial allocations to cuts.

Provincial Council allocations as recommended by the Finance Commission are not released on time by the central Treasury.

Annual financial allocations to be made as a single block grant.
Funds allocated to Provincial Councils should not be re-allocated to line ministries of the central government replicating devolved functions.
Establishing a Finance Commission that is accountable to both the central government and the Provincial Councils. It should have provincial representation.

Issues

Limitations on Provincial Council tax raising powers.
Lack of Provincial Council powers to attract foreign aid and loans.
No national policy on funding Provincial Councils.

Alternatives

Vesting adequate tax raising powers to each province so that provincial fiscal policy can be determined according to provincial needs.
Provincial Councils should have full powers over the implementation of foreign-funded projects.
Foreign funds to be directly allocated to Provincial Councils with the concurrence of the central government.
Policy-making function on subjects to be strictly divided between provincial and national spheres.

ANNEXURE 2

Procedures for Drafting and Approval of Statutes by Provincial Councils.

1. Understanding the objective of proposed statute by the Ministry which is proposing a new statute. Accordingly careful consideration is required about the various lists. Whereas a provincial council can formulate statutes on subjects within the provincial council list and the concurrent lists, but in the latter case, it must first consult with parliament on each occasion.
2. Similarly before submitted to the Council and proposed statute on finance, the relevant Hon Governors confirmation must be obtained.(See Article 24 of provincial council Act 1987 No 42)
3. Prior to formulating a statute on any subject an investigation must be carried out to check if there is already any prepared subsequent Act relevant the 13th Amendment passed by Parliament. If there is such an Act passed by Parliament, it is not possible to create a statute.
4. Parliament can only draft legislation on subjects within the Concurrent list, after consultation with the provincial councils. It is advisable for provincial councils to formally draft statutes on these subjects without delay.
5. the below mentioned procedures must be followed by provincial councils in the drafting of statutes Based on advice from the relevant Minister in Charge, the Ministry Secretary should prepare a document of contents of the proposed statute as a Minute or Draft Statute.
 - i. The relevant Minister will then present this document in the meeting of the Board of Ministers and obtain their consensus as a policy.
 - ii. If the Secretary of the relevant Ministry of the provincial council decides that this draft statute needs review or Legal advise from the Legal Advisor Ministry of Provincial Council it must be sent through the Chief Secretary will send it to the Secretary Provincial Council.
 - iii. If the Legal Advisor of the Ministry of Provincial Council amends the draft statute or advises regarding this, then the accordingly amended draft is submitted the Minister secretary with the confirmation of the relevant Minister to the Council Secretary.
 - iv. The Council Secretary should then present the Draft Statute to the Law and Statutes Committee and obtain recommendations. Following this the Draft Statute should be forwarded with all recommendations to the Secretary of the relevant Ministry. The Secretary should present the Draft along with all recommendations received, to the Board of Ministers by way of the relevant Minister, and obtain approval.

- v. Following approval received from the Board of Ministers for any draft Statute, for the purpose of including it to the Council Agenda, the Board of Ministers have to gazette it ten days prior to such inclusion.
- vi. Following the gazette notification of the Draft, if there is any public objection or suggestions forwarded, the Secretary of the Relevant Ministry should bring this to the notice of the Minister, and as agreed by latter any amendments resulting from such objection or suggestion should be included in the Draft. This should then be presented to the Council Secretary with the necessary number of copies for the purpose of tabling
- vii. Upon approval of the Draft Statute by the Council, along with the Council Secretary's certification that the Chairman of the Council has duly signed confirming Council approval on the Sinhala and Tamil copies, the Draft Statute is presented to the Hon Governor, and once his assent is obtained it becomes a Statute.

Whereas the Statute comes into force from the date that assent has thus been given by the Hon Governor, a notification announcing the assent to the has to be gazzetted. (Ref Article 154 of the Constitution for further details)

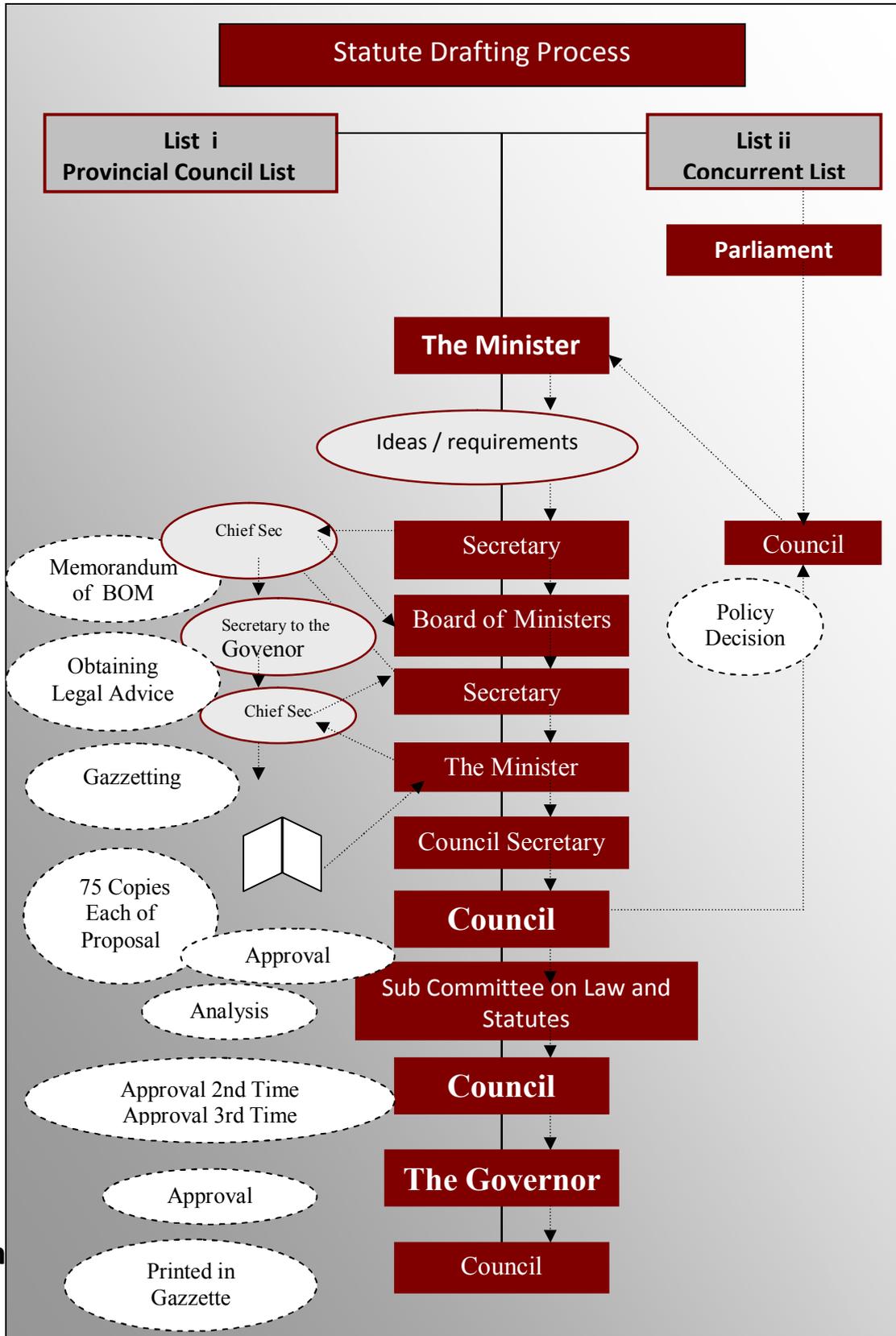
6. For the purpose of making a Statute as under 5(i) above, in the event that a Memorandum to the BOM is prepared, the instructions contained in 5(ii) should be followed. Subsequently, the Memorandum should be submitted to the Legal Division of the Ministry of Provincial Councils for the purpose of statute drafting and should be presented to the Secretary of the Ministry of Provincial Councils through the Chief Secretary of the Provincial Council
7. Once the Legal Division of the Ministry of provincial councils has sent the Statute Drafted according to the memorandum submitted by the BOM, the above sections 5(iv), (v),(vi),(vii),(viii) should be applied as suitable.
8. A Statute should have the following outline/design
 - i. Long Title of the Statute
 - ii. Short Title of the Statute
 - iii. Objectives (as required)
 - iv. In an event that a Statute is created to establish a fund, guidelines should be designed for the incorporation of this. If not, procedure should be laid down on the establishment of Governing Bodies related to the fund. Provision to establish an Account in the name of the Corporation
 - v. If a provision of a Statute is violated by a person, provisions for punishment as well as in the case of a Fund set up provisions for auditing should definitely be included in Statutes.
 - vi. Interpretation
9. In the making of By Laws on the subject of Local Government, the provincial council approval must be obtained by the relevant Minister. Whereas no

statute can diminish the effect of Local Government powers they can be increased by Statute.

10. If it is necessary to create by laws within a Statute, whereas there should be provisions for the making of such by Laws, in particular they should indicate the reasons for the making of such By Laws.
11. In the preparation of By Laws under Statutes, (Directives, and By Laws etc) it should be clarified under which Article of the Statute, such By Laws are made.

Annexure 3

Nature of the Statute Drafting Process



Ann

Item	Reserved	Provincial	Concurrent
1,General Public Services			
National Policy	National Policy on all Subjects and Functions	Subject to the formulation and implementation of National Policy in regards to Development and Planning, the power to promote, Establish engage in agriculture, industrial commercial and trading enterprises and other income generating projects within the province without prejudice to the power of the government and public corporation to have such enterprises and projects.	
Foreign Affairs	100 Percent		
Administration of justice	Constitution Organization jurisdiction and powers of the supreme court (including contempt of such court) and the fees taken therein: persons entitled to practice before the supreme court, court of appeal and other courts Constitution, Organization , Jurisdiction and Powers of the court of appeal and fees taken therein jurisdiction and powers of all courts except the supreme court and the court of appeal .		
Public Debt	100 Percent (Other than provincial Debt)		
Currency and foreign exchange International economic relations monetary policy	100 percent		
Bills of exchange cheques, promissory notes and other like instruments	100 percent		
Stock exchange and future market	100 percent		

Audit of the accounts of the government of Sri Lanka or a Provincial council	100 percent		
Immigration and Emigration and citizenship	100 percent		
Election	election of Presidential ,Parliamentary , Provincial Council and Local Authority		
Census and Statistics	Census inquires Surveys and Statistics for the Purpose of any of the matters in this list		Injuries and Statistics for the Purpose of any of the matters
Local Government	Supervision of the administration local authorities established by law, including the power of dissolution		
Intoxicating liquors		Possession ,transport, purchase and sale of intoxicating liquors	
Regulation of Union Corporated trading literacy, Scientific , religious and other Societies and association		100 percent	
Registration of Births and Deaths			100 percent
Renaming of town and Village			100 Percent
Surveys			for the purpose of the matters enumerated in the provincial or concurrent list
2, Defense Public order and safety Policy and Public order	Defense and national Security, Law and order and presentation and detention of crime expect to the extent Specified in provincial list	Public order and the exercise of public powers within the province and not including the city of Colombo, Sri Jayawardanapura Kotte	
offences against statutes	offences against		
	Statutes with respect to any matters Specified in this list	Offences against statutes with respect to any matters Specified in this list	Offences against statutes with respect to any matters Specified in this list
3. Economic Service			100 Percent
Insurance	100 percent		
Inter province trade and commerce	100 percent		
Pawn Brokers		Pawn Brokers other than pawn Brokers business carried on by banks	

Betting and Gambling (other than imposition of licence fees and taxes)		100 percent	
Private lotteries within the Province			100 percent
Rationing of food and maintenance of fool stock			100 percent
Tourism			100 percent
Price Control			100 percent
Drugs and Poisons			
Adulteration of food Stuff and other goods			100 percent
Trade and Commerce			Trade and Commerce in and the Production, Supply and distribution a of products of any industry where the control of such industries by the government is declared by Parliament by law to be Expedient in the public interest and imported goods of the same kind as such products and b: food Stuff and Cattle Fodder
Post and Telecommunications; Broadcasting , Television	100 Percent		
Post and Harbors	100 Percent		
Aviation and Airports	100 Percent		
Transport and Construction of roads and Bridges	National Transport ,Railways, National High Ways, Carriage of passengers and goods by railways land, sea or air or by national water ways in mechanically propelled vessels	Construction of road and bridges on within the province other than National highways Bridges and terries on national high ways	
Rivers and water ways	100 Percent		
Shipping and navigation maritime zones including historical waters and territorial waters (Exclusive Economic Zone and Continental Shelf)	100 Percent		
Land and Foreshore	Except to the extent Specified in Provincial List	Land that is to say , rights in or over land , land tenure transfer and alienation of land, land use land settlement and land	

		improvement	
Regulation of road Passenger Carriage service and Carriage of goods by motor vehicles		Regulation of road Passenger Carriage Services and the Carriage of goods by motor vehicle within the province and the province of inter – provincial road transport services	
Extension of Electrification			Extension of electrification within the province and the Promotion and regulation of the use of electricity within the Province
Irrigation		Planning designing implementation Supervision and maintenance of all irrigation works. Other than Irrigation Schemes relating to rivers running through more than one province or inter Provincial Irrigation and land development Schemes inter Providing irrigation	Water Storage and management drainage and embankments floor protection planning, Planning of water resources. Service Provided for inter Provincial land and irrigation Schemes Such as those relating to rural Development, health, Education, Vocational training, Co-operatives and other facilities.
Agriculture and Agrarian Service		Agriculture including agrarian extension, Promotion and education Purposes and agrarian Service. Rehabilitation and maintenance of minor irrigation works Agricultural Research ,save and except institutions designated as national Agricultural research institutions	Establishment and Promotion of agro-Linked Industries the establishment and maintenance of farms and Supervision of Private nurseries Social conservancy plants pests
Animal Husbandry		Preservation , Protection and Improvement of Stock and prevention of animal disease within the Province	Production, Processing distribution and Sale of livestock and livestock Products. Veterinary training Services and research inclusive of the Provision of Science

			laboratories and Science Equipment animal breeding care and health Establishment of pastures
Fisheries			100 Percent (Other than fishing bay and tributary waters)
Market fairs		100 Percent	
Food Supply and distribution within the Province		100 Percent	
Co-operatives		Cooperative Undertakings and Organization, Super Vision and Audit of cooperative education and Propaganda Cont: Provincial Cooperative Employees Commission matters Connected with Employment, promotion, retirement and other matters Employees of Cooperative within the province	
Mineral and Mines	Regulation and Development of oil fieldsand mineral oil resources, petroleum Product; other liquids and substance declared by Parliamentary by law to be dangerously in flammable regulation of mine and minerals development to the extent to which such regulations and development under the control of the government of Sri Lanka is declared by Parliament by law to be expedient in the Public interest.	Regulation of mines and mineral development to the extent permitted by or under any law made by parliament within the Province.	
Employment 4,Human Resources Development and Social Protection			100 percent
Professional Occupation and Training	100 Percent		
Education and	Educational	Provision facilities of	Higher Education

Educational Service		States Schools other than National Schools other than Special Schools for Service Personal and Schools for Specified development Schemes. Supervision of management of all pre Schools and all state Schools other than Specified Schools	Establishment and maintenance of new University Establishment of degree awarding Institutions.
Social Service and Rehabilitation		Provision of Facilities of all States Schools other than National School, Special Schools for Specified development Schemes. Supervision of the management of all pre schools and all state School other than Specified Schools.	Relief, Rehabilitation and Resettlement of displaced Persons. Relief of distress due to Floods draughts epidemics or other Exceptional causes and rehabilitation and resettlement of those affected cout: Restoration reconstruction and rehabilitation of towns villages, Institutions, properties, Industrial place of workshop destroyed or damaged and grant of Compensation or relief to person or institutions.
Health		Establishment and Maintenance of Public hospitals , rural hospitals maternity homes, Dispensaries (other than teaching hospitals established for special Purpose) Public health services, health education, nutrition, family health ect. Formulation and implementation of health development plan and of Annual health Plan for the Province.	School for training of Auxiliary medical personnel. Supervision and Private medical care Controls of Nursing home and of diagnostic facilities within Province. Population Control and Family Planning Constitution of Provincial medical Boards.
Indigenous Medicine		100 Percent	
administration of reformatories, Borstal institutions and other institutions of a like		Reformatories, Borstal institutions of a like nature and Persons detained therein, arrangements with	

		other Provinces for the use of such institutions.	
5. Environment and Community affairs Housing and construction		Implementing, Coordinating, Supervising and monitoring Provincial housing development programmers and projects. Protection of Tenants and rent act within a Province.	National Housing and Construction. the Promotion of integrated Planning and implementation of economic, Social and physical development of urban development areas resettlement of those affected .
Rural Development		100 Percent	
Maintenance of rest house and Bangalows		100 Percent	
Burials and Burial Grounds, Cremation and Cremation Grounds		100 Percent (other than national memorial cemeteries)	
Protection Of Environment		Protection of Environment within the Province to the extent permitted by or under any law made by Parliament	Protection of Environment
Social Forestry and Protection of wild animals and bird			100 Percent
6, Recreation Culture and Religion Libraries ,Museums, Ancient and Historical Monuments	Archaeological activities, and sites and antiquities declared by or under any law made by Parliament to be of national Importance.	Libraries ,Museums and other similar institutions controlled or financed by a provincial council. Ancient and historical monuments and reside other than declared by or under law made by Parliament to be at national Importance.	
Theaters and dramatic performance , music , cinemas, entertainments and amusements		100 percent (excluding the Sanctioning of exhibition and cinematograph films for public performance)	
encouragement and development of sports festival and exhibition		100 Percent (other than national Sports association)	100 Percent
News Papers, Books and Periodicals and printing Press			100 Percent
Pilgrimages			100 Percent (Other Than outside Sri Lanka)
Others	All Subject and Functions not Specified		

	in Provincial list and Concurrent list		
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Annexure 5

Assignment of Taxes, Rates & Levies		
Reserved	Provincial	Concurrent
Taxes on ,capital wealth of individuals companies and corporations	-	-
Customs duties including import & export duties and excise duties	-	-
-	Turnover taxes on wholesale and retail sales	-
-	Betting taxes and taxes on price competitions and lotteries other than national lotteries and lotteries organized by government of Sri Lanka.	-
-	License taxes, arrack, toddy rents, tapping license fees, and liquor license fees.	-
-	Motor vehicle license fees	-
-	Dealership license tax on drugs and other chemicals	-
-	Stamp duties on transfer of properties such as land and motor cars.	-
-	Toll collection	-
-	Fines imposed by courts	-
-	Fees charged under the medical –ordinance	-
-	Fees charged under the Motor Traffic Act	-
-	departmental fees in respect of matters specified in the list	-
-	fees under the Fauna & Flora protection Ordinance	-
-	Fees on land alienated under the Land Development Ordinance and Crown Land Ordinance.	-
-	Court fees including	-

	stamp fees on document produced in court.	
-	Regulatory charges under the weights and Measures ordinance.	-
-	Land revenue	-
-	Taxes on lands and buildings, including the property of the state.	-
	Taxes on minerals rights	-
-	License fees on possession, transport purchase, and sale of intoxicants.	-
-	Other taxation within the province in order to raise revenue for provincial purposes to the extent permitted by or under any law made by Parliament.	-
Fees in respect of any of the matters in the Reserve list excluding fees taken in any court.	Fees in respect of any of the matters in the Provincial list excluding fees taken in any court.	Fees in respect of any of the matters in the Concurrent list excluding fees taken in any court.
Any other tax, duties or levies not specified in Provincial List.	-	-

Source: *The Operational Experience of Fiscal Devolution and Provincial Finance in Sri Lanka: Challenges and options in getting to Devolution and Multi-level Governance*, (Colombo, Institute of Professional Public Administrators,)2007.

List of Interviewees

North Central Province

Hon. Peshala Jayaratne - Minister of Health
Hon. K.M. Nandasena – Minister of Agriculture
Hon. P.B. Dissanayake- Chairman
Hon. R.M.S.K. Ratnayake- Deputy Chairman
Hon. Kasturi Anuradhanayake- Opposition Leader
Hon. A.S.R.N. Mohammed – Member of the Provincial Council
Hon. Anil Ratnayake- Member of the Provincial Council
Hon. Rohana Gamage- Member of the Provincial Council
Mr. A. Thalakatunage- Chief Secretary North Central Province
Mr. Neil de Alwis- Deputy Chief Secretary (Admin and Training)
Mr. G.D.K. Gamage- Council Secretary
Mrs. D.H. Badrani Dissanayake -Administrative Officer

Uva Provincial Council

Hon. Hema Rathnayaka- Chairman
Hon. Upali Samaraweera – Opposition Leader
Hon. Manel Ratnayake – Member of the Provincial Council
Hon. Sudath Balagalla - Member of the Provincial Council
Hon. Chaminda Thissakuttiarachchi- Member of the Provincial Council
Hon. Mihimal Munasinghe - Member of the Provincial Council
Hon. Jayantha Kannangara- Member of the Provincial Council
Mr. P.B. Amarasekara- Chief Secretary
Mr. J.C.B. Dehipe – Coordinating Officer

Southern Province

Hon. Shan Wijelal de Silva – Chief Minister
Hon. Wijaya S Weerasinghe –Minister of Agriculture
Hon. G.D. Ariyathilaka- Minister of Sports
Hon. K.A. Somawansa- Chairman
Hon. Siri Wijewickrama- Opposition Leader
Mr. W.M. Wijethilaka- Secretary of the Main Ministry
Mr. A.M.W. Sarath – Secretary of the Ministry
Mr. K.H.A. Keerthiratne- Secretary of the Ministry
Mr. G.S. Lokuhetty - Secretary of the Ministry
Mr. J. Ruwanpathirana - Secretary of the Ministry
Mr. K.L. Dayananda- Council Secretary
Mr. L.P. Wijesinghe – Legal Officer

Central Provincial Council

Hon. Sarath Ekanayake –Chief Minister
Hon. Saliya Bandara Dissanayake – Chairman
Hon. W.M. Yasamanna- Deputy Chairman
Hon. K.K. Piyadasa- Opposition Leader
Hon. A.G. Sirisena- Member of the Provincial Council
Mr. P.G. Amarakoon- Chief Secretary
Mr. K.P. Karunadasa – Secretary of the Ministry
Mr. P.B. Wijeratna- Council Secretary
Mr. T. Ranatunga – Assistant Council Secretary

Eastern Provincial Council

Hon. Thuraiyappa Nawaratnaraja- Minister of Agriculture
Hon. Wimalaweera Dissanayake – Minister of Education
Hon. M.S. Udumalebbe- Minister of Road Development
Hon. H.M.M. Faiz – Chairman
Hon. Ariyawathi Galappaththi – Deputy Chairman
Hon. A.S. Jawahir Saley – Member of the Provincial Council
Hon. Soamsundaram Pushparaja- Member of the Provincial Council
Hon. Nimal Gamini Hewawitharana- Member of the Provincial Council
Mr. V.P. Balasingham – Chief Secretary
Ms. J.J. Muralidharan – Council Secretary
Mr. S. Nadarasa- Deputy Council Secretary
Mr. A.M. Aneef – Legal Officer
Mr. R. Thiyalinkam- Former Council Secretary

Western Provincial Council

Hon. Prasanna Ranatunga – Chief Minister
Hon. Jagath Angage – Minister of Health
Hon. Udaya Gammanpila – Minister of Environment
Hon. Upali Kodikara- Minister of Transport
Hon. Sunil Wijeratne – Chairman
Hon. Renuka Perera- Chief Government Whip
Hon. George Perera- Chief Opposition Whip
Hon. Sisira Jayakodi – Member of the Provincial Council
Hon. Mahesh Almeda- Member of the Provincial Council
Hon. Shiral Lakthilake- Member of the Provincial Council
Hon. Isuru Devapriya - Member of the Provincial Council
Hon. Piyal Nishantha de Silva- Member of the Provincial Council
Hon. Nihal Jayawardena- Member of the Provincial Council
Hon. Harshana Rajakaruna- Member of the Provincial Council

Hon. Gunasiri Jayanath- Member of the Provincial Council

Mr.Victor Samaraweera- Chief Secretary

Mr. Lalith Kannangara- Council Secretary

Mr. A.K.N.H. Fernando – Assistant Secretary of the Ministry

Mr. D. Rajapaksa – Secretary

North Western Provincial Council

Hon. D.B. Herath – Minister of Agriculture

Hon. R.D. Wimaladasa- Chairman

Hon. Prasanna Shamal Senarath- Opposition Leader

Hon. D.M. Gamini Dissanayake – Former Provincial Council Member

Mr. T.G.U.B. Thambugala- Chief Secretary

Mr. M.A.B.V. Bandaranayake – Secretary of the Ministry

Mr. S.R.A. Samarakoon – Council Secretary

Mr. G.B.M. Sirisena- Secretary

Mr. S.A. Ariyaratne- Assistant Secretary

Mr. D.M.R.K.R. Dassanayake- Assistant

Sabaragamuwa Provincial Council

Hon. Maheepala Herath – Chief Minister

Hon.Ranjith Bandara- Chairman

Hon. Jayathilaka Podinilame- Deputy Chairman

Hon. (Miss) Thusitha Wijemanne- Chief Opposition Whip

Mrs. A. Siriyanie Padmalatha – Council Secretary

Mr. R.H. Nahalwathura- programme Assistant

Mr. M.K. Gunathilaka- Assistant Secretary

Mr. Sunil Leelananda Perera- Assistant Secretary

Mr. H.S. Kariyawasam – Coordinator Secretary

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Asoka Herath

S. Kamaladevi

Center for Policy Alternatives

The mandate of CPA, identified at its inception, is to strengthen the civil society contribution to opinion and decision making in public policy in the areas of peace and governance within a rights based framework.

Accordingly, the objectives of CPA are:

1. To contribute to public accountability in governance through strengthening of the awareness in society of all aspects of public policy and implementation
2. To make inputs into the public - policy making and implementation process in the constitutional, legislative and administrative spheres to ensure responsible and good governance
3. To propose to the government and parliament and all other policy – making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the Rule of Law, human rights and social justice
4. To contribute towards the conflict resolution process in Sri Lanka and the South Asian region, so as to strengthen institutions and capacity building for democratic governance in multi-ethnic and pluralist societies
5. To focus attention of the social and political consequences of development

In pursuit of the above objectives, CPA is pledged to carry out the following activities:

- Programmes of research and study and the establishment of a documentation centre on public policy
- Dissemination of research and study through seminars, conferences, publication and exchange of ideas, including the use of the print and electronic media
- Advocacy of constructive policy alternatives, lobbying of decision makers and the shaping of public opinion
- Monitoring of the executive, legislature, judiciary, media and other public institutions
- Forging linkages with local and foreign institutions with similar aims and objectives