

**An Examination of the Institutional Capacity of Sri Lanka's  
Eastern Provincial Council for Multi-Level Governance:  
Focusing on Post-war Regional Development**

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**Dedicate to**

**My Beloved Parents and Brothers**

## ABSTRACT

*With the aim of devolving power, the Provincial Councils were established in each of the nine Provinces of Sri Lanka. Eastern Provincial Council (EPC) is one of them.*

*Due to the prolonged civil war that lasted for more than twenty five years, the citizens of the Eastern Province faced immeasurable suffering. The election for EPC was held in May 2008 in the aftermath of the war which ended in the Province in 2007. The citizens of the Eastern Province have been expecting many services from the sub-national government (EPC) in the post-conflict situation.*

*This study attempted to examine the institutional capacity of EPC for Multi-Level Governance (MLG): focusing on regional development. Using robust literatures and data the study focused on three objectives, namely, (a). assess the institutional capacity of the EPC in relation to MLG, (b). identify the institutional and non-institutional capacities required by the EPC for having an effective MLG meant for post-war regional development and (c). discern knowledge (to the existing) in relation to the MLG practice at the sub-national governmental level in the post crisis situation.*

*The study was carried out based on both qualitative and quantitative methods. Though the qualitative method meant to analyze and interpret data was given priority.*

*The Eastern Province has a pluralist society with different political options. So, sufficient human resources with skills are pre-required to balance the pluralism and make good foundation for the policy which is appropriate to the Eastern Province.*

*The study found that although the effective and powerful sub-national government has not evolved yet in Sri Lanka, the EPC is expected to work on post-war regional development. The inadequacy related to the human resources provided to the EPC also contributed to the weak capacity basis of the EPC. In allocating staff to the EPC attention had not been paid to provide necessary technical skills. A good example is the absence of the Legal Draftsman whose presence is vital for the exercise of statute making by the Provincial Council. Lack of control over the executive level personnel supplied by the central to the EPC is another factor which has restricted the capacity of the EPC.*

*The legal framework is inappropriate to empower the sub-national government (EPC). Fiscal and financial arrangements are inadequate to meet the needs of the people. EPC mostly depends on the central government's funds except for the modest amount of money they collect as revenue from the citizens of the Province.*

*The public-private-nonprofit partnership at sub-national level can be an alternative solution meant for the post-war regional development in Sri Lanka. Meanwhile it should aim to encourage people's participation, as well ensure the democratic public accountability at the sub-national level.*

*It was found that the partnership approach is an important element in the actual working of the EPC. Insufficient fiscal framework created by Thirteenth Amendment is one of the push factors towards partnership approach. Also, the development of the partnership with non-profit and private sectors aimed to fill the gap in both human and material capacities.*

*The MLG took vital role in the regional development activities in the Eastern Pprovince. Various actors such as central government, EPC, local governments, civil society organization, NGOs, INGOs, donors and development partner and private sector were involved in the development agenda. Though, EPC did not play a vital role in the MLG due to the weak institutional capacity.*

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## LIST OF ABBREVIATIONS

ACTED	Agency for Technical Cooperation and Development
ADB	Asian Development Bank
BTT	Business Turnover Tax
CAARP	Conflict Affected Area Rehabilitation Project
CBO	Community-based organization
CBT	Criteria Based Grant
CSO	Civil society organization
DO	Divisional Officer
DS	Divisional Secretary
DSD	Divisional Secretariat Division
DPD	Deputy Provincial Director
DER	Department of External Resources
EP	Eastern Province
EPC	Eastern Provincial Council
GA	Government Agent
GN	Grama Niladhari
GOS	Government of Sri Lanka
HR	Human Resource
ICES	International Centre for Ethnic Studies
IPKF	Indian Peace Keeping Force
ITAK	Illankai Tamil Arasu Kachchi
JICA	Japan International Cooperation Agency
JVP	Janata Vimukti Peramuna
LGIP	Local Government Infrastructure Improvement Project
LKR	Sri Lankan Rupee
LTTE	Liberation Tigers of Tamil Eelam
MC	Municipal Council
NECORD	North East Community Restoration and Development Project
NECCDEP	North East Coastal Community Development Project

NEHRP	North East Housing and Reconstruction Programme
NEP	Northern and Eastern Province
NEPC	Northern and Eastern Provincial Council
NGO	Nongovernmental organization
PS	Pradeshiya Sabha
PC	Provincial Council
PD	Provincial Director
PPS	Provincial Planning Secretariat
RDD	Rural Development Department
RDO	Rural Development Officer
RDS	Rural Development Society
SLFP	Sri Lanka Freedom Party
SLILG	Sri Lanka Institute for Local Governance
SLMC	Sri Lankan Muslim Congress
TNA	Tamil National Alliance
TMVP	Tamil Makkal Viduthalai Pulikal
UC	Urban Council
UN	United Nations
UNDP	United Nations Development Programme
UNESCAP	United Nations Economic and Social Commission for Asian and the Pacific
UNF	United National Front
UNP	United National Party
UPFA	United People's Freedom Alliance
USAID	United States Agency for International Development
WB	World Bank

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Mr. N. Sivakumar

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background and Context

Sri Lanka (officially, The Democratic Socialist Republic of Sri Lanka) is a tropical island lying to the Southeast of India, from which it is separated by Palk Strait. Comprised of a total terrain of 65,610 square kilometers, Sri Lanka is home to a population of 20 millions. Though comparatively small, it is a land of diversity-diversity of peoples, scenery, climate and religions. It has a rich history and traditions reaching back through many centuries recorded in its ancient chronicles.

The last three decades have been the bloodiest in Sri Lankan history. The ethnic conflict in Sri Lanka turned into a full-fledged civil war in 1983. The civil war in Sri Lanka came to an end with the military defeated of the separatist Liberation Tigers of Tamil Eelam (LTTE) in May 2009. Though, the government declared the Eastern Province (EP) cleared of the LTTE in July 2007.

The war was marked by phases of high intensity (Eelam War I: June 1983-July 1987; Eelam War II: June 1990-January 1995; Eelam War III: April 1995-February 2002; Eelam War IV: July 2006-May 2009) interrupted by different efforts to find a negotiated solution, which failed altogether (Sandra 2010, p.8). The civil war incurred the toil of the many thousands of deaths and immeasurable human suffering. This war took place particularly in the Northeast (Northern and Eastern Provinces) of Sri Lanka and destroyed the infrastructure. Therefore, the development process is an inevitable to restore the normalcy in the particular areas.

The concept of decentralization is not new in Sri Lanka. Its existence in varied forms is deep-rooted in the history. Numerous attempts have been undertaken over the years. The Indo-Sri Lanka agreement in July 1987 made it essential for the government to create

Provincial Council (PC) and devolve<sup>1</sup> authority to them (Bastiampillai 1996, p.29). Accordingly PCs were established under the Thirteenth Amendment to the Constitution, which came into effect on 14 November 1987 (Wickramaratne 2010, p.1).

The North-East Provincial Council became non-functional by 1990, following the return of civil strife in these areas. After the military defeat of the LTTE in July 2007, the government of Sri Lanka made speedy arrangement to be held the election for the Eastern Provincial Council (EPC).<sup>2</sup> Consequently the election to the EPC was held in May 2008. The EPC with elected representatives have been operating for a period of four years.

In October 2006, administration of Eastern Province was separated into two Provincial Councils from the combined North-East Provincial Council. On 22nd December 2006 with the appointment of the Governor for EP the establishment of a separate Provincial administration for the Eastern Province became a reality.

Then the Government with the view to allow un-disrupted administration decided to divide the already prepared financial estimates for the year 2007 according to a formula derived on the basis of population between Northern Province and EP. Hence, the EP was assigned 53% of the total estimated financial requirement of the former EPC. With this divided budgetary provision the EPC administration functionally separated with effect from 01.01.2007 (<http://www.ep.gov.lk/>).

Sub-national governments especially in the war ravaged Provinces are experiencing increasing pressure from their citizens, civil society organizations, and the media to provide accessible and affordable infrastructure and basic services. Perhaps the provisions regarding the Provincial Council system are not appropriate for strength the sub-national government to getting things done. Hence an effective approach should be followed to achieve the objectives.

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<sup>1</sup>In the Sri Lankan context, devolution means transferring political and administrative decision-making authority from central government to elected bodies at lower levels (The official website of Government of Sri Lanka' (last modified: 09/03/2010).

<sup>2</sup> From the establishment of Provincial Council system, Northern and Eastern Provinces had functioned as one administrative unit (as the North-Eastern Province). In 16<sup>th</sup> October 2006, the Supreme Court had held that the arrangement under which the Northern and Eastern Provinces had functioned as one administrative unit since 1987 to be invalid. Consequently, the two Provinces were administratively separated from 1<sup>st</sup> January 2007.

The Public-Private non-profit Partnership (PPPs) also can be an alternative approach meant to regional development in the EP. The PPPs is becoming the preferred method for public procurement of infrastructure and infrastructure services projects throughout the world (ADB 2006, p 19). The PPP has emerged as a collaborative public management model for delivering public services through a partnership between the public, private and non-profit sectors. It can ease the burden of regional development responsibilities which are expected to undertake by the EPC.

The participations do not end with players only from the public sector or government agencies. Rather, management of public sector programs involves a wide range of players from both the for-profit and nonprofit sectors (Beryl 2007, p.366). The partnership at the sub-national level can be identified as horizontal dimension of Multi-level governance (MLG).

MLG system is involving in stakeholder, institutions and places at different levels of human society. It also comprises the emergence of public-private partnership as well as the privatization of the delivery of public services (Jan-Erik 2009, p.102).

As a sub-national government, EPC also has responsibility to work towards regional development in EP. Most of the central level political elites do believe that, the existing Provincial Council system can be an appropriate solution for the ethnic conflict of Sri Lanka. Also, it can contribute for regional development. But there are ongoing debates regarding the perspective and the beliefs of the political elites.

As a sub-national government, adequate institutional capacity is pre-required to EPC to deal with MLG in an effective manner meant for regional development. Without devolutions any effort to promote government and community partnership at sub-national level will lack trust and credibility.

## 1.2 Statement of the Problem

The Northern and Eastern Provinces of Sri Lanka are the mostly affected areas by the civil war that lasted nearly thirty years<sup>3</sup> Because of the longevity of war these Provinces do face many challenges related with infrastructure development, rural development, resettlement, human security, human rights, livelihood and social security. People from the EP expect that the EPC would do the action to restore their needs. The regional development is one of their needs.

The EPC assumes special significance in terms of power-sharing, post-war regional development as well as issues related with fully implementation of 13<sup>th</sup> Amendment to the constitution. The Centre for Policy Alternatives' (CPA) report (CPA 2010:8) states that,

‘President Rajapaksa’s government has showcased the Eastern Province both as an example of the post-war re-establishment of democracy and devolution in the war-torn areas as well as a site of its major development and reconstruction programmes. It has stated that the Eastern Province is a model for the establishment of the Northern Provincial Council in the near future’.

Some projects were completed related with regional development in the EP. Most of them were implemented through partnerships. This partnership approach indicates the practice of MLG at sub-national level. Working of MLG at sub-national level can be a move towards regional development.

Sub-national governments across the world are generally designed according to the principles of subsidiarity. Meaning the central government is expected to play only a supporting role in governance, acting if and only if the constituent units of government are incapable of acting on their own (Daniel 2008, p.1). The decentralization and principles of subsidiarity are basically compatible with the supporting for the bottom level

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<sup>3</sup>There are nine Provinces in Sri Lanka. Northern and Eastern Provinces are directly affected by civil war. The war/s between LTTE and Government’s forces as well IPKF (Indian Peace Keeping Force) were held in Northern and Eastern Provinces). Other Provinces were indirectly affected.

participation in the governance process. Both concepts aim at realizing the participation of citizens in public affairs and founding public authorities that are close to the citizens.

The concept of MLG indicates the policy network. Various sectors do involve in the process of MLG. Therefore the appropriate arrangements concerning subsidiary and decentralization are important pillars for practicing MLG at sub-national level. In other words adequate human, physical and fiscal resources are crucial to sub-national government to deal with MLG. Further appropriate legal framework is must.

It is worth noting here, the previous studies on PCs system of Sri Lanka indicated that, the meaningful decentralization has not evolved yet. The model adopted in the devolution of power places the centre in a dominant position in the context of Centre – Provinces relations (Amarasinghe et al 2010, ix).

The crucial problem is how the practices of principle of subsidiarity and decentralization scheme are important components meant for the effective MLG at sub-national level. And as a sub-national government, what is the actual role of EPC in practicing MLG in Eastern Province for regional development? Taking these matters into consideration the study attempts to examine the institutional capacity of Sri Lanka's Eastern Provincial Council for MLG focusing on post-war regional development.

### **1.3 Significance of the Study**

The study is very topical one. The EPC is significant for a number of reasons in the context of post-crisis situation of Sri Lanka. Post-war regional development has become the governance as well political dilemma. The major Tamil political party namely Tamil National Alliance (TNA) is unhappy regarding devolved power to the sub-national government (Provincial Council). They are criticizing the unwillingness of the political elite towards decentralization and regional development in war ravaged area. This study aims to examine the institutional capacity of EPC for MLG in Eastern Province. Hence the study can be contributed to find out the reality of decentralization in Sri Lanka.

There are number of studies done related with Provincial Council system, devolution of power as well as multi-level governance. Some partial references were given in these studies to the MLG and Provincial Council system of Sri Lanka. No specific study linking with the concepts of Post-war regional development, MLG and sub-national government (EPC) has yet been done.

Without proper arrangement towards the regional development, it is difficult to establish enduring peace in Sri Lanka. Hence, the post-war regional development is expected to be an important activity in the working agenda of EPC. This study aims to explore the capacity of EPC for MLG meant for regional development. Further, it can contribute for policy learning in relation to the MLG practice at sub-national level in the post crisis situation.

#### **01.4. Research Questions**

The main objective of the research is to examine the institutional capacity of EPC in relation with multi-level governance for post-war regional development. In the meantime, it is also intend to identify the institutional and non-institutional capacities required by the EPC to deal with MLG. To be achieved these objectives the following research questions will be answered.

- What are the institutional and non-institutional capacities required by the EPC for having an effective MLG?
- What are the measures that have to be taken for building of such capacities in the EPC?
- Is the institutional capacity provided to the EPC sufficient to deal with the MLG effectively meant for regional development programe in the post crisis situation?

## 1.5 Objectives of the Study

- Assess the institutional capacity of the EPC in relation with multi-level governance.
- Identify the institutional and non-institutional capacities required by the EPC for having an effective MLG meant for post-war regional development.

## 1.6 Hypothesis of the Study

- The success of MLG at the regional governmental level depends on the extent of the provision of sufficient institutional capacities
- The public-private-non-profit partnership can ease the burden of regional development responsibilities to be undertaken by the regional government

## 1.7 Limitation and Scope of the Study

The scope of the study is determined considering the time constrains, availability of data, vastness of factors which can contribute for institutional capacity of the EPC.

The limitation and scope of the study can be explained based on the following indicators such as Geography, involving actors, dimension of MLG, variable and numbers of respondents.

**Geography:** The Northern and Eastern Provinces are war (directly) ravaged areas in Sri Lanka. However, the study was conducted in the EP only. The EP contains three districts namely; Ampara, Batticaloa and Trincomalee districts.

**Involving actors:** Many actors do involve in post-war regional development activities in EP. Though, emphasis is given to the EPC.

**Dimension of MLG:** There are two dimensions of the MLG, namely; vertical dimension and horizontal dimension. This study focused on horizontal dimension.

**Variable:** Legal framework, Human resource and Fiscal resource are considered as variables, which can be ensured the institutional capacity of the EPC.

**Numbers of respondents:** Due to the time constraint the study took interviews of twenty respondents.

## **01.8 Research Methodology**

The study adopts both qualitative and quantitative methods to conduct the research. Though, the vital place is given to the qualitative research method. Both types of data were gathered from primary and secondary sources.

### **01.8.1 Primary Data Collection**

Non-probability sampling (purposive sampling) was used for primary data collection. Interview with check list was used in the research. Accordingly in-depth and semi-structure interview methods were used respectively. The interview method helped the researcher to collect needed information and data by face to face contact from the respondents.

The researcher took in-depth interview from 06 respondents (Chief Minister- EPC, 02 Councilors from EPC and 02 Chairmen and 01 opposition party leader from local government –Pradeshiya sahba) in the EP.

Further, 14 respondents (04 from civil society organization, 01 from NGO, 01 from INGO, 05 official of EPC, 01 official from local government, 01 Personal Secretary to Minister-EPC, 01 from think-tank) were selected for semi-structured interview.

### 01.8.2 Secondary Data Collection

Secondary data also took significant place in this study. Data were collected from relevant existing literatures such as books, constitutional law, Act, case laws, previous research works, seminar papers, reports, journal and official website of EPC, local government, and related private and non-profit sectors.

### 1.8.3 Study Area

This study covers the EPC as the study area. It is situated in the EP of Sri Lanka. The EP comprises 15 percent of the land area of the country, 25 percent of the coastal belt and 8 percent of the country's population.

The three districts in the EP are: Ampara, Batticaloa and Trincomalee. EP has a multi ethnic Population composition. (See Table No: I).

Table No: I

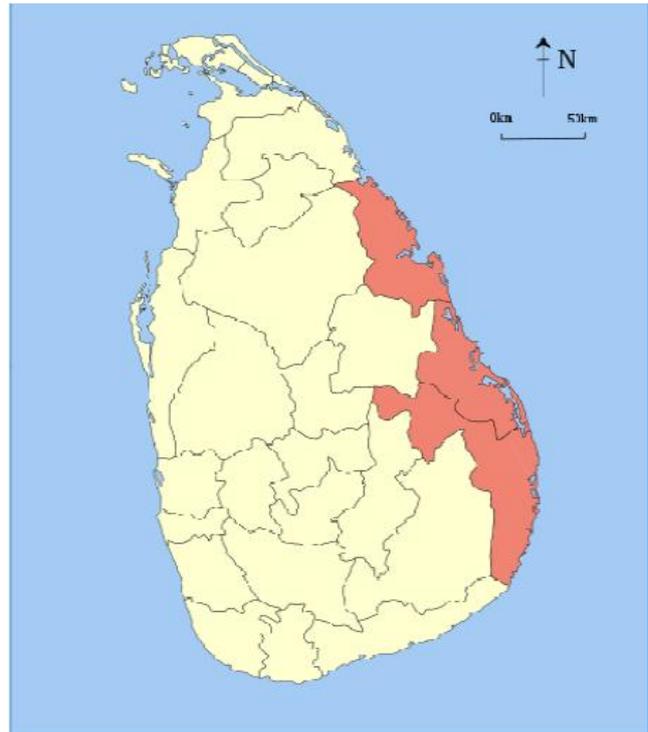
**Population of EP by Ethnic Groups in 2007-Special Enumeration**

District	Tamils		Muslims		Sinhalese		Others		Total
	Number	%	Number	%	Number	%	Number	%	
Ampara	112,006	18.3	268,630	44.0	228,938	37.5	1,145	0.2	610,719
Batticaloa	381,984	74.0	128,964	25	2,397	0.5	2,512	0.5	515,857
Trincomalee	96,142	28.8	151,692	45.4	84,766	25.3	1,763	0.5	334,363
EP Total	590,132	40.4	549,857	37.6	316,101	21.7	4,849	0.3	1,460,939

Source: Department of Census and Statistics, 2007

Figure: I

### Map of Eastern Province



The EP, located in the dry zone of the country and East coast of Sri Lanka, is surrounded in the East by the Bay of Bengal, North by the Northern Province, West by the North Central and Central Province and South by the Uva and Southern Province. (See Figure No I).

The Chief Minister of EPC heads the provincial administration. The five ministries administer the functions entrusted through the devolution of power to Provincial Councils by the constitution.

Source: EPC website <http://www.ep.gov.lk/>

At present there are five Ministries headed by Secretaries. The Secretaries are appointed by the Governor.

The 16 Departments shown below are for different sectors that come under the purview of the five Ministries:

1. Department of Agriculture
2. Department of Animal Production and Health
3. Department of Land Administration
4. Department of Irrigation
5. Department of Education
6. Department of Sports
7. Department of Health Services
8. Department of Indigenous Medicine
9. Department of Local Government
10. Department of Cooperative Development
11. Department of Management Development and Training
12. Department of Industries
13. Department of Rural Development
14. Department of Road Development
15. Department of Social Services
16. Department of Buildings.

There are 43 Local Authorities administering and delivering the local government services in the EP. They are the 2 Municipal Councils, 4 Urban Councils and 37 Pradeshiya Sabhas. (See Table No II)

Table No: II

**Provincial Administration Agencies in the Eastern Province**

District	No of GN divisions	No of DS divisions	Pradeshya Sabha	Urban Council	Municipal Council
Ampara	507	20	16	1	1
Batticaloa	348	14	10	1	1
Trincomalee	230	11	11	2	-
EP	1085	45	45	4	2

Source: EPC website <http://www.ep.gov.lk/>

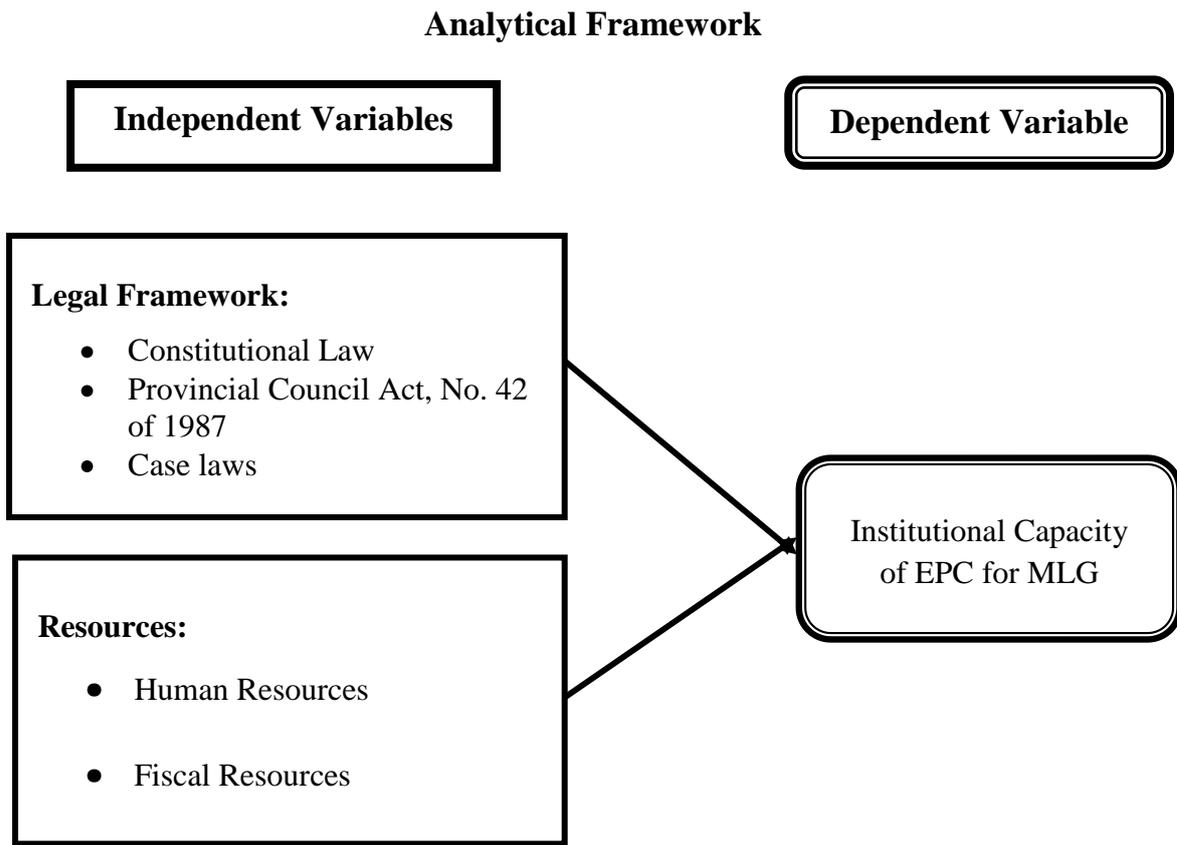
**01.8.4 Data Analysis**

The study adopted both qualitative and quantitative methods to analyze and interpret data. Though, vital place was given to the qualitative method. Further, some percentage, charts, and tables were used to present the data in quantitative manner.

**1.9 Analytical Framework**

The analytical framework was developed according to the correlations between independent variables and dependent variable. The existing literature on institutional capacity, concept of MLG, decentralization and subsidiarity also were taken into consideration. The framework indicates the frame to analyze on the subject of the institutional capacity of EPC. ‘Institutional capacity’ is indicated as a dependent variable. On the other hand, legal framework and the resources (human and fiscal) are indicated as independent variables.

Figure: II



### 1.9.1 Operational Definition of Variables and Indicators

- **Sub-national government:** The Eastern Provincial Council is considered as a sub-national government.
- **Institutional Capacity of EPC:** It means the capability of EPC to effectively deal with MLG. It can be ensured via Legal framework, Human resource and Fiscal resources.
- **Legal Framework:** It indicates the appropriate legal provisions towards meaningful decentralization and practice of subsidiarity.
- **Human Resource:** It refers the adequate human resource with sufficient skills to deal with MLG. It also means the control over staffs, who do work at EPC.

- **Fiscal Resource:** It indicates the sufficient financial arrangement to work independently and meet the regional development of the respective province.
- **Multi-Level Governance:** The MLG includes relations between governing authorities at all levels-the neighborhood, local government, Provincial Council, National state, and regional and global institutions. It also comprises the emergence of public-private partnerships as well as the privatization of the delivery of public services.

Table No: III

### Summary of data collection methods

<b>Variable (independent)</b>	<b>Indicators</b>	<b>Source of data</b>	<b>Data collection method</b>
Legal Framework	Adequate powers for effective functions of EPC	<ul style="list-style-type: none"> <li>• Constitutional Law</li> <li>• Provincial Council Act</li> <li>• Case Laws, Lawyer</li> </ul>	Review of laws and, interview
Resources	Human Resource- numbers of employee, Control over them, proficiency (working experience, training)	<ul style="list-style-type: none"> <li>• Official records</li> <li>• Relevant officials at EPC and partnership sector/s</li> <li>• Constitutional Law</li> <li>• Provincial Council Act</li> </ul>	Documents and laws review and interview
	Fiscal Resource – request budget and adequate annual amount granted by central government, provincial fiscal resource (tax and revenue), financial assistance from donors and development partners	<ul style="list-style-type: none"> <li>• Constitutional Law</li> <li>• Case laws</li> <li>• Relevant officials from EPC and partnership sector/s</li> <li>• Annual budget report</li> <li>• Reports of EPC, Relevant websites and Related previous studies</li> </ul>	Laws and documents review, and interview

## **01.10 Structure of the Thesis**

The thesis is composed of six chapters, which are presented below:

**Chapter One:** Introduction: this chapter writes on background of the study, research problem, significance of the study, research questions, research objectives, scope and limitation of the study, analytical framework, operational definition of variables and indicators, research methodology and chapter plan. The operational definitions are also given intent to provide understanding about the variable.

**Chapter Two:** Conceptual outline of the Study: The second chapter presents the conceptual outline of the study. Accordingly, the concept of decentralization, multi-level governance and principles of subsidiarity are presented respectively.

**Chapter Three:** Legal frame work of the EPC: Main objective of the chapter is to reveals the legal basis and capacity of EPC. Accordingly, it provides a background of legal framework of the Provincial Council System of Sri Lanka. Further, it identifies the power and function provided to the EPC via existing legal framework.

**Chapter Four:** The Human and Fiscal capacities of the EPC: This chapter reveals the institutional capacity of the EPC in terms of human and fiscal resources.

**Chapter Five:** Analysis of Data: The fifth chapter analyses the data gathered related with legal framework, fiscal and human resources of the EPC. The objective of the chapter is to examine the institutional capacity of EPC in relation to the MLG practice in the post crisis situation.

**Chapter Six:** Conclusion and Suggestions: Briefly this chapter presents the major finding of the study. Also, it gives some thoughtful suggestions towards empowerment of the sub-national government. Finally, it identifies some of the issues intend to further studies.

# CHAPTER TWO

## CONCEPTUAL OUTLINE OF THE STUDY

### 02. Introduction

The purpose of this chapter is to present the conceptual dimension of the study. Accordingly the concepts such as decentralization, multi-level governance, and principles of subsidiarity are presented respectively.

#### 02.1 Conceptualizing Decentralization

The concept of decentralization is closely linked with democracy, development, public administration and good governance (Khan 2009, p.1). In the second-half of the twentieth century, practically every country has experimented with some form of decentralization or local government reform with varying aims and outcomes (Cheema & Rondinelli, 1983, Campbell 1991 cited in Andrew 1995, p.242).

Among academics, it has become the latest fashion in development administration. Within the current development debate, literature on decentralization and the suggested policy models are based on the liberal normative assumptions of decentralization, and the focus is on decentralization as a tool for development (Mustafa & Kirsten 1994, p.12-13).

The terminology most often used to discuss by Rondinelli (Parker & Kirsten 1995, p.242). According to Rondenelli, decentralization is the ‘transfer of authority to plan, make decision and manage public functions from national level to any individual organization or agency at the sub-national level (Rondenelli 1981, p.137 cited in Tofail 1993, p.22). Later he defined decentralization as ‘the transfer of responsibility for planning, management, raising and allocation of resources from central government, semi-autonomous public authorities or corporations, area wide regional or functional authorities, or non-government private or voluntary organizations’ (Rondenelli & Nellies 1986).

Leonard D. White observed “The process of decentralization denotes the transference of authority, legislative, judicial or administrative from a higher level of government to a lower” (Encyclopedia of the Social Sciences, Vol. V-VI 1959, p.43). Decentralization implies the establishment of relatively autonomous field and regional offices and delegation of decision-making powers and functions to them (Polinaidu 2004, p.199). Conyers observes decentralization as ‘the transfer of authority from a higher level of government to lower levels’ (Conyers 1986 cited in Tofaill 1993, p.22).

A decentralized organization is one, in which the lower levels are allowed the discretion to decide most of the matters, which come up, reserving comparatively a few bigger and more important problems only for those higher up. The essence of decentralization lies in the distribution of the power of decision (Ali et al 1983, p.20-21). Decentralization relates to the role of, and the relationship between, central and sub-national institutions, whether they are public, private or civic (UNDP 1997).

Decentralization is not now seen as an end result in itself. A consensus view on the definition of decentralization is summarized in the following text.

“...decentralization must be seen as a process not a condition (so it is) futile in policy terms, to compare states by the extent of decentralization, or to rank them on a (single) continuum. What is at issue is a question of dimensionality. Hence we emphasize the verbs-to decentralize, or to make decentralizing moves, to introduce decentralizing moves, or to introduce decentralizing policies, and not an adjective such as decentralized state or even a decentralized delivery system.” (Cohen 1981 cited in Tofaill 1993, p.24).

The decentralization, or decentralizing governance, refers to the restructuring or reorganization of authority so that there is a system of co-responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiarity, thus increasing the overall quality and effectiveness of the system of governance, while increasing the authority and capacities of sub-national levels (UNDP 1997).

### **02.1.1 Forms of Decentralization**

Various form / types of decentralization are identified by scholars. Among them Rondinelli (1981), distinguishes between four different categories of decentralization (Parker & Kirsten 1995, p.242-243). They are:

- I. Deconcentration: It is defined as a transfer of power to local administrative offices of the central government
- II. Delegation: It is the transfer of power to sub-national governments and/or parastatals, or other government entities
- III. Devolution: It is the transfer of power to sub-national political entities
- IV. Privatization: It is the transfer of power to the private sector

Each type and form is different from the others in nature, extent and degree. It also varies according to the nature of the organization where it is put into operation. The deconcentration and Devolution are the oldest of the forms covering the territorial dimension. The delegation and the privatization represent a functional aspect. Clear demarcation and delimitation, however, is difficult to find when it is analyzed in the context of a particular country. Because element of the four types may be present at the same time in many of the programmes.

Decentralization also can be identified as Political and administrative decentralization. Political decentralization presupposes the transfer of functions or authority from central levels of government to sub-national institutions based on local political representation. This means that the local institution to which tasks are devolved must be governed by locally elected representatives. This type of decentralization is sometimes referred to as devolution (Conyers 1983).

Administrative decentralization means the delegation of tasks or transfer of authority from central government to local 'branches' of central government (i.e. the local institutions to which tasks are delegated are not based on any local political representation controlled from below). This type of decentralization is often referred to as deconcentration (Conyers 1983 and Smith 1985, cited in Arild & Marit 2005:10).

Furthermore, according to M.P. Sharma (1973) decentralization has five aspects, two of which are administrative, one political, one geographical, and one functional. They are:

1. Delegation of authority in such a way that large areas of discretion are entrusted to subordinate officers and comparatively few questions are referred to the chief at the apex (administrative)
2. Broad grant of powers to individual component parts of the organization and retention of only certain essential powers of control in the head office (administrative)
3. Much power in the hands of elective bodies and considerable popular participation in administration (political)
4. Freedom to the field agencies or units away from head-quarters and near to the people (organization)
5. Functional autonomy to various departments in respect of some of their functions (functional).

### **02.1.2 Devolution**

The study deals with Provincial Council (PC) system of Sri Lanka. The PC system is considered as a devolution arrangement. Therefore, it is worth full to make understanding about 'devolution' as a form or type of decentralization. 'Devolution' occurs when authority is transferred by central government to autonomous local-level government units holding corporate status granted under state legislation.

Devolution refers to the transfer of authority to legally constituted provincial, district and local bodies. It is the most common understanding of genuine decentralization. Through devolution, the central government relinquishes certain functions or creates new units of government that are outside its direct control (UNDP 1997, p.5).

The devolution of Power to sub-national units of government is seen by many as the ideal form of decentralization as it combines the promise of local democracy with technical efficiency. The transfer of authorities to autonomous lower-level units, such as provincial,

district, local authorities often referred to as devolution and is the most common understanding of genuine decentralization (UNDP 1997).

Devolution creates or strengthens sub-national units of governments outside the direct control of central government by legal means (Rondenelli & Nellis 1986). Conyers (1987) defined devolution as the transfer of significant power, including law making and revenue raising, by law to the locally elected bodies. Maddick define devolution as “the legal conferring of powers to discharge specified or residual function upon formally constituted local authority” (Maddick, 1963; 25 cited in Rahaman and Khan 1995, p.3).

Devolution in its purest form has certain fundamental characteristics (UNDP 1997). They are:

- Local units of government are autonomous, independent and clearly perceived as separate levels of government over which central authorities exercise little or no direct control.
- The local governments have clear and legally recognized geographical boundaries within which they exercise authority and perform public functions.
- Local governments have corporate status and the power to secure resources to perform their functions.
- Devolution implies the need to "develop local governments as institutions" in the sense that they are perceived by local citizens as organizations providing services that satisfy their needs and as governmental units over which they have some influence.
- Devolution is an arrangement in which there are reciprocal, mutually beneficial, and coordinate relationships between central and local governments; that is, the local government has the ability to interact reciprocally with other units in the system of government of which it is a part.

Cheema and Rondenelli (1983) identified fundamental characteristics in explaining the purest form of devolution. First, powers are transferred to autonomous units governed independently and separately without the direct control over a recognized geographical area. Second, the units enjoy corporate status and power to secure its own resources to perform its functions. Three, devolution implies the need to develop local government institution. Fourth, it is an arrangement of reciprocal, mutually beneficial and coordinative relationship between central and local government.

Florestal and Cooper (1997) identified five features of devolution as following:

1. The entities that exercise responsibility legally separates from central government
2. The devolved units acts its own, not under hierarchical supervision of the central government
3. The entities can exercise only the powers given to them by law
4. The body can act only within the geographic limit set out in the law
5. The devolved units are often supervised by a board of officials elected by the local people.

Devolution may include elements of both deconcentration and delegation, but it goes beyond these decentralization strategies by recognizing the important role that political and fiscal control plays in better satisfying the demands of the beneficiaries of rural development (Parker & Kirsten 1995, p.243). Also, decentralization may serve several objectives. In terms of policy, the most widely pursued objective has been the down-sizing of central governments. Leading institutions such as the World Bank and the International Monetary Fund (IMF) have adopted this approach founded on a neo-liberal agenda. Within the same tradition, many authors have promoted decentralization in reaction to what they see as the failures of 'over-centralized' states (World Bank 2000, cited in UNDP 1997).

## **02.2 Conceptualizing the Multi-Level Governance**

Initially the Multi-Level Governance (MLG) referred to the negotiation between the local governments at different decisional levels and describes the way in which “the supra-national, national, regional and local level” belongs to a complex territorial complex network. The concept of MLG has been much inspired by the evolution of the European Union (EU), involving several supranational or intergovernmental bodies.

The MLG is used in different ways and for different purposes (Bache & Matthew 2004, p.195). Gary Marks (1992) first used the phrase multi-level governance to capture developments in EU structural policy following its major reform in 1988. Subsequently, Marks and others developed the concept of MLG to apply more broadly to EU decision

making. In developing his approach, Marks drew on insights from both the study of domestic politics and of international politics (Ibid).

The MLG characterizes the changing relationships between actors situated at different levels, both from the public and the private sectors. The diffusion of authority in new political forms has led to a profusion of new terms: multi-level governance, multi-tiered governance, polycentric governance, multi-perspectival governance, functional, overlapping, competing jurisdictions (Gary & Hooghe 2004, p.15).

In an early article on the subject, Marks defined multi-level governance as:

"..a system of continuous negotiation among nested governments at several territorial tiers-supranational, national, regional and local" (Marks 1993, 392; Hooghe 1996) governments are enmeshed in territorially overarching policy networks" (Marks 1993: 402-3 Cited in Gary & and Hooghe 2003, p.234).

Gary and Hooghe identified two types (Type I and Type II) of MLG. These two quite distinct approaches to decentralization have suggested on the basis of different concepts of governance: "Type I" and "Type II" respectively (Hooghe & Marks, 2001 cited in Jan-Erik 2009, p.105). 'Type I' MLG is similar to federalism. It describes jurisdictions at a limited number of levels. These jurisdictions-international, national, regional, local- are general purpose. That is, they bundle together multiple functions, including a range of policy responsibilities and, in many cases, a court system and representative institutions. The membership boundaries of such jurisdictions do not intersect (Gary & Hooghe 2003, p.236). In which the dispersion of the authority is limited to a certain number of jurisdictions that are not overlapped, with a small number of territorial levels, each one of them having the responsibility of a certain number of functions.

'Type II' MLG is distinctly different. It describes the governmental agreements in which the jurisdictions of authority are specific to the tasks, the jurisdiction operating at numerous territorial levels that can overlap. It is composed of specialized jurisdictions. It is fragmented into functionally specific pieces. For instances: providing a particular local service, solving a particular common resource problem, selecting a particular software standard, and monitoring the water quality of a particular river. The number of such jurisdictions is potentially huge, and the scales at which they operate vary finely. There is

no great fixity in their existence. They tend to be lean and flexible-they come and go as demands for governance change (Ibid).

The MLG emphasizes the importance of the sub-national actors. The multi-level governance has 3 tenets (Hooghe and Marcus 200):

- The decisional competences are distributed between the actors from different level and are not monopolized by the national actors.
- The collective decisions involve an important loss of control/authority by each state
- The politic space is interconnected to a larger territory. The sub-national actors operate in both areas national and international creating transnational bonds.

The MLG is assumed to differ from traditional intergovernmental relationships in four respects (Guy & Jon 2005, p.77):

- It is focused on systems of governance involving transnational, national and sub-national institutions and actors
- It highlights negotiations and networks, not constitutions and other legal frameworks, as the defining feature of institutional relationships
- It emphasizes the role of satellite organizations, such as NGOs and agencies, which are not formally part of the governmental framework
- It makes no normative pre-judgments about a logical order between different institutional tiers.

The MLG can be defined as an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels (Schmitter 2004: 49 cited in SimonaPiattoni 2008:2).

A baseline definition of MLG refers to negotiated, non-hierarchical exchanges between institutions at the transnational, national, regional and local levels (Jachtenfuchs 1995; Smith 1997). But, MLG refers not just to negotiated relationships between institutions at different institutional levels but to a vertical ‘layering’ of governance processes at these different levels (Pierre & Stoker 2000, p.79).

The MLG signifies the totality of relations between public and private sector actors, situated at different territorial levels in the governance process. Jan-Eric Lane (2009, p.101-102) states that, ‘the MLG includes relations between governing authorities at all levels-the neighborhood, municipality, province, national state, and regional and global institutions. It comprises the emergence of public-private partnerships as well as the privatization of the delivery of public services’.

Bache and Flinders outline four key dimensions, which the concept allows us to think about more deeply (Paul Stubbs 2005, p.4).

- The first is the increased participation of non-state actors.
- The second is the need to move away from understanding decision-making in terms of “discrete territorial levels” and, instead, the need to conceptualise it in terms of “complex overlapping networks” (Bache & Flinders 2004).
- The third refers to the way the MLG concept allows for an understanding of the transformation in the role of the state towards new strategies of co-ordination, steering and networking.
- Fourthly, the concept forces an understanding of the ways in which traditional notions of democratic accountability are being undermined and challenged.

### **02.2.2 Dimensions of the Multi-Level Governance**

Different dimensions of MLG were identified by scholar. Ian Bache and Matthew flinders (2004) and Patrick and others (2005) have distinguished two major dimensions, namely horizontal dimension and vertical dimension. According to Jan-Erik Lane (2009), MLG is constituted by three main dimensions or development, namely; vertical dimension, horizontal dimension and private providers of public services.

**The horizontal dimension:** it refers to the opening up of the political space to non-state actors, meaning that the State now has to interact with non-state actors in the governance process. In other words, government has to ‘produce’ governance by taking into account

the desiderata of a multiplicity of stakeholders. It also has to provide room and resources to these stakeholders for the realization of public policy goals. For instance: the public-private nonprofit partnership.

**The vertical dimension:** It comprises interaction between higher and lower levels of government including external regional bodies such as the EU. It refers to both the upward and downward decision-making processes. The upward process is one in which national decision-making becomes increasingly embedded in supranational decision-making. The downward process has to do with the process of decentralization, particularly the devolution of power. As such, MLG involves the existence of multiple political decision-making centre at different levels (sub-national, national, supranational, international) and the interdependent relations among these. Political interdependence means that the political processes at one level influence the political processes at the other levels and vice versa.

### **02.3 Conceptualizing Principles of Subsidiarity**

The principle of subsidiarity states that the lowest and least centralized levels of administration and governance should handle the citizens' various concerns. Only on concerns where the lower levels cannot handle that the next higher level of administration should take charge. This principle has to do with conditions of subsistence and support. It is derived from the Latin root *subsidiuum*, which refers to assistance in terms of the smaller matters of life.

The Latin word *subsidiarity*, it is seen that the concept has a two-edged meaning: the first meaning comes from the root "*subsidiary*" or "*substitute*" and recalls the idea of "being in a state of secondary and lesser importance". This usage of the word was mainly based on the idea that the higher authority, namely the state, would substitute its troops, which were in a state of reserve/subsidiary, i.e. secondary position, for that of periphery if the periphery could not cope with the issue at hand. The second edge comes from the root "*subsidium*", which means "aid / support" in Latin. This second meaning recalls the idea of "subsidy" and "help" (Bengi 2003, p.6).

The term has quite a long historical past. Its oldest traces are found in Aristotle and it has made several re-appearances in different philosophical and political contexts like Catholicism, liberalism and federalism throughout the history since then (Ibid).

Though, popularity of the concept of subsidiarity has increased by the adoption of the Maastricht Treaty, The most renowned exposition on subsidiarity is contained in Article 5 of the Treaty Establishing the European Community, which provides that in areas that do not fall within its exclusive competence – shall “take action, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community”. Therefore, the smaller units (the Member States) shall have priority in their actions *vis-à-vis* the higher unit (the European Community), limited only by their capability (European Community, 1957 cited in Wisdom 2006, p.6).

There is no accurate definition for subsidiarity that is accepted by all. Nevertheless, this does not mean that the principle of subsidiarity is an “un-principled principle” (Endo, 2001: 8, cited in BengiDemirci 2003:3), because when we look at its evolution throughout the history, we see that there are common denominators that make up the essence of this principle.

The Oxford Dictionary defined Subsidiarity as ‘the principle that a central authority should have a subsidiarity function, performing only those tasks that cannot be performed effectively at a more immediate or local level’.

Ferran Requejo describes subsidiarity as a principle according to which a political decision, or at least its implementation, must be carried out at the closest possible level to the people. Thus, the principle of subsidiarity advocates curbing top-heavy, overly hierarchical bureaucratic institutions that operate from the center.

Gibson (2005) notes, the subsidiarity provides the intellectual anchor for, and the easiest way of, deepening decentralization as it proposes a minimalist role for central governments. The principle advocates that those institutions that are closest to beneficiaries of government undertakings, and have the needed competencies, are the best situated to undertake those activities (eg., policy development, program management, service delivery), and should be given the opportunity and mandate to do so (Ibid).

Subsidiarity calls for social problems to be addressed from the bottom up, rather than from the top down. Literally meaning 'to 'seat' ('sid') a service down ('sub') as close to the need for that services as it feasible, (Bryan 1998 cited in Rebert 103) subsidiarity holds that where families, neighborhoods, churches, or community group can effectively address a given problem, they should. Where they cannot, municipal or state government should intervene. Only when the lower bodies prove ineffective should the federal government become involved (Rebert 103).

Subsidiarity does not embody a hierarchical structure in which local authorities occupy the lowest rungs of the administrative or governmental ladder. On the contrary, it represents a partnership in which various levels of government are synergistically integrated in order to provide the best possible engagement between citizens and government and the most efficient means and forms of service delivery and public goods (Wisdom 2006, p.9).

The principle of subsidiarity is based upon a particular view of the nature of the human person, the nature of the state and society and the relation between them, and the role of the individual citizen within the state. It addresses fundamental issues of democracy (Bernard Cullen undated). The principle of subsidiarity has (at least legally) serious implications on the functioning of the Community system, more specifically on the Community decision-making processes.

## **2.4 Conclusion**

There are logical links between the concept of decentralization, multi-level governance and subsidiarity. The decentralization process, characteristic for the subsidiary state, allows the achievement in optimum conditions of the social justice, develops solidarity, and ensures the closeness of the decision to the place where it produces its effects, facilitating the citizen's involvement in the local decisional process.

The subsidiarity and decentralization do not mean the same thing and there are prominent differences between these two concepts (Canatan, 2001 cited in Bengi 2003, p.28): Decentralization has the idea of founding local autonomy by allocating power and resources from the center to the localities. That is to say the starting point of

decentralization is the center and it foresees the allocation of power and resources from the center to the local governments, which are established by the center and the extent of this allocation is determined by the central authority. Though, in subsidiarity the starting point is the locality. Other than those limited number of powers attributed to the central authority, power is vested to local authorities.

Furthermore, in decentralization the central authority has priority over the local units. Also the relationship between central (State) and local unit depends upon the subordination of the local units to the central authority. Whereas in subsidiarity the local units have priority since they are the ones that are closer to the citizens and the relationship between the local units and the central authority is based on the functionality criteria and it is continuously re-defined according to the changing circumstances (Ibid).

The decentralization and principles of subsidiarity do link with the concept of multi-level governance (MLG). These two principles bring the various sectors (public, private, non-profit, other stakeholders) in the policy network; also they open up the place for bottom level participation. Subsidiarity does not embody a hierarchical structure, in which local authorities occupy the lowest rungs of the administrative or governmental ladder. On the contrary, it represents a partnership in which various levels of government are synergistically integrated in order to provide the best possible engagement between citizens and government and the most efficient means and forms of service delivery and public goods.

## **CHAPTER THREE**

### **LEGAL FRAMEWORK OF THE EPC**

#### **03. Introduction**

The 'Indo-Lanka Agreement' signed by President J. R. Jayawardene of Sri Lanka and Prime Minister Rajiv Gandhi of India on 29<sup>th</sup> July 1987 in Colombo (Shastri 1994, p.200), Commonly known as the Indo-Lanka Accord, this international bilateral agreement addressed a number of issues pertaining to the resolution of the conflict in Sri Lanka (CPA 2010, p.11). In regard to constitutional, it contained a joint declaration of the broad principles of a new settlement committing Sri Lanka to establish a system of devolved government called Provincial Councils. Thus, Provincial Councils were established under the Thirteenth Amendment to the Constitution, which came into effect on 14 November 1987 along with the Provincial Council Act No.42 of 1987 (Wickramaratne 2010, p.1).

#### **03.1 The Thirteenth Amendment**

Among the provisions of the Indo-Sri Lanka Accord were two vital clauses, one pertaining to the official language and the other pertaining to setting up of Provincial Councils. These two clauses were translated into constitutional provisions through the 13<sup>th</sup> Amendment to the Constitution (Jayaweera 1990, p.35). Consequent to the Indo-Sri Lanka Accord in 1987 two Bills (Thirteenth Amendment to the Constitution and Provincial Council Act No.42 of 1987) were prepared. They were placed by Parliament

before the Supreme Court in terms of Article 120<sup>4</sup> of the 1978 Constitution to find out whether any of their provisions were inconsistent with the Constitution.

A full bench of the Supreme Court was nominated by the Chief Justice to hear the case. The determination of the Chief Justice and three Judges was that the said Bill to amend the Constitution (13<sup>th</sup> Amendment) does not require the approval by the people by virtue of a Referendum under Article 83 of the Constitution (Uditha & Mahen 2009, p.14).

Five Judges to four (by 2/3<sup>rd</sup> Majority), the Supreme Court held that the provisions of the Thirteenth Amendment were within the framework of a Unitary Constitution. The crux of the majority decision was that despite the Amendment the Central Government would continue to hold supreme power and that the PC had no control over the Judiciary (Wigneswaran 2009). Finally the Bill was passed (by 2/3<sup>rd</sup> Majority) and the Constitution amended accordingly.

The Thirteenth Amendment to the Constitution, while amending the Constitution of 1978 (it amended Articles 18, 138, 155 and 170 of the Constitution of 1978), sought to add a new Chapter XVII A and Articles 154 A to 154 T relating to the executive, administrative and legislative powers of the Provincial Councils (Warnapala 1997, p.23).

The Thirteenth Amendment to the Constitution provides for: The establishment of Provincial Councils, The appointment and powers of the Governor of Provinces, Membership and tenure of Provincial Councils, The appointment and powers of the Board of Ministers, The legislative powers of the PCs, Alternative arrangements where there is a failure in the administrative machinery, The establishment of the High Court of the Province and The establishment of the Finance Commission (<http://www.priu.gov.lk/ProvCouncils/ProvincialCouncils.html>).

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<sup>4</sup> Article 120 deals with the Constitutional Jurisdiction of the Supreme Court. Accordingly the Supreme Court shall have sole and executive jurisdiction to determine any question as to whether any Bill or any provisions thereof inconsistent with the constitution.

### **03.2 Provincial Council Act**

The Provincial Councils Act, No. 42 of 1987 was certified on 14<sup>th</sup> November, 1987. The Act brought to provide for the procedure to be followed in PCs; for matters relating to the Provincial Public Service; and for matters connected therewith or incidental thereto (Preamble of Provincial Council Act. No. 42 of 1987).

The main features of the Provincial Council Act, No. 42 of 1987 as amended by Act No. 27 of 1990 and Act No. 28 of 1990 may be referred to (Wickramaratne 2010, p.30). Part I of the Act deals with membership of PCs, Part II with meeting and conduct of business, Part III with finance and Part IV with the Provincial Public Service Commission (Ibid).

Provincial Councils Act No. 42 of 1987 provides the procedures to be followed by provincial councils in relation to;

- Membership of Provincial Councils
- Meetings and conduct of business in Provincial Councils
- Financial procedures of Provincial Councils
- Establishment of Provincial Public Service Commission

### **03.3. The Establishment of Provincial Council**

The Provincial Councils (PCs) were established by the President by Orders published in the gazette in pursuance of his Executive powers. However, they were not constituted under the 13<sup>th</sup> Amendment until its members were elected. Election to the Councils were not regulated under the 13<sup>th</sup> Amendment but under a separate Statute enacted by Parliament (Provincial Council Election Act, No. 2 of 1988 cited in Marasinghe 2009, p.12).

Each PC consists of members elected by the voters of the Province, on the basis of the List System of Proportional Representation, the number of members for each PC being determined by its area and population (Leitan 2001, p.2). Meaning the system seeks to provide for a structure of devolved power-sharing through the creation of popularly elected PCs, each lead by a Chief Minister (CM), who commands a majority in the PC (Shastri 1994, p.206).

Each PC has a Chief Minister and Board of Ministers. There is also a Governor for each Province, who is appointed by the President. A Board of Ministers is appointed from among the members of the Council, with the Chief Minister at its head, and consisting of not more than 4 other ministers. The Board of Ministers is to aid and advise the Governor in the exercise of his functions (Leitan 2001, p.4).

A Provincial Council, unless sooner dissolved, shall continue for a period of five years from the date appointed for its first meeting, with the expiration of the said period of five years by itself operating as dissolution of the Council (Hussain 2010, p.143).

Once the Council is dissolved the power of the Council reverts to the Representative of the Executive President, namely the Governor because there is no PC to carry out a 'Caretaker Role'. Unlike Parliament, PC cannot assume the role of a care-taker administration, because once dissolved there is no PC as constituted under the 13<sup>th</sup> Amendment (Marasinghe 2009, p.12).

The dissolved PC gets constituted only upon the holding of an election under the Provincial Council Election Act No. 2 of 1988 where fresh slates of members are elected to constitute it.

### **03.4 Establishing the North-Eastern Provincial Council**

The Thirteenth Amendment provides for the establishment of PC in each of Sri Lanka nine Provinces. In addition, Article 154A (3) states as follows:

“Notwithstanding anything in the preceding provisions of this Article, Parliament may, by or under any law, provide for two or three adjoining provinces to form one administrative unit with one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers, and for the manner of determining whether such provinces should continue to be administered as one unit or whether each such province should constitute a separate administrative unit with its own Provincial Council and a separate Governor, Chief Minister and Board of Minister” (Article 154A (3)).

In pursuance of this Article, Parliament made provision in Section 37 of the Provincial Council Act No.42 of 1987 allowing the President by proclamation to declare any two or three adjoining provinces as one administrative unit in the manner described above. The section also require that when such a proclamation has been made, the President shall fix for a poll to be taken in each such Province to determine whether it should remain linked with such other Province or Provinces (Ruana 2008, p.83).

To this extent the above provisions are neutral and could apply to any two adjoining Provinces. However, two other sub-section in the Act make it clear that these provisions were designed principally to merge the Northern and Eastern Provinces into one unit. A proviso to sub-section 37(3) stated that if a poll held in the Eastern Province determines that the electors of that Province wish to remain linked to the Northern Province, it shall not be necessary to hold a poll in the Northern Province (Ibid).

The other sub-section 37(1)(b) prohibited the President from making a proclamation of merger in respect of the Northern and Eastern Provinces ‘unless he is satisfied that arms, ammunition, weapons, explosives and other military equipment which, on 29 July 1987, were held or under the control of terrorist militant or other groups having as their objective the establishments of a separate State, have been surrendered to the Government

of Sri Lanka or authorities designated by it, and that there has been a cessation of hostilities and other acts of violence by such group in the said Provinces.

On 02.09.1988, the President J. R. Jayawardene sought to amend section 37(1) (b) by an Emergency Regulation, adding an alternate pre-condition for the merger, by including the words “or that operations have been commenced to secure complete surrender of arms, ammunition, weapons, explosive or other military equipment by such groups.” The Proclamation “merging” the Northern and Eastern Provinces was issued on 08.09.1988 (Wickramaratne 2010, p.09).

Though the merged of the North-Eastern Province never officially acknowledge. Meaning the intension seems to have been to indefinitely keep postponing the referendum in the East (allowed by Section 37 (2) (b)), in the hope that eventually, the North-Eastern merger would become a permanent feature rather than the interim measure suggested by the elaborate provisions of Section 37. From the initial Proclamation in August 1988 to November 2005, the referendum was annually postponed by successive Presidents of Sri Lanka (CPA 2010, p.21).

An election was held for the merged Provincial Council at which the Ealam People’s Revolutionary Liberation Front (EPRLF) won the 3 districts of the Northern Province uncontested while in the EP polling took place only in Ampara District. The governing party (EPRLF) in the merged Council made a unilateral declaration on independence and felt to India in March 1990 (Ruana 2008, p.84). When it declared independence unilaterally, the North-East Provincial Council was given to final below by the President using the powers assigned to him by the Constitution. The opponents of the new system of government found ammunition in this scenario to support their argument that the Provincial Council merely provides a platform for the secessionists to advance their demand for an independent state further (Bandara 2010, p.50).

Then, the North-East Provincial Council stood dissolved in July 1990 upon the Governor making a communication in terms of Section 5A introduced by the Provincial Councils (Amendment) Act No.27.1990, that “more than one half of the membership of the Council expressly repudiated or manifestly disavowed obedience to the Constitution” (Wickramaratne 2010, p.09). After which the Council (North-East Provincial Council) were jointly administered by a Governor until 4<sup>th</sup> June 2008 (Ruana 2008, p.85). Meaning

until 4<sup>th</sup> June 2008 when the elected Provincial Council of the Eastern Province assembled for the first time, the North-Eastern Province was administered by the Governor (CPA 2010, p.21).

### **03.5 De-Merger of the North-Eastern Provincial Council and the Establishment of EPC**

As said earlier the Eastern Provincial Council was amalgamated with the Northern Province until 2006.

There are two special provisions that apply to a “merger” of the Northern and Eastern Provinces. Under section 37(1) (b), the President shall not make a Proclamation merging the said Provinces unless he is satisfied (a) that arms, ammunition, weapons, explosives and other military equipment which, on 29 July 1987, were held or under the control of terrorist militant or other groups having as their objective the establishments of a separate State, have been surrendered to the Government of Sri Lanka or authorities designated by it, and that there has been a cessation of hostilities and other acts of violence by such group in the said Provinces.

Sub-section (3) states that if the electors of the Eastern Province decide that such Province should be linked to the Northern Province, a poll shall not be required in the Northern Province. Though the poll that was required to be held namely a poll in the Eastern Province to determine whether its peoples wished to remain merged with the Northern Province, was never held, with the President putting off the date for that poll by periodic gazette notifications under Emergency Regulations (Ruana 2008, p.84).

In this background, the first legal challenge to this state of affairs took place in 2006 when three petitioners from the Eastern Province filed a fundamental rights petition in the Supreme Court. In *Wijesekara v Attorney-General*, A fundamental rights application filed in 2006, the Proclamation made by the President “merging” the Northern and Eastern Provinces was challenged (Wickramaratne 2010, p.10).

A five judge Bench of the Supreme Court headed by Chief Justice Sarath N. Silva, having reviewed the history of the merger, held that the purported amendment of Section 37(1) (b) of the Provincial Council Act by way of Emergency Regulation was null and void, as emergency regulations could only be promulgated for the purposes set out in the Public Ordinance whereas this regulation was for the collateral purpose of amending another Act of Parliament. It also enabled the circumvention of Article 154A (3) of the Constitution whereas an emergency regulation could not override the Constitution. Thus the original requirement of armed groups remained applicable.

Further the Petitioners complained that they and other similarly circumstanced voters of the Eastern Province had been continuously denied their right to have a lawfully elected Provincial Council constituted for the Eastern Province (Ibid).

The Supreme Court agreed with the petitioners' contention that the impugned Emergency Regulation was invalid because it was a statutorily unauthorized use of emergency powers by the President for a collateral purpose (i.e., *ultra vires* Section 5 of the Public Security Ordinance). Since the emergency regulation seeking to amend the relevant section of the Provincial Councils Act was invalid, there had been no legal amendment of the Provincial Councils Act.

The President had therefore not satisfied the statutory requirement set out in that Section 37 (1) (b) regarding decommissioning, which rendered the subsequent Proclamation merging the two Provinces also invalid. This was the legal basis on which the Supreme Court declared the 'demerger' of the Northern and Eastern Provinces (*Wijesekera v Attorney General* (2007) 1 SLR 38 cited in CPA 2010:22). Hence the petitioners' application for an annulment of the merger was allowed. Consequently after a period of about twenty years, as per judgment of the Supreme Court on 16<sup>th</sup> October 2006, the North-East Province has been de-merged into two separate provinces; viz: Northern Province and Eastern Province. The administration of the two provinces was brought under two Governors ([www.ep.gov.lk](http://www.ep.gov.lk)).

Then following the end of armed hostilities in the Eastern Province in July 2007, elections to the EPC were held on 10<sup>th</sup> May 2008, in which the United People's Freedom Alliance (UPFA, and under which the Thamil Makkal Viduthalai Pulikal (TMVP) contested) won the majority with 20 out of 37 seats.

The Governor summoned the EPC to meet on 4th June 2008 in Trincomalee, at which inaugural session the Council elected its Chairman and Deputy Chairman. The policy statement of the new provincial administration outlining its proposed programme over five years was presented to the Council by Chief Minister of EPC on 11th June 2008 (CPA 2010, p.22).

### **03.6 Legislative Powers of the EPC**

The Law (Statute) making power of Provincial Councils, for what they make is law, although different from the law passed by Parliament. With the coming into effect of the thirteenth Amendment to the Constitution in 1987, a body other than Parliament was given legislative powers for the first time.

EPC is an elected body which was given power to pass statutes applicable to their respective Province, with regards to certain specified matters. Indeed validity of a 'statute' can always be canvassed in a court of law, even years after its passage. If it is ultra vires for a PC to enact such a statute, it is a nullity and is void ab initio (Uditha and Mahen 2009:32). The statutes will validity only within the territory over which the Council has Jurisdiction (Amarasinghe 2010, p.91).

The devolution of powers in respect of PC is specified under the 9<sup>th</sup> Schedule of the 13<sup>th</sup> Amendment to the Constitution, under 3 lists viz.

1. List I, the Provincial Councils List, which specifies the powers and functions under which provincial councils may pass statutes in relation to their respective provinces;
2. List II, the Reserved List which indicates the powers which belong exclusively to the central government;
3. List III, the Concurrent List, under which both the centre as well as the provinces are able to legislate (Leitan 2000, p.7).

The EPC adopted its rules of procedure on 7<sup>th</sup> October 2008, which was approved by the President on 3<sup>rd</sup> December 2008. The first piece of substantive legislation passed by the EPC was the Finance Statute, No. 1 of the 2008.

### **03.6.1 Provincial Council List**

Article 154G enables the PC to make Statutes. Hence EPC has Statute-making powers over the subjects named in List I of the Ninth Schedule to the Constitution (Provincial Council List). Article 154G(1) of the Constitution Reads: ‘every Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule’ (1978 Constitution, Article 154G(1)). This power is subject to the provisions in the Constitution including Article 75<sup>5</sup> and Article 154(G)(10). However, legislative power of the Provincial Council is not exclusive.

The subjects allocated to the Provincial Councils cover a range of items which are of particular relevance to regional development and provincial governance (Amarasinghe 2010, p.92).

The Provincial Council List (List I) enumerates 37 subjects or ‘items’ (many of which contain ‘sub-items’ further specifying the scope and limits of the itemized subjects) over which legislative and executive powers are devolved on Provincial Councils. Three of the most important subjects are further elaborated in three appendices that form part of the Provincial Council List. These are Law and Order (Appendix I), Land and Land Settlement (Appendix II) and Education (Appendix III) (CPA 2010, p.36).

Some of the subjects listed in the Provincial Council list (List) are: Police and Public order, Planning, Education and Educational services, Local government, Provincial

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<sup>5</sup> Article 75 deals with Legislative Power. Accordingly Parliament shall have power to make laws, including laws having retrospective effect and repealing or amending any provision of the Constitution, or adding any provision to the Constitution. Though Parliament shall not made any law; suspending the operation of the Constitution or any part thereof, or repealing the Constitution as a whole unless such law also enacts a new Constitution to replace it.

housing and construction, Roads and bridges and ferries thereon within the province, Social services and Rehabilitation, Regulation of road passenger carriage services and the carriage of goods by motor vehicles within the Province and the provinces of inter-provincial road transport services, Agriculture and Agrarian Services, Rural Development, Health, Indigenous Medicine-Ayurveda, Markets fairs, Food supply and distribution within the Province, Co-operative, Land, Irrigation, Animal husbandry, Possession, transport, purchase and sale of intoxicating liquors, The regulation of mines and mineral development, to the extent permitted by or under any law made Parliament, within the Province (Ninth Schedule of the 1978 Constitution).

The Statutes made by Provincial Councils have to be consistent with the other provisions of the Constitutions. Once a Provincial Council passes a statute on a subject in List I following the prescribed procedure the existing Parliamentary law shall remain suspended (Amarasinghe 2010, p.91) and be inoperative within that Province so long as the statute is in force (Wickramaratne 2010 & Article 154G (8)<sup>6</sup> of 1978 Constitution).

Where one or more Provincial Councils request Parliament by Resolution to make law on any matter on the Provincial Council List I, Parliament may make law on that matter applicable only to the Provinces for which those Councils were established, by a majority of Members of Parliament present and voting. So, it is plain and simple that the Parliament is not precluded from making laws in respect of a subject in the Provincial Council List, but it has to follow a special procedure prescribed by Article 154G.

Further this procedure requires the Bill to be referred to every Provincial Council for its views prior to being placed on the Order Paper of Parliament. Where every Council approves the Bill, it may be passed by a majority of members present and voting in Parliament. Where one or more Councils do not agree to the Bill, such Bill is required to be passed by a two-third majority in Parliament if it is to be applicable Island-wide, or else, or else it may be passed by a simple majority and becomes applicable only within the Provinces whose Councils approved it.

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<sup>6</sup>Article 154G (8): Where there is a law with respect to any matter on the Provincial Council List in force on the date on which this Chapter comes into force, and a Provincial Council established for a Province subsequently makes statute on the same matter and which is described in its long title as being inconsistent with that law, then, the provisions of the law shall, with effect from the date on which that statute receives assent and so long only as that statute is in force, remain suspended and be inoperative within that Province.

### **03.6.2 The Reserved List**

There is no ambiguity with the Reserved List. Those subjects and functions are exclusively reserved only for the Central Government. These cover areas of national importance. Indeed a provincial Council shall have no power to make statutes on any matter set out in the Reserved List II of the Ninth Schedule.

The Matters set out in the Reserved List II are: National Policy on all subjects and functions relating to: Defense and Security with Internal security, law and Orders and prevention and detection of crimes. Foreign Affairs, Post and Telecommunication, Justice placed in relation to the Judiciary and Courts Structure, Finance in relation to National Revenue, Monetary policy, external resources and customs, Foreign trade, Inter Provincial Trade and commerce, Ports and Harbors, Aviation and Airports, National Transport, Rivers and waterways, Shipping and Navigation, Maritime Zones including historic waters, territorial waters, Exclusive economic zone, State land a foreshore, Mines mineral, Immigration and Emigration and Citizenship, Election including Presidential, Parliament, Provincial Council and Local Authorities, Census and Statistics etc (Ninth Schedule of the 1978 Constitution).

The first item in the Reserved List is the ‘National policy on all subjects and functions. The Provincial Councils have no powers in respect of National Policy, even on subjects and functions included in the Provincial Council List. It is for the Parliament to lay down National policy. Therefore clear that Parliament retains its control on all matters and where appropriate may dictate to the Provincial Councils.

### **03.6.3 Concurrent List**

The Concurrent List contains the matters in respect of which both the Parliament and the Provincial Council may make laws and statutes respectively. The Concurrent List (List III) enumerates 36 subjects, once again with some items further elaborated in sub-items. The following are some of the subject listed in Concurrent List. Namely; Higher

Education, national Housing and Construction, Social services and rehabilitation, Agricultural and Agrarian Services, Health, Registration of births, marriages and deaths, Renaming of Town and villages, co-operative, co-operative Banks, Irrigation, Social forestry and protection of wild animals and birds, fisheries, Animal Husbandry, Employment, Tourism, Drugs and Poisons etc (Concurrent List, 13<sup>th</sup> Amendment to the 1978<sup>th</sup> Constitution).

Every Provincial Council may subject to the provisions of the Constitution, make Statutes applicable to the respective Province, with respect to any matter on the concurrent List III of the Ninth Schedule after such consultation with Parliament as it may consider appropriate in the circumstances of each case (Article 154G (5) (a)). Also any matter on the Concurrent List the Central Government can legislate after consultation with the Provincial Council. If any provision of any statute made by a Provincial Council is inconsistent with the provisions of any such law made by Parliament, such law shall prevail and the provisions of the statute shall, to the extent of such inconsistency be void (Article 154G(5)).

### **03.8 Legal Provision Relating to the Governor**

Through the instrument of assent, the Governor is an integral part of the provincial legislative process. Therefore it is worth full to make understand regarding the legal provisions which related with Governor of EPC.

There shall be a Governor for each Province. He /she is appointed by the President by warrant and paid from funds allocated by Parliament. The Governor is the head of the Province. The Governor shall hold office for a period of five years from the date of assuming office. Subject as he/she is to hold the office during the pleasure of the President, in accordance with Article 4(b).

The Governor is also subject to removal by the President on an address to the President advising the removal by the Provincial Council, after a resolution for it has been passed by not less than two-thirds of the whole number of members of the Council and on grounds that the Governor has intentionally violated the provisions of the Constitution is

guilty of misconduct or corruption involving the abuse of the power of the office or is guilty of bribery or an offence involving moral turpitude.

The Governor has to act on the advice of the Chief Minister and Board of Ministers, except where he or she is required to act on his or her discretion. However, unlike the President who is the head of the Cabinet, the provincial Governor is not the head of the Board of Ministers of the Province but is required to exercise his powers in accordance with the advice of the Chief Minister of the Province so long as the Board of Ministers commands, in the opinion of the Governor, the support of the majority of the Provincial Council.

The discretionary powers of the Governor do relate to the following:

1. Appointment of the Chief Minister
2. Assent to statutes of the Provincial Council
3. Dissolution of the Provincial Council
4. Emergency situations, pertaining, for instance, to break down of administrative machinery of the Provincial Council, situations of financial instability, etc.

These discretionary powers assume significance since they are tied up with the possibility of central direction and intervention, and could impact on the centre-province relationship (Leitan 2000, p.8).

According to Marasinghe (2009), the Governor is given the “Plenary Powers” and the “Delegated Powers” via 13<sup>th</sup> Amendment. The exercise of Governor based on plenary powers can be questioned in court of Law. Article 154 B (8), 154 C<sup>7</sup>, 154 F(1)<sup>8</sup> and 154 H(1)<sup>9</sup> deals with the Governor’s “Plenary Powers”. The Governor’s delegated powers are

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<sup>7</sup>154c: Executive power extending to the matters with respect to which a Provincial Council has power to make statutes shall be exercised by the Governor of the Province for which that Provincial Council is established, either directly or through Ministers of the Board of Ministers, or through officers subordinate to him, in accordance with Article 154F.

<sup>8</sup>154F(1): There shall be a Board Minister with the Chief Minister at the head and not more than four other Ministers to aid and advice the Governor of a province in the exercise of his function. The Governor shall, in the exercise if his functions, act in accordance with such advice, except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.

<sup>9</sup>154H (1): it deals with Assent of Governor for Statute made by a Provincial Council.

few and when they are exercised, they are exercised as a delegate of the President. Being so such exercise of delegated powers cannot be questioned in a court of Law (Ibid).

Furthermore all plenary powers are subject to both judicial scrutiny and approval by the Board of Minister (Article 154B (8) D (8) (d) and F (1) and (4) cited in Ibid 2009:16). The Governor's plenary powers do not give him an unfettered freedom to act, as the case laws suggest (Mahindasoma v MaithripalaSenanayake (Governor, North Central Province) and others, (1996) 1SLR. 364(S.C.); Premachandra and Dodangoda v Jayawickreme (Governor, North-Western Provincial Council) and Bakeer Markar (Governor, Southern Provincial Council) and others, (1993) 2 S.L.R.294, affirmed at (1994) 2 S.L.R.90.)

Under Article 154C the executive powers of the Governor "shall be exercised ...either directly or through Ministers of the Board of Ministers or through officers subordinate to him/her....". "Officers subordinate to him" refers to the members of the Provincial Public Service created under the Provincial Councils' Act. According to section 32 of the Provincial Councils' Act the PC's officers' loyalties are to the Governor.

### **03.9 Conclusion**

The Thirteenth Amendment is already part of the Constitution of Sri Lanka from 14<sup>th</sup> November, 1987. It amended Articles 18, 138, 155 and 170. A new Chapter XVIII starting from Article 154A and ending with Article 154T was inserted. Also Eight and Ninth Schedule were inserted into the Constitution. Thirteenth Amendment was within the framework of a Unitary Constitution. Despite the Amendment the Central Government would continue to hold supreme power.

Also the President remained supreme in the Executive field; the Governor is a figurehead who is subject to the control and directions of the Executive President and the Provincial Council in terms of the Thirteenth Amendment would only be a body subordinate. If the President gives directions to any Provincial Council they have to be complied with.

Failure can entail Parliament declaring the taking over of the functions of the Council and the President thereafter would take over functions by issuing a Proclamation.

As discussed earlier the Ninth Schedule to the Thirteenth Amendment contains three Lists. These Lists set out the subjects and the legislative functions allotted to the centre and the periphery (Provincial Council). List I enumerated the Provincial Council List, List II the Reserved List or subjects allocated clearly to the Central Government and List III the Concurrent List.

The subjects and functions are listed in reserved list exclusively reserved for the Central Government. But it was found that the subjects and functions allocated in the Provincial Council List are not exclusively theirs. Parliament remains supreme and can be exercise of its legislative powers determine the scope of the powers of the Councils. Also the statute of a PC applies only within the Province. Parliament retains a variety of ways in which it can also pass laws on the subjects assigned to the Provincial Council. Notably the Provincial Councils have no powers in respect of National Policy, even on subjects and functions included in the Provincial Council List.

A Provincial Council can make a statute which will apply only within its provincial limits. No Provincial Council can claim to have authority to make statutes having application extra provincially or territorially.

EPC may by a resolution decide not to exercise its statute-making powers. Upon the acceptance of this resolution, the Parliament is thereafter empowered to make laws applicable to the eastern province. Article 154G(3) provides that Parliament could by a majority legislate in respect of the matters specified in Provincial Council List I with the consent of some of the Provincial Councils in which event the Bill shall become Law applicable only to those provinces. But if Parliament passes by a two-third majority, such Law would become applicable to all Provincial Councils whether they agreed to such Law or not.

There have been instances of conflict between the democratically elected Provincial Council Members and the Presidential appointee, the Governor because of ambiguity in term of legally devolved power and function among them. Some of these disputes have come before the courts. One such dispute refereed to a provision which stated the

Governor should appoint as Chief Minister the Provincial Council member who is in his or her opinion the best able to command the support of the majority of the members of the Council (1993) 2 SLR 294).

The Thirteenth Amendment also provides for the procedure for the amendment or repeal of Chapter XVIIIA of the Constitution or the Ninth Schedule. If all the Provincial Council agrees to the amendment or repeal, such a Bill in Parliament could then be passed with a simple majority. If one or more Councils do not agree then it requires a two thirds majority to be passed.

## **CHAPTER FOUR**

### **THE HUMAN AND FISCAL CAPACITIES OF THE EPC**

#### **04. Introduction**

In the analytical framework, the human resource, fiscal resource and legal framework are indicated as independent variables, which can be ensured the institutional capacity of the EPC. Line with the prediction, the third chapter presented the legal framework respectively. This chapter presents the collected data on the subject of human and fiscal resources of the EPC.

#### **04.1 Human Resources (HR)**

The organization involves group of people working together interdependency to achieve common goals, managing those human resources is one dimension that can significantly constrain or assist the capacity of organization to perform. The UNDP (1998, p.10) believes that human resources are central to capacity development and is the most critical factor to consider in analyzing capacity.

##### **04.1.1 Administrative Centres at the EPC**

The following administrative centres at the EPC corresponding to the legislative and executive organs (Bandara 2010, p.177):

1. Office of the Governor
2. Office of the Provincial Council
3. Office of the Chief Secretary
4. Office of the Provincial Public Service Commission

5. Office of the Chief Minister
6. Office of the Provincial Ministers
7. Office of the Provincial Departments
8. Office of Provincial Statutory Authorities

In order to deliver its development services, the EPC has organized itself into the following five ministries:

1. Ministry of Local Government, Cooperative, Rural Development and Industries.
2. Ministry of Agriculture, Livestock Development, Lands, Irrigation and Inland Fisheries.
3. Ministry of Health and Indigenous Medicine
4. Ministry of Education, Cultural Affairs and Sports
5. Ministry of Rehabilitation, Reconstruction, Social Services, Probation & Child Care Services and Women's Affairs.

#### **4.1.2 Cadre Creation and Appointments**

There are two categories of personnel are working at the EPC. They are:

- Staff grade personnel
- Non-staff grade personnel

The staff grade personnel (Sri Lanka Administrative Service (SLAS), Sri Lanka Planning Service (SLPS), Sri Lanka Engineering Service, Sri Lanka Accounting Service (SLAcctS), and Sri Lanka Scientific Service.) are recruited and transferred to the Provincial Council by the Central Government. Matters relating to these personnel are dealt by the National Public Service Commission. Meanwhile, Office of the Deputy Chief Secretary Administration, EPC co-ordinates all work connected with the appointments to the posts in Staff Grades and the All Island Services with the Provincial Public Service Commission and the Ministry of Public Administration and Home Affairs and other relevant authorities.

The non-staff grade personnel (System Administrators, Statistical officer, Development Assistants, Programme Assistant, Translator, Management Assistants, Data entry

Operator) are appointed by Provincial Public Service Commission. Also it deals with transfers, promotion, extension, retirement approval, re-instatement, termination of service, conducting exams and interviews for recruitment and promotion of non-staff grade personnel.

Furthermore, foreign personnel (consultants and specialist) also work in donors funded projects. They are not belonging with the EPC. It was found that the EPC's senior level staff satisfied with the performance of foreign personnel. Consequently they requested the donors to make arrangement to appoint such personnel for a long period.

### **4.1.3 Skills of the Staff**

The inadequacy of the human resource is one of the obstacles that prevent the regional development. According to the Planning Secretariat of the EPC, only around 40% staff works with adequate proficiency on the regional development. The EPC could achieve around 60% results from the training programme, which were conducted in Sri Lanka intend to enhance the capacity of its staff. Around 80% staff used to attend in the programs. Among them, around 20% are belonging to low level grade. The personnel who are involving in policy level activities not willing to participate in workshops / training programme. They used to send their juniors who are available with less work during the time.

According to the Chief Minister of the EPC, it (EPC) had been worked towards regional development without a proper development plan. Thus, it faced challenged related with identification of problems, and mobilizations of resources as well as balance regional development (Budget Speech 2012). The EPC does not have adequate resources to draft a comprehensive development plan. The need for a comprehensive long term development plan for the EP has been widely felt at all levels for quite some time.

However, pursuant to the installation of the newly Elected Council and the emerging socio economic situation in the Province consequent thereto, a quick initiative was taken to prepare an Integrated Development Plan for the Rehabilitation and

Development of the Eastern Province (Balasingham 2012). Accordingly five years plans such as Eastern Development Plan 2012-2016-Volume I, and Eastern Development Plan 2012-2016, Volume III, Sector Analysis are prepared.

To achieve this task, a team of experts equipped with necessary knowledge of, and experience in, local economy and regional development was mobilized and it worked with specific sector specialists. The senior officials from the EPC contributed as a working committee to this mobilized team to complete these documents (Ibid).

The EPC has personnel to negotiate with Donors and Development Agencies. Though, it was found that only around 40% personnel are with adequate skills to deal with policy level activities. There is a “Yes” culture among those personnel. Consequently instead of discuss they used to accept theirs (donors and development partner) ideas and priorities. The problem is, the development partner and donors come up with their own concepts, which were developed based on their socio-economic, and political context. Those are not relevant or good fit to the existing socio-economic and political context of Eastern Province of Sri Lanka.

#### **4.1.4 HR Development Programs**

Training is another alternative that can significantly improve the capacity of government institutions. Various training programs have been conducted intend to improve the capacity of EPC’s staffs. These training programs can be divided into two categories such as: HR development programme conducted in Sri Lanka and HR development programme conducted in overseas.

#### **4.1.4.1 HR Development Programme Conducted in Sri Lanka**

The EPC's staffs obtained multiple training in provincial as well as national level. These programme were organized by various sectors such as EPC, Universities, Private sector, NGOs and donors.

The EPC established a unit namely Management Development and Training Department (MDTD) intend to provide multiple training. Mission of the MDTD is to Facilitate Development of the Eastern Province through enhanced public sector competence by serving as premier and principal agent for human resource development.

The followings are the key Function of the MDTD meant for ensure its mission: Conducting training need analysis among the public servants to identify training needs of public servants, Design training programmes, workshops and seminars in terms of the training needs analysis, Coordinating programmes with National Training Organizations, Seek funding from foreign donor funding agencies, Coordinating Language proficiency Courses with the collaboration of Department of Official Languages and Setting up of a Management Information System for Monitoring and Evaluation of Training Programmes and impact assessments (<http://www.ep.gov.lk/mdtdindex.asp>).

The MDTD has conducted numerous programme since 2009. (See Table No IV). In addition to that, senior level staff (for instance Provincial Planning Secretariat-PPS) of EPC also conducted training programme for other staff of EPC as well as district / divisional planning staff (See Table No V).

Table No: IV

**HR Development activities organized by MDTD**

<b>2009</b>	
<b>Name of Programe</b>	<b>Organized by &amp; Venue</b>
Induction Training for Newly Appointed Management Assistant (MA)	MDTD, Trincomalee
Disciplinary Procedures	MDTD, Trincomalee
New Tends in Public Financial Management	MDTD
Traffic Rules and Safe Driving	MDTD
Basic Computer Maintenance operation	MDTD
<b>2010</b>	
Training Programme on Office Administration and Management Techniques	MDTD, Trincomalee.
Safety Management Quality and Implementation	MDTD, Trincomalee.
Training on Office System	MDTD, Trincomalee.
Training Programme on Web Based Human Resource Database	MDTD, Trincomalee.
<b>2011</b>	
Workshop on Pension Matters	MDTD, Trincomalee
Workshop for Minor Staff on Productivity & Service Delivery Improvement	MDTD, Trincomalee.

Source: Administrative Report-2009, 2010 &2011, Provincial Planning Secretariat, EPC, Trincomalee.

Table No: V

<b>Training Programme conducted by PPS -2011</b>			
<b>Name of the Workshop</b>	<b>Venue</b>	<b>Period</b>	<b>No. of. Participants</b>
Workshop on regional planning process & Monitoring	PDHS, Conference hall	2 Days	23 Senior Officials & 20 Supportive staff from provincial Ministries & Department
Advanced Training on Web designing & Techniques	SLIIT, Colombo-03	6 Days	11 IT Officers from Ministries & Departments
Training Programme on Effective Function of Planning Unit in Ministries and Department	Chief Secretaries Conference hall	1 Day	36 Planning officials, EPC
Workshop on Effective Planning Skill Development for Planners of EPC	MDTD, Trincomalee	2 Days	10 Senior Officials & Planners from Provincial Ministries & Department
Capacity Development and Provincial Planning Practices	Hotel Gritala, Polannaruwa	2 Days	43 Planning officers from 05 Ministries & PPS

Source: Administrative Report 2011, Provincial Planning Secretariat, EPC, Trincomalee.

Furthermore, other governmental and non-governmental sectors also organized various training programs. (See Table No VI). According to the DPD and CM secretary of the EPC; the need base analysis did not take place when training programme was organized by the NGOs, INGOs and the donors.

Table No: VI

**HR development activities organized by government bodies, NGOs and private sectors**

<b>2009</b>	
<b>Name of Programme</b>	<b>Organized by &amp; Venue</b>
SPSS Package	University of Colombo
Gender Mainstreaming in the Project	University of Colombo
Advance Training on Ms-Access	IDM, Colombo
VB.Net	SLIIT, Colombo
<b>2010</b>	
Training Programme for HRD Software Developers	CIRM, Colombo
Workshop on Managing Development Result and Evaluation	UNDP-LoGoPro, Batticaloa.
Training Programme for Lanka Government Network	e - Lanka Project, Trincomalee.
Training Programme on Baseline Survey for Rural Road Development Project	JICA, Trincomalee.
Workshop on Second phase of the Local Economic Governance Project	The Asia Foundation, Polonnaruwa
<b>2011</b>	
Third International Evaluation Conference	Sri Lanka Evaluation Association, Colombo
Familiarization programme on Action Research & Using Data Effectively for Development Results	University of Peradeniya, Kandy.
Workshop on Renewable Energy, Energy Efficiency & Energy Planning	Oruthota Chalets, Teldeniya, Kandy.

Source: Administrative Report-2009, 2010 &2011, Provincial Planning Secretariat, EPC, Trincomalee.

#### 4.1.4.2 HR Development Programme Conducted in Overseas

Some of the EPC's staffs have obtained training from overseas (See Table No-VII).

Table No: VII

#### HR Development Programme (Foreign)

<b>Foreign Training Programmes / Seminar / Conferences- 2009</b>	
Name of Programme	Organized by & Venue
Local Governance and Basic Services Delivery in Conflict Affected Areas. (Thailand)	UNESCAP
<b>Foreign Training Programmes / Seminar / Conferences- 2010</b>	
Health Sector Planning & Monitoring	HSDP, Phillipines
Local Governance	HSDP, Phillipines
E – Government	UNPOG, South Korea
Local Governance	UNDP-LoGoPro, India
<b>Foreign Training Programmes / Seminar / Conferences- 2011</b>	
Nil	Nil

Source: Administrative Report-2009, 2010 &2011, Provincial Planning Secretariat, EPC, Trincomalee.

#### 4.1.5 HR at the Legal Unit

Very recently a legal unit was established in the EPC. They allocated 0.50 million through Criteria Based Grant to establish the unit (EPC Annual Implementation Programme 2012 (CBC), Status Report-2012). There is a Legal officer.

The officials and the Elected Provincial Councilors are extremely eager to prepare statutes on an emergency basis. Though, the EPC does not have qualified personnel (Legal Draftsman) to undertake drafting of statutes.

## **4.2 Fiscal Resource**

Availability of sufficient financial resource is an important aspect of devolution of powers. Once the powers are devolved through legislation, the EPC cannot proceed further unless they are in a position to meet their financial needs and commitments. Thus, there are arrangements to meet the financial needs of the EPC. The EPC gets funds through the following ways;

1. Devolved Revenue
2. Surplus on Advance Account Activities
3. Profits made on enterprises directly run by the Eastern Provincial Councils
4. Grants from the Government on the recommendation of the Finance Commission
5. Grants from Line Ministries
6. Others

### **4.2.1 Devolved Revenue Power**

The decentralization theorem asserts that the assignment of public expenditure powers to Provinces must be determined by adequate finances to meet such needs. Revenue raising powers assigned to EPC include a combination of tax and non-tax sources. Provincial revenue sources have been identified under the Ninth Schedule of Thirteenth Amendment to the Constitution (Para 36.1 to 36.20) (See Table No-VIII).

Table No: VIII

<b>Provincial Revenue</b>		
	Article	Subject
Tax	36.1	Turnover taxes on wholesale and retail sales
	36.2	Betting taxes
	36.5	Dealership license taxes on drugs and other chemicals
	36.17	Taxes on lands and buildings including property of the State to the extent permitted by law
	36.18	Taxes on mineral rights within limits and exemptions as prescribed by law
	36.20	Other taxation within the province in order to raise revenue for provincial purpose to the extent permitted by law
Duties	36.6	Stamp duties
Fees and Charges	36.3	Toddy tapping licence fees and liqueur license fees
	36.3	Motor vehicle licence fees within such limits and subject to such exemptions as may be prescribed by law
	36.8	Fines imposed by courts
	36.9	Fees charged under the Medical Ordinance
	36.10	Fees charged under the Motor Traffic Act
	36.11	Departmental fees in respect of any of the matters specified in List I
	36.12	Fees under the Fauna and Flora Protection Ordinance
	36.13	Fees on lands alienated under Land Development Ordinance and Crown Lands Ordinance
	36.14	Court fees, including stamp fee on documents produced in court
	36.15	Regulatory charges under the Weights and measures Ordinance
	36.16	Land revenue, including the assessment and collection of revenues, and survey for revenue purpose
	36.19	Licence fees on possession, transport, purchase and sale of intoxicating liquors.
	36.20	Other taxation within the Province in order to raise revenue for Provincial purposes to the extent permitted by or under law made by Parliament

Source: Wicramaratne. 2010, Fiscal Devolution: Operational Issues, p.115.

The EPC has passed the finance statute in 2008 for devolved revenue. And also now it is in the process of collecting revenue. (See Table No IX).

Table No: IX

**Actual Collection of Revenue by Sources 2009-2010**

(Rs`000)

Province	Year	B.T.T	Motor Vehicle license Fees	Excise Duty	Stamp Duty	Court Fines	Others	Total
Eastern	2009	261,021	92,000	-	319	-	58,950	412,289
	2010	459,080	72,215	-	109,690	69,085	189,540	899,610

Source: Finance Commission recommendation and Provincial Budget estimates 2011

Business Turnover Tax (BTT) was the major revenue source of provincial councils. It has been observed that the operation of the provincial BTT and other similar national taxes resulted in tax on tax. This has caused a high tax burden particularly, on Small and Medium Enterprises (SME) and consumers. With a view to avoiding this complicated tax system, the BTT collected by the Provinces was abolished by the National Budget - 2011 presented before the Parliament. In order to supplement the reduction of revenue collected by the Provinces, a special revenue sharing system was introduced by the National Budget – 2011 (Finance Commission 2011).

To implement this policy decision, Secretary to the General Treasury issued the Fiscal Policy Circular No: 01/2010 on 29th of December, 2010. Accordingly, revenue collected by central authorities such as Commissioner General of Inland Revenue (CGIR), Director General of Customs (DGC) and Commissioner General of Motor Traffic (CGMT) should be transferred to the Provinces, on the following basis, with effect from the 01st of January, 2011.

- 33 1/3% of the Nation Building Tax (NBT)
- 100% of Stamp Duty
- 70% of Vehicle Registration Fees

Accordingly The Ministry of Finance and Planning decided to transfer 5% of the revenue to the EPC for the implementation of Budget Proposals – 2011. While the collected revenue from NBT and Stamp Duty should be shared with the Provinces according to following percentages; (See Table No X for details).

Table No: X

**Transfer of Revenue for the Credit of Provincial Bank Accounts**

<b>Province</b>	<b>Ratio</b>
Western Province	48%
Central Province	9%
Southern Province	9%
North Western Province	9%
Sabaragamuwa Province	5%
North Central Province	5%
Uva Province	5%
Eastern Province	5%
Northern Province	5%

Source: Ministry of Finance and Planning, Sri Lanka, Fiscal Policy Circular No: 01/2010

After introduced the New Revenue Sharing System, the actual transferred amount to the EPC was 1,020.62 million Rupees. Table XI shows a comparison of BTT collection of 2010 and actual transfers of Central Government revenue in the year 2011.

Table No: XI

**Provincial Revenue before and after Introducing the New Revenue Sharing System**  
(Rs Million)

Province	BTT Collection 2010	Central Government Transfers-2011	Difference
Eastern	459.08	1,020.62	561.54

Source: Finance Commission Report 2011

## **4.2.2 Grants from the Central Government**

The Thirteenth Amendment provided for the allocation of funds by the National Government and the distribution of such funds within the Provincial Councils. Accordingly the Central Government allocates fund to EPC from the Annual Budget on the recommendation and in consultation with the Finance Commission. The Finance Commission (FC) was established by the Thirteenth Amendment to the Constitution.

Main responsibilities of the FC are to make recommendations to the Government and formulate principles, policies and guidelines on the apportionment of funds to the nine Provinces aiming to achieve balanced regional development.

The FC comprises five members. They are:

1. Governor of the Central Bank
2. The Secretary to the Treasury
3. Three members appointed by the President to represent the three major communities, each of whom shall be a person who has distinguished himself, or held high office, in the field of finance, law, administration, business or learning.

The FC is required to consult with and recommended to Government needs of the EP so as to enable allocations from the Annual Budget funds as are adequate to meet such needs of the EPC.

Financial transfer to EPC constitutes an annual cycle. It comprises:

- Assessment of the “Needs of the Province”
- Allocation of funds from the Annual Budget
- Apportionment of Funds between the Provinces: The FC will, in making such recommendations, have in view the objective of achieving balanced regional development in the country, and will take into consideration: The population of each province, the per capita income of each province, the need, progressively, to reduce social and economic disparities; and the need progressively to reduce the differences

between the per capita income of each Province and the highest per capita income among the Provinces.

Furthermore, the funds released on the recommendation of the FC are:

- 1) Block Grant
  - 2) Matching Grant
  - 3) Criteria Based Grant (CBG)
  - 4) Provincial Specific Development Grant (PSDG)
  - 5) Education Sector Development Project (ESDP)
  - 6) UNICEF/UNFPA
- **Block Grant:** This is a grant meant to meet recurrent expenditure needs of Provinces for the purpose of sustaining and improving the service delivery system. The estimate of revenue of the Province for a particular year is deducted from the estimated recurrent needs for the same year and the balance is recommended as Block Grant.

Table No: XII

### Allocation and Release of Block Grant 2008-2011

Rs. Million

Provincial Council	Year	Allocation	Release
EPC	2008	8,500	8,104
	2009	9,891	9,421
	2010	10,100	10,100
	2011	10,473	10,952

Source: Finance Commission and General Treasury

- **Matching Grant:** The Matching Grant is released as an incentive based on the collection of Devolved Revenue.

- **Criteria Based Grant (CBG):** The CBG is to meet the capital expenditure for improving the socio-economic condition in the provinces in a manner that contributes towards reducing regional disparities. The Criteria Based Grant was recommended to the Provincial Council to meet capital needs based on criteria such as population, area, per capita income, social-economic disparities etc. an annual basis.

The funds provided under this grant are available to the provinces for discretionary spending on development. However, the provinces are required to allocate this grant adhering to the directives given by the FC Circular FC/PSDG&CBG/CIRCULAR/2011/1 dated 26th July 2011.

Table No: XIII

**Allocation and Release of Criteria Based Grant 2008 – 2011**

Rs. Million

<b>Provincial Council</b>	<b>Year</b>	<b>Allocation</b>	<b>Release</b>
EPC	2008	370	341
	2009	382	197
	2010	325	276
	2011	250	230

Source: Finance Commission and General Treasury

- **Provincial Specific Development Grant (PSDG):** The Provincial Specific Development Grant is recommended by the FC in consultation with the Department of National Planning the basis of national priority. This grant is mainly expected for financing capital nature development projects paying special attention to infrastructure development under different devolved subjects.

Upon the receipt of Provincial development plans, the FC and respective Provincial authorities discussed and agreed to ensure that such plans would address the provincial needs and that they are within the National Development Policy Framework of the Government. For each investment, measurable results (output, outcome and impact) need to be identified in the form of pre-defined indicators and periodical monitoring and evaluation of achievements, on the basis of such indicators should be carried out. Results based monitoring and evaluation process should be conducted by the EPC authorities and facilitated by the FC.

Table No: XIV

**Allocation and Release of Province Specific Development Grant 2008 – 2011**  
Rs. Million

<b>Provincial Council</b>	<b>Year</b>	<b>Allocation</b>	<b>Release</b>
EPC	2008	1,641	747
	2009	4,702	1,202
	2010	3,273	1,730
	2011	5,079	1,135

Source: Finance Commission and General Treasury

- **Education Sector Development Project (ESDP):** As the National Budget allocations are inadequate to meet the actual requirements, the World Bank has funded for the budgetary support programme. This commenced from the year 2006.
- **UNICEF/UNFPA:** For the development works in the Education, health and Probation sectors supported by the UN where ever the needs are urgent and inadequate of domestic funds.

### **4.3 Conclusion**

The resources capacity arrangement at the EPC has proved what Navaratna Bandara noted in 2000, "...despite the Constitutional devolution, the de facto system in Sri Lanka still resembles de-concentration rather than devolution' (Bandara 2010, p.165). This is attributed to the arrangements set by the Finance Commission for organizing central government grants to the PCs and the restrictions upon the PCs to utilize the Provincial Fund where all the Provincial revenue is deposited.

The inadequacy related to the human resource provided to the EPC has also contributed to the weak capacity basis of the EPC. The lack of control over the executive level personnel supplied to the EPC is another factor which has restricted the capacities of EPC. Further there are many weaknesses in the current legal fiscal framework. First, the powers on taxation are extremely limited so that the revenue which Provincial Council could raise through taxation may not be significant. Indeed, 90 percent of the funds are coming from central government to the EPC.

The Provincial Council System is an example of devolution, which has been formulated strictly following the power arrangement within a unitary system of government.

Notably the EPC does not have legal draftsman. The Provincial Councils were entrusted with statute making power to prepare these institutions cannot exceed the laws passed by Parliament. Thus the Provincial Executive has to exercise its authority within the legal framework established by national Parliament.

## **CHAPTER FIVE**

### **ANALYSIS OF DATA**

#### **05. Introduction**

The multi-level governance is an important theme in the development discourse in Sri Lanka for some time (Gunawardana 2007). The scenario could be identified at sub-national level especially in the EP of Sri Lanka. The problem is; who is playing the vital role in the MLG meant to regional development in the EP? If the EPC desires to play key role, the adequate institutional capacity is pre-required to do so. To get deeper understanding on the matter-of-fact this chapter analyses the institutional capacity of EPC line with analytical framework. Accordingly it examined the variables such as Legal framework, Human and fiscal resources. Also it discusses the non-institutional capacity which require to the EPC for the MLG practice at sub-national level.

#### **5.1 Legal Capacity and Practice of MLG**

Legal capacity is one of the pre-requirement to the sub-national government (EPC) to work independently towards regional development. The fundamental principle, on which the sub-national self-governments are built, is that they enjoy complete freedom and independence to take decisions, prepare action plans and implement schemes for socio-economic development. Therefore, the function is not just implementation of project but also decision-making at the policy level. Appropriate legal framework is pre-required to do so. While the central government can issue guidelines for policy making at the sub-national level, it cannot meddle in the day to day affairs of the sub-national government. It was found that the Legal framework of the Provincial Council System of Sri Lanka allows the central government to intervene the day to day affairs of the EPC. Also it provides limited legislative power. In order to get deeper understanding on the scenario this section makes further elaboration.

### **5.1.1 Limited Legislative Power**

The provisions of the Thirteenth Amendment were within the framework of a Unitary Constitution. According to the majority determination in the Thirteenth Amendment case, the EPC does not exercise sovereign legislative power and is a subsidiary body exercising limited legislative powers.

Parliament remains supreme and it retains a variety of ways, in which it can also pass laws on the subjects assigned to the EPC.

A statute made by the EPC may be void if the statute is inconsistent with a law passed by Parliament, which was enacted following the provisions of paragraphs (2), (3), (4) and (5) of Article 154G of the Constitution. This is due to paragraph (6) of Articles 154G, which reads as follows:

“if any provision of any statute made by a Provincial Council is inconsistent with the provisions of any law made in accordance with the preceding provisions of this Articles, the provisions of such law shall prevail and the provisions of such statute shall, to the extent of such inconsistency, be void.”

### **5.1.2 National Policy**

It was found that the EPC has no power in respect of National Policy, even on subjects and functions listed in the Provincial Council List. For instance; The National Transport Commission Act No.37 of 1991. Some of the provisions of this Act are in conflict with items 8<sup>10</sup> of the Provincial Council List. However, since it relates to National policy, its constitutional validity was upheld by the Supreme Court and it was passed by a simple majority (Uditha & Mahen 2009, p.40).

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<sup>10</sup>Regulation of road passenger carriage services and the carriage of goods by motor vehicles within the Province and the provinces of inter-provincial road transport services.

In re – the Transport Board Statute (take – over of Assets and Liabilities of Northern and Eastern Province Transport Board) the Supreme Court determined as follows:

1. That, a Provincial Council can make statutes (in respect of the provision of Intra-Provincial Road Transport Services in respect of both passengers and goods) by virtue of item 8 as well as item 21 of the Provincial Council List.
2. That a Provincial statute can authorize the Council itself to provide Road Transport Services.
3. That, the duty to consult under Article 154G (5) (a) and (b) is mandatory.
4. That, the Provincial Council statute cannot transfer or vest in the Council without compensation the assets of a Public Corporation which is empowered to provide both intra-provincial and inter-provincial road transport service.

This determination reflects the unwillingness on the part of the National Government to give effect to the provisions in the Thirteenth Amendment and the shortcoming on the part of the Provincial Council, which was expected to make a meaningful attempt to work the devolution to its optimum.

The EPC ought not to take upon itself responsibilities that it cannot handle. On the other hand, if it has the capacity to discharge its responsibilities in respect of the matters in the Concurrent List, provisions are made for the Council to do so, provided that, where there exists a conflict between the National Government and the Provincial Council, the Parliament could effectively obstruct the Council by firstly objecting to the making of any statutes in respect of the said matters and thereafter by enacting legislation based on National Policy.

### **5.1.3 External Resources and Foreign Trade**

The subjects and functions listed in Reserved List are exclusively reserved for the Central Government only. Especially external resources, foreign trade, Inter Provincial Trade and commerce are listed under Reserved List. The EPC cannot make any statues related with external resources and foreign trade. Consequently the EPC cannot directly access financial assistance from donors and development partners.

It is worth noting here that, institutionally the foreign aid delivery system constitutes an interlock network of partner agencies contributing to coordination, negotiation, mobilization and utilization of official development assistance to the Government of Sri Lanka (Gunawardena 2003, p.8). The Department of External Resources (DER), Ministry of Finance and Planning constitute the focal agency in the aid system networking with policy, donor and user agencies.

The DER is the apex government institution that coordinates and mobilizes the foreign financing to Sri Lanka for financing development projects in order to achieve the development targets of “*Mahinda Chinthana*”. The total foreign finance commitment in 2011 was USD 2,076 million. This consists of project loans of USD 1945 million and grants of USD 131 million (Performance Report 2011, ERD) (See Table No XV).

Table No: XV

<b>Foreign Finance Commitments in 2011 (USD Mn)</b>			
Development Partner	Loan	Grant	Total
<b>Bilateral</b>	<b>1,426</b>	<b>32</b>	<b>1,458</b>
China	784.7	-	784.7
India	-	9.1	9.1
Japan	500.0	23.0	523.0
Kuwait	10.9	-	10.9
France	45.3	-	45.3
Netherlands	12.9	-	12.9
Malaysia	4.0	-	4.0
Belgium	13.9	-	13.9
Pakistan	-	0.1	0.1
Sweden	54.2	-	54.2
<b>Multilateral</b>	<b>473</b>	<b>189</b>	<b>662</b>
Asian Development Bank	369.9	3.9	373.8
World Bank	103.0	8.1	154.0
<b>Other UN Agencies</b>	<b>-</b>	<b>89.9</b>	<b>89.9</b>
FAO	-	14.6	14.6
UNDP	-	1.3	1.3
UNHCR	-	0.6	0.6
UNICEF	-	16.0	16.0
UNIDO	-	8.8	8.8
WFP	-	48.6	48.6
<b>Total</b>	<b>1,945</b>	<b>131</b>	<b>2,076</b>

Source: Performance Report 2011, ERD.,p.5

### **5.1.4 Obstruct by the Governor**

It was found that the subjects and functions allocated in the Provincial Council List are not exclusively theirs. In terms of Article 154H a Statute enacted by a Provincial Council (as opposed to Law enacted by Parliament) comes into force only upon receiving the assent of the Governor.

A Governor could assent or return same to the Provincial Council together with a message requesting the Council to reconsider it or consider the desirability of introducing amendment as may recommended in the message. (Article 154H (2)), in which event it is imperative for the Provincial Council to reconsider the statute having regard to the message of the Governor but it may pass the statute with or without the amendment and present it again to the Governor for his assent (Article 154H(3)).

Thereafter the Governor may assent to the Statute or reserve it for reference by the President to the Supreme Court within one month of the passing of the Statute for the second time, for a determination that it is not inconsistent with the provisions of the Constitution. Depending on the determination of the Supreme Court the Governor shall either assent or withhold his/her assent (Article H (4)).

The above provisions place several effective obstacles in the passage of a Statute before it comes into force. Unlike the power of Parliament in relation to a Bill which requires no Executive assent, a Statute requires the assent of the Governor who is the Chief Executive of the EPC. It is open to a Governor temporarily obstruct a statute for various reasons, yet a permanent obstacle may be placed, only if the statute is inconsistent with the Constitution.

Under Article 154B(11)(a) it shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Board of Ministers relating to administration and even the proposal for legislation. The Governor could under sub Article (b) call for any information pertaining to administration such as the relevant functioning of any Ministry. Thus the Governor keeps a strict control over the affairs of the EPC.

In July 2009, the relations between the Governor and the Board of Ministers had reached such a low level that at least some Ministers actively considered moving the Provincial Council for the presentation of an address to the President advising the removal of the Governor (CPA 2010, p.62). Hence, it is apparent that the Thirteenth Amendment intended the Governor to exercise control over the EPC's power to make Statutes.

### **5.1.5 Intervention by the Centre**

There are three grounds on which the President and or Parliament is empowered to intervene directly in the affairs of EPC. They are:

- Public Security
- Failure of administrative machinery
- Financial stability

Article 154J (1) empowers the President to intervene the Provincial Council, under the public security ordinance. Upon the making of a Proclamation under the Public Security Ordinance bringing such Ordinance into operation on grounds that the maintenance of essential supplies and services is threatened by war, external aggression or armed rebellion, the President may give direction to the Governor of Eastern Province as to the manner in which the Governor's executive power is to be exercised.

The second situation is referred to the failure of administrative machinery. The making of the Proclamation under the Article 154 (L)(1)<sup>11</sup>, is in relation to a situation, where on a receipt of a report from the Governor of the Province or otherwise, the President is satisfied that the administration of the province cannot be carried on in accordance with the provisions of the Constitution. By the Proclamation made in these circumstances, the President may:

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<sup>11</sup>Article 154(1): If the President on receipt of a report from the Governor of the Province or otherwise, is satisfied that a situation has arisen in which the administration of the Province cannot be carried on in accordance with the Provisions of the Constitution, the President may by Proclamation.

(a) Assume to himself all or any of the functions of the administration of the Province and all or any of the Powers vested in, or exercisable by, the Governor or anybody or authority in the Province other than the Provincial Council;

(b) Declare that the Powers of the Provincial Council shall be exercisable by, or under the authority of, Parliament:

(c) Make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation:

The third situation refers to financial instability. Article 154N enables the President to give direction to the Governor when the financial stability or credit of Sri Lanka or of any part of the territory thereof is threatened.

### **5.1.6 Conclusion**

The EPC has been provided limited legislative power. Also the legal framework which deals with Provincial Council system allows the central government to intervene day to day affairs of the EPC. The weakness of the concurrent jurisdiction, the Reserved List ‘national policy’ power, the Governor’s involvement in the statute-making process generally through the requirement of assent and specifically in relation to financial statutes, the lack of precision and clarity in the textual formulations of the three lists all contribute to a vulnerable system of devolution. This scenario is inappropriate for meaningful decentralization as well as practice of subsidiarity. Consequently, the EPC faced many obstacles while attempt to practice MLG in an effective manner at sub-national level.

## **5.2. Human Resource and Practice of MLG**

Human resource with sufficient skill is essential for make comprehensive development policy and gains the benefits from other sector meant to regional development. The EP has a pluralist society with different political options. So, sufficient human resources with

skill are pre-required to balance pluralism and make good foundation for the policy which appropriate to the Province.

The MLG as a policy network, thus various sectors such as central government, sub-national government, and local government, organizations from civil society, private sector and NGO involve in the network process. The EPC need to be established a good relationship between civil society organization, and organization from the third sector and public authority throughout in policy network.

Furthermore, human resource dimension of capacity relates to the ability of an organization to recruit, utilize, train, and retain employees, especially those who are managerially, professionally, and technically capable. Hence, the EPC must have power over its staff who are managerially, professionally, and technically capable. Then only it can deal with the MLG line with its priority and policy rather depends on the central government and its personnel.

### **5.2.1 Lack of Control over Staff**

As noted in chapter four, there are two types of personnel working at EPC, namely staff grade personnel and non-staff grade personnel. Noteworthy, staff grade personnel (high level, executive and professional standard staffs) are appointed by the central government. They would be recalled by the central at any time.

Another problem is, when a vacancy occurs in a staff grade position, the EPC has to wait until the National Public Service Commission or the relevant line ministry to appoint or transfer a new person. Noteworthy, there was delay in appointing the personnel to particular post. Some of the Cadres requested by the EPC were not approved by the Central Government on time. For instance numbers of two Deputy Director (SLPS) Cadres required to the EPC in 2010 and 2011. Though only a cadre was approved (See Table No-XVI).

Table No: XVI

<b>Staff Position at the EPC</b>						
Post	Required Cadre		Approved Cadre		Present Strength	
	2010	2011	2010	2011	2010	2011
Director, Planning (SLPS - I)	01	02	01	01	01	01
Deputy Director (SLPS - II )	02	02	01	01	01	-
Asst. Director (SLPS - III ) & SLPS-II/I)	03	03	02	02	01	03

Source: Administrative Report- 2010 &2011, Provincial Planning Secretariat, EPC, Trincomalee.

The cadre positions of the Provincial public administration are determined by the Department of Management Services of the General Treasury. All the Provincial Ministry Secretaries belong to the centrally organized Sri Lanka Administrative Service (SLAS). Other staff members come within the Provincial Public Service.

The framework with regard to the Provincial Public Service Commission and Provincial Public Service in the Provincial Councils Act is one of the most unsatisfactory features of the Thirteenth Amendment scheme. The Act promotes the control of the Provincial Public Service by the Governor rather than its independence.

Also the nature of the Provincial Public Service Commission is such that it inspires no confidence as to its impartiality and independence. It is symptomatic of the weak institutional framework that no one makes any material distinction between the Governor and the Provincial Public Service Commission in the EP (CPA 2010, p.60).

Furthermore, section 32 of the Provincial Councils' Act vests appointment, transfer, dismissal and disciplinary control of such officers (Provincial Public Service) with the Governor of the EPC. As a consequence the elected members of the EPC do not have any control over their public officers who are expected to implement the decision of the EPC.

### **5.2.2 Inadequate HR**

The EPC does not have adequate human resources to work effectively on regional development. This issue has identified in relation with availability of capable resources as well as numbers of senior grade staff.

The EPC, NGOs, INGOs and donors also organized various workshop / training programs meant to improve the capacity of EPC's staff. Though, the participation of the senior level staff in skill enhancement programme is low. Most of the programs were conducted for the improvement of productivity of their non-staff grade personnel. They are not in a position to implement a comprehensive Human Resource Management (HRM) policy.

Furthermore, it was found that, there is a "Yes" culture among majority of the personnel who do involve in negotiation activities intend to gain assistance from Donors and Development Agencies. Hence the EPC needs further human resources with adequate skills.

### **5.2.3 Insufficient HR at the Legal Unit**

The legislation is thus the framework by which governments of whatever persuasion seek to achieve their purposes. Laws are necessary for running the EPC. These laws are called 'statutes.' The subject allocated to the EPC cover a range of items, which are of particular relevance to the regional development and Provincial governance.

In 1988, when the Provincial Council system started functioning, it was found that there were about 300 laws in force pertaining to subjects in the Provincial and Concurrent list (Wicramaratna 2010). All these referred to the functions and powers of Ministers in the Central Government. But, the EPC could enact three statutes since 2008. They are:

- Finance Statute, No 1 of 2008
- The Transport Authority Statute, No 1 of 2009
- The Pre-School Education Statute, no 1 of 2010

Therefore, the EPC should make the necessary statutes to transfer such powers and functions to the Provincial ministers and officials. The officials and the elected Provincial Councilors are extremely eager to prepare statutes on an emergency basis. For this purpose ‘Statute Drafting Unit’ with the necessary human and material resources is pre-required. But, the biggest challenge is the unavailability of qualified personnel (legal draftsman) in the EPC. The EPC is not properly equipped to the specialized task of making statutes.

It was noted that the Provincial Council (Consequential Provisions) Act, No.12 of 1989 was passed by the Parliament. The Act was passed in order that even in the absence of statutes, provincial authorities may exercise powers using pre-1987 laws as a legal basis. A pre-1987 parliamentary law on a matter in the Provincial Council List will be inoperative in a Province only if a statute is made.

The point is, the Provincial Council (Consequential Provisions) Act, No.12 of 1989 can be linked up with the concept of principle of subsidiarity. According to the principles of subsidiarity, the central Authority should have subsidiarity function performing only those tasks that cannot be performed effectively by the EPC.

This Act enables the EPC’s authorities to exercise powers in respect of matter set out in the Provincial List. However, to absolutely agree with the argument the following questions need to be answered.

- Who brought the proposal for Provincial Council (Consequential Provisions) Act?
- Is the Act enabling the EPC to exercise power in relation to all devolved subjects?
- Did the central political factor/s intentionally pass the Act to empower the Provincial Councils?

The proposal of the Provincial Council (Consequential Provisions) Act was brought by Mr. Bernard Soysa. He was a member of the Western Provincial Council, and was the prime mover of this proposal (Wickramaratne 2010, p.65). So, the initiative was taken by a sub-national government member. Despite the fact the central government showcased its unwillingness. The government reluctantly agreed to make such a provision (Ibid).

The vital problem is; the provisions of Provincial Council (Consequential Provisions) Act did not enable the EPC to exercise power in respect of matter set out in the Concurrent List. Consequently there remain an estimated close upon 200 laws in respect of matter set out in the concurrent list are not covered by the Act (Ibid 2010:67). Also the Act enacted as an interim measure, still continues in force.

### **5.3 Fiscal Resources and Practice of MLG**

The fiscal aspects relates to the assignment of revenues to undertake the expenditure responsibilities arising from the subjects and functions transferred to the EPC. Fiscal aspects also extent to the arrangements to address imbalances in the availability of resources arising from the revenue powers and expenditure responsibilities, usually provided for through intergovernmental transfers (IPPA 2007, p.6). The fiscal resources should be adequate to meet the Eastern Provincial public expenditure.

#### **5.3.1 Inadequate Fiscal Arrangement**

The fiscal grants which were allocated to the Provincial Council through the FC not sufficient. The grants were not allocated on time. According to DPD of EPC, the Central Government did not grant the requested amount by the EPC.

Certain regulatory powers were devolved to the EPC and the Provincial List enumerates these devolved powers, which include certain “taxation” powers. The Provincial Council List contains various items relating to taxation and other revenues recoverable by EPC. However, since the main taxes such as income tax, customs duty and the major portion of the turnover tax accrue to the central government.

From the total revenue of the Central Government of this country the Provincial Councils are receiving only 10% for their development activities, and 90% of the state funds are spent for recurrent expenditure and salaries and maintenance work. Consequently the 90% of the state funds allocated for recurrent expenditure are used to pay the salaries of the public servants once appointed by the Central Government (Bandara 2009).

However, it is clear from reading the 13<sup>th</sup> Amendment as whole, fiscal powers may be exercised by the EPC authorities (both taxation and spending powers), in reality, only at the pleasure of the Central Government. Sri Lanka's experience in fiscal devolution under the Thirteenth Amendment has thus suffered from inadequacies in design as well as in practice, and especially from lack of coherence and commitment in moving from centralized to devolved governance.

### **5.3.2 Low Revenue Collection**

The Financial Commission (FC) is mandated by the Constitution to focus on achieving balanced regional development. The per capita income is one of the indicators considered by the FC while recommending fund for the EPC. Mean Per Capita Income is commonly used to measure purchasing power of a population. The purchasing power is an important indicator which covers various aspects; namely poverty, economic development capacity and standard of living.

It was found that, Per capita income in the Western Province in 2009/2010 is the highest (Rs.11, 561) among all Provinces of the country. Meanwhile the Per Capita Income of the EP is low compared to other Provinces (See Table No XVII for details). It may be attributed to the conflict situation existed in the EP.

Table No: XVII

**Per Capita Income by Province**

<b>Province</b>	<b>Mean Per Capita Income in Rs.- 2009/10</b>
Western	11,561
Central	8,040
Southern	8,035
Northern	5,515
Eastern	5,663
North Western	9,280
North Central	9,132
Uva	7,343
Sabaragamuwa	9,132

Source: Expenditure Survey of the Department of census and statistics 2009/2010, cited in p.17

Furthermore, the Eastern community is not strength in terms of finance. The private sector investment is low in EP. There are issues related with security in the EP. In early 2009, UNHCR also expressed its concern regarding the security situation, calling upon the Government of Sri Lanka to investigate reported human rights abuses and urging the relevant authorities to provide adequate security to civilians in the region (UNHCR 2009, p.8). Indeed the situation made fear among the private investors. So, they (private sectors) are not willing to invest in EP. This scenario is negatively affecting the contribution of private sector for regional development.

Consequently, the revenue collected in EP in 2009 and 2010 are low compared to other Provinces. (See Table No XVIII)

Table No: XVIII

**Actual Collection of Revenue by Sources 2009-2010 (Rs`000)**

Year & Province	B.T.T	Motor Vehicle license Fees	Excise Duty	Stamp Duty	Court Fines	Others	Total
Eastern							
2009	261,021	92,000	-	319	-	58,950	412,289
2010	459,080	72,215	-	109,690	69,085	189,540	899,610
Western							
2009	10,248,673	1,729,993	185,315	3,636,540	478,852	1,866,003	18,145,376
2010	12,747,890	1,971,072	284,330	4,549,780	596,330	2,591,578	22,740,980
Central							
2009	1,511,254	315,687	103,985	404,047	66,654	305,852	2,707,479
2010	1,682,540	410,635	96,365	481,791	68,208	246,835	2,986,374
Southern							
2009	1,401,556	282,427	62,259	349,780	180,256	342,893	2,619,171
2010	1,632,237	350,636	60,892	501,549	171,456	207,363	2,924,133
Uva							
2009	440,069	147,196	36,883	62,649	52,319	89,978	829,094
2010	528,299	122,619	39,883	96,454	81,695	106,534	975,484

Source: Finance Commission recommendation and Provincial Budget estimates 2011

### 5.3.3 Heavy Dependency on Central Government

The Finance Commission at the centre is charged with making recommendations to the government regarding financial allocations to the EPC under the annual budget. There is, accordingly, heavy dependence by the EPC financially, on the Centre. For instance the

higher amount money had been allocated for the EPC in 2011 by the central government (See Table XIX). It was found that the massive amount allocated to EPC due to the Eastern Reawaking programme.

Furthermore, much of this activity is conceived, planned and executed via central government institutions, in particular the Ministry of Nation-Building through major programmes such as *Nagenahira Navodaya* (Eastern Reawakening), which functions through its own presence in the Province and other central government agents such as District Secretaries and Divisional Secretaries over whom the elected provincial administration has no control (CPA 2010, p.42).

The EPC also takes role in implementation of the Eastern Reawakening programme. Though, central government took dominant role in the policy.

Table No: XIX

**Budgetary Allocation to Provincial Council- 2011**

(In Rupee Millions)

<b>Year</b>		<b>2011</b>
Name of the Provinces	Western Province	9,306
	Uwa Province	12,366
	Eastern Province	15,802
	Sabaragamuwa Province	12,185
	Northern province	12,496
	Total	62,155

Source: Active Citizenship for Development Network, Briefing Paper No.1-October 2011

**5.4 The MLG in Development Activities**

Rejecting a state-centred approach to government, the MLG suggests a contractual approach with inter alia the design of grants transferred from central to sub-national levels of government and the variety of agreement between local authorities / government and with civil society, i.e. the public-private partnership. All the respondents agreed that,

‘there is progressive situation in terms of regional development in the EP after math of war.

It was found that many sectors are involving in the process. They are: central government, EPC, Development Partner, donors, NGOs, local government and authorities and private sectors.

The development activities and the provision of infrastructure facilities initiated within the EP are mainly carried out by special representatives of the Central Government through various ministries.

In doing so, the higher amount of 15,802 million rupees had been allocated for the EPC in 2011. This amount is a massive increase of 94% compared to the figure in 2007 (See Table No XX).

Table No: XX

**Comparative Review of Budgetary Allocation to Provincial Council-2007/2011  
(In Rupee Millions)**

Year		2007	2011
Name of the Provinces	Western Province	8,814	9,306
	Uwa Province	7,925	12,366
	Eastern Province	8,140	15,802
	Sabaragamuwa Province	9,555	12,185
	Northern province	7,779	12,496
	Total	42,213	62,155

Source: Active Citizenship for Development Network, Briefing Paper No.1-October 2011

The EPC cooperated with the Central Government on matters relevant to development or of benefit to the people of the EP. When dealing with parallel Ministries, the Board of Ministers of EPC acts cordially and are successful with some development projects.

The local Authorities also are taking place in the development activities in the Province. Local Authorities are the development agents in their respective areas and they are

playing greater role in development activities at local level in collaboration with Central and Provincial government agencies (TVEC 2010, p.10).

It was found that, the EPC is willing to promote bottom level participation. Consequently Rural Development Society (RDS), Agrarian Development Societies (ADS) are given place to work towards regional development. The EPC took necessary action to form 'committee system' at local governmental level (Budget Speech 2012).

The Government Agent (GAs), Divisional Secretaries and Grama Niladharis are administrative officials, responsible to the Centre, and not elected by the people of each area. The District Secretariats coordinate certain development activities directed by the Central Government and by the Provincial Council.

As said earlier the process of development in EP of Sri Lanka has been complemented by the foreign aid substantially. For instance, Asian Development Bank, World Bank and UN agencies work as multilateral development partners.

The Asian Development Bank (ADB) is one of the major multilateral development partners of Sri Lanka with over 45 years of productive partnership. Hence, the medium-term Country Partnership Strategy developed jointly by the Government of Sri Lanka and ADB in 2011 for 2012-2016 focuses on three main objectives namely (i) inclusive and sustainable economic growth (ii) catalyzing private investment and enhancing the effectiveness of public investment (iii) human resource and knowledge development.

Accordingly, it assures continuous support for infrastructure development including roads and transport, water supply and sanitation, and energy, as development of these sectors are vital to meet the high demand for such services resulting from the accelerated economic growth. For instance; 'Eastern and North Central Provincial Road Project' is being implemented in 2011. The total estimated cost of the project is USD 78 million of which USD 70 million is provided by the ADB.

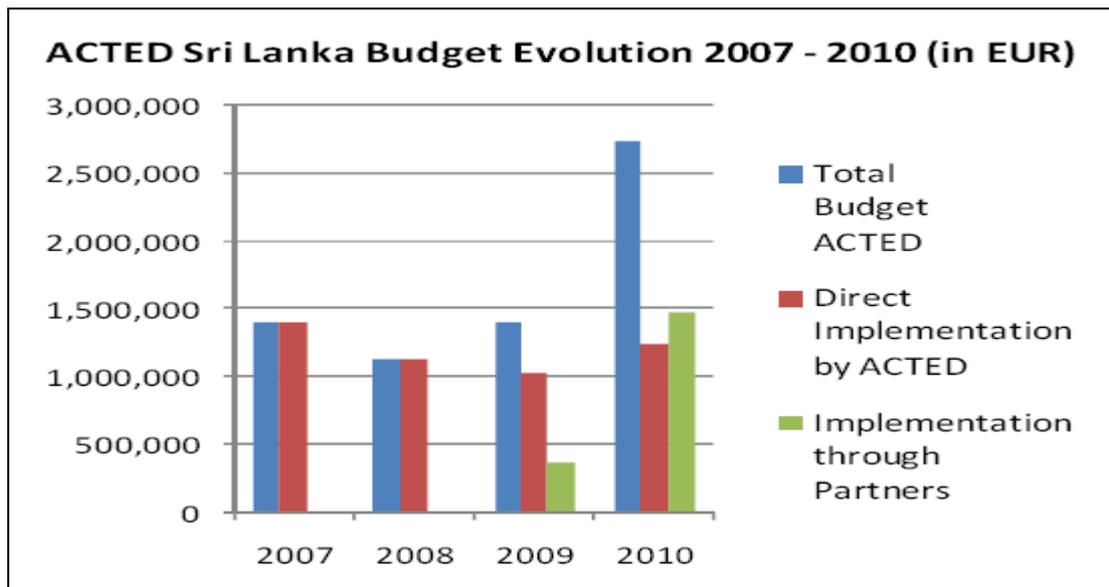
In addition, the ADB has agreed to provide a grant of USD 800,000 for institutional development of provincial road agencies in Eastern, North and Central Province while the Government will make a contribution an equivalent to USD 150,000. The proceeds of the loan will be utilized to rehabilitate 150 km of provincial roads in the Eastern Province as

well in order to improve the transport system in the Eastern Province (DER, Performance Report 2011.p.16).

It was found that the non-governmental organizations are also important actors in the regional development. For instance, ACTED supported community-led socio-economic development through a holistic, multi-pronged approach including infrastructure, livelihood, psychosocial and conflict mitigation components, with special attention paid to persons with disabilities in the EP.

ACTED implemented its programme towards development in EP directly as well as through partnership approach too (See Chart No I). ACTED's longer-term development activities aimed at strengthening Civil Society Organizations in representing public needs and engaging in local development planning and management while monitoring service delivery of state actors thus contributing to improved local governance in the area (ACTED 2011).

Chart No: I



Source: ACTED, Sri Lanka Country Strategy Paper 2011 – 2013

### **5.4.1 Partnership Approach**

The fiscal devolution arrangements constitute an integral component of the multi-level governance system introduced through devolution for power sharing under the Thirteenth Amendment to the Constitution (Gunawardena 2007, p.6). The fiscal arrangement and financial assistance are not sufficient to fulfill the needs of the people. Consequently the EPC is expected to follow the partnership approach intend to getting things done towards development in the Province.

All respondent from the EPC expressed the importance of partnership approach for regional development. Personnel of the EPC believe that the partnership approach would be an appropriate move toward regional development. Financial deficiency of EPC is one of the motivation factors behind this scenario.

Specially designed projects with specific objectives are being implemented in the Eastern Province with the assistance under international economic cooperation in collaboration with relevant stakeholders at national and provincial levels ([www.ep.gov.lk](http://www.ep.gov.lk)). Most of the projects are aims to support rehabilitation of essential infrastructure and restoration of community livelihoods in the most severely conflict affected areas of the EP (See Table No XXI).

Table No: XXI

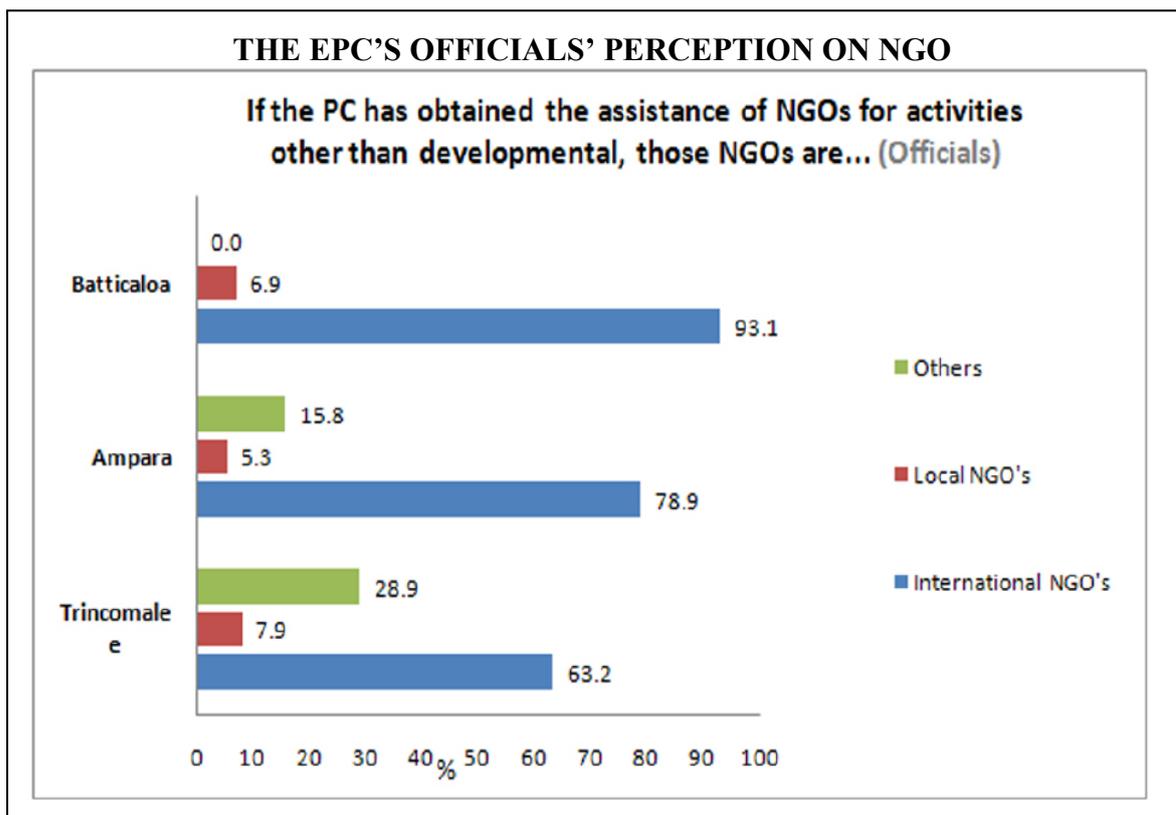
<b>Donors / Development Agencies Funded Projects in Eastern Province</b>				
Name of the Project	Project Area	Cost	Period	Objectives
Pro-Poor Rural Development Project	Ampara District	govt. of Japan(JBIC) Rs. 378 Mn	1.07.2007 – Oct 2009	Improve road Network system in Amparai District
NECCDEP	Coastal area of Eastern Province	ADB - \$. 20 Mn GON - \$. 1.5 Mn GOS – \$. 5.6 Mn. Total - \$. 28.4Mn	November 2004 to December 2010	To reduce poverty and meet the basic needs in Coastal Communities in the project area
LGIP	Eastern Province	Rs. 226.02 Million	30th June 2006 to 30th April 2012	To increase growth potential of and reduced poverty in Urban Centres
NEHRP	North East Province	IDA US \$ 118.0 Mn EU US \$ 21.70 Mn GOS US \$ 6.52 Mn Total US \$ 146.22 Mn	2005 – 2011	Intended to reconstruct houses of the poor damaged by conflict
World Bank Funded Provincial Roads Project	Ampara District	US \$ 20Mn	2010 March - 2015 March	Improve the quality of roads in the Eastern Province
Community Livelihoods in Conflict Affected Areas Project – Re-awakening Project	North Eastern Province	WB Rs. 6470 Mn GOS Rs. 1372 Mn Beneficiary Rs. 272 Mn Total Rs. 8114 Mn	2005 – 2012	Assist conflict affected communities & adjoining areas to restore livelihoods and enhance agricultural and other production and incomes and build their capacity.
JICA funded Eastern Province Water Supply Development Project	Eastern Province	Rural Water Component - Rs. in Mn.1160 Ampara Water Supply Component - Rs. in Mn. 5151	2010 to 2012	To provide safe drinking water by constructing and water supply facilities in the Eastern Province

Source: Official website of EPC: <http://www.ep.gov.lk/>

Furthermore, the EPC obtained assistance from non-governmental institutions for development activities. Such assistance is mostly from the INGOs. It was found that the contribution of the local NGOs towards regional development is low compared to the contributions of INGOs.

Very recent study done by CPA on ‘Devolution in the eastern province’ (2010) also found the same scenario in the EP. (See Chart No II). The respondents for the particular information are the official of EPC. However, it does not mean that, the INGOs have sole right to claim the development progress occurred in the EP.

Chart No: II



Source: CPA., 2010. Devolution in the Eastern Province: Implementation of the Thirteenth Amendment and Public Perceptions: 2008-2010. Colombo: CPA. p.98.

With the opening up of economies and on the eve of globalization, private sector has been looming large as the engine of growth. The private sector used to work to get reasonable returns to its investment. Indeed private investment would flow to any sector or any area, which would provide highest returns to its investment. However, according to CM

secretary, the private sectors' involvement in regional development activities in the EP is considerably low.

On the other hand, political party affiliation is one of the barriers to make effective partnership among the local government at horizontal level. The local government is one of the devolved subject to the Provincial Council. So, there is unavoidable situation which imposes the local government bodies to work with the EPC.

## **5.5 Non-Institutional Capacity for MLG**

The success of MLG at the sub-national government (SNG) not only depends on institutional capacity but also non-institutional capacity. Accordingly good foundations for the PPP also need to be developed at the sub-national level. Further political will is must for practice MLG at SNG in an effective manner.

### **5.5.1 Good Foundation for the PPP**

Achieving the objectives of the overall regional development would depend on how much the public sector, private sector and non-profit sector can participate as partners in the development process.

Creation of enabling environment for private sector investment in EP is the main role of the public sector. In that the public sector has to identify and introduce investment opportunities in the regions. For instance construction of a road alone may not bring adequate returns to the investment. Yet, the public sector could identify a broad corridor with excess land for the road tracing. The private sector could develop the land and other ancillary facilities, along the side of the road, which would increase revenue opportunities.

Further if proper private-public partnership is to be introduced to infrastructure / public utilities, the sub-national government should engage in an open dialogue with the stake

holders and civil society. Then the implementation could be expedited with least political resistance.

The EP has a pluralist society with different political options. Every level has a kind of culture, kind of culture of thinking and speaking. The situation in EP is one of multiple channels of service delivery, fragmentation in planning and budgeting for the allocation of resources that undermines accountability for development and welfare outcomes. So, Public-private partnership should then be addressed in the context of fundamental shifts in public sector management. Indeed the approach should accommodate all kind of sector and level meant to balance pluralism.

## **5.5. 2 Political Will and Commitment**

Sri Lanka was forced to accommodate the practice of devolution (PC system) following the worsening of the Sinhalese - Tamil conflict which occasioned the intervention of India (Bastiampillai 1996, p.29). Then 'Indo-Lanka Agreement was signed. In fact the 13<sup>th</sup> Amendment was a product of the geo-political environment in which India played the role of regional security manager. Through 13<sup>th</sup> Amendment the idea of Provincial Council which become a part of the Constitution of Sri Lanka (Bandara 2010, p.350). Nevertheless strong Unitarian tendencies and controlling attitudes made devolution a reluctant and unsatisfactory exercise in practice.

Further the political parties which took the ruling power of Sri Lankan government are not very supportive for the Provincial Council System. When attempt made to introduce the Provincial Council system in Sri Lanka, the Sri Lanka Freedom Party (SLFP), refused and rejected the Indo-Sri Lanka Accord as well as the system of Provincial Council. (Bandara 2010, p.430).

United People's Freedom Alliance (UPFA) became as ruling party at the EPC by obtaining 19 seats out of 35 (See Table No XXII) in the 2008 EPC election. This is a coalition government. SLFP took vital role in the political administration at EPC. Meanwhile SLFP is the major ruling party in central government as well. On the other

hand Tamil Makkal Viduthalai Pulikal (TMVP) also takes vital role in the governing process of EPC.

Table No -XXII

<b>Provincial Council Election Results -2008</b>					
District	Allocated Seats	Political Party	Votes Obtained	Percentage	Seats
Ampara	14	United People's Freedom Alliance	144,247	52.96	08
		United National Party	121,272	44.52	06
		People's Liberation Front	4,745	1.74	-
<u>Batticaloa</u>	11	United People's Freedom Alliance	105,341	58.09	06
		United National Party	58,602	32.31	04
		Tamizh Democratic National Alliance	7,714	4.25	01
		Eelam People's Democratic Party	5,418	2.99	-
Trincomalee	10	United National Party	70,858	51.37	05
		United People's Freedom Alliance	59,298	42.99	04
		People's Liberation Front	4,266	3.09	01
		United Socialist Party	1,309	0.95	-

Source: Department of Election, Sri Lanka, Site by SLTnet.

It was found that, insupportable political culture / practice occur at EPC. Individual Ministers represent different constituent parties within the UPFA, have different constituencies, and enjoy different relationships with the central government. Those Ministers who have closer relationships with the central government find it easier to resist attempts at intervention by the Governor, or to circumvent other obstacles, than others

who do not. Such closer relationships may be based on personal contacts with key central government actors, or closer party political ties with the centre.

The EPC is also handicapped in the use of the powers legitimately assigned to them on account of not having a system of provincial administration which is totally under its control.

When investigating the systematic empirical evidence regarding decentralization and ethnic conflict of Sri Lanka, it is important to note that all forms of decentralization models have proved hard to implement fully. The existing literatures reflect extreme lack of enthusiasm to transfer meaningful powers to representative sub-national government. Indeed without the appropriate institutional forms and powers, decentralization will not deliver the theoretical benefits, such as efficiency, equity and improved service delivery.

This scenario should be changed in order to empower sub-national government meant to ensure the bottom level participation and regional development. It is worth noting here, the EPC can overcome the lack of officially provided capacities, if the PC level political and administrative leadership made arrangements to evolve a framework for the MLG.

## **5.6 Conclusion**

Decentralization and principle of subsidiarity are important pillars for the MLG practice in the sub-national governance. Practice of subsidiarity at sub-national level (Provincial Level) would have two dimensions. On the one hand, it is the responsibility of the centre government to make arrangements to enable the sub-national government to perform as a self-governing body. If the principle of subsidiarity violated, the sub-national government (EPC) unable to handle the functions related with regional development, then it would become the responsibility of central level administration.

On the other hand, it is the role and responsibility left for the sub-national government to ensure the equitable development at the regional level overcoming problems created by the non-adherence of subsidiarity principle by the Centre. In other words, the sub-national government cannot stand idle by since it has the responsibility of attending to the functions which are within its purview.

Under a truly devolved system, the unit to which the power is devolved can exercise its autonomy in the implementation of the devolved functions as well. This autonomy should have been ensured, in the PC system as expected in the 1987 Indo-Sri Lanka Agreement. This would have made the Provincial Council to be equal in status to the central government in some identification areas. To quote: “This relationship between the centre and the devolved tier has not been observed under the Provincial Council system. Instead the provincial Councils continue to be like local government units and not as units of regional government”.

Principle of subsidiarity refers to a bottom-up arrangement in the location of governmental functions in terms of the relative efficiency of different levels in their performance. Despite the fact that the ability of the Governor of EPC to use the sole discretion in implementing decisions in Provincial Council work.

It is worth noting here the decentralization implies the establishment of relatively autonomous field and regional offices and delegation of decision-making powers and functions to them. But, elected members of the EPC and the Board of Ministers are expected to play a supporting role rather than a leading, or even a consultative role in the high visibility development programmes.

Moreover, parliament members and ministers from the Province have strong influence in implementing decision. So, the EPC’s Councilors are compelled to work under strong influence of above said personnel.

The principles of subsidiarity state that the institutions, which are close to beneficiaries are the best situated to undertake the activities related with policy development, programme management and service delivery meant for regional development. Accordingly the opportunity and mandate should be given to EPC to do so. It was found that the appropriate mandate has not been made in favor of sub-national government (EPC) to empower them.

What is actually taking place is the Central Government using its institutional linkages, i.e. the Governor and the Chief Secretary and its own district level administration implement functions that have been devolved to the EPC. Since the EPC doesn’t have

required capacities to handle the subjects, which are devolved to them the central level administration gets a space to take charge of these functions.

The importance of the fiscal devolution has also been stressed to avoid undermining the independence and the usefulness of the sub-national government in improving and sustaining the quality of public services and developing the Province to meet the future needs of the people. Reliance largely on the funds of the central government can restrict the exercise of the devolved powers, making the system ineffective.

The capacity of the sub-national government level to fulfill their responsibilities to the people in accordance with the objectives of the MLG will eventually depend on the economic and financial resources which they can access. The ground reality however is that these resources are distributed in a highly unequal manner among regions, and not sufficient to fulfill their responsibilities.

The EPC is mostly dependant on the Central Government funds except for the modest amount of money they collect as revenue from the citizens of the respective provinces. Therefore, the Government has many chances to control fiscal capacity of the EPC. The central Government controls its (EPC) finance capacity using various methods such as making delays to approve development budget by the Finance Commission as well as slashing significant portions of approved budgets by the treasury etc.

In addition to that, the dependency syndrome is highly visible in the administrative organization, which is manned by the personnel loaned to the EPC by the Central government. The most qualified and experienced cadre in the human resources pool has been recruited to national or all island services. They are normally deployed from the centre to the regional level - once again a process of centralization and re-allocation. The 13<sup>th</sup> Amendment has attempted to establish institutions for decentralizing these services such as the regional Public Service Commission but most of the services retain their centralized character.

The experience of the EPC demonstrates that the full constitutional extent of devolution is possible by an innovative and flexible approach to the implementation of the Thirteenth Amendment. This has not been realized yet.

We noted an important element in the actual working of the EPC. That is the development of working partnership with the non-profit and private sectors to fill the gap in both human and material capacities. We have provided ample information about the participation of NGOs, INGOs, donor agencies and development partners in the development activities though they are providing financial, physical, human resources and technical assistance to implement the certain project in the EP.

The MLG takes vital role in the regional development activities in the EP. The ‘Multi-level’ referred to the increased interdependence of governments operating at different territorial levels, while ‘governance’ signaled the growing interdependence between governments and non-governmental actors at various territorial levels (Bache & Matthew 2004, p.3). Notably the concept of MLG indicates the involvement of verity of actors in the development activities. Therefore, if EPC desire to take key role in the development activities, adequate capacity in terms of resources as well as legal framework is pre-required. In other words, the success of MLG at the regional government level depends on the extent of the provision of sufficient institutional capacity. Then only it can work independently and implement its own agenda through the MLG.

But, it was found that the devolution arrangement did not empower the sub-national government (EPC) to work independently. Meaning the EPC has not been provided adequate capacity to deal with MLG in an effective manner. In this sense, EPC is unable to take key role in the MLG process. Instead the EPC is also one of the actors who are involving in the MLG meant for regional development in the EP.

# CHAPTER SIX

## CONCLUSION AND SUGGESTIONS

### 6.1 Conclusion

The study has examined the institutional capacity of the Eastern Provincial Council for Multi-Level Governance. To achieve the objective in a systematic way, an analytical framework was developed. The Legal framework, Human and Fiscal resources were defined as independent variables, which can be ensured the institutional capacity of EPC (dependent variable).

The research questions of the study were organized to find out answer regarding sufficiency of institutional capacity of the EPC to work on regional development via MLG in the post-crisis situation.

The broad goal of the study was to analyze the institutional capacity of the EPC of Sri Lanka for MLG. It aimed to achieve three objectives, namely, (1). Assess the institutional capacity of EPC in relation to MLG, (2). Identify the institutional and non-institutional capacities required by the EPC for having an effective MLG meant for post-war regional development and (3). Determine the policy learning in relation to MLG practices at sub-national government in the post crisis situation.

The second chapter presented the conceptual outline of the study. The chapter gave particular attention to the concept of decentralization, MLG and principles of subsidiarity. It was found that there are logical links between these concepts. The decentralization process aims to ensure the subsidiarity state. The subsidiarity and decentralization aim at realizing the participation of citizens in public affairs and founding public authorities those are close to the citizens. These two principles do bring the various sectors (public, private, non-profit, other stakeholders) in the policy network; also they open the place up for bottom level participation. The participation and partnership are important pillars of

MLG. Therefore, appropriate arrangements towards decentralization and subsidiarity are important for having an effective MLG at the sub-national level.

The third chapter provided a background of the legal framework of the Provincial Council system of Sri Lanka. Main objective of the chapter was to identify the legal capacity of sub-national government (Provincial Council) for MLG practice at sub-national level. Meanwhile focus was given to the EPC.

The fourth chapter identified the Human and Fiscal capacities of EPC. Consequently many challenges related with human and fiscal resources were identified in the chapter.

Two hypotheses were tested in the studies. One is; ‘The success of MLG at the regional governmental level depends on the extent of the provision of sufficient institutional capacities’. Other one is ‘The public-private-non-profit partnership can ease the burden of regional development responsibilities to be undertaken by the regional government’.

The first one is strongly supported. Meaning the EPC has not been provided adequate institutional capacity to effectively deal with MLG. The provided institutional arrangement and non-institutional arrangement (such as political will) are keeping the sub-national government (EPC) as a dependent body on central government. Due to these syndromes the EPC is unable to practice the MLG in an effective manner. Therefore, it is pure and simple that, ‘the success of MLG at the regional (Provincial) level depends on the extent of the provision of sufficient institutional capacities.’

The second one also supported. The EPC is experiencing increasing pressure from their citizens, civil society organizations, and the media to provide accessible and affordable infrastructure and basic services. The EPC is unable to provide the services to meet the needs of the people. Since neither the public sector nor the private and nonprofit sector can meet the financial requirement for infrastructure in isolation. The Public-private-non-profit partnership can be a sustainable financing and institutional mechanism with the potential of bringing the infrastructure gap. Therefore, if the EPC develops partnership with the non-profit and private sectors, it would fill the gap in both human and material capacities of EPC.

Further NGOs, INGOs, Donor Agencies and Development Partners were founding for the development activities which undertaken by the government in the EP. They provided

financial, physical, human resources and technical assistance to implement certain projects in the EP. Consequently the partners contributed to the regional development activities which were expected to be undertaken by the EPC. But, still there are many activities should be done in the war ravaged areas. Further the PPP yet to be develop in a systematic manner to deliver the theoretical benefits, such as efficiency, equity and improved service delivery.

The correlations between independent variables (Legal framework, Human Resource and Fiscal Resource) and the dependent variable (Institutional Capacity of EPC for MLG) have been identified. Further some factor also identified as independent variables which can be ensured the institutional and non-institutional capacity of the EPC meant for MLG. Some of them are:

- The Political Will and Commitment of Central level political elites towards meaningful decentralization and practice of subsidiarity.
- Willingness of political leaders of sub-national government as well as administrative personnel (EPC, Local Government – PD, MC, UC) to collaborate with each and other sectors such as civil society organization and private sector etc.

The Central Government may have a role in the sub-national structures that emerges from the reconfiguration of the existing architecture of government. Nevertheless, taking in to consideration about principles of subsidiarity, the central government could empower the sub-national government (EPC). The necessity of empowering the sub-national government is not limited to principles of subsidiarity. It goes beyond that. It would create an enable environment to move towards regional development and sustainable peace as well.

## **6.2 Major Findings**

### **Legal Framework**

- The model adopted in the devolution of power in Sri Lanka places the central government in a dominant position in the context of Centre-Provinces relations
- The EPC was unable to exercise its powers over the subjects in the Provincial List unless they have been handed over to them (EPC) by the Central Government.
- The EPC is also handicapped in the use of the power legitimately assigned to them on account of not having a system of Provincial administration which is totally under its control.
- Service delivery responsibilities of the central government, the EPC and local levels of the multilevel system have not been clarified.
- The legislative power of the EPC is not exclusive. Parliament may also legislate on matters in the Provincial Council List but under certain conditions.
- The EPC has no powers in respect of National Policy, even on subjects and functions included in the Provincial Council List.
- The EPC has no power related to external resource and trade. So, it does not directly access financial and other assistances from overseas meant to regional development.

### **Human Resource**

- The Eastern Provincial Councils had not been bestowed the adequate opportunities to establish its own administration.

- Statues drafting Units with the necessary human and material resources are yet to be established. In allocating staff to the EPC attention had not been paid to provide Legal Draftsman.
- The EPC is controlled by the Governor who was appointed by the President as a safeguard on behalf of central government.
- The inadequacy of the human resources is one of the obstacles that prevent the regional development.
- The EPC does not have the Authority to recruit the staff in order to fill the vacancy of staff grade personnel because this Authority is belonging with National Public Service Commission or the relevant line ministry.

### **Fiscal Resource**

- Fiscal devolution is a centralized then a shared responsibility.
- The fiscal devolution has not brought a meaningful allocation of finances to meet the public functions assigned to the EPC.
- EPC mostly depends on the Central Government funds except for the modest amount of money which they collected as revenue from the citizens of the EP.
- The Provincial Councils have to depend on Treasury funds for their recurrent expenditure in which larger share was the salaries of the staff appointed by the central government.
- The practice of devolution, which entails direct interference by a range of central authorities and indirectly control through allocation of funds and political pressure.

- Provincial fiscal governance lacking in participation, transparency. Also there is inadequacy of the finance commission in mediating fiscal devolution meant to empower the Provincial Council.

Furthermore the following also were found by the study:

- The devolution package (PC system) was not introduced by Sri Lankan government. Sri Lanka was forced to accommodate the practice of devolution by India following the worsening of the Sinhalese-Tamil conflict. The political parties, which took the ruling power of Sri Lankan government, have never been very supportive for the Provincial Council System.
- When investigating the systematic empirical evidence regarding decentralization and ethnic conflict of Sri Lanka, it is important to note that all forms of decentralization models have proved hard to implement fully. The existing literatures reflect extreme lack of enthusiasm to transfer meaningful powers to representative sub-national government.
- There is progressive situation in terms of development (especially rebuilding of physical infrastructure, including roads, bridges etc.) in the aftermath of the war in the EP.
- The EP which lacked any development over the last two decades was targeted for accelerated development programme in early 2007 and all stakeholders were invited to contribute towards its successful implementation. This programme was identified as “Negenahira Navodaya” (Eastern Reawakening).
- There have been substantial central governmental interventions in the EP, especially in the rebuilding of physical infrastructure, including roads, bridges, electrification and so on.

- Public-private non-profit partnership (PPP) took place in the regional development activities in the EP.
- MLG took place in the regional development activities in EP. Though proper mechanism has not been developed to practice MLG at sub-national (provincial level) level yet.
- The institutional structure to promote a private-public partnership had many shortcomings. The coordinating network with other agencies such as the civil society organization, private sector, local government, Urban Development Authority, Road Development Authority, line Ministries etc., was not effective.
- EPC involved in the MLG, which took place in regional development activities. Nevertheless, EPC did not play key role in MLG due to the insufficient institutional capacity.

### **06.3 Recommendations**

- If the central government permits the EPC to exercise taxation powers to the full extent envisaged under the 13<sup>th</sup> Amendment, the breadth of the taxation authority available to the EPC would be very wide.
- Service delivery responsibilities of the central, provincial and local levels of the multilevel system need to be clarified.
- Statute Drafting Units with the necessary human and material resources need to be established at the EPC meant to draft essential statutes.
- Administrative authority could be provided to the Provincial Public Service Commission to handle matters pertaining to personnel in the All Island Services or at least to make recommendations to the National Public Service Commission in that regard.

- The post crisis situation is somehow improved in terms of security compare to the past. Achieving the objectives of the overall Provincial development would depend on how much the private sector and public sector can participate as partners in the development process. Creating of enabling environment for private sector investment in the Province is vital for regional development as well as the partnership approach.
- Participatory, people-centred development activities are far more effective than top-down, institutional delivery. So taking in to consideration about principles of subsidiarity, the central government could take a policy decision not to exercise executive power in relation to any devolved power to the Provincial Council.
- Public-private non-profit partnership could be promoted at sub-national level meant to regional development.
- Proper mechanism needs to be developed to practice MLG at sub-national level. It could aim to ensure and encourage people's participation, as well democratic public accountability.

#### **06.4 Further Research Area**

At the time of writing the current Chapter the Governor has dissolved the EPC on the advice of the Chief Minister. However, the actual motive of dissolution of EPC, before it complete its full five year term (still it has one more years to go), was the desire of central political leadership to have a snap election in the Province to test the government's popularity in the countryside.

The situation indicates the unwillingness of political elite at the Centre to make arrangement to empower the sub-national government (EPC). It also indicates the political party affiliation and interest instead of considering the interest of the people and democratic public accountability.

K.K.P.R Amarasinghe who is a registered voter from Ampara District, has filed the writ petition before the Court of Appeal calling on the court to restrain the Governor of the

Eastern Province from dissolving the Eastern Provincial Council (Global Tamil News, 14 June 2012).

The Writ Petition filed requesting the prevention of the premature dissolution of the EPC was unsuccessful thus the argument that the devolved institutions in Sri Lanka are just an agency for the centre to manipulate the public opinion is proved. But the Writ petition has been rejected by the court.

So it is worth noting that the attitude of the central government politicians towards the Provincial Council system needs to be studied to have clear picture.

## REFERENCES

- Amarasinghe, Y.R. ed., 2001.*Devolution Experience in Sri Lanka (1988-1998): The Administrative and Fiscal Implications*. Colombo: National Integration Programme Unit.
- Amarasinghe, Y.R., 2010. Legislative Functions of Provincial Councils: Statute Making and Capacity Issues. In Amarasinghe, Y.R. et al., eds. *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka*. Rajagiriya: Institute for Constitutional Studies. Ch.4.
- Aminuzzaman, S. M., 1999. Decentralization in Bangladesh: What Went Wrong?. Research Note. Dhaka: Centre for Administrative Studies, University of Dhaka.
- Andy Smith., 2007. Multi-Level Governance: What it is and how it can be studied. In Peters, G. & Pierre, J., eds. *Handbook of Public Administration*. Singapore: SAGE Publication.
- Andrew N Parker., 1995, Decentralization: Toward a revitalized strategy for Rural development, *Agrekon*, Vol34 No 4 (December 1995). Available at: [137.215.9.22/bitstream/handle/.../Parker\\_Decentralization\(1995\).pdf](http://137.215.9.22/bitstream/handle/.../Parker_Decentralization(1995).pdf) [accessed 27 October 2011]
- Active Citizenship for Development Network., 2011. What, Where and how Much is Government Spending?. [online]. Available at: [www.lawandsocietytrust.org/PDF/resource/Briefing\\_Paper\\_en.pdf](http://www.lawandsocietytrust.org/PDF/resource/Briefing_Paper_en.pdf) [accessed 20.02.2012].
- ARD., 2005. *Local and Provincial Government Assessment: Sri Lanka*. Working Paper. New York: USAID.
- Bache, I. & Flinders, M. eds., 2004.*Multi-Level Governance*. Oxford – New York: Oxford University press.
- Bache, I. & Matthew, F., 2004.Themes and Issues in Multi-level Governance. In Bache, I. & Matthew, F. eds. *Multi-Level Governance*. Oxford: Oxford University Press, p. 1-14.
- Bache, I., 2005, Europeanization and Britain: Towards Multi-level Governance? In: EUSA, 9th Biennial Conference. Texas, Austin 31 March. Retrieved 25 June 2011 from <http://aei.pitt.edu/3158>

Bandara, A.M., 2001. The Administrative Organization and the Public Service. In Amarasinghe, Y.R., ed. *Devolution Experience in Sri Lanka (1988-1998) the Administrative and fiscal implications*. Colombo: National Integration Programme Unit (NIPU). Ch. 3.

Bandara, A.M. 2010. The Politics of Devolving Power. In Amarasinghe, Y.R, at al., eds. *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka 2010*. Rajagiriya, Sri Lanka: Institute for Constitutional studies. Ch. 2.

Bandara, A.M., 2010. Provincial Public Administration and the Public Service. In Amarasinghe Y.Y, at al., eds. *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka*. Rajagiriya: Institute for Constitutional Studies. Ch. 7.

Bandara, A.M., 2010. Provincial Public Administration. In Marasinghe. L., & Wickramaratne.J., ed. *13<sup>th</sup> Amendment Essays on Practice*. Pannipitiya, Sri Lanka: A Stamford Lake Publication, p. 164-189.

Bandarage, A., 2009. *The Separatist Conflict in Sri Lanka-Terrorism, ethnicity, political economy*. Colombo, Sri Lanka: VijithaYapa Publications.

Bastian, S., 1994. *Devolution and Development in Sri Lanka*. Colombo, Sri Lanka: ICES.

Bastiampillai, B., 1996. Devolution and Power Sharing: The Means to Peace and Development. In ICES, ed. *Sri Lanka: The Devolution Debate*. Colombo: ICES. Ch. 3.

Becker, F & Patterson, V., 2005. Public: Private Partnerships: Balancing Financial Returns, Risks, and Roles of the Partners. *Public Performance & Management Review*, Vol. 29, No. 2 (online). pp. 125-144. Available at: <http://www.jstor.org/stable/20447583> [Accessed: 24/12/2011]

Beryl A., 2007. The Instruments of Intergovernmental Management. In Peters, G. & Pierre, J., eds. *Handbook of Public Administration*. Singapore: SAGE Publication.

Centre for Policy Alternative (CPA)., 2010. *Devolution in the Eastern province: Implementation of the thirteenth Amendment and public perceptions - 2008-2010*. Colombo, Sri Lanka: CPA.

Charles, A., 1966. Social Welfare in the Public-Private State. *University of Pennsylvania Law Review*, Vol. 114, No. 4, [online] Feb., 1966, pp. 487-493. Available at: <http://www.jstor.org/stable/3311070> [Accessed: 24/12/2011]

Chakraborty, A., 2005. Confused Policy for Public-Private Partnership. *Economic and Political Weekly*, Vol. 40, No. 5 [online] Jan. 29 - Feb. 4, 2005, pp. 351-353. Available at: <http://www.jstor.org/stable/4416122> [Accessed: 24/12/2011]

Cohen, J.M. and Peterson, S.B., [n.d.(1)]. Administrative Decentralization. Available at: *Compendium on Theories and Approaches of Public Administration*. MPPG Programme, North South University.

Cohen, J.M. and Peterson, S.B., [n.d.(2)]. *Methodological Issues in the Analysis of Decentralization*. Available at: [www.icd.harvard.edu/pdf](http://www.icd.harvard.edu/pdf) [accessed 27 August 2011]

Conyers, D., 2006, Decentralization: “The Latest Fashion in Development Administration”, in Otenyo, E.E. and Lind, N.C., ed. *Comparative Public Administration: the essential readings*. Available at: <http://books.google.com> [accessed 27 August 2011]

Devas, N., 2005. *The Challenges of Decentralization*. Paper presented on Global Forum in Fighting Corruption, Brasilia, June 2005. Available at: [www.cgu.gov.br](http://www.cgu.gov.br). [accessed 20 August 2011]

Department of External Resources (DER) - Sri Lanka, 2011. *Performance Report 2011*. [online]. Available at: <http://www.erd.gov.lk/index.html> [accessed 11. 03.2012]

Department of External Resources (DER) - Sri Lanka, 2010. *Performance Report 2010*. [online]. Available at: <http://www.erd.gov.lk/index.html> [accessed 11. 03.2012]

Department of External Resources (DER) – Sri Lanka, 2009. *Performance Report 2009*. [online]. Available at: <http://www.erd.gov.lk/index.html> [accessed 11. 03.2012]

Deputy Chief Secretary of EPC., 2010. *Administrative Report 2010*. Trincomalee, Sri Lanka: EPC.

Gary, M., 1993. Structural Policy and Multi-Level Governance in the EC. In Rosenthal, G. ed. *The State of the European Community*. Boulder: Lynne Rienner.

Gunawardena, A., 2010. Fiscal Devolution: Operational Issues. In Amarasinghe, A.R. et al., eds. *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka*. Rajagiriya: Institute for Constitutional Studies. Ch. 5.

- Harmes, A., 2006. Neoliberalism and Multilevel Governance. *Review of International Political Economy*, Vol. 13, No. 5 (online). pp. 725-749. Available at: <http://www.jstor.org/stable/25124100> [Accessed: 12/12/2011]
- Hoeth, T., 1991. Public-Private Partnerships in State Government. *Public Productivity & Management Review*, Vol. 15, No. 2, [online] Winter, 1991, pp. 147-150. Available at: <http://www.jstor.org/stable/3380750> [Accessed: 24/12/2011]
- Hooghe, L. & Marks, G., 2003. Unraveling the Central State, but How? Types of Multi-Level Governance. In American Political Science Association. *The American Political Science Review*, Vol. 97, No. 2 (May, 2003). USA: American Political Science Association. Available at: <http://www.jstor.org> [accessed 24 October 2011]
- Hussain, M.S.M., 2010. *Unique Higher Educational Guide to the Laws of Sri Lanka*. Dehiwala, Sri Lanka: Perpetual Calendar Wizard's Research Centre.
- ICES., 1996. *Sri Lanka: The Devolution Debate*. Colombo: International Centre for Ethnic Studies (ICES).
- Indraratna, A.D.V. & Ranasinghe, A. eds., 2006. *Public-Private Sector Partnership in Economic Development: A case for Sri Lanka*. Colombo: Sri Lanka Economic Association.
- Jan-Erik Lane., 2009. *State management: An enquiry into models of public administration and management*. New York: Routledge.
- Jean, E. & Thomas, W., 2004. The Economics of Public-Private Partnerships. *Canadian Public Policy / Analyse de Politiques*, Vol. 30, No. 2 [online] Jun., 2004, pp. 135-154. University of Toronto Press on behalf of Canadian Public Policy. Available at: <http://www.jstor.org/stable/3552389> [Accessed: 24/12/2011]
- Jennifer, M. Brinkerhoff., 2003. Donor-Funded Government–NGO Partnership for Public Service Improvement: Cases from India and Pakistan. *International Journal of Voluntary and Nonprofit Organizations*, Vol. 14, No. 1 [online] March 2003, pp. 105-122. Available at: <http://www.jstor.org/stable/27927828> [Accessed: 24/12/2011]

- Khan, M.M., 2009. *From Government to Governance: Expanding the Horizon of public Administration to Public Management*. Dhaka, Bangladesh: The University Press Limited.
- Kenneth, J at al., 2004. Multilevel Governance and Organizational Performance: Investigating the Political-Bureaucratic Labyrinth. *Journal of Policy Analysis and Management*, Vol.23, No.1(online).p.31-47. Available at: <http://www.jstor.org/stable/3326189> [Accessed: 24/12/2011]
- Ladduwahetty, N., 2010. Sri Lanka's National Question: A Collection of Articles. Sri Lanka: VijithaYapa Publication.
- Laitan, G.R.T., 1979. *Local Government and Decentralized Administration in Sri Lanka*. Colombo: Lake House.
- Leitan, G.R.T., 2001. Sri Lanka's system of Provincial Councils. In Amarasinghe.Y.R., ed. *Devolution Experience in Sri Lanka (1988-1998) the Administrative and fiscal implications*. Colombo: National Integration Programme Unit (NIPU).
- Liebman, L., 1984. Political and Economic Markets: The Public, Private and Not-for-Profit Sectors. *Bulletin of the American Academy of Arts and Sciences*, Vol. 38, No. 2 [online] Nov., 1984 ,pp. 6-29. Available at: <http://www.jstor.org/stable/20171747> [Accessed: 24/12/2011]
- Marasinghe, L., 2009. *The Provincial Governor Rights and duties under the 13<sup>th</sup> Amendment*. Colombo, Sri Lanka: Institute for Constitutional Studies.
- Marasinghe, L. & Wickramaratne, J., 2010. *13<sup>th</sup> Amendment Essays on Practice*. Pannipitiya, Sri Lanka: A Stamford Lake Publication.
- Marga Institute., March-2011. *Overview of the Local Government System: Towards Participatory Democracy in Sri Lanka*. EthulKotte, Sri Lanka: Marga Institute.
- Mark Turner and David Hulme., 1997. *Governance, Administration and Development: Making the State work*. New York: PALGRAVE.
- Meenakshisunderam, S.S., 1994. *Decentralization in Developing Countries*. New Delhi: Concept Publishing Company.

Ministry of Public Administration and Home Affairs., 2007. *Negenehira Navodaya-Restoration of Civil Administration and Service Delivery System in the Eastern Province-180 Day programe*. Independence Square, Colombo: Ministry of Public Administration and Home Affairs.

Ministry of Finance and Planning- Sri Lanka, 2010. Fiscal Policy Circular No:01/2010. [online]. Available at:<http://www.treasury.gov.lk/> [accessed 15. 01.2012]

Paul Stubbs., 2005. Stretching Concepts Too Far? Multi-Level Governance, Policy Transfer and the Politics of Scale in South East Europe. *Southeast European Politics* Vol. VI, No.2 November 2005,25. Available at: [www.seep.ceu.hu/archives/issue62/stubbs.pdf](http://www.seep.ceu.hu/archives/issue62/stubbs.pdf) [accessed October 2011]

Parliament of the Democratic Socialist Republic of Sri Lanka., 1987. *Constitution of Democratic Socialist Republic of Sri Lanka-1978*. Colombo: Government Printing Cooperation.

Parliament of the Democratic Socialist Republic of Sri Lanka., 1987.*Provincial Councils Act, No.42 of 1987*. Colombo: Government Printing Cooperation.

Parliament of the Democratic Socialist Republic of Sri Lanka., 1987.*Provincial Councils (Consequential Provisions) Act No. 12 of 1989*, Colombo: Government of Sri Lanka.

Parliament of the Democratic Socialist Republic of Sri Lanka., 1987.<sup>13<sup>th</sup></sup> *Amendment to the Constitution of Democratic Socialist Republic of Sri Lanka, 1987*. Colombo: Department of Government Printing.

Polinaidu, S., 2004.*Public Administration*. New Delhi: Galgotia Publications Pvt. Ltd.

Provincial Planning Secretariat of EPC., 2011. *Administration Report 2011*.Trincomalee, Sri Lanka: EPC.

Provincial Planning Secretariat of EPC., 2010. *Administration Report 2010*.Trincomalee, Sri Lanka: EPC.

Provincial Planning Secretariat of EPC., 2009. *Administration Report 2009*.Trincomalee, Sri Lanka: EPC.

Priyantha, R., 2010. Multi-Level Education Policy Governance in Sri Lanka: prospects and Challenges. In Vartola, at al., eds. *Towards good governance in South Asia*. University of Temple: Department of management Studies.

Puneet, K. at al., 2006. Improving Tuberculosis Control Through Public-Private Collaboration In India. *British Medical Journal*, Vol. 332, No. 7541 [online] Mar. 11, 2006, pp. 574-577. Available at: <http://www.jstor.org/stable/25456342> [Accessed: 24/12/2011]

Radhika, C., 1994. Devolution, the Law, and Judicial Construction. In ICES. *Devolution and Development in Sri Lanka*. Colombo, Sri Lanka: ICES.

Robert Boron., 1995. *Centre-Provincial Relations in Canada-Lessons for Sri Lanka*. University of Colombo, Sri Lanka: Centre for Policy Research and Analysis (CEPRA).

Rondinelli, D.A. and Cheema, G.S., 1983, Implementing Decentralization Policies: An Introduction. In Cheema G.S and Rondinelli D.A. ed. *Decentralization and Development*. New Delhi: Sage Publications.

Rondinelli, D.A., 1980. Government Decentralization in Comparative Perspective: Theory and Practice in Developing Countries. *International Review of Administrative Sciences*, Vol 47, 1980, Sage Publication, p 133-145. Available at: <http://www.sagepublications.com> [accessed October 2011]

Rondinelli, D.A., (n.d.). What is Decentralization? In Litvack, J. and Seddon, J. ed. *Decentralization Briefing Notes*, Washington D.C.: The World Bank. Available at: <http://siteresources.worldbank.org/WBI/Resources/Wbi37142.pdf> [Accessed on September 2011]

Rogene, A & Sandra, B., 2004. Stakeholder Theory and Public Policy: How Governments Matter. *Journal of Business Ethics*, Vol. 51, No. 2 (online). pp.143-153. Available at: <http://www.jstor.org/stable/25379180> [Accessed: 27/12/2011]

Robert G. Chollar., 1979. Public-Private Partnerships. *The Antioch Review*, Vol. 37, No. 2, [online] Spring, 1979, pp. 162-169. Available at: <http://www.jstor.org/stable/4638169> [Accessed: 24/12/2011]

Ruana Rajepakse., 2008. *A Guide to Current Constitutional Issues in Sri Lanka*. Rajagiriya, Colombo: Citizens' Trust.

Samaraweera, R., 2007. *Provincial Councils after Twenty Years Success, Failures and Constraints*. Colombo: Institute of Professional Public Administrators.

Sandra Destradi., December 2010. *India and the Civil War in Sri Lanka: on the Failures of Regional Conflict Management in South Asia*. In GIGA, eds. German Institute of Global and Area Studies.

Saul, B. & Klaman., 1967, Public/Private Approaches to Urban Mortgage and Housing Problems. *Law and Contemporary Problems*, Vol. 32, No. 2, [online] Spring, 1967, pp. 250-265. Available at: <http://www.jstor.org/stable/1190866> [Accessed: 24/12/2011]

Sharma, A.K., 2004. *Bureaucracy and Decentralization*. New Delhi: A Mittal Publications.

Smith, B.C., 1985. *Decentralization: the Territorial Diversion of the State*. London: George Allen & Unwin.

Suriyakumaran, C., 1996. Devolution of Governance and Self-government in Sri Lanka. In Aziz, A. & Arnold, D., ed. *Decentralized governance in Asian countries*. New Delhi / Thousand Oaks / London: Sage Publication.

Sundaramurthy, C & Lewis, M., 2003. Control and Collaboration: Paradoxes of Governance. *The Academy of Management Review*, Vol. 28, No. 3 (online). pp. 397-415. Available at: <http://www.jstor.org/stable/30040729> [Accessed: 24/12/2011]

The Government of Sri Lanka., 2010. *Provincial Council System of Sri Lanka*. [online]. (last modified: September 03 2010) Available at: [www.priu.gov.lk/ProvCouncils/ProvincialCouncils.html](http://www.priu.gov.lk/ProvCouncils/ProvincialCouncils.html) [accessed 05 October 2011]

The Finance Commission., 2012. Recommendation to H.E. the President on the Apportionment between the Provinces of Funds to be Allocated from the Annual Budget 2012. [online]. Available at: [www.parliament.lk/.../10082012/recommendation\\_of\\_the\\_finance](http://www.parliament.lk/.../10082012/recommendation_of_the_finance) [accessed 18.04.2012]

Tofail Ahmed., 1993. *Decentralization and the local State under peripheral capitalism*. Dhaka, Bangladesh: Academic publishers.

Tony Bovaird., 2004. *Public-private partnership: from contested concepts to prevalent Practice*. Available at <http://ras.sagepub.com/com/cgi/content/abstract/70/2/199> [assessed November 2011]

Uditha, E. & Mahen, G., 2009. *Devolution of Powers: The Sri Lankan Experience*. Colombo-5, Sri Lanka: Kamalabayson Foundation.

United Nations Development Program (UNDP)., 1997a. *Re-conceptualizing Governance*, Discussion Paper 22. New York: Management Development and Governance Division, Bureau for Policy and Program Support, UNDP.

United Nations Development Program (UNDP)., 1997b, *Decentralized Governance Program: Strengthening Capacity for People-centered Development*. New York: Management Development and Governance Division, Bureau for Development Policy, UNDP.

United Cities and Local Governments., 2009. *Decentralization and Local democracy in the world*. A co-publication of the World Bank and United Cities and Local Governments.

USAID., 2005. *Local and Provincial Government Assessment: Sri Lanka*. Available at: [www.usaid.gov/pdf/\\_docs/PNADD827.pdf](http://www.usaid.gov/pdf/_docs/PNADD827.pdf) [accessed 28 October 2011]

Warnapala, W.A., 1997. *Provincial Politics in Sri Lanka-An Analysis of the Southern Provincial Council Council Election – 1994*. New Delhi: Navarag.

WAPS., 2005. *Peace in Sri Lanka: Obstacles and Opportunities*. London, New York, Toronto: World Alliance for Peace in Sri Lanka.

Weerasooria, W., 2004. *The law Governing Public Administration in Sri Lanka*. Sri Lanka: University of Sri Jayawardenapura, Postgraduate Institute of Management.

Wickramaratne, J., 2010. The Constitutional Framework. In Amarasinghe, A.R. et al., eds. *Twenty Two Years of Devolution: An Evaluation of the Working of Provincial Councils in Sri Lanka*. Rajagiriya: Institute for Constitutional Studies. Ch. 1.

Wickramaratne, J., 2010. *Fundamental Rights in Sri Lanka*. Pannipitiya, Sri Lanka: A Stamford Lake Publication.

Wijesundara, N., 2010. *Whither or Whether the Executive Presidency: A Study in the Light of Separatism*. Pannipitiya, Sri Lanka: A Stamford Lake Publication.

Zoyza, M.O.A.De., 2003. Democratic Governance through Devolution: Sri Lanka Experience. In CIRDAP. *Workshop on Governance, Partnership and Poverty*. Bangladesh: CIRDAP.

## **APPENDIX-A**

- **Checklist for in-depth Interview** (Respondents: Councilors and Chief Minister of EPC)

### **HUMAN RESOURCE**

1. Does the EPC have sufficient human resources to work on regional development?
2. What are the challenges faced by EPC in relation to Human Resources?
3. What are the measures taken to develop the skills of the staff?
4. Do you have any suggestions to overcome from the challenges occurred in relation to human resource?

### **FISCAL RESOURCE**

5. How does EPC get money for regional development activities?
6. Is the fiscal arrangement sufficient to meet the needs of the people?
7. What are the challenges faces by the EPC in relation to fiscal resource?
8. Any suggestions to overcome from the issues?

### **LEGAL FRAMEWORK**

9. Do you think the existing legal framework on Provincial Council System is appropriate for self sub-national government? Please give reasons for your answer.
10. Does central government intervene in the day to day affairs of the EPC using any legal ground?

**11.** Does the EPC face any legal challenges related with partnership approach?

### **COLLABORATION / PARTNERSHIP**

**12.** Do you think the partnership can be an appropriate approach for regional development in the Eastern Province?

**13.** Does the EPC face challenges related with collaboration or partnership approach?

**14.** Does the EPC ensure the bottom level participation in development activities?

**15.** Do you think the central government is very much supportive for meaningful decentralization and partnership approach?

**16.** Do you observe progressive situation in terms of regional development in the Eastern Province aftermath the war? If it so, what are the sectors involving in the process?

**17.** Do you think the Multi-level Governance takes key role in the regional development activities? If it so, what is the role of the EPC in the process?

**18.** Any suggestions to improve the partnership approach meant for regional development in the Eastern Province

- **Checklist for Semi Structure Interview** (Respondents: Councilor and Staff of EPC)

### **HUMAN RESOURCE**

1. Does the EPC have enough or adequate human resources to work on regional development?
2. What are the challenges faced by EPC in relation to Human Resources?
3. What the measures that have been taken to develop the skills of the staff?
4. Did the central government support for the skills enhancement of the EPC's staff? If it so, explain briefly.
5. Did NGOs / INGOs / donor support for the skills enhancement of the staff? If it so, explain briefly.
6. Do you have adequate human resources to negotiate with Donors and development partners? If it not, why?
7. What are your suggestions for overcome from the challenges / issues which faced by EPC in relation to human resource?

### **FISCAL RESOURCE**

8. How does the EPC get money for regional development activities?
9. Is the fiscal arrangement made by the 13<sup>th</sup> amendment appropriate for proper function of the EPC?

10. Are there any restrictions to get / bring financial assistances directly from the donors and development partners meant for regional development? If yes, what are they?
11. What are the challenges faces by the EPC in relation with fiscal resource?
12. What are your suggestions to overcome from the issues?

### **LEGAL FRAMEWORK**

13. Do you think the existing legal framework on Provincial Council System is appropriate for self sub-national government? Please give reasons for your answer.
14. Did the EPC face any legal challenges related with partnership approach?
15. Can EPC directly access financial assistance from overseas meant to regional development? If it not, what the procedures to access financial assistance from overseas?

### **COLLABORATION / PARTNERSHIP**

16. Do you think the partnership can be an appropriate approach for regional development in the Eastern Province? If it so, why?
17. Does the EPC have any collaboration with other sector such as private, nonprofit?
18. Does the EPC face challenges related with partnership approach? If it so, what are they?
19. Do you think, the political party's affiliation is one of the barriers for partnership approach at the sub-national navel? If it so, please give evidence to your answer.

20. Do you think the existing legal framework on Provincial Council System inappropriate to collaborate with donors and development partner? If yes, please indicate them
21. Does the EPC ensure the bottom level (people) participation in the development activities? If it so, what the measures that have been taken by the EPC?
22. Do you think the central government is very much supportive for effective decentralization? Please give reasons to your answer.
23. Do you think the central government is very much supportive for collaboration approach intend to regional development in the Eastern Province? Please give reasons to your answer.
24. Do you observe progressive situation in terms of regional development in the Eastern Province aftermath the war? If it so, what are the sectors involving in the process?
25. Do you think the Multi-level Governance play a vital role in the development activities? If it so, what is the role of the EPC in the process?
26. What are your suggestions to improve the partnership approach meant for the regional development in the Eastern Province
- **Checklist for Semi Structure Interview** (Respondents: NGOs, INGOs, RDS, ADS and Private Sector)
01. Do you think / observe progressive situation in terms of regional development in the Eastern Province? If it so, what sectors are involving in the process?
02. What are your roles in relation with regional development in the Eastern Province?

- 03.** Do you implement any project with the assistance of the Eastern Provincial Council?
- 04.** Do you think the Eastern Provincial Council follows collaboration approach for regional development?
- 05.** What are the weaknesses that have you observed from EPC in relation to Human resource?
- 06.** What are the weaknesses that have you observed from EPC in relation to fiscal resource?
- 07.** Do you think the Eastern Provincial Council has Will to collaborate with non-state actors meant for regional development?
- 08.** Did you face any obstacle from central government (including representative of central government) while attempt to collaborate with Eastern provincial Council
- 09.** Did the EPC inform you about the financial details of any project which implemented with the assistant of your organization?
- 10.** Did the EPC allow you to ask any question regarding their activities at the meeting which arranged by you or EPC? If it so, did they answer your questions?
- 11.** What are/is the process followed by Eastern Provincial Council to access the assistances from your organization?
- 12.** Do you think that, the Eastern Provincial Council promotes the bottom level participation in the policy process?
- 13.** Do you think the EPC should promote the bottom level participation of in policy process? Please give reasons for your answer
- 14.** Does provincial council maintain transparency in the regional development policy process? If it so, how EPC ensure the transparency?

**Appendix: II**

**அமைச்சு/திணைக்கள ரீதியான செலவின மதிப்பீடு - 2011**  
**கிழக்கு மாகாண சபை**  
**வියடதி அடிப்படையிலான அமைச்சு/அமைச்சு/அமைச்சு - 2011**  
**தரவுகளைப் பற்றிய விவரம்**  
**Expenditure Estimate Ministry/ Department - 2011**  
**Eastern Provincial Council**

ரூபாய்களில்/Rupees					
தொ. இல	தலைப்பு	அமைச்சு / திணைக்களம்	மீள்வரும் செலவினம்	மூலதனச் செலவினம்	மொத்தச் செலவினம்
අනු අංකය	ශීර්ෂ	අමාත්‍යාංශ / දෙපාර්තමේන්තුව	පුනරාවර්තන වියදම්	ප්‍රාග්ධන වියදම්	වියදම් එකතුව
S.No	Head	Ministry / Department	Recurrent Expenditure	Capital Expenditure	Total Expenditure
(1)	(2)	(3)	(4)	(5)	(6)
<b>Governor's Cluster</b>			<b>50,033,000</b>	<b>11,000,000</b>	<b>61,033,000</b>
1	900	ஆளுனர் செயலகம் தலைவர் அலுவலகம் Governor's Secretariat	37,120,000	10,000,000	47,120,000
2	901	மாகாண பொதுச்சேவை ஆணைக்குழு தலைவர் அலுவலகம் Provincial Public Service Commission	12,913,000	1,000,000	13,913,000
3	902	மாகாண பேரவைச் செயலகம் தலைவர் அலுவலகம் Provincial Council Secretariat (Assembly)	52,241,000	7,000,000	59,241,000
<b>Chief Minister Secretariat-Provincial Ministry of Finance &amp; Planning , Local Government, Rehabilitation, Resettlement, Rural Development, Tourism and Environment</b>			<b>994,964,000</b>	<b>149,000,000</b>	<b>1,143,964,000</b>
4	910	முதலமைச்சர் செயலகம் தலைவர் அலுவலகம் Chief Minister's Secretariat	50,704,000	49,000,000	99,704,000
5	911	உள்ளூராட்சித்திணைக்களம் தலைவர் அலுவலகம் Department of Local Government	881,385,000	91,000,000	972,385,000
6	912	கிராம அபிவிருத்தித் திணைக்களம் இலாப சம்பந்தம் Department of Rural Development	62,875,000	9,000,000	71,875,000
<b>Chief Secretary's Cluster</b>			<b>930,393,000</b>	<b>233,000,000</b>	<b>1,163,393,000</b>
7	920	பிரதம செயலாளர் செயலகம் தலைவர் அலுவலகம் Chief Secretary's Secretariat	22,016,000	1,500,000	23,516,000
8	921	பிரதிப்பிரதம செயலாளர் - நிதி கிளர்ச்சி தலைவர் அலுவலகம் - நிதி Deputy Chief Secretary - Finance	787,739,000	12,500,000	800,239,000
9	922	பிரதிப்பிரதம செயலாளர் - திட்டமிடல் கிளர்ச்சி தலைவர் அலுவலகம் - திட்டமிடல் Deputy Chief Secretary - Planning	26,740,000	201,500,000	228,240,000
10	923	பிரதிப்பிரதம செயலாளர் - நிர்வாகம் கிளர்ச்சி தலைவர் அலுவலகம் - நிர்வாகம் Deputy Chief Secretary - Administration	20,061,000	5,000,000	25,061,000
11	924	பிரதிப்பிரதம செயலாளர் - பொறியியல் சேவை கிளர்ச்சி தலைவர் அலுவலகம் - பொறியியல் சேவை Deputy Chief Secretary - Engineering Service	6,960,000	1,000,000	7,960,000
12	925	மோட்டார் போக்குவரத்துத்திணைக்களம் சாலைப் போக்குவரத்து தலைவர் அலுவலகம் Department of Motor Traffic	12,368,000	1,000,000	13,368,000

தொ. இல ஏல எண் S.No (1)	தலைப்பு கீழ் Head (2)	அமைச்சு / திணைக்களம் அமைச்சு-ம் / டிபார்ட்மென்ட் Ministry / Department (3)	மீள்வரும் செலவினம் புனரமைப்பு செலவு Recurrent Expenditure (4)	மூலதனச் செலவினம் புதிய செலவு Capital Expenditure (5)	மொத்தச் செலவினம் மொத்த செலவு Total Expenditure (6)
13	926	மாகாண உள்ளக கணக்காய்வு திணைக்களம் புற அலுவலர் திணைக்களம் Department of Provincial Internal Audit	8,900,000	1,500,000	10,400,000
14	927	மு்காமைத்துவ அபிவிருத்தி பயிற்சித்திணைக்களம் கல்வியியல் அபிவிருத்தி பி.டி.டி. டிபார்ட்மென்ட் Management Development & Training Department	19,809,000	7,000,000	26,809,000
15	928	வருமானத் திணைக்களம் புற அலுவலர் டிபார்ட்மென்ட் Department of Provincial Revenue	25,800,000	2,000,000	27,800,000
<b>Ministry of Agriculture , Animal Production and Development , Rural Industries Development and Fisheries</b>			<b>343,453,000</b>	<b>118,500,000</b>	<b>461,953,000</b>
16	930	விவசாய அமைச்சு கல்வியியல் அமைச்சு Ministry of Agriculture	43,628,000	29,500,000	73,128,000
17	931	விவசாயத்திணைக்களம் கல்வியியல் டிபார்ட்மென்ட் Department of Agriculture	107,675,000	41,000,000	148,675,000
18	932	கால்நடை உற்பத்தி சுகாதாரத்திணைக்களம் மீன்வள அபிவிருத்தி அமைச்சு டிபார்ட்மென்ட் Animal Production & Health	113,217,000	34,000,000	147,217,000
19	933	கிராமிய கைத்தொழில் அபிவிருத்தித் திணைக்களம் புற அலுவலர் டிபார்ட்மென்ட் Rural Industries Development Department	78,933,000	14,000,000	92,933,000
<b>Ministry of Education ,Cultural Affairs Lands and Land Development , Transport</b>			<b>6,509,402,000</b>	<b>534,500,000</b>	<b>7,043,902,000</b>
20	940	கல்வி அமைச்சு புற அலுவலர் அமைச்சு Ministry of Education	86,672,000	25,000,000	111,672,000
21	941	கல்வித்திணைக்களம் புற அலுவலர் டிபார்ட்மென்ட் Department of Education	6,370,060,000	504,500,000	6,874,560,000
22	942	காணி நிர்வாகத் திணைக்களம் புற அலுவலர் டிபார்ட்மென்ட் Department of Land Administration	52,670,000	5,000,000	57,670,000
<b>Ministry of Health and Indigenous Medicine ,Social Welfare,Probation and Child Care services Woman Affairs, Youth Affairs , Sports, It Education, Cooperative Development, Food Supply and Distribution</b>			<b>2,728,800,000</b>	<b>402,500,000</b>	<b>3,131,300,000</b>
23	950	சுகாதார அமைச்சு புற அலுவலர் அமைச்சு Ministry of Health	28,150,000	19,000,000	47,150,000
24	951	சுகாதார திணைக்களம் புற அலுவலர் டிபார்ட்மென்ட் Department of Health Services	2,283,490,000	264,000,000	2,547,490,000
25	952	சுதேச வைத்தியத்துறை திணைக்களம் புற அலுவலர் டிபார்ட்மென்ட் Department of Indigenous Medicine	123,050,000	27,000,000	150,050,000

தொ.இ ல	தலைப்பு	அமைச்சு / திணைக்களம்	நியம அடிப்படை.கொ டைகள்	மாகாண விசேட அபி.தி கொடை நவோதயா	வறுமை சார் கிராமிய அ.செ.தி/ கல்வி.உ. அ.செ.தி/ யுனிபா	கல்வி / சுகாதார அ.செ.தி	யுனிசெவ்	மொத்தச் செலவினம்
අනු අංකය	ශීර්ෂ	අමාත්‍යාංශ / දෙපාර්තමේන්තුව	උපමාන පාදක ප්‍රධාන	පළාත් තාප්ප තිශ්චිත ප්‍රධාන	දිලීල නිතවාදී සං. ව්‍යාපෘති/ අධ්‍යාපන ව.සං.ව්‍යාපෘති/ සුනිසා	අයද./සෞභ්‍ය. අංශ සං.ව්‍යාපෘතිය	සුනිසෙල්	එකතුව
S.No	Head	Ministry / Department	CBG	PSDG & Navodava	JBIC/EEDP/ UNFPA	ESDP/HSDP	UNICEF	Total Expenditure
26	953	சமூகசேவைகள் திணைக்களம் සමාජ සේවා දෙපාර්තමේන්තුව Department of Social Services	2,000,000	15,000,000				17,000,000
27	954	சிற்றவர் நன்னடத்தை பராமரிப்பு சேவைகள் திணைக்களம் පරිවහන හා ලමාපසු සේවා දෙපාර්තමේන්තුව Department of Probation and Child Care Services	2,000,000	20,000,000			33,000,000	55,000,000
28	955	விளையாட்டுத்துறை திணைக்களம் ශ්‍රීවා දෙපාර්තමේන්තුව Department of Sports	2,000,000	15,000,000				17,000,000
29	956	கூட்டுறவு அபிவிருத்தி திணைக்களம் සමුපකාර සංවර්ධන දෙපාර්තමේන්තුව Department of Co- operative	3,000,000					3,000,000
30	957	கூட்டுறவு ஊழியர் ஆணைக்குழு සමුපකාර සේවක කොමිෂම Co-operative Employees Commission	500,000					500,000
31	970	வீதி அபிவிருத்தி அமைச்சு මාද්ල සංවර්ධන අමාත්‍යාංශය Ministry of Road Development	12,000,000	11,000,000				23,000,000
32	971	வீதி அபிவிருத்தித்திணைக்களம் මාද්ල සංවර්ධන දෙපාර්තමේන්තුව Department of Road Development	2,000,000	50,000,000				52,000,000
33	972	நீர்ப்பாசனத் திணைக்களம் වාටිමාද්ල දෙපාර්තමේන්තුව Department of Irrigation	4,000,000	25,000,000				29,000,000
34	973	கட்டிடங்கள் திணைக்களம் ලොඩනුලී දෙපාර්තමේන්තුව Department of Buildings	2,000,000					2,000,000
மொத்தம்/ එකතුව/Total			250,000,000	850,000,000	88,000,000	80,500,000	293,000,000	1,561,500,000

## **Appendix: III**

### **PROVINCIAL COUNCILS ACT, No. 42 OF 1987**

(Certified on 14<sup>th</sup> November, 1987)

**AN ACT TO PROVIDE FOR THE PROCEDURE TO BE FOLLOWED IN PROVINCIAL COUNCILS; FOR MATTERS RELATING TO THE PROVINCIAL PUBLIC SERVICE; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.**

#### **SHORT TITLE AND DATE OF OPERATION**

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

**1.** This Act may be cited as the Provincial Councils Act, No. 42 of 1987, and shall come into operation in respect of all or any of its provisions, on such date or dates as the president may appoint, by Order published in the Gazette, not being a date or dates prior to the coming into operation of the Thirteenth Amendment to the Constitution.

#### **PART I**

##### **MEMBERSHIP OF PROVINCIAL COUNCIL**

**2.** Where a Provincial Council is established for a Province by virtue of Article 154A of the Constitution, the President shall, by Order published in the Gazette, assign a name to such Council and specify the number of members such Provincial Council shall consist of. In specifying such number, the President shall have regard to the area and population of the Province for which that Provincial Council is constituted.

**3.** No person shall be qualified to be elected as a member of a Provincial Council or to sit and vote as a member of such Council –

- (a) if such person is subject to any of the disqualifications specified in paragraphs (a) , (b) , (c), (d) ,(e) , (f) and (g) of Article 91(1) of the Constitution ;
- (b) if such person is under any law, disqualified from voting at an election of members to a local authority;
- (c) if he is a Member of Parliament ;

(d) if he is a member of any other Provincial Council or stands nominated as a candidate for election for more than one Provincial Council ;

(e) if he is stands nominated as a candidate for election to a Provincial Council, by more than one recognized political party or independent group.

**4.** No member of a Provincial Council shall sit or vote as such member until he has taken or subscribed the oath, or made or subscribed the affirmation, set out in the Fourth Schedule to the Constitution.

**5.** (1) If a member of any Provincial Council –

(a) becomes subject to any disqualification mentioned in section 3; or

(b) resigns his seat by writing under his hand addressed to the Chairman, his seat in the Provincial Council shall thereupon become vacant.

(2) If for a period of ninety days a member of the Provincial Council is without permission of the Council absent from all meetings thereof, the Council may declare his seat vacant : Provided that in computing the said period of ninety days, no account shall be taken of any period during which the Council is prorogued for more than four consecutive days.

**6.** If a person sits or votes as a member of a Provincial Council before he has complied with the requirements of section 4, or when he knows that he is not qualified , or that, he is disqualified, for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recovered as a debt due to the State.

## **PART II**

### **MEETINGS AND CONDUCT OF BUSINESS OF PROVINCIAL COUNCILS**

**7.** (1) Every Provincial Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

(2) A member holding office as Chairman or Deputy Chairman of a Provincial Council –

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman to the Chairman, resign his office;

(c) may be removed from his office by a resolution of the Council passed by a majority of the whole number of members of the Council (including those not present) :

Provided that whenever the Council is dissolved, the Chairman shall not vacate his office until immediately before the first meeting of the Council after the dissolution.

(3) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as may be determined by the rules of procedure of the Council.

(4) During the absence of the Chairman from any sitting of the Council, the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council shall act as Chairman.

(5) There shall be paid to the Chairman and the Deputy Chairman of the Provincial Council such salaries and allowances as may be fixed by the Provincial Council, by statute and, until provision in that behalf is so made, such salaries and allowances as the Governor may, with the approval of the President, by order, determine.

**8.** (1) At any sitting of the Provincial Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of subsection (4) of section 7 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Provincial Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in section 10, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

**9.** (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of a Provincial Council, there shall be freedom of speech in every Provincial Council.

(2) No member of the Provincial Council shall be liable to any proceedings in Court in respect of anything said or any vote given by him in the Council or any Committee thereof, and no person shall be liable in respect of the publication by, or under, the authority of such Council, of any report, paper, votes or proceedings.

(3) The provisions of subsections (1) and (2) shall apply in relation to persons who by virtue of any written law have the right to speak in, and otherwise to take part in, the proceedings of, a Provincial Council or any committee thereof as they apply in relation to members of that Council.

**10.** (1) Save as otherwise provided in this Act, all questions at any sitting of the Provincial Council shall be determined by a majority of votes of the members present and voting other than the Chairman or person acting as such.

(2) The Chairman or person acting as such shall not vote in, the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(3) A Provincial Council shall have the power to act notwithstanding any vacancy in the membership thereof, and any proceedings in any such Council shall be valid, notwithstanding that it is discovered subsequently that some person who was not entitled to do so, sat or voted or otherwise took part in the proceedings.

(4) The quorum to constitute a meeting of a Provincial Council shall be one third of the total number of members of the Council. Where one-third of the number of members is an integer and fraction, the integer immediately higher to that integer and fraction shall be deemed to be the one third of the number of members for the purpose of this section.

(5) If at any time during a meeting of a Provincial Council there is no quorum, it shall be the duty of the Chairman, or person acting as such, either to adjourn the Council or to suspend the meeting until there is a quorum.

**11.** A Provincial Council may make rules for regulating, subject to the provisions of this Act, its procedure and the conduct of its business:

Provided that the Provincial Council shall, after consultation with the Chairman of such Council and with the approval of the President, make rules-

- (a) for securing the timely completion of financial business;
- (b) for regulating the procedure of, and conduct of business in, the Provincial Council in relation to any financial matter or to any statute for the appropriation of moneys out of the Provincial fund of the province;
- (c) for prohibiting the discussion of, or the asking of questions on, any matter which affects the discharge of functions of the Governor in so far as he is required by the Constitution or this Act, to act in his discretion.

**12.** (1) The validity of any proceedings in a Provincial Council shall not be called in question on the ground of alleged irregularity of procedure.

(2) No officer or member of a Provincial Council in whom powers are vested, by or under this Act, for regulating the procedure, or the conduct of business, or for maintaining order, in such Council shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

**13.** The property of the State shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by or under any statute made by a Provincial Council.

**14.** (1) A statute pending in a Provincial Council shall not lapse by reason of the prorogation of such Council.

(2) A statute pending in a Provincial Council shall lapse on a dissolution of the Council

**15.** (1) The Governor shall make rules for the allocation of business among the Ministers in so far as it is not business with respect to which the Governor is by, or under, the Constitution required to act in his discretion.

(2) Save as otherwise provided in this Act, all executive action of the Governor, whether taken on the advice of his Ministers or otherwise, shall be expressed to be taken in the name of the President.

(3) Orders and other instruments made and executed in the name of the President, shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in

question on the ground that it is not an order or instrument, made or executed by the President.

**16.** (1) All contracts entered into in the exercise of the executive power of the Governor of the Province, shall be entered into, and performed, in the name of the Provincial Council constituted for that Province, as if such Provincial Council were a body corporate.

(2) All actions in relation to the exercise of such executive power shall be brought by, or against such Provincial Council, as if such Provincial Council were a body corporate.

**17.** (1) A Provincial Council shall have its own secretarial staff.

(2) A Provincial Council may, by statute, regulate the recruitment, and conditions of service, of persons appointed to its secretarial staff.

**18 .** Subject to paragraph (4) of Article 154B of the Constitution, no discussion shall take place in a Provincial Council with respect to the conduct of the President or the Governor or a Judicial Officer or a Member of Parliament.

### **PART III**

#### **FINANCE**

**19.** (1) There shall be a Provincial Fund for each Province into which shall be paid-

- (a) the proceeds of all taxes imposed by the Provincial Council of that Province;
- (b) the proceeds of all grants made to such Provincial Council in respect of the Province, by the Government of Sri Lanka;
- (c) the proceeds of all loans advanced to the Provincial Council from the Consolidated Fund of Sri Lanka; and
- (d) all other receipts of the Provincial Council.

(2) No moneys out of the Provincial Fund of a Province shall be appropriated except in accordance with, and for the purposes, and in the manner, provided in this Act.

(3) No sum shall be withdrawn from the Provincial Fund of a Province except under a warrant under the hand of the Chief Minister of the Province.

(4) No such warrant shall be issued unless the sum, has by statute of the Provincial Council, been granted for services for the financial year during which the withdrawal is to take place or is otherwise lawfully charged on the Provincial Fund of the Province.

(5) The custody of the Provincial Fund of a Province, the payment of moneys into such Fund, and all other matters connected with, or ancillary to, those matters shall be regulated by rules made by the Governor.

**20.** (1) There shall be established a Emergency Fund in the nature of an imprest to be entitled "Emergency Fund of the Province" into which shall be paid from and out of the Provincial Fund of the Province such sums as may, from time to time, be determined by statute made by the Provincial Council, and such Fund shall be held by the Governor to enable advances to be made by him out of such Fund.

(2) No advances shall be made out of the Emergency Fund of the Province except for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by the Provincial Council under appropriations made by statute under sections 26 and 27.

(3) The Governor may make rules regulating all matters connected with, or ancillary to, the custody of, the payment of moneys into, and the withdrawal of moneys from, the Emergency Fund of the Province.

**21.** (1) The Minister in charge of the subject of Finance may give guarantees in respect of loans raised by a Provincial Council.

(2) Immediately after a guarantee is given under sub section (1), the Minister in charge of the subject of Finance shall, lay a statement of such guarantee before Parliament.

(3) Any sum required for the fulfilment of a guarantee given under subsection (1) shall be paid out of the Consolidated Fund of Sri Lanka.

(4) Any sum paid out of the Consolidated Fund of Sri Lanka in fulfillment of a guarantee given under subsection (I) shall be repaid, together with interest thereon, at such rate as may be determined by the Minister in charge of the subject of Finance, by the Provincial Council, in such manner and over such period, as the Minister in charge of the subject of Finance may determine.

(5) A Provincial Council may not, without the consent of the Minister in charge of the subject of Finance, raise any loan if there is still outstanding any part of a loan which has

been made in respect of a Provincial Council out of the Consolidated Fund of Sri Lanka or in respect of which a guarantee has been given under subsection (1).

**22.** Foreign aid negotiated by the Government for a project or scheme in a Province, shall be allocated by the Government to such project or scheme.

**23.** (1) Article 154 of the Constitution shall apply to the audit and accounts of the Provincial Fund of a Province.

(2) A copy of the Auditor-General's report relating to the accounts of the Provincial Fund of a Province shall be submitted to the Governor who shall cause it to be laid before the Provincial Council.

**24.** (1) A statute in relation to any subject with respect to which the Provincial Council has power to make statutes, shall not be introduced into, or moved in, a Provincial Council except on the recommendation of the Governor, if such statute makes provision for any of the following matters, namely:-

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the amendment of the law with respect to any financial obligations undertaken, or to be undertaken, in respect of the administration of the Province;

(c) the appropriation of moneys out of the Provincial Fund of the Province;

(d) the declaring of any expenditure to be expenditure charged on the Provincial Fund of the Province or the increasing of the amount of any such expenditure;

(e) the receipt of money on account of the Provincial Fund of the Province or the custody or issue of such money.

(2) A statute shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body, to local purposes.

(3) A statute which, if enacted and brought into operation would involve expenditure from the Provincial Fund of a Province shall not be passed by the Provincial Council of the Province, unless the Governor has recommended to that Council the consideration of the statute.

**25.** (1) The Governor of a Province shall in respect of every financial year, at least five months before the expiration of such financial year, cause to be laid before the Provincial Council of that Province, a statement of the estimated receipts and expenditure of the Province for that year, in this Part referred to as the “annual financial statement”.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately-

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the Provincial Fund of the Province; and

(b) the sums required to meet other expenditure proposed to be made from Provincial Fund of the Province, and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Provincial Fund of the Province:-

(a) the emoluments and allowances of the Governor;

(b) the charges payable in respect of loans advanced in respect of the Province from the Consolidated Fund of Sri Lanka including interest, amortization payments, and other expenditure connected therewith;

(c) the salaries and allowances of the Chairman and the Deputy Chairman of the Provincial Council;

(d) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal, entered against the Provincial Council;

(e) any other expenditure declared by the Constitution or by law made by Parliament, or by statute made by the Provincial Council, to be so charged.

**26.** (1) So much of the estimates as relates to expenditure charged upon the Provincial Fund of the Province shall not be submitted to the vote of the Provincial Council, but nothing in this subsection shall be construed as preventing the discussion in the Provincial Council of any of these estimates.

(2) So much of the said estimates as relates to expenditure shall be submitted in the form of demands for grants to the Provincial Council, and the Provincial Council shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand, subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

**27.** (1) As soon as may be after the grants under section 26 have been assented to by the Provincial Council there shall be introduced a statute to provide for the appropriation out of the Provincial Fund of the Province, of all moneys required to meet-

(a) the grants so made by the Provincial Council; and

(b) the expenditure charged on the Provincial Fund of the Province but not exceeding in any case the amount shown in the statement previously laid before the Council.

(2) No amendment shall be proposed to any such statute in the Provincial Council which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Provincial Fund of the Province and the decision of the person presiding as to whether an amendment is inadmissible under this subsection, shall be final.

(3) Subject to the other provisions of this Act, no money shall be withdrawn from the Provincial Fund of the Province except under appropriation made in accordance with the provisions of this section.

**28.** (1) The Governor shall-

(a) if the amount authorized by any statute made in accordance with the provisions of section 27 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year; or (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the Provincial Council, another statement showing the estimated amount of that expenditure or cause to be presented to the Provincial Council with such previous approval, a demand for such excess, as the case may be.

(2) The provisions of sections 25, 26 and 27 shall have effect in relation to any such statement and expenditure or demand and also to any statute to be made authorizing the appropriation of moneys out of the Provincial Fund of the Province to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a

grant and statute to be made for the authorization of appropriation of moneys out of the Provincial Fund of the Province to meet such expenditure or grant.

**29.** (1) Notwithstanding anything in the foregoing provisions of this Part, the Provincial Council shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion within a period of four months of the making of the grant of the procedure prescribed in section 26 for the voting of such grant and passing of the statute in accordance with the provisions of section 27 in relation to that expenditure and the Provincial Council shall have power to authorize by statute, the withdrawal of money from the Provincial Fund of the Province for the purposes for which the said grant is made.

(2) The provisions of sections 26 and 27 shall have effect in relation to the making of any grant under subsection (1) or to any statute to be made under that subsection as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the statute to be made for the authorization of appropriation of moneys out of the Provincial Fund of the Province to meet such expenditure.

**30.** Notwithstanding anything in the foregoing provisions of this Part, the Governor may authorize such expenditure from the Provincial Fund of the Province as he deems necessary for a period of not more than six months beginning with the date of the constitution of the Provincial Fund of the Province, pending the sanction of such expenditure by the Provincial Council.

#### **PART IV**

#### **PROVINCIAL PUBLIC SERVICE COMMISSION**

**31.** The President shall appoint the Chief Secretary of each province, with the concurrence of the Chief Minister of that Province.

**32.** (1) Subject to the provisions of any other law the appointment, transfer, dismissal and disciplinary control of officers of the provincial public service of each Province is hereby vested in the Governor of that Province.

(2) The Governor of a Province may, from time to time, delegate his powers of appointment, transfer, dismissal and disciplinary control of officers of the provincial public service to the Provincial Public Service Commission of that Province.

(3) The Governor shall provide for and determine all matters relating to officers of the provincial public service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principles to be followed in making promotions and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers, In formulating such schemes of recruitment and codes of conduct the Governor shall, as far as practicable, follow the schemes of recruitment prescribed for corresponding officers in the public service and the codes of conduct prescribed for officers holding corresponding officers in the public service.

**33.** (1) There shall be a Provincial Public Service Commission for each Province which shall consist of not less than three persons appointed by the Governor of that Province. The Governor shall nominate one of the members of the Commission to be the Chairman.

(2) No person shall be appointed or continue as a member of a Provincial Public Service Commission if he is a Member of Parliament, a member of a Provincial Council, a public officer, a judicial officer or officer of a provincial public service.

(3) Every member of a Provincial Public Service Commission shall hold office for a period of five years from the date of his appointment, unless he earlier resigns his office by a writing under his hand addressed to the Governor of the Province or is removed from office by such Governor for cause assigned, but shall be eligible for re- appointment.

(4) The Governor may grant leave from his duties to any member of a Provincial Public Service Commission and may appoint a person qualified to be a member of such Commission to be a temporary member for the period of such leave.

(5) A member of a Provincial Public Service Commission may be paid such salary as may be determined by the Provincial Council for that Province. The salary payable to any such member shall be charged on the Provincial Fund of the Province and shall not be diminished during his term of office.

(6) A Provincial Public Service Commission shall have power to act notwithstanding any vacancy in its membership and no act or proceeding of such Commission shall be, or

deemed to be, invalid by reason only of any such vacancy or any defect in the appointment of a member.

(7) For the purposes of Chapter IX of the Penal Code, a member of a Provincial Public Service Commission shall be deemed to be a public servant.

(8) The Governor of a Province shall have the power to alter, vary or rescind any appointment, order of transfer or dismissal or any other order relating to a disciplinary matter made by the Provincial Public Service Commission of that Province

**34.** Every person who, otherwise than in the course of duty, directly or indirectly, by himself or by any other person, in any manner whatsoever, influences or attempts to influence, any decision of a Provincial Public Service Commission or any member thereof shall be guilty of an offence and shall on conviction by the High Court after trial without a jury be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.;

Provided that nothing in this section shall prohibit any person from giving a testimonial or certificate to any applicant or candidate for any office in the Provincial Public Service.

**35.** A person appointed to any office in the Provincial Public Service shall not enter upon the duties of his office until he takes and subscribes the oath, or makes and subscribes the affirmation, set out in the Fourth Schedule to the Constitution.

**36.** If any difficulty arises in giving effect to the provisions of this Act and, in particular, in relation to the constitution of a Provincial Council for a Province, the President may, by order, take such action, not inconsistent with the provisions of this Act, as appears to him to be necessary, or expedient for the purpose of removing such difficulty.

**37.** (1) (a) The President may by Proclamation declare that the provisions of this subsection shall apply to any two or three adjoining Provinces specified in such Proclamation (hereafter referred to as "the specified Provinces"), and thereupon such Provinces shall form one administrative unit, having one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers, for the period commencing from the date of the first election to such Provincial Council and ending on the date of the

poll referred to in subsection (2) of this section, or if there is more than one date fixed for such poll, the last of such dates.

(b) The President shall not make a Proclamation declaring that the provisions of subsection (1) (a) shall apply to the Northern and Eastern Provinces unless he is satisfied that arms, ammunition, weapons, explosives and other military equipment, which on 29th July, 1987, were held or under the control of terrorist militant or other groups having as their objective the establishment of a separate State, have been surrendered to the Government of Sri Lanka or to authorities designated by it, and that there has been a cessation of hostilities and other acts of violence by such groups in the said Provinces.

(2) (a) Where a Proclamation is made under the provisions of subsection (1)

(a), the President shall by Order published in the Gazette, require a poll, to be held in each of the specified Provinces, and fix a date or dates, not later than 31st day of December, 1988, for such poll, to enable to the electors of each such specified Province to decide whether-

(i) such Province should remain linked with the other specified Province or Provinces as one administrative unit, and continue to be administered together with such Province or Provinces; or

(ii) such Province should constitute a separate administrative unit, having its own distinct Provincial Council, with a separate Governor, Chief Minister and Board of Ministers.

(b) The President may, from time to time, at his discretion, by subsequent Orders published in the Gazette, postpone the date or dates of such poll.

(3) Where at the poll held in each of such specified Provinces, the decision of the electors in each such Province is that such Province should remain linked with the other specified Province or Provinces, such specified Provinces shall continue to form one administrative unit, having one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers, and the Provision of any written law relating to Provincial Councils shall be construed as if the specified Provinces were one Province:

Provided that if at such a poll in the Eastern Province, the decision of the electors of such Province is that such Province should remain linked with the Northern Province, a poll shall not be required in the Northern Province, and accordingly such Provinces shall form one administrative unit, having one elected Provincial Council, one Governor, one Chief Minister and one Board of Ministers.

(4) (a) Where two or more Provinces are specified in such Proclamation, and the decision of the electors of one such Province is that such Province should constitute a separate administrative unit, having its own distinct Provincial Council, with a separate Governor, Chief Minister and Board of Ministers, the Provinces specified in the Proclamation shall forthwith cease to form one administrative unit, and separate Provincial Councils, with a separate Governor, Chief Minister and Board of Ministers shall be deemed to have been established and constituted for each such Province with effect from the date on which the result of such poll is declared ; and the President shall thereupon by Order published in the Gazette cancel the poll in the other specified Province or Provinces, if such poll has not already been held.

(b) The President may, by order published in the Gazette, make such provision as may be necessary for the distribution of the property of such specified Provincial Councils, and with respect to the officers and servants of, contracts entered into by, and actions instituted by, and against, such Councils during the period when the such Provinces formed one administrative unit.

(5) Such poll shall be conducted by the Commissioner of Elections, and the President may make regulations under this subsection providing for all matters relating to the conduct of such poll.

(6) The elections of a Province shall be deemed to have decided in favour of a proposal submitted to such electors at such poll if such proposal has been approved by an absolute majority of the valid votes cast at such poll.

(7) Every such poll will be monitored by a Committee of three persons consisting of the Chief Justice, who shall be the Chairman thereof and two other persons appointed by the President, who shall report to the President.