
**MAPPING AND ASSESSMENT OF
PROVINCIAL COUNCIL STATUTES
& DRAFTING OF MODEL STATUTES**

DELIVERABLE 3 - REPORT

INSTITUTE FOR CONSTITUTIONAL STUDIES

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1. Introduction

1.1 The already submitted Report – Deliverable 2 – [copy attached as Appendix 1] provided the scope and modality of the project with details on the number and subject-matters of statutes passed by all the Provincial Councils [PCs] and the areas of the PC List which have not been made use of by the PCs so far. It also listed the Province-wise usage of the PC subject matters for statute-making. The Report further gave an account of the subjects in the PC List which have been used popularly by most of the PCs and which have not been made use of that often. It also provided a brief analysis of the reasons for the PCs not venturing into some of the subjects devolved under the 13th Amendment. The Report further provided in detail the different ‘manner and form’ of devolution adopted in the 13th Amendment and opined that the different approaches adopted in the 13th Amendment would have been one of the reasons for the reluctance on the part of the PCs; this might have been due to grey areas with regard to the scope of legislative power devolved on the PCs as well as lack of clarity the PCs experienced. The Report also presented a few specific analyses of selected Statutes and commented on them.

1.2 The present Report will not go into those matters covered already, save some references may be made to underscore recommendations which are made here. The Project subjected a selection of Statutes enacted by all the PCs to a qualitative analysis. For this purpose, a minimum of two Statutes per Province was selected. However, mostly different Statutes have been chosen from different PCs for this analysis on the basis of their importance and scope of coverage of the subject matter

by those different PCs. The names of PCs and the Statutes selected for analysis are given in Appendix 2 of this Report. The detailed analysis of each of those Statutes is provided in Appendix 3 which is attached to this Report. Those extensive analyses have not been incorporated in the body of this Report as such a wholesale incorporation would distract the focus and usefulness of this presentation. Instead, the present write-up will highlight some of the most important facets culled out from those analyses to bring them to the attention of the readers.

- 1.3** The main focus of this Report is to highlight a) good practices incorporated in the statutes; b) gaps in statute-making (other than those which have already been highlighted in the Deliverable 2 – Report- Appendix 1); c) overstepping the scope of devolved authority; d) challenges faced by the PCs in making statutes; and, e) areas and aspects of Provincial statute-making which require improvement.
- 1.4** Also, this Report contains recommendations for improved functioning of the Provincial Councils in their legislative role.
- 1.5** This study is being carried out thirty years after the Provincial Council system has come to be established. When the constitutional amendment to facilitate the devolution of legislative and executive powers was enacted in 1987¹ the then ground situation was markedly different from what it is now. The division of legislative subject matters into three lists [Provincial Councils List, Reserved List and Concurrent List] in the Ninth Schedule of the Constitution was done in a hurried and haphazard manner – not in a well-considered and fully informed manner. Nevertheless, the use of the line items of these Lists and the interpretation and construction thereof have got increased and broadened as the functioning of the Provincial Councils gained experience and momentum. One can predict that this natural tendency will go on further expanding and stretching the powers enjoyed by the Provinces.

¹ Thirteenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

2. Good Practices

2.1 It is refreshing to note that the study found many provisions representing good practices incorporated in the statutes made by the PCs. Some of the important ones are given below.

2.2 Objects and Aims of a Statute. It is desirably a good practice to provide the objects and aims which are intended to be achieved by making a statute. In particular, it provides authoritative statement of the purpose for which or the object which is to be achieved by the enactment of the statute. It provides valuable assistance in the interpretation and implementation of the provisions of the statute. The fact that the long title of a statute says the purpose of the statute or the preamble of the statute recites such objects does not play an important role when a question of interpretation of the provisions of the statute is raised. They are only a guide and they cannot be treated as integral part of the statute. However, an object clause is part and parcel of the statute which has to be taken into consideration when implementing or interpreting the provisions of the statute. In this respect, the Western Province Rural Development Statute, No. 2 of 2013 sets a very good example by elaborately providing its objects and functions (purposes) [vide s. 2]. The Western Province Waste Management Statute, No. 1 of 2007 also stipulates the objects which are to be achieved under it. Similarly, the Early Childhood Development Statute of the Central Province², the Sabaragamuwa Pre-Child Education Development Authority Statute³ and the Southern Province Social Services Statute⁴ provide for the objectives in their respective pieces of legislation.

This desirable feature is not found in the Eastern Province Statutes on Tourism as well as on Housing.

2.3 Promoting Consultative Process. One of the desirable democratic features of administration is to facilitate consultative and inclusive process not only in statute-

² Section 8 of the Early Childhood Development Charter of the Central Province No. 03 of 2015; see also Section 7 of the Central Province Rural Development Statute No. 02 of 2015.

³ Section 3 of the Sabaragamuwa Pre-Child Education Development Authority Statute, No. 02 of 2010

⁴ Section 2 of the Southern Province Social Services Statute No. 02 of 2002; see also Section 02 of the Southern Province Alternate Power and Energy Statute No. 02 of 2007 .

making but also in exercising the powers and performing the functions under such statutes. This consultative process could take place with the central government authorities and those below the provincial administration. The Eastern Province Tourism Bureau Statute No. 1 of 2015, which is on a Concurrent List Line Item, contains such a positive and welcome feature of democratic practice. The Statute provides for the Tourism Bureau to engage in consultation with the national tourism authorities when the Bureau wants to involve in tourism related business ventures in the Province. [s. 19 (1)]. Similarly, the Eastern Province Housing Authority Statute No. 2 of 2013 provides for the Provincial Housing Authority to follow a consultative process with the relevant institutions of the central government when formulating any housing related development work [s. 6 (2)].

A consultative process with the relevant stakeholders is also provided for in the Central Province Rural Development Statute No. 02 of 2015.⁵ The Southern Province Alternate Power and Energy Statute No. 02 of 2007 is another example where a provision for consultative process with the relevant stakeholders is incorporated in the statute.⁶

The Northern Province Health Services Statute, No. 1 of 2015 also provides for a consultative process for getting the Annual Health Plan of the Province approved.

2.4 Avoidance of Conflict with the Centre. It is common ground when subject matters of legislation are divided or shared among more than one authority, there is bound to be conflicts and disharmony among these bodies. This is naturally expected. But what is needed as a matter of good practice is to have institutionalized mechanisms which will ensure or attempt to ensure that such conflicts and discords are minimized if not fully avoided. The Eastern Province Tourism Bureau Statute has taken the precaution of prescribing that due regard is

⁵ Section 8 (e) & (h) of the Statute.

⁶ Section 05 (d) of the Statute.

to be given to the provisions of the Tourism Act of Parliament in the exercise, performance and discharge of the powers, functions and duties of the Bureau under the Statute. This provision is obviously to avoid any conflict between the provincial administration and central government in their respective tasks [s. 13]. Likewise, the Eastern Province Housing Authority Statute requires the Provincial Housing Authority to consult with the relevant central government institutions when implementing any housing related development work which may affect the rights, interests or functions of those bodies [s. 6 (2)].

Although consultative process is not mentioned expressly in the Western Province Rural Development Statute, No. 2 of 2013, the functions under the statute include the task of coordinating with the governmental (central), foreign and local non-governmental organizations established for rural development. This clearly shows that the Department of Rural Development is expected to work in coordination with the relevant authorities and not in their seclusion or isolation. Similarly the Western Province Waste Management Authority is also called upon to work in coordination with local authorities and other organizations having similar objects.

2.5 Avoidance of Conflict of Interests in the Membership of Boards of Management, etc. It is axiomatic that persons who are appointed to positions of responsibility and public power should be devoid of any conflict of interests or partisan interests – both in reality and appearance. Otherwise the trust and confidence the general public repose in those institutions and offices would be badly affected and that will undermine the standing and acceptance of those institutions and position. This is obviously one of the best practices which should be embedded in the creation of statutory bodies which are invested with public power to do good to the public.

Although the Provincial Minister is empowered to appoint members of the Eastern Province Tourism Bureau, he is required to ensure that no person with any direct or indirect financial or other interest could be appointed, or could be permitted to

continue, as a member of the Bureau [s. 5 of Eastern Province Tourism Bureau Statute No. 1 of 2015]. A somewhat similar provision is included in the Eastern Province Provincial Housing Authority Statute No. 2 of 2013. The Provincial Minister who is given authority to appoint members to the Provincial Housing Authority is required to be satisfied that the persons who are to be appointed have no financial or other interest which conflicts with their functions as members of the Housing Authority [s.3]. It is further provided in the Statute that the Minister should satisfy himself from time to time that no member has any such interest while being a member of the Authority. The Provincial Housing Authority Statute furthermore precludes and disqualifies a Member of Parliament, Provincial Council or Local Authority from being a member of the Housing Authority.

The Western Province Waste Management Statute, No. 1 of 2007 too has a provision which prevents a person with conflict of interests being appointed a member of the Waste Management Authority set up under it.

2.6 Removal of Members from Boards, etc. In the same way as appointing persons to the membership of Boards and Authorities, the removal of those members appointed to those institutions should also ensure certain safeguards. This is essential because if an appointed member could be removed at the whims and fancies of the appointing authority, then it is obvious that the person so appointed would be at the mercy or sympathy of the appointing authority. The member will not be or will not appear to be capable of discharging the functions pertaining to the office in an independent manner. This is another instance of good practice which should be embedded in the public service of the country.

The Provincial Minister in charge of the subject of tourism in the Eastern Province is given statutory authority to appoint and remove members of the Tourism Bureau under the Statute. However, this power is subject to a good practice of administration, in that the Minister can remove an appointed member and chairman after assigning reasons only. He is precluded from removing an appointed member or chairman without any reasons. This provision attempts expressly to obviate arbitrariness and caprice in administrative and executive actions. A similar position is included in the Eastern Province Housing Authority Statute too. [s. 3]

2.7 Directions are to be in writing. It has been a common manifestation in the public service that the political authorities at the helm institutions which come under them give directions and orders orally; not in writing! It is true that there are instances where the situation may demand an immediate verbal instruction; however, it is necessary for the concerned authority to reduce the verbal instruction into written form once the urgency is diminished for the purpose of official record. But the cliché in the public service has been that it never happens, which phenomenon is not a good practice of administration! What accords with good practice is that the instructions or directions should be given in written form.

The Eastern Provincial Minister for Tourism is given statutory power to issue general or special directions to the Tourism Bureau in respect of its duties, powers and functions and the Bureau is required to give effect to such instructions. However, the Ministerial directions have to be in writing [s.30]. It is, therefore a good administrative practice that official directions are given in written form and administrative officers should not act on verbal instructions given by the Minister. As such, any general or special instructions given by the Minister verbally to the Bureau and acted upon cannot absolve the responsibility of the Bureau by claiming that it was the Minister who gave the directions and that it is not responsible for carrying the directions as it implemented the directions of the Minister only!

Comparatively, the Eastern Province Housing Authority Statute does not expressly require the relevant Minister to give in writing his directions – general or special – to the Housing Authority. Here the Statute fails to incorporate a good practice of administration!

2.8 Consent/Concurrence of Management Board – Appointment & Removal of Responsible Officers by the Minister. The Eastern Provincial Minister of Tourism is empowered to appoint and remove the General Manager of the Tourism Bureau. However, he could appoint and remove only after obtaining the written consent of the Bureau. And with regard to the removal of General Manager, the Minister should give reasons for doing so [s. 22 (6) of the Eastern Province

Tourism Bureau Statute No. 1 of 2015]. In contra distinction, the Eastern Province Housing Authority Statute of 2013 empowers the Housing Authority to appoint the General Manager of the Housing Authority; however, the statute requires the Housing Authority to exercise this power with the prior approval of the Provincial Minister in charge of Housing. But there is no express requirement to give reasons for such removal which fails to accord with good practice.

2.9 Delegation of Authority. It is considered to be a good administrative practice to delegate powers to officers and such delegation is statutorily authorized. This ensures that there is no concentration of power in one person or authority, but diffusion of power; also it formalizes the delegation and makes the delegated authority to exercise power traceable to a statutory provision. Section 29 of the Eastern Province Tourism Bureau Statute provides for delegation of powers, functions and duties by the Bureau to its officers and employees.

2.10 Status of Legal Person / Body Corporate. It is desirable to have the body which implements a statute conferred the status and recognition of being a legal person. Such a statutory recognition, as a body corporate with its usual trappings, makes it easy for anyone to deal with its personnel as the body carries perpetual succession and consequently responsibility and liability though the personnel may move out in short periods. The Eastern Province Tourism Bureau Statute provides for this legal position; so does the Eastern Province Housing Authority Statute.

2.11 Facilitating Civil Society bodies. As had been adverted to in the earlier Report, the subject of ‘rural development’ could be used for the development of rural areas and thereby developing the lives – economic, social, educational, cultural, etc. – of the people. There are no limitations or restrictions placed on this subject of devolved power. However, it is evident that civil society people or groups, including women, at rural level may not have the expertise and skills to organize themselves as a body to take the development activities forward. Hence, it is a desirable step if necessary constitutional instruments are provided for the people to organize themselves as structural bodies, it will go a long way in commencing their activities and functioning in an orderly manner. The Western Province Rural Development Statute is a good example on this account as a model constitution is

provided in the statute itself for establishing the different societies recognized by the statute. These societies are also statutorily accorded the status of legal person with a common symbol, having authority to enter into contracts and the right to sue and be sued. This will, in addition, ensure that the members of these societies will not be personally liable for any action of the Society.

Therefore, many PCs have incorporated provisions in their statutes which facilitate empowerment of women and other vulnerable groups. The Southern Province Social Services Statute No. 02 of 2002⁷ and the Central Province Rural Development Statute No. 02 of 2015⁸ are good examples for this.

2.12 Delegation of the power of enforcement. It is a desirable and welcome feature if a PC makes a statute and the statute authorises the local authorities of respective areas to implement as well as enforce the provisions of the statute. The provincial level administration could permit the local authorities to perform an agency-type function. This is practised in many other countries. The Western Province Waste Management Statute contains such a provision with regard to enforcing the provisions relating to offences specified under it. Also the statute empowers the local authorities to make relevant by-laws in relation to some of the functions of the Waste Management Authority within their respective areas.

3. Gaps in Statute Making

3.1 This section deals with gaps in making statutes by the PCs. However, as indicated already the present section does not cover the gaps which have already been shown in the Deliverable 2 Report. The present section deals with the lack of comprehensive coverage of subject-matters on which PCs had made statutes. For instance, a PC might have made use of a line-item prescribed in the PC List but it would not have made use of the line-item fully or comprehensively to address all possible matters contained in the line-item.

⁷ Sections 2 and 8 of the Statute.

⁸ Sections 8 and 34 of the Statute.

3.2 The Eastern Province Road Passenger Transport Authority Statute No. 02 of 2009 is an example where the PC did not make use of the relevant line-item in the PC List to the full. In terms of Line-item 8 of the PC List, the “Regulation of road passenger carriage services and the carriage of goods by motor vehicles within the Province and the provisions of inter-provincial road transport services” are within the legislative competence of the PC. However the Statute referred to above deals with the regulation of road passenger carriage services and the carriage of goods within the Province; it does not have any express provisions to enable the PC administration to engage in the provision of inter-provincial road transport services within the Province. While the PC List enables the PC to regulate the road passenger transport on one hand and it also enables the PC to provide inter-provincial road transport services. This is a lacuna which the PC could have avoided, though it may not have started a road passenger transport service by itself immediately. The Statute could have made provision for it by utilizing the line item to the optimum.

3.3 Similarly, the Northern Province Health Service Statute No. 01 of 2015 as amended subsequently provides as one of the functions of the Northern Province Department of Health the following: “establish, administer and maintain Health institutions set out hereinafter in the Schedule ... and to promote the improvement of the services provided by them.” The Schedule attached to the statute contains the names of hospitals – General Hospital, Base Hospital (Type A), Base Hospital (Type B), Divisional Hospitals (Type A), Divisional Hospitals (Type B) Divisional Hospitals (Type C), Primary Medical Care Unit, Chest Clinic, S. T. D. Clinic, etc., which have been already in existence when the Statute was enacted. By providing the number of different types of hospitals and their places, the PC has, through its statute, restricted its administration to those hospitals only. In future if the Provincial Administration were to establish a hospital in a place which is not mentioned in the Schedule, it requires an amendment to the Statute as it refers to the hospitals listed in the Schedule. This lapse is a failure to intelligible use the line-item effectively and efficiently.

3.4 Similarly, the line-items, ‘rural development’ [PC List Item No. 10], ‘income generating projects’ [PC List Item No. 21] amongst others, could have been made use of by the PCs in a very visionary and effective manner to clothe the Provincial Administration with necessary and effective powers to guide and help the people of their area to improve their own economic condition and life style and consequently the economic status of the Province in particular and the country in general. Save in the case of a few PCs which have made meaningful use of these line items, the failure on the part of the other PCs to make use of these two line items in a broad and purposeful way is a deficit which could have been avoided had the Council been more sensitive to the scope of these two line items.

3.5. It is also noted that the Provincial Councils do not generally follow the good and professional practice of having Policy papers [Green Paper/White Paper] prepared on proposed statute before the officers commence drafting a statute. This is a practice which is universally followed and in particular followed by the office of the legal draftsman at the national level in the country. However, this practise does not seem to be followed by a majority of the Provinces if not all.

3.6 In a sense, the good practices referred to in 2.1 above become shortfalls when those are not adopted in the Statutes made by the Provincial Councils.

4. Overstepping the Scope of Legislative Authority

4.1 Having seen the gaps in statute making, it is also necessary to look at the statutes to assess whether they have exceeded the limits of authority given by the constitutional provisions. This study came across many instances where the statutes passed by some of the PCs have gone beyond the legislative authority conferred by the constitution. In this respect, there are two situations which should

be taken into account. One such scenario is where the statutes made by the PCs go beyond the scope of substantive legislative authority stated in a line item of the PC List or the Concurrent List. The other is where the PCs have made statutes on matters which are not stated expressly in any of the line items of these Lists.

4.2 Statutes made by PCs on matters such as ‘salaries and allowances⁹’, ‘cadres¹⁰’, ‘emergency fund¹¹’, ‘Governor’s fund’, ‘Chief Minister’s fund¹²’, ‘Provincial Council Staff¹³’, etc. do not fall under any specific item enumerated in the PC List. However, while some of them fall within the provisions of the Provincial Councils Act, No. 42 of 1987 and others may be considered to facilitate the effective functioning of the entire provincial administrative set-up and therefore to come under the overall purview of the subjects mentioned in the PC List.

4.3 There are also statutes passed by the PCs and assented to by the respective Governors which overstep the substantive scope of legislative authority specified in the PC List. For instance, the statutes passed by some PCs purportedly on the general subject of “Education and Educational Services” [Line item 3 of the PC List] and the specific subjects of ‘Supervision of the management of (a) all pre-schools...’ and ‘Registration and supervision of pre-schools’ [Clauses 2 (a) and 18 of Appendix III (Education) attached to the PC List] go well beyond the express, implied and incidental authority devolved on the PCs. Where the PCs are authorised to have legislative and executive authority over registration and supervision of the pre-schools, some PCs have enacted statutes to provide for the establishment of model pre-schools, provide training and certificates and establish training centres, etc.¹⁴ These do not fall within the scope of devolved power.

⁹ Payment of Salaries & Allowances Statute of the Central Provincial Council, 1989 as subsequently amended; Southern Province Salaries and Allowances for Chairman/Deputy Chairman Statute No. 03 of 1989; Uva Province Payment of Salaries and Allowance Statute No.02 of 1990; Western Province Payment of Salaries and Allowances Statute, 1989;

¹⁰ Southern Provincial Council Secretariat Cadre Statute No. 05 of 1989

¹¹ Central Province Emergency Fund Statute No. 02 of 1990; Eastern Province Emergency Fund Statute No.02 of 2010; Southern Province Emergency Funds Statute No. 04 of 1989; Uva Province Emergency Fund Statute No.01 of 1989; Western Province Emergency Fund Statute, 1989.

¹² Uva Provincial Council Chief Minister’s Fund Statute No.2 of 1993

¹³ Central Provincial Council Secretarial Staff Board Statute No.15 of 1990.

¹⁴ Northern Province Pre-School Education Statute No. 03 of 2015; Central Province Early Childhood Development Charter (?) NO. 03 of 2015; Bureau of Pre-School Education of Eastern Province Act (?), No.01 of 2010; North Western Province Statute No. 4 of 2003; Southern Province Pre-School Statute No. 2 of 2008; Western Province Pre-School Statute No. 1 of 2013.

4.4 Similarly, the statutes enacted by some of the PCs on the subject of “Indigenous Medicine – Ayurveda, Siddha and Unani” go well beyond the scope of the two sub-clauses stipulated in the PC List [vide Item 12]. The two sub clauses authorise the PCs to make statute on the i) establishment of Ayurvedic dispensaries and hospitals, grants to such dispensaries and hospitals [12:1]; and, ii) establishment and maintenance of herbaria [12:2]. The statute¹⁵ passed by the Northern Provincial Council on this subject exceeds the scope of authority granted to it by the PC List. The statute purportedly declare as its objectives, among others, the implementation of ‘preventive measures and health education activities to promote the health conditions of the people of Northern Province, according to Indigenous Medicine system’, ‘regularizing any dispensaries, hospitals, sales centers, drugs producing centers, yoga service centers in the names of (meant accordingly) siddha, Ayurveda, Unani, Yoga systems, other alternative medicine procedures’. Although the PC might have enacted this statute with well-being of the people in mind, the subject matters covered by the statute go beyond the limits of power conferred upon the PC. This is the case with the Western Province Indigenous Medical Statute, No. 3 of 2013. This statute too covers matters which do not fall within the two clauses given in the line item 12 of the PC List.

4.5 Another instance where a PC had transgressed its devolved legislative authority is found in the Western Province Rural Development Statute No. 02 of 2013. One of the declared ‘objectives and functions’ of the said statute is ‘establishing banks for rural development to ensure the safety of members’ [of the Rural Development Societies & Women Rural Development Societies] money and ... banks for rural development shall be established at divisional and district level.¹⁶ In terms of the Reserved List, the subject of ‘Banking’ is exclusively a matter for the Central Government and Article 154G (7) makes it abundantly clear that PCs shall have no power to make statutes on any matter set out in the Reserved List. Furthermore, item 27 of the PC List while giving a PC the power to make statutes on ‘incorporation, regulation and judicial winding up of corporations’ it expressly excludes ‘trading corporations, *banking*, insurance and finance corporations.’

¹⁵ Northern Province Indigenous Medicine Statute, No. 09 of 2016.

¹⁶ S.02 (g) of the Rural Development Statute of the Western Provincial Council, No. 02 of 2013.

However, there is one exception recognized by the Constitution in the Concurrent List. One of the subject matters on which a PC can also make statute is ‘Co-operative Banks’ [Item 15 of the Concurrent List]. In this respect the Central Province Rural Development Statute No. 02 of 2015 does not contain such a provision.

5. Challenges faced by Provincial Councils in Making Statutes –

- 5.1** It is axiomatic that drafting of statutes is a pre-requisite for the Provincial Councils to make statutes. It is also equally true that statute drafting is a technically skilled exercise which requires training in substantive (theory oriented) and procedural aspects of the task. This includes practical exercises to make a person to become trained skilfully in statute drafting.
- 5.2** One of the challenges faced by the PCs is that they have not got cadres approved by the Central Government to recruit suitably qualified persons to such positions. It is learnt that all what the Provincial Administrations are provided with are the cadres for legal officers and legal draftsmen.
- 5.3** It is a sad state of affairs that the Provincial Administrations and Provincial Public Service Commissions have not taken this matter seriously to get such cadre positions approved by the Governor of the respective Province and/or the concurrence of the Central Government. This failure to develop and to have trained and skilled legal draftsmen in each of the PCs will continue to pose great challenges even in the future.
- 5.4** Also this leaves room for failure to maintain institutional memory with regard to what thinking went in when a PC decided to make a statute on a subject matter. The preparation of policy papers provides this information for the future as well. These are to be maintained by the Provincial Department/Bureau of Legal Draftsman so that they will be available for future reference.

5.5 One other challenge faced by the Provincial administrations is that the senior administrative officers who are responsible for providing to the political entities in the Province the possible policy alternatives and their implications on the society do not seem to have the necessary trained capacity to project such policy alternatives to the political decision makers. As such the political decision makers who are expected to authorize any particular course of action do not venture into making such decisions for the simple reason that they have not been trained to reflect on such issues and advise the political administration.

5.6 Another issue faced by the PCs relates to the consequences of making a statute which contains provisions that are inconsistent with some provisions of an Act of Parliament passed already on the same matter by the Central Government. It is understood that the Act will remain suspended and be inoperative within the Province if the said statute had in its long title described that it is inconsistent with the Act. It is commonly witnessed that many statutes of PCs do have this 'inconsistency clause' included in their long title stating that they are inconsistent with certain Acts of Parliament. It is assumed that the Act of Parliament referred to in the statute is suspended and inoperative in the Province until the statute is effective therein. Consequently the provisions of the Act are suspended and excluded from their operation in the Province and that the statute will only be applicable. There are many instances where such a position practically has put the Provincial Administrators into immense difficulty.

5.7 For instance, when a statute is made by a PC on a subject matter on which Parliament had already enacted a law, the PC may be making the statute to deal with some aspects of the subject matter only; not the entirety of the subject matter. The PC assumes that the rest of the matters of the law need not be incorporated in the statute. In terms of Article 154G (8), the provisions of the Act were to be deemed as suspended and inoperative in the Province; then there would be difficulty in implementing the provisions of the statute as there would be some vacuum. Because the statute did not include those provisions which were in the Act and which the PC did not see any objection to. Otherwise, the statute has to incorporate those provisions of the Act in the statute itself. This issue has caused many interpretational problems and led to many debates in the PCs.

5.8 The PCs should identify the most suitable and appropriate instrument for implementing the provisions of a statute to be made by it. Some subject matters may require the establishment of a ‘Department’ type of mechanism to execute the provisions of the statute, whereas some other subject matters may require the creation of a statutory body / agency with limited supervision and control of its functioning. So the PC should identify the subject matter properly and decide whether it is appropriate to establish a department or agency/authority which will ensure the effective and efficient discharge of functions under the statute.

5.9 There are broad subjects which are enumerated in more than one List in the Ninth Schedule, while specific aspects are specified in the Provincial Council List other aspects may be given in the Concurrent List. The process to be followed in making statutes on matters specified in the Provincial Council List is somewhat different from the ones falling under the Concurrent List. On a matter given in the Concurrent List, the PC is expected to follow a consultative process with the Central Parliament before making a statute¹⁷, whereas such a process is not prescribed with regard to enacting a statute¹⁸ on a PC List matter. However, there are different aspects of a subject matter enumerated in the PC List and the Concurrent List that are closely connected to each other and that a statute dealing with both the aspects of the subject matter may seem to be desirable instead of having two separate statutes. For instance, the subject of Health is found in both the PC List and Concurrent List. Similarly, broad subjects such as ‘Planning’, ‘Irrigation’, ‘Social Services and Rehabilitation’, ‘Agriculture and Agrarian Services’ are found in both these Lists, with different aspects enumerated in them. However, some of these specific aspects may be dealt with in one single statute, though the process to be enacting a statute under the PC List is different from that one under the Concurrent List.

The consequences of provisions of a statute passed under these two Lists may also be different. If the National Parliament wishes to override the provisions of a PC statute on a matter in the PC List the procedure it has to follow is different from if

¹⁷ Article 154G (5) (b) of the Constitution.

¹⁸ Article 154G (1) of the Constitution.

it wishes to make a law overriding the provisions of a PC statute on a matter in the Concurrent List. The stringent process to be adopted by Parliament to pass a law on a subject matter of the PC List will not apply to a subject matter on the Concurrent List. As such combining different aspects of one common subject matter may pose this difficult when it comes to ensuring that the National Parliament does not easily override the PC statute.

5.10 The Constitution provides¹⁹ for and enables a PC to make a request to Parliament to enact a law on a subject matter on the PC List. This request can be made by the PC by passing a resolution to such effect. If Parliament makes a law in response to the request of the PC, that law will be applicable in the Province only. This mechanism can be utilized by a PC to get a law passed by Parliament on a subject matter which is found both in the PC List and the Concurrent List. In such a situation, the difficulty adverted to in the preceding paragraph may not arise.

6. Areas and aspects of Provincial Statute Making which require improving.

6.1 The Provincial Ministries do not get the professional service of dedicated Legal Draftspersons to draft their statutes which are to be presented to the PCs for approval. The present provincial administrations have legal officers who are not legal draftspersons. They are called upon amidst their other tasks to draft statutes as well. Lack of trained, skilled and dedicated legal draftspersons is an area which requires immediate remedial action.

6.2 Senior administrative officers and policy makers must be very much aware of the scope and limitation of legislative authority devolved on the PCs. The overstepping of their limits creates unnecessary issues of governance and the rule of law. In this respect, trained legal draftspersons will be in a position to advise such officers and policy makers as to the limits of their authority. It is evident that the PCs have in

¹⁹ Article 154G (4) of the Constitution.

many an instance exceeded their limits of power and those statutes have received the assent of the Governor as well.

- 6.3** It is therefore evident that the Governor does not function as an Executive Governor; but discharges his/her duties as a nominal Head of the Province giving way for the will of the Provincial Council. But it is incumbent on the Governor to ensure that the PCs with limited authority do not act ultra vires those limits.
- 6.4** There are many different ways in which the scope of devolved power is circumscribed, curtailed, limited or qualified. The officers in the Province must appreciate this. They should advise and apprise the political decision makers on these limitations. To do so, they need to be somewhat trained to know the limitations on the powers devolved on the PCs.
- 6.5** For instance, the statute making exercise of the PCs must be undertaken as a collaborative exercise with all the stakeholders including the Central Government authorities; not as a confrontational activity or an exercise forcing down on the people of the Province. The initiative should be a consultative and participatory exercise. Releasing of Green Papers or White Papers and entertaining the views of the people and stakeholders is a practice which should be paid attention to by the PCs.

7. Recommendations

- 7.1** The Provincial Governors and/or the Provincial Public Service Commissions as the Provincial Authorities in charge of creating cadres, appointing officers and dealing with their service conditions should take immediate steps to create a Provincial Legal Draftspersons Service. The Provincial Councils may enact a statute for the establishment of a Provincial Department / Bureau of Legal Draftsperson. The provisions of the Provincial Councils Act, in particular s. 32 (3) of the Act, could be made use of for this purpose.

- 7.2** Each PC should try to recruit at least three legal draftspersons to be trained and engaged in this professional task. Towards this end, the PCs should try to arrange for senior officers in the Legal Draftsperson Department at the Central Government to be seconded for a few years to train the new recruit of the Provincial Department. In this respect the National Ministry in charge of Provincial Councils can play a critical role in getting this Service recognized by the Central Government as well as to impress upon the National Legal Draftsperson Department to permit a few officers to be released on secondment for service at the provincial levels.
- 7.3** It may also be a desirable step if a Provincial Attorney's Department is established in each Province by the Provincial Governor and/or Provincial Public Service Commission. One of the important duties of this Department would be, among others, to study all Bills when they were drafted and before presented to the PC and advise the Provincial Administration as to their constitutional compliance or otherwise. Such an institution will reduce many issues of inconsistency that may arise between the Statutes passed by PCs and the provisions of the Constitution and/or national laws.
- 7.4** The PCs should adhere to good practices in enacting statutes as well as ensure that those good practices, as evidenced in some of the statutes made by PCs, are included in their statutes. This will facilitate and enhance participatory, inclusive and transparent governance as well as strengthen good governance in the province. Also it has the tendency to minimize, if not eliminate, the space for arbitrariness in administration.
- 7.5** It is desirable and necessary that the Provincial Administrations have a proper and formal structure or mechanism in order to prepare and put out policy papers [White Paper or Green Paper] on subject areas over which they intend making statutes. These policy papers must be prepared preferably in consultation with experts and relevant stakeholders. It is a good practice if prior notice and adequate space and opportunity are provided to the people to express their views on such issues, in particular when those issues do have the potential to generate controversies and disputes.

- 7.6** One of the good practices would be for the PCs while enacting statutes on certain subject matters to delegate the implementation of those provisions to the local authorities of the Province. This will facilitate the officers of local democratic institutions who are closer to the people in localities to engage in those functions and gain experience and exposure to those activities. The Provincial Administration can oversee how things are being done; but it can reduce the number of its employees than what is needed if they are to implement those provisions.
- 7.7** All the PCs must be provided with all the Laws and Statutes made in this country. They should also have the copies of judgments delivered by the Courts, in particular the Supreme Court, Court of Appeal and all the Provincial High Courts in their appellate jurisdiction. There should be continuous arrangement for the PCs to obtain the judgments delivered by these courts.
- 7.8** It is also found that many PCs do not have their statutes made in all three languages. Only a few have been doing so. Even if they are not making in all three languages, the statutes shall be published in the two languages, namely the language used in the administration of the Province and the English language. The PCs must be provided with qualified translators to ensure that the statutes are made in at least two languages, if not three languages, in order to ensure and respect the linguistic rights of the people in the country.
- 7.9** There should be constitutional or legislative provision facilitating formal meetings of the Chief Ministers and Law Ministers of all the Provinces regularly. Similarly, there could be legislative opportunity for Provincial Legal Draftspersons to meet regularly to discuss their issues and achievements so that there would be sharing experiences among them which will go a long way to help in their functions.
- 7.10** It is also recommended that there should be regular meetings between the relevant officers of the Provincial Administrations and the Central Government over each subject matter on which there could be tension or difference of opinion amongst them. It would be desirable if these meetings and dialogues are made use to iron

out any potential conflicts between these two bodies. These could even be between the relevant Ministers of the Central Government and the Provincial Administrations.

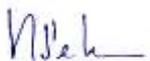
- 7.11** The Central Government Ministry in charge of Provincial Councils should shoulder the responsibility of prevailing upon other fellow Ministries to ensure that the physical resource and human resource deficits in the Provincial Councils are addressed materially, timely and satisfactorily without compromising on the responsibilities cast on the Provinces. The Central Ministry of Provincial Councils must not only act as the friend and facilitator of Provincial Councils but also seen and felt to be so by the Provincial Councils and their people.

8. Conclusion

- 8.1** The Provincial Councils and Provincial Administrations in the country have come a long way – thirty years - since their establishment in the country. Save the Provincial Councils for the Eastern and Northern Provinces, which had a shortened life-span in the initial period as a merged North – Eastern Provincial Council and then came to be re-established as separate Councils in 2009 and 2013 respectively, other Provincial Councils have made around 250 statutes among themselves during this period of thirty years. Eastern and Northern Provincial Councils have enacted twenty-six statutes in all during their short spell of ten years and five years respectively.

This is a remarkable performance given the fact that the Provincial Council system is new to the country, the initial years were spent on setting up the institutions, the personnel who are elected to the Councils were not well versed in the functioning of the system and that the system did not have the trained and skilled human and other necessary resources to draft statutes. Even to this day, the PCs do not have the necessary skilled and trained personnel – on a permanent or temporary basis – to engage in this professional task.

- 8.2** Although there are shortcomings in some of the statutes made by a few Provincial Councils, there are many good practices which have been implanted in other statutes which are sometime lacking a place in the national legislation. In certain cases, some of the statutes seem to provide direction in adopting principles of good governance and participatory and responsive democracy which could be followed desirably at the national level.
- 8.3** It is noted with satisfaction that suitable provisions representing many instances of good practices have been included in the statutes made by PCs. For instance, provisions to ensure the avoidance of ‘conflict of interests’ when making appointments to important executive or managerial positions; to promote consultative process with stakeholders; to avoid confrontational approach with the centre; to require that reasons are given when removing important officials; to necessitate that directions and instructions given by political authorities in the helm are given in writing; to declare objects and aims of making of the statutes; to encourage diffusion of power through delegation thereof; to empower women and vulnerable sections of the society, are some of them.
- 8.4** The political representatives in the Provincial Councils and the personnel at the Provincial Administrations must not only be responsible and answerable to the people of the province for what they promised to do but also they should be responsive to the needs and necessities of their people. If they are unable to perform this due to paucity of resources – both human and material – the responsibility for such a failure should justifiably lie not only at the feet of the Provincial Authorities but also at the shoulders of the Central Authorities.!



Prof. N. Selvakkumaran

Team Leader/

Mapping of Statutes Project

ICS

APPENDIX 1

Mapping and Assessment of PC Statutes & Drafting of Model Statutes

Deliverable 2 - Report

1. Introduction

1.1 The Project carried out a mapping exercise of the Statutes made by the nine Provincial Councils [PCs] under the Provincial Council List (List 1). The names of these Statutes have been provided by the relevant officers of the Provinces themselves. However, the copy of all the Statutes claimed to have been made by these PCs has not been provided to the Mapping exercise. Also while a majority of the Statutes is in the Sinhala Language, there are a significant number of them in the English Language as well. All the Statutes made by the Eastern PC and Northern PC are in all three languages, some of the other PCs too have enacted a few Statutes in all three languages.

2. Statute Mapping & List of Statutes

2.1 While Table 1 [Annex 1] gives an overview of the total number of Statutes made by all the PCs since their establishment, the subject matters on which each of the PCs has made Statutes are given in Table 2 [Annex 2]. The total picture with gaps in statute-making by the PCs on the subjects enumerated in the PC List is found in Table 3 [Annex 3]. There are a few Statutes which are made by these PCs which do not fall strictly within the matters specified in the PC List but which facilitate the PCs and their Administration to function effectively in discharging their allotted functions. Names of those subjects are found in Table 4 [Annex 4].

It is also evident that some of the subject matters on which some of the PCs have made Statutes are found in the Concurrent List as well.

2.2 The Western PC tops the list of number of Statutes passed by the PCs. It has made 52 Statutes during the last thirty years. The second place goes to the North Western PC with 41 Statutes. While the Sabargamuwa and Uva PCs are in the thirties with 35 Statutes and 34 Statutes respectively to their credit, the Central, Southern and North-Central Provinces have enacted 27, 26 and 23 Statutes respectively for their part. The Northern PC has enacted 15 Statutes and the Eastern PC has 07 Statutes to its credits. While the Eastern PC has functioned for about two terms, the Northern PC has commenced functioning since October 2013 only. In this respect, it has to be noted that the merged North-Eastern PC had had a very short existence as an elected PC at the initial period when the PC system was established in 1988. All the other seven PCs have had a longer period almost spanning three decades.

2.3 The Line Item 'Regulation of Road Passenger Carriage Services and Carriage of Goods by Motor Vehicles' [PC List No. 8] is the subject matter of 21 Statutes made by all the PCs. Each of the subject matters of 'Social Services & Rehabilitation' [PC List Item No.7] and 'Cooperatives' [PC List Item No. 17] has attracted 20 Statutes a piece across all the PCs. However, the subject matter which tops the list is the revenue raising subject items [PC List No. 36] having 64 Statutes in total by all the PCs. 'Education & Educational Services' PC List No. 3] is also a subject which commanded the attention of all the PCs with 16 Statutes. With regard to the number of Statutes, 'Local Government' [PC List No. 4] comes next with 13 Statutes passed by all the PCs other than those of the East and North. Nineteen Statutes to 'promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income-generating projects' [PC List No. 21] have been enacted by seven PCs excluding the Eastern and Northern PCs.

2.4 Thirteen Line Items of the PC List have not been made use of by any PCs to exercise their legislative authority so far. These include 'Police and Public Order' [PC List No. 1], 'Markets fairs' [PC List No. 15], 'Food Supply and Distribution' [PC List No. 16], 'Reformatories, Borstal institutions...' [PC List No. 22], 'Possession, transport, purchase and sale of intoxicating liquors' [PC List No. 23], 'Burials and burial grounds ...' [PC List No. 24], 'Regulation of mines and mineral development ...' [PC List No. 26], 'Incorporation, regulation and judicial winding up of corporations ...' [PC List No. 27], 'Betting and Gambling ...' [PC

List No. 30], ‘Provincial Debts’ [PC List No. 31], and ‘Borrowing of money ...’ [PC List No. 35].

2.5 While two PCs [Western & North Western] have passed three Statutes each (including amendments) on the subject of ‘Protection of environment ...’ [PC List No. 37], the remaining subjects enumerated in the PC List, other than those referred to above, have been legislated upon by the PCs on less than ten occasions only. These include ‘Health’ [PC List No. 11] with six PCs other than those of the Sabaragamuwa, Eastern and North-Western Provinces having Statutes; ‘Agriculture and Agrarian Services’ [PC List No. 9] with only three PCs [the North-Central, North-Western & Uva Provinces] having Statutes; ‘Rural Development [PC List No. 10] with five PCs, other than the Northern, North-Central, Southern and Eastern Provinces - having Statutes; ‘Local Government’ [PC List No. 4] attracting six PCs other than those of the Central, Eastern and Northern Provinces having Statutes.

3. Brief Overview/Analysis

3.1 While the total number of Statutes made by all the nine PCs amounts to 256, the breakdown of its number by Province-wise is given in Table 5 [Annex 5], Fifteen important or critical areas/subjects, from the perspective of service provision to the people, are listed in Table 6 [Annex 6]. However, there seems to be some reasons for the well-established and long-standing PCs not to have made use of these important areas for their statute making.

3.2 One of the reasons may possibly be the ‘manner and form’ of devolving these powers to the PCs through the PC List. The approaches adopted by the constitution-makers of the PC system have demonstrated that there are many different ways in which the powers have been devolved and that there are many grey areas and lack of clarity with regard to the scope of legislative power devolved on the PCs.

3.3 The approaches could be understood somewhat intelligibly if one were to identify the manner and form of devolution of legislative power to the PCs. They take different approaches or forms as listed below.

3.4 The approaches can be broadly categorised as: (i) subjects, without any limitations; (ii) subjects with specific limitations; (iii) subjects which are dependent on Parliamentary Laws to

be operationalized; (iv) subjects which are presently made available to the PCs but whose authority could be qualified or limited by Parliamentary Laws; (v) subjects, the scope and limitations of which are provided in the Appendices attached to the PC List; (vi) subjects, the broad areas of which are found both in the PC List and the Concurrent List.

3.5 The subjects such as “Rural Development” (PC List Line Item No. 10); “Markets Fairs” (PC List Line Item No. 15); “Food supply & distribution” (PC List Line Item No. 16); “Provincial debt” (PC List Line Item No. 31) are examples for subjects which are devolved on the PCs without any limitations. On the other hand, the subjects such as “Roads & bridges & ferries thereon other than – national highways and bridges & ferries on national highways” (Item 6); Pawnbrokers – Pawnbrokers other than pawnbrokers business carried on by Banks” (Item 14) represent the approach of subjects with specific limitations.

3.6 “Regulation of road passenger carriage services & the carriage of goods by motor vehicles within the Province and the provisions of inter-provincial road transport services” (Item 8) can also be placed under the category of subjects with specific limitations. This is because the restricted task of ‘regulation’ has been devolved to the PCs with regard to this subject matter. For instance, ‘establishment and provision’ of carriage of goods services is not devolved on the PCs.

3.7 The subject, “Promotion, establishment & engagement of agricultural, industrial, commercial & trading enterprises & other income-generating projects ...” [PC List Line Item No. 21] represents almost an item devolved without limitation; however, this rubric includes an exemption clause which recognizes ‘the power of the Government and public corporations to have such enterprises and projects’ in the Province.

3.8 Subjects such as “Borrowing of money...” [Item 35], “Regulation of mines and mineral development” [Item 26] and “Protection of environment ...” [Item 37] are examples of subject-matters which are dependent on Parliamentary laws to be operationalized because they are subject to the condition that the PCs can exercise power “to the extent permitted by or under any law made by Parliament”. Hence, the relevant Parliamentary laws are made to prescribe the extent of power either by it or under it, the subject matter is not effective.

3.9 On the other hand, there are a few subjects that are presently made available to the PCs but the authority over those subjects could be qualified or limited by laws made by Parliament. For instance the subject of “Burials and burial grounds, cremation and cremation grounds” [Item 24] are given broadly to the PCs subject to the qualification that those which are declared by or under law made by Parliament to be national memorial cemeteries. A similar position obtains with regard to the subject matter “Ancient and historical monuments and records” [Item 25:2].

3.10 There are three major and important subject matters the scope and limitations of which are provided in the Appendices attached to the PC List. They are known as “Police and Public order” [Item 1], “Education and Educational Services” [Item 3] and “Land” [Item 18].

3.11 These apart, there are subjects which appear in more than one List. For example, the subjects of “Social Services and Rehabilitation” [Item 7], “Agriculture and Agrarian Services” [Item 9] “Education and Educational Services” [Items 2 & 3] appear in both the PC List and the Concurrent List. Of these three items, the last one is also governed by Appendix III attached to the PC List as stated in paragraph 3.10 above. Similarly “Land” [Item 18] of the PC List is while being qualified by the provisions of the Appendix II it is also dealt with by the Reserved List item which states that “State Lands and Foreshore”, except to the extent specified in the PC List.

4. Specific Overview/Analysis of selected Statutes

4.1 The Project also subjected some of the Statutes passed by the PCs for a qualitative analysis to find out the extent to which their legislative authority has been utilized over those subjects. The subject of “Rural Development” of the PC List [Item 10], which is devoid of any express limitations, is taken for consideration. This is subjected to cognizance and analysis as the country consists of vast tracts of rural and village areas inhabited by people who may be identified as representing rural population.

4.2 Four PCs, viz., Western, Central, Sabaragamuwa and North Western PCs, have enacted Statutes on the above subject. The Western Province which is more urban than rural, compared with other Provinces, has a fairly comprehensive Statute on the subject. The objectives and

functions under the Statute are wide and enabling the administration to provide guidance and tangible help to rural populace. The PC may be held to have overshoot its legislative limit in making this Statute. For instance, section 2 (g) provides for the establishment of "... banks for rural development to ensure the safety of its members' money ...". However, PC List Item 27 provides for the "Incorporation, regulation and judicial winding up of corporations with objects confined to the Province, excluding trading corporations, banking, insurance and financial corporations". In addition, 'banking' is included in the Reserved List (List 11 of the Ninth Schedule) the subject matters of which are beyond the legislative competence of PCs. [Refer to Article 154G (7) of the Constitution].

4.3 Having said that, there is no doubt that this is a subject matter which enables, empowers and facilitates the PCs to be creative and imaginative and make use of it to develop, promote and sustain the rural economy, rural infrastructure, social, educational, cultural needs at rural level thereby helping the rural population to improve and develop their standards of living and lives. The PCs should not restrict themselves to make use of this rubric to regulate, control and supervise the 'rural development societies' which are formed and operated by people themselves. The subject of 'rural development' is a very broad one, either on its own or in conjunction with other subjects devolved to the PCs, that can be used as a vehicle to promote and empower rural folks to become responsible citizens as well as to be self-reliant and to use their rural resources for their own welfare while augmenting the national economy and national productivity.

4.4 In this connection, the subject matter referred to in Item 21 of the PC List provides further complementing and amplifying legislative and executive authority to the PCs. Under this subject, which could be, for the sake of brevity, called as 'income generating activities', PCs can "promote, establish and engage in agricultural, industrial, commercial and trading enterprises and other income-generating projects". This is expressly declared to include the "promotion of scientific and industrial research and the preparation, co-ordination and the implementation of industrial development plans for the Province." This rubric is also very broad in scope and coverage, facilitating the PCs to be effective promoters as well as performers of economic activities in their respective Provinces.

4.5 When the subjects of "rural development" and 'income generating activities' are combined and made use of, they could become effective vehicle of economic development and

social enhancement of the people in the Province. These have to be used by the PCs very creatively, resourcefully and innovatively when enacting statutes making use these subjects.

5. Stakeholder Consultation

5.1 The Project organized the first Stakeholder Consultation under the aegis of the Ministry of Provincial Councils & Local Government and Sports with the participation of the representatives from the UNDP. This half-day Consultation took place in mid-September in Colombo. Although all the Provincial Chief Secretaries, Secretaries Provincial Ministries, Secretaries of the Provincial Councils, and legal officers/focus points from all the PCs were invited, some of them did not turn up for the Consultation. [A copy of the list of attendees is attached herewith as Annex 7.

5.2 The Project prepared a ‘Briefing Paper’ explaining the objectives of the Project and the proposed Consultation was sent to the Ministry to be transmitted to the potential participants from the Provinces so that they would be prepared to participate in the Consultation effectively and make use of it constructively [Annex 8]. A questionnaire was also prepared and sent to the Ministry to be forwarded to the participants so that they would provide the responses in writing as well as make brief presentation at the Consultation [Annex 9].

5.3 Except for the Northern PC, no formal presentation was made by any other PCs. The questionnaire was also not responded to by the representatives in writing. However, some of the representatives participated actively bringing out the problems faced by them in enacting necessary Statutes and implementing them under the devolved powers. They also made requests to the Project to prepare some model Statutes on certain specific subjects. Before this, the Project made a presentation explaining some of the key findings with regard to the enactment of Statutes and where they stand. A brief qualitative analysis of some of the Statutes was also presented to the participants. [A copy of the PowerPoint Slides used for the presentation is attached hereto as Annex 10].

5.4 A meeting of the Steering Committee formed by the Ministry followed the Stakeholder Consultation under the chair of the Secretary to the Ministry. This was attended by the representatives from the Ministry, Provincial Chief Secretaries and/or Provincial Ministries’ Secretaries, UNDP representatives and members of the Project Team. It was agreed at this

meeting that Provincial Ministry Secretaries will send in the perfected questionnaire by or before the 28th of September.

5.5 It was also suggested that the Project would have the 2nd Stakeholder Consultation at Provincial locations bringing together representatives of two or three Provinces to participate in one location. It was also agreed not to identify only two or three PCs for selection of detailed analysis of their Statutes as stipulated in the agreement with the UNDP. Instead to identify important areas or subject matters and to analyse the statutes on those matters from all the PCs. The option for the Project team to meet representatives of PCs separately in their respective Provinces was also left open.

6. Epilogue

6.1 Depending on the effectiveness of the Consultation as well as the efficient utilization of the financial allocation for this purpose, it is understood that mechanics and modalities of the Stakeholder Consultation can be adjusted by the implementers of the Project.

Prepared by:

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Annex 1

Table 1

No of Statutes listed in web	No of Statutes in the list sent by PCs.	Total of the statutes received	No of Statutes on PC List (List 1) subjects	No of Statutes from Concurrent List	Miscellaneous	No of Statutes passed but not assented to by the Governer.
343	359	324	258	7	61	9

Table 2

No	Provincial Council	No of Statute listed in the website	No of Statutes listed by the PCs.	Statute Received	Statutes enacted under the Scope of the PC list
1	Central PC	31	39	37	27
2	Eastern PC	6	10	9	7
3	Northern PC	16	16	15	13
4	North Central PC	47	57	35	23
5	North Western PC	46	54	54	41
6	Sabaragamuwa PC	39	49	48	35
7	Southern PC	43	30	30	26
8	Uva PC	44	43	43	34
9	Western PC	71	61	53	52
		343	359	324	258

Table 3

No in the PC List	Title	Western PC		Sabaragamuwa PC		Central PC		Northern PC		Eastern PC		Southern PC		North Central PC		Uva PC		North Western PC		Total number of Statutes	No of PCs dealt with the subject
		Principal Statute	Amendments																		
1	Police and Public Order																			0	0
2	Planning	1				2						1								4	3
3	Education and Educational Service	2		3	1	1		2		1		2		1		2		1		16	9
4	Local Government	4		1								3		2		1		2		13	6
5	Provincial Housing and Construction	1		1		1				1						1		1		6	6
6	Roads and Bridges and ferries	1	2			1						1				2		2		9	5
7	Social Services and Rehabilitation	2		3	1	1		3				2		2		3		3		20	8
8	Road Passenger Carriage Services and carriage of goods	2	3	2		2		1		1	1	1	1	2		3		2		21	9
9	Agriculture and Agrarian Service													1		1		2		4	3
10	Rural Development	1		2		1										1		1		6	5
11	Health	1				1		1	1			1		1		2				8	6
12	Indigenous Medicine	1				1		1				1				1		1		6	6
13	Rest Houses and Circuit Banglows															2				2	1
14	Pawn Brokers	1				1	1	1				1								5	4
15	Markets, fairs																			0	0
16	Food Supply and Distribution																			0	0
17	Co-operatives	3	1	4		3	1							1		3		4		20	6
18	Land	1												2						3	2
19	Irrigation	1												1				2		4	3
20	Animal Husbandary																	1		1	1

21	Agricultural, industrial, commercial and trading enterprises and other income generating projects	2		2		2						2		2	1	4		4		19	7
22	Reformatories, Borstal institutions and other institutions																			0	0
23	Intoxicating Liquors																			0	0
24	Burials and Burial Grounds, Cremations grounds																			0	0
25	Libraries, Museums and other similar institution and Ancient Monuments and records	1		1	1	1						1				1		1		7	6
26	Mines and Minerals																			0	0
27	Corporations																			0	0
28	Unincorporated trading, literary, scientific, religious, and other societies and associations	2														3		1		6	3
29	Theatres and dramatic performance, music, cinemas, entertainments and amusements ; Sports	1	1	1								1				1		1		6	5
30	Betting and Gambling																			0	0
31	Provincial Debt																			0	0
32	Offences																			0	0
33	Fees in respect of any matters in the list																			0	0
34	Electrical Energy	1										1								2	2
35	borrowing of money																			0	0
36	Revenue	6	7	6	6	5	2	3		3		5	2	5	2	3		5	4	64	9
37	Protection of Environment	2	1															2	1	6	2
	TOTAL																			258	

Table 4

No in the PC List	Title	Western PC		Sabaragamuwa PC		Central PC		Northern PC		Eastern PC		Southern PC		North Central PC		Uva PC		North Western PC		Total	
		Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments	Principal Statute	Amendments		
			Concurrent List	2			1			1		1		1				1			
	Miscellaneous																				
	Salaries and Allowance	1	3	2		1						2		2		3		1	6	21	
	Appropriation			2	5									7				1	6	15	
	cadre	2		2		1									1		2	1	9		
	Emergency Fund	1		1		1				1		1		1		1		1	5	8	
	Chief Ministers Fund			1										2		1		1	3	5	
	Governors Fund														1	1			2	2	
	PC Staffs					1													1	1	61
		21	5	13	7	12	1	4	1	3	0	11	0	17	0	21	1	19	8		68

Table 5

	Western PC		Sabaragamuwa PC		Central PC		Northern PC		Eastern PC		Southern PC		North Central PC		Uva PC		North Western PC		Total
	Principal Statute	Amendments																	
No of statutes under List I	37	15	26	9	23	4	12	1	6	1	23	3	20	3	34	0	36	5	
	52		35		27		13		7		26		23		34		41		258

Table 6

No in the PC List	Title	Western PC		Sabaragamuwa PC		Central PC		Northern PC		Eastern PC		Southern PC		North Central PC		Uva PC		North Western PC		Total	No of Provincial Councils dealt with the subject matter
		Principal Statute	Amendments																		
8	Road Passenger Carriage Services and carriage of goods	2	3	2		2		1		1	1	1	1	2		3		2		21	9
21	Agricultural, industrial, commercial and trading enterprises and other income generating projects	2		2		2						2		2	1	4		4		19	7
3	Education and Educational Service	2		3	1	1		2		1		2		1		2		1		16	9
4	Local Government	4		1								3		2		1		2		13	6
6	Roads and Bridges and ferries	1	2			1						1				2		2		9	5
11	Health	1				1		1	1			1		1		2				8	6
5	Provincial Housing and Construction	1		1		1				1						1		1		6	6
10	Rural Development	1		2		1										1		1		6	5
12	Indigenous Medicine	1				1		1				1				1		1		6	6
37	Protection of Environment	2	1															2	1	6	2
9	Agriculture and Agrarian Service													1		1		2		4	3
18	Land	1												2						3	2
20	Animal Husbandary																	1		1	1
15	Markets, fairs																			0	0
16	Food Supply and Distribution																			0	0
TOTAL		18	6	11	1	10	0	5	1	3	1	11	1	11	1	18	0	19	1	118	

**Provincial Councils Statutes selected for
Qualitative Assessment**

APPENDIX 2

Name of the Province	Title of the Statute	Name of the Consultant
Central Province	Early Childhood Development Statute No. 03 of 2015	Prof. N. Bandara
	Rural Development Statute No.02 of 2015	Prof. N. Bandara
Eastern Province	Housing Authority Statute No.2 of 2013	Prof. N. Selvakkumaran
	Tourist Bureau Statute No.01 of 2015	Prof. N. Selvakkumaran
Northern Province	Health Services Statute No. 01 of 2015	Prof. N.Selvakkumaran
	Indigenous Medicine Statute No.9 of 2016	Prof. N.Selvakkumaran
North Central Province	Agriculture Services Statute No. 09 of 1990	Mr. Asoka Gunawardene
	Land Statute No. 05 of 1994	Mr. Asoka Gunawardene
	Land Development Statute No. 04 of 1994	Mr. Asoka Gunawardene
North Western Province	Environmental Authority Statute No.13 of 1990	Mr. Asoka Gunawardene
	Local Authorities Supervision of Administration Statute No. 01 of 1990	Mr. Asoka Gunawardene

Sabaragamuwa Province	Co-operative Employees Commission Statute No.01 of 2014	Prof. N .Bandara
	Pre-Child Education Development Authority Statute No.02 of 2010	Prof. N. Bandara
Southern Province	Alternative Energy Statute No. 2 of 2007	Prof. N. Bandara
	Social Welfare Statute No. 02 of 2002	Prof. N. Bandara
Uva Province	Business Registration Statute No.01 of 1996	Mr. Asoka Gunawardene
	Supervision of Local Government Statute No. 2 of 2011.	Mr. Asoka Gunawardene
Western Province	Rural Development Statute No.2 of 2013	Prof.N.Selvakkumaran
	Waste Management Authority Statute No.01 of 2007	Prof. N.Selvakkumaran

APPENDIX 3

**ASSESSMENT OF PROVINCIAL
COUNCIL STATUTES**

Early Childhood Development Charter

[No. 03 of 2015] of Central Province

By

Prof. N. Bandara

1. Text of the PC List Item

PC List: Appendix 3.

Education and Education Services – Education to the extent set out in Appendix III –

2 (1) Supervision of the Management of All Pre Schools

12. Preparation of plans (educational development plan and annual implementation plan) will be the responsibility of PC

13. Implementation of annual development plan

18. Registration and supervision of Pre-Schools

20. Construction and maintenance of educational buildings, libraries and play grounds

21. Procuring and distribution of teaching aids and audio visual materials, furniture and other equipment

23. Production and distribution of school text books after approval by the Ministry

32. Offences against the statutes with respect of any of the matters specified in this law

2. Text of the Statute's Long Title

A Charter to repeal the sub clause 12(2) (xii) of section ii of Education Charter of 1990 of the Central Provincial Council to and make provisions to establish an Early Childhood Development Unit to register, monitor, govern and manage Early Childhood Development Centers and for matters connected therewith or incidental thereto

3. Aims & Objectives

Aims

To improve the early childhood development and education in the Province

To create an environment that promotes the overall development of children in Early Childhood including physical and mental development

To ensure the rights of the children in Early Childhood and provide them proper protection

To take other steps towards the development of Early Childhood

To provide guidance and aid for improving the Early Childhood Development activities

Educate the Community on the importance of ECD

Objectives:

Establishment of Early Childhood Development Unit (ECDU)
Appointment of Director (the Head of ECDU) and the staff required
Register and Regulate the ECD Centres
Carrying out training institutes to train and develop instructors of ECD Centers

4. Instrumentalities/bodies chosen to implement the devolved powers
Early Childhood Development Unit
5. Powers, Duties & Functions of the bodies
 - Substantive
 - Register, manage and monitor Early Childhood Development Centres
 - Register, monitor and regulate all institutions and organizations within the central province working towards Early Childhood Development
 - Training of Instructors of ECD Centres
 - Establish Provincial, District and Divisional Forums
 - Preparation of policies necessary to carry out duties identified in the charter
 - Procedural
 - Conduct training to the Instructors of ECD centres and Issuing Certificates
 - Evaluating and grading the institution engaged in ECD activities
 - Set minimum standards for administration and management of ECD centres in par with the national standards
 - Temporarily suspend or halt the operation of any ECD centre which does not conform to the provisions of this charter
 - Appointment of Management and Advisory Committees
 - Establishment of financial account for the ECDU.
6. Consistency with the 13th Amendment
7. Consistency with the Chapters on Fundamental Rights & Language Rights
8. Consistency with other laws
9. Analysis / Observations
 - 9:1 General
 - Statute repeal the clause on Pre Schools in the Education Statute of the Provincial Council and provides provisions to establish a Unit to regulate, supervise & support the Early Child Development Centres and Pre Schools in the Province

9:2 Specific

- The statute provides a clear definition to the term “Early Childhood”. Accordingly “Early Childhood of a child refers to the period between conceiving of a child to five years of age”.
- The statute narrowed down the definition to “the period between a child’s birth to day he/she enters formal school education” for the purposes of the current statutes. Thus it identifies the scope and the field covered by the statute.
- Recognition of “Rights of Children in Early Childhood”.
- The statute has provided a clear approach to the education of children in the period identified as “Early Child Hood” and provides clear guidelines to handle the most sensitive period of Child development.

10. Overall Remarks

1. This subject could have been brought under the Concurrent List – Refer to Items 2 & 3. This would have given the PC a broader canvass to play a vital role! It is not clear whether the PC used both the Lists or the PC List only!
2. Also Items 12, 13, 20, 21, 22 of Appendix III [Education] too could have been made use of!
3. There is an inconsistency between the Short Title of the Statute as stated in section 1 and the name of it given in section 31 (2)! [Pre Child Development Authority Statute v. Pre School Statute]
4. Pre-Child Development Authority Statute No. 02 of 2010 v. Pre School Statute No. 07 of 1994.

11. Post Script

According to the Chief Secretary of CPC they have decided to establish a Unit for Early Childhood Development Unit to find the Head of Institution from the All Island Service Officer assigned to the Province as it could avoid bringing non career persons according to political or personal preferences. Another reason was to find cadre within the Provincial Public Service and receive funds to run the program from the Provincial Fund. The Unit has so far registered 2700 pre-schools in the Province (80%) and currently manned by 06 development officers. The treasury agreed to provide cadres but so far it has failed supply them. The Unit by introducing minimum standards for pre-schools, preparation of teacher hand book and developing equipment and toys focusing on basic capabilities to be developed of children within the early childhood

period have created an impact in the field of early childhood development, especially in the field of pre schools.

Rural Development Statute
[No. 02 of 2015] of Central Provincial Council
By
Prof. N. Bandara

1. Text of the PC List Item
 - 10. Rural Development
 - 28. **Regularization of unincorporated** trading, literacy, scientific, religious, and **other societies and associations**

2. Text of the Statute's Long Title
 - A Statute to provide for the establishment of a Rural Development Department and registration and maintenance of Rural Development Societies and establishment, registration and maintenance of Rural Development Divisional Authorities, Provincial Authorities, establishment, maintenance and regularization of Women Development Centres and make consequential provisions for Rural Development in the Central Province and for matters connected therewith or incidental thereto.

3. Aims & Objectives
 - Aims
 - Development of capabilities of rural communities [7(d)]
 - Encouraging self-oriented business among the beneficiaries of Women Development Centers [8(c)]
 - Improving cultural system that pave the way for attitudinal changes [10(a)]
 - Preserving the indigenous identity [10(a)]
 - Facilitate the united co-existing and self-relying rural community [10(b)]
 - Environment equalization and ascertaining unidentified rural energetic force [10(c)]
 - Strengthening family unit, creation of unity and co-existence and women and child care development [10(e)]
 - Improving the economic conditions and capabilities of rural women (34)
 - Obtaining the active active participation of civil society for provincial development [15(a)]
 - Promotion of inter-relationship among community organizations at rural level [15(b)]

 - Objectives
 - Establishment of Provincial Department of Rural Development

Appointment of Provincial Director of Rural Development and other officers and staff to the Department and its District Offices

Establishment of Rural Development Societies (RDCs)

Establishment of Rural Development Divisional Authorities (RDDAs)

Establishment of Rural Development Provincial Authority (RDPA)

Establishment of Rural Women Development Centres (RWDCs)

4. Instrumentalities/bodies chosen to implement the devolved powers

Provincial Department of Rural Development

Rural Development Societies

Rural Development Divisional Authorities

Rural Development Provincial Authority

Rural Women Development Centres

5. Powers, Duties & Functions of the bodies

- Substantive

Administration, supervision, dissolution and auditing of RDCs, RDDAs, RDPAs, RDPA and RWDCs

Establishment of RWDCs

Provide vocational training for beneficiaries of RWDCs

Conducting training programs for the development of capacities of masses and officials of the Department

Plan and Implement Rural Development Projects

Development of essential infrastructural facility projects through the rural communities making use of community contributions

Implement Rural Development Projects

Sustainable rural economic development

Development of rural leadership

- Procedural

Registration of RDCs, RDDAs, RDPAs, RDPA and RWDCs

Entertain assistance of eminent individuals of the Central, Provincial and Local government institutions

Planning and implementing of rural development projects

Provide vocational training for beneficiaries of Rural Women Development Centres

Custody and possession of moveable and immovable property to be vested by transfer, donations, grant, gifts, testimony or by any other manner

Initiating the Auditing of finance reports forwarded by the RDS, DA and PA and taking legal action on finance frauds revealed therein

6. Consistency with the 13th Amendment
Consistence with the 13th Amendment List 1 item 10 and 28
7. Consistency with the Chapters on Fundamental Rights & Language Rights
Did not find any inconsistency with FR Chapter
8. Consistency with other laws
No
9. Analysis / Observations
 - 9:1 General
 - The statute seeks a building a partnership between the government and civil society organizations in order to empower and mobilize rural communities for rural development
 - 9:2 Specific
 - The statute envisaging the establishment of rural development societies in the villages and empowering rural women leaders through vocational training.
10. Overall Remarks
Error noted in the English version: Article 8 (J) referred to No. 42 of Local Government Act, of 1987. This should be corrected as No. 42 Provincial Council Act of 1987. Sinhala version is correct.
11. Postscript
At the meeting held in CPC office in Kandy, the senior officers in charge of Rural Development said they are satisfied with the statute. The legal provisions of the statute have facilitated the establishment of 2556 Rural Development Societies. They have established Divisional Forums. However they have not established the Provincial Forum yet. The Department conducts performance competitions among the Rural Development Societies on the basis of community work undertaken by these societies. The political interference in the selection of office bearers and the tendency of giving more attention to take government contracts to undertake community projects have been identified as the problems encountered.

Housing Authority Statute
[No. 2 of 2013] of Eastern Province

By

Prof. N. Selvakkumaran
Team Leader, Mapping of PC Statutes

1. The Eastern Provincial Council enacted the Eastern Provincial Council Housing Authority Statute in 2013 (hereinafter sometime referred to as the “Housing Authority Statute”) and the Governor had granted his assent in February 2014.
2. The Provincial Council List [PC List] of the Ninth Schedule to the Constitution provides for ‘Provincial Housing and Construction’ as a subject matter on which the Provincial Councils [PCs] could make statutes [vide Line Item 5]. At the same time, the Concurrent List [List 3] also provides for ‘National Housing and Construction’ as a subject matter [vide Line Item 5] on which both the National Parliament and Provincial Councils can make Laws and Statutes respectively. While Provincial Councils are empowered by Articles 154G (1) and 154G (8) to make Statutes on matters enumerated in the PC List, Articles 154G (5) (a) & (b) empowers the Parliament and PCs to make Laws and Statutes on matters on the Concurrent List. Provincial Councils may also make use of Art. 154G (9) to make Statutes on Concurrent List matters in appropriate cases.
3. The Line Item 5 of the PC List under the sub-title “Provincial Housing and Construction” reads as follows:
 - “5:1 Implementing, co-ordinating, supervising and monitoring provincial housing development programmes and projects (other than National Housing Development Authority projects) including aided self-help housing projects, housing loans and the provision of building materials;
 - 5:2 The implementation of the Protection of Tenants Act and the Rent Act within a Province;
 - 5:3 Construction activity in respect of subjects in this List.”
4. On the other hand, the Concurrent List in its Line Item 5 provides under the sub-title “National Housing and Construction” as follows: “The promotion of integrated planning and implementation of economic, social and physical development of urban development area”. However, the Housing Authority Statute does not state whether the Statute was

passed in terms of Line Item 5 of the PC List and/or the Concurrent List. It seems that the Council might have enacted it under the PC List.

5. In terms of its Long Title, the Statute is for establishing the Eastern Provincial Housing Authority, Provincial Housing Planning Implementations and Monitoring, Staff Appointment and for the matters connected therewith or incidental thereto. The Long Title also provides that the Statute is inconsistent with the National Housing Act (Chapter 401). As such the provisions of the National Housing Act enacted by Parliament become suspended and inoperative within the limits of the Eastern Province until the Statute is in operation [vide Art. 154G (8)].
6. There is no provision in the Statute which expressly provides for the ‘Aims and Objectives’ of the Province regarding the subject of provincial housing and construction, either in its Long Title or in its main part. Express statement by the PC in the Statute of the aims and objectives would have provided the policy of the Province which would have guided the interpretation and implementation of the Statute by the administration.
7. The Statute provides for the establishment of an Authority, viz., the Eastern Province Provincial Housing Authority (hereinafter sometimes referred to as “the Housing Authority”), with nine members. Out of these members, five are appointed by the Provincial Minister in charge of the subject of Housing and the balance four are ex officio members representing key officials of the Province. However, the Statute leaves room for lack of clarity with regard to the number of ex officio members. Although section 03 (1) (b) of the Statute refers to four ex officio members, sub-clauses of this Clause (b) lists five official positions [(i) – (v)] to be ex officio members. This uncertainty undermines the exact composition of the Housing Authority.
8. The Minister is given power to remove any appointed member, though this could not be exercised without assigning reasons [section 03 (7)].
9. One of the salutary aspects of the Statute is the provision that the Minister shall satisfy himself that the person who is to be appointed has no financial or other interest which conflicts with his functions as a member of the Housing Authority [section 03 (4)]. The Minister is also required to satisfy himself from time to time no member has any such

interest while being a member of the Housing Authority. Similarly the Statute disqualifies a Member of Parliament or any Provincial Council or any Local Authority to be a member of the Housing Authority, These good practices of administration are included in the Statute.

10. The Statute also extends to the Housing Authority the attributes of a legal persona by being declared to be a body corporate and the Housing Authority is also provided with perpetual succession and legal capacity to sue and be sued [section 02 (2)].
11. Although the Statute provides for the Chairman of the Housing Authority to be appointed by the Minister [section 4 (2)] from amongst the appointed members, it fails to provide the person who would keep the minutes of the meetings of the Housing Authority. It would have been desirable if a Secretary to the Housing Authority is nominated by the Statute, who would be in a position to provide institutional continuity and memory for activities of the Housing Authority when Chairman and members may experience periodical change every three years. Although there is a provision for the Housing Authority to appoint, with the written approval of the Provincial Minister, a General Manager to the Housing Authority, the General Manager is not stated to be the Secretary of the Housing Authority. Therefore it is evident that he is not declared to be the Secretary of the Housing Authority!
12. Part II of the Statute, through its sections 06 and 08, provides for the powers, duties and functions of the Housing Authority. All these three tasks have been bundled together and listed in the above two sections. These include the function of formulating Provincial Housing Development Plan and of submitting it to the Provincial Minister of Housing for approval [section 06 (1) (b)] as well as implementing the Plan once approved by the Provincial Minister [section 06 (1) (e)]. The powers, duties and functions listed are somewhat elaborate and may tend to overlap or conflict with the powers, duties and functions of Government Agency or public corporation [Central]. In order to avoid such conflicts, the Statute casts a duty on the Housing Authority to have consultation with such Government Agency or corporation when formulating or implementing any housing planning related development work which may affect the rights, interests or functions of those bodies [section 06 (2)]. This will obviously avoid any conflict between the

Provincial administration and Central government bodies in their respective tasks and this provision is very salutary and promoting consultative administrative processes.

13. It has also to be noted that the provisions of the Parliamentary laws and the rules, regulations and by-laws of any Local Authority or Urban Development Authority or any other Institution have to be adhered to or complied with when the Housing Authority constructs houses or any other structures under the Statute [section 06 (3)].
14. One of the salutary features found in this respect is that the Statute positively provides that the Housing Authority may engage in manufacture, import and supply of materials required for the construction of houses [section 06 (1) (i)], as well as to provide roads, water, electricity, gas, sewerage and other infrastructure necessary for any housing area [section 06 (1) (g)].
15. There are, however, two questionable provisions in the Statute which may be considered to infringe some provisions of the Chapter on Fundamental Rights in the Constitution and the law of the land.
16. One of them is section 16 (1) of the Statute which enables the Housing Authority to take steps to acquire immovable property of private individuals. In terms of this section, “Where any immovable property is required to be acquired for the purpose of business of the Housing Authority and the Provincial Minister approves of the proposed acquisition, that property shall be deemed to be required for a public purpose, and may accordingly be acquired under the provisions of the Land Acquisition Act and be vested in the Housing Authority. Any sum payable for any such acquisition shall be paid by the Housing Authority.
17. Section 16 (2) deals with the use of State land within the Province by the Housing Authority for the purpose of its business. The procedure laid down in the provision seems not to accord with the relevant Constitutional provisions in the 9th Schedule of the Constitution.
18. The other is section 17 which is to the following effect: “It shall be lawful to the Chairman of the Housing Authority or any officer generally or specially authorized by him in

writing, after giving at least three days' notice in writing to the owner or occupier of any land or premises, to enter upon such land or premises and there do such acts as may be reasonably necessary *for the purposes of carrying out any work of the Housing Authority, or of making any investigation or examination, or the discharge of any function, of the Authority*" [section 17]. This, in particular the phrase in italics, is somewhat overbreadth, sweeping, amorphous and unstructured and tends to offend "the Right to Equality" guaranteed by the Fundamental Rights Chapter of the Constitution.

19. The attention is also drawn to the fact that it is not the Housing Authority which is authorised to do the above acts; instead this sweeping power is vested in the Chairman or any officer authorised by him to exercise those powers! The substantive powers, duties and functions under the Statute are vested in the Housing Authority. They are to be exercised, performed or discharged by the Housing Authority. The officer who is identified by the Statute for carrying out the business of the Housing Authority, the organization and execution of the powers, functions and duties of the Housing Authority is the General Manager in terms of section 09 (2) of the Statute. None of these substantive powers etc., are, expressly or directly, conferred upon the Chairman to be exercised by him.
20. The above two sections are somewhat problematic. One cannot predict to what extent these provisions will survive a judicial challenge. It is anybody's guess!
21. The Minister in charge of housing in the Province is given power to issue general or special directions to the Housing Authority in respect of its duties, powers and function and that it is the duty of the Housing Authority to give effect to such instruction. Comparatively the Statute does not state that the Minister should give the directions in writing; nor does it provide for the role of the Board of Ministers in some of the important tasks, viz., the development of the Provincial Housing Development Plan has not been clearly spelt out. It is the Board of Ministers which is answerable and responsible to the Provincial Council for ensuring that acceptable policies are formulated and implemented in the Province.
22. Section 15 of the Statute provides for the Housing Authority to make rules in respect of the management of the affairs of the Housing Authority. However, no such rule will have

effect until it has been approved by the Provincial Minister, confirmed by the Eastern PC and published in the Gazette. This is desirable and represents good administrative-cum-legislative practice.

23. Part IV of the Statute contains provisions relating to the finances of the Housing Authority and those provisions do tend to undermine the necessary flexibility and freedom which a Statutory Board or Authority generally enjoys in its operation as opposed to those of a government department. For example, section 11 (5) prescribes that the funds of the Housing Authority shall be appropriated by the Eastern PC as provided under section 19 of the PC Act and that such sum may be paid out of the Provincial Fund in such instalments as the Provincial Minister of Finance may, in consultation with the Governor, determine and that such sums shall be credited to the Authority Fund. When one compares, a similar provision does not appear in the Eastern Province Tourism Bureau Statute No. 1 of 2015 [Refer to Part V of the said Statute]. On the other hand when one compares section 19 (2) of the Tourism Act, No. 38 of 2005, it provides that the rules regarding the withdrawal of money from the Fund are to be made by the Tourism Authority with the concurrence of the Minister. A similar provision would have enhanced the operation and effectiveness of the functioning of the Authority.
24. Similarly section 11 (6) provides that the maintenance and operation of the Authority Fund shall be subject to the provisions of Part III of the PC Act. Those provisions relate to the Provincial Fund and withdrawal of money from that Fund needs the approval of the PC. (Compare the provisions of Part XIII [in particular section 100 (2)] of the Universities Act).
25. Section 08 provides for the Housing Authority to delegate its powers, functions or duties to the Chairman or any of its officers. This is also salutary as it diffuses the concentration of power!
26. The Statute contains a few provisions which pave the way for good administrative practices to be followed in its implementation. For example, the Minister's duty to ensure that members appointed to the Housing Authority do not have any financial or other interests which conflict with the functions and role of the Housing Authority; that the Housing Authority could appoint the General Manager of the Housing Authority with

the approval of the Provincial Minister; that it cannot remove the General Manager without the prior approval of the Provincial Minister. It would have been more salutary had the Statute provided that the General Manager could be removed for cause assigned, but not otherwise.

27. Similarly, the provision which requires the Housing Authority to consult with any Government Agency or public corporation when exercising, performing and discharging its powers, functions and duties is very constructive in that the Housing Authority cannot take steps in conflict with the powers and functions of the national agencies in this sphere.
28. There are however a few imperfections with regard to the use of the language in the English text. However, on the whole this piece of legislation enacted by the Eastern Provincial Council is a forward looking step in the formulation of a Statute.
29. However, it seems that the Governor of the Province had granted his assent to the Statute and it is operative in the Province. That is a positive feature in that the Provincial System in the East is geared to do some beneficial services to the people of the East if it desires to do so.

N. Selvakkumaran

November 06, 2018

Tourism Bureau Statute
[No. 1 of 2015] of Eastern Province

By

Prof. N. Selvakkumaran

1. The Provincial Council List [PC List] of the Ninth Schedule to the Constitution does not provide for ‘tourism’ as a subject matter on which the Provincial Councils [PCs] could make statutes. However, the said subject matter [Line Item 22] finds a place on the Concurrent List which enables both the PCs and Parliament to make Statutes and Laws respectively, after such consultation with each other as each may consider appropriate in the circumstances of each case [vide Art 154G (5) (a) & (b)].
2. The Eastern Provincial Council enacted the Eastern Province Tourism Bureau Statute in February 2016 and the Governor had granted his assent in March the same year. However, the Statute does not state whether there was any consultation with the Parliament before enacting the Statute. Similarly there was no express statement in the Tourism Act No. 35 of 2005 enacted by Parliament, after the introduction of the 13th Amendment, on whether it was enacted after consultation with the PCs in the country as provided for in the relevant Constitutional Article [vide Article 154G (5) (1)].
3. Item 22 of the Concurrent List provides the scope of ‘devolved’ power on the subject of “Tourism”. Accordingly, the PCs as well as Parliament do enjoy legislative power over “Development and control of the Tourist Industry in the Province”. Although the Line Item referred to in the Concurrent List provides the scope of legislative power of both these institutions, it has to be remembered that whatever not provided for in the PC List and Concurrent List are deemed to have been ‘reserved’ for the Parliament in terms of the Reserved List [Vide “All Subjects and Functions not Specified in List I or List III ...” of the Reserved List].
4. In terms of its Long Title, the Statute is for establishing the Eastern [Province] Tourism Bureau for the development and control of the tourism industry within the Eastern Province.

5. The Preamble of the Statute recognizes that it is a fundamental duty of the Provincial Council of the Eastern Province ‘to develop the tourism industry in the Province while safeguarding the cultural heritage of the Province and the moral values of the people’. It also recognises the Council’s ‘desire to work in concurrence with assisting the national tourism authorities in the formulation and implementation of “national policy” on tourism in accordance with such principles as are enshrined in the Constitution’.
6. The Statute through its Long Title and section 1 (1) makes those provisions of the Tourist Development Act No. 14 of 1968 enacted by Parliament which are inconsistent with the provisions of the Statute to be inoperative and suspended in the Province. It does not declare that entire Act as inconsistent with the Statute. Nor does it include the provisions of the Tourism Act No. 35 of 2005 in the Long Title.
7. Although the Long Title and Preamble of the Statute identify, among others, the development and control of the tourism industry within the Province and the necessity to safeguard the cultural heritage of the Province and the moral values of the people, the Statute does not expressly provide for the ‘Aims and Objectives’ of the Province regarding the subject of tourism in the main part of the Statute. The use of Long Title as well as the Preamble in the interpretation of the provisions of a Statute is of limited value when compared with the aims and objectives which are specifically provided in the body of the Statute.
8. The Statute provides for the establishment of a Bureau, viz., the Eastern Province Tourism Bureau, with nine members. Out of these members, five are appointed by the Provincial Minister in charge of the subject of tourism and the balance four are *ex officio* members representing key officials of the Province. The Minister is given power to remove any appointed member, though this could not be exercised without assigning reasons.
9. One of the salutary aspects of the Statute is the provision that no person with any direct or indirect financial or other interest could be appointed as a member of the Bureau [section 5 (a)]. In this respect, the Statute expressly declares that any person who holds or enjoys, directly or indirectly, any right or benefit under any contract with the Bureau or has any financial or other interest as is likely to affect prejudicially the discharge by

him of his functions as a member of the Bureau is disqualified from being appointed or continuing as a member of the Bureau [section 5 (d)]. These represent good practices of administration which have been included in the Statute.

10. The Statute also extends to the Bureau the attributes of a legal persona by being declared to be a body corporate and the Bureau is also provided with perpetual succession and legal capacity to sue and be sued [section 3].
11. Although the Statute provides for the Chairman of the Bureau to be appointed by the Minister [section 4 (2)] from amongst the appointed members, it fails to provide the person who would keep the minutes of the meetings of the Bureau. It would have been desirable if a Secretary to the Bureau is nominated by the Statute, who would be in a position to provide institutional continuity and memory for activities of the Bureau when Chairman and members may experience periodical change. Although there is a provision for the Minister to appoint, with the written consent of the Bureau, a General Manager to the Bureau, the General Manager is not stated to be the Secretary of the Bureau. He is declared to be the Chief Executive Officer and has the right to attend, and express views at, the meetings of the Bureau; but he does not have the right to vote at the meetings [section 22]. Therefore it is evident that he is not declared to be the Secretary of the Bureau!
12. Sections 13 and 14 of the Statute provide for the functions and powers of the Bureau respectively, including the function of formulating Tourism Development Plan for the Province and reviewing and updating it every other year [section 13 (j)]. These powers and functions are somewhat elaborate and tend to overlap or conflict with the provisions of the Tourism Act, No. 38 of 2005. However, the Statute has taken the precaution of prescribing that due regard is to be given to the provisions of the Tourism Act in the exercise, performance and discharge of the powers, functions and duties of the Bureau under the Statute. This will obviously avoid any conflict between the Provincial administration and Central government in their respective tasks.
13. It has also to be noted that the provisions of the Tourism Act enacted by Parliament in 2005 will prevail over the provisions of the Statute if there is any inconsistency between them. If there is a conflict between the provisions of the Statute and those of the Act, the

former will be void to the extent of such inconsistency [Article 154G (6) of the Constitution].

14. One of the salutary features found in this respect is that the Statute positively provides that the Bureau may engage in tourism related business venture in consultation with the national tourism authorities [section 19 (1)]. This is a good administrative practice of consulting with an important and relevant stakeholder.
15. There are, however, two questionable provisions in the Statute which may be considered to infringe some provisions of the Chapter on Fundamental Rights in the Constitution. One of them is to the following effect: “It shall be lawful to the Bureau to issue such directions to the employers in the tourist industry to give priority to permanent residents of the Eastern Province when recruiting people for employment in such industry.” [section 18 (1)]. This provision tends to offend Articles 12 (1), (2) & (3) and 14 (1) of the Constitution in that it would be interpreted to mean that the right to equality is not respected on one hand, and the freedom to secure employment is disregarded on the other. To what extent this provision will survive a judicial challenge is anybody’s guess!
16. Similarly, section 21 (1) provides that no premises in the Province shall be used for the provision of accommodation to tourists unless such premises have been registered with the Bureau. Although sub-section (2) of section 21 lists some exemptions, it has a prohibitive effect on the people as the Interpretation given to the word ‘tourist’ is very wide and lacks specificity. According to Section 34 – interpretation section – ‘tourist’ includes ‘a Sri Lanka national or a foreign national’. This means no private house-holder can permit his friends and relatives to stay with him or at his house because they will fall within the definition of ‘tourist’ according to this provision. This provision may suffer the fate of being struck down due to its over-breadth and lack of acceptable specificity leaving room for arbitrariness in interpretation and interfering with the rights of individuals.
17. Although the Minister in charge of tourism in the Province is given power to issue general or special directions in writing to the Bureau in respect of its duties, powers and function and that it is the duty of the Bureau to give effect to such instruction, the role of the Board of Ministers in the formulation of the bi-annual development plan has not been clearly

spelt out. It is the Board of Ministers which is answerable and responsible to the Provincial Council for ensuring that acceptable policies are formulated and implemented in the Province.

18. Section 33 of the Statute provides for the Minister to make regulations in respect of all matters required by the Statute. However, sections 21 and 23 enable the Bureau to specify the registration fees and the registration procedure through regulations as well as regarding the appointment of the staff of the Bureau. These are contradictory to what is stated in section 33 as well as this power does not find a place in section 14 dealing with the powers of the Bureau.
19. Part V of the Statute contains provisions relating to the finances of the Bureau and those provisions are consistent with the provisions of the Provincial Councils Act, 1987. However, it is doubtful to what extent this requirement will make it efficient for the Bureau to function as an entity which is to compete with the private sector in this area of activity. It would have been desirable had the Eastern PC incorporated a section similar to what is in the Tourism Act No. 38 of 2005. Section 19 (2) of the Tourism Act provides that the rules regarding the withdrawal of money from the Fund are to be made by the Tourism Authority with the concurrence of the Minister.
20. Similarly, section 29 provides for the Bureau to delegate its powers, functions or duties to any of its officers or employees. This is also salutary as it diffuses the concentration of power!
21. The Statute contains a few provisions which pave the way for good administrative practices to be followed in its implementation. For example, the Minister's duty to ensure that members appointed to the Bureau do not have any financial or other interests which conflict with the functions and role of the Bureau; that the Minister could appoint the General Manager of the Bureau after getting the written consent of the Bureau; that he could remove the General Manager with the written consent of the Bureau and after assigning reasons for such removal; that he could remove the Chairman and members of the Bureau from their respective positions only for reasons stated.

22. Similarly, the provision which requires the Bureau to give due regard to the provisions of the Tourism Act of 2005 enacted by Parliament when exercising, performing and discharging its powers, functions and duties is very constructive in that the Provincial Authorities cannot take steps in conflict with the powers and functions of the national agencies in this sphere. As seen already the provisions of this Act are operative in the Province and when there is a conflict between those provisions and those of the Statute, it is the latter provisions which will be invalid and will have no force of law.
23. One other similar satisfactory step is the declaration in the Long Title of the Statute as well as in its section 1 (2) that the Statute is inconsistent with the provisions of the Tourist Development Act No. 14 of 1968 and that those provisions of the Act which are inconsistent with the provisions of the Statute would remain suspended and inoperative in the Eastern Province. This allows the other provisions of the Act to be operative and effective in the Province.
24. There are however a few imperfections with regard to the use of the language in the English text and internal inconsistencies in certain other aspects, such as making of regulations, for example. However, on the whole this piece of legislation enacted by the Eastern Provincial Council is a forward looking step in the formulation of a Statute.

N. Selvakkumaran

November 05, 2018

Health Services Statute
[No. 1 of 2015 as amended by Statute No. 10 of 2016] of Northern Province

By

Prof. N. Selvakkumaran

1. Item 11 of the Provincial Council [PC] List provides the scope of power devolved on the subject of “Health”. Accordingly, it is as follows:

“11. Health -

- 11:1 The establishment and maintenance of public hospitals, rural hospitals, maternity homes, dispensaries (other than teaching hospitals and hospitals established for special purposes);
- 11:2 Public health services, health education, nutrition, family health, maternity and child care, food and food sanitation, environmental health;
- 11:3 Formulation and implementation 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, excluding the procurement of drugs;
- 11:5 Awarding of Scholarships for Post-Graduate Education within Sri Lanka to personnel attached to the Institutions specified in 1 above.”

2. The long title of the Statute provides for the following –
 - the establishment of a Department of Health Services;
 - the continuation of services for the promotion and preservation of the health of the people in the Province;
 - to provide for all the matters connected therewith (omnibus clause);
 - that the Statute is inconsistent with the Health Services Act, No. 12 of 1952 as amended.
3. Although the long title of the Statute identifies, among others, the continuation of services for the promotion and preservation of the people’s health, it does not expressly provide for the ‘Aims and Objectives’ of the Province regarding the subject of health in the main part of the Statute. The use of long title in the interpretation of the provisions

of a Statute is of limited value when compared with the aims and objectives which are specifically provided in the Statute.

4. While 'functions' are specified in the Statute, 'powers and duties' are not expressly provided for [Vide s. 3]. It is to be noted that merely specifying 'functions' without providing for 'powers' to perform those 'functions' may lead to problematic situations! In particular when those functions infringe on the freedoms and rights of individuals.
5. There are no express provisions on 'substantive powers' as well as 'procedural duties' [process related obligations] in the Statute. This leaves room for lack of clarity as well as possible uncertainty and arbitrariness; this is not in accord with the principle of good practice to be followed by State institutions.
6. Apart from the above general observations, the following itemise some specific remarks on the provisions of the Statute:
 - a) The long title of the Statute lays down that it is 'to provide for the continuation of services for the promotion and preservation of the health of the people ...'. This raises an issue of whether there is a need for a Statute if it were to continue with what has already been there. It lacks reflection on contextual initiative and creativity towards provincial level needs, reforms, re-organization, revamp, etc. in the subject of health. It could have been better had it been for 'providing excellent, efficient and easily accessible health services to the people ...'.
 - b) With regard to the functions of the Department of Health Services, clauses (a) and (b) of section 3 refer to the Schedule and restrict the scope of activities to those institutions listed in the Schedule. This is restrictive in nature and does not permit any new institutions or other bodies to be set up in the Province unless the Statute is amended. The provision should have been formulated to permit future expansion and creativity. Should the Provincial Administration not think of establishing different types of institutions or bodies to provide effective and efficient health services which could be accessible by the people easily?

- c) Regarding the formulation and implementation of ‘Health Development Plan and of the Annual Health Plan’ which is provided for in the PC List, the Health Statute provides for the function ‘to *implement* the Provincial Health Development Plan and the Annual Health Plan’ [vide clause c) of section 3]. Although sub-section 1 of section 6 requires the Provincial Director to ‘facilitate the preparation of the Annual Health Plan’ the Statute does not provide a role to the Department in the formulation of the Provincial Health Development Plan. There is no reference to the Health Development Plan in the Statute. This is a major lacuna! Even if it were envisaged that the Provincial Ministry of Health and / or the Board of Ministers of the Province will be responsible for the preparation of the Health Development Plan, that function, and the necessary power for it, should have been provided for in the Statute on one hand, as well as the process of preparation through consultation with, and participation of, relevant stake holders should have been laid down on the other.
- d) In this respect, it has to be remembered that there is qualitative difference between ‘preparation’ of the Annual Health Plan and ‘facilitation in the preparation’ of the said Plan. What is provided in the Statute is facilitation in the preparation of the Annual Health Plan.
- e) Section 6. 1 of the Statute enumerates the factors that are to be taken into consideration in the facilitation process. Those factors are listed as exhaustive ones or closed ones; they are not open-ended or having a general clause permitting other relevant factors to be taken into consideration.
- f) The Statute is formulated to the effect that the Provincial Director submits the Annual Health Plan to the Ministry Secretary who in turn submits it to the Provincial Health Services Advisory Board. After considering the observations of the Board, the Secretary approves the Annual Health Plan and submits it to the Board of Ministers through the Minister of Health for the approval of the Board. However, the Statute does not provide as to what happens if the Annual Health Plan is not approved by the Board of Ministers. While it is appreciated that a consultative process is prescribed for getting the Annual Health Plan approved, it is desirable

that the Statute provides for the steps to be taken if the Board of Ministers does not approve such Plan.

- g) A majority of clauses in section 3 is almost a verbatim reproduction of the sub-items enumerated in the PC List, Item 11. It would have been desirable and structured had the constituent powers or detailed powers, duties and functions been elaborated in the Statute instead of repeating what is stated in the PC List. One of the purposes of the Statute is to flesh out the details so that they would facilitate the administrators to implement the provisions effectively and efficiently.
 - h) The matters referred to in clause b) of section 3 could, preferably should, have been spelt out separately and in detail. For instance, the powers, duties and functions over 'food and food sanitation' as well as 'environmental health' should have been separately dealt with specifying the agency or body which will deal with them! These are two important aspects which have a definitive impact on the promotion and preservation of good health in the Province.
 - i) While the Provincial Director of Health Services is subject to the direction and supervision of the Provincial Ministry Secretary, the two Deputy Provincial Directors of Health Services seem to be free from such direction and supervision. The Deputy Provincial Directors are called upon to assist the Provincial Director in his functions, duties and responsibilities. On the other hand, the five Regional Directors of Health Services are under the direction and supervision of the Provincial Director of Health Services. They are also said to be responsible for the provision of health services in their respective districts [vide s.5. 2].
 - j) Section 9 of the Statute empowers the Minister to make regulations 'in respect of any matter required by this Statute to be prescribed or in respect of which regulations are authorised or required by this Statute to be made.' However, a reading of the Statute does not bring out any provision which requires the Minister to prescribe anything through regulations.
7. Section 10 of the Statute provides for the establishment of a Provincial Health Services Advisory Board consisting of ex-officio and other members, not more than nineteen in

total, appointed by the Minister. While it would have been desirable had the functions of this Board been enumerated in a structured manner, the present section 11 could be considered as broad in scope to make ‘recommendations and observations to the Minister ... for the planning and provision of health services’. However, the provision that the quorum for a meeting is 11 members including the Chairman [vide section 10. 14] seems to provide an unwarranted veto power to the Chairman on holding and or functioning of the Board; if he/she does not attend the meetings the Board could not meet and it could not function, in effect! Also the Statute is silent on treating the appointed members who are absent at consecutive meetings!

8. The establishment of Hospital Development Committees for each hospital in the Province is a welcome measure, though its scope of the role is restricted to take measures for the development and rehabilitation of the institution [vide section 12. 12]. The Statute does not give the Committee the role of making suggestions with regard to improving the service delivery, quality of service, etc. Furthermore the role is also restrictive in that these committees are to be established for those hospitals and institutions which are referred to in the Schedule to the Statute through clauses a) and b) Of section 3.
9. The Statute in its Schedule refers to ‘Cancer Hospital’ in Tellipalai as one of the Special Service Units. One wonders whether it will not come under the category of excluded hospital in terms of sub-item 11.1 of the PC List!
10. There are also references in the Schedule to Regional Training Centre at Pannai (in Jaffna) and Nursing School in Vavuniya as Training Institutions. They seem to come under Line Item 9:1 of the Concurrent List! Should not the PC have ‘consulted’ the Parliament with regard to this, though consultation is not mandatory in terms of Article 154G (5) (b)?
11. The Health Service Statute of Northern Province, No. 1 of 2015 is amended by the Northern Province Health Service (Amendment) Statute No. 10 of 2016. However, section 1 of the said amending Statute cites it as “the Finance (Amendment) Statute of Northern Province, No. 10 of 2016”. Obviously it is a typographical mistake which did not catch the attention of the draftsman and the Provincial Council Secretariat!

12. The above apart, what is perhaps salutary is that the Governor has given his assent to this Statute of the PC with the above imperfections. Perhaps thirty long years of the existence of the Provincial Council system might have made the political authority to be somewhat relaxed and accommodative contextually than being strict and restrictive textually!

N. Selvakkumaran

October 29, 2018

Indigenous Medicine Statute
[No. 9 of 2016] Northern Province

By

Prof. N. Selvakkumaran

1. Item 12 of the Provincial Council [PC] List provides the scope of power devolved on the subject of “Indigenous Medicine”, which is as follows:

“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.”

2. The long title of the Statute consists of many “aspects” which do not seem to fall within the ambit of Line Item 12 of List I. The long title reads as follows:

“A Statute to provide, by implementing the subject of “Indigenous Medicine system” mentioned in list I of Table 9 embodied in the constitution of Democratic Socialist Republic Of Sri Lanka, for implementation of curative, preventive care services and health education, establish Indigenous Medical community medical services development, and conservation of the same; by using Indigenous Medicine system for the people of Northern Province; the establishment, and development of Indigenous Medical institutions, and Herbal gardens to provide necessary facilities and expansion for same; registration of Indigenous Medical institutions and Indigenous Medical practitioners of Northern Province and regularizing and supervising of the same; improvement and preservation of Indigenous Medicine procedures; to initiate and maintain Indigenous Medicine Community health services; for matters connected with or incidental to the aforesaid matters. The provisions of this statute are inconsistent with the Ayurveda Act No. 31 of 1961.”

3. The scope of the Statute as seen from the long title goes beyond the express authority, implied authority and consequential (incidental) authority that could be discerned from Item 12 of the PC List.

4. It is also evident that the operation of the Ayurveda Act of 1961 enacted by Parliament is suspended in the Northern Province by virtue of the provisions of Article 154G (8) of the Constitution. This has significant effect on the functioning, among other matters, of indigenous medical practitioners in the Province.
5. The Statute provides for the establishment of a Department of Indigenous Medicine in the Northern Province and for the appointment of a Commissioner of Indigenous Medicine and Deputy Commissioners [vide ss. 2 & 3]. While this falls within the purview of the Line Item of 12 of the PC List, the objectives of the Department which are listed in four clauses of section 4 do not strictly adhere to the ambit of the Line Item.
6. The stated objectives transcend the scope of power devolved on the Provinces on this subject. For instance, the clause IV (a) which provides for “*regularizing* any dispensaries, hospitals, sales centers, drugs producing centers, yoga service centers in the names of meant accordingly, of siddha, Ayurveda, Unani, Yoga systems, other alternative medicine procedures” does not come within the implied authority or consequential authority of “*establishment* of Ayurvedic dispensaries and hospitals, grants to such dispensaries and hospitals” which is given in Line Item 12:1 of the PC List; it does not fall within the express authority at all. The “*establishment* of Ayurveda dispensaries and hospitals” does not authorize the Department, by any stretch of interpretation, the power of regularizing any dispensaries, sales centers, drug producing centers, yoga service centers, etc.
7. The activities of the Department as provided in section 5 of the Statute go beyond the scope of devolved power. There are many clauses of this section which are not intra vires the power vested in the Provincial Council; many of them are suspect as to their validity! For instance, clause (vi) provides for “registration of private, non-governmental organizations, semi government institutions and co-operative related institutions and formulating guidelines, standards and basic requirements which shall be followed by the institutions concerned when carrying on activities, implementing and supervising and regularizing the same”. What has the Department got to do with private or non-governmental organizations which have nothing to do with Indigenous Medicine? This is patently outside the scope of power devolved on the PC under this subject! Refer to clauses (ii), (iv), (v), (xiii), etc.

8. Part II of the Statute contains provisions relating to registration of Indigenous Medical Institutions and the powers and tasks of the Commissioner regarding those registered institutions. On the other hand, Part III (sections 10 – 14) contains provisions prohibiting persons from engaging in indigenous medical practice in the Province and stating the requirements to be satisfied by a person to become eligible for engaging in practice. Part IV specifies offences and punishments. Some of these functions and powers are not traceable to the devolved power in the Constitution.
9. There are provisions in the Statute which establish an Indigenous Medical Services Advisory Board for the Province and provide for its tasks [vide Part V]. These tasks may be relevant to those matters which are covered by the Statute, but they do not fall within the four corners of Line Item 12 of the PC List.
10. The establishment of Hospital Development Committees is provided in Part VI of the Statute. This Part is intra vires the powers devolved on the Provincial Council.
11. The relevant Minister is empowered to make regulations [vide Part VII]. However, the matters over which the Minister is authorised to make regulations go well beyond the scope of power devolved on the Provincial Council as seen earlier. For example, clauses (a), (b), (c) and (d) of sub-section (1) of section 25 do not strictly fall within the express authority of the devolved power; nor do they fall within the implied or consequential authority of the express authority.
12. On the other hand, the establishment and maintenance of herbaria which is one of the two sub-clauses in the devolution of power has not been treated elaborately in the Statute. It is dealt with in the provisions dealing with the ‘objectives of the Department’ [vide s. 4 (iii)] and those dealing with the ‘activities of the Department’ [vide s. 5 (vii), (viii)].
13. Dealing with the powers of the Department, section 6 (i) provides for generalised power in a broad sense. It did not identify or itemize specific powers that are enjoyed by the Department. Sub-clause (ii) contains provision which has a tendency of infringing on privacy as well as intellectual property rights of an individual. The provision is over-breadth and is susceptible to abuse.

14. These above apart, there are many grammatical errors related to the construction of sentences which make the reading of the Statute very difficult.
15. However, it is recorded that the Governor has given his assent to this Statute of the PC with the above imperfections. Perhaps thirty long years of the existence of the Provincial Council system might have made the political authority to be somewhat relaxed and accommodative contextually than being strict and restrictive textually!

N. Selvakkumaran

October 29, 2018

Agrarian Services Statute
[No. 09 of 1990] of North Central Province
By
Mr. Asoka Gunawardane

1. Text of the PC List Item:

9. Agriculture and Agrarian Services

9.1 Agriculture, including agricultural extension, promotion and education for provincial purposes and agricultural services (other than in inter-provincial irrigation and land settlement schemes, State land and plantation agriculture):

9.2 Rehabilitation and maintenance of minor irrigation works:

9.3 Agricultural research, save and except institutions designated as national agricultural research institutions.

2. Text of the Statute's Long Title:

“Secure rights of tenant cultivators and owner cultivators cultivating paddy lands, to provide measures for obtaining optimum productivity by proper use and management of paddy lands and other agricultural lands, provide measures for the establishment of Agrarian Services Committees, provide for the settlement of financial and other disputes in respect of agricultural lands, prescribe powers vested in the Commissioner, and provide for any matters consequential thereto. The statute does not come into conflict with the Agrarian Services Act No. 58 of 1979”.

The long title of the Statute can be compared with the long title of the Agrarian Services Act no. 58 of 1979:

“An Act to provide security of tenure to tenant cultivators of paddy lands; to specify the rent payable by tenant cultivators to landlords; to provide for maximum productivity of paddy and other agricultural lands through the proper use and management of agricultural crops and livestock; to provide for the establishment of Agrarian Services Committees; to provide for the determination of tenurial and other disputes relating to agricultural land by the Commissioner of Agrarian Services; to confer and impose certain powers and duties on the Commissioner; to provide for the appointment of cultivations officers; to provide for the repeal of the Agricultural Productivity Law No. 2 of 1972, and the Agricultural Lands Law No 42 of 1973; and to provide for matters connected therewith or incidental thereto”.

Thus, the Long Title of the Statute is identical with that of the Act except for the provision for the “determination of tenurial and other disputes relating to agricultural land by the Commissioner of Agrarian Services” in the Act.

3. Aims & Objectives:

There is no specific statement of aims and objectives. They are as set out in the Long Title. What is stated in the Long Title are at the output rather than outcome level. The Long Title therefore does not proceed from an explicit policy goal. The aims and objectives of the Statute would therefore seem to be enabling the Provincial Council takeover the extant functions of the Department of Agrarian Services at the centre except for the provision relating to the determination of tenurial and other disputes.

4. Instrumentalities/bodies chosen to implement the devolved powers:

The Statute provides for the establishment of Department, staffed with a Commissioner and other staff.

5. Powers, Duties & Functions of the Bodies:

- Substantive

5. Powers of the Commissioner to make rules.

5.(1) (a) Promotion, extension and regulation and management of a cultivation season.

5.(1) (b) Application of relevant agricultural practices.

5.(1) (c) Undertaking agricultural activities at due times.

5.(1) (d) Efficient use of irrigation water.

5 (1) (e) Application of collective measures for soil conservation and protection from use of weedicides, diseases and stray animals.

5 (1) (f) Convene meetings of owner cultivators and occupiers for adopting measures in respect of the efficient use of lands, agricultural productivity, protection of minor irrigation works, protection of catchment areas.

5 (2) Where a meeting is to be convened the Commissioner to give notice of such meeting

5 (3) Commissioner or authorised officer to chair meetings

5 (4) (1) Attendance of 1/3 or 25% of the owner cultivators and occupiers for a meeting to be valid, and the procedure to be followed in the event such attendance is not present.

5 (5) Rules made at such meetings to be binding on all owner cultivators and occupiers

5(6) Any question of right to voting to determined by the chair of the meeting

5(7) Minutes of meetings to be kept and certified by the officer chairing the meeting

5 (8) Any contravention of decision taken at such meetings by an owner cultivator of occupier to be guilty of an offence.

6 (1) Appointment of Vel Vidane to carry out decisions taken at meetings

21 Purposes for which a paddy land can be used

22 Interference with cultivation rights

23. Filling of paddy lands without approval

24 Powers to file action in courts

- Procedural
 - 3 (1) Appointment of Commissioner and other staff
 - 4 Commissioner to function under the general directions of the Minister.
 - 7 Appointment of Agrarian Services Committees and their functions
 - 9 Survey of agricultural lands
 - 10 Audit of accounts of Agrarian Services Committees
 - 13 Powers of the Commissioner
 - 20 Agrarian Services Fund

These are as per the Act No. 58 of 1979.

6. Consistency with the 13th Amendment:

Item 9 of List I is about Agriculture and Agrarian Services, with three sub-items 9.1, Agriculture 9.2, Rehabilitation and maintenance of minor irrigation works, and 9.3 Agricultural research, save and except for institutions designated as national agricultural research institutions.

The statute is about “Agrarian Services”, the scope of the subject being derived from the “Agrarian Services Act No 58 of 1979”. The Statute in section 2(1) states that in the use of powers as actions under sections 2 – 38 of the Statute follow the Act No 58 of 1979. However, the Statute does not provide for the provisions relating to tenancy provided for in the Act No 58 of 1979.

Thus, neither the Act 58 of 1979 nor the Statute under review extend to matters provided for under 9.1, 9.2, or 9.3. The items 9.1 and 9.2 constitutes the functional area of the “Provincial Department of Agriculture”.

7. Consistency with the Chapters on Fundamental Rights & Language Rights:

-

8. Consistency with other laws:

-

9. Analysis / Observations:

9:1 General

The work content of the Department of Agrarian Services was identified as being within the purview of List I and hence transferred to provincial councils. However, interpretations of the Supreme Court determination in respect of amendments to Act No 58 of 1979 resulted in the transfer of the functions of “Agrarian Services” back to the centre. Subsequent determination by the Supreme Court did not lead to the transfer of the functions of the Department of Agrarian Services to the provincial councils. As such the Statute is not operational.

As noted earlier, the statute does not provide for the determination of tenancy rights and obligation provided for the Act No.58 of 1979. In the absence of a clarification of the scope of “Agrarian Services” within item 9, it would be necessary to determine the

nature and scope of the functions that would comprise “Agrarian Services” within the competence of the 13th Amendment.

9:2 Specific

Minor irrigation that had been a function of the Department of Agrarian Services, from prior to the 13th Amendment, remained with the Department. The Annual Budget of the Central Government continued to provide funds for minor irrigation to the Department of Agrarian Services. The Finance Commission provides funds under Province Specific Development Grant for minor irrigation to provincial councils. Thus, there is a duality in public expenditure on minor irrigation. In this regard it is noteworthy that item 19 of List I makes Irrigation a provincial subject, excluding irrigation schemes linked to rivers running through more than one province. Thus, every province has established a Provincial Irrigation Function. There is clearly a need to bring together all irrigation matters assigned to provincial councils under List I under a single statute.

10. Overall Remarks:

The exclusion of institutional aspects agrarian from the purview of provincial councils makes for fragmentation of planning for the agriculture sector between the centre and the provinces. There is policy justification for bringing “Agrarian Services” under provincial purview.

Land Statute
[No. 05 of 1994] of North Central Provincial Council
By
Mr. Asoka Gunawardane

1. Text of the PC List Item:

18. Land – Land, that is to say, rights in or over land, land tenure, transfer, and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II.

2. Text of the Statute's Long Title:

“Statute effected by the North Central Provincial Council of the Democratic Socialist Republic of Sri Lanka setting out the subject of land to the extent land administration, control and use is vested in the Provincial Council in terms of the Ninth Schedule, List 1, item 18 and Appendix II, 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka”.

Preamble:

“The Parliament having brought into effect the Land Ordinance incorporating legal provisions prior to 14/11/1987 for grant and alienation of lands of the Republic of Sri Lanka,

The subject of land being assigned to the Provincial Councils to the extent set out in the 13th amendment to the Constitution, 9th schedule, list 1, item 18 and Appendix II, the North Central Provincial Council considering it appropriate to set out in a statute provisions relating to land administration, control and use vested in the Provincial Council consistent with the said law, the North Central Provincial Council of the Republic of Sri Lanka has effected the following statute.

Any legal provisions in force applicable to matters set out in this statute is inconsistent and suspend the implementation of such provisions and remain inapplicable until this statute remains in force.

The Statute is made inconsistent with the extant “legal provisions applicable to matters set out in the Statute”. Thus, inconsistency is not specified in terms of specific Laws to be made inoperative.

3. Aims & Objectives:

The Statute does not provide for a specific statement of aims and objectives and hence they are as the action content as set out in the Long Title. The Long Title refers to the action content in terms of “land administration, control and use vested in the Provincial Council consistent with the said law (i.e., the 13th Amendment). There is as a result a policy lacuna in terms of the outcome specific to the North Central Province to be achieved by being vested with the said powers provided for in the law.

4. Instrumentalities/bodies chosen to implement the devolved powers:
The Statute provides for a Department, with a Commissioner of Lands and other support staff for carrying out actions in respect of land administration, control and use.
5. Powers, Duties & Functions of the bodies:
Substantive:
 - Part 1: Grants, lease and alienation of land
 - Part 2: Land management and useProcedural:
 - Part 3: Administration
 - Part 4: Orders and regulations
 - Part 5: Legal action
6. Consistency with the 13th Amendment:
Above powers, duties and functions in respect of land administration, control and use to be exercised by the Provincial Lands Commissioner are within the framework of the powers, duties and functions of the State Lands Ordinance No 08 of 1949. The Long Title of the Act No 08 of 1949 provides for, amongst others, “make provision for the grant and disposition of state lands in Sri Lanka”. Accordingly, the Statute provides for the performance of the specified powers, duties and functions for “Land Administration, Control and Use” within the North Central Province subject to the powers vested in the President in terms of item 1.3 of Appendix II of List 1 of the Ninth Schedule of the 13 Amendment to the Constitution as stated in Part 1, Section 3. The preamble makes any legal provisions in force applicable to matters set out in the statute inconsistent and suspend the implementation of such provisions and remain inapplicable until this statute remains in force.
7. Consistency with the Chapters on Fundamental Rights & Language Rights:
-
8. Consistency with other laws:
-
9. Analysis / Observations:
The Province established a position of a Commissioner for the subject of Provincial Lands on establishment of the Provincial Council in 1987. As noted above, the purpose of the Statute is stated as being to set out powers, duties and functions in respect of the subject of land, to the extent set out in the 13th amendment to the Constitution, 9th schedule, list 1, item 18 and Appendix II, taking note of the Land Ordinance No. 08 of 1949 and incorporating legal provisions prior to 14/11/1987 for grant and alienation of lands of the Republic of Sri Lanka. The preamble to the Statute takes note of the provisions in Appendix II, which states that Land shall be a Provincial Council Subject, subject to the special provisions set out therein. Current

practice, however, suggests that the Provincial Land Commissioner functions within the framework of an extant set of procedures and practices established following Appendix II of List 1 of the Ninth Schedule of the Constitution, extending from the Commissioner General at the centre, the Provincial Land Commissioner and the Divisional Secretary. The content of powers, duties and functions of the Provincial Land Commissioner is therefore likely to be determined the system imperatives than those set out in the Statute. In this context the powers, duties and functions provided for by the Statute remains the de-jure provincial component of an intergovernmental system for the grant or disposition of state lands rather than constitute the basis for de-facto practice.

9:1 General:

There is a need to review the nature and scope of the provincial land subject and function in the context of the intergovernmental context of grant and disposition of state land taking account of province-specific development imperatives, powers, duties and functions, both substantive and procedural.

9:2 Specific:

- a. The intergovernmental imperatives in the grant or disposition of state lands require streamlining the relationships of the Provincial Land Commissioner with the Divisional Secretary, performing duties and functions for both the Central and Provincial authorities.
- b. The intergovernmental delivery of grant and disposition of state lands restricts addressing specific provincial land-based development concerns. It is then necessary that a provincial land statute provide for provincial control of land-based development initiatives that take place within the province.

10. Overall Remarks:

It is timely to review the provincial land subject and function in its economic, social and political context and move beyond a provincial “taking over” of the duties and functions performed at the district level to one of aligning powers vested under the 13th Amendment with development needs of the Province.

Land Development Statute
[No. 04 of 1994] of North Central Provincial Council
By
Mr. Asoka Gunawardane

1. Text of the PC List Item:

18. Land – Land, that is to say, rights in or over land, land tenure, transfer, and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II.

2. Text of the Statute's Long Title:

“Relate provisions of the Land Development Ordinance of Democratic Socialist Republic of Sri Lanka to alienate and develop land of the Republic of Sri Lanka with the provisions set out in the 13th amendment, Ninth Schedule, List 1, item 18, Appendix II, to incorporate provisions inconsistent with the provisions of the said Ordinance and to make provision for the division and transfer of lands for land development, management, administration and use”.

Preamble:

The Republic of Sri Lanka having brought into effect the Land Development Ordinance incorporating legal provisions for development and alienation of land, and these provisions being related to the legal provisions set out in the 13th amendment to the Constitution, 9th schedule, list 1, item 18 and Appendix II, this Statute is brought into effect by the North Central Provincial Council, incorporating provisions for the division, transfer, development, management, administration and use of land, inconsistent with the provisions of the said Ordinance.

3. Aims & Objectives:

The Statute does not provide for a specific statement of aims and objectives. The Long Title and the preamble state the purpose of the Statute as being to:

- a. Align the provisions of the Land Development Ordinance No. 19 of 1935 with the powers vested in the Provincial Councils in respect of land under item 19 of List II of the Ninth Schedule to the Constitution enabling “division, transfer, development, management, administration and the use of land” in the Province.
- b. Provide for the division and transfer land for land development, management, administration and use.

As in the case of the Land Statute, there is as a result a policy lacuna in terms of the outcome specific to the North Central Province to be achieved by being vested with the said powers provided for in the law.

4. Instrumentalities/bodies chosen to implement the devolved powers:

The Statute provides for a Department, with a Commissioner of Lands and other support staff for carrying out actions in respect of division and transfer of land for development, management, administration and use of such land.

It is noted that the instrumentality/body provided for the implementation of the Land Development Statute is the same instrumentality/body as for the Land Statute, viz., the Provincial Land Commissioner.

5. Powers, Duties & Functions of the bodies:

- Substantive

Part 1: Determination of beneficiaries

Part 2: Transfer of land

Part 3: Issue of land permits

Part 4: Issue of land grants

Part 5: Sub-leasing and mortgage of alienated lands

Part 6: Succession or transfer

Part 7: Cancelling of grant and lease permits

Part 11: Marking of lands owned by the provincial council

- Procedural

Part 8: Orders and regulations

Part 9: Appointment of officials, their powers and duties

In view of the single instrumentality/body set up in the Province for the performance of powers, duties and functions under the Land as well as Land Development Statutes, those under the Land Development Statute constitute the core of the operational content of the subject of Land.

6. Consistency with the 13th Amendment:

Above powers, duties and functions in respect of “division, transfer, development, management, administration and the use of land” to be exercised by the Provincial Land Commissioner are within the framework of the powers, duties and functions of the Land Development Ordinance No 19 of 1939. The Long Title of the Act No 19 of 1939 provides for, “the systematic development and alienation of state land in Sri Lanka”. The Statute contextualizes its provisions in respect of “division, transfer, development, management, administration and the use of land” within the provisions of Appendix II of List 1 of the Ninth Schedule of the Constitution in making its provisions inconsistent with the corresponding provisions of Act No 19 of 1939.

7. Consistency with the Chapters on Fundamental Rights & Language Rights:

-

8. Consistency with other laws:

-

9. Analysis / Observations:

The Province established a position of a Commissioner for the subject of Provincial Lands on establishment of the Provincial Council in 1987 to take over and perform extant functions at the District level relating to Lands and Land Development. As noted above, the preamble to the Statute states its purpose as being to set out provisions relating to “division, transfer, development, management, administration and the use of land” in the context of The subject of land being assigned to the Provincial Councils to the extent set out in the 13th amendment to the Constitution, 9th schedule, list 1, item 18 and Appendix II, so as to make relevant provisions of the Land Development Ordinance No 19 of 1939 inconsistent and inoperative in the North Central Province.

Current practice suggests that the Provincial Land Commissioner functions within the framework of an already existing set of procedures and practices extending from the Commissioner General of Lands at the centre, the Provincial Land Commissioner and the Divisional Secretary. The content of powers, duties and functions of the Provincial Land Commissioner is therefore likely to be determined by the system imperatives than those set out in the Statute. In this context the powers, duties and functions provided for by the Statute constitutes the provincial component of an intergovernmental system for the “division, transfer, development, management, administration and the use of land”. However, the Provincial Commissioner of Lands functions on the basis of intergovernmental practice rather than powers vested by the Statute.

9:1 General:

There is a need to review the nature and scope of the provincial land subject and function in the context of the intergovernmental arrangements set in place following and in terms of the 13th Amendment to the Constitution for the “division, transfer, development, management, administration and the use of land” taking account of province-specific development imperatives, powers, duties and functions, both substantive and procedural.

9:2 Specific:

- c. The intergovernmental imperatives in the “division, transfer, development, management, administration and the use of land” require streamlining the relationships of the Provincial Land Commissioner with the Divisional Secretary, performing duties and functions for both the Central and Provincial authorities.
- d. The intergovernmental delivery of the “division, transfer, development, management, administration and the use of land” restricts addressing specific provincial land-based development concerns. It is then necessary that a provincial land statute provide for provincial control of land-based development initiatives that take place within the province.

10. Overall Remarks

It is timely to review the provincial land subject and function in its economic, social and political context and move beyond a provincial “taking over” of the duties and functions performed at the district level to one of aligning powers vested under the 13th Amendment with development needs of the Province. It would also be appropriate to set out provincial land powers, duties and functions ensuing from Appendix II of List of the Ninth Schedule in a single statute rather than follow the two Ordinances in formulating separate statutes for Land and Land Development.

Environmental Statute
[No. 13 of 1990] of North Western Province

By
Mr. Asoka Gunawardane

1. Text of the PC List Item:
List 3: Protection of the Environment
2. Text of the Statute's Long Title:
"To provide for the establishment of the North Western Provincial Environmental Authority, to make provision with respect to the powers, functions and duties of that Authority, and to make provision for the protection, management and enhancement of the environment and for the regulation, maintenance and control of the quality of the environment "".
3. Aims & Objectives:
The Statute does not provide for a specific statement of aims and objectives. However, the Long Title refers to "the protection, management and enhancement of the environment and for the regulation, maintenance and control of the quality of the environment". A comprehensive statement of aims and objectives would enable contextualize above actions within the context of the North Western Province.
4. Instrumentalities/bodies chosen to implement the devolved powers:
The Statute establishes an implementation mechanism comprised of three structures, an Authority, an Advisory Council and a Fund.
 - a. The Authority is the executive body and is constituted as a corporation. It is comprised of three members. As the corporate decision-making body, the Authority is narrowly constituted with a technical bias. The Authority does not provide for public interest representation.
 - b. The Advisory Council brings together stakeholder interests into the decision-making process. It is biased towards public sector and provides for three members to represent civil society interests in a twenty-five-member body. The functions of the Advisory Council consist of tendering advice on responsibilities, powers and functions of the Authority and reporting on specific matters referred to it by the Authority.
 - c. The Fund finances the operations of the Authority and provides for autonomy in its actions. The fund operations are subject to audit by the Auditor General
5. Powers, Duties & Functions of the bodies:
The Authority works through rules and regulations, recommendations and orders, and licenses.
 - Substantive:
Substantive powers include power:

- a. To make rules and regulations about protection, management and enhancement of the environment and for the regulation, maintenance and control of the quality of the environment.
 - b. To require any local authority within the North Western Province to comply with and give effect to any recommendation relating to environmental protection within the limits of the jurisdiction of such local authority and in particular any recommendation relating to all or any of the following aspects of environmental pollution”, and to “give to any local authority in writing such directions whether special or general to do or cause to be done any act or thing which the Provincial Authority deems necessary for safeguarding and protecting the environment within the limits of such local authority”.
 - c. To issue environmental protection licenses
 - Procedural:
Procedural powers for enforcement of rules and regulations, orders and licenses are provided for under respective protection and management provisions.
6. Consistency with the 13th Amendment:
The statute is passed following the due procedure for items under List 3.
7. Consistency with the Chapters on Fundamental Rights & Language Rights:
Section 59 of the Statute provides for the protection of actions taken in good faith under the Statute or on the direction of the Authority. Implications of such protection for fundamental rights of persons that may be affected by hazardous projects licensed by the Authority for operation.
8. Consistency with other laws
-
9. Analysis / Observations:
While modelled on the National Environmental Act No.47 of 1980, the North Western Province Environmental Statute excludes the Central Environment Authority from the Province. It is the only province to have an environmental authority. Several issues arise from this situation of the Provincial Authority.
- a. The Statute should enable deliver the services being delivered under the Act so as to ensure national standards in environmental protection, management and enhancement and control of environmental quality (provided for by the Statute) as well as “prevention, abatement and control of pollution” (provided for by the Act). It is necessary to consider whether these provisions in the Act would require incorporation in the Statute if such required services are to be provided by the Provincial Authority, and how - whether by amendment of the Statute or regulations under the Statute.
 - b. The Provincial Environmental Authority excluding the Central Environmental Authority from the Province gives rise to a competitive situation in environmental policy and practice. The situation raises issues of centre-province coherence of policy and practice that is fundamentally different from the situation under items in the Provincial List. It raises questions about the adequacy of “consultation” as the

constitutional modality for ensuring centre-province coherence on items under the Concurrent List, if and when provinces would be making statutes on these items.

- c. The experience of the Provincial Environmental Authority raises issues of governance, accountability and capacity that require being considered in reviewing the institutional modalities of the Statute.

9:1 General:

9:2 Specific:

10. Overall Remarks:

**Local Government (Supervision of Administration) Statute
[No.1 of 1990] of North Western Province**

By

Mr. Asoka Gunawardane

1. Text of the PC List Item:

List 1, item 4. Local Government –

4.2 Supervision of the administration of local authorities established by law, including the power of dissolution (subject to such quasi-judicial inquiries into the grounds for dissolution, and legal remedies in respect thereof, as may be provided by law, and subject to provisions relating to audit as may be provided by law)

2. Text of the Statute's Long Title:

A statute to provide for the exercise of the powers vested in the Governor of the province in terms of the Constitution of the Sri Lanka Democratic Socialist Republic in respect of the supervision of the administration of local authorities established within the province and matters consequential thereto.

3. Aims & Objectives:

The Statute does not provide for specific provisions relating to its aims and objectives. The Long Title states that the Statute provides for the exercise of powers vested in the Governor for the supervision and administration of local authorities. The substantive provisions of the Statute are about:

- a. the dissolution of Municipal Councils, Urban Councils and Urban Councils on grounds of inefficiency (Section 2); and,
- b. the audit of the accounts of Local Authorities (Section 3).

Both are about accountability of local authorities, though it is not stated as a specific objective of the supervision of administration.

4. Instrumentalities/bodies chosen to implement the devolved powers:

The powers of supervision of administration of local authorities is to be exercised through the Minister of the Board of Ministers of the North Western Provincial Council responsible for the subject of local government in terms of the powers vested in the "Minister" in the respective Ordinances and Acts of Local Authorities. The Office of the Provincial Commissioner of Local Government is provincial agency for carrying out Ministers powers.

Powers of audit of local authorities is to carried out by the Auditor General in terms of Article 154 of the Constitution. The recovery of any surcharge, when imposed by the Auditor General, is the responsibility of the Commissioner of Local Government of the North Western province.

5. Powers, Duties & Functions of the bodies:
 - Substantive
Dissolution of local authorities
Audit of local authorities
 - Procedural
Procedural powers are written into the provision relating to the substantive powers regarding dissolution and audit of local authorities.
6. Consistency with the 13th Amendment:

The 13th Amendment List 1 of the Ninth Schedule to the Constitution provides for under item 4.2 powers of “supervision of the administration of local authorities established by law, including the power of dissolution” The power to remove the chairman and dissolve the council/sabha is provided for in the Pradeshiya Sabha Act (Section 185) and Urban Councils Ordinance (Section 184). The instrumentality for the exercise of such powers under the respective Acts is the Minister responsible for the subject of Local Government, in terms of item 4.2, the Minister of the Board of Ministers of the Provincial Council.
7. Consistency with the Chapters on Fundamental Rights & Language Rights:
 -
8. Consistency with other laws:
 -
9. Analysis / Observations:

As noted above the Statute provides for the specific purposes of:

 - a. removal of chairman and dissolution of council/sabha;
 - b. audit of the accounts of the respective local authority funds.

Thus “supervision of administration” is defined within these two actions. The Minister in charge of the subject of local government is vested with powers of control and oversight so as to ensure internal accountability on the part of the chairman and the council for effective performance of the purposes provided for by the respective laws. It would make better “governance” sense if the power of the Minister to dissolve local authorities for inefficiency and of the Auditor General to audit the local authority funds are positioned within a definition of the “supervision of administration” that would take fuller account of local government accountability.

 - 9:1 General:

It is timely to move forward from reactive statutory responses of provincial councils to taking charge of the regulatory aspects of the supervision and administration of local authorities and use the provisions of item 4, List 1, of the Ninth Schedule to construct a policy for governance of local government by conferring additional powers (item 4.3) reflecting imperatives of local governance and accountability in the delivery of respective mandates.
 - 9:2 Specific:

Prepare a framework local government statute that would provide for adoption of elements of transformation meeting specific needs of the province.

10. Overall Remarks:

**Co-operative Employees Commission Statute
[No.01 of 2014] of Sabaragamuwa Province**

**By
Prof. N. Bandara**

1. Text of the PC List Item

PC List Item, 17 Co-operatives:

17.1 Co-operative undertakings and the organization, registration, supervision and audit of co-operative societies within the province

17.2 Co-operative development within the province including co-operative education and propaganda

17.3 Provincial cooperative Employees Commission

17.4 Matters connected with employment, promotion, retirement and other connected matters of employees of cooperative societies within the province

Note:

Reserved list item 15, Cooperatives – Cooperative Banks

2. Text of the Statute's Long Title

A Statute to establish a commission to be known as Sabaragamuwa Province Employee's Commission in terms of the Article 154 (g) (1) of the 13th Amendment to the Constitution of Democratic Socialist Republic of Sri Lanka and to make provisions in respect of Employees of Cooperative societies in the Sabaragamuwa Province and to provide for matters connected therewith or incidental thereto.

The provisions of this Statute are inconsistent with Co-operative Employee's Commission Act, No.12 of 1972 amended by Co-operative Employee's Commission (amended) Act, No.51 of 1992.

3. Aims & Objectives

4. Instrumentalities/bodies chosen to implement the devolved powers

5. Powers, Duties & Functions of the bodies

- Substantive & Procedural

6. Consistency with the 13th Amendment
7. Consistency with the Chapters on Fundamental Rights & Language Rights
8. Consistency with other laws
9. Analysis / Observations
 - 9:1 General
 - 9:2 Specific
10. Overall Remarks

Pre-Child Education Development Authority Statute

[No.2 of 2010] of Sabaragamuwa Province

By

Prof. N. Bandara

1. Text of the PC List Item

PC List: Appendix 3. Education and Education Services – Education to the extent set out in Appendix III –

2 (1) Supervision of the Management of All Pre Schools

18. Registration and supervision of Pre-Schools

Sinhala Copy of the constitution is different:

While the English copy says “Supervision **of the** Management of All Pre Schools”, the Sinhala copy says “Supervision **and** Management of All Preschools”.

Sabaragamuwa Pre-Child Education Development Authority follows the Sinhala version.

2. Text of the Statute’s Long Title

A Statute to provide for the promotion and development of Sabaragamuwa Pre-Child Education by management and supervision of Pre-Schools within the Sabaragamuwa Province and for matters connected therewith or incidental thereto

Note:

According to the Article 31 (2) of the Statute this Statute should be given priority in the event of conflict between the Pre School Statute No. 7 of 1994.

At the discussion we conducted at the Sabaragamuwa provincial council we were told the Statute No. 7 of 1994 is inactive now.

3. Aims & Objectives

1. Objective

Establishment of Sabaragamuwa Pre-Child Education Development Authority

2. The objectives of the Authority shall be –

- Development of Child Education in the province by supervision and management of pre child education
 - Create and appropriate environment for the education, social and spiritual development, of the children of the Province
4. Instrumentalities/bodies chosen to implement the devolved powers
Sabaragamuwa Pre-Child Education Development Authority
 5. Powers, Duties & Functions of the bodies
 - Substantive
 - Provide necessary advice, guidance and assistance for the improvement of child education in the province
 - Educate the community of the importance of Pre-child development
 - Supervise and coordinate the activities of the government and non-governmental organizations work for the child development in the Province
 - Prescribe standard in regard to the management and control of the pre-schools conducted by other organization including local authorities
 - Impose requirements in regard to educational and professional qualifications for the male and female wardens of Pre-schools
 - Procedural
 - Registration of all preschools established and maintained in the Province
 - Importance requirements in regard to educational and professional qualifications for the male and female wardens of Pre-schools
 - Establish and conduct teacher training institution to train the male and female wardens of the preschools and to award certificates
 - Prescribe standards in regard to buildings required for the Pre-schools
 - Impose condition in regard to recovery of fees charging fees from the preschool children
 - Coordination and supervision of NGOs working in the field of child development
 - Establish Model Preschools
 6. Consistency with the 13th Amendment

Some provisions may inconsistency with the 13th amendment such as Establishment of model preschools (List III Items 2 (1) and 18); Establish and conduct teacher training institutions (List III Item 8. Training of Teachers and other educational personnel will come within purview of National Institute of Education (NIE); 15. Conducting of in-service training programmes for which prior approval of NIE has been obtained)

7. Consistency with the Chapters on Fundamental Rights & Language Rights

May inconsistency with the FR chapter article 14 (1) (g). the freedom to engage...in any lawful occupation, profession, trade, business or enterprise, as the privately owned and managed pre-school owners or managers might challenge some provisions of the statute as interference in their business.

8. Consistency with other laws

XXXXXXXXXXXXXXXXXX

9. Analysis / Observations

9:1 General

- The statute uses word “Pre-Child” and “Child” invariably. It does not provide definitions to the words “Pre-child” and “Child” in order to have a proper perspective and identification of the scope. Pre-Childhood covers a specific period of the development of a child. It is better to provide a broad definition and identification of the scope of the statute. Pre-Childhood is a specific period of a child which needs specialized attention.
- Some provisions refer “Child Education and Development” not “Pre-Child” – according to SL standards Child covers up to the 18 years of age. Then the statute refers to the children in the formal education which is covered under Provincial Schools referred in the List III 2 (2).
- The statute provides for appointment of a Chairman to implement the decisions taken by the Board of Management. However the Secretary of the Ministry is the ex-officio Chairman of the board. Since an Authority is a delegated institution under the Ministry, the Secretary of the same ministry becoming the Chairman may obstruct the autonomy to be granted to the authority by the Ministry.

9:2 Specific

- Statute is a good attempt to set standards for pre-school education, charges recovered, the staff and their training, the building and other facilities.
- Also it recognizes the role played by the Non-Government Organizations.

10. Overall Remarks

At the meeting held with the relevant officials, the Director of Pre Child Development Authority informed that the Sinhala term ‘පූර්ව ළමා විය’ that is used for the term “Pre Child” is wrong and it should be “Pre Childhood” ‘මුල් ළමා විය’.

The Authority exercises considerable autonomy and introduced several good practices such as

Setting minimum standard for a Pre- School

Introduced guidelines and time to improve the qualities to reach the minimum standards

Introduce work books for Pre Schools

Completed the registration 80% pre schools

Alternate Power and Energy Statute
[No.02 of 2007] of Southern Provincial Council

By
Prof. N. Bandara

1. Text of the PC List Item
 34. Development, conservation and management of sites and facilities in the Province for generation and promotion of electricity energy (other than hydro-electric power and power generated to feed the national grid)

2. Text of the Statute's Long Title

A statute to provide for establishing the subject of alternate power and energy in the Southern Province for identification, preservation and improvement of alternate power and energy sources and exploit them for enhancement of the power supply for the benefit of the People of the Southern Province ensuing the least harm to the environment and all other matters connected with, incidental and ancillary thereto.

3. Aims & Objectives
 1. Development of sites and facilities within the province for the generation enhancement of electrical supply, their conservation and control (except hydro electricity generated to feed the national grid).
 2. Preservation and the maintenance of power generation projects already in operation within the provincial council (area) and others expected to be identified in the future.
 3. Generation of power and energy through the exploration of renewable energy sources such as natural cascade, solar energy, wind power, bio-gas and dendro which are not productively exploited.
 -
 4. Interacting with and accreditation, subject to supervision of persons with acceptable qualifications, non-governmental organizations, other persons and organizations with experience for providing the organizational management, technical and financial consultancy services in planning, implementing and strengthening the sustainability of alternative power and energy sources
 5. To organize – (a). Provincial Committees and sub-committees, and (b). Divisional Steering Committees, aimed at guidance, co-ordination, advice and supervision of schemes in operation and provisions of resources needed by them.

6. Adoption within the provisions of this statute any policies decided upon from time to time, necessary for the promotion and operation of alternate power and energy projects in the interest of the general public.
7. Encourage people to make use of alternate energy sources for domestic electricity, development and manufacturing activities and provide them with necessary guidance and assistance regarding same.
8. To take necessary steps to prevent damages to the eco-system when operating alternate power and energy resources
9. To take necessary steps to promote the generation of power and its use among the people and encourage them in that regard.
10. Registration with the Ministry of Alternate Power and Energy, all societies and organizations promoting the generation and use of alternate power and energy among the people and provide them with state assistance.

11. Establishment of (a). A Provincial Committee (b). Administration Unit, and (c). An Alternate Power and Energy Development Fund on the recommendation of the Minister and with the approval of the Governor
12. The 'Establishment of one or more Training and Research centres on alternate power and energy

4. Instrumentalities/bodies chosen to implement the devolved powers
 - Provincial Committee (on alternate power and energy)
 - Administration Unit (on alternate power and energy)
 - Divisional Committee (on alternate power and energy)

5. Powers, Duties & Functions of the bodies
 - Substantive
 - Provincial Committee:
 - Identification of power and energy sources currently extent within the province, their conservation and maintenance
 - Planning of technical, financial and consultancy services
 - Co-ordination among the non-government organizations, persons and organizations with supervision,
 - Sale of movable properties received as gifts or donations and crediting the account of the Fund with proceeds realized
 - Divisional Steering Committee
 - Implementation of alternate power and energy projects
 - Providing consultancy services

Accreditation of suitably qualified persons, non-government organizations with experience for consultancy services subject to the supervision of the provincial committees

- Establishment of one or more Training and Research centres on alternate power and energy and conducting seminars, workshops, meetings, maintain and exhibitions an information centre, awarding local and foreign scholarships

- Procedural

- Establishment of Provincial Alternate Power and Energy fund with initial capital of Rs.1 Million.
The Chief Minister shall credit the account of the Fund with an amount as determined by him in consultation with the Minister in charge of the subject, by way of capital

6. Consistency with the 13th Amendment

Objectives are consistent with the 13th amendment.

1. Aims are consistency with the 13th Amendment

2. However the establishment of separate Fund, namely, Alternative Power and Energy Fund - is problematic.

- The Provincial Council Act No.42 of 1988 provides the provisions for “Provincial Council Fund” but not separate accounts established by the statutes [Ref PC Act No.42, Articles 19 (1) (d)].

3. The ‘Establishment of one or more Training and Research Centres on alternate power and energy’ is envisaged in the statute. However, this is not stated under “General Objectives”. It appeared in “Part III – Training and Research”.

- This clause would contravene with the Reserved List subject, namely, “Provincial agencies and institutions for professional, vocational training (and) Promotion of special studies or research”. Accordingly the research and data collection could be interpreted as a reserved subject.

7. Consistency with the Chapters on Fundamental Rights & Language Rights

Yes.

8. Consistency with other laws

Not verified

9. Analysis / Observations

9:1 General

The statute displays a good practice by the regional legislatures as the statute has expanded the field and scope of the subject assigned under 13th amendment. From the alternate power and energy such as solar, wind, biomass, wave and tidal wave recognized by the scientists, the statute has identified natural cascades, solar energy, wind power, bio-gas and dendro as sources of alternate power and energy.

9:2 Specific

The statute is an innovative step by the Provincial level as there are many untapped alternate power and energy resources available at the regional level. The production of bio gas for domestic use and wind power and establishment of small hydroelectricity power plant helping the small scale manufactures in the province also grow energy producing dendro (fuel) trees to produce power and use as fertilizer for cultivation.

10. Overall Remarks

The statute has adopted a visionary and evolving approach to solve energy problem in the province by using environmental friendly energy sources. These projects could provide income generation and employment opportunities for the local population

11. Post Script

At the meeting conducted at the Southern PC, the officials informed that the Alternate Energy Statute has not been implemented in the province. As such the fund account was not established. The current staffs do not know why this has not been implemented. However, they informed that the Provincial Council has submitted two proposals to establish two mini-hydroelectricity projects through community organizations. But this was not allowed. We informed them that the reason might be the identification of hydroelectricity as a Reserved List subject in the PC List.

Social Services Statute
[No.02 of 2002] of Southern Province
By
Prof. N. Bandara

1. Text of the PC List Item:

7. Social Services and Rehabilitation

7.1 Probation and Child Care

7.2 The Rehabilitation of destitute persons and families

7.3 Rehabilitation and welfare of physically, mentally and socially handicapped persons

7.4 Relief of the disabled and unemployed

Text of the Concurrent List Item:

7. Social Services and Rehabilitation

7.1 Relief, rehabilitation and resettlement of displaced persons

7.2 Relief of distress due to floods, droughts, epidemics or other exceptional causes and rehabilitation and resettlement of those affected

2. Text of the Statute's Long Title

A statute to provide for the grant of assistance and aid to the poor, the destitute and the disabled; the establishment and maintenance of homes and day care centres for elders and the grant of assistance and aid to the sick, with a view to providing services and facilities to the economically and socially disadvantaged persons living in the Southern Province

3. Aims & Objectives

Provide assistance and aid to the poor, destitute and disabled persons

Establish and maintain homes and day care centres for elders

Establish and maintain homes for disabled and mentally retarded persons, grant them assistance and aid provide them with their necessities

Grant aid to distressful persons in time of disaster

Grant aid and assistance to sick suffering from various ailments

Establish a Department of Social Studies and Appoint a Provincial Director of Social Services

Establish Social Service Fund Account

Register volunteer organizations engaged in aforesaid activities and give them guidance

Provide equipment to persons with disabilities

Create scholarships to obtain knowledge, modern technology on social development, creative skills of the disabled

4. Instrumentalities/bodies chosen to implement the devolved powers

Department of Social Services

Provincial Director of Social Service and Assistant Secretary Provincial Ministry of Social Service

Social Service Officers appointed by the Department to the three districts in the province

Southern Province Social Service Fund – An Advisory Board appointed by the Minister at his discretion – advising the Secretary of Ministry who shall administer the fund

5. Powers, Duties & Functions of the bodies

- Substantive

Establish and Maintain Southern Province Social Service Fund

Receiving funds and donations and money to the fund

Accepting foreign aid obtained by the Central Government

Create scholarships by the Minister for imparting new knowledge, technology on social development and to develop and management skills in the members of Women's Organizations and voluntary and development of creative skills of the disabled persons

Registration of voluntary organizations

- Procedural

- Minister/Secretary of the Ministry of Social Service determining the powers and functions of the Director

- All officers appointed under this statute in the exercise of their power, act in accordance with the general and special orders and directives given to the by the Minister/Secretary

- The Secretary shall compile annual reports regarding the administration of the fund

- The Minister shall place annual report in respect of the management of fund account together with the audited account and the report of the Auditor General before the Provincial Council and the Board of Ministers

- Secretary of the Ministry approved the procedure to abide by the voluntary organizations and maintain a registry of VOs

- Hold inquiries on cases against the VOs regarding the violation of any provisions of the statute or the approved procedure and dissolve the managing body of VOs and reconstitute is, if found guilty
- Acquiring the property of cancelled VOs and appoint an officer to handle them
- Reconstitute the cancelled VOs

6. Consistency with the 13th Amendment

4. Aims are consistence with the 13th Amendment
5. However the establishment of Social Service Fund is problematic. The statute states that the Social Service Fund Account shall be in conformity with the provisions of Part III of the Provincial Council Act, No.42 of 1987:
 - The Act provides the provisions for “Provincial Council Fund” but not separate accounts established by the statutes [Ref PC Act No.42, Articles 19 (1) (d)].

We don't know whether they have followed the Art.24 of the PC Act and receive a recommendation of the Governor:

- Article 24(1) A statute in relation to any subject with Special respect to which the Provincial Council has power procedure to make statutes, shall not introduced into, or as to move in, a Provincial Council except on the status recommendation of the Governor, if such statute Relating makes provision for any of the following matters:
 6. “Grant aid to distressful persons in time of disaster” an objective specified in the statute is cross cutting with the subject in the Concurrent List i.e. Social Service and Rehabilitation (7.2) Relief of distress due to floods, droughts...
 - However, the word ‘disaster’ is not included in the concurrent list subject. It seems that the drafters avoided the statute falling under the concurrent list by using the word ‘in time of disaster’

7. Consistency with the Chapters on Fundamental Rights & Language Rights

The Articles 10 (1) & (3) Statute might contravene with the FR Chapter as it has given powers to the Secretary to dissolve the managing body of the Voluntary Organizations (VOs) in addition to cancelling their registration under the Ministry and confiscate the property of such VOs.

- Article 10 (1) ...that the managing body of any voluntary organization is guilty of contravention of any provisions of this statute or the approved procedure, such the Secretary shall have the power to dissolve managing body of such association or organization.
- Article 10 (3) All the property of an association or organization whose registration is cancelled shall vest in the Ministry of Social Service

FR Chapter of the Constitution:

Article 14(g) the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.

The Secretary can cancel the registration. But can he/she dissolve managing body of such associations if it is working in areas outside the subject of Social Service or registered as a company under companies Act?

Can the Secretary to confiscate the property of an organization if such properties not given by the Social Service Department or earned by working under the registration.

8. Consistency with other laws
Company's Act and Laws governing property rights have to be checked
9. Analysis / Observations

9:1 General

The long title is clearly spelled out to include all the sub-subjects identified the constitution.

However, the procedural sections in the statute is limited only to the recruitment of Director and other staff of the Ministry and creation of social service fund, the registration and regulation of voluntary organizations and awarding scholarships to obtain new knowledge and technologies on the social services and disabled.

Following items in the PC list have not been accommodated:

Probation and Child Care

Relief of the disabled and unemployed

9:2 Specific

The creation of unified approach to manage the service personal belong to the social service officers working in three different districts and divisional areas should be appreciated as it would provide the Ministry to prepare a Provincial Plan for the subjects identified in the PC List.

The statute provided a space for the Ministry of Social Services to development of a partnership with the VOs.

Under scholarship program the statute has a specific focus on the development of leadership and management skills in the members of Women's organization.

The capacity building of Voluntary Associations actively participate in the social development at rural, regional and district level.

Further the scholarship program aimed at the imparting of knowledge in the modern technologies applicable to social development relating to the functions of social service officers and superintendents of social service institutions.

10. Overall Remarks

Approach to the subject is visionary and evolving.

But the constitutional, legal and financial processes set in the statute may create legal issues if an aggrieved party seek judicial intervention.

11. Postscript

The officials of Provincial Social Service Department informed that they have been considering the introduction of an amendment to the current statute or draft a new statute.

Currently the Department is headed by a Commissioner though the statute created a position of Director as the head of Department under the instructions given by the Treasury. By creating the position of Commissioner the Treasury instructed to merge the Department of Probationary and Childcare and the Department of Social Services. The Commissioner is also handling the functions identified by the statutes on the welfare of Elders and Disabled persons.

Under social service the Department provides grants to the organizations registered with Divisional Secretariats for undertaking homes for adults in destitute. Some organizations have received funds for new buildings. The department also providing funds to the Temples.

Business Registration Statute
[No. 1 of 1996] Uva Province
By
Mr. Asoka Gunawardane

1. Text of the PC List Item:
No PC List item.
2. Text of the Statute's Long Title:
A statute to register business names of businesses, institutions and individuals engaged in business operations within Uva Province and provide for matters related to the subject. The provisions of this statute are inconsistent with the Business Names Registration Ordinance.
3. Aims & Objectives:
The Statute does not provide a specific statement of aims and objectives and is to be inferred from the Long Title. The substantive powers provided for in the Statute suggest a regulatory objective.
4. Instrumentalities/bodies chosen to implement the devolved powers:
The Statute does not provide for an organizational entity with responsibility for the implementation of the Statute. The Statute refers to a "Registrar" as the person to whom information is to be provided and who would act in case of default. At present, the Provincial revenue Commissioner functions as the Registrar of Business Names.
5. Powers, Duties & Functions of the bodies:
 - Substantive
 - a. Specification of individuals and business to be registered
 - Procedural
 - a. Designation of who should register a business
 - b. Procedure to be followed and information to be furnished
 - c. Time period during which the business registration should be carried out.
 - d. Penalties for incorrect registration and wrong information
 - e. Provision for regulations
6. Consistency with the 13th Amendment:
The Statute has been passed by the Uva PC on the basis of item 27 of List 1, "Incorporation, regulation and Judicial winding up of corporations with objects confined to the Province, excluding trading corporations, banking, insurance and financial corporations".
The corresponding Statute in the Western Province (05 of 2011) has as its Long Title: "A statute to make provisions for the registration of business establishments and persons conducting business activities under business names within the Western Province, and in order to provide provisions for all matters related to such registration

or matters consequential thereto. Western Province Business Names Statute, No. 04 of 1994 is repealed hereby. This statute non-complies with the Registration of Business Ordinance (Authority 149) amended by Ordinances, No. 6 of 1918, No. 27 of 1919 and No. 8 of 1938. Trade, corporations and non-incorporated trade institutions, the objectives of which are confined to the Province, shall only be registered under this Statute as a business name”.

7. Consistency with the Chapters on Fundamental Rights & Language Rights:

-

8. Consistency with other laws:

-

9. Analysis / Observations:

As noted above the scope of the Statute is regulatory, regulation of business names of enterprises located within the Province. In the Uva Province, the revenue collected from registration of business names is not significant. In the event of the registration of business names being considered a source of revenue, it would be necessary to move from current one-time fee basis of such registration to one that yields revenue from businesses on an ongoing basis. However, such an arrangement would require positioning registration of business names within a business promotion agenda providing services to enterprises.

9:1 General:

Review the aims and objectives of the statute to reflect current context of business promotion.

9:2 Specific:

Amend the Statute appropriately.

10. Overall Remarks:

**Supervision of Local Authorities Statute
[No. 02 Of 2011] of Uva Provincial Council**

By

Mr. Asoka Gunawardane

1. Text of the PC List Item:
List 1, item 4. Local Government –
4.2 Supervision of the administration of local authorities established by law, including the power of dissolution (subject to such quasi-judicial inquiries into the grounds for dissolution, and legal remedies in respect thereof, as may be provided by law, and subject to provisions relating to audit as may be provided by law)
2. Text of the Statute’s Long Title:
Statute to provide for the exercise of powers of supervision of the administration of local authorities situated within Uva Province and matters related to or consequential thereto.
3. Aims & Objectives:
There is no specific provision stating the aims and objectives of the Statute. It is noted that Sections 2 – 7 of the Statute follow Sections 184 of the Urban Councils Ordinance 61 of 1939 and 185 (1) – (7) of the Pradeshiya Sabha Act No. 15 of 1987, “Removal of the Chairman and the Dissolution of the Pradeshiya Sabha”. It is noted that Section 185 is contained within Part VII Supplementary Provisions Relating to Pradeshiya Sabhas that provides for, amongst others, Minister’s powers in respect of Pradeshiya Sabhas. Indeed, the exercise of the supervision of the administration of local authorities constitute a wider area of actions of which the “Removal of the Chairman and the dissolution of the Pradeshiya Sabha” is a specific act. Therefore, the Long Title of the Statute does not clearly describe the aim and objective of the Statute.
It is to be noted that Section 2 (1) of the Statute broadens the scope of misconduct beyond Section 185 (1) (a) – (e) of Act 15 of 1987.
4. Instrumentalities/bodies chosen to implement the devolved powers:
The powers of supervision of administration of local authorities is to be exercised through the Minister of the Board of Ministers of the North Central Provincial Council responsible for the subject of local government in terms of the powers vested in the “Minister” in the respective Ordinances and Acts of Local Authorities (eg., Pradeshiya Sabha Act No 15 of 1987, Section 185). Ministers powers will be executed through the office of the Provincial Commissioner for Local Government.
5. Powers, Duties & Functions of the bodies:

Substantive

Removal of Chairman and Dissolution of local authorities

Procedural

Procedural powers are written into the provision relating to the substantive powers regarding dissolution of local authorities.

6. Consistency with the 13th Amendment:
The 13th Amendment List 1 of the Ninth Schedule to the Constitution provides for under item 4.2 “Supervision of the administration of local authorities established by law, including the power of dissolution” The power to remove the chairman and dissolve the council/sabha is provided for in the Pradeshiya Sabha Act and Urban Councils Ordinance. However, the Statute has included a new case of misconduct as reason for removal of chairman and dissolution of the sabha/council, by introducing the following:
“(f) Continued non-participation in functioning standing committees while being members of such committees” (Section 2 (1) (f)).
Item 4.3 of List 1, Ninth Schedule states that “Local authorities will have the powers vested in them under existing law, It will be open to a Provincial Council to confer additional powers on local authorities but not take away their powers”. However, the Statute is made inconsistent with the relevant section of the Municipal Councils Ordinance (277(1), 277(1) (a)), 277 (2)(b), 277 (3)), Urban Councils Ordinance (184) and Pradeshiya Sabha Act (185).
7. Consistency with the Chapters on Fundamental Rights & Language Rights:
-
8. Consistency with other laws:
-
9. Analysis / Observations:
As noted above the Statute provides for the specific purpose of removal of chairman and dissolution of council/sabha. Thus “supervision of administration” is narrowly defined. The Minister in charge of the subject of local government is vested with powers of control and oversight so as to ensure internal accountability on the part of the chairman and the council for effective performance of the purposes provided for by the respective laws. It would make better “governance” sense if the “power of the Minister to dissolve local authorities for inefficiency” is positioned within a definition of the “supervision of administration” that would take fuller account of local government accountability.
9:1 General:
It is timely to move forward from reactive statutory responses of provincial councils to taking charge of the supervision and administration of local authorities and use the provisions of item 4, List 1, of the Ninth Schedule to construct a policy of local

government by conferring additional powers (item 4.3) reflecting imperatives of local governance and accountability in the delivery of respective mandates.

9:2 Specific:

Prepare a framework local government statute that would provide for adoption of elements of transformation meeting specific needs of the province.

10. Overall Remarks:

Rural Development Statute
[No. 02 of 2013] of the Western Provincial Council

By

Prof. N. Selvakkumaran

1. The Provincial Council [PC] List devolves, without any limitation or restriction, the subject of ‘Rural Development’ to the Provinces [Vide Item 10]. The item ‘Rural Development’ is neither elaborated nor qualified by any other explanation or addition. As per the Supreme Court, when a subject is mentioned in the Lists without any restrictive or qualifying statements, the said subject is devolved in the PC fully.

As such, it is deemed that the entirety of rural development is a devolved matter and the Provincial Councils have comprehensive power to legislate upon it.

2. The qualitative analysis of the Rural Development Statute of the Western Provincial Council has to be carried out against this backdrop. It is also significant to keep in mind that vast areas of the Western Province continue to be rural, though both the ‘commercial and political hubs of the country’ are in the Western Province. It is also true that there are more number of Municipal Councils in the Province compared with other Provinces. However, that does not detract from using this subject matter to effectively and efficiently engage in rural development of the rural areas of the Western Province.
3. The following is given as the long title of the Statute –
 - To allocate provision for the establishment, registration and continuance of Rural Development Societies, Women Rural Development Societies, Rural Development Divisional Boards of Authority, Rural Development District Boards of Authority and Rural Development Provincial Boards of Authority in order to improve economic, social, educational, moral health and cultural affairs of rural and urban communities within the Western Province,
 - To make provisions related to or consequential to the stated provisions and
 - To repeal the Rural Development Statute No. 05 of 1998.

4. The objectives of the Statute are to create economic, social, cultural and spiritual development of the public of the Province by their own planned activities while improving their skills and self-power. Towards these objectives, the Statute lists many functions which include the following:
 - i) Establishing and maintaining Rural Development Societies / Women Rural Development Societies;
 - ii) Organizing, establishing and maintaining Rural Development Divisional Boards of Authority;
 - iii) Organizing, establishing and maintaining Rural Development District Boards of Authority;
 - iv) Organizing, establishing and maintaining Rural Development Provincial Boards of Authority;
 - v) Establishing and maintaining Women Improvement Training Centers;
 - vi) Planning programmes for rural development and implementation;
 - vii) Establishing and maintaining training and sales centers towards upgrading the economic activities and livelihoods of the rural community;
 - viii) Establishing Banks for rural development to ensure the safety of members' money;
 - ix) Managing and supervising institutions which support rural development through rural savings, deposit accumulations, investment and loan provision and promotion;
 - x) Coordinating with the governmental, foreign and local non-governmental organizations established for rural development;
 - xi) Establishing and maintaining a Provincial Rural Development Fund.

5. The Statute establishes a Department of Rural Development with a Provincial Director of Rural Development at the helm to accomplish the objectives and functions above referred to. The Statute also provides for the positions to be in the Department such as Assistant Directors of Rural Development, District Rural Development Officers, Rural Development Officers, Senior Sewing Instructors, Sewing Instructors. The Statute implies the creation of a Provincial Rural Development Service.

6. It is also envisaged to establish Rural Development Society and/or Women Rural Development Society in every village. There will be women members only in the Women Rural Development Society. The Statute is somewhat detailed with regard to establishing these Societies, their powers and the registration of these Societies.
7. A model Constitution for these Societies is also appended in the Schedule to the Statute. This is a good and welcome step as the aspiring members may not have the skill to draft their own Constitution. The Rural Development Society is endowed with the status of legal persona having a common symbol, the authority to enter into contracts and could sue and be sued in its name. This particular attribution will ensure that the members of the Society will not be personally liable for any action of the Society.
8. The Statute also contains detailed provisions relating to the Rural Development Divisional Board of Authority, District Board of Authority and the Provincial Board of Authority. The aims of these Authorities are also listed in the Statute thus making it known to these bodies what they should try to achieve under the provisions of the Statute. These sections, while providing for promoting the cause of rural development, try to ensure safeguards against any possible abuse of the system and facilities provided under the Statute.
9. One of the desirable features of the Statute is the recognition that the Rural Development Divisional Board of Authority, District Board of Authority and the Provincial Board of Authority are empowered to provide funds and guidance to promote Rural Development Societies and Women Rural Development Societies to accomplish their objectives. This will ultimately promote the Societies to engage in self-reliant projects and activities if the Authorities provide adequate funds and necessary guidance and above all constant monitoring and supervision. This will make these societies worthwhile, feasible and desirable entities in the long run.
10. The Statute establishes a Rural Development Fund in which all the grants received from the Government, grants made by the PC Fund, 1/5 of the benefits received by the contractual services; money received from local and foreign persons and institutions and funds received from other legally accepted ways are remitted. A Provincial Rural Development Account would be opened and maintained under the Rural Development

Fund. The Statute provides for the Auditor General to exercise the powers vested in him under Article 154 of the Constitution, which again is a healthy step.

11. Rural Development Societies could be 'dissolved' or they could be suspended by the Director of Rural Development / Divisional Secretary. This is after obtaining reports. Similarly a Rural Development Divisional Board of Authority too could be suspended by the Director. When it comes to the Rural Development Provincial Board of Authority, it is the Secretary to the Ministry who has the authority to suspend it.
12. The Minister is empowered to make rules under the Statute. These rules have to be gazetted and brought before the PC for its approval. Any rule which is not approved by the PC will cease to be in operation without prejudice to what had already been done.
13. There are a few concerns as to the coverage of the scope of the subject of 'rural development'. While it is true that there are no restriction specified in the item as to its scope, there could be matters which could not be within the legislative power of the Provincial Council. For instance, no Provincial Council can make any Statute establishing a bank, except a co-operative bank [vide Item 27 of the PC List which expressly excludes trading corporations, banking, insurance and financial corporations].
14. In the circumstance, one of the objectives provided for in the Statute [vide section 02 g)] is to establishing banks for rural development to ensure the safety of members' money, though no detailed provisions are laid down in the Statute other than this one objective clause. This provision tends to be ultra vires the legislative power of the PC.
15. Another concern is found in section 05 (2) of the Statute. This provides the criteria for recognizing a settlement as a Village. In this respect, this clause recognizes as a village the Grama Niladhari division or the village, among others, with traditional bonds based on class, caste, religion, etc. It is questionable whether this recognition would withstand a judicial scrutiny on the basis of discrimination which is prohibited under Article 12 (2) of the Constitution!

N. Selvakkumaran

December 20, 2018

Waste Management Statute
[No. 1 of 2007] of Western Province

By

Prof. N. Selvakkumaran

1. Item 37 of the Provincial Council [PC] List provides that ‘protection of environment’ is, subject to some qualification, a devolved subject. Accordingly, it reads as follows:

“37. Protection of environment within the Province to the extent permitted by or under any law made by Parliament.”

The Western Province Waste Management Statute deals with matters which will have some relation to the subject of ‘local government’ which is dealt in Item 4 of the PC List. According to this Item, local government authorities in the country shall be dealt with by law passed by Parliament with regard to their constitution, form and structure [vide Item 4:1]. But the supervision of administration of these bodies falls within the purview of Provincial Council [vide Item 4:2]. It is also provided that the local authorities will have the powers vested in them under existing laws and that Provincial Council can confer additional powers on local authorities but cannot take away their powers [vide Item 4:3]

2. It is in this backdrop that the Statute should be assessed. The long title of the Statute provides for the following –
 - the establishment of a Waste Management Authority;
 - the management of collection, segregation, transportation, transfer, treatment and disposal of waste;
 - the establish of a fund for the management of the relevant affairs;
 - the delegation of certain powrs to local authorities of the Western Province in connection with the implementation of the aforesaid functions;
 - other matters connected therewith or incidental thereto; and
 - repealing the Waste Management Statute, No. 9 of 1999.

3. The Statute establishes the Waste Management Authority of the Western Province which is declared to be a body corporate with perpetual succession and a common seal and is capable of suing and being sued in such name. The Statute provides for a desirable composition of members for the Authority. The composition represents a mix of officials on one hand and persons who are knowledgeable and experienced in waste management as well as a representative of the Finance Commission and some Chairmen of Municipal Councils, Urban Councils and Pradeshiya Sabhas on the other.
4. One of the desirable provisions in the Statute is that it does not enable a person to be a member if he/she is a share-holder or a member of or an adviser to a company which is connected with waste management activities. This pre-empts any possibility of a conflict of interests arising among the members of the Authority.
5. The Statute, in its Part III, provides for the objects of the Authority, which are somewhat comprehensive and which makes it clear that the Authority will be working in coordination with local authorities as well as other organizations having similar objects. The Authority is also empowered to conduct research on re-cycling and re-use of waste and engage in creating awareness among the public on waste management, through publication of papers, reports, etc.
6. Wide powers are vested in the Authority. They include those customarily granted to a body corporate which enjoys perpetual succession and which could sue and be sued. The Authority is also empowered to make by-laws regulating and controlling the issuance of licenses to entities other than the local authorities. It also enjoys power of investigation into complaints against any violation of rules and regulations on waste management and to take appropriate steps.
7. The Statute provides for the Authority to establish Advisory Councils to advise the Authority on any or all matters referred to it by the Authority as the Minister may consider necessary. The composition of the Council is left at the discretion of the Authority.

8. The Statute prescribes that the Authority will have its own Fund. Part VI stipulates matters relating to finances and it ensures that the Authority is responsible and answerable by being subjected to government audit.
9. Part VII prescribes offences under the Statute and the offences are also quite comprehensive. These offences are triable in a Magistrate's Court and carry fine and/or imprisonment. The Statute permits the relevant local authority to enforce the provisions relating to offences and it can collect 80% of the fine imposed and remit 20% to the Authority.
10. The Statute also enables expressly the local authorities within the Province to make By-laws in relation to the regulation, control and management of segregation, collection, etc., of waste and prohibition, regulation, control and management of burning garbage and other material.
11. The power of search, in some broad way, is also vested in the Director or an officer authorized by him/her. The Authority is also empowered to take steps to acquire State land or private land by following proper procedure under the law.
12. Relevant Provincial Minister is authorized to issue special or general direction to the Authority which is mandated to implement those directions. The Minister has power to make rules for a variety of purposes.
13. On the whole, the Statute is a good piece of work by the Western Provincial Council. A private company which is involved in the task of waste management industry filed a writ application challenging the validity of this piece of Statute on the primary ground that the PC through this Statute has taken away powers enjoyed by the local authorities and as such they are ultra vires the Constitution as per those clauses relating to the Local Government.
14. However, the Court of Appeal did not find the contention of the petitioners convincing. It upheld the validity of the Statute and declared that it is a combined effort between the local government institutions which are expected to keep the city clean and the Waste Management Authority of the Provincial Council is a good initiative which complements

the work of the local authority. It refused to hold the Statute of the Western Province invalid or unconstitutional.

N. Selvakkumaran

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