

Supporting Effective Dispute Resolution:

Rapid Assessment of Community-Level Financial Disputes in Six (6) Districts (Kandy, Polonnaruwa, Monaragala, Gampaha, Colombo, and Anuradhapura) of Sri Lanka

Rapid Assessment Report

By Centre For Poverty Analysis
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1. Executive summary

Community Mediation Boards (CMBs) were first established as an alternative mechanism of accessing justice. However, an increase in the number of financial disputes between financial institutions and individuals from diverse socio-economic backgrounds has contributed to changes in the CMBs. The increasing number of financial institutions resorting to CMBs as an alternative mechanism of resolving disputes has raised the question of whether CMBs are moving away from the mandate of being a pro-citizen mechanism. Therefore, the Ministry of Justice, at the request of the Mediation Boards Commission, decided to set up Special Mediation Boards (Financial Disputes) in Sri Lanka and trial them in six districts. These Special Mediation Boards (Financial) are to be established in the districts reporting the highest number of financial disputes at the Mediation Boards in 2019 namely Colombo, Gampaha, Kandy, Anuradhapura, Polonnaruwa and Monaragala. A special gazette to this effect was issued on the 21st of December 2021 establishing the Special Mediation Boards to settle financial disputes. Although the said Gazette set the threshold at Rs.500,000/-, it was increased to Rs.1,000,000/- by Extraordinary Gazette No.2328/19 dated 21.04.2023. Therefore, the pilot effort will take up financial disputes of a monetary value of less than rupees One Million (Rs. 1,000,000). However, this amount is not a financial ceiling and disputes over the value of Rs. One Million could be referred to Special Mediation Boards (Financial Disputes).

This study supports the Asia Foundation (the Foundation), in understanding the nature of financial disputes, designing training programmes for mediators and providing recommendations to design awareness-raising programmes about community-level financial dispute resolution. The research sets out to identify and understand the nature and types of small-scale financial disputes in the districts of Kandy, Polonnaruwa, Monaragala, Gampaha, Colombo, and Anuradhapura, identify the parties to such disputes, identify current ways and mechanisms used by parties to settle such disputes, and provide recommendations to strengthen mediation as a way of resolving small-scale financial disputes.

The study adopts a qualitative approach, particularly an interpretivist approach that posits that reality is 'socially constructed', to help gain an in-depth understanding of the phenomena of financial disputes through actors' experiences. The methodological framework consists of a desk review, empirical research consisting of KPIs and case studies, as well as analysis and reporting of findings and recommendations. The empirical research was built on in-depth interactions with communities from the urban, rural and plantations sectors which engage in occupations such as farming, fisheries, estate work and small-scale enterprises.

The role of CMBs in legitimately facilitating alternative dispute resolution has been widely noted in published studies. However, issues such as low numbers of disputants approaching the CMBs, lack of awareness of its functions, lack of infrastructure and incentives to mediators including regular training need to be urgently addressed particularly as their resolution would prove beneficial to the Special Mediation Boards.

The study identifies the key parties to the conflict, including banks, micro finance institutions (MFIs) and individuals who provide credit, and borrowers from urban, rural and plantation communities. It reflects on the challenges of identifying and categorizing the nature of financial disputes on a conceptual level and provides insights on defining what a financial dispute entails. The distinctions among the different types of credit suppliers and their lending and recovery practices, while somewhat ambiguous, have provided easier credit access to those who are unable to fulfil requirements such as collateral. This, however, has also increased the risk of borrowers being targeted by predatory lenders, particularly those who are more socio-economically vulnerable. While a lack of financial literacy played a role in this increased risk, the socio-economic circumstances surrounding 'debt seeking' behaviour means that borrowers tend to ignore the risk factor - potential inability to repay - and continue to borrow.

Recent financial disputes have been aggravated by some notable contextual challenges such as COVID19 and the economic crisis that affected Sri Lanka. The economic crisis in particular has increased vulnerability

caused by inconsistent incomes, potentially increasing the number of financial disputes. Key Person Interviews noted that there is a high demand for borrowings at present, signaling a possible increase in the proliferation of financial disputes in the near future, which will result in an increased demand for services from alternative disputes resolution mechanisms such as the CMBs.

Another key point of concern is the lack of financial literacy among borrowers in general. This is accentuated by the non-transparent practices of financial institutions such as the lack of time and effort invested on explaining the financial responsibilities that come with financial borrowing; particularly calculations of interest and fluctuations of interest rates. Recovery practices of financial institutions differ according to the type of institutions – some banks endeavour to support recoveries in a proactive manner while others adopt a semi-aggressive manner in dealing with recoveries. These practices potentially exacerbate the disputes and create room for intimidation, induced stress and serious psychological impacts.

Focusing on dispute resolution, there is a tendency, particularly from the perspective of the financial institution, to see the process and the final resolution of the dispute as a win-win situation when there is possibility for debt restructuring. It raises questions whether root causes need to be considered when employing interest-based mediation, with delays or non-repayment of the loan mostly being viewed as a breach of contract by the part of the financial institution. Borrowers, however, consider it a win-win situation if concessions, by way of interest waivers and lengthening repayment terms, are provided by the financial institution.

This study concludes by presenting recommendations on:

- Conceptualising financial disputes and mediation in order to arrive at context specific definitions on financial disputes for training and mediation purposes,
- Points of action in relation to skills, knowledge, training and recruitment of mediators,
- The establishment of an expert committee and some key characteristics of the expert committee,
- Strengthening infrastructure requirements and addressing logistics related gaps; and
- Strengthening of financial literacy as well as awareness among communities on CMBs and SMBs.

2. Introduction

Research in Sri Lanka reveals that most financial disputes, particularly of medium to small-scale, can be attributed to debt due to loans, personal borrowings, micro-credit schemes, vehicle, equipment and goods leasing and credit card payments. Literature on the nature of community level financial disputes is scarce in Sri Lanka. However, studies focusing on the provision of micro-credit do analyse this issue, particularly with a focus on the poor and women as primary borrowers (Arambepola & Romeshun, 2019) and how variables such as education influence repayment behaviour among farmers in Sri Lanka (Arrupillai and Phillip, 2014). Microfinance lending, through institutions, has seen an exponential growth over the years in the Sri Lankan context (Romeshun, Gunasekara & Munas, 2014), and has emerged as the most common driver of a wide range of community level financial disputes (Munas et al, 2018). This increase is generally based on the assumption that, allowing access to credit will help women and their families get out of poverty (Arambepola and Romeshun, 2019). Microcredit is designed for women to establish a micro-enterprise, of which the income is expected to meet the consumption, education and health needs of their family members, especially the children. However, its fundamental principles are eroding in the face of high competition among lenders to reach the same pool of borrowers. Furthermore, the respective microfinance institutes (MFIs) who execute microcredit, distort the purpose of these schemes by using strategies that enable quick disbursement of credit within a short time period. Indebtedness due to microfinancing is not a recent phenomenon, nevertheless it has become particularly dire for women in Sri Lanka struggling to repay loans. The practice of taking out more loans to pay back existing debt, outward migration of villagers due to their inability to pay instalments, migrating for work overseas to service the mounting debts, pawning and instances of debt-related suicides are some of the related issues arising from indebtedness (Najab, 2020). For example, a study conducted by the Centre for Poverty Analysis (CEPA) notes that 86% of the surveyed households received housing assistance in the districts of Kilinochchi, Mullaitivu and Jaffna are now in debt (Romeshun, Gunasekara & Munas, 2014). Further, according to the Central Bank of Sri Lanka in 2013, there was a 600% rise in the density of lending institutions per square kilometre in the Northern Province enabling better access to microfinance for micro and small enterprises (MSEs) (Munas & Lokuge, 2016).

The study conducted by CEPA in the Mullaitivu, Batticaloa and Monaragala Districts highlights that existing community organisations are also used as a conduit by private MFIs to enter communities where they rely on community mediation boards to resolve any disputes arising from lending (Arambepola and Romeshun, 2019). These MFIs penetrate and establish their authority over the communities by providing micro-credit predominantly to women who have less access to state-led services and who at the same time are attracted to the advantages of acquiring credit through MFIs because the quick turn-around eliminates the need for collateral. The MFI's charge high interest rates and rely on group liability, a form of social collateral against default through social sanction and peer enforcement, to mitigate the effects of using non-collateralized financing.

The 2014 study by Romeshun, Gunasekera and Munas reveals how women tend to borrow to meet consumption related needs at the household level rather than for investment or income-generating activities. MFIs are not concerned with women's empowerment, specifically in monitoring whether the credit is invested in a long term and sustainable manner (Arambepola and Romeshun, 2019). The study further reveals that group liability is causative in breaking the solidarity of women's groups, while peer pressure enables space for disputes within the community. Credit paves the way for multiple levels of indebtedness and the depletion of savings with borrowers seeking informal money lenders. This causes disruption within the family as well as tension with local authorities who struggle to resolve financial borrowing induced disputes, resulting in an increased demand to find alternative forms of mediation.

Additional research on community level mediation provides insights on how people's past associations with mediation or informal justice processes and their knowledge of and experience with formal justice mechanisms have impacted their experiences and expectations of Community Mediation Boards, (Munas

and Lokuge, 2016). The findings reveal that perceptions of and expectations from the Community Mediation Boards are not static but change as the engagement during the mediation process advances and shifts because of the evolving nature of disputes.

At present, financial disputes in Sri Lanka are resolved under several forums including the Civil Courts, Community Mediation Boards, Debt Conciliation Boards, Arbitration and Financial Ombudsman. Of these, litigation in the civil courts appears to be the most sought-after forum by creditors, mainly due to the finality attached to the proceedings. Nevertheless, as the domestic legal system is inundated with backlogged cases and inordinate delays, it is by no means a sufficiently efficient and effective forum, particularly in the context of financial dispute resolution. Thus, there is room not only for alternative forums of dispute resolution but also more appropriate forums of dispute resolution, particularly that of financial dispute resolution in Sri Lanka.

3. Financial disputes and dispute resolution: A review of literature

The following sections outline some key conceptual observations that have been made pertaining to disputes and dispute resolution, globally as well as in Sri Lanka. In Sri Lanka, there is a gap in terms of available scholarship identifying and understanding community-based financial dispute resolution, which includes understanding types of disputes, causes as well as resolution processes. The following section firstly looks at global trends in relation to the financial sector, as well as scholarly observations pertaining to Sri Lanka. Drawing on the current debate related to the assessment, this section first looks at financialisation and the emergence of the finance capital model that impacted debt practices and the overall development of communities particularly in South Asia. The review looks at the nature of financial disputes to further understand the characteristics of disputes which will situate the empirics. This is followed by a discussion of the scholarship around the various mechanisms used to resolve disputes and finally looks at scholarly work on the concept of interest-based litigation along with the domestic legal framework that facilitates alternative forms of dispute resolution.

3.1 Financialisation

Global academic literature approaches financialisation with divergent views particularly as there is an increasing influence exerted by financial interests upon politics, as well as a growing dominance of financial logics or shareholder value in the changing spatial organisation of the global economy. Hence, there has been a proliferation of literature on financialisation – academic and lay – over recent years. Literature also focuses on financialisation in terms of society and the class system, but all the elements need to be considered holistically for a finer understanding of the concept.

Financialisation in the 1990s was likened to the political dominance of the finance capital model and the emergence of rentier classes in the 20th century referenced by Hilferding, Lenin, Kalecki and Keynes. This view drew comparisons between the rise of financial expansion and the post-war age of capitalism which it replaced. Scholarship on financialisation in the Great Financial Crisis that unfolded between 2007 - 2008 focused on the destructive power of financial systems prompting the wide usage of the term financialisation. Scholarship looked at various financial actors such as institutional investors and investment vehicles, and markets like the bond markets, commodity markets, housing and welfare markets (Aalbers, 2008; Dixon and Sorsa, 2009; Fichtner, 2013; Finlayson, 2009; Gospel et al., 2014, Montgomerie, 2009). A key observation of scholarship was that financialisation needed to be understood beyond the Anglo-American context of finance capitalism and through national or local contexts instead. In this regard the work by Daniela Gabor (2010) on Eastern Europe, Lena Rethel (2010), Iain Hardie (2012) and Bruno Bonizzi (2013) on emerging economies are notable.

Financialisation helps contextualise financial disputes, for example the rapid commercialisation of micro-credit is linked to financialisation. Here financialisation denotes practices, devices and techniques where particular objects or categories of social life are converted into financial asset streams with micro-borrowers becoming sources of financial profit. Commercialised micro-credit provides services to poor populations by involving them in credit practices influenced by global financial markets but fails to give the poor the stability or security that it claims to provide. In the recent years, failures experienced in Anglo-American political and economic contexts are being transferred to populations in the global South (Aitken, 2013). Marxist feminists such as Byatt (2018:2) argue that “(w)ith the creation of microfinance institutions (MFIs) as an attempt to alleviate poverty, by allowing women the access to capital through small loans, this ‘Smart Economics’ is a neoliberal instrument of exploitation”. These forms of exploitation are couched in terms such as ‘women’s

empowerment', assuming that as consumers and entrepreneurs, women can alleviate their own poverty. Such mechanisms drive the provision of micro-credit, but on meeting with realities at ground level, result in financial disputes and often even broader personal, family and community conflicts.

3.2 Financial inclusion, financial literacy and poverty

Another important research focus scrutinized the accessibility and utilisation of financial services, particularly in understanding whether the process known as financial inclusion is effective in reducing poverty (Lal 2017, Emara 2020). Madukala & Silva (2022) conclude that financial inclusion does not have the potential to lower income inequality. They discuss the need for the simplification of documentation processes for loans, digitised systems such as e-loans and affordable bank charges. Further research (Herath, 2015) that looks at poverty reduction concludes that microfinance was an empowering factor that helped households move away from poverty, while cumulative credit with credit-plus services increased the probability of empowerment.

While Sri Lanka has high levels of financial inclusion it is compromised by issues such as low levels of IT literacy, a weak regulatory framework to govern the microfinance sector and the inability to ensure client protection, which subsequently reflects on the quality of overall financial inclusion (Kelegama & Tilakaratna, 2014). Gunawardhena (2021) notes that local farmers have general knowledge with regards to basic financial processes but struggle to navigate online functions and maintain bookkeeping. Furthermore, he notes that education levels affect financial literacy and the misutilisation of loans for purposes other than farming was a common practice. Scholarship (Premaratna, Rathnayake et al, 2021) also discusses major determinants demanding credit among urban households. In the Sri Lankan context, a study that looks at five selected districts concludes that the level of education, private sector employment, entrepreneurship and male-headed households are some of these specific determinants. It discusses the need for policy makers to look at collateral free credit schemes, social capital, strengthening business units etc. to improve living conditions of the urban poor.

Understanding the link between financial inclusion, financial literacy and poverty is important to situate the empirical focus of this research, particularly in relation to the nature of financial transactions and subsequently the nature of financial disputes.

3.3 The nature of financial disputes

Empirical insights from the Votta and Mekong basins highlight that poverty in small-scale fishing often relates to socio-political issues, for example debt (Béné and Friend, 2011). Consequently, debt forms the basis of financial disputes and is closely related to the socio-economic characteristics of the communities. Therefore, an understanding of how socio-economic characteristics are linked to disputes arising from debt related financial transactions provides another integral element to analyse the empirics.

Literature on dispute resolution discusses the causes of disputes and resolution methods (Awwad et al, 2016). Community level disputes in the Sri Lankan context vary in nature, for example, many disputes are land related disputes and assault related disputes that could also be connected to financial disputes and family disputes that include domestic violence (Munas, Tennakoon et al., 2018). One assessment on land disputes looks at the Northern and Eastern provinces of Sri Lanka and identifies the nature of disputes related to land in the post-war context (Selvakkumaran, Thirunavukarasu, Jayasundere, 2014).

Most of the financial disputes in Sri Lanka, particularly on a medium to small-scale can be attributed to debt due to loans, personal borrowings, micro-credit schemes, vehicle leasing and credit card payments. While

literature on the nature of financial disputes with a focus on Sri Lanka is limited there is some substantial work on micro-credit services focusing on the poor (Arambepola & Romeshun, 2019). This is particularly interesting since global literature on microcredit notes a shift from the mere provision of micro-credit services to the provision of comprehensive financial services as a package which includes micro-savings, credit and insurance (Pomeranz, 2014). The general focus of the literature is on microcredit's positive impact in supporting people move out of poverty (Fouillet, Hudon, Harriss-White & Copestake, 2013) albeit the growing critique on the commercialisation of micro-credit as discussed above (Sub-section 3.1). Micro-credit and micro-finance, sometimes used interchangeably, is one of the most popular financial services offered to the poor particularly in Sri Lanka. Furthermore, Illankoon, Tam et al. (2019) discussing disputes related to the construction industry in Sri Lanka note that most disputes are caused due to changes in conditions, payment issues, time and delays, bidding errors and lack of communication. Shen, Tang et al. (2016) also observe that those with higher financial literacy are less likely to be involved in financial disputes and can proactively address problems that arise from disputes related to the purchase of financial goods and services.

Disputes often arise when there is a rupture or delay in repayment of the loan. Research on the farming community notes that the secondary education of borrowers has a positive influence on repayment behaviour (Arrupillai and Phillip, 2014). Nevertheless, it notes that loan repayments continue to be in the range of only 10% for full repayment as opposed to 90% non-repayment, which creates an environment for potential financial disputes. Further research on the construction industry highlights 'failure to administer the contract' as one of the main causes for dispute, while contract documentation and contract administration could possibly be underlying issues of disputes (Illankoon, Tam and Ranaduwa, 2019).

3.4 The mechanisms put in place to resolve disputes

Scholarly research further discusses a wide range of alternative instruments to resolve disputes, known as alternative dispute resolution (ADR). The research focuses on the applicability of ADR methods such as mediation (Besaiso and Emsley, 2017; Gregory-Stevens et al., 2016) arbitration (Garth 2015; Moza and Paul 2016; Ranasinghe 2012), adjudication (Jayasinghe and Ramachandra, 2016; Ranasinghe and Korale 2011), and dispute review boards (Harmon, 2009). In the Sri Lankan context, research focuses on the enforceability, applicability and effectiveness of ADR methods. In particular, the scholarship discusses, arbitration practices (Ranasinghe, 2012), critical successes of arbitration and adjudication practices with regards to disputes of the construction industry; mediation processes and its advantages, disadvantages, and barriers (Abenayake and Weddikara, 2012), and the effectiveness of the current adjudication practice specifically considering enforceability (2016). Gajanayake and Gajanayake (2020) discuss the salient aspects of the Singapore Convention and features of mediation in comparison to arbitration. By signing the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation"), Sri Lanka has taken steps to promote international commercial mediation as an ADR method and the potential of Sri Lanka becoming a hub for international commercial mediation. Further scholarship highlights the lack of legislative support for the mediation industry and notes that Asia has not implemented the UNCITRAL Model Law on international commercial conciliation that governs cross-border mediation (Yin, 2014). Yin further discusses issues around private mediation where privilege and confidentiality are not statutorily guaranteed. Furthermore, the research highlights that settlements that are enforced through contractual means make commercial mediation uncertain and inconducive, increasing the need for formal recognition and promotion of mediation.

While Sri Lanka has reformed and set in motion revisions to procedural laws and the development of legal and court infrastructure, the litigation system continues to be overburdened resulting in inordinate delays

and financial strain (Wijayatilake, 2016). This creates the space for dispute resolution through non-judicial ADR mechanisms such as Conciliation, Mediation and Arbitration. Dispute resolution within the Islamic banking system uses arbitration as a form of ADR since it reduces settlement time, and it was felt that negotiating a settlement was a more effective form of dispute resolution (Nafees and Habeebullah, 2016; Nafees and Ayub, 2016).

Community-based mediation boards under the Mediation Boards Act No. 72 of 1998 is one popular form of dispute resolution accessible at a community level. Financial institutions¹ such as banks are one of the main disputing parties that use the services of mediation boards. Community mediation practices and methods, known as ADR is characterized as non-professional, community-based, participatory, non-coercive, collaborative, and non-confrontational and is referenced in scholarship as distinctly separate from the functions of the formal legal framework (Welikala, 2016).

Ilaria and Paech (2018) also highlight recent developments globally where there is an increase in legislation supporting mediation in financial matters and ADR service providers offering mediation services. They discuss how mediation in finance could increase efficiency but also point out the limitations particularly in terms of issues around risk management. This means that mediation is only effective for issues not associated with transfer of value.

Literature also looks at the potential of mediation boards in the Sri Lankan context, insights into the history of theories and practice of the mediation boards. (Valters 2013). It also reflects on the reasoning and evidence, supported with new empirical data, that resolving and preventing disputes can promote social harmony, improve community relationships and inter-ethnic harmony.

3.5 Conceptual framework on ‘Interest-Based Mediation’ and mediation of ‘financial disputes’

In terms of Article 1 of UNCITRAL Model Law, mediation is a process where parties are assisted by a third person to negotiate and reach an amicable settlement. Within this process, the mediator or the third person who assists the parties has no power or authority to impose a solution. Mediation can be defined as a powerful tool to resolve a conflict and the mediation provisions embedded in a contract are significant (Runesson & Guy 2007). Considering the difference between the process of mediation and litigation, it is evident that unlike litigation mediation is a voluntary process which is triggered by diverse external factors such as reputation, cost, time and the uncertainty of the implementation of the decision.

Mediation is a facilitative strategy which can be categorized into three main forms: right-based, power-based and interest-based mediation. In a right-based approach of mediation, investigation and internal adjudication play a prominent role. In a power-based approach, the managers and other internal parties make use of their power to resolve disputes. However, with interest-based mediation, the intervention and facilitation by a neutral third-party, results in conflict resolution (Jameson, 2001). Thus, interest-based mediation is primarily for those who wish for an amicable solution within the process of conflict resolution.

With interest-based mediation it is essential to strike a proper balance between conflicting interests. The process of mediation facilitates the underlying tension with a view to disentangling the knot of interest and needs in a structured and efficient manner (Kirchhoff, 2009). Interest-based mediation is highly regarded within the international context as a very promising tool of conflict resolution which ends in compromise. Kirchhoff who explored the relationship between interest-based mediation and transitional justice has

¹ Financial institute in this report includes Banks, MFIs and Leasing Companies.

further emphasized that interest-based mediation is a model that offers social space for an elaborated communication structure in view of reconciling the existing conflicting interests (Kirchhoff, 2009).

Considering mediator orientations, strategies and techniques within the process of interest-based mediation, Riskin has clearly pointed out how interest-based mediation suffers from ambiguity. He has further emphasized how people struggle between training, evaluating, regulating and selecting mediators (Riskin, 1994). Thus, the role of a mediator is of extreme importance within interest-based mediation. In interest based or facilitative mediation, the mediator assists the parties to be realistic about their situations (Riskin, 1994).

In simple terms, “[i]n interest-based mediation, mediators guide disputing parties through a process that tries to get to the real issues at the root of the conflict, identify the needs or interests of the parties, and finally find a solution that is acceptable to both sides” (Gunawardana, 2011). Thus, rather than focusing on “positions”, which is their surface-level standings, the mediator would guide the parties to focus on their “interests” and help achieve their interests which are really the root cause of conflict.

It is the mediator’s role to encourage and facilitate parties to explore more options, rather than being limited by their initial positions. Since parties have pre-conceived notions, personal biases and prejudices, the role of a mediator is crucially important in interest-based mediation to guide parties to filter out their ‘positions’ and identify their ‘interests’.

In Sri Lanka, the distinction and the special focus made on ‘special financial mediation boards’ appears to be a domestic phenomenon, stemming from the vast numbers of financial disputes encountered during community-based mediation boards. Thus, there is a dearth of specific research material on “special financial mediation boards” in global literature. Nevertheless, recent years have shown that there are fragmented legislative efforts on mediating financial disputes globally, particularly following the global financial crisis of 2008-2009 (Ilaria Forestieri and Philipp Paech, 2018). Albeit an emerging and developing dispute resolution mechanism, the mediation of financial disputes is believed to improve market conditions both in terms of efficiency, stability and reputation (Ilaria Forestieri and Philipp Paech, 2018). Such determinations and observations are more pertinent to be examined in the context of large-scale indebtedness which lies outside the purview of this study. Nevertheless, it can be observed that a stark difference does not exist between the mediation of financial disputes and commercial disputes in the global context.

There are also global institutions which specifically mediate financial disputes. The ‘**FIDRec**’ (Financial Industry Disputes Resolution Centre Ltd) in Singapore is a good example of an international alternative dispute resolution institution specifically focusing on financial dispute resolution between consumers and financial institutions. It is an independent and private dispute resolution center which conducts services both in mediation and adjudication for a fee. Thus, although special focus on special financial mediation alone is rare, it is by no means unheard of or an anomaly. Rather, it is viewed as part of commercial mediation.

4. The domestic legal framework on financial dispute resolution and Special Financial Mediation Boards: A discussion

The following is a review of the domestic legal framework (Acts and Regulations) applicable to the resolution of community level financial disputes.

4.1. Financial dispute resolution in Sri Lanka: A general overview

Financial Dispute Resolution in Sri Lanka takes place under many forums. A party may institute an action for recovery of money in a civil court of Sri Lanka. While the jurisdiction for action was vested with the District Courts, the newly set up Small Claims Court², is expected to conclude a matter within 18 months and hear and determine disputes below Rs. 2 million³. The Small Claims Court is expected to reduce the backlog of cases in the District Courts and contribute towards elevating Sri Lanka's overall ranking in the World Bank Doing Business Index.⁴

If the amount of the debt concerned is less than Rs.500,000/-, the parties must first go before the Community Mediation Board, as established by the Mediation Boards Act No. 72 of 1988, as amended. If no settlement can be reached by the parties, the Community Mediation Board issues a certificate to that effect and the party instituting action in a civil court has to produce the same for the civil court to assume jurisdiction to hear the action. However, recent studies highlight that Community Mediation Boards are being inundated with financial disputes mostly on issues of loan repayment, which limits the opportunities and resources available to mediate other types of disputes at the community level.

In addition to opting for litigation through the courts of Sri Lanka and/or resorting to Community Mediation Boards, an individual (debtor or creditor) may apply to go before the Debt Conciliation Board, if the financial dispute involves immovable property. The **Debt Conciliation Ordinance, No. 39 of 1941**, as amended⁵ establishes the Debt Conciliation Board of Sri Lanka and vests the Minister with the power of appointing branch Boards.

An individual may also refer a financial dispute to the Financial Ombudsman Sri Lanka inasmuch as the dispute relates to insurance and/or banking matters. Albeit vested with the power to make "just and equitable" remedies, the ombudsman may only make recommendations that are not mandatorily binding on the parties.

Furthermore, the parties upon agreement can opt for Arbitration, subject to the provisions of the **Arbitration Act No. 11 of 1995**, which is another alternative dispute resolution mechanism operating in Sri Lanka with the power to make binding awards. Under and in terms of Section 31 of the said Act, a party can make an application to the High Court for the enforcement of an arbitral award and subject to the conditions specified in Section 31(6), the Court may give judgment according to the arbitral award and thereby enter a decree in terms of the judgment.

² Established by the SMALL CLAIMS COURTS' PROCEDURE ACT, No. 33 OF 2022 and the - JUDICATURE (AMENDMENT) ACT, No. 34 OF 2022

³ Gazette Extraordinary No.2328/16 dated 21.04.2023

⁴ "Specifically, when the Small Claims Court Act has attempted to limit the time period to hear and determine a matter within 18 months from its commencement, and if such restriction can be strictly adhered to, it would entail Sri Lanka's overall standing in the Doing Business Index being elevated from Sri Lanka's present rank of #164. Presently the rank is a reflection of the time taken to resolve a dispute in respect of a contract which as estimated by the Doing Business Index to be taking over 1,300 days," the committee (appointed to explore the possibility of setting up a Small Claims Court in Sri Lanka) Convener said. "Cabinet approves proposal to set up "Small Claims Court", *The Sunday Times*, (20 June 2021) Available at < <https://www.sundaytimes.lk/210620/business-times/cabinet-approves-proposal-to-set-up-small-claims-court-446722.html>>

⁵ Noteworthy amendments to the main enactment, *inter alia*: Amendment No.20 of 1983 and Amendment No.29 of 1996.

In this context, it is pertinent to examine the legal framework applicable to the “Special Financial Mediation Boards” set up to specifically resolve financial disputes in Sri Lanka.

4.2. The Legal Framework applicable to Special Financial Mediation Boards

The legal framework on CMBs is governed by the **Mediation Boards Act No. 72 of 1988**, as amended by Acts including Act No. 15 of 1997, Act No. 21 of 2003, Act No. 7 of 2011 and Act No 9 of 2016. Under Section 10 of the said Act, “it shall be the duty of such Board by all lawful means to endeavour to bring the disputants to an amicable settlement and to remove, with their consent and wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute, or offence...”.

Pursuant to enactment of the Amendment Act No 9 of 2016 which increased the financial threshold of disputes to Rs. 500,000/-, under Section 7 of the said Mediation Boards Act (as amended), a party could seek to litigate a dispute specified in the said section below the said threshold in a court of first instance only after attempting to resolve such dispute firstly through the CMB. Presently, such disputes include disputes relating to or arising from debts which do not exceed Rs. 500,000/-.

Conspicuously, the legal framework on Special Financial Mediation Boards is governed by the **Mediation (Special Categories of Disputes) Act, No. 21 of 2003**, the long title of which stipulates that it is an Act “to provide for the establishment of mediation boards for settlement through mediation of special categories of disputes”.

By the **Extraordinary Gazette No.2259/11 dated 21.12.2021**, the Minister of Justice, exercising powers vested under Section 2⁶ (i.e., categories of dispute), 3⁷ (i.e., special mediation board areas) and 8⁸ of the above mentioned **Mediation (Special Categories of Disputes) Act**, had promulgated that “**financial disputes** arising out of a **financial business transaction** between **individuals or institutions** and **between individuals or between institutions**” will be settled through mediation in terms of the provisions of the above mentioned Act.

Interestingly, although the term “institutions” has been defined to mean ‘company or a body of persons or corporate sole’, the Gazette has not defined the term “financial disputes”.

The Schedule of the said Gazette has specified 6 administrative districts: namely Colombo, Gampaha, Kandy, Monaragala, Polonnaruwa and Anuradhapura, as the areas wherein the special mediation boards are to be set up. Although the said Gazette set the threshold level at Rs.500,000/-, it was increased to Rs.1,000,000/- by **Extraordinary Gazette No.2328/19 dated 21.04.2023**. However, it must be noted that the said amount does not set a ceiling amount barring disputes over Rs. 1,000,000/- to be resolved through mediation. Thus, the legal framework allows the discretion of the parties to be maintained in that regard.

⁶ Section 2:

“(1) The provisions of this Act shall apply in regard to the settlement through **mediation of such categories of disputes** as shall be determined by the Minister by Order published in the Gazette.

(2) In specifying such categories the Minister shall take into consideration the need to provide for the meaningful resolution of disputes relating to social and economic issues”.

⁷ Section 3

“The Minister shall, from time to time by Order published in the Gazette, specify the area (hereinafter referred to as the “Special Mediation Board Area”) within which the settlement of disputes shall be carried out under the provisions of this Act, in respect of anyone or more of the categories of disputes determined under section 2”.

⁸ Section 8:

“(1) Where a Panel has been appointed under this Act in respect of a Special Mediation Board Area, no proceedings in regard to a dispute arising wholly or partly within such area in respect of anyone or more of the categories of disputes determined under section 2, where the monetary value of the subject matter of such dispute is less than such sum as shall be specified by the Minister by Order published in the Gazette, shall be instituted in or entertained by a court of first instance, unless it is accompanied by a certificate of non-settlement issued under paragraph (a) of section 14 or subsection (2) of section 17”.

4.3. The qualifications of a ‘financial mediator’

The appointment of the Mediation Panel will thereby take effect under **Section 4 of the Mediation (Special Categories of Disputes) Act**, which stipulates:

“4. (1) Upon the publication of an Order under section 3, the Mediation Boards Commission shall, subject to the provisions of subsection (2), take all necessary steps to appoint a Panel of Mediators (hereinafter referred to as the "Panel") in respect of each Special Mediation Board Area. The provisions contained in the Schedule to this Act shall apply in respect of the selection and appointment of members of the Panel.

(2) A person to be eligible to be appointed under subsection (1) as a member of a Panel shall be required to have such qualifications as shall be prescribed for that purpose by the Minister, who shall in prescribing such qualifications have regard to the expertise required of members to be appointed to such Panel, taking into consideration the nature of the categories of disputes determined by the Minister under section 2. Different qualifications may be prescribed in respect of the different categories of disputes determined under that section”.

(3) The Mediation Boards Commission shall appoint one of the members of the Panel appointed in respect of each Special Mediation Board Area, to be the Chairman of such Panel.

In accordance with the abovementioned Section 4(2), with regards to the qualifications of the mediators of the Special Financial Mediation Boards, **Mediation Special Categories of Disputes (Qualifications of Mediators) Regulations No. 1 of 2023** were issued by way of the **Extraordinary Gazette No.2314/80 dated 14.01.2023**. Therein, Regulation 2(a) sets an age limit of 35-75 years for a mediator whilst 2(b)(i)-(iii) lists the education/professional qualifications required by financial mediator. Regulation 2(c) requires a mediator on a special financial mediation board to be of sound mind and physically fit to carry out functions.

A KPI revealed that the qualifications of a mediator are crucially important for the success of mediation in Sri Lanka. In fact, they opined that Sri Lanka’s ‘leisurely view’ of mediators as part-time volunteers, stemming from a lack of understanding of the importance of the role of a mediator in interest-based mediation, is detrimental to the successful realization of mediation as an alternative dispute resolution process. The expert opined that mediation must be viewed as a profession where mediators could aspire to a career in mediation with continuous professional development (‘CPD’), as in foreign jurisdictions.

In view of the above, while there is more specificity provided on the qualifications of financial mediators in comparison to CMB mediators, it is questionable whether it is sufficient to meet the demands required by an effective financial mediation dispute resolution process, particularly in consideration of the fact that most financial disputes are commercial in nature. However, as the process is still in progress, only time will tell whether the qualifications required by the said Gazette of financial mediators are sufficient.

While the Gazette does shed light on the qualifications required for a mediator to be appointed to a Special Financial Mediation Board, there appears to be no statutorily mandated special training procedure specifically applicable for financial mediators of Special Financial Mediation Boards. In general, Mediators appointed by the Mediation Board Commission are given formal training in mediation (Welikala, 2016). Mediators are also provided with a training manual⁹. KPIs revealed that in practice, a “7 day” specialized training on a particular subject matter is provided to mediators appointed to all types of Special Boards, immediately following the 5-day general mediation skills training. Nevertheless, further details about such special training could not be located by the researchers. KPIs opined that the one-off 40-hour training programme provided by the Ministry of Justice might not be sufficient for mediators to tackle complicated situations that could arise, particularly in financial dispute resolution.

⁹ The training manual can be accessed at < https://www.moj.gov.lk/images/pdf/trainee_english_final_med_process.pdf>

4.4 Would the Small Claims Court overshadow the Financial Mediation Boards?

The Small Claims Courts are operative from the 1st of January 2023. In terms of **Section 2(e) of Judicature Act No.2 of 1978, as amended by Act No. 34 of 2022 (“Judicature Act”)**, the Small Claims Court, the jurisdiction of which shall be vested in the District Court, is a Court of first instance according to which shall have the full power to hear and determine all actions specified in the Seventh Schedule to the Judicature Act (as amended).

The **7th Schedule** (as amended) specifies the following actions:

- “1. Any action for the recovery of money (either as a debt or fee or payment or damage or demand including an action for the recovery of damages on accident or personal injury or in any other similar category);
2. Any action for the recovery of movable property;
3. Any action for a counterclaim in respect of any cause of action specified in items 1 and
4. Any other jurisdiction as is conferred upon it by any other law.”.

However, the **proviso to Section 29A(1) of the Judicature Act as amended by Act No. 34 of 2022** excludes the following actions from the purview of the Small Claims Court:

- any action filed under the provisions of Chapter LIII of the Civil Procedure Code
- action for the recovery of money to which special provisions are made under any other written law.

Although the threshold for the Small Claims Court was initially set at Rs. 1,500,000, by **Extraordinary Gazette No. 2328/16 dated 21.04.2023**, it was increased to a sum of Rs. 2,000,000 or not exceeding Rs. 2,000,000 (operative from the 1st of May 2023).

Provided that the threshold limit for Special Financial Mediation Boards is set at Rs. 1,000,000 and Small Claims Court is set at Rs. 2,000,000, there is no overlap between the two systems technically per se. This is also because the two systems fundamentally emanate from two different forms of dispute resolution.

However, given the finality attached to litigation, there are doubts if the Small Claims Court would overshadow the legitimacy attached to the Special Financial Mediation Boards, i.e., whether parties would prefer going to the Small Claims Court or even view the Small Claims Court as a better option of dispute resolution and hinder the morale and participation of the Special Financial Mediation Boards. At this juncture, it would be useful to examine the legal framework of the Small Claim Courts in order to ascertain whether the provisions of the Act could contribute to substantiating such doubts.

It is opined that overall, the provisions of the **Small Claims Courts’ Procedure Act No.33 of 2022** are formulated in such a way that it **actively** and **expressly** encourages settlement of disputes throughout its procedures.

For instance, Section 21(1) of the Act stipulates:

“21. (1) The Small Claims Court shall forthwith on the filing of the answer or replication, if any, **fix a date for the settlement within a period of four weeks from the date of the completion of pleadings** and it shall be **the duty of the Small Claims Court**, before the case is fixed for trial, **to persuade the parties to arrive at a settlement** of the dispute, and record such settlement if any, and enter judgment and decree accordingly. **Suppose a party fails to be present in person on the date fixed for settlement without sufficient cause. In that case, the Small Claims Court may order costs against such defaulting party or parties**, unless the parties enter into a settlement on the same day”.
[Emphasis Added]

In view of the above, the procedure gives a period of four weeks for the parties to approach a settlement within the litigation process. The seriousness placed on the settlement process is evinced by the fact that the latter half of the Section clearly stipulates that “failure to be present” on the date fixed for settlement without sufficient cause is grounds for costs to be imposed on such absent party.

In addition to the said four-week period, under and in terms of Section 29E of the Judicature Act as amended by Act No. 34 of 2022 stipulates as follows:

“29E. It shall be the **duty of the Judge** of the Small Claims Court **by all lawful means to make every effort to induce the parties, before or during the trial, to arrive at a settlement** where appropriate and if the parties agree to a settlement, the settlement shall be recorded and signed by the parties and a judgment made in accordance with the terms as settled.” [Emphasis Added].

Therefore, not only procedural law but also substantive law (which is stipulated by the Judicature Act) imposes an express “duty” on the judge to make “**every effort**” to induce the parties to reach a settlement. Thus, it is contended that whereas settlement of disputes is expressly encouraged, the two systems, *i.e.*, the Special Financial Mediation Boards and the Small Claims Courts, should not be viewed as mutually exclusive systems. Although the Judicature Act does not expressly refer to the mediation boards anywhere in the Act, the parties could adopt mediation as a complementary system or a tool which enables the settlement of the dispute in question. In practice, whereas the settlement period is viewed as a formality, as parties often struggle to reach settlement on their own, interest-based mediation with the intervention of a facilitator could lead to successful results. Although the Small Claims Court Procedure does not specify mediation (while only generally mentioning the concept of ‘settlement’) with proper referencing, financial mediation could certainly be presented as an option by which parties could reach a settlement. This could even be viewed as an existing gap in the legal framework which can be mitigated. Similar to the procedure relating to a land action, where a commission may be issued through court to one of the certified surveyors from the list of surveyors to survey a land in a *rei vindicatio* action or partition action etc., the Small Claims Court could maintain a list of certified mediators and the parties could be referred to a financial mediation. Although such a recommendation might be futuristic, it is certainly feasible if financial mediation is popularized among parties.

The experts certainly encouraged such a nexus between the two procedures during the KPI. However, they opined that mediation should exist on its own, as a separate system as well, not merely as an accessory powered by the court system.

The doubt as to the possible overlap of matters handled by the Special Financial Mediation Boards and the Small Claims Courts may be addressed by defining “financial disputes”. However, providing a definition at such an early stage could have drawbacks. For instance, the KPI revealed that such a definition could make the process more restrictive and might even take away the voluntary nature of mediation, which is fundamentally important to any ADR method.

Nevertheless, the one point that could have an impact on a party’s preference for the Small Claims Court over the Special Financial Mediation Board, is the finality attached to litigation due to the binding nature of the Court Order. Although the existing legal framework on mediation could be utilized for the setting up and operation of Special Financial Mediation Boards, both Acts applicable to CBMs and Special Categories, are silent on the legal effect of the end Settlement/Agreement reached by parties.

In terms of Section 17 of the **Mediation (Special Categories of Disputes) Act, No. 21 of 2003**, where a party violates the terms of a Settlement reached at a financial mediation, the aggrieved party can only report it to the Special Mediation Board who would, after attempting to resolve it again, issue a certificate of non-settlement. Nevertheless, the Act does not expressly state that the settlement reached by the parties is non-binding. It is observed that as a settlement reached during mediation is in its essence an “Agreement”, it must

be contractually binding on all parties under the principles of contract law. KPIs revealed that people believe that the settlement reached during mediation is not binding.

Considering that most financial disputes have commercial characteristics, commercial entities might not be agreeable with the aforementioned uncertain and unpredictable ends to dispute resolution. Further, the domestic law on failure to comply with or violation of settlement as stipulated by Section 17, marks a stark contrast from the streamlined commercial mediation procedure as stipulated by the **United Nations Convention on International Settlement Agreements Resulting from Mediation (the “Singapore Convention on Mediation”¹⁰)**, which ensures that a settlement reached by mediation has the same legal binding effect as that of contract or general legal agreement. Although the said Convention is only applicable to international settlement agreements resulting from mediation concluded by parties to resolve a commercial dispute, it could be examined to understand international best practices on mediation, particularly commercial mediation.

The expert during the KPI opined that although the existing legal framework can be generally applied to the new special financial mediation boards, the Act must be amended to reflect that as financial disputes are commercial and settlements reached by the parties through mediation must be considered as legally binding contracts.

¹⁰ Full text of the Convention can be found at < <https://www.singaporeconvention.org/convention/text> >

5. Methodology

5.1 Objectives of the assessment

Sri Lanka has seen a rapid increase in household-level borrowing, hire purchase and leasing in the last decade, resulting in a spike in the number of disputes from such transactions being reported to Community Mediation Boards. As a result, the resources, time and space allocated to resolving disputes other than those related to financial transactions have gradually shrunk. The increase of financial disputes and the number of financial institutions accessing Community Mediation Boards create a power imbalance wherein the financial institutions benefit from the pro-poor mechanism (Munas and Lokuge, 2016). Mediating financial disputes requires mediators with specific skills, knowledge and expertise.

Given the above reasons, the Ministry of Justice decided on a policy to set up Special Mediation Boards (Financial Disputes) in Sri Lanka and to trial them in six districts at the request of the Mediation Boards Commission. Special Boards will be established in the districts where the most financial disputes were reported to the mediation boards in 2019. These districts are Colombo, Gampaha, Kandy, Anuradhapura, Polonnaruwa and Monaragala. A special gazette was issued on the 21st of December 2021 to establish a Special Mediation Board to settle financial disputes. The pilot effort will take up financial disputes with a monetary value of less than rupees one million as the mandatory limit, while allowing space for disputes of a higher value to be mediated upon the discretion of the parties to the disputes and contract regulations.

The Asia Foundation (the Foundation), commissioned CEPA to conduct a 'Rapid Assessment of Community Level Financial Disputes' to explore the nature of financial disputes and to provide recommendations to design training programmes for mediators. This assessment also aims to provide recommendations to design awareness-raising programmes about community-level financial dispute resolution. The following are the key objectives of the assessment:

- Identify and understand the nature and types of small-scale financial disputes/issues in Kandy, Polonnaruwa, Monaragala, Gampaha, Colombo, and Anuradhapura.
- Identify the parties to such disputes.
- Identify current ways and mechanisms used by parties to settle such disputes.
- Provide recommendations to introduce mediation as a way of resolving small-scale financial disputes.

5.2 Research questions

Based on the objectives above, the research team derived the following research questions to examine the financial disputes in the districts identified.

1. *What is the nature of community-level financial disputes in Kandy, Polonnaruwa, Monaragala, Gampaha, Colombo, and Anuradhapura?*

This research question was explored through the literature review and primary data paying specific attention to the nature of financial disputes, breaking them down by the different types of disputes, types of parties to such disputes and their impact on socio-economically vulnerable groups.

2. *What are the ways in which people resolve community-level financial disputes?*

People use multiple mechanisms to resolve community-level financial disputes. This includes formal settings such as litigation, small claims courts and courts. Other methods of resolving financial disputes are using the ADR mechanisms, including mediation boards, police, community-based dispute resolution mechanisms such

as peace committees, religious institutions, producer-based organisations and negotiations at the institutional level such as banks and microfinance institutions. This research question attempted to understand these diverse mechanisms used by the communities in resolving financial disputes.

3. How do people view the use of mediation as a mechanism for resolving financial disputes at the community-level?

This research question was explored through primary data such as discussions with disputants, debtors, community leaders, civil society members, the private sector, religious leaders, mediators, and government officials appointed and elected to mediate community-level financial disputes in the study districts.

4. What are the critical training needs of mediators of Special Mediation Boards (financial)? What strategies can be used to create awareness on financial dispute resolution?

This research question generated recommendations to guide the design and delivery of a training program for mediators who are to be appointed to Special Mediation Boards (Financial Disputes) in the study districts.

5. What strategies can be used to create awareness of financial dispute resolution?

This research question generated recommendations on strategies to increase awareness of financial dispute resolution mechanisms among the general public, duty bearers and rights holders in the study districts.

5.3 Research tools

The research adopted an interpretivist approach where the researchers view reality as 'socially constructed', to gain an in-depth understanding of the phenomena of financial disputes through actors' experiences. The phenomena of financial disputes are complex, where numerous actors with unequal power-relations may skew the dispute resolution process and outcome. It is, therefore, important to understand the nature of financial disputes in communities and the processes followed in resolving them. The understanding was gained through the experiences of the people and institutions participating in the dispute resolution process. To this end, an inductive, ground-up approach, primarily qualitative was adopted. Primary and secondary quantitative data analysis supplemented the qualitative data analysis.

The research was carried out in the following stages:

1. Desk review
2. Empirical research
3. Analysis and reporting

5.4 Desk review

During the inception phase, the team conducted a desk review to contextualise the study and fine-tune the conceptual framework of the research. The desk review drew on published literature, research papers, journal articles, and policy papers on financial disputes and dispute resolution. Desk review topics included financialisation, the nature of financial disputes, the mechanisms put in place to resolve disputes, and the role of ADR mechanisms in resolving financial disputes, including Community Mediation Boards and Special Mediation Boards.

The review also engaged in a study of the conceptual framework on interest-based mediation, particularly in the context of financial dispute resolution, and a review of the domestic legal framework (Acts and Regulations) applicable to the resolution of community level financial disputes. The reviews aimed at understanding the strengths, gaps and revisions required in the domestic legal framework so that the benefits of mediating financial disputes can be realized.

5.5 Empirical research

An in-depth, qualitative and inductive approach was adopted to understand the complexity of financial disputes in the study districts. The research relied on both primary and secondary data. Table 1 illustrates different methods, tools and sources used to respond to research questions. Primary data was collected in-person, using Key Person Interviews (KPIs) and in-depth case studies with disputants. The assessment was conducted in selected Divisional Secretariat Divisions (DSD) in Colombo, Gampaha, Anuradhapura, Polonnaruwa, Kandy and Monaragala districts.

Table 1: Data collection tools and methods adopted in response to the research questions and sub-themes

Research questions	Sub-themes	Data sources
What is the nature of community-level financial disputes in the study districts?	Nature of financial disputes, by types of disputes, and their impact on vulnerable groups, Impact of COVID and the ongoing crisis	Literature and primary data
What are the ways in which people resolve community-level financial disputes?	Use of diverse mechanisms, including ADR	In-depth interviews and Key Person Interviews
How do people view the use of mediation as a mechanism for resolving financial disputes at the community level?	People's experiences and perceptions in using CMBs to settle financial disputes	In-depth interviews and Key Person Interviews
What are the critical skills/knowledge and training needs of mediators of Special Mediation Boards (financial)?	Recommendations on skills, training and the nature of the advisory committee	Key Person Interviews
What strategies can be used to create awareness of financial dispute resolution?	Awareness among general public, government stakeholders	Key Person Interviews and in-depth interviews, desk research

A. Key Person Interviews (KPIs)

KPIs were carried out to gather expert views, opinions and experiences on financial disputes. To this end, the KPIs were designed to identify the actors involved in dispute resolution, their roles and responsibilities, the challenges faced and recommendations to improve these mechanisms. The KPIs were conducted at national and district levels to capture different expertise and specific context-related nuances. National-level KPIs provided insights into the overall situation of the financial disputes, transactions, and dispute resolution mechanisms. In addition, discussions at the national-level also contributed to the conceptual discourses on resolving financial disputes. At the national-level, the team conducted five key person interviews.

- Key policy makers - officials at the Ministry of Justice, Members of the Mediation Commission,
- Lawyers,
- Experts and academics working on the issues of financial disputes and informal dispute resolution mechanisms,
- Individuals and consultants involved in designing and delivering training for mediators,

- Representatives of non-government organisations/MFI.

KPIs in each district were conducted with the individuals representing the following organisations. Table 2 provides the summary of the number of KPIs and case studies with disputants conducted in each study district. A total of 72 KPIs were conducted for the study. The KPIs were selected in consultation with the respective Mediator Training Officers (MTOs), Chairpersons of CMBs and Development Officers of selected DSDs.

- Appointed officials: District Secretaries/designated officials at the District Secretariats, Divisional Secretaries, Grama Niladaris, Samurdhi Officials,
- State authorities and organisations: National Enterprise Development Authority (NEDA), Women's Development Organisations (WDOs) and members of the Women's Forum, Development Officers in charge of Community Mediation Boards,
- Banks and microfinance institutions: Sarvodaya, Sanasa, Berendina, RDB, Samurdhi Bank,
- Community-based organisations that practice group lending: Women's Rural Development Societies, Cooperatives, Thrift and Credit Societies, Farmer Organisations,
- District level Chambers,
- Local-level peace committees (multi-faith, inter-religious, inter-ethnic committees),
- Community Mediation Boards: Chairpersons, Mediator Training Officers and mediators,
- Religious institutions and leaders,
- Police officers: representatives from the community police.

Table 2: KPIs and Case-studies by district

District	KPIs	Case-studies
National level	5	
Colombo	12	15
Gampaha	10	15
Anuradhapura	15	15
Polonnaruwa	09	15
Kandy	11	15
Monaragala	10	15
Total	72	90

B. Case Studies

The case studies were conducted with people facing financial disputes. The financial institutions and MFIs often termed the people involved in the financial disputes as 'defaulters'. These case studies draw on people's experiences with financial disputes, actors and mechanisms involved in resolving the disputes and their levels of satisfaction with the dispute resolution mechanisms.

Fifteen in-depth case studies were conducted in each district, bringing the total number of case studies to 90. The research tool consisted of informal conversations, structured and semi-structured questions and participator observations. While the overall research approach was predominantly qualitative, the research

instrument was designed to capture some quantitative/numerical data, such as volume of financial transactions, time spent with dispute resolution actors per visit, time taken to resolve, age, sex, income levels, willingness to pay for the mediation services and costs associated with accessing dispute resolution mechanisms. A team of two conducted the interviews for the case studies. One team members administered the interviews, including filling the digitized quantitative survey component on a hand-held device and the other took detailed qualitative notes.

The sampling criteria were drawn from the previous studies carried out by CEPA on this topic and its experiences of conducting research in the proposed geographical areas. For primary data collection, one DSD was selected from each district. This DSD reporting the highest number of financial disputes was selected for the study, excepting two districts, as discussed below. Notably, the highest number of financial disputes are reported from the urban-centric locations of every district where the financial institutions that summon the defaulters are located and where the transactions took place. Furthermore, the vibrant business environment in urban centers contributes to many financial transactions. However, in order to capture the experiences of the people from the estate sector, the team purposively selected Gampola DSD from Kandy in consultation with the Foundation and the respective MTOs. Likewise, Negombo DSD was selected from Gampaha district, to understand the nature of financial disputes in coastal fisheries communities.

Selecting case studies

The research team used a multipronged approach to identify the disputants willing to participate in the case studies. While the Community Mediation Boards remain the constant source in all the districts, the team attempted to gather information from different sources for case selection. Only settled or unsettled cases were selected from CMBs for case studies, ongoing cases were not considered. Unsettled cases were only selected when both disputants participated in at least one sitting. Although we requested information regarding the disputants, the private banks and MFIs, in most cases they did not adhere to this request and refrained from sharing the details of the disputants stating the need to protect the privacy of the disputants.

In most cases, the addresses of the disputants were shared by the sources. As a result, the team had to spend considerable time in the field to locate the disputants' houses. In some instances, the disputants had moved from the given address, and others were absent.

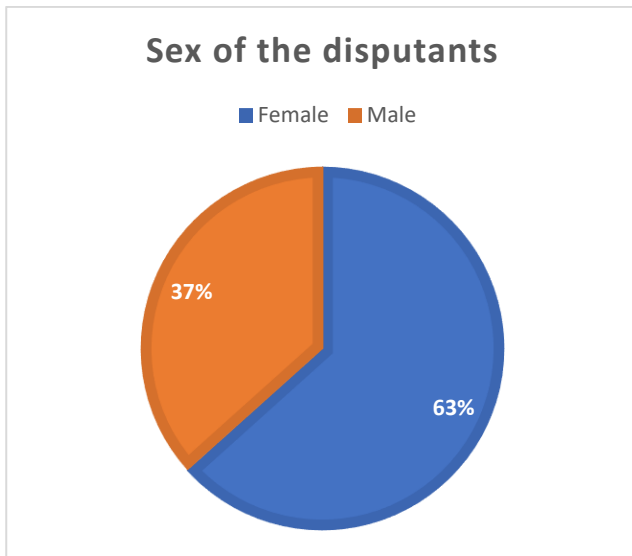
The team also witnessed the reluctance and mistrust of the disputants when approached to participate in the case studies. The sources of contact information were often questioned. Some respondents refused to interact and some responded with a lot of reluctance. Some respondents thought the research team was trying to recover the debt or help them resolve the financial dispute.

Table 3: Sources used to identify cases by district

District	Sources
Anuradhapura	Community Mediation Boards, Samurdhi Bank, Bank of Ceylon, Women's Societies
Polannaruwa	Community Mediation Boards, LOLC, Women's Societies
Gampaha	Community Mediation Boards, Regional Development Bank
Colombo	Community Mediation Boards, GN, Women's Societies
Kandy	Community Mediation Boards, Estate Welfare Officer, Samurdhi Officer
Moneragala	Community Mediation Boards, FISD (NGO), GN

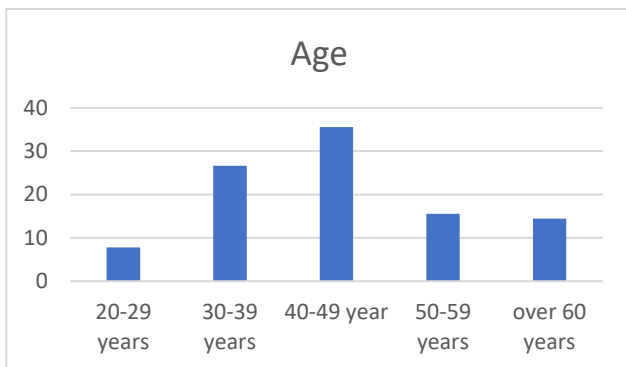
The sample ensured the inclusion of disputants of different sex, age, from rural, urban and estate settings and different ethnic groups. Figures 1-5 show the distribution of the sample based on sex, age, sector and ethnicity. The sample distribution shows that females are over-represented (63%). This representation exists because the MFIs provide small entrepreneurial loans specifically targeting women. In addition, group and cultivation loans are often given to women.

Figure 1: Sex of disputants



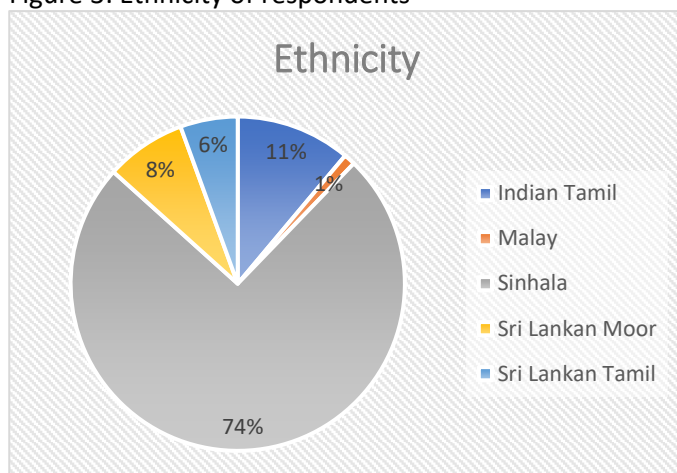
In terms of the age of the respondents, as shown in Figure 2, the majority fall within the age of 40-49 and over 62% of the respondents are between the age of 30-49.

Figure 2: Age of respondents



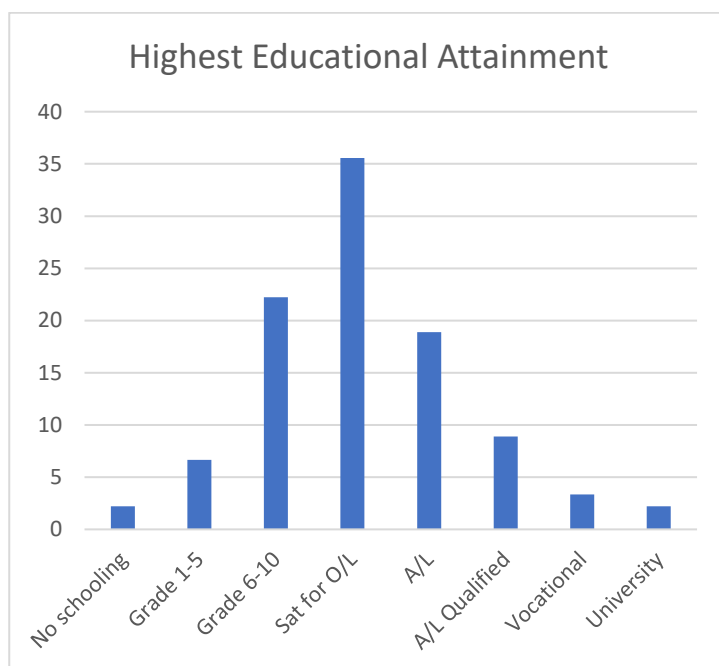
About 74% of the respondents are Sinhalese and 11% are Indian Tamils (Figure 3). The Indian Tamils are predominantly from the estate sectors in the Kandy and Monaragala districts.

Figure 3: Ethnicity of respondents



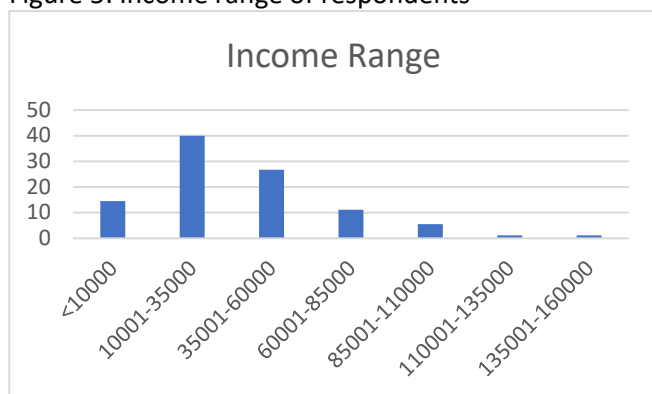
Considering the socioeconomic conditions of the respondents, 35% have sat for the Ordinary Level examination, 19% have studied up to the Advanced Level and 91% have studied up to grade 6 or above (Refer figure 4).

Figure 4: Highest educational attainment of respondents



In terms of the total household income, 40% of the respondents report an income range of between Rs.10,000 and Rs.35,000. Likewise, over 50% of the respondents fall within the income range of less than Rs. 35,000 per month. (Figure 5)

Figure 5: Income range of respondents



5.6 Limitations of the study

Rapid assessment is a valuable tool for gathering and analysing information on existing social issues. The tool comes with several limitations. These limitations are important to consider:

Although the assessment incorporated in-depth case studies as a tool to overcome the issue of lack of depth, the study team could not spend sufficient time with the disputants to understand the nuances, causes and implications of financial disputes in their everyday lives. The literature review indicated that there are no such studies carried out in Sri Lanka to understand the nature, types and resolution of financial disputes. An in-depth assessment of the complex financial disputes in each study district requires an extended period of time, especially in a study of this nature that looked at six districts. We recommend a follow-up, in-depth study to explore further the key themes identified in this rapid assessment. In addition, the assessment would have benefitted from an adequate data validation and triangulation exercise.

Identifying the disputants willing to participate in the study was a challenge throughout the study. While noting that the assessment adopted a multipronged approach to identifying the disputants, the research team found that over-reliance on CMBs to identify the disputants may have skewed the results. Further, the information provided by the CMBs was not uniform across the districts. As a result, the sample drawn from CMB sources varied across the study districts and the findings of the study cannot be generalised. The study would have benefitted from detailed statistical information on financial disputes on the number of sittings, time taken to resolve, no-show rates/percentages and returning cases. The CMBs did not generate uniform disaggregated data on financial disputes mediated by them. This data would have contributed to sharpening the sampling strategy.

6. Findings and discussion

6.1 The nature of financial transactions

The *types of transactions* include borrowing and repayment issues related to banks and micro finance institutions, mortgages, hire purchase, pawning, borrowing from informal lenders within the village or city, credit card repayments, group loans that are based on membership in CBOs such as women's societies, farmer organisations and Samurdhi, state housing cooperatives, hire purchase (formal and informal), leasing and non-payment of utility bills.

A majority of the disputes studied were linked to loans or borrowings. Loans or borrowings generally fall under two general categories: consumption (household expenses, housing loans, vehicle loans) and entrepreneurship (self-employment, farming, small-scale tea cultivation, animal husbandry). This can be further differentiated as collateral-based and non-collateral-based borrowings, where some loans are given with security while others are without security, although defaulting on loans with security does not change the situation or the nature of the dispute (LOLC KPI, Anuradhapura).

The *purpose for transactions*, as per the transaction agreement, is mainly entrepreneurial (agriculture, cultivation, buying boats, other fishing equipment and diverse small-scale businesses associated with fisheries and others, liquor credits) and consumption (utility payments, household budget, education, weddings, puberty ceremonies), housing, and cultivation. However, borrowing to pay back existing loans or for consumption was cited by many respondents, although the loans as per the agreements are intended for entrepreneurial activities. The intention for borrowing changed for some disputants due to external factors (this will be elaborated further in section 6.4 below). For example, those who had borrowed with the original intention of business/enterprise development, switched to using the borrowed money for consumption, due to the slowing down of economic activities during the pandemic and the subsequent political-economic crisis. These mismatches in the 'need for borrowing' by the borrower and the 'purpose or objective for the loan provision' by the lender often result in delays and disputes in repayment.

The type of transaction determines the type of disputes, which can also be specific to urban, village and estate/ plantation areas. A majority of daily or weekly loans are observed as originating from the village and estate areas, while larger bank loans and credit care-related disputes are reported from the urban areas.

6.2 Financial institutions and transactions

Types of financial institutions in the study areas: Singer, Sarath Motors, LOLC Leasing, Loans & Lands, Kamrich, Hatton National Bank (HNB) Finance, Summit, TRC Lanka (Pvt), Softlogic (Finance & distribution), Vallibel Finance, Commercial Credit/ Finance, CDB Finance, DJ Trading Company, Nation Lanka, Abans, Sarvodaya, Bank of Ceylon (BOC), People's Bank, National Savings Bank (NSB), Commercial Bank, Sampath Bank, Seylan Bank, Nations Trust Bank, Pan Asia Bank, DFCC Bank, Citizens Development Business Finance (CDB Finance), Central Finance, Sahanra, Berandina, Negombo South Fishermen's Co-operative Society Ltd.

'Self-employment' or entrepreneurship promotion loans: Disputes around loans for self-employment (including for agricultural purposes below Rs. 500,000) borrowed on an individual or group basis are predominantly referred to CMBs. These loans are usually in the range of Rs. 100,000-200,000 and sometimes have guarantors from the government sector. A majority of farmers are fearful of obtaining agricultural loans from private and government financial institutions. It is a common practice to form groups and apply for loans collectively in the Govi Jana Sewa Organisations (5 members). This approach, often called joint liability lending or group lending, is designed to provide mutual support and encourage responsible repayment within the group. It reduces the chances of disputes.

Agriculture loans: Banks such as the People's Bank and BOC also provide agricultural loans which are disseminated through the Agrarian Services Centre (*Govi Jana Sewa*), which is divided into respective

branches to increase the effectiveness of disbursing loans. Allowing the respective branches to handle the loans gives the bank a better understanding about the form and characteristics of the Societies they support, such as cultivation periods and pertinent personal details of the farmers, including the size of their holdings. Cultivation loans are also given through private banks such as HNB and must be obtained from the branch closest to their residence. These agricultural loans are used to buy equipment/ farm machinery i.e. tractors, or for harvest. Typically, these disputes are not handled through the mediation boards because the loan amounts exceed one million.

Samurdhi loans: The *Samurdhi Bank* being part of the government's Samurdhi initiative to support development and poverty alleviation, is popular among the public as a lending institution. The bank functions well, but loan recoveries have decreased due to the impact of the COVID19 pandemic and the country's economic situation. At the end of 2022, in Kandy alone, there were many bad debts among the 45 borrowers who defaulted for over nine months. At present, there are around Rs. 3 million bad debts from approximately 25 borrowers. The government has announced that it will waive the loans of people with low incomes, but this creates confusion because people do not know whose debts are being waived, and therefore stop making repayments. Some people who receive financial assistance from Samurdhi, deliberately choose not to repay their loans even if they are able to, while others are genuinely unable to pay because they do not have enough money. Even the repayments of loans given to businesses have decreased, but they are gradually being paid at present. Some people have even left their villages because they are not able pay their debts (KPI, Kandy).

Revolving loans: A revolving loan program for members of a women's society provides loans at an interest rate of 6%, with 3% allocated to their union and the remaining 3% to the local authority (KPI, Kandy). Since the responsibility of the 'revolving loan' is entrusted to the women's society, it is paid off without problems. The women's society acts as the guarantor, and its officials collect and deliver the loan funds. Loans are given to individuals who come with a recommendation from the women's society.

Daily and weekly loans: The most difficult type of loan to mediate, in the study sample, are loans provided by micro-finance institutions on a daily collection basis. Their main target group is women. The individuals who want to take loans need to create a group of five or six to receive loans so that the rest of the group members act as a guarantee and are liable for paying any defaults. If group members default, the micro-finance institutions report the case directly to the CMB. The CMBs reported a backlog in accepting cases is seen in most districts due to the high number of cases being presented to CMB by the financial institutions.

Loans against EPF: Youth in the estate sector purchase three-wheelers with loans taken against their parents' Employee Provident Fund (EPF) and Employee Trust Fund (ETF). In other instances, the parents withdraw their gratuity money and the EPF and ETF at retirement age to give their children the money to purchase three-wheelers. When the youth are not able to continue paying the instalments regularly, either the finance company seizes the vehicle or the burden of paying the dues falls on the parent.

"The EPF and ETF loans and interest are cut off from EPF and ETF savings. So, in the end parents don't have any safety. They give everything to the children, and they lose everything". (KPI, Kandy)

Hire purchases and leasing: This is a popular option for purchasing mobile phones, furniture and household equipment, three wheelers and motor bicycles. In cases of leasing, the inability to repay often results in the vehicles being seized. However, the person is required to continue paying the remainder of instalments or at least a few more instalments. Ultimately, the borrower does not have a vehicle but must pay instalments with interest and sometimes a seizure fee as well. The process of recovery leads to tense situations at times as the borrower loses the assets acquired.

"When you buy a vehicle after leasing it and don't pay the instalments, the people who seize it come

and take away the vehicle. They are making a complaint saying that we are acquiring these vehicles peacefully. But even though they say they will take it peacefully, they don't do it. What or who wants to give a vehicle peacefully, that they could have paid the finance. Some people who are unaware of the rules understand that it was taken because they didn't make the payments. People who know a little about the law come and complain that their property has been taken by force". (KPI, Anuradhapura)

In Kandy, a three-wheeler driver who bought a vehicle on lease was paying a monthly lease payment but after the first three months it needed repair and he was unable to continue repaying the lease. Subsequently, the finance institute seized the vehicle. While he understood why the vehicle was seized, he noted that the provision of a grace period before the vehicle was taken away would have helped him. (Case study, Kandy).

After a vehicle is seized, it is 'resold' by the financial institution, usually at a lower price than its original price, and the original lease holder has to settle the loss incurred by the institution, even though he or she had already lost possession of the vehicle. Disputants interviewed for this study claim that the 'resold' price is not disclosed to them, and that therefore they are made to repay an amount that seems arbitrary from their point of view. When this practice was discussed and clarified with the MFIs, some stated that they had stopped the practice of seizing vehicles over the last few years. Others explained that when seizure of the vehicle is imminent, some borrowers remove parts of the vehicles such as the tyres and that what they hand over is of much less value than what it should be, based on the period of use. Therefore, the original lease holders are held responsible to repay the 'value that is lost'.

Financial institutes that provide hire purchase and lease offers as a fast method of owning vehicles such as three-wheelers and bikes, do not factor in a person's ability to pay back resulting in a high likelihood of payment defaults.

6.3 Nature of financial disputes in the study districts

Case categorization/identification and reporting: A pertinent question during this study's empirical phase is how cases are identified and categorised as financial disputes. The question arises cases are sometimes reported as family disputes or assault, while the root of the dispute is a financial dispute. The primary parties to the disputes are typically the dealing institution (Financial institutions such as Banks or credit companies) and the customer or the borrower. In relation to group loans, a collective or society represented by the leader of the society such as the President, will be the disputing party.

In terms of the **nature of financial disputes**, identifying the division between informal and formal borrowings is a big challenge. There is a perspective among borrowers (Anuradhapura) that all private financial institutes are informal as opposed to state banks. In this context, informal or private entity borrowing is preferred as it reduces paperwork and issues around guarantors. Several financial institutions provide microfinance and leasing which is not officially registered with the Central Bank of Sri Lanka due to the absence of proper regulations. These institutions can register and establish a company with the Divisional Secretariat with a mere Rs. 2000. The lack of regulation poses a significant issue amongst the estate sector population, who are offered loans from Rs.15,000 – Rs.100,000 on a weekly or monthly basis. These institutions often target people who lack financial knowledge. The interviews with the Key Persons indicated that the proof of residency issued by the respective Grama Niladari is used to ensure the borrower is from the area. This ensures that the probability of default is minimized by limiting non-residents and temporary migrants from obtaining loans.

6.4 Causes of financial disputes

Many KPIs in the study districts highlighted a gradual but clear decline in aggressive lending practices by MFIs, which peaked around 2019. Some KPIs identified this phase leading up to 2019 as characterised by MFIs 'making people lose their fear of debt' ('*nayata thiyena baya nathi kara*') through the proliferation of MFIs. Despite the decrease in borrowing since 2019, non-repayment or delays in repayment of existing loans, especially those taken a few years before the pandemic, were highlighted as the main reasons leading to financial disputes at present.

Primary data reveals that one of the main causes for non-repayment was the COVID-19 related slowdown in economic activity compounded by the current economic crisis, which induced consumption-related borrowings. The COVID-19 period saw default on borrowings increase between 2019 and 2020 but a slight decrease was also pointed out in selected districts such as Anuradhapura. Nevertheless, financial disputes have increased from 70% to 77% (as a proportion to the total disputes received for resolution) with the collapse of the economy (KPI, Kandy). The COVID-19 crisis mostly affected self-employed groups; those who took loans to develop home-based enterprises such as small tourism or hospitality related businesses, small businesses preparing food items, poultry farm owners and small service providers such as service providers for weddings.

People faced many issues due to the debt moratorium introduced during COVID-19. Many found it difficult to repay debts since lending institutes demanded the arrears in full at the end of the moratorium. According to the disputants, state banks reduced the interest rate during crisis periods, but the MFIs did not. As per the KPIs, although borrowing in the form of weekly loans reduced, the overall rate of borrowing among people increased. There are also a high number of credit card customers who have defaulted on making credit card payments due to the pandemic and the economic crisis (KPI, Colombo).

Furthermore, the number of people wanting loans has increased due to the economic crisis, indicating a potential increase in financial disputes in the coming months and years. For example, KPIs report that many individuals in the Anuradhapura and Monaragala districts are trying to obtain residence certificates, which are mandatory to apply for a loan. As the excerpt below illustrates, the lack of financial resources and employment opportunities pose significant challenges, especially in agricultural and fishing communities where they lack a monthly income and are faced with exponentially high input costs. People currently struggle to pay loan installments due to decreased incomes or profits; borrowing for consumption within such a context further aggravates the situation.

"People in the Negombo area hardly earn a monthly income and very few people have a regular monthly income. Most of the villagers, around 95%, work as fishermen. If they don't earn anything on a particular day, they either borrow money privately or purchase things on loan from a shop and fulfil their daily consumption. When they receive some money, they use it to repay their debts. However, the amount they earn is often insufficient to clear the accumulated debt they have taken over time fully, and they are in a perpetual debt trap". (KPI, Negombo)

Multiple borrowing from different sources is not a new phenomenon and increased to a certain extent during the pandemic. As per KPIs, multiple borrowings have increased rapidly as a result of the ongoing political economic crisis, often to repay an existing loan. Before the onset of the crises, these borrowers had been able to repay the loans through the income that they generated and they expected to do the same with the new borrowings as well. However, with livelihoods and incomes being affected in the face of the economic slowdown, repayment of the multiple loans has become almost impossible, resulting in financial disputes.

Case Study 1:

Nishadi and her husband had taken multiple loans to support their home-based business of sewing pillowcases and have three 'active' loans at present. But with COVID19 and the economic crisis, the demand for their products decreased while the input costs increased. The family comprises of seven members including three children who are still studying. She explained how they ended up with multiple borrowings:

"We took loans to buy material for the pillow cases. But on certain days, we come back from the neighbouring markets with zero products being sold. From the little money we get from the sales, after we pay for food and children's education, there is nothing left. So at the end of the month, when there is no money to buy material, we have to borrow again. This is why we keep taking multiple loans. They (MFIs) also come to our homes and give loans, so we also take them. We take the loans in the hope of coming out of this mess one day, but we are still stuck in the same place."

She has to pay Rs. 600 per day to service the 'daily loan' she has taken, for which the capital is Rs. 15,000. She states that at the end of the repayment, she would have paid Rs. 21,000 in total and that the interest rate is about 17% to 18%. Her loan from Samurdhi is deducted from her Samurdhi allocation. She stated that she receives Rs.1400 per month from Samurdhi and that the whole amount is deducted for the loan. She also stated that she received the sewing machine through Samurdhi, on a partial payment arrangement of 50%, but that now she is being told that as she got the sewing machine, her Samurdhi benefits would be stopped.

"I went to the Samurdhi bank today, after the ninth month last year, to see whether there is any money left in my account. I have taken a loan of Rs.70,000 and a loan of Rs.10,000. I thought there would be some money left in the account, I stayed there in the Samurdhi bank queue since morning, and came home empty handed, hungry and with a headache. For the Rs.70,000 loan, the monthly repayment is Rs.2,500, so on top of the Rs.1,400 we have to pay extra too. This is why we let the bank continue to deduct the instalments and we thought since we did not receive Samurdhi benefits for many months now, that by now the loan repayment would be complete and there would be some money left in the account. But that was not the case."

She has Rs. 6,500 to repay a Rs. 50,000 loan that she has taken from a certain MFI, and she says that is negligible and that she can pay it off. She explains her interactions with the recovery officers:

We somehow repay the instalments because those who collect them come in front of our houses and shout at us. We also try to somehow finish these loans, even if we do not have food to eat. Their (recovery officers) behaviour is very different when they come to collect instalments, not like when they gave us the loans in a very friendly manner. They are like heroes when they come to collect money, they come here and shout, 'even if you do not have food to eat, we need the money'.

She has been taken to the courts by a certain cooperative bank, due to non-repayment of three loans. As a result they completed the repayment, and paid Rs. 79,000 in total for a loan of Rs, 25,000, as per her calculations. She completed the repayment of this loan by taking another loan.

Relationship between financial literacy and financial disputes: Most financial disputes have occurred due to the misalignment in understanding or interpretation of the contract or conditions of agreement between formal lenders and borrowers. Loan-related contracts and documents often contain sector-specific technical terms and jargon that a layperson does not fully comprehend, and lenders fail to explain these terms and conditions to the prospective borrowers. Even in urban settings where it is assumed that the borrowers are financially literate, there is a distinct issue where the borrowing party does not fully understand the terms

and conditions of the contract. This is the case even when the contracts are drawn up in local languages.

In all the study districts, one major observation arising from the empirics is the low levels of financial literacy among borrowers. Most borrowers have no knowledge or more specifically a recollection of the structure of loans and the processes of obtaining loans. Most disputants interviewed opted for what could be termed 'distress loans', where the objective is to take the loan and sign the agreement as soon as possible without clearly understanding the terms and conditions. Some people in these villages still use their fingerprints in lieu of a sign, therefore, they are not able to understand what is written in the contracts. Most borrowers from the villages are unaware of how interest is calculated. There is no time for borrowers to read and understand the terms and conditions, and in instances where they cannot figure it out themselves, they are not given the option to have the details explained to them.

Another critical issue is that most of the documentation and forms, related to borrowings from MFIs and banks are in English. In fact, almost all respondents of the current study who had entered into credit, hire purchase or lease agreements from MFIs and banks stated that the documentation was in English, which they could not understand. As per a KPI from a state bank in Anuradhapura, initially, there were loan application forms in Sinhala, but after the introduction of networked and centralized information systems and computers, documentation became English-centric. They are automatically generated from an online document repository in English. Further, only basic information is given to the borrowers at the initial stages of processing the loan, and that too verbally. The exception to the forms being in English are documents related to agricultural loans by state and private banks and micro-level loans provided by societies/CBOs/NGOs, which are in Sinhala and Tamil.

Further, communication of interest revisions is now conducted via short message services (SMS), in English, by certain banks and MFIs. The study team were presented with these SMS messages by the respondents on several occasions during the study and were asked to explain what the message meant. This SMS does not specify the changed interest rates, instead it requests the borrower to contact the bank or MFI for more information. In general, this misalignment in understanding the conditions of the agreement, either because of the language in which the documentation is provided or due to other reasons, should be taken into consideration when analysing the interests of the different parties to the dispute during the mediation process.

"Banks have a form that shows the loan amount, interest and unpaid instalments. Some people come to know about the interest when a bank official comes, calculates the amount to be paid and explains it at the CMB". (KPI, Kandy)

The lack of systematic provision of documentation and receipts as evidence of loan, lease or hire purchase repayment also contributes as causalities for financial disputes. For example, Figure 6 below illustrates a receipt provided by an MFI, which as per the disputants, fades away within a month at most. Unless the borrowers are sufficiently astute to take a photocopy or a photograph of the receipts, they have no 'proof' that they have paid the required repayment, and if a dispute arises, they have no means to prove their case. Figure 7 illustrates how the calculation was made for a 'fine for late repayment' for a borrower. Apart from this, the borrower received no other communication on the fine for his last instalment, which doubled after a month's delay. Practices such as these contribute to financial disputes and should be analysed and taken into consideration during the resolution process.

Figure 6: Repayment receipt

ORIGINAL RECEIPT

DATE/TIME : 23/05/22 11:33:42
 TERM ID : 17B5AB5CD78938AD
 REPT NUM : RCRFW69209
 CON. NO : PWTWA034981
 CSU NAME : -
 CUST NAME: R. SUDARSHAN
 TYPE : Rental/ONLINE

Received a Sum Of 22,000.00
 In Cash

Details	Rental
PWTWA034981	22,000.00
Full Balance	220,240.89
Arrears	(21,671.11)
Total	22,000.00

Cashier User : anjanadh
 This is a Computer generated invoice
 and does not require any stamp
 or signature.
 ***** CUSTOMER COPY *****
 THANK YOU

Figure 6: Repayment receipt

Handwritten calculations and notes on a receipt:

8258.8
 + 4129 - 2nd 8
 86717 (May)
 (15000)
 71717
 + 3585
 75302 June
 - 15000
 60302
 15000
 x 4129
 x 10871
 x 3585
 x 1415

While there are instances where programmes to increase financial literacy were conducted, they were not systematically implemented nor sufficiently regular or comprehensive. These programmes have been implemented through government structures and officers such as the Women Development Officer (WDO), especially during the pre-pandemic period but have been less regular since then. NGOs and CBOs interviewed confirmed that they have also conducted awareness programmes, especially stressing the importance of a good understanding of the repayment terms. For example, in Gampola, an Entrepreneurial Development Officer (EDO) conducts financial literacy programs for estate communities, but the EDOs find it difficult to engage people given their long work schedules in the estates. On the other hand, young fishermen in Negombo seem to possess financial literacy, and many have a considerably higher education level. The older-generation fishermen may have less formal education, but they possess extensive industry experience, making them financially literate.

"It would be even better if we could organize workshops together and then spread awareness through various media about financial literacy, however, it is difficult to gather fishermen. If we give a subsidy, they will come. Further, they are really busy since fishermen in large boats usually spend a month or one and half months at sea, while smaller boats do not go to sea only on Sundays". (KPI, Negombo)

"Negombo is an area with a huge level of diversity. Therefore, financial literacy varies according to lifestyle, education level and social status. Thus, this can also be considered as highly personal. However, people in Colombo have a better state of financial literacy". (KPI, Colombo)

Some of the **recovery practices** of certain financial institutions cause or aggravate disputes. In most cases, these recovery practices relate to 'small group loans' disbursed to women, generally collected through house visits. In some cases, small groups of five to six members are formed by an individual who requires a loan, comprising neighbours/relatives/friends. Often these small groups are amalgamated into a bigger group as

well. These small groups, engage directly with banks and financial institutions to obtain the loans often via the 'group leader' or the individual who formed the small group. 'Recovery officers' visit the residence of the borrower, often the group leader, for collection of loan instalments, daily, weekly or monthly, as per the terms of repayment. In case of defaulted payments, for group loans, the bank or financial institute will visit the defaulters' home to recover the dues. These recovery visits usually take place before 5 pm., a practice that the Governor of the Central Bank regulated. However, instances where these visits took place after 6pm, and was therefore seen as being 'coercive', in the sense that unless a payment is made, the officer will not leave the house, was highlighted by KPI and disputants. Another critical issue is that, although most of the microfinance recipients are women, the MFIs/banks do not employ women recovery officers. These practices go on to contribute to other disputes such as family disputes and suicide attempts (some respondents indicated that these practices may provoke them to think about attempting suicide), which will be discussed in the section below.

However, the case studies revealed that not all banks/MFIs follow the same recovery practices. While some banks and MFIs adopt coercive practices as discussed above, some banks/MFIs take concerted efforts to adhere to ethical recovery practices and guidelines. For example, some banks/MFIs do pay special attention to the vulnerable position of women-headed households. In these instances, the banks ask the cluster leader or a group member to accompany the male recovery officers to avoid further complications.

Apart from the types of disputes and causes mentioned above, specific types of financial disputes were discussed in the study districts. These include disputes arising from liquor credit, where liquor is supplied to shop owners on credit and is solely based on trust. There is no documentation apart from the invoice that is issued and is the only evidence of the transaction. The invoice is printed in English and normally, buyers/shop owners do not ask any questions. There are no problems with their financial management, and since they are conducting business, they have sufficient financial literacy (KPI, Colombo). Another such type of dispute reported was of contractors not delivering on their construction contracts to build roads or tank bunds. The Agrarian Services Centre and the Farmer's Society are often parties to such disputes.

6.5 Financial disputes leading to other types of disputes and conflicts

It is not uncommon for borrowings to be intertwined with family problems. Primary data reveals that some of the loans are taken based on close societal relationships and may be borrowed from friends, relatives, or community members or as groups of friends, neighbours or relatives. When difficulties arise in repaying the loans, relationships can be strained leading to family disputes and strained social relationships, as the quote below illustrates. Intra-family disputes, where the husband is unaware of borrowings by the wife were also reported both by KPIs and disputants. These borrowings are mainly for household consumption or supporting school-related expenses for their children. This could mostly be due to the increasing cost of living compared with their income.

"I took this loan with three others, as a group loan. I took it because other people in this area took this same loan. Those who took the loan along with me completed the repayment, but I could not complete it. They were told (by the MFI) that if I don't repay, they will also be taken to courts, because of this they came and fought with me. They blamed me saying that 'you have taken the loan and eaten it up, but we can't languish at the courts because of you, finish it off'. (Case study, Kandy)

These borrowing patterns resulted in undue assumptions being drawn about women being at the forefront of taking loans as stated by one *Grama Niladhari* '...most women tend to take loans from these companies than men. They were addicted to taking loans' (KPI, Anuradhapura). However, a deeper understanding or willingness to understand what triggered these borrowings, or interventions to introduce alternative lending sources which are less predatory seemed to be lacking in most instances. Instead, 'responses' from some lending institutions seemed to be embarking on gender discriminatory practices. For example, in Kandy, an

interviewee representing a private credit institution noted that since the women are less educated and borrow without the knowledge of their husbands, the institution insists on the husband or a male member of the family signing the loan agreement.

One exception to these practices and responses, was the lending facilitated through women's and other community-based organisations/societies, under the purview of the Women's Development Officer, and other Development Officers, attached to the Divisional Secretariat. In almost all the study sites, the concessionary nature of these loans, specifically in interest rates and repayment terms, including those who delay payments or are unable to repay due to an emergency or changing of socio-economic circumstances was discussed (illustrated below in case study 2). These women's societies and other CBOs have also conducted awareness programmes on predatory loan schemes and high interest rates offered by certain MFIs and informal lenders.

Case Study 2:

Shanthi had owned a small snack making business (*bite*) since 2014, but with COVID19, her business had slowed down. Prior to the pandemic she had received orders every day, but in the last two years, this had reduced to about two orders per month.

Since the slowing down of her business, she had faced difficulties in repaying the loan she had taken from a CBO. She stated that she is well aware that she has to repay the loan, in whatever capacity that she can, and stated that the flexibility provided by the CBO office bearers and the reminders and understanding of the government officials monitoring the CBO was a great relief to her. She stated that she prefers to resolve disputes like these within the CBO, without escalating them to mechanisms and structures outside the community.

"The Development Officer (DO) at the DS informed me that my repayment was delayed, and reminded me to pay the instalments. He called me also and reminded me. When I met the treasurer, she reminded me as well. She told me to repay in whatever capacity I can, even in small amounts, like Rs. 500 or Rs. 1000. We are still members of the societies in the village and we meet the treasurer and other office bearers when we go for the meetings. They are never aggressive towards us...even the DOs never use any strong words against us. They encourage us to be part of the society and remind us about the repayments. We discuss these repayment issues in front of all the members, it is nothing to be ashamed of, the matter is not about stealing or anything...Everyone faces issues like this, we have taken loans and we need to somehow repay them."

Migration for work within the country and overseas, by both men and women was also linked to the inability to repay loans by KPIs and disputants interviewed for this study. In one case, a disputant from Gampola, faced with debt that could not be repaid, migrated overseas to the Gulf, despite being chronically ill with a spine injury. What made her position even more vulnerable is that she migrated for work on a visit visa, putting herself at great risk of being exploited and was subsequently unable to secure a job for more than three months, during which time she could not remit any money. As a result, fines on late interest had doubled, trapping the whole family in a vicious cycle of insecurity. People also borrow money to pay employment agencies to secure foreign employment, but complaints are not made pertaining to such matters.

Multiple borrowings leading to suicide attempts or 'thoughts of committing suicide' were cited by KPIs across all the study sites, with examples being given in some study sites. In at least two cases conducted for the current study, the disputants alluded to 'suicide-like' thoughts, illustrated in the quote below. A few KPIs also pointed out instances where women borrowers have had to satisfy the sexual needs of moneylenders,

resulting in critical breakdowns in individual and family welfare. However, the current study did not come across such instances through interviews with disputants, in case studies.

I had to borrow from so many people to settle these loans. At one point I thought I will not be able to pay this debt back even if I work rest of my life. Once I was also thinking of attempting suicide. Then I thought about my children and family. (Case study, Kandy)

6.6 Defining financial disputes

While not specifically part of the study's objectives, this study attempts to contribute to understanding the diverse notions behind the term 'financial dispute' to provide a few suggestions to arrive at a context-specific definition of this term. In the Gazette dated No 2259/11- December 21, 2021, the term is defined as,

"Disputes arising from a financial business transaction between individuals or institutions and between individuals or institutions. For the purposes of this Order 'institution' means a company or a body of persons or corporate sole."

It further notes that for a financial dispute to occur there needs to be a transaction that involves finances, non-payment or borrowing that has at least missed one instalment, a communication by the lending institution or individual, issuing or 'red notice' by utility service provider (electricity, water) or the inability to pay service providers (i.e., salon, tuition teachers).

The study reveals that a financial dispute is usually considered a breach of agreement/ promise or a breakdown in trust, in layman's terms and that the dispute should not merely be defined around money or finances. Financial institutions based their definition of a financial dispute around their inability to ensure financial recovery and a formal notice of the breakdown in the agreement and trust was required to initiate a resolution process. It was also noted that financial disputes are caused by a diverse range of factors, including low financial literacy. They manifest in indirect ways such as physical assault, intimidation, family disputes, psychological stress, and are characterized by an imbalance in the power relations between the borrower and lender.

Thereby, a financial dispute could be defined as,

'disputes arising out of a financial transaction between individuals and/ or institutions that result in a breach of agreement/ trust resulting in the inability to ensure financial recovery, which could be caused by diverse reasons and manifested through indirect ways (physical assault, intimidation, psychological stress and imbalance in power relations)'.

6.7 Mechanisms used to resolve financial disputes

The research found that financial disputes are resolved using multiple mechanisms such as formal judicial processes, government employees, Police, CMBs, producer groups, civil society organisations, Naya Sahana Mandalaya (Debt Conciliation Board), and financial institutions. Although each mechanism takes up financial disputes, none are purely dedicated to resolving financial disputes. Likewise, the Department of Debt Conciliation Board is dedicated to address the indebtedness caused by loans obtained on the security of deeds on conditional transfer of immovable property. Debt conciliation does not mediate financial disputes other than those relating to immovable properties. Each institution and mechanism adopts a unique approach to dispute resolution. Alternative dispute resolution mechanisms play a significant role in settling financial disputes, especially disputes with a value of less than Rs. 500,000.

The financial institutions have internal mechanisms that they use initially to deal with the financial disputes that they are party to. Usually, a system-generated letter will be sent when the first instalment is not paid.

When subsequent payments are missed the recovery office will establish contact with the borrowers. The guarantor is informed from the second missed payment. Some financial institutions like the Bank of Ceylon (BOC) conduct recovery camps, which take place thrice a year. However, it should be noted that this practice can vary within the same bank and across different banks. The recovery camp is usually held at smaller branches and people who struggle to repay are invited to the camps where their issues are discussed. The banks try to help self-employed borrowers develop their businesses to maintain cash flows in a non-traditional way. Another good practice adopted by the BOC is a revival loan system for people who have failed businesses. The Central Bank has recommended that other banks adopt this practice of business revival, particularly post-COVID and specifically targeting the tourism sector. The Financial Ombudsman is another mechanism that has legal authority and seeks to protect the rights of the guarantor and the debtor. Despite this, not many banks adopt such practices due to the additional efforts required to organize them. Financial institutes adopt strategies such as debt restructuring, rescheduling and exit to deal with financial disputes due to lack of or delays in repayment. However, restructuring and rescheduling of the loans is subject to fluctuating interest rates in the market.

The study also noted that financial dispute resolution practices adopted by the same financial institution differ across the districts. For instance, while the Samurdhi bank in the Anuradhapura district approaches the CMB to settle financial disputes, it tries to settle disputes in the Polonnaruwa district using the bank's internal mechanisms. Given the nature of group lending practiced by the Samurdhi banks, peer pressure is used as a mechanism to enforce repayment.

Cooperative societies are empowered with an internally established dispute resolution process called *mudal theeraka mandalaya* and is not mandated to send financial disputes to the CMBs. Discussions with the Negombo South Fishermen's Co-operative Society indicated that the society has an internal dispute resolution process. An officer functions as an arbitrator or adjudicator, and the two guarantors and the debtor are present during the sessions. Therefore, in such instances, cases are not referred to the CMB. The credit offered by Community Based Organisations such as the women's societies often tend to settle disputes within the CBOs. This process is usually recommended by the Women Development Officers (WDOs) who are overseeing officers based at the Divisional Secretariat office. An internal process is adopted to avoid delays and amicably settle the disputes as per the following excerpt by an interviewee. The members feel that such an internal process is vital since the office bearers understand the reasons and the context in which the repayment issue took place.

"It is better to settle through the CBO, there is no need to go to the CMB. If it is a loan taken via the CBO, we have to complete the repayment through the COB. There is an extra expense attached to going to CMB also, so if it better to repay in any way we can, even Rs. 500 at a time and resolve the issue within the CBO". (Case study, Anuradhapura)

6.8 Community Mediation Boards (CMBs)

Discussions with the Chairpersons and Mediation Training Officers (MTOs) of the CMBs across the districts indicate that an overwhelming number of financial disputes are directed to CMBs by various actors such as the financial institutions, police, local CBOs and women's collectives. In some instances, when cases are received from the police they are presented as assaults or fights. Therefore, there is a need to understand the cases better to identify the causes of the disputes. Sometimes financial disputes under Rs. 500,000 are reported via the police and some police officers try to settle the disputes, specially those financial disputes that involve violence or assault. These cases are referred to the CMBs if this attempt at resolution fails. However, Key Person Interviews with the Police officers indicated that the Police also refer to CMBs without

trying to resolve the disputes if they identify the cases as straightforward financial disputes below Rs. 500,000.

Although the statistics are not available to analyse the proportion of financial disputes in relation to the total number of disputes, the Chairpersons indicated that more than 50% of the disputes received by CMBs are related to financial disputes. In some district capitals such as Anuradhapura, this proportion was close to 80%. Due to this case volume, CMBs have taken several measures to manage them by imposing an upper limit on the financial disputes taken each day or dedicating a day in each month to take up financial disputes. For instance, in Anuradhapura, a single financial institution can submit up to 10 cases. Once these cases are resolved and a certificate is issued, the institution can submit new cases. In other CMBs, an additional day per month is allocated to resolving financial disputes, so as to manage the caseload. Financial institutions also noted that the ceiling on the number of cases accepted by the CMBs per month constrains their business since it prolongs the recovery process. When CMBs impose such case limits, it can cost the second party to the dispute as well. For example, second party disputants noted that the interest penalty imposed on them continues until the case is settled. As the number of disputes accepted from financial institutes is limited by the CMBs, a backlog builds up in the financial institutes. Representatives of the financial institutes state that in certain cases, summoning a disputant may take about 6 months to a year. Therefore, financial institutions feel discouraged by the slow progress of the CMBs. The fact that the CMBs did not operate during the COVID19 pandemic also contributed to this backlog of cases. As a result, some financial institutes approach CMBs intending to get a non-settlement certificate that allows for litigation. It should be noted that the CMBs set a ceiling on financial disputes to allow space for other types of disputes to be discussed.

One pertinent issue linked to financial disputes at CMBs is the no-show of second-party disputants. As per chairpersons of the CMBs in Anuradhapura, Polonnaruwa and Kandy, the participation rate is as low as 5%. This lack of participation is linked to a lack of awareness of the purpose and process followed by the CMBs, willful defaulting, lack of clarity of invitation letters, and invitation letters not reaching the disputants. Disputants or borrowers providing inaccurate residential addresses or those living on rent and shifting houses after obtaining and defaulting on the loans, were mentioned by the KPIs as a deterrent to the resolution process. The interviewees also mentioned that many are unaware of the mediation process and that if they reach out to a CMB, they could solve financial disputes of up to Rs. 500,000. The administration tasks related to sending invitation letters consume considerable effort, time and cost for each CMB. This effort is wasted when participants do not show up.

However, mediators noted that the settlement rate reaches above 90% when all parties show up. The mediators play a facilitative role in settling these disputes. The manner in which this facilitation takes place, specially within interest-based mediation, is discussed in section 6.9 below.

Furthermore, the CMB officials state that a no-show for three consecutive meetings that lead to the issuance of non-settlement certificates affects the overall performance of the CMBs. The officials feel this situation contributes to the increased number of unsettled disputes administered by the respective CMBs. In addition, when financial institutes refer these disputes to the courts, the courts are overburdened, defeating the purpose of referral to the CMBs. Private financial institutes direct disputes to the courts after attempting to resolve them through the CMBs. The institutes prefer to resolve disputes through the CMBs. Disputes of more than Rs. 500,000 could previously be directly referred to the courts, however, more disputes are now being referred to the CMBs. A mediator noted that the number of cases which are solved or not solved affects the CMBs assessment.

“Some parties who went came for one or two mediation sessions stop coming for any further sessions without informing us. Sometimes this is because they have resolved the dispute among themselves, but do not inform us that they have done so. We put those cases in the non-settled cases group

because we don't know the situation. So, the number of non-settled cases is becoming high, and it will directly affect the reputation of the Mediation board". (KPI, Anuradhapura)

The involvement of financial matters and financial institutions can run the risk of corruption and related malpractices such as facilitating the discussion so that the settlement benefits one party. To prevent and mitigate such practices, the CMBs adopt strict processes regarding financial disputes. One important practice adopted by many CMBs is ensuring that mediators do not handle all the cases from one financial institution. Another practice adopted is to let the second disputing party select the mediators. Further, the CMBs allow the second disputant party to discuss their issues and ensures that the financial institutions listen to them. However, the study team noted that in certain cases, donations such as stationery and storage cabinets from financial institutions that refer cases frequently to the CMBs are accepted. When these donations are showcased with labels attached, the unbiased processes and outcomes of CMBs are compromised opening up potential allegations of corruption, since it creates a sense of mistrust in the other disputing party.

Most interviewees felt that CMBs are very effective in financial dispute resolution. However, several constraints were highlighted by the KPIs due to the limited financial resources allocated to the CMBs to carry out everyday activities. It is noted that priority is not given to power in the CMBs, both parties are given equal opportunity to speak.

"I think solving small-scale disputes is the most important thing to do. As the problems can be multiplied in the future. A mediation board is good for solving those problems as it can control the disputes. I identified the mediation board as a primary court. If we go to court, our time and money will be wasted and maybe they will not give us a proper solution". (KPI, Anuradhapura).

"...within the community mediation board of Negombo, around 80 cases related to financial disputes are being heard on a monthly basis. Here, the mediation board comprises of well-experienced mediators over years and years". (KPI, Negombo)

6.9 How are disputes resolved?

CMBs adopt an interest-based mediation approach to settle financial disputes. The empirics raised some interesting questions in relation to interest-based mediation. One question that emerged was in understanding what a win would mean for a financial institution, which could differ from what the borrower might consider a win. In financial disputes, one party may not see the outcome as a win and there is a compromise by the other party. For example, could debt restructuring be considered a win-win?

"In mediation, parties are unsatisfied each time because both parties expect relief from the CMB. They hope to get solutions from the mediators. And the decisions are based on the understanding level of the parties" (KPI, Colombo). Interest-based mediation, in principle, needs to facilitate an in-depth discussion in such a way to understand the root cause of the dispute and address the root cause. However, in instances of financial disputes, addressing the root cause may not be practical because the dispute occurs due to a breach of a contract (formal or informal) and non-payment of agreed instalments. When the first party to the dispute is a financial institution, the contract details are often not shared with the mediators. The financial institutions visit the CMBs with a debt restructuring plan to be implemented. Therefore, the discussion generally revolves around debt restructuring rather than addressing the root causes. As the quote below states, the reason for borrowing is financial need and defaulting becomes inevitable due to various household and external conditions. The mediators cannot ask the lenders to write off the loans or get rid of the existing contract since the contract is a legal document signed by both parties. Therefore, the mediators play a facilitative role in debt restructuring.

“The primary reason is the need of the second party and nothing else. As in other disputes, finding the root cause in financial disputes is impossible. It is the need of the second party that had caused the dispute.” (KPI, Anuradhapura)

As financial institutions are mandated to take disputes arising out of financial transactions below Rs. 500,000 to the CMBs, their primary intention is to get a ‘non-settlement’ certificate so that the cases can be referred to the courts. This approach to CMBs limits the scope for an in-depth discussion on the root causes. However, it should also be noted that not all financial institutions behave in this manner. Some financial institutions with a developmental orientation honestly attempt to resolve disputes at the CMBs without going to the courts.

As far as financial institutions are concerned, any form of a debt restructuring agreement with the second party is considered a win. Similarly, the second-party disputant who has defaulted sees the debt restructuring as a relief as well, because the financial institutions provide some ‘concession’ in the new payment plan. These concessions include interest waivers, removal of interest on interest, extending the payment period, bringing the instalment value down and offering a new loan to repay the existing loans. Although the reason for the dispute is discussed briefly, this discussion does not affect the repayment plan, as discussed above, the disputant is contractually bound to pay the loans back. When asked, the second party disputant who went to the CMBs to resolve financial disputes indicated they were satisfied with the outcome of the settlement. However, this does not address the root cause of the dispute. Case study 3 below is an illustration of the settlement of disputes through the debt restructuring process.

Case study 3:

This case study illustrates the experience of Sewwandi who had borrowed from a state-owned MFI institute and faced a dispute due to partial non-repayment of the Rs.50,000 loan as the business was affected by the COVID19 restrictions. Despite the concessions given by the government during COVID19, the financial institutions imposed penalty interests which put the borrowers in a difficult position to repay. As a result, the dispute was referred to the CMB by the financial institute and the disputant showed up after receiving the invitation letter.

Although Sewwandi has heard about the CMBs as an entity that resolves disputes, she has not been to one before. This first impression has been positive. She felt the mediators listened to her sufficiently and gave her an opportunity to discuss her issues related to default and the reasons for non-repayment. She stated that;

“We discussed the installments interest and what amount I should pay to the bank. Officers from the bank forced us to pay it back as a full amount. But the mediators stopped that and told them to give us a grace period. Then they told us to try to pay the bank as much as possible. Having said that, the bank officers agreed to it.”

She felt that she was treated equally and respectfully during the entire session. Further, she was also satisfied with the outcome of the discussion. Both parties discussed and agreed on a repayment plan. The fact that the repayment can be negotiated at the CMB is considered satisfactory by the disputant.

“The solution given by the Mediation Board is good. If we go to the financial institution, they will tell us to pay the entire loan at once. However, when we go to the mediation board, we can suggest the amount we are able to pay.”

An interviewee felt that the spectrum of interest-based mediation strikes a balance between law and social obligations within the process of mediation. Apart from interest-based mediation there are other ways of settling disputes such as using power and a rights-based approach. Solving the issues related to financial disputes are crucial to solve in the current context. Power is interpreted as a win for one party and loss for the other party, but interest-based mediation creates a win-win situation.

The CMBs do not have a formal mechanism to follow-up the cases once they are settled. There are instances where the agreements reached at the CMBs are not followed by the parties. Changes in circumstances from the time of settlement to its implementation is often the case. The disputant who took part in the case studies stated that although he agreed to pay the amount during the discussion at the CMB, changes in the overall economic situation in the country and the business environment contributed to non-repayment of the loan obtained. His quote states;

"I agreed to settle it as a one-off payment at that point in time. But with the current circumstances of the country, I can't repay the whole amount as one instalment. This is the biggest issue now." (Case study, Anuradhapura)

It should also be noted that there are several instances of willful non-repayment despite the agreement reached during the mediation process. Lack of compliance, lack of the legally binding nature of settlement and challenges in enforcing the settlements are reasons for such breach of settlements.

Key challenges faced by CMBs

A mediation board is appointed for three years. However, due to the current economic crisis, as per KPIs, the appointment of new boards and the provision of training for these new boards has been delayed.

There is an issue regarding the lack of basic facilities and requirements i.e., stationery and infrastructure such as meeting venues that ensure the privacy of the proceedings. Most often schools provide their primary sections to conduct the mediation process. CMBs mainly function during the weekend at selected places like schools and temples and accessibility is sometimes an issue, particularly when the schools are busy with exams, sports meet, and other functions, and alternate venues need to be found during these instances.

"We used to have the CMB at the temple, but now we have it at the Buddhist college. Unfortunately, the facilities there are very poor. We are given the primary school area because the other halls are being used for exams, occasions, and other events. So, sometimes we cannot hold CMB on certain days. They have small chairs that make it hard for elderly people to write and sit comfortably. There are also many stairs, making it difficult for them to walk around. Additionally, the classrooms are small, so there isn't enough space." (KPI, Kandy).

Interviewees also felt that there must be some level of community outreach to educate people about the concept and advantages of mediation. The lack of awareness about the purpose, existence, process and outcomes of the CMBs contributes to a certain fear and uncertainty among the disputants. As a result, there are low rates of participation and non-compliance of settlements reached. The awareness activities can include organising workshops, seminars, and awareness campaigns in collaboration with local community centres, schools, or organisations. Social media is one of the best ways to improve awareness about the mediation process such as "Gini Sisila" program. Traditional media like TV, radio, and newspapers could be used to sensitise those who do not use social media.

Since the mediators at the CMBs are mostly retired personnel, the average age tends to be above 60. While noting the emphasis is on the importance of recruiting experienced personnel to mediate disputes, the need to recruit and retain young dynamic personnel was also raised by many disputants. However, an important point to consider when recruiting younger mediators is that these mediators may not contribute sufficiently to the mediation processes due to their work, personal and other commitments and responsibilities. The interviewees also noted that this practice is an implicit strategy to keep retired people engaged and active post-retirement, provide companionship and the feeling that they are contributing to the society. Nevertheless, this conflicts with the need to appoint people who are up to date in terms of language skills, financial know-how and technical skills. Similarly, the presence of women mediators in these boards is also

low. This low level of participation is linked to dual or multiple burdens the women face due to paid work or unpaid household care duties.

Incentivising the mediators to carry out their tasks effectively has been a continuous challenge. One such incentive is the travel allowance paid to the mediators. The mediators welcome the recent revision of this allowance. However, most mediators believe that the allowance paid at present is insufficient to cover travel costs and this amount needs to be reconsidered. If the allowance for a SMB is increased, it must also be reconciled for the CMBs. Further, serving as mediators is considered an honorary service, enabling satisfaction since the mediator is contributing to resolving the issues of the community members. There is an increase in social status and all previous mediators have been awarded all island Justice of Peace (JP) status. This is still pending for the new recruits, which has caused some dissatisfaction.

There is a need for mediators who can communicate in local languages, accommodate the language needs of the parties to the disputes and have enough members to contribute to the discussions as per the language needs (i.e. Tamil language). People are not always satisfied with the CMBs' ability to respond in Tamil. Although the respondents can communicate in Sinhala, they prefer speaking in Tamil because of the convenience of discussing in their first language and the ability to articulate better. This has implications for the outcome as well. Furthermore, sending letters in a language they don't understand affects privacy and paves the way for the issues to be known to others.

Due to a lack of space, others can hear the discussion because it takes place in open spaces. CMBs need a permanent location to help them store documents and record data. Currently, chairpersons must carry the documents home. This affects privacy as well. Not having a permanent location affects people's perceptions too.

6.10 Special Mediation Boards (SMBs)

In this section we present the findings from the study relevant to people's responses to the question whether a Special Mediation Board (SMBs) would be meaningful in resolving the financial disputes, the composition of the SMBs and their expectations of SMBs. While these questions are hypothetical in nature given that SMBs are not in operation yet, the responses are shaped by the processes and performances of the CMBs. The respondents could imagine the functions of SMBs as being similar to CMBs since CMBs are known to deal with significant volume of financial disputes at community level.

Discussions around the need for a SMB highlighted some interesting and diverse perspectives regarding the expectations of the SMBs. Some respondents felt that establishing a SMB to handle financial disputes can be a helpful approach particularly since it would enable a dedicated platform for resolving financial disputes efficiently and effectively. Generally, CMBs deal with various cases such as financial disputes, family issues, and divorces, increasing the time duration for cases to be resolved. Key Persons interviewed felt that by focusing on financial matters, the SMB can develop expertise in handling particular types of cases, leading to quicker settlements. According to the Mediator in Anuradhapura, financial disputes are the most reported category of disputes with 300 to 400 cases reported by around 10-15 institutions (including police) to the CMB daily. Therefore, a dedicated SMB would ensure the efficient resolution of cases.

A special Mediation Board can be a valuable resource for the communities, offering them a cost-effective and accessible means of resolving financial disputes and promoting fair and just outcomes. A Key Person from Anuradhapura felt that a SMB for financial disputes will command more importance and encourage people to approach it to resolve their disputes. In accordance with this a Key Person from Colombo raised the question whether an SMB should have the authority to enforce a penalty on those willfully defaulting, particularly since the service of the CMB is free and voluntary.

However, the empirical discussions also pointed to some alternative views and concerns in relation to instituting a SMB. They stated that the current CMB members are aware of financial mediation and are supported by officers such as the development officer and MTOs. These established structures are capable of dealing with financial disputes.

The views of the disputants on the SMBs are diverse. As indicated earlier, most disputants are unaware of the SMBs for financial disputes. However, as the quote by a disputant from Colombo district indicates, the disputants support establishing SMBs for financial disputes assuming that the dedicated mediation board will be empowered sufficiently to provide sustainable, fast solutions to the disputes.

"I have not heard of any kind of special mediation boards. But I agree with the idea that there should be a special mediation board to resolve the financial disputes. The reason is there should be some officials to look after the people like me who are not aware of the financial matters." (Disputant, Colombo)

An individual from Anuradhapura, who faced a financial dispute with a women's society and has never been to a CMB, expressed that SMBs would be effective in settling financial disputes.

"I think it's good to have special mediation boards, as they have been coming for a long time. I don't have any experience of going to mediation boards, but I think if there's a special mediation board for financial disputes, people will come to solve their problems and it will be more efficient. It may have good recognition too." (Disputant, Anuradhapura)

Another individual, who works in the tea estates in Kandy district and was referred to the CMB by the bank for default, indicated that she has never heard of SMBs. However, she opined that SMBs would be better if they speak on behalf of the people to settle their disputes.

"No, we haven't heard of that. I don't have much knowledge to say that but it would be good if there are people who can talk to our side." (Disputant, Kandy)

A disputant from Polonnaruwa, who was referred to the CMB by the electricity board for utility bill arrears, states that the CMBs are equipped to deal with financial disputes and a special board may not be necessary.

"I think there is no need for a special mediation board because this mediation board (CMB) is sufficient." (Disputant, Polonnaruwa)

Further, the disputants who participated in the study pointed out that mediators in SMBs should be knowledgeable on financial issues such as minor debts and debts management, be knowledgeable in English to review the agreements and documents, as well as adept in working with people of all genders, class and castes. The need to possess knowledge on diversity and have an adequate representation of women were also expressed. There was also a concern about the age of mediators since most CMB mediators are seniors. Therefore, the need for younger, dynamic professionals was highlighted. Some also believed that the mediators need to be well remunerated.

Given the increased demand for mediation services to settle financial disputes, the research team also asked the respondents, both the Key Persons and the disputants, of the feasibility of charging a fee for the services provided. Some interviewees felt that a way to support the mediation boards would be to charge a fee. However, when it comes to determining who should bear the burden of these fees, it's important to consider various factors including fairness, economic implications, and the potential impact on different groups of people. Charging fees from the institutions instead of individuals, particularly in situations where the institutions can afford to pay, can be seen as a more equitable approach and one that would help improve the resources available for the Mediation Boards, as the excerpt by an expert below indicates. It can help ensure that the cost is distributed more fairly and that those who can afford to contribute more do so.

However, it's also essential to consider the potential consequences of such a policy. For instance, if the financial institutions are required to pay fees, they may pass on these costs to their customers, which could indirectly affect individuals.

“Charging a fee would help with not just improving resources for the process but also legitimizing the process in the minds of parties. They would take the process more seriously. However, as different parties come from different backgrounds, this will have to be an area that will require some research to be undertaken in order to ensure that parties are treated equally.” (KPI, Colombo)

Currently, financial institutions are expected to pay a stamp duty of Rs. 5 per case if this is increased to Rs. 1000 and calculated at an average of 200 cases per year, the cost to the institution would be high. Additionally, the ability of institutions to absorb these fees depends on various factors, such as their size, financial resources, and purpose. When implementing a fee system, it's crucial to conduct careful research, analysis, and consultation with all the parties concerned to determine the most appropriate approach. Considerations should include the financial capabilities of both institutions and individuals, the potential impact on different socioeconomic groups, and the overall goals and objectives of the fee. This is also an important issue to consider when setting up SMBs. It should be noted that most financial institutions interviewed indicated that introducing a fee solely for the financial institutions is unfair and it will increase the burden placed on them. The willingness to pay among the financial institutions was low. However, they are willing to pay a fee if it contributes to a change in the current practice of mediation boards, efficiently settle cases by increasing the number of cases heard and provide faster settlements.

During the in-depth case studies, we asked if disputants are willing to pay for the services offered by SMBs. A majority of the respondents (51%) said they are willing to pay. However, most of them are willing to pay less than Rs. 200 with only one respondent willing to pay over Rs. 1000. This amount reflects the low level of socio-economic conditions of the people who access CMBs. A disputant from Kandy district, who has faced multiple borrowings, including borrowings to settle previous loans, stated that charging a fee would be an added burden on the people who are already affected by the indebtedness.

“We are already in deep trouble due to debt and charging a fee on people like us is going to get us into further trouble.” (Disputant, Kandy)

Figure 8: Willingness to pay for SMB

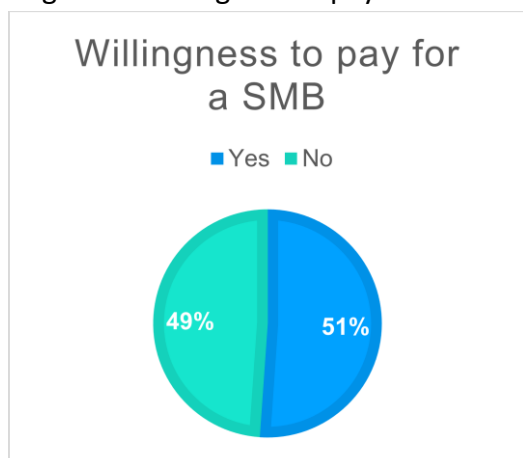
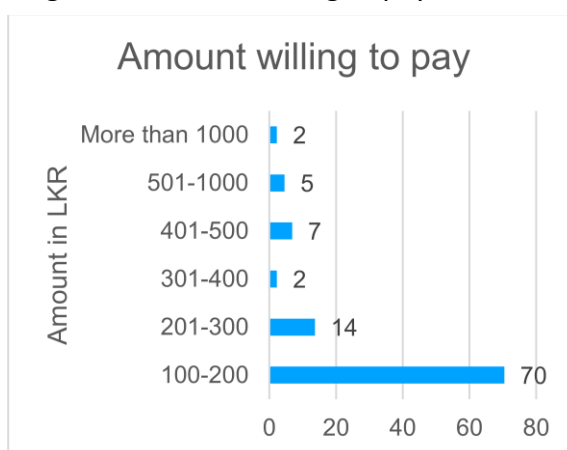


Figure 9: Amount willing to pay



The issue of no-shows or non-participation in mediation is also pertinent to the SMBs. In setting up SMBs, consideration must be given to implement measures that ensure participation in the form of an incentive or

penalty, while ensuring that invitations to participate in mediation must be encouraging as well as highlight the benefits of the resolution to a dispute.

Challenges in Setting up SMBs

Accessibility is a concern raised by several Key Persons. A SMB would be established on a district level to cover many areas and especially in non-urban areas of Anuradhapura, Polonnaruwa, Kandy and Moneragala. People have to travel long distances and spend money on travel even in the case of CMBs. Setting up a SMB would increase the distance and create an extra burden for those already burdened financially.

The caseloads in SMBs will be even higher than the CMBs due to the increase in monetary threshold from Rs. 500,000 – Rs. 1,000,000 and all financial institutions within the respective districts will refer cases to SMBs. For example, a Key Person noted that there are almost 10 branches for one bank in a district and if every bank officer from each branch visits the SMB it will create overcrowding. Some financial institutions are of the view that increasing the threshold and setting up SMBs will further delay the settlement process since they are precluded from referring the cases above Rs. 500,000 to the courts. Furthermore, establishing SMBs does not preclude CMBs from taking up cases below Rs. 500,000. Therefore, the burden on SMBs can be lessened. However, if the CMBs refer all financial disputes to the SMBs, the caseloads of SMBs will increase.

The effectiveness of a mediation board relies on the participation of both parties involved in the dispute. If one party is unwilling to engage in the mediation process, it can indeed hinder the resolution efforts. In most cases, the absence of a second party to the CMB affects the non-settlement of cases. If an SMB is set up for financial disputes the interviewees feel that it will be of no use if at least one party to the dispute is not present.

Who should be a mediator?

Regulation 2 of Extraordinary Gazette No. 2314/80, dated 14.01.2023, stipulates the skills and qualifications of a mediator in a Special Mediation Board as follows.

Regulation 2

To be eligible to be appointed as a Member of the Panel of Mediators in respect of the Special Mediation Board Area specified in the Order made under Mediation (Special Categories of Disputes) Act, No. 21 of 2003 published in Gazette Extraordinary No. 2259/11 of December 21, 2021 a person shall :-

(a) be between 35 to 75 years of age;

(b) be a person who

(i) is or has been an officer who has held office in the public sector at the staff officer level for a continuous period of five years at the minimum;

(ii) is holding or has held a senior managerial post in the Private Sector, in a Non-Governmental Organization, Bank of Corporation; or

(iii) has a professional or academic qualification obtained from a recognized professional or higher educational authority established by or under any written law; and

(c) be of sound mind and physically fit to carry out functions as a member of a Panel of Mediators;

Regulation 2 (a)

be between 35 to 75 years of age;

The age of the mediators was one of the key concerns raised by the disputants and key persons. Although in terms of Regulation 2(a), 35 has been set as the minimum age, pragmatically the average age lies around 60. The research team found that the age of the mediators extended between 47-80+ and currently most mediators are retired government officials who are much older. While noting the importance of having experienced personnel, the interviewees urged the need to engage younger members who can understand developments in a dynamic financial sector and provide lasting settlements. This is more so in the context of the ways in which financial disputes have evolved, particularly with the advancement of technology.

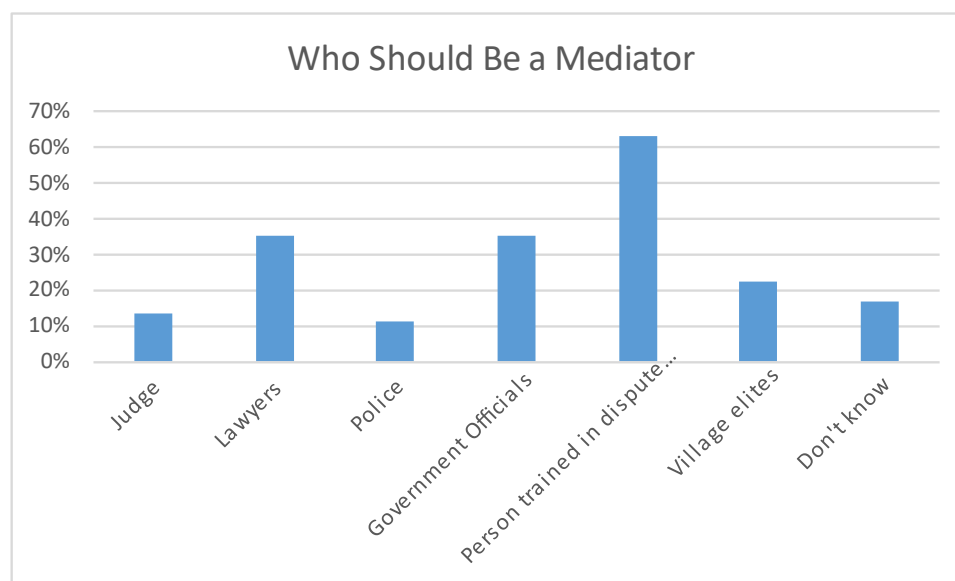
Regulation 2 (b) be a person who

- (i) is or has been an officer who has held office in the public sector at the staff officer level for a continuous period of five years at the minimum;
- (ii) is holding or has held a senior managerial post in the Private Sector, in a Non-Governmental Organization, Bank of Corporation; or
- (iii) has a professional or academic qualification obtained from a recognized professional or higher educational authority established by or under any written law; and

Regulation 2(b) outlines the key qualifications of the mediators. As noted, the mediator could be a person who is/was working in public sector at staff level position, or in the private or non-Government sector at a senior managerial position. In addition to the positions, the said Gazette recognises the relevant professional and academic qualifications that are required by a person who is to be appointed to Special Financial Mediation Board. These three clauses give a broader scope to recruit suitable mediators for the Special Financial Mediation Boards.

The following chart illustrates the responses by the disputants to the question of who a mediator in the SMBs should be. Over 60% stated (Figure 10) that persons trained in dispute resolution should be mediators. In addition, the respondents indicated government officials, lawyers and village elites as potential candidates to become mediators.

Figure 10: Who should be a mediator



The participants of the study suggested a range of personnel as key individuals who should be recruited as mediators for SMBs. They include government officials; accountants from the divisional secretariat, financial assistants social service officers; Administrative Grama Niladari, managers from Samurdi offices and women's development officers who are closely working with the communities. Further, personnel from the private sector with financial knowledge were also suggested. Officers such as accountants, private bank managers, officials holding higher positions in management, social workers from the locality who have a good understanding of the local issues, members from the farmer organisations were also proposed by study participants. These personnel were proposed by the participants based on their experience with the CMBs and expectations from SMBs.

Regulation 2 (c): be of sound mind and physically fit to carry out functions as a member of a Panel of Mediators

This particular Regulation relates to the discussion above regarding the age of the mediators and their contribution to the mediation process. However, the study also finds that engaging in the mediation process requires considerable energy, time commitment and physical strength. These factors need to be considered when recruiting the mediators.

Regulation 3: Experience in mediation or knowledge of principles and key features of mediation would be an added qualification.

While noting the mention of relevant experience of mediation in the said Gazette, most participants stated financial sector experience as a mandatory requirement. For instance, the disputants stated that the mediators should have sufficient knowledge and qualifications to understand how the financial institutions function and interest rates are decided and calculated, in order to provide meaningful intervention during the mediation/negotiation process. The participants feel that the absence of such knowledge makes the settlement process less effective.

An important dimension that needs to be considered in recruiting the mediators is language. While the Gazette does not stipulate this as a requirement, the ability of the mediators to communicate in the respective local languages is critical. It is important to nominate Sinhala and Tamil speaking personnel as mediators in consideration of the language composition of the area.

Another factor suggested by participants of the study is the ability of the mediators to understand agreements and contracts. Since most of the financial disputes are about breach of contract, the mediators should be able to comprehend contract prior to engaging in the mediation process. The mediator should be able to understand a formal contract and its terms and conditions in order to facilitate a meaningful settlement that is acceptable to both parties. This would also help manage power imbalances when financial institutions dominate the discussions during the mediation sessions. In addition, it was also noted that officers associated with the process of mediation should be able to understand the legal aspects of different disputes that they would have to resolve through mediation.

7. Conclusions and recommendations

The focus of this report has been to conceptually and empirically understand financial disputes in six selected districts of Sri Lanka: Kandy, Polonnaruwa, Moneragala, Anuradhapura, Colombo and Gampaha. This process has provided insights into the different types of transactions, the varied purposes they are made for as well as the nature of the disputes that arise because of these financial transactions and the causes of such disputes. It identifies the key parties to the conflict, formal and informal financial institutions and borrowers from communities belonging to the urban, rural as well as plantation sectors, with occupations in farming, fisheries related, estate work as well as small scale entrepreneurs. The main types of transactions that lead to community level financial disputes include loans provided for micro, small and medium enterprise development, agriculture, Samurdhi, revolving, weekly and daily loans, loans against EPF, hire purchase and leasing.

The study reveals challenges around identifying and categorising the nature of financial disputes on a conceptual level. Another salient issue is the borrower's inability to understand the distinction between formal and informal financial institutions that in many cases increases the risks not yet taken into serious consideration due to less restrictive paperwork and ease of access to credit. There is also a close link between the nature of financial disputes and the nature of financial transactions, particularly when the intention behind the borrowing or the need for the borrowing shifts or changes, resulting in disputes.

The recent financial disputes have all been aggravated by some notable contextual challenges such as COVID19 and the economic crisis that affected Sri Lanka. The economic crisis, in particular, has increased the vulnerability caused by inconsistent incomes. It was noted that there is a high demand for borrowings at present, signaling a possible increase in the proliferation of financial disputes in the near future. The majority of those interviewed are daily wage earners from rural, urban and estate/ plantation areas. The increased vulnerability due to the country's situation has increased consumption related borrowings and the subsequent defaults of instalment payments. Another, key observation is that a high number of the rural poor resort to group loans or micro-credit schemes and are mostly dominated by female borrowers. A deeper look into this issue reveals that the women who handle the households are burdened to deal with the direct impact of the economic crisis and have the responsibility of balancing the monthly household budget. Another key point of concern is the lack of financial literacy among borrowers in general, which is accentuated by the non-transparent practices of financial institutions such as not investing in time and effort to talk about the financial responsibilities that come with financial borrowing; particularly calculations of interest and fluctuations of interest rates etc. The recovery practices of financial institutions differ according to the type of institutions – some banks have been making efforts to support recoveries in a proactive manner such as by undertaking monthly camps, while others such as Samurdhi banks have a semi-aggressive manner of dealing with recoveries. These practices potentially exacerbate the disputes and create room for intimidation, induced stress and even suicide.

In relation to popular mechanisms in dealing with financial disputes, some financial institutions such as banks have their own ombudsman or arbitration mechanisms. Nevertheless, a popular mechanism resorted to was mediation and as an alternative dispute resolution mechanism beyond the legal framework. CMBs were largely appreciated by the interviewees and invariably most CMBs predominantly handled financial disputes. The biggest challenges faced by CMBs, which are also points to be considered if and when SMBs are established, is the issue of no-show or the lack of participation in the mediation process by the borrowing parties. While there was a tendency to see the process and the final resolution of the dispute as a win-win situation, arguably this perspective can be challenged from the financial institutions' point of view unless there is a possibility for debt restructuring. It raises questions whether the root causes need to be considered when employing interest-based mediation, while delays or non-repayment of the loan is mostly viewed as a breach of contract on the part of the financial institution. Nevertheless, the borrowers consider it a win-win in the event concessions are provided by the financial institution such as interest waivers etc.

Another challenge for CMBs was the lack of infrastructure, regular trainings and most importantly finding suitable mediators who satisfy key pre-requisites of the position; and a way of sufficiently remunerating them to retain their services as well as ensure their commitment. These challenges are also very relevant in relation to establishing SMBs. Further, a recurrent observation was the issue of accessibility of the SMBs and whether the SMBs could handle a large number of cases that would be referred to them in each district. The general consensus arising from the empirics was in favour of the creation of specialized SMBs.

To conclude, the study highlights the following recommendations as a way forward:

Conceptualising financial disputes and mediation as appropriate for the Sri Lankan context

- Using a context specific definition on financial disputes for the training of mediators and for communication purposes - financial disputes although based essentially on financial transactions for goods or services, need to be understood beyond the monetary or financial transaction aspect. A working definition building on what was proposed above can be used to incorporate complex causalities for the disputes. At a broad level, a financial dispute must be considered a breach of an agreement or trust between individuals and/or institutions, resulting in financial non-recovery, which then can manifest itself in a financial dispute, which may lead to other types of disputes and conflicts as well.
- A decision must be made from the beginning pertaining to the model to be adopted by the Special Financial Mediation Boards. If it is merely to “restructure the debt” owed to a creditor, it is opined that rather than adopting the framework of interest-based mediation, it is pertinent to adopt the framework of “transactional mediation” where the role of a mediator would be limited to assisting the parties to formulate a plan to pay back the debt owed. However, in view of the findings made consequent to the field research, it is recommended to explore the need to go beyond the facilitative mediation approach currently practiced, incorporating elements of both interest-based and transactional mediation, resulting in a hybrid model for mediating financial disputes. Expert advice on this issue should be sought to make this decision and if any changes are proposed, the training manuals and methods should be updated.
- Given that, internationally, financial dispute resolution through mediation appears to be viewed as an aspect of commercial mediation and commercial mediation is increasingly gaining attention in Sri Lanka, relevant aspects of commercial mediation and lessons learnt – such as training of mediators - should be taken into consideration when setting up special mediation boards.
- The Act must be amended to reflect that as financial disputes are viewed as commercial, settlements reached by the parties through the mediation must be considered as legally binding contracts.

Skills, knowledge, training and recruitment

- Formulate a checklist to guide in assessing specific skills, qualifications, competency and composition (ensuring a good gender balance) in the recruitment of new mediators (and appraising existing mediators).
- Develop a training module and training calendar for professional and practical trainings on mediation in general and mediation of financial disputes specifically, for SMB/CMB mediators with particular attention given to improve specific skills and language skills (particularly proficiency in Tamil). The training calendar should include, apart from the five-day training at recruitment, a refresher course, delivered at scheduled intervals, ideally every six months. These refresher trainings should include practical lessons learnt and critical feedback sessions, where mediators can share their experiences

and learn from each other.

- While being technical experts in finance is not required for a mediator, the training program will have to be tailored to meet the challenges in the area. Further, continuous improvement must be sought, as mediators must be trained to not let personal biases obstruct dispute resolution. Thus, inherently, it cannot be a one-off process and must contain a mentoring element within the training process as well.
- Training of mediators should be focused on social inclusion, cultural/gender sensitivity while captivating the nature of the area and the stakes concerned.
- Mediation to be made 'professional'; as something to aspire as a career, with continuous professional development ('CPD').
- A formalized and recognized mentoring process to be established (similar to that of lawyers during their apprenticeship period), where mediators could start as co-mediators for about two years and subsequently graduate to being a fully-fledged mediator.
- Support structure established for women mediators to manage care work and formalise scheduling at least half a day during the week to ensure their ability to attend CMB/ SMB work.
- Lower the maximum age limit for mediators of special mediation boards to 60 or 65.

Expert committee

- There was a divided opinion among the Key Persons about the need for an expert committee. In terms of establishing an expert committee, some interviewees felt that this would be a good idea, while others pointed out that having qualified people within the CMB would be sufficient. The availability of time and the commitment required by the expert committee was questioned. The key person indicated that the expert committee could perhaps get involved distantly, providing input to the training curriculum. Getting involved on a regular basis would not be practical. The expert committee could also intervene in instances where an appeal against a biased decision is made.

Strengthening infrastructure and addressing logistics related gaps

- Analyse/assess the reasons for low participation rates in financial dispute resolution in CMBs and incorporate lessons learnt and design targeted action to increase participation in the SMBs.
- Establish permanent infrastructure for CMBs/ SMBs including a dedicated and accessible Centre for mediation, ensure technical and technological support to record, document and monitor mediation related activities, check for compliance and follow-up on settled cases.
- Formalising communications sent out from CMBs and SMBs by incorporating the official government logo and formulating it in an appropriate tone to encourage or incentivize increased reaching out for mediation support. Assess and include an incentive or a penalty to further motivate participation. This is critical to ensure higher rates of participation in CMBs and SMBs.
- Assess the communication related costs of existing mediation boards and propose a viable budget to maintain communications for special mediation boards, including postage.

- Formulate a fee structure after assessing various factors, including fairness, economic implications, and the potential impact on different groups of people i.e. charging fees from institutions instead of individuals, while being more equitable could also open the possibility of institutions seeing it as an added financial burden. Any fee charged should not end up being an added burden for the second party disputants, who are already unable to meet repayment obligations.
- Establishment of special mediation boards on a rotation basis in 2-3 locations within a given district, apart from the district capital, to reduce travel costs, encourage participation and to manage the case-load for the district capital. Special attempts should be made to recruit mediators from these identified locations, so that transport challenges and costs are kept to a minimum.
- If SMBs are being operated on a rotation basis in different locations, a transport allowance for mediators of SMBs should be made based on distance expected to travel, current market prices of public transport and fuel.

Strengthening financial literacy, increasing awareness about special mediation among the general public and financial institutions

- Training and awareness campaigns for the public in all three languages to increase financial literacy.
- Conduct awareness campaigns using different media on accessing CMBs/SMBs for mediation, including targeted campaigns for financial institutions to increase their understanding of the role of Special Mediation Boards, the process and the principles followed. These targeted campaigns should also be made use of to highlight the importance of preparing for the mediation sessions on the part of the financial institutions, including studying the case files and participating at the sessions with solutions to the repayment issue.
- State banks and lending mechanisms attached to the government mechanisms such as women's societies should consider extending business loans at concessionary interest rates to discourage the public from resorting to MFI loans and should extend guarantorship to the non-public sector.

The study team recommends further research to understand the complexities involved in financial disputes in relation to the causes, implications and resolution mechanisms.

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