

**DECODING FINANCIAL INCLUSION IN A POST-WAR JURISDICTION**

**SRI LANKA: A CASE STUDY**

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A DISSERTATION SUBMITTED TO

THE FACULTY OF GRADUATE STUDIES

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE  
DEGREE

OF

DOCTOR OF PHILOSOPHY

GRADUATE PROGRAM IN LAW

YORK UNIVERSITY

TORONTO, ONTARIO

July 2021

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## **ABSTRACT**

This qualitative study examines the complex interplay between the financial regulatory landscape and financial inclusion in a post-war jurisdiction. The global debates surrounding the deployment of financial inclusion initiatives virtually center on many legal and non-legal discourses, thereby making this a significant study. This study further identified specific thematic strands which highlight how financial inclusion is regulated and administered in a post-war jurisdiction by amplifying the lived experiences of individuals that are caught between the regulatory structure of financial inclusion. In particular, this doctoral research further examines how stakeholders engaged in financial inclusion have shaped the financial regulatory landscape. By applying a local level analysis of banking practices coupled with daily lived experiences, this research aimed to explore the strengths and limitations in the delivery of financial inclusion efforts. The study employed an interdisciplinary approach, which created narratives contextualized within the jurisdiction this study was conducted. This study seeks to present theoretical and legislative developments that uncover how banking law is interlaced in policy and cultural formation using financial inclusion as an illustrative vehicle. This study is further designed to showcase theoretical and legal influences, as well as a guide in navigating this legal research project by providing original contributions of the fieldwork conducted in a post-war jurisdiction.

## DEDICATION

*I dedicate this work to all of the women and men, the brave survivors of war,  
who participated in the study's interviews.*

&

*My late father, who was the first "Dr." in his lineage.*

## **ACKNOWLEDGEMENTS**

As I write this last part of my dissertation, I am overwhelmed by how many people have stood in my corner. I would like to express my deep gratitude to so many individuals who have touched my life because of this almost 10-year project. First and foremost, I would like to thank each and every stakeholder in Sri Lanka that participated and contributed to these stories embedded in this study. Without these voices, this project would not have been possible.

I am grateful for my supervisor Professor Benjamin Geva and for his consistent and continued support throughout these years! His valuable insights and guidance have not only shaped this study, but also my professional career. I wish to further thank my PhD Committee, Professor Poonam Puri (who has supported all my professional career moves and provided constant mentorship), Dr. Amar Bhatia, and Dr Ikechi Mbeoji for their interest and enormous time commitment. I would also like to thank Dr. Annie Bunting for her kindness and agreeing to be part of my committee.

I could not have completed this PhD without Dr. Ruby Dhand. Her encouragement and friendship helped me reach the finish line. I am also grateful to Dr. Sujith Xavier for his constant support and care, and friendship throughout this process! A special thank you to Professor Sonia Lawrence, who believed in my project in my first semester in graduate school and gave me my first opportunity to present my research at an IFLS event. I wish to extend my gratitude to Professor Stephanie Ben-Ishai, who provided me with mentorship and support throughout my graduate studies and my professional development. I am also thankful to my friendships at the Osgoode Graduate program, and from the IGLP workshops, and wonderful colleagues I met along the way.

I am also grateful for financial support from SSHRC graduate funding and IGLP. A special thanks to the Faculty of Law at Thompson Rivers University, the Faculty of Law at the University of Windsor; the American-Sri Lanka Institute and Duke University.

To conclude, I would like to thank my husband, Dr. Niles Senthe for his patience and unconditional support during this incredibly long journey. I am grateful for my mother and brother, who have also been part of this process.

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## CHAPTER 1: INTRODUCTION

Inside a small windowless store front in the Northern part of Sri Lanka, a young woman and her husband are kneeling on the cold concrete floor, covered by a Palmyra leaf mat, folding clothes. They have just stitched, and ironed an order of school uniforms for a families in the community. Behind them, there is a Singer sewing machine with colorful threads and fabrics, and an ironing board and a steel electrical iron, which looks more vintage than new. “Buheneswary”<sup>1</sup> is the neighborhood seamstress, that discovered her talent during the war. She mended clothes for her family and friends. She has learned the art of creating clothing from scrap material. This choice was more about necessity that design. She was able to earn a living through her attention to detail and fine needlework. “Oh..she is one of the best here – she made my daughter’s wedding blouse and pleats for her wedding saree”, says an older lady as she passes us. I ask “Buheneswary” if this is something she has heard since opening her store? She shyly responds “No, you know....I am the only one and I just want people to be happy to wear nice and clean clothes.” “Buheneswary” and her husband are part of the 180,000 people that have been affected by the brutal civil war in Sri Lanka. She and her family witnessed destruction, experienced homelessness and dislocation, as well as the continued trauma of losing loved ones. Her survival, as she explains, is contingent on creating a sustainable livelihood, which will provide her family economic stability within her community. The loan scheme provided by a local community agency, which is partnered with a financial institution, has aided her in starting her business. She remains hopeful and is intent on expanding her sewing business.

This vignette exemplifies the themes discovered in this qualitative study on how financial inclusion is regulated and administered in a post-war jurisdiction. By starting this dissertation with Buheneswary’s story, the hope is to shed a spotlight on the lived experiences of individuals that are caught between the regulatory structure of financial inclusion. This study examines the complex interplay between the financial regulatory landscape and financial inclusion in a post-war jurisdiction. The global debates surrounding the deployment of financial inclusion initiatives virtually center on many legal and non-

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<sup>1</sup> The informant’s name has been changed in accordance to the ethical compliance and for anonymity.

legal discourses, thereby making this a significant study. In particular, this doctoral research examines how stakeholders engaged in financial inclusion have shaped the financial regulatory landscape. By applying a local level analysis of banking practices coupled with daily lived experiences, this research aims to explore the strengths and limitations in the delivery of financial inclusion efforts. The study employed an interdisciplinary approach, which created thematic strands of narratives contextualized within the jurisdiction this study was conducted.

This study further seeks to present theoretical and legislative developments that uncover how banking law is interlaced in policy and cultural formation using financial inclusion as an illustrative vehicle. The aspirational rationale for using qualitative methodology is twofold: to showcase peripheral influences, as well as a developing a guide in navigating legal research by providing a detailed manual of the fieldwork conducted in a post-war jurisdiction. It is significant to note that since the writing of this dissertation, many policies have changed due to political and financial legislative action, as such the information presented may be updated and amended prior to the finalization of this project. This study is confined to the period within the research period: 2010-2014.

‘Financial inclusion’ is the contemporary desired approach in financial policy to create an inclusive fiscal landscape by creating a gateway to capture informal financial services and transactions into a formalized and regulated sphere. Financial inclusion attempts to ‘include’ the unbanked into the formal financial system and refers to accessibility and delivery of financial services to “unbanked” segments of society.<sup>2</sup> Recent fiscal measures

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<sup>2</sup> Oya Pinar Ardic, Maximilien Heimann & Nataliya Mylenko, “Access to Financial Services and the Financial Inclusion Agenda around the World: A Cross-Country Analysis with a New Data Set” (2011) World Bank Policy Research Working Paper No 5537. The

that promote financial inclusion are increasingly at the center of the financial regulatory agenda. The adoption of ‘financial inclusion’ as a policy goal is driven by the ideology that participation in the formal financial system is believed to facilitate fiscal stability and economic growth, creating economic development, growth and gender parity. A precursor to the financial inclusion framework was the microfinance movement, which catapulted the financial inclusion discourse to the forefront.<sup>3</sup>

A more contemporary turn in financial regulation is the conceptual refinement of ‘financial inclusion’. The post-financial crisis regulatory reforms not only addressed financial contagion challenges, but also attempted to mend the fault lines highlighted during the crisis. As jurisdictions race to adopt global banking sector reforms, the accessibility of core financial services has become a vital component of this regulatory shift. Despite the fact that financial inclusiveness has been vigorously embraced as a policy agenda by International Financial Institutions, such as the World Bank, to systematically address deficiencies in the banking sector, the structural inequities still remain, and may even be exacerbated as result of these new legal reforms.<sup>4</sup>

On April 12, 2013, the World Bank launched the “Financial Inclusion Support Framework” (FISF) as national regulators have adopted financial inclusion as a desired

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‘unbanked’ are a vast number of people who lack access to the formal banking system and financial services. These “unbanked” individuals can be distinguished from those who are “underbanked.” Unlike “unbanked” individuals, the “underbanked” individuals only have “nominal access” to poor quality if financial services.

<sup>3</sup> The International Year of Microcredit was declared by the UN in 2005. This amplified the need to ensure financial inclusion through accessible credit products. United Nations, “International Year of Microcredit 2005,” (2 April 2021) online: [https://www.un.org/en/events/pastevents/microcredit\\_2005/](https://www.un.org/en/events/pastevents/microcredit_2005/)

<sup>4</sup> This includes poor service delivery, discriminatory lending and coercive repayment methods.

outcome in building inclusive fiscal initiatives. Its mission is to form “an inclusive platform for all G-20 countries, interested non-G20 countries and relevant stakeholders to carry forward work on financial inclusion, including implementation of the Financial Inclusion Action Plan.”<sup>5</sup> In assessing the levels of financial inclusion established within jurisdictions, numerous approaches have been used to describe and measure the financial inclusion phenomenon. One survey suggested that “almost one in five adults has no bank account or other form of access to the formal financial sector.”<sup>6</sup> The idea of bank account ownership as a foundational component of financial inclusion is used to gage the levels of financial inclusion determinants. In this study, such a measure was unhelpful as it did not account for the exogenous conditions<sup>7</sup> present within the jurisdiction.

Further, the World Bank released its set of “Financial Inclusion Indicators” to enable the assessment and implementation of financial inclusion components.<sup>8</sup> National indicators are measured by how institutions facilitate access and enable delivery of services, such as by identifying the following factors (and not limited to):

1. Numbers of “accounts held at a formal financial institution”<sup>9</sup>,

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<sup>5</sup> World Bank, Press Release, “Financial Inclusion Support Framework Launched” (21 April 2021), online: <https://www.worldbank.org/en/news/press-release/2013/04/21/financial-inclusion-support-framework-launched>

<sup>6</sup> Aaron Mehrotra & James Yetman, “Financial Inclusion – Issues for Central Banks” (2015) BIS Q Rev 83 at 83, citing Asli Demigurc-Kunt & Leora Klapper, “Measuring Financial Inclusion: The Global Findex Database” (2012) World Bank Policy Research Working Paper No 6025.

<sup>7</sup> I refer to exogenous conditions to characterize culture, post-war conditions and non-economic factors that inform financial inclusion initiatives.

<sup>8</sup> World Bank, “G20 Basic Set of Financial Inclusion Indicators” (21 April 2021) online: *Global Partnership for Financial Inclusion* <[datatopics.worldbank.org/g20fidata/](https://datatopics.worldbank.org/g20fidata/)>.

<sup>9</sup> World Bank, “G20 Basic Set of Financial Inclusion Indicators” (21 April 2021) online: *Global Partnership for Financial Inclusion* <[datatopics.worldbank.org/g20fidata/](https://datatopics.worldbank.org/g20fidata/)>.

2. Automated teller machines (ATMs) (per 100,000 adults)<sup>10</sup>,
3. Loans from a financial institution in the past year<sup>11</sup>, and
4. The percentage of female-owned SMEs with an outstanding loan or line of credit.<sup>12</sup>

The widespread use of indicators developed by international financial institutions may not tell the whole story. Legal scholarship mirrors this newly evolved ‘indicator culture’ as it provides an empirical methodology to provide concrete evidence of a phenomenon. However, as suggested in the previous paragraph, the sample of indicators highlighted above to assess financial inclusion do not take into account other factors in demonstrating success of inclusive measures. For instance, transportation, infrastructure, technology, legal mechanisms, culture and post-war conditions are significant components that must be considered in the measurement of financial inclusion. Borrowing from Sally Engle Merry’s seminal contribution, *The Seductions of Quantification*<sup>13</sup>, the now accepted global standard setting procedures emanate from measurements of indicators. This troubling phenomenon has transformed policymaking and law making, by neglecting to consider local considerations. Merry’s critique can be applied to the financial inclusion context, cultural nuances and conditions are not included in these indicator-frameworks.<sup>14</sup>

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<sup>10</sup> World Bank, “G20 Basic Set of Financial Inclusion Indicators” (21 April 2021) online: *Global Partnership for Financial Inclusion* <[datatopics.worldbank.org/g20fidata/](http://datatopics.worldbank.org/g20fidata/)>.

<sup>11</sup> World Bank, “G20 Basic Set of Financial Inclusion Indicators” (21 April 2021) online: *Global Partnership for Financial Inclusion* <[datatopics.worldbank.org/g20fidata/](http://datatopics.worldbank.org/g20fidata/)>.

<sup>12</sup> World Bank, “G20 Basic Set of Financial Inclusion Indicators” (21 April 2021) online: *Global Partnership for Financial Inclusion* <[datatopics.worldbank.org/g20fidata/](http://datatopics.worldbank.org/g20fidata/)>.

<sup>13</sup> Sally Engle Merry, *The Seductions of Quantification, Measuring Human Rights Gender Violence and Sex Trafficking* (Chicago: University of Chicago Press, 2016).

<sup>14</sup> Jose-Miguel Bello y Villarino & Ramona Vijayarasa, "The Indicator Fad: How Quantifiable Measurement Can Work Hand-in-Hand with Human Rights - A Response to Sally Engle Merry's *The Seductions of Quantification* " (2018) 50:3 NYU J Int'l L & Pol 985 at 988.

Another challenging aspect in examining the regulatory structure underpinning financial inclusion are the linguistic and semantic considerations that are often not precisely defined, thereby creating dissonance in policy applications. As financial inclusion is furthered through regulatory measures and private actors, this qualitative study demonstrated how the financial regulator provides supervisory oversight, as more complex financial products and services are increasingly becoming a larger presence in the financial landscape, and thus regulatory challenges are emerging. For example, by focusing on small sum lending in the form of microcredit as a driver of financial inclusion within the banking and finance ecosystem, special attention to the impact of prudential and non-prudential regulatory measures that affect the daily lives of beneficiaries of these services are articulated in the results section of this dissertation.<sup>15</sup> The regulatory responses to financial inclusion measures are fragmented, and tensions emerge in designing regulatory oversight without thwarting the purpose of financial inclusion.<sup>16</sup>

My study is intended to contribute original findings within the field of banking law by examining the types of regulation as it affects financial inclusion in a post-war jurisdiction.

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<sup>15</sup> Prudential measures are designed to manage risk in the financial system, and non-prudential measures are tailored towards the consumer, such as disclosure or consumer protection requirements. B. Seth McNew, “Regulation and Supervision of Microfinance Institutions: A Proposal for a Balanced Approach,” (2009) 15 *Law & Bus. Rev. Am.* 287; also see Robert Peck Christen, Timothy R. Lyman, & Richard Rosenberg, *Microfinance Consensus Guidelines: Guiding Principles on Regulation and Supervision of Microfinance*, (CGAP), July 2003, at 15-16, available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16958/831500WP0ENGLI00Box379886B00PUBLIC0.pdf?sequence=1&isAllowed=y>

<sup>16</sup> B. Seth McNew, “Regulation and Supervision of Microfinance Institutions: A Proposal for a Balanced Approach,” (2009) 15 *Law & Bus. Rev. Am.* 287 at 290.

Sri Lanka was chosen as the site for this research, due to its unique economic, political and post-war status.

## **1.1 Overview of The Study**

In order to uncover and address the divergent issues framing of the regulatory nature of financial inclusion in Sri Lanka, this study examines national (domestic) banking legislation and regulation of financial inclusion through an interdisciplinary lens. The method and process of this study are further explained in Chapter 2.

1. This chapter provides the introduction to the doctoral examination by including the research inquiry, the significant contribution, the terminology and contextual background of the study. Within this chapter the methodological approaches employed and interconnect the corresponding legal frameworks identified in the study are identified. The introduction serves as guide to navigate the organizational structure of this study to illustrate the historical setting, theoretical claims, the findings and recommendations.
2. The theoretical framework employed in this study consist of principles rooted in legal pluralism, regulation theory and grounded theory. Further, theoretical frameworks derived primarily from regulatory theory rooted in global financial regulation and thematic elements within law and finance have informed this project. *New Governance Theory, International Financial Regulation and Legal Theory of Finance* are also regulatory strands that were used in the current research question, specifically as they address contemporary banking and financial trends. This framework is further described in Chapter 2.



3. The literature review in this study is based upon historical, legal and non-legal interventions that specifically address financial inclusion measures in different jurisdictions, which consider multiple lenses in the deployment of financial services to alleviate poverty and enhance economic development. This research is situated in the literature review in Chapter 3.
  
4. The methodology of this study is interdisciplinary. I conducted interviews with decision-makers, stakeholders and beneficiaries of financial inclusion schemes. I also was able to make observations of several financial inclusion structures in the field. In total, I conducted semi-structured interviews and focus groups. The data was coded and analyzed through a process rooted in grounded theory. My ethics approval from York University for the fieldwork is attached to this study in the Appendix. The methodology section is contained in Chapter 3.
  
5. The analysis of the qualitative data is embedded in the results chapter, which consist of themes and sub themes that emerged from the research, primary and secondary data. These are located in Chapter 4.

## **1.2 Significance of the Study**

The current financial inclusion literature focuses on jurisdictions that are in the Global South, with an emphasis on economic development. This study contributes another

dimension to this discourse, by examining financial inclusion in a fragile and post-war jurisdiction. By examining how financial inclusion is regulated in Sri Lanka after a 30-year brutal civil war beyond the traditional modes of inquiry, this study captures stories within the financial inclusion discourse. In exploring the use various actors to illustrate the variegated legal structures that are embroiled in the banking and finance domain with a closer look at local level<sup>17</sup> practices this study provides original data.

As my field research revealed, financial inclusion initiatives in Sri Lanka are governed by multiple non-state actors and informal arrangements dictated by political, economic, cultural, rural and urban social norms as well as national legislation. Legal ordering and networks within institutional and social structures are manifested ‘on the ground’ through a myriad of mechanisms, which demonstrated how multiple systems co-exist or run counter to each other. Through using an interdisciplinary methodology as a vehicle to demonstrate how banking legislation connects to the financial inclusion agenda, multiple systems embedded in the financial landscape are highlighted. This project provided a deeper insight into the regulatory inquiry to determine how national top-down regulation is translated at the branch level at the financial institution.<sup>18</sup> This study employed legislative indicators and a thematic examination of the legal processes to capture the data analyzed to develop

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<sup>17</sup> Local level analysis in this context is both national (domestic) law and informal socially constructed rules within the microfinance context. It can include regulatory measures, rules or norms surrounding the access and delivery of microfinance services or front-end / back-office banking practices. I focused on literature on local governance to as part of this analysis. In banking practice, functions are divided by front-end services (customer service, deposit-taking etc.) and back-office (accounting, compliance methods and internal fiscal operations).

<sup>18</sup> I refer to local as national domestic legislation and at the branch level.

a set of findings, which created a profound impact on the beneficiaries of financial inclusion initiatives.

The use of an interdisciplinary legal lens, coupled with jurisprudential analysis, has resulted in producing a unique set of results, which have introduced an original perspective within the current literature. The organization of identification of themes are not in a sequential form, rather the thematic structures, and derivative subthemes thereto, are amplified in this dissertation to provide a deeper understanding of the research inquiry.

Throughout this research, definitional issues posed challenges and barriers in the administration of financial inclusion policies. The terminology and semantic uses of general concepts did not correspond to the policy goals as intended. Instead, some of the terminology used was pre-determined by policymakers, only to be manipulated or defined through cultural norms by stakeholders. As such, in order to provide clarity for the reader, the pre-insertion of a Definitional and Conceptual Terminology section in the preface of this study, provides an enhanced knowledge of the subject at issue.

### **1.3 Contextual Setting**

During recent years, financial inclusion has become a popular subject attracting a vast amount of interdisciplinary scholarship. Financial inclusion is often associated incorrectly with “microfinance”. Furthermore, the neologism “microfinance” itself includes loans, savings, insurance, transfer services, and other financial products targeted at low income

clients, previously unbanked or excluded from traditional banking systems.<sup>19</sup> This movement of fiscal inclusion routinely adopted by international development scholars as methods of furthering the economic rights of indigent individuals and communities in developing countries, and now more recently in developed countries promises to support economic growth.<sup>20</sup>

However, a critical undertone has emerged. For example, as financial inclusion programs utilize microfinance institutions (“MFIs”) as conduits to provide unsecured-small-sum large scale lending, and the delivery of ancillary financial services. These institutions, previously structured as non-profit organizations and charged with a social mission to “place poverty in a museum”, have not only transformed into profit-generating commercial entities but also as ‘state actors’.<sup>21</sup> Scholars argue that this transformation has resulted in a *mission drift*.<sup>22</sup> The paradigm has shifted from economic consumer empowerment to investor enrichment.<sup>23</sup>

The framing of outcomes associated through the adoption of a financial inclusion is based on economic indicators, which has prompted the regulatory uptake by international

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<sup>19</sup> C. Van Rooyen, R. Stewart & T. De Wet, “The Impact of Microfinance in Sub-Saharan Africa: A Systemic Review of the Evidence” (2012) 40:11 World Development 2249 at 2249.

<sup>20</sup> Delwin A. Roy, “Trends in Global Corporate Social Responsibility Practices: The Case of Sub-Saharan Africa” (2010) 8:3 Intl J Civ Soc’y L 64 at 75.

<sup>21</sup> Delwin A. Roy, “Trends in Global Corporate Social Responsibility Practices: The Case of Sub-Saharan Africa” (2010) 8:3 Intl J Civ Soc’y L 64 at 75.; Muhammad Yunus, *Creating a World Without Poverty: social business and the future of capitalism*, (New York: Public Affairs, 2007).

<sup>22</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism*, (London: Zed Books, 2010). Also see terminology section.

<sup>23</sup> Beatriz Armendáriz & Ariane Szafarz, “On mission drift in microfinance institutions” (2011) Munich Personal RePEc Archive Working Paper No 31041; Delwin A. Roy, “Trends in Global Corporate Social Responsibility Practices: The Case of Sub-Saharan Africa” (2010) 8:3 Intl J Civ Soc’y L 64.

and national stakeholders. The numerical associations are driven by economics and financial institutions, yet fall short on examining the local conditions embedded within financial inclusion policies. For example, the graph below presents a financial snapshot on the correlation between financial inclusion and economic growth.

**FIGURE 1: “Prevalence of microcredit, all developing regions and selected countries, end-2009”<sup>24</sup>**

Region	Number of creditors reporting	Active accounts (millions)	Accounts/100 working-age adults	Loan portfolio (million \$)	Average loan \$	% of GDP/capita	Population density (per km <sup>2</sup> )	Urban % of population
Sub-Saharan Africa	190	7.9	1.79	4,248	539	88%	32	35%
Ethiopia	18	2.3	5.24	410	177	88%	75	16%
Kenya	13	1.5	6.72	1,113	763	169%	63	21%
Middle East & North Africa	57	2.5	1.90	1,139	460	24%	36	57%
Morocco	10	0.9	4.34	612	666	37%	68	55%
Eastern Europe & Central Asia	216	2.4	0.80	6,881	2,904	111%	18	64%
Bosnia and Herzegovina	13	0.4	14.07	832	2,219	103%	74	46%
South Asia	183	50.1	5.06	7,489	149	21%	310	29%
Bangladesh	28	20.6	19.61	2,347	114	24%	1,176	26%
India	88	26.6	3.61	4,499	169	22%	368	29%
East Asia & Pacific	117	8.5	0.65	5,774	678	35%	119	42%
Cambodia	14	1.1	11.86	829	746	148%	79	20%
China	7	0.0	0.01	47	953	43%	140	40%
Indonesia	17	3.8	2.47	3,563	937	83%	121	48%
Mongolia	2	0.4	20.56	554	1,441	201%	2	57%
Latin America & Caribbean	341	13.2	3.66	17,132	1,294	28%	27	78%
Bolivia	23	0.9	14.99	1,854	2,125	178%	8	64%
Mexico	39	4.5	6.44	2,699	599	10%	53	76%
Nicaragua	24	0.4	11.29	472	1,207	139%	45	56%
Peru	60	3.1	16.59	5,477	1,773	61%	22	71%
All	1,104	84.6	2.40	42,663	504	29%	56	43%

Note: Same institutions excluded as in Table 1. Data for Bank Rakyat Indonesia are for 2007.

Sources: Microfinance Information Exchange; World Bank (2010). Modeled on Rhyne and Otero (2006).

Figure 1 further depicts how economic indicators, such as the GDP, population density and active bank accounts, are interrelated. This snapshot demonstrates that financial inclusion methods correspond to a higher GDP, thereby affecting economic conditions. Unfortunately, such ‘snapshots’ or reports are unhelpful in examining micro-level and exogenous circumstances that have become a by-product of financial inclusion initiatives.

<sup>24</sup> David Roodman, *Due Diligence: An Impertinent Inquiry into Microfinance* (Washington, DC: Center for Global Development, 2012) at 132.

This dissertation focuses on such on how stakeholders in a post-conflict jurisdiction engaged in financial inclusion inform the beneficiaries' lived experiences.

Recent studies have revealed that financial inclusion may not result in poverty amelioration or economic development.<sup>25</sup> These studies suggest that many factors contribute to the demise of financial inclusion deployments, such as lack of financial literacy, an absence of entrepreneurial training, high interest rates, challenging lending arrangements and context-specific conditions.<sup>26</sup> In order to enhance the delivery of these financial services and products, and to ensure viability and sustainability, 'commercial' attributes have been adopted by specific institutions and stakeholders.

Proponents for commercialized forms of financial inclusion initiatives argue that the factors cited may be alleviated if these institutions and services are self-sustaining, thereby allowing them to provide ancillary services, such as the required financial literacy and consumer protection advocacy. The current literature suggests that financial inclusion initiatives are not simply deployed on a one-size fits-all basis as was the case it its early inception.<sup>27</sup> The lessons learned indicate that these initiatives are not transferable due to regulatory challenges, geographic location, culture, language and the divergent aspects of social capital.<sup>28</sup> Instead, stakeholders have adopted context-specific methods to ensure

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<sup>25</sup> Ruth Stewart et al, "What is the impact of Microfinance on Poor People? A Systematic Review of Evidence from Sub-Saharan Africa" (2010) EPPI-Centre, Social Science Research Unit, Institute of Education, University of London at 8.

<sup>26</sup> Such as war, environment and lack of infrastructure.

Ruth Stewart et al, "What is the impact of Microfinance on Poor People? A Systematic Review of Evidence from Sub-Saharan Africa" (2010) EPPI-Centre, Social Science Research Unit, Institute of Education, University of London at 10.

<sup>28</sup> Ruth Stewart et al, "What is the impact of Microfinance on Poor People? A Systematic Review of Evidence from Sub-Saharan Africa" (2010) EPPI-Centre, Social Science Research Unit, Institute of Education, University of London at 10.

financial sustainability. This proposed research will trace the nuanced approaches employed by stakeholders engaged in financial inclusion in the country subject to research by examining their distinctive organizational and legal nature while developing finance platforms.

The above referenced conditions become more acute when applied to fragile states or post-war jurisdictions. This study uses the term “post-conflict” to describe the political, economic and social fragility that still continues in Sri Lanka. The economic effects of war are long lasting and have a profound impact on the regulatory structure during the reconstruction phase. Post-conflict jurisdictions have to deal with population decreases, a low labor force with a lack skill sets, loss of capital, and humanitarian issues.<sup>29</sup>

The aftermath of the long civil war resulted in scarcity of resources, a lack of infrastructure, destruction of institutional and historic structures, an enormous loss of life, and militarization in the Northern and Eastern part of Sri Lanka. The survivors in those areas are left with post-traumatic conditions, psychological scars and brutal memories of war. It is undisputed that these conditions raised above do affect the daily lives of the stakeholders and recipients of financial inclusion interviewed in this study.

### 1.3.1 Geographic Context

Democratic Socialist Republic of Sri Lanka, described as a “a pearl drop island”, located in the Indian Ocean at the tip of the Southern part of India, is famously known for

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<sup>29</sup> Elena Ianchovichina & Maros Ivanic, “Economic Effects of the Syrian War and the Spread of the Islamic State on the Levant” (2014) World Bank Policy Research Working Paper 7135.

its Tea, cinnamon and gem trade.<sup>30</sup> Sri Lanka, also formerly known as Ceylon, has not only endured a 30-year civil war, but has also suffered the devastating effects of the 2004 Tsunami.<sup>31</sup> It is, however, still a popular tourist destination. According to the post-war 2012 Sri Lankan Department of Census and Statistics, the ethnic categorization is composed as follows<sup>32</sup>:

<b>Ethnic Composition</b>	<b>Percentage</b>
Sinhalese	75%
Tamil	11%
Muslim	9 %

The start of the civil war is highly contested and is historically rooted in post-colonial reconstruction. The war between the Government of Sri Lanka (“GoSL”) and the Liberation Tigers of Tamil Eelam (“LTTE”) is predicated on Tamil self-rule as a result of political, economic, social and cultural exclusion by the Sinhalese majority government after British rule. Scholarly interventions suggest that the cultural domination and erasure of the Tamil community, or the social and democratic exclusion were the catalyst for a call for Tamil independence.<sup>33</sup> In order to understand the nature of the civil war and the post-war climate for the purposes of this study, it is imperative to understand the vital

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<sup>30</sup> J.W. Buultjens, I. Ratnayake & W.K. Athula Chammika Gnanapala (2016) 19:4 “Post-Conflict tourism development in Sri Lanka: implications for building resilience,” *Current Issues in Tourism* 355 at 358.

<sup>31</sup> J.W. Buultjens, I. Ratnayake & W.K. Athula Chammika Gnanapala (2016) 19:4 “Post-Conflict tourism development in Sri Lanka: implications for building resilience,” *Current Issues in Tourism* 355.

<sup>32</sup> Sri Lankan Department of Census and Statistics. (2012). Sri Lanka census of population and housing, 2011. Sri Lankan Department of Census and Statistics, online: <http://www.statistics.gov.lk/pophousat/cph2011/Pages/Activities/Reports/cph2011Pub/po p42.pdf>

<sup>33</sup> S, Abeyratne, “Economic roots of political conflict: The case of Sri Lanka” (2004) 27:8 *The World Economy* 1295.



geographical sites of war. The Northern and Eastern provinces have the highest concentration of Tamils;<sup>34</sup> this is where most of the casualties and destruction occurred. These provinces were controlled by the LTTE, shut off to the world, and later occupied by the Sri Lankan military. The stark contrast in Sinhala and Tamil everyday lives is rooted in the civil war context, and is still part those communities.

The tremors of disenfranchisement finally cracked in 1983 when the LTTE retaliated the oppressive regime by attacking Sri Lankan army so. The following quote depicts the epicenter of the protracted conflict:

“On 23 July 1983, 13 Sinhala soldiers were killed in an ambush in the Jaffna peninsula. The next day their bodies were brought back to Colombo for a mass burial at the main cemetery. A large crowd had gathered there and moved on from the funeral to attack Tamil properties in<sup>35</sup> the immediate area of the cemetery. In the following week whole suburbs of Colombo were razed to the ground and Tamil property in a number of other southern towns was systematically destroyed. In addition an unknown number-probably 2,000 to 3,000 of Tamil civilians were killed, and many more were rendered homeless.”<sup>36</sup>

This quote encapsulates the start of the Tamil exodus from Sri Lanka, and the creation of the Tamil diaspora as immigrants and refugees.<sup>37</sup> Defining the diasporic community is a subjective exercise. Sarah Wayland describes the diaspora as “a type of transnational community that has been dispersed from its homeland, whose members permanently reside

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<sup>34</sup> David Elliott, “Suresh and the Common Borders of Administrative Law: Time for the Tailor” (2002) 65: 2 Saskatchewan Law Review 469 citing *On Sri Lanka and the Tamils*, see J. Pandian, *Caste, Nationalism and Ethnicity: An Interpretation of Tamil Cultural History and Social Order* (Bombay: Popular Prakashan, 1987); A.J. Wilson, *Sri Lankan Tamil Nationalism: Its Origins and Development in the Nineteenth and Twentieth Centuries* (Vancouver: UBC Press, 1999); K.M. de Silva, *Reaping the Whirlwind: Ethnic Conflict, Ethnic Politics in Sri Lanka* (New Delhi: Penguin Books, 1998).

<sup>36</sup> Jonathan Spencer, “Collective Violence and Everyday Practice in Sri Lanka” (1990) 24:3 *Modern Asian Studies* 616.

<sup>37</sup> Sarah Wayland, “Ethnonationalist Networks and Transnational Opportunities: The Sri Lankan Tamil Diaspora” (2004) 30 *Review of International Studies* 405 at 408.

in one or more 'host' countries and possess a collective, sometimes idealised, myth of the homeland and will to return. Diasporas such as the Tamil one exist largely because of ethnonationalist conflicts and persecution in the homeland.”<sup>38</sup> Even though this qualitative study is focused on financial inclusion in Sri Lanka, the diasporic flow of remittance culture informs the daily lives of Tamils in post-war regions.<sup>39</sup>

The “July 1983 massacres”<sup>40</sup> against the Tamil community, also remembered as “Black July”<sup>41</sup> marked the demarcation of the political, geographical and social separatist structure within Sri Lanka. The continued violent conflict between the GoSL and the LTTE finally ended in May 2009 amidst scandal of severe human rights abuses and allegations of war crimes.<sup>42</sup> The protracted civil war has left the Northern and Eastern regions of the Island in need of political, economic, social and physical reconstruction. This study was conducted during the phase of reconstruction, which identified unique markers of ‘exclusionary’ methods within the financial inclusion context.<sup>43</sup>

#### **1.4 Rethinking the Current Structure of Financial Inclusion through Methodology**

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<sup>38</sup> Sarah Wayland, “Ethnonationalist Networks and Transnational Opportunities: The Sri Lankan Tamil Diaspora” (2004) 30 *Review of International Studies* 405 at 408.

<sup>39</sup> See Chapter 4-section 3.3.

<sup>40</sup> Eleanor Pavoy, “The Massacres of Sri Lanka During the Black Riots of 1983” online <https://tamilnation.org/indictment/genocide83/pavey.pdf> at 2

<sup>41</sup> Eleanor Pavoy, “The Massacres of Sri Lanka During the Black Riots of 1983” online <https://tamilnation.org/indictment/genocide83/pavey.pdf> at 6

<sup>42</sup> Nira Wickramasinghe, After the war a new patriotism in Sri Lanka, *The Journal of Asian Studies*, Nov., 2009, Vol. 68, No. 4 (Nov., 2009) at 1045-1054.

<sup>43</sup> See Chapter 4: Results.

The financial inclusion paradigm is designed to foster the reduction of poverty through the provision of financial services in order to promote micro-enterprises and income growth. The research methods employed for this study are as follows:

1. This research examined the operation of stakeholders, in particular with the microfinance structure in Sri Lanka. In order to accomplish a review of the existing frameworks, the following considerations below were explored.
  - a. In the aftermath of conflict, the development of financial growth and economic opportunity is often challenging in unpredictable conditions and weak infrastructure, as such social, cultural and economic conditions were part of this study.
  - b. The study included a survey of the preconditions the delivery of financial inclusion initiatives; for instance, conflict-affected regions required more than just a general regulatory intent to infuse markets with a supply of capital; it required a process for designing loan and financial products which identified and addressed the needs of borrowers affected by conflict.<sup>44</sup>
2. The second issue examined was whether the modern promulgation financial regulation through policy implications (theoretical and empirical), within the legal regime vis-à-vis rendered the system operational, functional or inefficient, and which governance mechanisms employed within the institutional structures addressed adequate access to financial services, credit and equal credit distribution to the geographic areas selected for this research. This included an inquiry into the

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<sup>44</sup> Lisa Avery, "Microcredit Extension in the Wake of Conflict: Rebuilding the Lives and the Livelihoods of Women and Children Affected by War"(2005) 12:2 Geo J on Poverty L & Pol'y 205.

internal corporate structure of stakeholder institutions and perspectives, such as political, economic, capital adequacy requirements, donor and investment decisions, ownership, interest rate and social corporate governance, and cultural considerations.<sup>45</sup>

3. The final phase of the research included a detailed review of how banking legislation in the commercialization and post-war context is applied through the lens of the fair lending and accessibility paradigm in relation to access to loans, credit eligibility, repayment methods, debt recovery (moral hazard issues), and credit allocation, and credit documentation, coupled with the added tension of post-war reconstruction and constrained conditions, which revealed deficiencies in the current system.

Without belaboring the definition challenges of financial inclusion, the structure and its alleged success in poverty alleviation, gender empowerment and furtherance in entrepreneurial stimulus demonstrated that not all financial inclusion schemes have the desired effect in certain regions. The research examined sub-culture groups on a comparative basis through a substantive analysis of the relevant law and jurisprudence.<sup>46</sup> In other jurisdictions, academic studies have uncovered the disparate delivery of financial inclusion services, such as indigenous communities within an Islamic structure in Malaysia, and the Dalit community in India.<sup>47</sup> A corollary inquiry in this study was whether

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<sup>45</sup> Todd Arena, "Social Corporate Governance and the Problem of Mission Drift in Socially-Oriented Microfinance Institutions" (2008) 41:3 Colum JL & Soc Probs 269.

<sup>46</sup> The term constrained is defined as a region which is constrained by exigent circumstances, such as knowledge gap, no formal financial system or a recently transitional economy. either subcultures within a larger culture, or within an emerging economy.

<sup>47</sup> Jamie Morgan & Wendy Olsen, "Aspiration problems for the Indian rural poor: Research on self-help groups and micro-finance" (2011) 35:2 Capital and Class 189. See also Stefano

the Tamil community in Northern and Eastern Sri Lanka are precluded from financial inclusion.<sup>48</sup>

Sri Lanka can be described as a transitional nation, which has been an eager recipient of foreign investment and development aid, and has been subject to banking reform and rule of law projects. It is a developing nation, which was plagued with civil war for over 30 years as discussed in the preceding sections, and also struggled with the aftermath of the Tsunami.<sup>49</sup> At present, many of the financial inclusion regimes, supported by the financial institutions, private corporations, non-profit organizations and development agencies, have been established in Sri Lanka. Prior to 2009, the Northern region and Eastern coastal areas have been largely ignored, or unable to attract the attention to establish financial inclusion, and if they do, onerous government and regulatory conditions are imposed, thereby corrupting the intent and design of the regime.

With reference to the various approaches within the emergence of the global governance system, financial services, banking and credit regimes were examined to determine whether a legal hybrid needs to be developed to properly address the defects apparent in the current structure. The current legal model implemented is as a 'one size fits

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Mengoli, Vincenza Odorici & Sigurdur Gudjonsson, "The Scorpion Who Stings the Dog Who Bites: The Effect of Women's Different Job Positions on Gender Discrimination in Microfinance" (2017) 7:1 J Res Gender Stud 137.

Patel, P. C., et al. "Caste-Based Discrimination, Microfinance Credit Scores, and Microfinance Loan Approvals Among Females in India." *Business & Society*, 2020.

<sup>48</sup> Academic scholarship has focused on the lack of economic opportunities within the Dalit cast (India) and the Tamil community (Sri Lanka). However, the aboriginal /indigenous community in Malaysia has been largely ignored by the Islamist state. East Timor (a recent emerging economy) also received scarce academic attention, despite many microfinance projects initiated by the UN and USAID.

<sup>49</sup> "Sri Lanka: 10 Years Since Aid Worker Massacre", *Human Rights Watch* (31 July 2016) online: <[www.hrw.org/news/2016/07/31/sri-lanka-10-years-aid-worker-massacre](http://www.hrw.org/news/2016/07/31/sri-lanka-10-years-aid-worker-massacre)>.

all'. For instance, the World Bank has placed a significant emphasis in the development of the rule of law in order to promote policies affecting economic rights and capacity building in enhancing financial and banking systems.<sup>50</sup> In assessing how financial inclusion schemes operate under the legislative framework, a closer examination of the present system was required in order to illustrate the defects in the stakeholder models established by using other jurisprudential approaches comparatively.

### **1.5 Statement of Purpose**

The research contemplated sought to uncover how financial inclusion has been shaped and transformed by the regulatory landscape and post-war conditions using a banking law trajectory. Through an analysis of banking legislation and other intervening factors, this study provided a unique perspective of how law is translated on the ground financial inclusion efforts in post-war Sri Lanka. This study contributes to this particular discourse by employing a binary approach through the application of jurisprudence and the use of interdisciplinary methodology to respond to the research inquiry set forth in this study.

### **1.6 Rationale of Study**

The recent polarization within the financial inclusion discourse focuses on two contradictory objectives: (1) achieving self-sustainability through state intervention and commercialization through creating profit-driven models<sup>51</sup>, and (2) maintaining its anti-

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<sup>50</sup> World Bank, Brief, "Justice and the Rule of Law" (28 April 2015), online: <[www.worldbank.org/en/topic/governance/brief/justice-and-rule-of-law](http://www.worldbank.org/en/topic/governance/brief/justice-and-rule-of-law)>.

<sup>51</sup> See Milford Bateman, *Why Doesn't Microfinance Work? The Destructive Rise of Local Neoliberalism* (New York: Zed Books, 2010); Pamela Das, "Avoiding a Subprime-like Crises in Microfinance: Lessons from the Mexican and Bolivian Experience" (2009) 15:4

poverty mission and economic development.<sup>52</sup> To clarify, the tension is predicated upon how commercialized models of MFIs are used to deploy financial inclusion initiatives, yet have to use interest rates and strict repayment mechanisms, which adversely affect microfinance consumers.

An inquiry into whether these two objectives have been affected by financial regulatory oversight has not yet been fully explored in a microlevel context. Financial inclusion providers are regulated under the purview of the financial regulator, and are thus, compelled to adhere to national banking and financial legislation. This process of formalization has encouraged specific providers to deviate from their original mission and seek a double bottom line, namely social and financial returns.<sup>53</sup> *Mission drift* within these providers has raised a number of troubling questions: Is self-sustainability achieved by disbursing larger loans to wealthier clients? If so, will this thereby exclude poor clients?

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L & Bus Rev Americas 819; Katherine N. Ranking, “Social Capital, Microfinance, and the Politics of Development” (2002) 8:1 Fem Econ 1; Anita Bernstein, “Tort Theory, Microfinance and Gender Equality Convergent in Pecuniary Reparations” (2009) New York Law School Public Law and Legal Theory Research Paper Series 06/07 # 32 at 16; Beatriz Armendáriz, *Economics of Microfinance* (Cambridge Mass: MIT Press, 2005); similar elements include providing financial services, insurance and savings products, and loans to individuals and communities excluded from the formal market sector.

<sup>52</sup> Todd Arena, “Social Corporate Governance and the Problem of Mission Drift in Socially-Oriented Microfinance Institutions” (2008) 41:3 Colum JL & Soc Probs 269; Delwin A. Roy, “Trends in Global Corporate Social Responsibility Practices: The Case of Sub-Saharan Africa” (2010) 8:3 Intl J Civ Soc’y L 64.

<sup>53</sup> Christina Frank, “Stemming the Tide of Mission Drift: Microfinance Transformations and the Double Bottom Line” (2008) Women’s World Banking Working Paper, online: <[www.womensworldbanking.org/publications/publications\\_stemming-tide-mission-drift-microfinance-transformations-and-double-bottom-line/](http://www.womensworldbanking.org/publications/publications_stemming-tide-mission-drift-microfinance-transformations-and-double-bottom-line/)>; Drew Tulchin, “Microfinance’s Double Bottom Line: Measuring Social Reform for the Microfinance Industry” (2003) Social Enterprise Associates, online: <[www.socialenterprise.net/pdfs/microfinance\\_education.pdf](http://www.socialenterprise.net/pdfs/microfinance_education.pdf)>.

Has gender outreach significantly diminished in lieu of profits?<sup>54</sup> And how are post-war communities affected by these financial inclusion programs?

This study aims to answer these questions by examining local banking and cultural practices within emerging financial regulatory schemes, and tracing the supply chain of financial services to the poor. These services include gender outreach, access to credit, financial literacy, lending technologies, access to payment systems, deposit-taking, repayment methods, creditworthiness, documentation asymmetry, and consumer protection. Despite the myriad of legal reform efforts promulgated thus far, consumers at the ‘bottom of the (income) pyramid’ are not adequately served.<sup>55</sup> Scholarly literature suggests that commercialized providers of financial inclusion appear to be “truly biased against the poor”.<sup>56</sup> Other scholars further claim that certain commercialized regimes have resorted to heavy-handed practices, such as imposing usurious interest rates and coercive repayment methods against the very consumers they were designed to economically empower.<sup>57</sup> Therein lies the inquiry of whether these efforts are designed to facilitate

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<sup>54</sup> Beatriz Armendáriz & Ariane Szafarz, “On mission drift in microfinance institutions” (2011) Munich Personal RePEc Archive Working Paper No 31041; Robert Cull, Asli Demirgüç-Kunt & Jonathan Morduch, “Microfinance Meets the Market” (2009) 23:1 J Econ Perspectives 167; Lamia Karim, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011).

<sup>55</sup> Allen L. Hammond & C.K. Prahalad, “Selling to the Poor” (2004) Foreign Pol’y 30.

<sup>56</sup> Beatriz Armendáriz & Ariane Szafarz, “On mission drift in microfinance institutions” (2011) Munich Personal RePEc Archive Working Paper No 31041 at 362; Robert Cull, Asli Demirgüç-Kunt & Jonathan Morduch, “Microfinance Meets the Market” (2009) 23:1 J Econ Perspectives 167.

<sup>57</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism*, (London: Zed Books, 2010); Pamela Das, “Avoiding a Subprime-like Crises in Microfinance: Lessons from the Mexican and Bolivian Experience” (2009) 15:4 L & Bus Rev Americas 819; Delwin A. Roy, “Trends in Global Corporate Social Responsibility Practices: The Case of Sub-Saharan Africa” (2010) 8:3 Intl J Civ Soc’y L 64; Mac Margolis, “Lining Up the Loan Angels; Critics put trendy poverty lenders to the



financial inclusiveness have embraced and morphed into the traditional banking model, which disproportionately exclude marginalized communities from financial services.

Moreover, certain segments of financial inclusion recipients are disproportionately vulnerable due to external circumstances.<sup>58</sup> Financial services, such as credit and insurance products, offered to the poor can be considered in three sets of “life-cycle needs”<sup>59</sup>, which consist of “marriage, burial and education”.<sup>60</sup> These are often referred to as consumption smoothing expenses, which refer to daily life expenses and are necessary for survival for vulnerable communities.<sup>61</sup> Originally, these initiatives were crafted to encourage aspiring entrepreneurs and foster economic development; however, ‘credit theory’ now encompasses a more customer-centric approach.<sup>62</sup> When examining the lending structures and extension of credit during this study, an inquiry explored the underlying assumptions and policy schemes of financial services promulgated by stakeholders surrounding business purpose and consumption smoothing financial products.

By providing a synopsis of the contextual framework for this study, it is important to be cognizant of country-specific conditions. Sri Lanka has an interesting economic

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test, and find they’re neither a real business nor a real help”, *Newsweek International* (9 April 2007).

<sup>58</sup> Such as conflict, natural disaster and displacements.

<sup>59</sup> Ruth Stewart et al, “What is the impact of Microfinance on Poor People? A Systematic Review of Evidence from Sub-Saharan Africa” (2010) EPPI-Centre, Social Science Research Unit, Institute of Education, University of London at 11.

<sup>60</sup> Ruth Stewart et al, “What is the impact of Microfinance on Poor People? A Systematic Review of Evidence from Sub-Saharan Africa” (2010) EPPI-Centre, Social Science Research Unit, Institute of Education, University of London at 11.

<sup>61</sup> Ganga Tilakaratne, *Microfinance in Sri Lanka: A Household-Level Analysis of Outreach and Impact on Poverty*, 2005

<sup>62</sup> Ruth Stewart et al, “What is the impact of Microfinance on Poor People? A Systematic Review of Evidence from Sub-Saharan Africa” (2010) EPPI-Centre, Social Science Research Unit, Institute of Education, University of London at 11.

history, which has been plagued by civil war. During its post-war reconstruction period, Sri Lanka has loosened its foreign investment criteria, thereby attracting Chinese and Indian foreign investment.<sup>63</sup> International donors and foreign banks have participated in financial inclusion as investment in Sri Lanka, which is a similar experience in many other jurisdictions.<sup>64</sup>

Sri Lanka's unique political, legal and financial structures have augmented the mode of fiscal regulation due to its new post-war governance regime. This study endeavored to answer how this movement in legislation has affected the promulgation of financial inclusion in Sri Lanka. The rationale of the study raised above hopefully make this inquiry interesting, and can offer a nuanced insight in law in context.

## 1.7 Research Questions

1. How is Financial Inclusion regulated in Post-War Sri Lanka?
2. How are financial relationship arranged and regulated in Post-War Sri Lanka?

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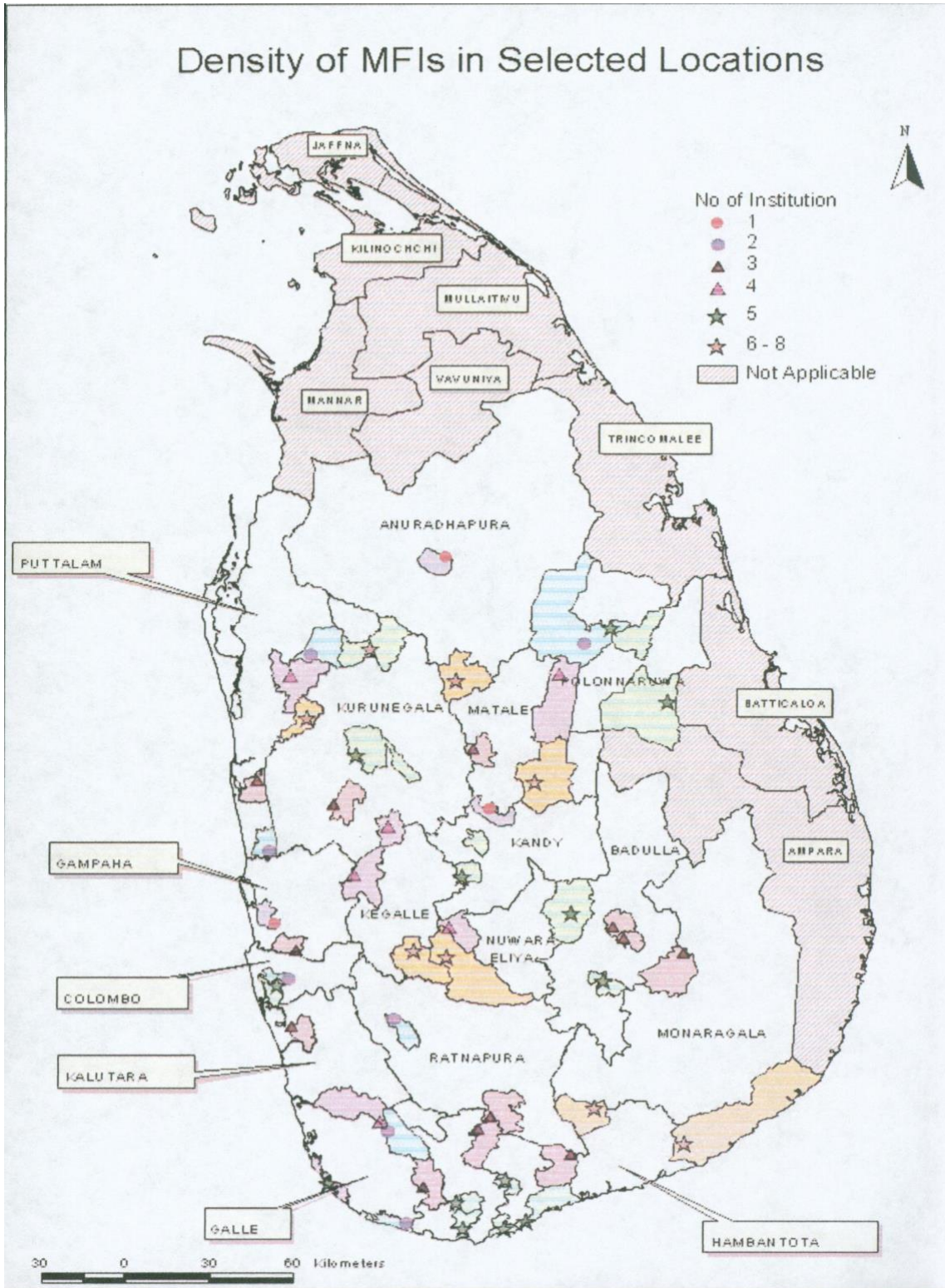
<sup>63</sup> “2012 Investment Climate Statement—Sri Lanka” (June 2012) online: *U.S. Department of State: Diplomacy in Action* <[www.state.gov/e/eb/rls/othr/ics/2012/191238.htm](http://www.state.gov/e/eb/rls/othr/ics/2012/191238.htm)>; also see Ramtanu Maitra, “China’s Investment in Sri Lanka a potential boon for region” (2 January 2013), online: *Vijayvaani.com* <<http://www.vijayvaani.com/ArticleDisplay.aspx?aid=2625>>; “Sri Lanka and China: About Face: A big deal in the heart of the capital goes bad” (29 October 2011), online (blog): *The Economist: Banyan* <<http://www.economist.com/blogs/banyan/2011/10/sri-lanka-and-china>>.

<sup>64</sup> See J. Wyatt Kendall, “Microfinance in Rural China: Government Initiatives to Encourage Participation by Foreign and Domestic Financial Institutions” (2008) 12 *NC Banking Institute* 375; Fernanda Martins & Adalbert Winkler, “Foreign ownership in Latin American microfinance institutions: evidence and impact” (2013) 83:6 *J Bus Econ* 665.

**FIGURE 2:** A map of Sri Lanka. Please note that the Northern and North-Eastern parts of the country were primarily affected by the civil war, and are now administered as a post-conflict zone.



**Figure 3:** This is map depicts the location of MFIs. Surprisingly, there are none in the North and Eastern part of the province which may demons ‘selective lending’. (Ganga



## 1.8 Concluding Thoughts

To date, interdisciplinary scholarship has focused on the economic and social perspectives embedded in the financial inclusion movement, whereas the legal investigation in this specific area is surprisingly absent. As such, the underlying rationale of the study proposed will examine the legal framework and theories using banking legislation to interpret ‘on-the ground’ analysis. The extant literature further affirms that this doctoral research may be situated at the cusp of debates within the financial inclusion discourse, as normative legal approaches have neglected to make specific interventions.

By examining how different discourses draw their assumptions from either banking legislation or exogenous influences, this study contributes a link in the chain of scholarship which may further an understanding of the legal conditions surrounding microfinance. The vision of the study has evolved in the 6 years of my doctoral study, and may continue to do so; however, a challenge to this discussion was to maintain fidelity to the narrow inquiry of this study. My own limitations have demonstrated that my inclination is to write about the ‘topic’ or ‘subject area’, rather than the controversy or issue within the scholarship. As such, my analysis is strictly geared to investigate the convergence of banking laws during the access and delivery moment of financial inclusion in a post-war jurisdiction. By using cultural cognition techniques derived from my field work, I hope to provide an added layer of how law is translated at a micro-level. In addition, by exploring law through several methods, this study provides intuitions to corresponding challenges and pitfalls in doing qualitative research using a “legal inquiry”, and hopes to serve as a preliminary methodological guide for legal scholars in examining financial inclusion within a banking context.

My hope is that this study can be used to measure the efficacy and the movement of law, by exposing a specific knowledge and deconstructing the institutional dimensions within banking regulation and governance. The analysis through interdisciplinary methods provides a divergent understanding of the applicable jurisprudence, and offer insights that can be transposed to the other contexts. The qualitative data in this study revealed the causality of the diffusion of legal norms within the context of financial inclusion.

The purpose of this outline is to provide a cursory review of the study, and to engage in a discussion necessary within the banking and fiscal regime. The research is particularly important as the financial climate has changed and is evolving to promote financial inclusion. Practical considerations in creating economic initiatives are in some instances not part of policy development, especially in the area of fair lending and consumer rights within post-war jurisdictions. In theory access to finance is readily available, but in practical reality, the commercialization and post-war effects have caused challenges within certain groups to access financial services due to political, cultural, legal, physical and social obstacles. Access is curtailed due to a political bias, lack of disclosure, fragmented regulation, and a lack of redress. In the financial inclusion context, these schemes often operate at a local level, and in some instances devoid of a functioning legal framework, despite being enacted by external regulations and policies. As stated above, this study is a start in furthering a dialogue within banking legislation and economic rights emerging markets.

## CHAPTER 2: METHODOLOGY

### 2.1 Mapping the Theoretical Landscape

The theoretical framework informs this study's analysis of how financial inclusion is regulated and administered in a post-war jurisdiction by stakeholders. This research is multi-faced and interdisciplinary in nature, which draws from theoretical underpinnings informed by qualitative data, employing grounded theory.<sup>66</sup> Specifically, this study is influenced by empirical legal studies, law and anthropology (legal pluralism and law as process discourses), which fall under the ambit of the law and society paradigm; and regulation and governance, in which law and economics are employed as a dominant model. This chapter (1) first highlights the variegated theoretical strands used to situate this study, and (2) subsequently outlines the methodological process and underlying modalities of this qualitative study.

#### 2.1.1 Law & Society

The law and society approach emerged as a result of melding the study of law and behavioral sciences.<sup>67</sup> Marc Galanter and Stewart Macaulay, in particular, are two legal

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<sup>66</sup> “Grounded theory is a method of conducting qualitative research that focuses on creating conceptual frameworks or theories through building inductive analysis from data” in Antony Bryant and Kathy Charmaz (eds), *The Sage Handbook of Grounded Theory* (London: Sage, 2007) at 608.

<sup>67</sup> David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 *NYU Journal of International Law and Politics* 335 at 447.; Stewart Macaulay, “Non-Contractual Relations in Business: A Preliminary Study” (1963) 28 *American Sociological Review* 55.

scholars who furthered this specific approach. For the purposes of this research, an emphasis is placed on similar scholarship, which centers on an analysis of conditions within private law (financial, banking and corporate) and market regulation.<sup>68</sup> Macaulay, in his formative article, “Non-Contractual Relations in Business: A Preliminary Study”<sup>69</sup>, demonstrated the linkages between the market, the law, and human behavior through the use of law and empirical investigation. The method employed is not a departure of doctrinal studies, but rather an alternate mode of legal analysis.<sup>70</sup> In addition, within this approach explains the view of law mirroring society to ensure that social order is maintained.<sup>71</sup> The “mirror thesis” promulgated by Brian Tamanaha provides added perspective to understand the regulatory structure, which include a manifestation of social conditions.<sup>72</sup> The law and society approach has been used by legal scholars to understand and highlight reflections in the law entrenched in constructs of society, and in some sense, as a counter narrative to formalism. Further, it explains relationships between non-state and state actors within a multitude of spheres.<sup>73</sup> This approach is beneficial as it provides

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<sup>68</sup> Many law and society scholars have provided a rich discourse on a variety of legal issues, such as a focus on social and criminal aspects within the law, litigation, jurisprudential issues. Marc Galanter, “Why the ‘Haves’ Come out Ahead: Speculations on Limits of Legal Change”, (1974) 9 *Law and Society Review* 95.

<sup>69</sup> David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 *NYU Journal of International Law and Politics* 335 at 447.; Stewart Macaulay, “Non-Contractual Relations in Business: A Preliminary Study” (1963) 28 *American Sociological Review* 55.

<sup>70</sup> See also : David Trubek, “Back to the Future: The Short Happy Life of the Law and Society Movement,” (1990) 18 *Florida State University Law Review* 4; David Trubek, “Where the Action Is: Critical Legal Studies and Empiricism, “ (1984) 36 *Stanford Law Review* 575 ;

<sup>71</sup> Brian Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: OUP, 2001).

<sup>72</sup> Brian Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: OUP, 2001) at 2.

<sup>73</sup> Brian Tamanaha, *A General Jurisprudence of Law and Society* (Oxford: OUP, 2001).



a deeper understanding of how financial inclusion is used a policy vehicle to create regulations within the legal framework using social customary rules in forming a common understanding.

### 2.1.2 Law & Anthropology

Theoretical underpinnings derived from the law and anthropology movement are used in this research study. The study of anthropology, often described as a later discipline that was formed out of the field of sociology, focuses on human conditions and culture. A simple distinction to illustrate this is that the study of sociology examines social behavior and society.<sup>74</sup> Whereas, anthropology emphasizes “the *expressive* concept of law.”<sup>75</sup> This approach can be described as a complementary lens to the law and society movement.<sup>76</sup> By employing anthropological methods, it demonstrates that law may be used, shaped and developed as an “ordering device” by understanding networks and relationships.<sup>77</sup>

Legal scholars, such as Sally Falk Moore and Annelise Riles, have greatly influenced this study as their work is based an analysis of alternative legal schemes and *law as process* within bounded settings.<sup>78</sup> The semi-autonomous field, furthered by Falk Moore, within

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<sup>74</sup> Dworkin, Ronald, 2004, Hart’s Postscript and the Character of Political Philosophy, *Oxford Journal of Legal Studies*, 24: 1–37.

<sup>75</sup> Pirie, Fernanda, 2010, Law before Government: Ideology and Aspiration, *Oxford Journal of Legal Studies*, 2: 207–228.

<sup>76</sup> David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 *NYU Journal of International Law and Politics* 335 at 463.

<sup>77</sup> David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 *NYU Journal of International Law and Politics* 335 at 447.

<sup>78</sup> See Sally Falk Moore, *Law as Process: An Anthropological Approach* (London: Routledge, 1978); Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study” (1973) 7 *Law and Society Review* 719; Annelise Riles, *Collateral Knowledge: Legal Reasoning for Global Financial Markets* (Chicago: University of Chicago, 2011).; and Annelise Riles, “Anthropology, Human

legal rule making provides the rubric to link internal and non-formalized rules to a larger regulatory apparatus.<sup>79</sup> Similarly, this research study, demonstrates through the use of qualitative data, the “gap between law and action” and how internal and procedural networks are tied (or not) to the regulatory framework, and whether these processes are shaping or rather are shaped by law within the regulation of financial inclusion.

### 2.1.3 Legal Pluralism

To guide this research, legal pluralism is used to describe the procedural possibilities within the relationships embedded within the financial inclusion context.<sup>80</sup> The application of legal pluralism to this study captures the essential components operating within and outside the legal regime, which in fact create an ordering mechanism. The recognition of private ordering and private rules by the State manufactures a regulatory space that is hybrid in nature as the data reveals.<sup>81</sup> The legal processes and techniques used in financial inclusion initiatives are manifold; as such, this theoretical frame is an appropriate vehicle to investigate the research question at issue.

Legal Pluralism articulates how legal spaces co-exist and create legal norms.<sup>82</sup> “On the descriptive level, legal pluralism could be viewed as expressing the normative/ideological

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Rights and Legal Knowledge: Culture in the Iron Age” (2006) 108:Q American Anthropologist 52.

<sup>79</sup> Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study” (1973) 7 Law and Society Review 719

<sup>80</sup> Paul Schiff Berman, “Global Legal Pluralism” (2007) 80 S. CAL. L. Rev. 1155 at 1157-59.

<sup>81</sup> Paul Schiff Berman, “Global Legal Pluralism” (2007) 80 S. CAL. L. Rev. 1155 at 1157-59.

<sup>82</sup> Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” (1973) 7 Law and Society Review 719

interrelations between different normative systems.”<sup>83</sup> Customary mechanisms embedded in and outside of systems are examples of such a phenomenon. The intertwined orientations of formal and informal laws affect how legal mechanisms, rules and processes maneuver within institutions. This approach refers to a wide range of iterations of legal pluralism, which is classified as deriving from the law and society movement.

A similar distinction is made by scholars, such as Falk Moore and Engle Merry, who have illustrated how plural legal orders can explain the simultaneous normative orderings in subfields within the law.<sup>84</sup> “The pluralistic qualities of law”<sup>85</sup> are central to this particular discourse, especially when studying the integrative legal regimes with a post-colonial history.<sup>86</sup> Merry suggests that “legal pluralism has expanded from a concept that refers to the relations between colonized and colonizer to relations between dominant groups and subordinate groups, such as religious, ethnic, or cultural minorities, immigrant groups, and unofficial forms of ordering located in social networks or institutions.”<sup>87</sup> The vast literature demonstrates how legal scholars have used this particular discourse to illustrate legal complexities, and thereby enrich understanding of diverse legal regimes.<sup>88</sup> Similarly, this particular project benefits from employing such methods as pluralism draws

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<sup>83</sup> Franz von Benda-Beckmann, “Comment on Merry” (1988) 22 *Law & Soc’y Rev.* 897.

<sup>84</sup> Sally Falk Moore, “Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study,” (1973) 7 *Law and Society Review* 719.; Sally Engle Merry, *Legal Pluralism*.

<sup>85</sup> Sally Engle Merry, “Legal Pluralism” (1988) 22:5 *Law and Society Review* 869.

<sup>86</sup> Sally Engle Merry, “Legal Pluralism” (1988) 22:5 *Law and Society Review* 869 at 871.

<sup>87</sup> Sally Engle Merry, “Legal Pluralism” (1988) 22:5 *Law and Society Review* 869 at 873.

<sup>88</sup> M.B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*, (Oxford: Clarendon Press, 1975). – cite that.; see Simin Gao, “Legal Pluralism and Isomorphism in Global Financial Regulation: The Case of OTC Derivative Counterparty Risk Regulation in China” (2019) 51:1 *The George Washington International Law Review* 145.

from a micro-examination of qualitative methods, and can provide insight into the private ordering taking place within the regulation of financial inclusion.<sup>89</sup>

Through examining the configuration of stakeholders and transactional processes, myriad of practices and the interactions are uncovered. Macaulay suggests that the “private government perspective” can be decoded to illustrate how internal governance structures are developed and implemented through non-state law or customary norms.<sup>90</sup> In this study, relationships and regulatory compliance and procedural mechanisms are analyzed to determine the interactions of the normative processes at play. Through this method, legislative gaps are identified and the intrusions of private ordering may be captured to determine the way financial inclusion policy making is either designed to respond or to counter regulations.

#### 2.1.4 Law as Process

Theoretical assumptions are employed to guide this research by posing several questions, such as whether traditional legal frameworks have appropriated customary or local practices in financial inclusion initiatives in a post-war jurisdiction?<sup>91</sup> Whether banking laws are actual “legal transplants” or do they contain local and informal cultural constructs mediated by stakeholders? Or, how consumer uptake and/ or borrower obligations function within the financial regulatory structure? These inquiries highlight the

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<sup>89</sup> Sally Engle Merry, “Legal Pluralism” (1988) 22:5 Law and Society Review 869 at 873.

<sup>90</sup> See Stewart Macaulay, *Private Government*, (Madison: University of Wisconsin-Madison, 1983).also Sally Engle Merry, “Legal Pluralism” (1988) 22:5 Law and Society Review 869 at 877.

<sup>91</sup> Sally Engle Merry, “Legal Pluralism” (1988) 22:5 Law and Society Review 869 at 882.

micro-level processes that compelled regulatory obligation or legal liability within the financial inclusion context. Sally Falk Moore suggests in “Law as Process: An Anthropological Approach” that through observing processes rules, customs and symbols contained therein can assist in providing a richer understanding of law.<sup>92</sup> Falk Moore further articulates how collective responsibility may be examined by understanding the processes within those relationships and identifying liabilities and obligations. She illustrates this by using the example of self-help groups to explain collective economic responsibilities.<sup>93</sup> This theoretical inclination is particularly relevant in this doctoral research, as the group lending method (also known as ‘peer lending’) is frequently used in financial inclusion programs.

By extending credit to a group of self-selected microcredit recipients, financial services providers can minimize risk of default and rely upon self-monitoring of repayment of loans. To illustrate, whether group lending economic stratifications are supplanted in these specific relationships and further create divisive groups.<sup>94</sup> Falk Moore’s approach to analyze group membership and models of organization is helpful in providing a useful framework in determining the lending cycle and its structure in these initiatives examined in this study. In addition, the existing and multiple orders captured by the qualitative data illuminate various stakeholder relationships, and challenges thereto as well as rules, compliance methods and sanctions for non-repayment of loans.

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<sup>92</sup> Sally Engle Merry, *Law as Process: An Anthropological Approach* (London: Routledge, 1978) at 50.

<sup>93</sup> Sally Engle Merry, *Law as Process: An Anthropological Approach* (London: Routledge, 1978) at 50.

<sup>94</sup> Lamia Karim, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011).

This study further investigates how these mechanisms operate and how norms are produced within the financial inclusion context. As highlighted above norms can be characterized as societal constructions of processes, and more specifically defined as “widely shared”<sup>95</sup> “Norms are a strand within the fabric of culture”<sup>96</sup>, which mirror local conditions, and can translate into ‘legal culture’ within an institution, or initiative and can be adopted as method or practice in the conduct of business. The emergence of *New Institutional Economic* theory, which takes its conceptual cues from a similar approach, underscores the importance of norm-producing conduct, legal and informal rules and the interactions thereto.<sup>97</sup> By merging the study of processes and norms within an economic vantage point, these theoretical strands can be described as “crossing boundaries”.<sup>98</sup>

Crossing boundaries as a theoretical strand within law and society research establishes a framework to bind theories that have been developed in silos.<sup>99</sup> As interdisciplinary approaches collide to provide a deeper understanding of law and how non-legal orderings affect law on the ground, legal scholarship has been enriched by using different methods in knowledge production. Similarly, this research seeks to examine norm producing relationships in order to provide an analysis of the interactions between informal

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<sup>95</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 761.

<sup>96</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 761.

<sup>97</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 762.

<sup>98</sup> Austin Sarat et al, *Crossing Boundaries Traditions and Transformations in Law and Society Research*, (Evanston: Northwestern University Press,1988

<sup>99</sup> Austin Sarat et al, *Crossing Boundaries Traditions and Transformations in Law and Society Research*, (Evanston: Northwestern University Press,1988).

and formal rules within the financial inclusion context as discovered through the qualitative data.

### 2.1.5 Regulation Theory within Social Dynamics

When adopting a law and society approach in understanding the myriad of relationships in the regulatory structure of financial inclusion, regulation theory is helpful in understanding the complex underpinnings of legal interventions in Sri Lanka, specifically within financial governance. A pre-requisite in understanding regulation and governance is to examine the inception of the legislative landscape.

Historically, current legal frameworks developed using “legal acculturation efforts, whereby legal systems, or parts thereof, were transferred from one society to another.”<sup>100</sup> This process of legal transplantation has been strongly criticized as it omits and dismisses local, religious, political and cultural aspects unique to the recipient jurisdiction. This line of reasoning has also been adopted by critics of the sweeping microfinance addiction within the financial inclusion discourse, which has been characterized as development curse by sustaining poverty. “The credit-baited subaltern woman, the subject of gender-and development-based microcredit projects”<sup>101</sup> has been the subject of inquiry in academic circles, not the subject to be saved by law and development scholars. This shift marks a demarcation in financial inclusion discourse as it relates to microfinance.<sup>102</sup>

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<sup>100</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739.

<sup>101</sup> Ritu Birla, “Law as Economy: Convention, Corporation, Currency” (2011) 1:3 UC Irvine Law Review at 1019

<sup>102</sup> Lamia Karim, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011) at 38.

Scholars have argued that the absence of local participation and the “capture of local elites”<sup>103</sup> in designing an holistic regulatory framework have rendered the ‘transplant effect’ a failure.<sup>104</sup> However, Daniel Berkowitz suggests that legal transplantation is needed for economic markets and financial regulation.<sup>105</sup> Due to the contentious nature of these debates, an empirical study was conducted, which illustrated that the ‘manner’ in which laws are adopted by the recipient jurisdiction is “more determinative of its eventual effectiveness than the particulars of the code itself.”<sup>106</sup> How is ‘effectiveness’ determined? Are there specific indicators employed in measuring whether specific legislation imported into different legal spheres?<sup>107</sup> These are some of the inquiries, which have guided this qualitative research.

Scholarly interventions suggest that “bottom-up, community based interventions”<sup>108</sup> are a better mechanism to offset prior implementation failures often so common in economic development projects. These specific approaches are promulgated to demonstrate the role of culture, and how culture can influence norms, which in turn shape

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<sup>103</sup> Trubek/ Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 755.

<sup>104</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 755.

<sup>105</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 754. Daniel Berkowitz, Katharina Pistor and Jean-Francois Richard, “The Transplant Effect” (2003) 51:1 The American Journal of Comparative Law 163.

<sup>106</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 755.

<sup>107</sup> Such as Governance Indicators used by the world bank.

<sup>108</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 744.



the regulatory environment.<sup>109</sup> This research considers the culture and its derivatives within a post-war jurisdiction, and how it is influenced by legislation and policy goals.

A robust legal system can “secure property and contract rights and thereby encourage economic exchanges, which would lead to economic growth.”<sup>110</sup> This has been the dominant approach employed in financial regulation in emerging and developing countries. Legal and political certainty and stability have long been touted as determinants for economic growth, foreign investment and entrepreneurial success.<sup>111</sup> Borrowing a similar argument from law and development theorists, legal reforms applied to developing legal frameworks have emerged as rule of law projects, specifically aimed at creating economic growth.<sup>112</sup> This particular approach was adopted by the World Bank, and also by the “Washington Consensus”<sup>113</sup>, which arguably propelled the microfinance ‘gold rush’.<sup>114</sup> Against this back drop, many financial inclusion initiatives emerged as a result of private investments and international financial intervention.

Not only is the use of sociological thinking instructive in framing this research inquiry, but this study is also theoretically informed by specific components of regulation

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<sup>109</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 745.

<sup>110</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 748.

<sup>111</sup> Poonam Puri, "Legal Origins, Investor Protection, and Canada" [2009] 2009:6 BYU L Rev 1671. ; Narjess Boubraki , Yves Bozec, Claude Laurin & Stephane Rousseau, Incorporation Law, Ownership Structure and Firm Value: Evidence from Canada, 8 J. EMPIRICAL LEGAL Stud. 358 (2011)

<sup>112</sup> Maggi Carfield, “Participatory Law and Development: Remapping the Locus of Authority” (2011) 82 University of Colorado Law Review 739 at 752.

<sup>113</sup> John Williamson, “A Short History of the Washington Consensus” (2009) 15:1 Law and Business Review of the Americas 7.

<sup>114</sup> John Williamson, “A Short History of the Washington Consensus” (2009) 15:1 Law and Business Review of the Americas 7.

and governance literature. Regulation is often prompted by ideology; numerous scholars debate whether state or private, liberal or neo-liberal interventions should be made or constrained. Legal, economic and political literature cross paths to observe trends and develop theoretical connections, which define and influence further regulatory mechanisms. Regulation theory is attributed to various market conditions and analyzed through several lenses. The frameworks either employ a cost-benefit analysis or efficiency claim, a market driven perspective, consumer impact consideration or inequality creation. Further, regulation theory describes the market, or a method to allow private actors to solve market failures, such as contracts as suggested by Coase.<sup>115</sup> Even if parties opt out of the formal legal system, a rule-based framework may determine actors' rights and obligations, thereby cementing alternate forms techniques of regulation.<sup>116</sup> Similarly, in this research study institutional or social norms, as derivative forms of governance, are mechanisms employed to regulate activity or conduct within the financial inclusion context.

By drawing from law and behavior economics, Cass Sunstein suggests how regulation affects decisions and choices by 'nudging' consumers toward a specific outcome.<sup>117</sup> He and Richard Thaler employ the term "choice architect",<sup>118</sup> which refers to the supplier of choices, to illustrate how choices are sold in the public sphere, thereby

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<sup>115</sup> Anthony I Ogus, *Regulation: Legal Form and Economic Theory*, (London, UK: Hart Publishing, 2004).

<sup>116</sup> Lisa Bernstein, "Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry" (1992) 21 *Journal of Legal Studies* 115.

<sup>117</sup> Richard H Thaler, & Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness*, (London, Penguin Books, 2008-2009).

<sup>118</sup> Richard H Thaler, & Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness*, (London, Penguin Books, 2008-2009).

effectuating a desired result.<sup>119</sup> They argue that the State, as the regulator, uses this strategy to further its political agenda. For instance, this approach, examined through the preference theory lens, measures how borrower's make choices when offered a myriad of credit products.<sup>120</sup> The market is used as the metric to identify the loan choices made by consumer purchases.<sup>121</sup>

The data from this research study revealed a surprising critic of this theoretical frame. The misapplication of the preference theory fails to consider the power inequities between parties when making that particular financial decision. This particular theoretical frame can be problematic, as the findings are based on products that are 'accepted' by the consumer, not necessarily based on preference. If a consumer only qualifies for a certain credit product and is deemed not to be creditworthy, the preference test can be said not to portray accurate findings. In this study, however, it is unlikely that regulations shape preferences in consumer choices in financial inclusion initiatives, instead poverty and post-war conditions impact consumer conduct.

Transaction costs associated in financial services can be traced to regulatory changes and compliance mechanisms thereto, which affect the financial ecology by influencing conduct in the marketplace. In some instances, legislative action exacerbates the issue subject to regulation. To illustrate, the issue of information asymmetry within the provision of microfinance within financial inclusion initiatives is a challenge for regulators

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<sup>119</sup> Richard H Thaler, & Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth and Happiness*, (London, Penguin Books, 2008-2009).

<sup>120</sup> Alan M White, "Credit and Human Welfare: Lessons from Microcredit in Developing Nations" (2012) 69:2 Washington and Lee Law Review 1093 at 1100.

<sup>121</sup> Alan M White, "Credit and Human Welfare: Lessons from Microcredit in Developing Nations" (2012) 69:2 Washington and Lee Law Review 1093 at 1100.

and service providers. The borrower is most familiar with her own business production or financial status than lenders, as such the risks are ‘hidden’.<sup>122</sup> The transaction costs associated with lending to that specific borrower to ensure regulatory compliance may emerge in many forms, such as high interest rates, consumer literacy programs, repayment enforcement, and employee training costs.

At first blush, the recent commercialization identified within financial inclusion schemes appears to follow the privatization and deregulation paradigm, which mirrors the evolution of the financial liberalization project and market ideology.<sup>123</sup> In fact, Mohamed Yunus, the Nobel Laureate winner for microfinance, objects to the emerging microfinance model, by remarking “microcredit was created to fight the moneylender, not become the moneylender.”<sup>124</sup> His criticism rests on the profit-driven model, which he believes has become an oppressive and coercive entity thwarting the poverty-reduction ideology. The non-profit model of microfinance envisioned by Yunus rested on self-sustaining institutions to recycle loans on a small-sum scale, and to use the repayment as a new source of funding. The non-commercialized vehicles depend on swift client repayment, State and Donor support. The commercialized (for-profit) model, which is manifested through

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<sup>122</sup> George Akerloff, “The Market for lemons: Quality Uncertainty and the Market Mechanism” (1970) 84:3 *The Quarterly Journal for Economics* 488.

<sup>123</sup> Working under the assumption that the market will correct itself – Coase Theorem; Autor, David, *Externalities, the Coase Theorem and Market Remedies* (Department of Economics, MIT, Spring 2004) at 10 online: MIT <<https://dspace.mit.edu/bitstream/handle/1721.1/71009/14-03-fall-2004/contents/lecture-notes/lecture17.pdf>>.

<sup>124</sup> Aneel G Karnani, “Regulate Microcredit to Protect Borrowers” (2009) *Ross School of Business Paper No 1133* at 50.

private microfinance institutions, are structured as lending institutions with interest rate allocation, and strict repayment mechanisms.<sup>125</sup>

At this juncture, it is important to note that the data in this study illustrated that merely overselling microfinance products not only forces financial service providers serving underbanked communities to charge higher interests as part of its risk mitigation strategy, but it also creates overcrowded markets for entrepreneurs. To illustrate, if credit is extended to multiple individuals or groups to manufacture or provide similar products and services within a specific geographic location, the market becomes oversaturated, thereby driving the costs of the services or products lower and precluding entrepreneurs from realizing a profit. As such, insufficient income is generated to fulfill loan agreements and default ensues. Empirical studies, similar to this study, have demonstrated that under such conditions, these entrepreneurs are more than likely to borrow from informal moneylenders and family members which ultimately contributes to over indebtedness.<sup>126</sup>

Regulation theory is often categorized in general terms, as financial relationships are more intertwined and more complex. However, contemporary regulation should enhance “aspects of informal regulation already in play” and should “not undermine the social fabric.”<sup>127</sup> The transnational dimensions of regulatory actors within financial inclusion are interconnected through public, private and cultural modalities. This qualitative research

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<sup>125</sup> Charitonenko S. "Commercialisation of Micro Finance: A concept Paper", Manila 2001. See also S. M. P. Senanayake, “Some Critical Issues Relating to the Commercialisation of Micro Finance Institutions in Sri Lanka,” (2003) 27:1 Savings and Development 79.

<sup>126</sup> See Chapter 4 (Results).

<sup>127</sup> Braithwaite, Valerie, “Closing the gap between regulation and the community”, in P Drahos, ed, *Regulatory Theory: Foundations and Applications* (Action: ANU Press, 2017) at 26.

offered a bird's eye view of the daily lived experiences of participants, also described as consumers, subject to the financial inclusion regime. It is important to have an understanding of the contextual conditions embedded within the regulatory framework designed to promulgate and further policy approaches affecting financial inclusion. The research findings of non-legal mechanism illuminate how law is embedded in the financial architecture. The dominant theme to emerge in this research is that regulators often struggle to evaluate how legal systems affect economic conditions; and more specifically how legal rules inform credit regulation in the financial inclusion context. Through exploring the "local" impact on the deployment of microcredit, the empirical connections show how local norms affect legal framework. Sunstein suggest that local level interventions can be most effective in guiding policymakers.<sup>128</sup> Throughout this study, the research revealed regulatory challenges in the form of State governance, private actors and local community impact within a post-war jurisdiction. The section below highlights the ideological underpinnings that stitch together the theoretical components of this research study.

#### 2.1.6 Regulation Theory within the Financial Landscape

Theoretical frameworks derived primarily from regulatory theory rooted in global financial regulation and thematic elements within law and finance have also informed this project. In particular when examining stakeholders that operate as "regulators". *New Governance Theory, International Financial Regulation and Legal Theory of Finance* are

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<sup>128</sup>Cass R Sunstein, *Social Norms and Social Roles*, (1996) 96 Colum. L. Rev. 903 at 952.

regulatory strands that are applicable to this research inquiry, specifically as they address contemporary banking and financial trends. These regulatory theories share the ‘responsive regulation’ discourse as furthered by Ayres and Braithwaite<sup>129</sup> in that these theories consider the policy and reform measures promulgated by regulators and private stakeholders within the interconnected financial system. To illustrate, a form of responsive regulatory mechanism in the financial inclusion context is for regulators to prohibit deposit-taking by unregulated financial intermediaries.

Saule Omarova uses new governance theory to suggest how institutional ‘embedded self-regulation’ and private interventions can shape policy and financial reforms within the global financial system.<sup>130</sup> “The central tenet of new governance literature posits that traditional command-and-control, top-down regulation has been supplanted, to varying degrees, by new forms of collaborative and polycentric governance, often involving dynamic cooperation between the public sector (formerly the "governors") and the private sector (formerly the "governed"), and often characterized by an increased participation in governance by third party non-state actors.”<sup>131</sup> The results of this study embody these theoretical iterations as the regulatory framework includes the State’s military, social capital and culture.

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<sup>129</sup> Ian Ayres and John Braithwaite, “Responsive Regulation: Transcending the Deregulation Debate” (New York: Oxford University Press, 1992).

<sup>130</sup> Saule T. Omarova, “The Future of Self-Regulation in the Financial Industry” (2010) 35:3 Brooklyn Journal of International Law 665. Omarova employs new governance theory to illustrate her claim.

<sup>131</sup> Robert F Weber, “New Governance, Financial Regulation, and Challenges to Legitimacy: The Example of the Internal Models Approach to Capital Adequacy Regulation” (2010) 62:3 Administrative Law Review 783.

New governance theoretical frames are gradually being employed to understand legal relationships in financial regulation. There is a shift in the way financial regulation is discussed; and more recently, legal scholarship considers external non-state actors as a significant influence on the financial regulatory system.<sup>132</sup> New governance theory is said to be related to experimentalism, which claims that by testing governance mechanisms, new regulation theories may emerge.<sup>133</sup> It also describes governance as collaborative and from ‘below’, usually referring to non-state, multi-industry stakeholders or private policy makers, which “constantly negotiate, and renegotiate the boundaries between public and private spheres of economic and social life.”<sup>134</sup>

Similarly, this theoretical lens assists in supporting the research claims as it relates to the financial inclusion discourse situated within the banking regime. In examining the local level transactions and processes, this study uncovers how stakeholders interact with the financial regulator, and in turn with the global financial system. A related discourse to this theory is explored by using scholarship as it relates to soft law mechanisms as promulgated by notable legal scholars, such as Anne Marie Slaughter and Chris Brummer.<sup>135</sup> As part of the international financial regulatory theory paradigm, Brummer suggests that international regulations are developed through non-binding ‘soft law’ arrangements.<sup>136</sup> He suggests

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<sup>132</sup> Saule T. Omarova, “The Future of Self-Regulation in the Financial Industry” (2010) 35:3 Brooklyn Journal of International Law 665. Omarova employs new governance theory to illustrate her claim.

<sup>133</sup> Grainne De Burca, “New Governance and Experimentalism: An Introduction” (2010) Wis. L. Rev. 227.

<sup>134</sup> Saule T. Omarova, “The Future of Self-Regulation in the Financial Industry” (2010) 35:3 Brooklyn Journal of International Law 665. Omarova employs new governance theory to illustrate her claim at 673.

<sup>135</sup> Anne-Marie Slaughter, *A New World Order* (Princeton University Press: 2005).

<sup>136</sup> Chris Brummer, *Soft Law and the Global Financial System: Rule Making in the 21st Century*, (Cambridge: CUP, 2012).



that informal and collaborative groups shape and develop global financial regulation. Brummer further cites institutional structures and operations to highlight how rule-making and standard-setting operate through private actors. This particular approach is persuasive within this research inquiry to determine how non-binding banking and financial rules affect financial inclusion initiatives and their interactions with national legislation and local level practices within a post-war jurisdiction.<sup>137</sup>

Further, *Legal Theory of Finance* (also referred to as “LTF”) developed by Katarina Pistor, which examines capital markets, offers a complementary dimension in explaining how financial inclusion measures are promulgated and how they are situated within the global financial system.<sup>138</sup> “LTF is an inductive theory... it is derived from observable facts from across the whole spectrum of finance”<sup>139</sup>, which is helpful in interpreting data derived from this research. LTF suggests that finance is legally constructed. “This also puts LTF apart from theories in socioeconomics that have long asserted the relevance of social structures to finance, but have been less explicit about the specific role attributed to law or the state as compared to other structures.”<sup>140</sup> Pistor further explains that finance can be perceived as a social system, which is influenced by how law constructs specific

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<sup>137</sup> For instance, the Basel Committee has established capital adequacy limits on financial institutions; some jurisdictions have compelled commercialized MFIs to comply. This onerous condition has placed some of these MFIs at risk as they were unable to meet capital adequacy, and had to be either assumed by a commercialized bank or partner with an existing bank. In this research, the inquiry rests upon how the national regulator transposes legislation to the local level, or not.

<sup>138</sup> Katarina Pistor, “Towards a Legal Theory of Finance” (2013) Columbia Law and Economics Working Paper No 196.

<sup>139</sup> Katarina Pistor, “Towards a Legal Theory of Finance” (2013) Columbia Law and Economics Working Paper No 196 at 7.

<sup>140</sup> Katarina Pistor, “Towards a Legal Theory of Finance” (2013) Columbia Law and Economics Working Paper No 196 at 35.

relationships in the financial landscape.<sup>141</sup> LTF expands on the notion that “private contracting” in financial arrangements operates in the periphery, or in the “shadow of the law” without state prohibition and intervention. The hybrid view of this theoretical stream offers insights into how patterns of financial inclusion with their dual nature (formal and informal) interact with legal structures within the financial system. LTF aims to shift regulatory measures to address the sources of fiscal instability, instead of centralized legislative authority (liquidity requirements etc.) by focusing on the “safety valves for enhancing the elasticity of law not only at the core, but also at the periphery of the financial system.”<sup>142</sup> This approach is in line with regulatory measures aimed at financial institutions engaged in financial inclusion initiatives to ensure financial sustainability, but also to maintain domestic fiscal stability.

By examining how financial inclusion is regulated through the variegated legal structures that are embroiled in the banking and finance domain, a closer look at local level practices is essential.<sup>143</sup> As the qualitative data reveals, financial inclusion approaches in Sri Lanka are governed and administered by multiple non-state actors and informal arrangements dictated by rural and urban social norms as well as national legislation. Legal ordering and networks are manifested ‘on the ground’ through a myriad of mechanisms, which demonstrates how multiple systems co-exist or run counter to each other. Through

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<sup>141</sup> Katarina Pistor, “Towards a Legal Theory of Finance” (2013) Columbia Law and Economics Working Paper No 196.

<sup>142</sup> June Rhee, “Towards a Legal Theory of Finance” (19 December 2012), online: *HLS Forum on Corporate Governance and Financial Regulation* <<https://corpgov.law.harvard.edu/2012/12/19/towards-a-legal-theory-of-finance/>>.

<sup>143</sup> Local level analysis in this context is both national (domestic) law and informal socially constructed rules within the financial inclusion context. It can include regulatory measures, rules or norms surrounding the access and delivery of financial services.

using commercialized MFIs as a vehicle to demonstrate how banking legislation connects to the financial inclusion agenda, I hope to study these multiple systems embedded in the financial landscape. This project may provide a deeper insight into the regulatory inquiry through employing ethnography within an institutional setting, such as a commercialized microfinance institution to determine how national top-down regulation is translated at the branch level at the financial institution.<sup>144</sup>

## **2.2 Thematic Considerations for Financial Regulators**

### **2.2.1 Policy Implications**

The globalization of financial regulation has established linkages that are intertwined within the promulgation of financial inclusion in a post-war jurisdiction. For developing economies, fiscal stability, resilience and efficiency are paramount considerations as those factors maintain a robust financial system that is able to adapt to poor market conditions and other financial shocks.<sup>145</sup> As Professor Ben Geva points out, “Financial Stability is a broad and discretionary concept that generally refers to the safety and soundness of the entire financial system and to the stability of payment and settlement systems. To address risks to financial stability, macro-prudential regulation focused on preventing or safeguarding against systemic risks is required. In this broad concept, systemic risk is a risk of disruption to financial services that is caused by an impairment of all or parts of the financial system and which has the potential to have serious negative

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<sup>144</sup> I refer to local as national domestic legislation and at the branch level.

<sup>145</sup> Eswar Prasad, “Financial Sector Regulation and Reforms in Emerging Markets: An Overview” (2010) NBER Working Paper No 16428 at 1.

consequences for the real economy.”<sup>146</sup> As such, a “sound banking system” encourages “widening inclusion in the formal financial system.”<sup>147</sup> The analytical reflection requires an examination of the broader the components that inform the financial regime.

### 2.2.2 Systemic Interdependence & Risk Management

Banking systems are designed to efficiently distribute and allocate “resources from those in surplus (depositors) to those in deficit (borrowers) by transforming relatively small liquid deposits into larger illiquid loans.”<sup>148</sup> Through this intermediation process, credit arrangements are developed to benefit large, small and medium sized institutions.<sup>149</sup> The systemic interconnectedness and the web of networks operate akin to a domino system, if one element falters, the financial system is compromised. Capital and liquidity are described as essential lifelines, which connect and sustain the banking system, thereby attracting the most protection within the financial system. These two components act as protective armor, which shield the financial system from a fiscal fallout. Equally, regulatory protection in the form of central banks (lenders of last resort) and deposit insurance guarantee schemes also act as risk mitigation instruments within the financial system.

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<sup>146</sup> Benjamin Geva, “Central Banks and Payment System Risk: Comparative Study” in Peter Conti-Brown and Rosa Maria Lastra ed, *Research Handbook on Central Banking* 1<sup>st</sup> edition (Cheltenham UK: Elgar Publishing, 2018) at 448.

<sup>147</sup> Eswar Prasad, “Financial Sector Regulation and Reforms in Emerging Markets: An Overview” (2010) NBER Working Paper No 16428 at 2.

<sup>148</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 1.

<sup>149</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 2

Banks are continually engaged in risk management (or ‘administration’<sup>150</sup>) by employing internal mechanisms, such as information gathering<sup>151</sup>, diversifying products, and structuring lending arrangements to manage credit risks.<sup>152</sup> A central theme within the financial inclusion discourse is how risks inherent in financial transactions and manufactured within the credit process and allocation affect the overall fiscal stability. This research identified how low-level governance, such as prohibition of unregulated deposit-taking, and credit enforcement mechanisms and an absence of recorded consumer credit histories affects the deployment of financial inclusion and the regulatory challenges. It is significant to note that the risk mitigation process considers whether the traditional methods are functional, and also whether the methods adopted are efficiently enhancing the flow of capital.

### 2.2.3 Regulatory Supervision & Oversight

The spectrum of theoretical debates surrounding financial regulations in this area of study are wide reaching, and continues to dominant this area. The neoliberal agenda has been heavily criticized for promoting deregulation of financial regulations, thereby deepening poverty and economic inequities within underserved, underbanked and unbanked communities. While interventionist policies may be rejected as they are deemed to stifle competition, innovation and artificially constrain the market, the data gathered in this study indicated how liberalization has created mixed results, and how the impact of

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<sup>150</sup> George S Oldfield and Anthony M Santomero, “Risk Management in Financial Institutions” (15 October 1997), online: *MIT Sloan Management Review* < <https://sloanreview.mit.edu/article/risk-management-in-financial-institutions/>>.

<sup>151</sup> To combat information asymmetry credit scoring techniques and portfolio management is used.

<sup>152</sup> Ulrich Beck, *Risk Society: Towards a New Modernity*, (London: SAGE Publishing, 1992).

post-war conditions has changed the economic structure and is a challenge to financial inclusion policies.

Financial regulators, such as central banks have embraced financial inclusion policies to ensure systemic stability. In the past decade, financial inclusion has become a regulatory mandate for regulators due to its promise in fostering economic development, poverty reduction and a thriving economy, as well as creating a “broader base of depositors and more diversified lending”.<sup>153</sup> The core banking components in providing a reliable and resilient infrastructure underscores the spirit of financial inclusion. As such, “the central bank’s role in maintaining financial stability is universally recognized even if the exact scope of its role, and its relationship with the role of other regulators and supervisors, are contested.”<sup>154</sup> Further, the current regulatory regime is shifting towards a ‘borderless’ uniform financial structure across jurisdictions has been adopted. To illustrate, the Bank of International Settlements (“BIS”), has issued guidance and policy circulars on the uptake of supportive financial inclusion measures for infrastructure reforms.<sup>155</sup> In addition, BASEL standards with respect to financial inclusion are now incorporated within national banking and payments systems.<sup>156</sup>

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<sup>153</sup> Aaron Mehrotra & James Yetman, “Financial Inclusion – Issues for Central Banks” (March 2015) BIS quarterly Review at 1.

<sup>154</sup> Benjamin Geva, “Central Banks and Payment System Risk: Comparative Study” in Peter Conti-Brown and Rosa Maria Lastra ed, *Research Handbook on Central Banking* 1<sup>st</sup> edition (Cheltenham UK: Elgar Publishing, 2018 at 449.

<sup>155</sup> Jaime Caruana, *Financial Inclusion: The Role of the Basel Process*, (Basel: Bank for International Settlements, 2012).

<sup>156</sup> Gary Becker and George Stigler, “Law Enforcement, Malfeasance, and Compensation of Enforcers” (1974) 3:1 *The Journal of Legal Studies* 1; S.H. Haber, A Razo, N Maurer, *The Politics of Property Rights: Political Instability, Credible Commitments and Economic Growth in Mexico*, (Cambridge,UK: CUP, 2003).). Also discuss the private empowerment view of financial regulation (James R Barth, Gerard Caprio, and Ross Levine, *Rethinking Bank Regulation: Till Angels Govern*, (Cambridge, UK: CUP, 2005).

In addition, technology has also created an impact the regulatory climate with respect to financial inclusion. Regulators are updating and developing electronic banking regulations to keep up with new technology driven and branchless products (such as mobile banking and prepaid cards).<sup>157</sup> The role of technology has affected the financial architecture as it continues to evolve. The mere use of mobile banking as a financial inclusiveness tool has had rippling effects on the “financialization of daily life”.<sup>158</sup> Segments of unbanked communities have employed mobile phones to safely engage in business and financial transactions, as well as health, insurance and electoral services.<sup>159</sup> A corollary consideration for regulators is the introduction of psychometrics data, described as “internet browsing histories” which is used in lieu of borrower credit history as part of the financial inclusion approach.<sup>160</sup> This innovative mechanism has privacy implications, and is critiqued as creating “government techniques producing particular

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Other inquiries to be discussed are “whether prudential regulation and safety nets designed for developed countries can be successfully transplanted to developing countries?” The importation of Basel II, however, impose onerous conditions on transitional economies, see problems with deposit insurance schemes. See Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 742; see de Sousa, Mariana Magaldi, “New Thinking and the New G20 Project” (2015) Centre for International Governance Innovation Working Paper No 7.

<sup>157</sup> S. E. Senthe, “Transformative Technology in Microfinance: Delivering Hope Electronically?” (2012) 13:1 *Pittsburg Journal of Technology Law and Policy* 1.

<sup>158</sup> Nick Bernards, “The poverty of fintech? Psychometrics, credit infrastructures, and the limits of financialization” (2019) 26:5 *Review of International Political Economy* 815.

<sup>159</sup> Several jurisdictions are now utilizing biometric technology to enhance financial inclusion; also see Ghana – where elections are held using biometric tools, or mobile phone for maternal health and insurance services for farmers in Kenya. Part of this discussion includes the issue of privacy in the context of mobile banking and whether consumer data derived electronically may create legal implications, or is protection of data not a priority due to the delay in the stages of financial development.

<sup>160</sup> Nick Bernards, “The poverty of fintech? Psychometrics, credit infrastructures, and the limits of financialization” (2019) 26:5 *Review of International Political Economy* 815.

kinds of market subjects to participation in financialized models of accumulation.”<sup>161</sup> These issues become more pronounced for regulators in post-war jurisdictions with respect to design eligibility for creditworthiness, property registers for collateralization financial services, AML/KYC compliance due to an absence of consumer identification and documentation.<sup>162</sup> As such the regulatory landscape must include flexible components to facilitate meaningful financial inclusion.

#### 2.2.4 Financial Inclusion & Access to Credit

The financial crisis, not only created financial contagion, but it also served to highlight the interdependent nature of the global financial system.<sup>163</sup> As jurisdictions race to adopt global banking sector reforms, the accessibility of core financial services has become a vital component of this regulatory shift. *Financial inclusion* can be characterized as the source for microfinance, which attempts to ‘include’ the unbanked into the formal financial system. Despite the fact that financial inclusiveness has been vigorously embraced as a policy agenda for International Financial Institutions, such as the World Bank to systematically address deficiencies in the banking sector, the inequities within the structural system still remain, and may even be exacerbated as result of these new legal

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<sup>161</sup> Nick Bernards, “The poverty of fintech? Psychometrics, credit infrastructures, and the limits of financialization” (2019) 26:5 *Review of International Political Economy* 817.

<sup>162</sup> Hue Dang, *Financial Inclusion, Developing Economies and Effective Implantation of the Risk-Based Approach in AML/CTF: The Need for Legislative and Regulatory Leadership to Motivate Private Sector Commitment and the Role of Audit* (Advancing Financial Crime Professionals Worldwide, 2014). ; Wameek Noor, “Anti-money laundering regulation and financial inclusion” (15 May 2013) , online (blog): *CGAP* <<https://www.cgap.org/blog/anti-money-laundering-regulation-and-financial-inclusion>>.



reforms. This debated must also include the examination of the role of government as it shapes inclusive financial systems. The challenge within this inquiry is whether “poor households benefit proportionately from financial development? Could there be a widening of income inequalities with the deepening of financial systems? And how important is direct access to financial services in this area?”<sup>164</sup> To fully answer this query, a historical examination of the policy agenda and its implementation must be performed.<sup>165</sup>

Credit constraints are cited as a primary cause for poverty<sup>166</sup>, as marginalized individuals are faced with the inability to access credit or financial services due to information asymmetries (identification, documentation, collateral and credit history). To date, public-private partnerships have embarked on creating credit registries and credit bureaus for previously excluded borrowers. Non-financial institutions, such as microfinance institutions (“MFIs”), have attempted to address this issue by circumventing traditional modes of consumer data based on local practices or social capital (such as standing in the community or family name and relationships). However, as the research data highlights, these adopted procedures have also resulted in unfair practices.<sup>167</sup>

To illustrate, political economy scholars have suggested that “better –functioning financial systems make financial services available to a wider segment of the population,

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<sup>164</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 735.

<sup>165</sup> Milford Bateman, *Why Doesn't Microfinance Work? The Destructive Rise of Local Neoliberalism*, (London: ZED Publishing, 2010).

<sup>166</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 735.

<sup>167</sup> See creditworthiness discussion – using cultural selection criteria. See Chapter 4 (Results).

rather than restricting them to politically connected incumbents.”<sup>168</sup> Conversely, other economists have argued that access to credit principally benefits the rich, and while it may spur economic development and growth at the early stages, the poor are disadvantaged due to income distribution problems.<sup>169</sup> Studies have also indicated that the expansion of access of credit and the provision of microfinance do not necessarily alleviate poverty or generate income.<sup>170</sup> Instead, the financial complexities vary in the economic studies conducted to measure access to credit in emerging markets.

Financial development cannot occur in a vacuum; it requires economic, political and legal stability.<sup>171</sup> As such, corruption, poor business conditions, political turmoil, and uncertain legal and property regimes stifle economic growth and affect financial and banking systems, and have a derivative impact on financial inclusion.<sup>172</sup> By analogy, La

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<sup>168</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 735.; Also see Rajan, R.G., “Separate and Unequal” (2006) 43 *Finance and Development* 56, Zingales, L, “Financial Dependence and Growth” (1998) 88 *American Economic Review* 559. Further, see (Randall Morck, Daniel Wolfenzon, and Bernard Yeung, “Corporate Governance, Economic Entrenchment, and Growth” (2005) 43:3 *Journal of Economic Literature* 655).

<sup>169</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 735 (Naomi R Lamoreaux, *Insider Lending: Banks, Personal Connections, and Economic Development in Industrial New England* (New York: National Bureau of Economic research/CUP, 2008)., and Stephen Haber, “Mexico’s experiments with bank privatization and liberalization, 1991-2003” (2005) 29 *Journal of Banking & Finance* 2325.).

<sup>170</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 736 – see Thai model (2004)

<sup>171</sup> “There is also large literature that discusses the historical determinants of financial development –such as legal origin, religion and culture, ethnic diversity, and initial geographic endowments.” Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 739; See Ayyagari, Meghana, Asli Demirgüç-Kunt and Vojislav Maksimovic, “How Important are Financing Constraints? The Role of Finance in the Business Environment” (2008) 22:3 *The World Bank Economic Review* 483, for a discussion and evaluation of these theories.

<sup>172</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 739; Also note that the small businesses are more

Porta *et al.* in their pioneering study demonstrated that access to increased private external funding is dependent on stronger jurisdictional legal enforcement policies.<sup>173</sup> Similarly, access to finance and credit within the financial inclusion context is expanded when there are effective legal systems in place, which enhance redressal mechanisms and conflict resolution procedures; and in turn contribute to lower interest rates and lower the costs of banking for the underbanked and unbanked.<sup>174</sup> In conjunction to on-the ground practices explored through qualitative methodology, and legal theoretical formations (theories) to account for specific processes or relationships, the above mentioned considerations offer a cursory overview of the promising policy approaches within the financial inclusion context for this research.

### 2.3 Research Paradigm – Methodology

“It was the American judge and jurist Oliver Wendell Holmes who offered the advice that ‘if your subject is law, the roads are plain to anthropology’. He added that it was ‘perfectly proper to regard and study the law simply as a great anthropological document’”.<sup>175</sup>

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detrimentally affected by those conditions (Beck, Thorsten, Asli Dermirguc-Kunt, and Vokislav Maksimovic, “Financial and Legal Constraints to Growth: Does Firm Size Matter?” (2005) 60:1 *The Journal of Finance* 137); Also to discuss – issues of Inflation and real interest – if higher, then associated with systematic crisis (Demirguc-Kunt, Asli & Enrica Detragiache, “Cross-Country Empirical Studies of Systemic Bank Distress: A Survey” (2005) 192:1 *National Institute Economic Review* 68).

<sup>173</sup> La Porta, Rafael, et al, “Legal Determinates of External Finance” (1997) 52:3 *The Journal of Finance* 1131.

(Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 740); Also add section on Hernando de Soto.

<sup>174</sup> Allen Berger, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019) at 740 (Djankov et al, and Beck, Demirguc-Kunt, Laeven, and Levine 2004).

<sup>175</sup> Michael Freeman and David Napier, “Introduction Law and Anthropology” in *Law and Anthropology*, (Oxford: Oxford University Press 2009) at 1.

Qualitative research is now firmly rooted in the realm of legal scholarship, and is constantly re-inventing research methods employed by legal academics. The above quote may refer to ‘anthropology’, but another interpretation is that study of law includes an examination of how law informs the lives of everyday people. This study’s inquiry was based upon an exploration of how financial inclusion mechanisms impact individuals and communities. Interdisciplinary approaches influenced by sociologists and anthropologists have become permanent fixtures of legal scholars as they appropriate tools from other disciplines to investigate uncharted legal queries. The shift from doctrinal legal scholarship to empirical studies is evident; in addition to the “law on the books”, the “law in action” has also permeated virtually all subfields of the law.<sup>176</sup> To date, legal knowledge has become richer as a result of qualitative research. The findings in this study project and capture results of fieldwork in a post-war jurisdiction employing a ‘on-the ground’ strategy. The banking structure, the microfinance context, the militatization, and the gender component are a few thematic strands that influenced how financial inclusion in Sri Lanka is mediated on the ground.

This chapter explains the methodological approaches used in this doctoral research project. The research employed qualitative methodology using mixed methods to examine how financial inclusion operates within a post-war jurisdiction. The intersection of banking regulation and financial inclusion encompasses a myriad of variables. Therefore, defining the research question was not an easy undertaking; the inquiry continually evolved during the field work stages. In selecting the methodological approach for this study, my initial

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<sup>176</sup> Ron Levi, & Mariana Valverde, “Studying Law by Association: Bruno Latour goes to the Conseil D’état”, (2008) 33 *Law & Soc. Inquiry* 805 at 806.

curiosity was simply based upon a captivating interest surrounding the financial relationships within the financial inclusion context in a post-war jurisdiction.

This particular path of research appealed to me as a former banking lawyer; and I believe that the use of qualitative methodology is an appropriate approach to truly comprehend the legal and social relationship between stakeholders. Situating myself within this study as a researcher was also a self-reflexive process. The role of the researcher during a qualitative exploration is a vital component in the research process. Qualitative methodology attributes ‘meaning’ to process, people and lived experiences within communities.<sup>177</sup> As such, the researcher’s objectivity during the research phase is paramount. However, objectivity is a slippery concept, as researchers are subject to their own lived experiences. By identifying my own assumptions, privileges and my worldview, shaped by my identity as a Tamil woman, not born in Sri Lanka, and not fluent in the languages employed in this study, I had to reorient my objectivity throughout the fieldwork. This research allowed me to forge new relationships with stakeholders, and as Dorrine K. Kondo describes, I was perceived as “a living oxymoron”, in which she herself as a researcher was seen as “someone who was both Japanese and not Japanese.”<sup>178</sup> Similarly, I was seen as a Tamil woman, yet during the interviews, certain stakeholders were perplexed at my inability to speak the language. The interviews were conducted in English by me, and in Tamil and Singhalese with the assistance of a paid interpreter. In some

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<sup>177</sup> Colleen Reid, Lorraine Greaves, Sandra Kirby, “Experience Research Social Change: Critical Methods” (Third Edition) at 134.

<sup>178</sup> Dorrine K. Kondo, How the Problem of “Crafting Selves” in Robert Emerson, *Contemporary Field Research* (Long Grove: Waveland Press, 2001) at 189.

instances, words which may attribute may have been lost in translation, yet the emotions or physical responses were noted by me through observations.

Defining my identity in this research is not easy – as we as lawyers and researchers embody a more complex and professional nexus to power. I personally did not experience the ‘invisibility’ that has been described by female researchers as their experience in fieldwork.<sup>179</sup> In fact, I believe I was “hypervisible”<sup>180</sup> in the field due to my non-local appearance, my privilege and my family connections. My entry into the institutional and military organizations was due to my ancestral lineage. My grandfather was a prominent Colonel after Sri Lanka’s independence, and my uncles were high ranking officers in the military. My mother’s family was a political family, highly privileged and still maintains those connections. Through these avenues, I was able to reconnect with family members and obtain access to different individuals in Banks, the military and other spaces.

The fieldworker as ‘a spy’, as many other researchers have described their informants’ perceptions, seemed a bit far fetched, yet during this fieldwork it appeared my presence was received with apprehension in certain spaces.<sup>181</sup> The surveillance culture created by the military and post-war conditions were part of this climate, especially in monitoring Tamil communities and foreign visitors. There were moments when myself and another researcher were followed to our hotel and restaurant, while in Colombo by men in government cars. In addition, the hotel staff at the hotel shared that they were asked

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<sup>179</sup> Carol A.B Warren, *Gender and Fieldwork Relations in Robert Emerson*, *Contemporary Field Research* (London: Waveland Press, 2001) at 216.

<sup>180</sup> Carol A.B Warren, *Gender and Fieldwork Relations in Robert Emerson*, *Contemporary Field Research* (London: Waveland Press, 2001) at 216.

<sup>181</sup> Carol A.B Warren, *Gender and Fieldwork Relations in Robert Emerson*, *Contemporary Field Research* (London: Waveland Press, 2001) at 216.

questions about my presence during my stay. However, these instances were not as amplified as communities who live through this on a daily basis. The qualitative inquiry and critical processes employed during this study created an expansion of themes not initially contemplated within the research design phase. To illustrate, the military's role in employing financial inclusion initiatives in rehabilitation efforts was a new contribution to this field of study.<sup>182</sup> The richness of the fieldwork experiences not only fulfilled me professionally, but also allowed me to reconnect with my lineage and family connections.

In order to focus on those relationship, the examination of the peripheral context is fundamental. The financial and economic features inform daily individual choices within communities. The inquiry not only uncovers the established patterns, but also examines those choices – are they made for regulatory cohesion? Or social conditioning or mere survival? The qualitative data provides a particular type of understanding to these questions. The roadmap in this chapter will address the following issues: Ground Theory; Selection and Recruitment Process and Ethical Considerations.

### 2.3.1 Grounded Theory

The use of qualitative methodology is widely accepted in studying relationships, impact on individuals and communities from different vantage points.<sup>183</sup> Through the use

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<sup>182</sup> See Chapter 4 (Results).

<sup>183</sup> To illustrate, see Hossein, Caroline Shenaz, *Politicized Microfinance: Money, Power and Violence in the Black Americas*, (Toronto: University of Toronto Press, 2016); Jameaba, Muyanja-Ssenyonga, "Rising Income Inequality Amid Declining Poverty Incidence: Revisiting Reformation Era Development Policies in Indonesia" Occasional Paper Working Paper 2018/12.; Okello Candiya Bongomin, George, & John C Munene, "Financial Inclusion of the Poor in Developing Economies in the Twenty-first Century: Qualitative Evidence from Rural Uganda" (2020) 21 *Journal of African Business* 355. and Serrao, Manohar Vincent, AH Sequerira, and Basil Hans, "Designing a Methodology to

of grounded theory<sup>184</sup> to make ‘sense’ of the data collected, this study is able to articulate real life interactions authentically. Grounded theory, as a framework for research, has evolved through multiple scholarly interventions and discoveries. Here, grounded theory is used to an interpretative tool of the data.<sup>185</sup> Cathy Urquhart provides an analogy akin to grounded theory in praxis that “this is rather like an artist deciding to paint pictures, but never framing them, exhibiting them or describing what they are doing in the context of current art practice.”<sup>186</sup> As part of the methodological framing for grounded theory, a focused data collection practice and analysis of the data is required for knowledge production.

Grounded theory, through symbolic interactionism, provides the participant’s own subject worldview and perception with respect to the research at issue.<sup>187</sup> It is described as an inductive approach, and has been used to depict social change, thereby affecting policy changes and decisions through voices of participants. This mode of research can only be performed at a ‘micro level’ and provides the researcher with interpretative frameworks. Further, grounded theory also allows for a closer reading of culture and practices within an

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Investigate Accessibility and Impact of Financial Inclusion” (2012) [unpublished], online: SSRN <<https://ssrn.com/abstract=2025521>>.

<sup>184</sup> Barney Glaser, & Anselm Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* 9 (New York: Aldine de Gruyer, 1967)

<sup>185</sup> Barney Glaser, & Anselm Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* 9 (New York: Aldine de Gruyer, 1967); Jonathan A Smith, *Qualitative psychology: A practical guide to research methods* (London: Sage Publishing, 2015).

<sup>186</sup> Cathy Urquhart, *Grounded Theory for Qualitative Research: A Practical Guide*, (London, Sage Publishing, 2013) at 2.

<sup>187</sup> M. Hammersley, *The Dilemma of Qualitative Method: Herbert Blumer and the Chicago Tradition* (Routledge: London, 1989).



organization, or community thus contributing non-verbal and other cultural cues toward the data set.

Grounded theory, as an interpretative method, is used in legal scholarship to identify fuzzy semantic boundaries, and develops knowledge production in variegated modalities. It assists in documenting a range of different patterns of how law is applied within cultures and entities through participant interviews. Through this research method, theories can emerge from the bottom-up by piecing together observed practices and principles that are examined through the research inquiry. As a counter theory, Lamia Karim employed an alternative modality of qualitative methodology using an ethnographic approach to study gender dynamics within microfinance schemes in Bangladesh. Karim employed a particular type of methodology by “follow(ing) the thing” coupled with qualitative interviews.<sup>188</sup> She tracked the “circulation of credit” and followed material objects in the hands of her research participants.<sup>189</sup> Her findings revealed that a woman’s family name was tied to family honor, and that the fear of being chastised or publicly humiliated by NGO loan officers ensured repayment of the loan, thereby increasing the rate repayment. She characterized the power relationship and the shame associated with nonpayment as perpetuating an ‘economy of shame’.<sup>190</sup> Her qualitative research was instrumental in demonstrating that one of underlying causes for high repayment rates was due to exigent factors, and not the success of these lending schemes. Correspondingly,

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<sup>188</sup> Lamia Karim, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011) at 38.

<sup>189</sup> Lamia Karim, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011) at 38.

<sup>190</sup> Lamia Karim, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011) at 38.

using grounded theory in analyzing data here, the findings derived in this study reached similar conclusions.

Through the use of qualitative interviewing, conversations are analyzed in blocks of dialogue between a researcher and interviewee. The data in this regard includes an analysis of pauses and speech fillers and takes into account language barriers, translation issues and transcription errors. These anomalies contribute to creating a pool of credible data. As mentioned in the preceding paragraphs, grounded theory has been subject to scholarly debates and expansion. Kathy Charmaz states that during the interview stages grounded theory is used to analyze and showcase “representations of words, actions, and stories—the marginalized voices—of her participants,”<sup>191</sup> and she further implicates the interpretative position of the researcher.<sup>192</sup> For her, the “product carries with it a more pronounced sense of action, of the participants speaking through the researcher to the reader.”<sup>193</sup> In addition the researcher’s proximity to the data, or “so close to data” that the researcher gains “all sorts of rich insights.”<sup>194</sup>

Here, in this case, the methodological suitability to conduct qualitative research using grounded theory was largely influenced by the fieldwork component. “Theory is derived from data acquired from fieldwork interviews, observations and documents.”<sup>195</sup>

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<sup>191</sup> Tavis Apramian et al., “(Re)Grounding grounded theory: a close reading of theory in four schools” (2017) 17:4 *Qualitative Research* 365.

<sup>192</sup> Tavis Apramian, et al., “(Re)Grounding grounded theory: a close reading of theory in four schools” (2017) 17:4 *Qualitative Research* 365.

<sup>193</sup> Tavis Apramian, et al., “(Re)Grounding grounded theory: a close reading of theory in four schools” (2017) 17:4 *Qualitative Research* 365.

<sup>194</sup> Cathy Urquhart, *Grounded Theory for Qualitative Research: A Practical Guide*, (London, Sage Publishing, 2013) at 4.

<sup>195</sup> Cathy Urquhart, *Grounded Theory for Qualitative Research: A Practical Guide*, (London, Sage Publishing, 2013) at 5.

The most efficient and accurate method to study the patterns of relationships, the shift in fiscal focus and the various changes in services and administration of financial inclusion at the local level was enriched by this time of method. The unraveling of the informal and formal routine codified in stakeholder interactions within or outside the regulatory framework provide legal insights to determine rights and obligations entrenched in financial relationships. The data builds theory through grounded theory to uncover the multiple power structures contained therein. It also reveals gaps of processes in regulatory entry points, with respect noncompliance of banking and fiscal legislation. However, the underlying rationale for selecting (and most compelling for me) in employing grounded theory in this qualitative study was the amplify the lived experiences of community members engaging with the financial system in a post-war jurisdiction. The hope is to empower participant voices through the data mining process and participant contribution.<sup>196</sup>

### 2.3.2 Research Site Selection

This section will describe the rationale for using Sri Lanka, a post-war economy in transition, during the period of study. Determining the geographic location of research is often premised on introspective notions of personal ties to a specific locale. At the commencement of this doctoral study, my intent was to conduct my research in Sri Lanka, Vietnam and Thailand. My rationale in studying these emerging economies was based upon their similarities with respect to national banking laws and economic policy (although they are quite divergent in many respects). As member states of the Asian Development Bank

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<sup>196</sup> Maria C. Malagnon, Lindsay Perez Huber and Veronica N Velez, “Our Experiences, Our Methods: Using Grounded Theory to Inform a Critical Race Methodology” (2009-2010) 8 *Settle J. Soc. Just.* 253.

and South Asian East Asian Central Bank Centre, these countries also share a similar financial inclusion agenda. However, soon realizing that attempting to study three different countries using qualitative research methods is an immense task, and requires infinite funding, I decided to choose Sri Lanka as my site for research. In this instance, my interest to use Sri Lanka is directly linked to my cultural and ethnic heritage. The familiarity of the geographic location has also provided me with a historical and political background that is beneficial when doing field work.

Further, place-centered research is not merely ‘local’; globalization has blurred the distinctions between the local and the global boundaries. “Global cultural flows” within the financial inclusion context can be studied through *financescapes* which includes “the disposition of global capital.”<sup>197</sup> At the onset of this research, the frenetic movement of capital inflicted tidal shocks on microfinance institutions and its consumers in India, which allowed me to reframe my research questions in preparation for the fieldwork.<sup>198</sup> Qualitative researchers must “look at local places within larger political, economic, and cultural frameworks.”<sup>199</sup> This multi-sited research method encompasses many forms and spheres from physical (institutional, community and home settings) to virtual (internet or digital) space.<sup>200</sup> The information streams can be captured from the center of the research

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<sup>197</sup> Arjun Appadurai, *Modernity at large, Cultural Dimensions of Globalization*, (Minneapolis: University of Minnesota Press, 1996) at 33-35.

<sup>198</sup> I am referring to the rapid rate of lending with high interest which led to ‘microfinance’ suicides in Andhra Pradesh in India. See Biswas, Soutik, “India’s micro-finance suicide Epidemic”, *BBC News* (16 December 2010) online: *BBC News* <<http://www.bbc.co.uk/news/world-south-asia-11997571>>.

<sup>199</sup> Sally Engle Merry, “Crossing Boundaries: Ethnography in the Twenty-First Century” (2000) 23:2 *Political and Legal Anthropology Review* 127.

<sup>200</sup> Sally Engle Merry, “Crossing Boundaries: Ethnography in the Twenty-First Century” (2000) 23:2 *Political and Legal Anthropology Review* 127 at 118.

location to the periphery, depending how the research is bounded. This is particularly apparent in the financial inclusion context due to its global reach and extension, (remittance flows have cross-border implications; loan officers conduct transactions in the homes of their clients or through mobile banking), accordingly distorting borderlines.

In the proposed research, the site selection and fieldwork component of the qualitative methods used revealed the economic and the transactional linkages within a post-war context that otherwise may not have been captured. By conducting fieldwork in a natural setting within the geographic location that is being explored, the data gathered is enriched by primary sources of information, the real time processes, and the authentic perspectives thereto. This enhances the legal research aspect as the flow or movement of law in specific spaces again would otherwise not be discoverable. To illustrate, risk mitigation is a cornerstone of financial regulation, and by engaging in fieldwork, alternative local internal controls were identified as specific tools to build credit histories for unpredictable actors in a credit relationships through using social relational networks. Core qualitative methodology texts illustrate the varying degrees of fieldwork applicability, yet the fusion of law and culture in the financial context are underexplored. As such, this research may contribute toward that genre.

Another critical feature to be considered is the “access” issue is that researchers often encounter challenges when attempting to acquire access to specific stakeholders, communities, institutions, especially within a post-war jurisdiction. The issues of surveillance, privacy and confidentiality can be barriers. How do researchers circumvent such stumbling blocks? In a cursory review of published studies, many researchers acknowledge that they received access through personal networks, or at the urging of

another third party, or government agent, or even through former informants.<sup>201</sup> This was also accurate for this qualitative study. This ethnomethodology is informed by organizational settings, social conditions, and conversation analysis. I build on the qualitative aspects based on discussions, banking and transactional practices through an analysis of loan documentation, and semi-structured interviews with management, in-house legal counsel, loan officers and consumers.

### 2.3.3 Participant Recruitment

The interviews were conducted in person in Sri Lanka on two separate field work visits.<sup>202</sup> In those two phases of fieldwork, I conducted 87 in-depth semi-structured qualitative interviews with stakeholders in person. The following stakeholders included:

1. Consumers
2. Loan Officers
3. Bank Executives (CEOs / CFOs and employees)
4. Regulators / Deputy Governors of the CBSL
5. Lawyers (Government and Private Sector)
6. Policy Makers (Financial Inclusion / Microfinance Advocates)
7. Gender Advocacy Activist
8. Military Personnel
9. Ex-LTTE combatants (in and out of detention centers)
10. NGO Executives (Microfinance Institutions)
11. Entrepreneurs (Private and SME)
12. International Financial Institution Personnel (World Bank)
13. Poverty Advocacy group personnel (Aid, Religious and Charities)

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<sup>201</sup> See Schmidt, Patrick, & Simon Halliday, “Beyond Methods - Law & Society in Action” in Simon Halliday & Patrick Schmidt, eds, *Conducting Law and Society Research: Reflections on Methods and Practices*, (Cambridge: CUP, 2009). The authors interviewed 22 scholars and a majority discussed how the informants were introduced to them, or access to a particular institution was acquired through their network.

<sup>202</sup> The dates of fieldwork in Sri Lanka: June 1, 2013- August 30, 2013 (Phase 1) and December 1-12, 2013 (Phase 2).

In addition, I conducted seven (7) different focus groups with recipients and consumers of financial inclusion schemes. Each focus group was held in different geographic regions in Sri Lanka:

1. Panadura – South
2. Colombo – Capital City
3. Vavuniya – Post-war area (North)
4. Mankulam - Post-war area (North)
5. Jaffna - Post-war area (North)
6. Mullaithivu - Post-war area (North)
7. Batticaloa - Post-war area (East)

Each of these focus groups consisted of 10-20 individuals who have received microcredit loans through an NGO, commercialized MFI, bank or state-sponsored program. The focus groups were designed to capture experiences of financial relationships and transactions and to ensure ‘member check’ protocols. The member-check technique is a part of the triangulation and analytical process within qualitative methodology to verify trustworthiness.<sup>203</sup> It is a process whereby the data is verified through discussion questions and participants provide similar feedback or responses that either expand or constrict the data. “Member Checking in the Literature Qualitative studies are useful when trying to deeply understand a participant’s lived experiences, the significance of those experiences, and potentially a phenomenon that the experiences illustrate.”<sup>204</sup> Member checking is an added dimension in the triangulation (cross-checking) process whereby the data is verified, confirmed or not depending on the framing.<sup>205</sup>

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<sup>203</sup> Amber G Candela, “Exploring the Function of Member Checking” (2019) 24:3 The Qualitative Report 619.

<sup>204</sup> Amber G Candela, “Exploring the Function of Member Checking” (2019) 24:3 The Qualitative Report 620.

<sup>205</sup> Amber G Candela, “Exploring the Function of Member Checking” (2019) 24:3 The Qualitative Report 619.

Applying the principles of grounded theory, these interviews enabled me to obtain empirical data, personal narratives and lived experiences of vulnerable communities whose stories would have otherwise been inaccessible, often ignored and silenced due to the post-war conditions described in the literature review and results chapter of this research study. There is a dearth of research that does not include these perspectives within the financial inclusion context.

#### 2.3.4 Recruitment Procedures

The recruitment process commenced upon ethics approval was obtained from York University.<sup>206</sup> The participants were chosen through an eligibility criteria by the research design framework<sup>207</sup> and by their profession roles, their institutional or organizational affiliations and membership to specific communities. Using the “snow ball sampling” technique, I was able to interview multiple stakeholders, as one contact would provide me with more individuals to contact for this study.<sup>208</sup> The sample size grew for each phase of this study due to expansion of the circle of contacts from different organizations and institutions, and informal networks. Many stakeholders were vehemently persistent in ensuring that I spoke to different participants in order “to get the whole story”. The circumstances surrounding these interviews ranged from individuals wishing to contribute meaningful information for law reform purposes, or to extract information from this research or to obtain my own perspective, or to show case how rehabilitation efforts

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<sup>206</sup> Ethics approval was obtained from York University – Human Participants Review Sub-Committee in the Office on Research Ethics and extended.

<sup>207</sup> The research design framework included pre-identified institutions and stakeholders who were engaged in financial inclusion in Sri Lanka.

<sup>208</sup> Chaim Noy, “Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research” (2008) 11:4 *International Journal of Social Research Methodology* 327.



through financial inclusion was a success. The most startling moment during this research resulted in a very candid discussion with a high ranking member of the military, who after my multiple questions offered me an opportunity to visit and interview participants were ex-LTTE combatants and were held in a secret detention location. The purpose of the visit is to demonstrate that the State was training and providing support for Ex-LTTE through financial inclusion which commenced while in detention. The post-war conditions of uncertainty, surveillance and propaganda were always present.

The collection of data occurred in three separate phases and it was organized after the transcription process outlined the sections below. Interviews were complete at the saturation point. The saturation of data occurs “when the researcher is not gathering new information from the participants or observing new themes from the data.”<sup>209</sup> It is significant to note, as I have done throughout this study, that the willingness on part of the various stakeholders listed above to assist, encourage, and push me forward in this research was humbling. I owe and dedicate the findings of these contributions to every single participant. More candidly, my own identity and family affiliations also afforded me access to stakeholders and communities, which other researchers may not have been able to access.

### 2.3.5 The Data Collection Process

The semi-structured interviews were conducted in between June 2013-December 2013, and were all conducted in Sri Lanka in the location of the participant’s choice, place

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<sup>209</sup> Ruby Dhand, *Creating a Cultural Analysis Tool For the Implementation of Ontario’s Civil Mental Health Laws* (PhD, York University, 2014) at 70; also see Greg Guest, Arwen Bunce and Laura Johnson, “How Many Interviews Are Enough? An Experiment with Data Saturation and Variability” (2006) 18:1 *Field Methods* 59.

of business or home or public space. The choice of location was intentionally selected by the participant for their own ease and comfortability. The interview questions were loosely based on my review of existing literature, regulatory enactments and theoretical frameworks.<sup>210</sup> In addition, the duration of the interviews was primarily determined by the participants; for if breaks were needed, if the interview had to be cut short or prolonged. Each interview followed the same protocol: by introducing myself and the purpose of the interview, obtaining informed consent on the record and requesting the participant's permission to use a recording device. The participant was also advised that the interview will be transcribed by a third party at later time. On many occasions, these issues were discussed through a translator hired by me. I also took notes on my initial impressions and observations during each field interview.<sup>211</sup> At the conclusion of each interview, I provided the participant my contact information in case they needed clarification or needed to rescind their participation for any reasons. The interviews were conversational in nature and in some cases informal due to cultural adherence. For instance, it was expected for me to have tea and snacks during interviews with military personnel or banking executives as part of Sri Lankan hospitality culture. Refusing a beverage or a snack or lunch would have been impolite. During my first set of interviews with individuals, who were microfinance recipients in post-war areas, I attempted not to take from people who had so very little. Again, I was instructed that it was part of the culture and partaking in a meal or snack

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<sup>210</sup> Jane Agee, "Developing qualitative research questions: a reflective process" (2009) 22:4 *International Journal of Qualitative Studies in Education* 431.

<sup>211</sup> Jane Agee, "Developing qualitative research questions: a reflective process" (2009) 22:4 *International Journal of Qualitative Studies in Education* 431.; also see Emerson, Robert M., *Contemporary Field Research: Perspectives and Formulation*, (Long Grove: Waveland Press, 2001).

builds goodwill and trust. Subsequently, I brought cookies and chocolates as a gift, as well as paid for transportation or food for the focus groups to offset any expenses that may be incurred by the institution, organization or individuals.

Further, I ensured that my conversations were organic, authentic and “flowed” to obtain raw and unfiltered data. In some interviews, I was invited to attend board meetings, training sessions and client meetings for observation purposes. I did not use a recording device during the observation process, instead I took notes on procedures, power dynamics, and stakeholder conduct and discussions. I was also given copies of documents and permitted to take photos of maps, financial statements. These textual components were reviewed during the data analysis.

### 2.3.6 Questions & Conceptual Considerations designed for Research Participants

A legal theoretical framework underpins this research study in order to obtain a deeper insight into the legal arrangements of financial inclusion in a post-war jurisdiction. By examining the daily interactions, transactions and activities of the identified stakeholders, a range of interrogations were determined. This qualitative inquiry rests broadly on the following preliminary determinations for data and theory building purposes:<sup>212</sup>

- *Identity:*
  - *Organizational Identity:* What methods are used to promote strategies? Donor and stakeholder influence? Is it regulated? NGO (unregulated? Licensed?) Deposit-taking status? Regulator? State-sponsored?
  - *Financial Institution/MFI Employees:* How are power relationships within management identified? What are their beliefs? Ethnic/Educational / Religious make-up? Are they experts or generalists?

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<sup>212</sup> This line of inquiry only represents very broad research markers. In the field, the questions were more tailored to either more consumer-centric, or financial in nature relating to specific banking and fiscal policy questions.

- *Borrowers*: Are they entrepreneurs? Do they have documentation to prove identity or residence? What products are sought (insurance, savings, credit) – if credit- consumption smoothing or business purpose? Language Ethnic/Educational / Religious make-up? Regional differences – Post war? Culture and religion – seen as challenges?
- *Relationship*: Lender-Borrower (vertical and horizontal relationships)? Unbanked population? Financial Inclusion Agenda? Are there compulsory savings mechanism? How are these relationships constructed or fostered?
- *Source of Funds*: Donors? Government sponsored or private equity/ venture capital funds?
- *Metric for Success*: What indicators are used by the institution to measure success? Repayment? Profit/ Balance-sheet purview? Impact assessment studies? How is the baseline constructed / calculated?
- *Product Selection & Consumer Patronage*: Mandatory savings? Insurance products for agriculture or business? Remittance (deposits)?
- *Access to Credit*: How is outreach conducted? Collateral requirements? Financial Literacy programs or a lack thereof? Gender and tiered / levels of poverty? Are women credit conduits for men? How is ‘consent’ constructed by consumers?
  - Determination of creditworthiness, credit scoring matrix?
- *Debt*: How does it affect the microfinance recipients? What are the issues surrounding informal banking? Are there joint lending initiatives?
  - *Repayment*: Practices? Consequences of non-payment? How does the institution handle these issues on their balance sheet (write off, sell and taxation implications?)
  - *Social Capital*: Community standing? Family and Kinship concerns? How does the informal economy or shadow banking impact debt?
- *Institutional Actors & Agents*: Local rules? Policies? Norms and Standards? Customs? What is considered good governance? Internal controls and protocols? Management weaknesses? Identification of decision-makers?
- *Institutional Structure*: How are departments segregated? What are the value practices? Control mechanism? Board and Director compliance, involvement and identity?
- *Risk Management*: Capital adequacy rules, solvency plans, capital and liquid structure, securitization?
- *Consumer Protection*: Legislation? Voluntary process? Dispute Resolution Mechanisms? Are these procedures / process disclosed conspicuously?

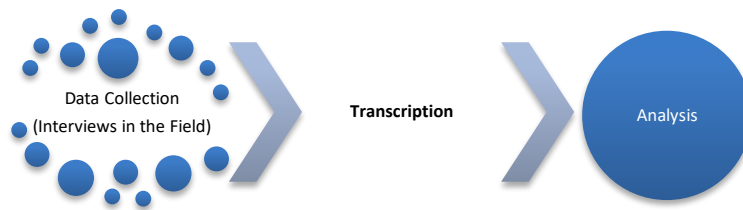
- *Enforcement & Monitoring*: How are contracts enforced? Legal knowledge and compliance? How is liability understood by all parties? Litigation proceedings? Recovery methods?
- *Financial Sustainability*: How is this established? Profit (cross-selling products)? Firm culture? Donor agenda?

In defining structural and institutional constituents within the web of daily lived experiences of underbanked communities, a network of systems was identified and the configuration of those arrangements are bounded by the post-war narrative. The interviews were categorized under a rubric for ease of understanding: “(1) the regulative system which includes rule setting, monitoring, sanctioning; (2) the normative system, which has to do with values and norms; and (3) the cognitive system, which provides meaning making, rules and frames.”<sup>213</sup> The above referenced research markers were not exhaustive of the subcomponents contained within the present qualitative inquiry. Instead, they emerged as synergistic relationships and specific features within the financial inclusion context in Sri Lanka. These questions are an attempt to elicit legal encounters in this context and to identify the sources of law, and how these stakeholders interact within the legal framework.

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<sup>213</sup> Francesca Bargiela-Chiappini, “Liminal ethnography: Understanding Segregated Organizations” (2007) 2:2 Qualitative Market Research: International Journal at 131.

### 2.3.7 The Analytical Process



The above graphic illustrates the process of the data analysis. This study included multivariate modalities of analysis at different stages of data review. Once the data was collected in the field, the recording was electronically submitted to a third-party transcriber.<sup>214</sup> Often described as “a behind-the-scenes task”, qualitative researchers describe transcription as “a powerful act of representation.”<sup>215</sup> The analysis of the data begins with the researcher’s further inquiry at the site of the interview. The follow up questions, the silences and laughs or sighs, or the physical responses were noted by myself to understand the context of the participant’s responses. These observations and critical insights do offer a starting analysis of the data, but they are a product of my own assumptions and impressions during that time.

The mechanical functions of transcription were also closely monitored in this study as the interviews were difficult to understand due to the local vernacular, accents and muffled sounds due to audio challenges (such as AC, traffic, office and fan oscillation

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<sup>214</sup> Each transcriber signed a non-disclosure and confidentiality agreement. All data was submitted under the Participant’s first and last initial in order to maintain privacy. To illustrate, Shanthi Senthe was amended to “Ms. SS”.

<sup>215</sup> Daniel G. Oliver, Julianne M Serovich, and Tina L Mason, “Constraints and Opportunities with Interview Transcription: Towards Reflection in Qualitative Research” (2005) 84:2 Social Forces 1273.

sounds). The transcription process is vital as the “inappropriate or inadequate preparation of transcripts from audio or digital recordings can delay or negatively affect the analysis process. Although no universal transcription format is adequate for all types of qualitative data collection approaches, settings, or theoretical frameworks, there are some practical considerations that can help researchers systematically organize and analyze textual data.”<sup>216</sup> In this research, a great deal of time was allocated to ensuring that the transcription from audio was captured in a verbatim format.

The coding process was conducted in concurrently while analyzing the transcripts described as primary data sources;<sup>217</sup> the interpretation and the participants’ perspectives were captured through the values attributed to the data subset within the context of the research questions and research site.<sup>218</sup> I used a self-reflexive process using my own “intimate data familiarity” in data interpretation and selected quotes to articulate original meaning.<sup>219</sup> Secondary data was used to contextualize the data collected through the analytical process. The coding produced the themes identified in this study, and the original knowledge production through qualitative analysis resulted in developing new forms of understanding. Coding is described as interactive and intentional act which is described as “the essential relationship between data and theory.”<sup>220</sup> “Put simply this is the process of

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<sup>216</sup> Elleanor McLellan, Kathleen M MacQueen, and Judith L Neidig, “Beyond the Qualitative Interview: Data Preparation and Transcription” (2003) 15:1 *Field Methods* 63.

<sup>217</sup> Colleen Reid, Lorraine Greaves, and Sandra Kirby, *Experience Research Social Change: Critical Methods*, (Toronto: University of Toronto Press, 2016).

<sup>218</sup> C.M. Bird, “How I stopped Dreading and Learned to Love Transcription” (2005) 11 *Qualitative Inquiry* 226.

<sup>219</sup> Colleen Reid, Lorraine Greaves, and Sandra Kirby, *Experience Research Social Change: Critical Methods*, (Toronto: University of Toronto Press, 2016) at 244.

<sup>220</sup> Barney Glaser, *Theoretical Sensitivity: Advances in Methodology of Grounded Theory* (Mill Valley, CA : Sociology Press, 1978) at 55.

attaching concepts to data, for the purposes of analyzing that data.”<sup>221</sup> A typical approach in qualitative analysis underscored by grounded theory employs the “constant comparative method” which allows the researcher to compare the data during the coding period as a veracity check.<sup>222</sup> Grounded theory, using the constant comparison process, “cuts across research methods (experiments, survey, content analysis, and all qualitative methods) and uses all data resulting therefrom.”<sup>223</sup> Generating integrated patterns or new theory are a part of the triangulation outcomes of this research.

The findings throughout the review of the data using a line by line approach and were either recorded in the form of quotations, or as commentary or analysis for each emerging theme. This iterative process of substantive coding continued over a period of 1 year.<sup>224</sup> Further, the quotations lifted from participant interviews were anonymized to maintain confidentiality by attributing qualitative indices through a general citation as follows:

1. “Interviews of stakeholders in Sri Lanka during field work (June 2013-August 2013).”
2. “Interviews of stakeholders in Sri Lanka during field work (December 2013).”

Through the process of analysis, the mechanical function of coding was much more nuanced and as data saturation became more amplified, a set of theoretical categories was formed through personal narratives, assumptions and attitudes and lived experiences.

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<sup>221</sup> Cathy Urquhart, *Grounded Theory for Qualitative Research: A Practical Guide*, (London, Sage Publishing, 2013) at 2.

<sup>222</sup> Barney G. Glaser, “The constant comparative method of qualitative analysis” (1965) 12:4 *Social Problems* 436.

<sup>223</sup> Barney G. Glaser, “Conceptualization: On Theory and Theorizing Using Grounded Theory” (2002) 1:2 *International Journal of Qualitative Methods* 23 at 24.

<sup>224</sup> Hsia-Yu Chen & Jennifer RP Boor, “Using a Synthesized technique for Grounded Theory in Nursing Research” (2009) 18 *Journal of Clinical Nursing* 2251 at 2258.



In Chapter 4, the findings reflect the data captured through the qualitative study. I have used block quotes from the original interviews as textual evidence. These will be contextualized through the voices of the stakeholders from the qualitative interviews extracted.

### 2.3.8 Fieldwork, Findings and Dismissing Self-Doubt

Qualitative methodology imposes neutrality on the researcher. She is presumed to be an insider yet remain unobtrusive in order to engage in this type of study. How does the researcher keep a political, cultural and economic distance while conducting research? How does she ‘check her biases at the door’? By being deeply immersed in the field maintaining an impartial perspective can be challenging. As such, these potential pitfalls must be disclosed in the findings. The mythical figure of the *unbiased* researcher is impossible to attain, yet qualitative fieldwork requires the researcher to examine individual changes and processes without judgment or preconceived notions. Her status as the “newcomer to the organization” or community is to assume the role of the “acceptable incompetent”, in which she can “ask silly questions about things insiders took for granted”.<sup>225</sup> The researcher must also capture the multiple voices within the organization or community, and ensure that the data demonstrates specific elements, not purely generalized accounts of what she observes. Or are these observations simply a study of “a bunch of encounters”?<sup>226</sup> However, through these ‘encounters’ the research establishes

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<sup>225</sup>Thomas Hoholm & Luis Araujo, “Studying Innovation Processes in real-time: The promises and challenges of ethnography” (2011) 40 *Industrial Marketing Management* 937.

<sup>226</sup>David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 *NYU Journal of International Law and Politics* 335 at 425.

theories and refines specific concepts. The findings derived out of informal or insignificant details have large consequences and contribute to original knowledge production.

The researcher is in strange position as she takes the “familiar” and makes it “strange”<sup>227</sup>; by observing everyday processes and focusing on understated, mundane, subtle conditions, or conversations, the data collected in turn is transformed into valuable findings. This includes an examination of ‘grey materials’, which includes the institutional or personal internal documents, policies, and photographs. The methodological gaze used in this study allowed for a localized understanding of the ‘research inquiry’. By developing a loose research agenda, the methodology allowed theories to emerge, rather than employing a constricting narrow framework. Scholars in this area maintain that the research is provoked by the surrounding conditions within the research site. For instance, certain scholars focus on the semantic structure of legislation, by identifying whether ‘neoliberal language’ is used, or whether the law is a subterfuge by studying the inaction or silence law.<sup>228</sup> Here, the research findings were derived from participant voices and their observations.

Reflexivity is a crucial trait for the researcher in the field, as it shapes how the data is obtained and perceived. The researcher is essentially the instrument in which the data is filtered and shared through the dissemination of the results. Scholars suggest that ‘impression management’ is key in mining valuable information by being cognizant of the

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<sup>227</sup> David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 NYU Journal of International Law and Politics 335 at 447.

<sup>228</sup> David Kennedy, “Shaping the Parameters of International Law in the New Millennium” (2000) 32:335 NYU Journal of International Law and Politics 335 at 447.

context-setting process.<sup>229</sup> Through using interviews in this research, the data was authenticated and interpreted by insiders themselves. The decision-makers, employees, consumers and other stakeholders interviewed conveyed the institutional and individual value sets that are derived from law or ascribed to specific cultural norms. By encapsulating the information obtained, the research is tailored to that specific moment of the study, rather than being directly influenced by exogenous factors. The questions themselves were framed with precision, yet were not too narrow to preclude key information. In preparing for the fieldwork, sets of questions used in other studies were also examined.<sup>230</sup> Again, as qualitative methodology encompasses a myriad of approaches from naturalistic and participatory observation to face-to-face interviews, the methods used were flexible and adaptable accordingly throughout the study to ensure that the information gathered is germane to this study.

For a researcher, the findings represent not only a possible discovery, but also ‘sweat equity’ derived from fieldwork. The hope is that these findings will have deep implications and help provide a more comprehensive response to the research inquiry. The focal query in any doctoral study has always been whether this research and these findings contribute to the general knowledge in this particular area? Will this research expand the field? Or will it create a sub-field? Or what if it *does not contribute anything* to the study at issue? All these questions have been answered in this study.

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<sup>229</sup> M Hammersley, *The Dilemma of Qualitative Method: Herbert Blumer and the Chicago Tradition* (London: Routledge, 1989).

<sup>230</sup> Robert Cull, Asli Demirguc-Kunt, Timothy Lyman, *Financial Inclusion and Stability: What Does Research Show?*, (Washington: World Bank Group, 2012).

Legal scholars embarking on qualitative research invariably suffer from self-doubt (sometimes fleeting or prolonged) by wondering if the research is viable, or whether the data will produce insights as anticipated, or simply whether these efforts are futile or useless. Is it even possible to conduct this research without being formerly educated as a sociologist or anthropologist? How does one overcome criticism from other disciplines as a result of using the borrowed tool incorrectly? Would this amount to academic suicide? These queries are manifested in self-doubt, which has been termed “methodological anxiety syndrome” (‘MAS’).<sup>231</sup> The prescribed cure for MAS encompasses a variety of methods, such as using a methodologist and becoming qualified in that specialty through taking courses, extensive literature review, or working in tandem with such scholars. This can also be a personal journey defining one’s scholarly identity and expressing a nuanced perspective in that particular genre of law. For this research, I reviewed extensive literature, enrolled in graduate level courses and attended conferences and consulted with other scholars and experts during this process.

The preceding discussion was offered as a glimpse of the research design and methods used. The highlighted aspects in this discussion were included to generate a dialogue between doctrinal and qualitative researchers by removing the methodological contestation. The legal consciousness that pervades the financial inclusion context must be discovered, and I hoped to accomplish that using qualitative fieldwork as a methodological tool.

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<sup>231</sup> Brendon Murphy, & Jeffrey McGee, “Phronetic legal inquiry An effective design for law and society research?” (2015) 24:2 Griffith Law Review 288.; Patrick Schmidt, & Simon Halliday, “Beyond Methods - Law & Society in Action” in Simon Halliday & Patrick Schmidt, eds, *Conducting Law and Society Research: Reflections on Methods and Practices*, (Cambridge: CUP, 2009).

### 2.3.9 Ethical Considerations

Ethical considerations are deeply rooted within this qualitative research while conducting field work. As stated earlier in this chapter, I obtained ethics approval from York University.. Further, I have completed the Tri-Council Policy Statement for Ethical Conduct for Research Involving Humans Certification (TCPS2: Core).<sup>232</sup> My research participants consisted from the following groups:

1. *Management of the Institution/ Organization:* (CEO, CFO, Executive Director, In-House Counsel, Executive Assistants): Interviews with high-level personnel, whose role affects the decision-making process of the organization or institution;
2. *Employees of the Institution:* Loan Officer, Internal Control Analysts, Consumer Advocates (or any other person who provides information, access and services to microfinance recipients);
3. *Customers of the Institution:* Recipients of credit, and other services (savings, deposit or remittance transfers) / Participants of state-sponsored programs, Ex-LTTE combatants;
4. *Government / Donor Personnel:* central bank employees, regulator's personnel (any personnel who provide regulatory oversight, Legal Counsel, International Financial Institution Personnel, Military Officers and Policy Analysts.

During the design component of this study, I used the principles outlined by the IDRC's Advisory Committee on Research Ethics as guidance due to the fact that this research was conducted in the Global South.<sup>233</sup> At all times, my research conformed to the IDRC's research guidelines by ensuring that all participants are treated "fairly, equitably,

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<sup>232</sup> Please find attached ethics approval in the Appendix.

<sup>233</sup> Anonymous, "IRDC's Advisory Committee on Research Ethics" (last accessed 21 September 2021), online: *International Development Research Centre* <<https://www.idrc.ca/en/idrcs-advisory-committee-research-ethics>>.

and with dignity” and are respected throughout the research process.<sup>234</sup> As the researcher, I was mindful of the autonomy of the individual and chose to “act to benefit or promote the wellbeing of participants” without harm.<sup>235</sup> In addition, I complied with the “universal concepts of justice and equity while remaining sensitive to the cultural norms and practices of the localities where the research is carried out”.<sup>236</sup>

Ethical guidelines were adhered to during the participant recruitment process. The participants were identified through my contacts at the various institutions, and informal networking with my colleagues and contacts. Purposive and stakeholder sampling was also used to identify potential participants using a pre-determined criteria. I employed NGO and Government contacts (lawyers, government agents, donor employees, finance and banking specialists, academics and advisors) in Sri Lanka to identify consultants and other researchers to identify participants to assist me in my research objectives. Prior to engaging in fieldwork, I used email, telephone solicitation and Skype to make initial contact and schedule preliminary interviews. The inclusion criteria employed is broad, as my research hinges on the regulation of financial inclusion in a post-war jurisdiction.

The inclusion criteria for participants was as follows:

1. Must be a stakeholder / recipient of financial services within financial inclusion context

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<sup>234</sup> Anonymous, “IRDC’s Advisory Committee on Research Ethics” (last accessed 13<sup>th</sup> September 2020), online: *International Development Research Centre* <<https://www.idrc.ca/en/idrcs-advisory-committee-research-ethics>>.

<sup>235</sup> Anonymous, “IRDC’s Advisory Committee on Research Ethics” (last accessed 13<sup>th</sup> September 2020), online: *International Development Research Centre* <<https://www.idrc.ca/en/idrcs-advisory-committee-research-ethics>>.

<sup>236</sup> Anonymous, “IRDC’s Advisory Committee on Research Ethics” (last accessed 13<sup>th</sup> September 2020), online: *International Development Research Centre* <<https://www.idrc.ca/en/idrcs-advisory-committee-research-ethics>>.

2. Must reside in Sri Lanka
3. Must be over 18 years
4. Must be willing to participate in the interview/research process

In drafting my consent form, recruitment documents and conducting interviews, I ensured that I was sensitive to the socio-cultural and economic environments. Interviews are a valuable source to elicit information specific to the research inquiry. During this process, I ensured : (1) that the participants remained anonymous (unless they otherwise agree), (2) created a trust based relationship, and (3) be cognizant of the power dynamics. In working with vulnerable communities, I mitigated research risks by developing a flexible and accommodating research design, especially where colonization ad neocolonial narrative is apparent.<sup>237</sup> Ethical challenges within the informed consent process were also managed through literature review, liaising with local researchers and seeking expert guidance.<sup>238</sup>

For the purposes of the PhD examination, I have included findings derived from interviews that were conducted in a detention setting. Given the heightened vulnerability of the informants, I adhered to all ethical obligations throughout the study pursuant to the York University REB and TriCouncil guidance. I was aware the power dynamics at all interview moments. I may decide to remove those findings prior to publication. I will seek additional expert and professional clarification prior to knowledge dissemination if

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<sup>237</sup> Jonathan A Smith, *Qualitative psychology: A practical guide to research methods* (London: Sage Publishing, 2015).

<sup>238</sup> For my risk mitigation plan – please refer to Part 3 of in the IDRC Application; Gloria Song, “Guyana-How do you know where to get the information you need? Determining Ethics Approval Requirements in a Developing Country” (2018) 1:1 Canadian Journal of Bioethics 17; Ayah Nayfeh, & Dominique Charron, “Ethical Challenges Faced by Development Researchers in Low and Middle-Income Countries” (2019) 1:1 Canadian Journal of Bioethics 4.

necessary. I am cognizant of the ethical considerations with respect to the power imbalance and informed consent challenges apparent in interviewing women in detention.<sup>239</sup>

The research took into account the theoretical strand of being an insider/outsider researcher to understand the various formations of relationships during the fieldwork process.<sup>240</sup> As this research was conducted in a developing country, local values and customs was respected and language barriers were eliminated with the use of qualified interpreters. In order to evaluate the data, even the information derived through the interpreter or translation services, was transcribed verbatim in true form in order to maintain authenticity and credibility. Through the recognition of positionality and to reduce the power imbalances within this proposed research, I enlisted participatory collaborations with stakeholders when necessary.<sup>241</sup> Overall, ethical considerations were embedded within this research at all stages.

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<sup>239</sup> For a similar issue see Rachel Kronickabc , Janet Clevelandac , Cécile Rousseauac, “Do You Want to Help or Go to War?”: Ethical Challenges of Critical Research in Immigration Detention in Canada” (2018) 6:2 *Journal of Social and Political Psychology* 644.

<sup>240</sup> Chinua Achebe, *Things Fall Apart* (Clayton: Prestwick House, 2009).

<sup>241</sup> Mark Huisman, & Christian Steglich, “Treatment of non-response in longitudinal network studies” (2008) 30 *Social Networks* 297.



## CHAPTER 3: LITERATURE REVIEW

### Scope of Limitation

This chapter is divided into two parts to contextualize the literature review for this qualitative study. In **Part 1** of this chapter, a historical overview is provided to set the scene for the study. The purpose for the very narrow historical component below is to demonstrate the development of financial inclusion as a conceptual and aspirational goal. Notwithstanding, the three dominant colonial interests and vast amounts of intertwining historical moments that are part of the financial inclusion development are narrowly explored. **Part 2** provides a literature review which embodies the current debates within financial inclusion discourse during the period of this study.

### PART 1

#### **3.1 Historical Inquiry**

The historical inquiry involves an account of the development of financial inclusion in Sri Lanka. The historical mapping below explores the colonial and post-colonial landscape, which gave rise to the current banking system. Simultaneously, I will trace the origins of the financial inclusion discourse in Sri Lanka. The prevailing view is that the conceptual framing for financial inclusion emerged in Sri Lanka as a result of the thrift and cooperative movement in 1911.<sup>242</sup> Academic literature suggests that this particular cooperative movement served as an impetus to first utilize organized economic groups to

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<sup>242</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 9.

alleviate poverty in rural Sri Lanka.<sup>243</sup> Rural banking formations and state bank partnerships are believed to be precursors to the current financial inclusion paradigm in Sri Lanka.<sup>244</sup> However, Sri Lanka's colonial legislative history suggests otherwise as described below.

This historical research explored how the legislative history that demonstrated that how financing for the rural sector influenced the normative financial inclusion agenda. Organizations, such as *Sarvodaya Economic Enterprise Development Services* ("SEEDS") and *Janashakthi* have historic roots as cooperative style models, and are presently utilized as dominant models for microfinance institutions in Sri Lanka, which participate in the financial inclusion landscape.<sup>245</sup> Through reviewing past influences and conditions, legislative and institutional history provide a contextual cue for this doctoral research. By historically situating this proposed study, the data gathered through qualitative research identifies past themes with new legal insights within the financial inclusion discourse in Sri Lanka. The observations and historical research below endeavors to provide a complete sketch of post-colonial financial inclusion axioms.

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<sup>243</sup> Deborah Winslow, "Co-opting Cooperation in Sri Lanka" (2002) 61:1 Human Organization 9. Robby Tulus, "Chapter 26- The SANASA movement- Sri Lanka: The pursuit of social order through cooperative leadership, vision, and innovation" in Anthony Jensen et al, eds, *Waking the Asian Pacific Co-operative Potention* (Cambridge, MA; Academic Press, 2020).

<sup>244</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 9.

<sup>245</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 9.

### 3.1.1 Pre-Colonial Conditions

This section examines Sri Lanka's history in regard to economic policies and its regulatory framework. The narrative that emerges from a survey of historical texts and literature suggests that the contemporary phenomenon of financial inclusion considerations have been part of the historical financial development of pre-and post-independence of Sri Lanka. Sri Lanka's history starts with a first wave of colonization.<sup>246</sup> Historic texts suggest that Sri Lanka's distinct elaborate irrigation system and feudal regime with regard to land ownership created the prototype for economic policies thereafter.<sup>247</sup> For instance, land ownership was dependent on "an obligation to service as condition to holding land"<sup>248</sup> The service condition is akin to working on the land or developing a feudal farming production system. Ancient Sri Lanka was described as an "agrarian economy."<sup>249</sup> The typology of the economy informed the types of commercial transactions and how these exchanges developed within community schemes.

The historical evolution of the banking regime can be traced from ancient texts and religious inscriptions, which describe the vibrant trade and sea routes that established

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<sup>246</sup> Sinnappah Arasaratnam, "Sri Lanka" (11<sup>th</sup> October 2021), online: *Britannica* <  
<https://www.britannica.com/place/Sri-Lanka>>.

<sup>247</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 35. See also Manik Jayasundera, "Ancient Sri Lankan Economic Systems" *Financial Markets, Institutions and Risks*, Volume 1, Issue 4, 2017, online:  
<https://core.ac.uk/download/pdf/324240475.pdf> at 25

<sup>248</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 36, 40. The King, unlike the European feudal system, did not own the land – exclusive property interests were later developed with private property rights emerged. It is interesting to note that a "form of monastic landlordism evolved" – granting land through service and donation and empowering monasteries.

<sup>249</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 42; See also Manik Jayasundera, "Ancient Sri Lankan Economic Systems" *Financial Markets, Institutions and Risks*, Volume 1, Issue 4, 2017, online:  
<https://core.ac.uk/download/pdf/324240475.pdf> at 24.

ancient Sri Lanka (known as Ceylon before 1972).<sup>250</sup> These trade routes prompted the creation of village guilds, which acted as depository structures that housed grain in the form of capital “on which interest was charged”<sup>251</sup>. Merchants “received grain to be deposited as capital (*gahe*) to be lent-not sold- to cultivators, who had to return the capital with interest (*vedha*) added.”<sup>252</sup> Further , these people “namely merchants, who stored and lent grain – were bankers of a sort.”<sup>253</sup> Here, the historical transition from merchant to banker is cemented within these types of commercial relationships, which anchored the banking framework, possibly as a precursor to the Sri Lankan banking system.

The ancient economic framework was intrinsically linked to the land-tenure-regime during that time period, which is described as a “multi-centered system” with complex ownership structures.<sup>254</sup> Land tax was a revenue generating mechanism for the Pollunnaruva Kingdom.<sup>255</sup> The ‘tax’ levied was paid into the royal coffers as grains and crops harvested by communities and landholders.<sup>256</sup> It is significant to note the agrarian

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<sup>250</sup> Sri Lanka, *The Constitution of Sri Lanka*, 1972; see also, Sinnappah Arasaratnam, “Sri Lanka” (11<sup>th</sup> October 2021), online: *Britannica* < <https://www.britannica.com/place/Sri-Lanka>>.

<sup>251</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 44.

<sup>252</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 44.

<sup>253</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 44.

<sup>254</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 70.

<sup>255</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 70; See also Manik Jayasundera, “Ancient Sri Lankan Economic Systems” (2017) 1:4 *Financial Markets, Institutions and Risks* 25.

<sup>256</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 70.

reforms in the 9<sup>th</sup> Century Sri Lanka expanded to a trade economy, which include mining of gems. The ‘right’ to mine gems were held by a “royal monopoly.”<sup>257</sup> This transactional vehicle can be likened to a modern day commercial license, where the user of the licensing of rights or the licensor has to pay a fee to the holder of the rights.<sup>258</sup> The trade routes, the derivatives for an agrarian economy, established during that time period also created Sri Lanka’s current exports and attractions, namely gems and cinnamon.<sup>259</sup> “The emergence of merchant ‘corporations’, the growth of market towns linked by well-known trade routes, and the development of a local economy, that is to say, (created a) regional coinage.”<sup>260</sup>

As local Kingdoms were weakened by Portuguese, Dutch and British colonial occupation between the 15<sup>th</sup>-18<sup>th</sup> Century, commercial transactions and trade became more multilateral and complex.<sup>261</sup> Nira Wickramasinghe describes this development as “commercial capitalism.” Through colonial conquests.<sup>262</sup> These financial relationships clearly required a banking structure, which operated as a conduit between states and communities, and supported specific industries. To name a few, the cinnamon trade,

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<sup>257</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 71.

<sup>258</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 71.

<sup>259</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 71; Nira Wickramasinghe, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 14.

<sup>260</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 71.

<sup>261</sup> No. Portuguese 1505-1658; Dutch 1658-1796 & British 1796-1948; Nira Wickramasinghe, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 9. The phases of colonialism were as follows: “Portuguese rule (1505-1658), Dutch rule (1658-1796), and British rule (1796-1948)”- see Nira Wickramasinghe, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 9.

<sup>262</sup> Nira Wickramasinghe, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 8.

coconut trade and coffee and tea plantations mapped out Sri Lanka's economic landscape, thereby affecting sovereignty issues, land rights, taxes, local and ethnic relationships and commercial customs. The colonial pursuit of economic and regional dominance in Sri Lanka was furthered through the East India Company.<sup>263</sup> This commercial enterprise was designed to create capital investments in its colonial economy and required a sophisticated method of banking.<sup>264</sup>

### 3.1.2 The First Wave of Financial Exclusion

The East India Company simply constructed commercial rules that would solely benefit her interests. Its jurisdictional reach authorized oversight over financial and commercial matters in Sri Lanka.<sup>265</sup> In determining the significance of capital investment, a comparison can be drawn between local traders around Sri Lanka's coastline and settler businessmen from India and other colonies. The local businesses clearly "lacked capital and organizational resources" to properly compete with their European counterparts.<sup>266</sup> It is important to note that this historical observation is akin to the challenges experienced by vulnerable communities in the inaccessibility to credit. The absence of fiscal investment prevented local merchants and traders to develop indigenous commercial enterprises that would benefit local economic growth, culture and political economy. Instead, business ventures during that time period were clearly designed to benefit the European settlers and

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<sup>263</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 240.

<sup>264</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 240.

<sup>265</sup> Nira Wickramasinha, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 29.

<sup>266</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 240.

their home country, thereby creating an economy which catered to colonial interests. The shift from local to global commerce was not an uncommon policy paradigm during the colonial period. In fact, these policies established the lifeline for colonialist expansion. The industry manipulation also elicited different policies with respect to raising and accumulating capital. To aid that policy, British governance abolished the payment of taxes in services or products, instead, cash was the only way taxes could be paid.<sup>267</sup> Banking facilities in Ceylon only emerged after a lengthy period; for instance, British missionaries had to create a remittance system through their own organizations.<sup>268</sup>

Banking was characterized as an Imperial enterprise<sup>269</sup>; “an enterprise of banking, finance, and empire whose ambitions and expansions were braided through colonial and neocolonial projects of the early twentieth century”<sup>270</sup>. Historically, these institutions were used as repositories for currency to further colonial taking, buying and selling human beings (slave trade), fund wars, create dependency policy and over indebtedness.<sup>271</sup>

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<sup>267</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 246, H. A. de Gunasekara at 51.

<sup>268</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 22.

<sup>269</sup> Peter James, *Bankers and Empire: How Wall Street Colonized the Caribbean* (Chicago: University of Chicago Press, 2017) at 4.

<sup>270</sup> Peter James, *Bankers and Empire: How Wall Street Colonized the Caribbean* (Chicago: University of Chicago Press, 2017) at 4.

<sup>271</sup> Nira Wickramasinghe, *Slave in Palanquin* (New York: Columbia University Press, 2020).

### 3.1.3 The Financial Acceleration Phase & Access to Capital

The absence of historical data and literature with respect to access to capital in Sri Lanka has created a vacuum for further study. As such, only one source in English was identified in this section. Colonial banks operated as a conduit for capital under a set of regulations promulgated by Britain.<sup>272</sup> In other words, the colonial banks received instructions from the Imperial government, which provided these institutions with a “source of strength and stability”<sup>273</sup>. The economic system in Sri Lanka was closely seen as a crucial interconnected linkage to Britain, which was predicated on a dependency on colonial financial and administrative rule.

In the 1830s, a plantation economy was started as a colonial endeavor through growing coffee at first as single crop for export purposes.<sup>274</sup> The price fluctuations experienced in European markets adversely affected the industry’s growth.<sup>275</sup> Investors were clamoring for more financing and capital infusion to stabilize the coffee plantation economy, thereby creating a demand for accessible credit and banking services.<sup>276</sup> The credit gap created an opportunity for the emergence of agency houses, such as Ackland

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<sup>272</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 20; See “Regulations for the Incorporation of Banking Companies in the Colonies” – they were governed by the Royal Charter and each colonial branch had to be preapproved.

<sup>273</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 51.

<sup>274</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 268.

<sup>275</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 269.

<sup>276</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 269.



Boyd and Co.<sup>277</sup> These agency houses were used to create sophisticated financing schemes in order to fund agribusiness in coffee production.

In turn, these agency houses can be likened to contemporary venture capitalists in that they provided access to capital for specific business ventures on the island. Agency houses in the Sri Lankan economy were created to function as credit institutions with oversight functions.<sup>278</sup> Serving as external financiers, these agency houses managed to determine the production of the plantations, and also indirectly affect employment in that sector. These types of financing arrangements flourished due to the reluctance of British commercial banks to engage in risky ventures.<sup>279</sup> “Because of their knowledge in every circumstance connected with the markets and the power of superintendence which they often retained, their loan to planters on the security of plantations and factories and even crops were relatively safe ventures whereas they would have been quite unsafe for a bank.”<sup>280</sup> The secured transactions aided in the extension of capital through a common desire to create clear and precise rights with respect to ownership to develop seamless commercial transactions.<sup>281</sup> The agency houses served a need for local businesses who suffered a lack to access of credit.

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<sup>277</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 269.

<sup>278</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 272.

<sup>279</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 273.

<sup>280</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 273.

<sup>281</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 275.; In 1840, the *State Lands Encroachments Ordinance 12* was passed to address these considerations with respect to land entitlements.

Unfortunately, the coffee plantation economy was a risky business, as “a large amount of capital was buried in the soil with little prospect of recovery.”<sup>282</sup> The rapid demise of the agency houses was due to coffee crop failure, the ownership of plantations was changing at a staggering pace, debt increased<sup>283</sup> and a decrease in capital affected this industry. As a replacement to coffee, the next phase in the island’s economic development was founded on the Tea industry. As British taste buds became increasingly dependent on Tea, the country’s plantation sector mirrored those needs.<sup>284</sup> Colonial interests were deeply seeped in the governance of the island, which re-routed investment away from traditional industries.<sup>285</sup> This later became an impetus for Ceylonese lawmakers to advocate for an autonomous financial institution.<sup>286</sup>

The plantation economy was generated for the export market, and the colonial banks financed these commercial ventures within the trade and shipping industries. The banking system essentially developed to aid and facilitate British investment strategy in its colony. The export trade itself was controlled by a small monopoly of European brokerage firms, comprised of a close-knit community.<sup>287</sup> The same individuals were also members

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<sup>282</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 269.

<sup>283</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 270.

<sup>284</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 290.

<sup>285</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 294.

<sup>286</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 191.

<sup>287</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 190.

of the Ceylon Chamber of Commerce during this time period, without local business leaders.<sup>288</sup> The governance structure was informal in nature which permeated their business relationships, and the banks followed suite. “This informality is evident in the manner in which the banks bought the shippers’ bills or extended credit to them”<sup>289</sup>, which suggests exclusionary tactics that disallowed local membership and indigenous participation in the trade economy. Through these networks and relationships, credit arrangements and financing devices were created. In addition, ‘working capital’ and credit without collateral was extended to these firms by the banks due to informal commercial networks.<sup>290</sup> This type of social capital served to enhance colonial interests in constraining credit and financially excluding Ceylonese businesses and communities.

#### 3.1.4 The Stark Emergence of Financial Exclusion

In order to understand Financial Inclusion in contemporary Sri Lanka, “exclusion” must be explored in a historical context. The undercurrents of the colonial financial climate have discernibly contributed to the current fiscal landscape with respect to financial inclusion. “The new export economy became an integral through subordinate part of a vast imperial network of production and exchange which was more or less coordinated and controlled by the metropolis in London.”<sup>291</sup> The business of banking was confined to trade

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<sup>288</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 191.

<sup>289</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 191.

<sup>290</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 192.

<sup>291</sup> Nira Wickramasinghe, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 8.

and export markets as mentioned previously, which in turn excluded any financing for internal or domestic commercial ventures usually pursued by local firms and business leaders.<sup>292</sup> The credit apparatus was designed to facilitate and support export-oriented production owned by non-locals.

This credit vacuum allowed middle-agents, such as the *Chettiars*<sup>293</sup> and money-lenders to thrive in the domestic commercial sphere.<sup>294</sup> In addition, due to the absence of financing opportunities, a robust shadow economy with variegated bartering systems emerged. This method of commercial engagement was the preferred method of obtaining supplies and services to ensure local commercial viability;<sup>295</sup> the use of this system was predicated on cultural norms and the need for a mechanism that would allow for local commercial ventures without the use of money.<sup>296</sup> It was operated as a parallel economic tradition to the traditional banking system, employed by colonial settlers. Again, comparisons can be made to the informal shadow economy and modern-day village moneylender. Historically, money lending was part of a transplanted culture as explained below.

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<sup>292</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 193.

<sup>293</sup> The Chettiars are bankers from South India, who settled in Sri Lanka, formerly Ceylon.

<sup>294</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 193 – also see section.... The Chetties – bankers from South India (90).

<sup>295</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 246.

<sup>296</sup> K M De Silva, *A History of Sri Lanka* (Berkeley: University of California Press, 1981) at 246.

### 3.1.5 The Chetty Bankers and Money Lenders<sup>297</sup>

The foundational ideology that prompted a call for a national financial institution was partly based on the high cost of borrowing due to the *Chettiar* transactions, which adversely impacted Ceylonese business communities. These can be described as money lending arrangements with third party agents. Due to the shortage of credit and access to other financing arrangements, local businesses had to resort to using moneylenders, also known as private credit agencies. The cost of borrowing proved to be detrimental to many local industries and the call for a national solution became heightened. The money lenders were a group of bankers from South India, named Chetty Bankers, also known as Chettiers. They were described as the ‘middlemen’ between the colonial financial institutions and the local businesses. They were able to supply credit and liquidity for local merchants in Colombo, who were excluded from other financial services.<sup>298</sup> They provided a vital linkage between banks and “Ceylonese borrowers.”<sup>299</sup> As H.A. de Gunasakara notes that the Chettiers’ extension of financial services primarily built the local Ceylonese enterprise.<sup>300</sup> They were the primary lenders for local businesses operating domestic operations. “The Chettiers were in fact responsible for the thin trickle of credit which found its way to internal trade

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<sup>297</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 3.

<sup>298</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 195.

<sup>299</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 11.

<sup>300</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 197.

and production.”<sup>301</sup> Further, historical accounts depict the Chettiars as predatory and non-discerning lenders.

“The Chettiar was ready to accommodate the genuine businessman, he was ready to accommodate the speculator and the spendthrift. He lent as readily to the exporter of desiccated coconut as to the impecunious land owner trying to raise a dowry for his daughter. When the commercial banks left the task of financing Ceylonese business to the Chettiars, they were unwittingly encouraging the growth of an unsound credit structure.”<sup>302</sup>

From a pragmatic perspective, the Chettiars practiced financial inclusion for their own benefit, yet they were met with local suspicion and criticism from local business leaders for their exploitative lending strategies. They were characterized as “shylocks and bloodsuckers” as they “loath to refuse an application for credit however unsound it was...and the loans were unrelated to the need of the borrowers.”<sup>303</sup> An analogy can be drawn to contemporary microfinance institutions that face similar critique, yet extend credit to individuals who are unable to access traditional forms of financial services. It is interesting to note that non-Ceylonese businesses by settler-colonialists, such as Arabs, Europeans and Indians (settler-colonial commercial operators) did not have the need for financial services provided by the Chettiars, as they were able to access alternate sources of credit.<sup>304</sup>

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<sup>301</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 197.

<sup>302</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 198.

<sup>303</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 198.

<sup>304</sup> The settler-colonial commercial operators obtained financing from their home countries and their own non-local communities.

### 3.1.6 Predatory Financial Services & Ceylon Banking Commission Report Findings

The Ceylon Banking Commission Report<sup>305</sup>, was designed to study the financial landscape of the country. The Commission's Report (hereinafter "Report") included complaints against the practices employed by the Chettiars, primarily based on high interest rates which led to an increase in indebtedness in local communities.<sup>306</sup> The Commission, however, dismissed these complaints as part of the money lending business, as these practices must be examined "with the working expenses, imperfection of security and the risk involved."<sup>307</sup> Pawnbrokers and general money lenders, who are not Chettiars are also mentioned in the Report as sources of alternate financial arrangement. In paragraph 990 of the Report, the Commission describes money-lending as an "ancient business"<sup>308</sup>, which anyone can participate in and that "wealthy persons and retired officials do not hesitate to engage in this activity."<sup>309</sup> The Commission clearly acknowledges these informal

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<sup>305</sup> A Ramaiya, "The Ceylon Banking Commission" (1935) 45:178 *The Economic Journal* 378.

<sup>306</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 12; Nira Wickramasinhe, *Sri Lanka in the Modern Age A History* (Oxford: Oxford University Press, 2014) at 146.

<sup>307</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 12.

<sup>308</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 13.

<sup>309</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 13.

transactions and characterizes them as “amateur”<sup>310</sup> moneylending, and in some cases, can be borne from altruism, thereby regulation cannot be stringent. The Report provides simple examples of justifiable money lending transactions in its findings, such as “the landlord’s advances to his tenants.”<sup>311</sup>

The Report further discusses the existence of an established legislative ordinance which adequately regulates pawn broking and moneylending. Paragraph 991 of the Report notes:

“Sufficient safeguards exist to protect the debtors from the malpractices of the creditors. If abuses are still found in practice they are inseparable from the nature of private lendings and indicate difficulties of legislation in these matters. It is impossible to save a person by law who refuses to take advantage of measures designed to help him or desires to commit economic suicide.”<sup>312</sup>

This above referenced paragraph suggests that the Commission shifted the onus on the borrowers, and found that the legislation existed to protect borrowers from predatory lending. The referenced deficiencies outlined by the Commission reinforced the need for a national bank to support local financial institutions that served local communities. “The existing banking organization with its nerve-centre thousands of miles away and whose management lacks intimate touch with the population is unfitted to meet reasonable

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<sup>310</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 13.

<sup>311</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 13.

<sup>312</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 13.



indigenous demands for credit.”<sup>313</sup> The Report, in paragraph 995, further emphasizes the dire absence of branch banking remittance services, and investment for local industries.<sup>314</sup> In order to enhance economic growth and development, the Commission found that national banking facilities were required. It further found that “powerful indigenous banks are always helpful not only to the commercial community, but also to the Government in their hour of need. National banking will lower rates of interest.”<sup>315</sup>

These findings reproduced from the Commission may be historical in nature, but are eerily still applicable. The blueprint of the issues surrounding lending, pawning, financial services and money lending are still pervasive in the contemporary fiscal landscape, specifically in the context of financial inclusion. The nationalization of banking was thought to get rid of those conditions, but it did not.

## **3.2. POST-COLONIAL CONDITIONS**

### **3.2.1 Creation of a National Bank & The Bank of Ceylon -- “An expression of self-government”**

The creation of the Bank of Ceylon has been lauded as the first post-colonial financial institution, which became a symbol of financial liberation. It was a product of nationalism in response to the colonial economic constraints imposed on local commercial and fiscal initiatives. The lack of financial services available for local and traditional

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<sup>313</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 14.

<sup>314</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 14.

<sup>315</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 14.

businesses became “an important national issue”, given the backdrop set out in the previous section.<sup>316</sup> The discriminatory treatment in lending arrangements became increasingly evident, and local businesses had to resort to pawnbrokers, moneylenders and “Shroff windows” in order to obtain adequate financing as described in the preceding section of this Chapter.<sup>317</sup> “Thus, when the winds of the Great Depression wafted to Sri Lanka, the national entrepreneurs were reduced to penury.”<sup>318</sup> The colonial political climate affected her subject colonies. Clearly, this is an example which demonstrates that financial inclusion has been a pre-independence national aspiration.

### 3.2.2 A Call for a National Bank

As business leaders, and Sri Lankan members of the State Council grew more and more impatient with the lack of autonomy under British rule. George E. de Silva, one of the first Members of an Independent Parliament, formalized a demand to create a “state aided bank to rescue the nationals from their dire predicament.”<sup>319</sup> A stronger movement of support commenced calling for ‘an indigenous bank’.<sup>320</sup> As expected, there was

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<sup>316</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at i.

<sup>317</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at i.

<sup>318</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at i.

<sup>319</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at i.

<sup>320</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at i.

considerable opposition from colonial interests; despite the challenges in creating a national Sri Lankan monetary institution, the Bank of Ceylon was established on August 1, 1939 under British occupation.<sup>321</sup> Independence was granted in 1948.<sup>322</sup>

This historical moment is quite significant, as Sri Lanka was undergoing social and economic shifts in its political landscape. The Bank's mission and purpose were described as "the country's leading bank."<sup>323</sup> Sri Lanka's lawmakers were intent on creating a local push towards a savings mechanism and credit facilities to create an investment culture that was nationally focused. The establishment of this monetary institution was characterized as a *public institution*.<sup>324</sup>

Legislative history provides a glimpse on the policy approaches considered during the time of colonial rule. On November 23, 1932, a resolution was made to appoint "a Commission to go into the System of Commerce, Banking and Insurance of this Island."<sup>325</sup> The Commission was formed to examine the economic structure of the island during this time period, and to uncover the challenges experienced by the local business community, which included the real challenges of financial inclusion. The economic autonomy of Sri

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<sup>321</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at ii.

<sup>322</sup> Sinnappah Arasaratnam, "Sri Lanka" (11<sup>th</sup> October 2021), online: *Britannica* <<https://www.britannica.com/place/Sri-Lanka>>.

<sup>323</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at ii.

<sup>324</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) – at iii.

<sup>325</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 1.

Lanka's growth and development was a crucial component to destabilize colonial structures that solely benefited European interests.

### 3.2.3 The Back Story

The Member of Parliament, George de Silva, in his submissions, stated that “Unless we could give the people of this country some encouragement to get money on easy terms it is almost impossible to carry on agriculture to the benefit of the people.”<sup>326</sup> De Silva further argued that the high interest rate charged for lending arrangements disproportionately affected local individuals and communities, and that the absence of a national bank with local interests allowed communities to become victims to predatory actors and discriminatory treatment.<sup>327</sup> He explains:

“I find, Sir, that in Ceylon we have a number of banks, and most of these banks are exchange banks except perhaps one, and that is the Imperial Bank of India. The Imperial Bank of India lend money and I might say that they lend money to a particular community and they naturally expect to look after those traders who have come from India and settled down in Ceylon”<sup>328</sup>

De Silva's pinpoints the disparate economic allocation of financial services. It is clear that a national bank was desired to create 'inclusion'. In his plea to the Council, he noted that:

“We find that most banks that are established here are run by bankers who have come from foreign countries. They did not bring large capital into this country. They have the credit given to them by the Ceylon Government and by their customers who live in this country. But, when it comes to a question of borrowing

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<sup>326</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 2.

<sup>327</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 3.

<sup>328</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 3.

any money you will find that the banks are very loath to grant loans for industrial purposes and for agricultural purposes.”<sup>329</sup>  
The Ceylon Banking Commission issued its report 1934 after 56 meetings with stakeholders<sup>330</sup>, which outlined the state of economic affairs in Ceylon during that time period and made recommendations to establish the Bank of Ceylon.<sup>331</sup>

In order to demonstrate the historical absence of financial inclusion, subsections of the report are examined to provide the underlying considerations in establishing a national financial framework. Much like many other colonies, perceptions of Ceylonese were described using a European gaze, thereby informing the patriarchal policies that stemmed from these perceptions based on culture, skin color and ‘otherness’ of the colonized.<sup>332</sup> The report articulated the financial exclusion, which the report characterized as ‘Handicaps of Ceylonese’.<sup>333</sup> These ‘handicaps’ are expressed below:

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<sup>329</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 4.

<sup>330</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 8.

<sup>331</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 7.

<sup>332</sup> There is a whole body of international socio-legal scholarship that has pursued this type of analysis; see for example Makau Mutua “What is TWAIL?” (2000) 94 *American Society of Intl L Proceedings* 31; Antony Anghie “What is TWAIL: Comment” (2000) 94 *Am Soc Int’l Proc* 39; Obiora C. Okafor, “Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?” (2010) 10 *Intl Community L Rev* 37; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004); Sundhya Pahuja, *Decolonising International Law: Development, Economic Growth and the Politics of Universality* (Cambridge: Cambridge University Press, 2011)

<sup>333</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 9.

“ A good deal of prominence is given in some quarters to the inability of the Ceylonese to carry on successful business, banking, and industrial undertakings. Want of punctuality in meeting their obligations is frequently urged as an argument of unfitness. There is nothing inherent in the indigenous people, which makes them unfit for these pursuits. They are only victims of past circumstances which have created a situation wherein most of those activities are monopolized by foreigners, who have built up unassailable positions. Not only in there strong competition to be faced, but considerable leeway has to be made up in training, experience, and credit and financial methods.”<sup>334</sup>

This passage clearly conveys a cultural bias against indigenous communities and seeks to provide underlying solutions to combat the discriminatory financial exclusion of local communities. Further, in paragraph 978 of the Report, the Commission addresses the discriminatory treatment faced by Ceylonese borrowers and customers:

“Serious complaints were brought to the notice of the Commission about the discrimination of these banks in the matter of distribution of credit. It is difficult to adjudicate upon these grievances. Every dissatisfied applicant thinks, rightly or wrongly, that he has not been fairly treated.

There are several subtle considerations about character, business efficiency, and capacity to repay, which a bank manager has to take into account before deciding on a credit proposal. The matter becomes more complex because the debtors are reluctant to accuse openly their creditors because of the fear of victimization, and bankers categorically deny these accusations.

However, reading between these divergent statements, it is not difficult to see that, although in some cases dissatisfaction is due to ignorance of principles which govern commercial advances and even though there may be no intentional racial discrimination on the part of the bank management, in practice, it somehow comes into operation through the Shroff, his guarantee, his commission, and the higher rates of interest have created sufficient grounds for genuine complaints and not unjustifiably created the popular impression of discrimination.”<sup>335</sup>

This paragraph encapsulates the systemic exclusion clearly apparent during the colonial period, and contemplates the issues faced by customers with respect to discrimination. In

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<sup>334</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 9.

<sup>335</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 10.

contemporary banking practices, the exclusion is manifested in various modalities in a particular context. Culture and post-war are contextual indicators have been a thematic strand in this study, and ironically these sentiments articulated in the call for establishing a national bank still ring true.

Other historical accounts suggest that part of the discriminatory treatment was attributed to the fact that bankers did not physically meet Ceylonese business leaders or customers. This isolation or rift made it “impossible for the banks to ever to develop an intimate banker-customer relationship between themselves and the Ceylonese which would have dispelled some of their innate doubts regarding the credit-worthiness of Ceylonese clients...”<sup>336</sup> The banks regarded the Ceylonese as “small men often with little capital of their own.”<sup>337</sup>

### 3.2.4 Challenges in Financial Services & Unregulated Financial Activity

Another similar policy concern for regulators in the post-colonial period has been preoccupation with ‘unregulated banking activity’, which is another intersectional theme in this study. The Report specifically addresses the cultural practice of ‘*cheetus*’ – which are communal savings devices. The Report further perceives these savings mechanisms as a threat and as a potential “injury which they cause to the public in their present unregulated

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<sup>336</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 203.

<sup>337</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 203.

state.”<sup>338</sup> Paragraph 983 of the Report suggests that these cheetus are “full of abuses which call for early legislation”<sup>339</sup>; and assumes that “cheetus provide a crude, but perhaps a necessary form of borrowing and lending suited to a certain section of the community in debt, but they will disappear with the growth of national banking.”<sup>340</sup> There is an implicit understanding that these informal financial transactions are a part of the daily lives of many due to the exclusion from traditional financial institutions, thereby establishing an argument for consumer protection by seeking a national bank. Unfortunately, these devices are still in usage in present day.<sup>341</sup>

The Report in paragraph 1028 emphasized the vital need for financial literacy, which remains a thematic strand in contemporary financial inclusion discourse in Sri Lanka. Not only has this call for action been “Importance of these problems to the development of indigenous banking is unquestionable. Ways and means are suggested to accelerate education and training of Ceylonese in banking. It is also urged that arrangements should be made to provide education in co-operation so as to quicken and

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<sup>338</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 11.

<sup>339</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 11.

<sup>340</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 11.

<sup>341</sup> Aiken, Sharryn J. and Cheran, Rudhramoorthy, *The Impact of International Informal Banking on Canada: A Case Study of Tamil Transnational Money Transfer Networks (Undiyal)*, Canada/Sri Lanka (Spring 2005). Law Commission of Canada, Government of Canada Publications (2005), available online: <https://ssrn.com/abstract=2494357>



expand the co-operative movement.”<sup>342</sup> An examination of the Hansard of the debates in the State Council further illuminate how nationalism and anti-colonial resistance were wrapped up in the call for establishing a national bank. Lawmakers cited that the primary reasons for “forming a national bank is the lack of credit facilities for financing internal trade and local industry”,<sup>343</sup> and “the lack of contact between bankers and their Ceylonese clients”<sup>344</sup> contributed to this position. Further the Report asserted that “the European officials at the bank lack that intimate touch with local enterprise and local population which is generated only by free and unfettered intercourse of daily life”<sup>345</sup>; and the “discrimination exercised by banks between different classes of clients.”<sup>346</sup> The exclusionary nature of these barriers were the foundational reasons for pursuing a national financial institution. The contemporary aspects of exclusion still prevail in this post-war jurisdiction, and have mutated into different outcomes as identified by this qualitative study.

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<sup>342</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 21.

<sup>343</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 24 – The Hon. Mr. Sundaram’s submission.

<sup>344</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 24 – The Hon. Mr. Sundaram’s submission.

<sup>345</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 24 – The Hon. Mr. Sundaram’s submission.

<sup>346</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 24 – The Hon. Mr. Sundaram’s submission.

As the Report was being debated, the Hon. Mr. Bandaranaike (who would later become Prime Minister of Sri Lanka)<sup>347</sup> provided his support for establishing a national bank. He insisted that a national financial institution with fair corporate governance measures would increase capital accumulation for the Ceylonese.<sup>348</sup> During this time period, only 35 percent of the country's capital was locally controlled<sup>349</sup>, and that establishing a home grown financial institution would create *economic equilibrium* and enhance the *economic position* of the country.<sup>350</sup> He further articulated that “this is a very urgent need. It is no use talking of great national movement of reconstruction<sup>351</sup>” without creating financial independence. He further stressed:

“It is pointed out that it is the duty of the State to help as far as possible in the task of reconstruction and economic progress. Banking is one of the chief methods undoubtedly in modern economics where the greatest help can be given for adequate and satisfactory credit facilities which are undoubtedly the heart which alone can pump blood into all the network arteries and veins which constitute economic life of the people.”<sup>352</sup>

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<sup>347</sup> Editors of Encyclopedia Britannica, “S.W.R.D. Bandaranaike: prime minister of Sri Lanka” (22<sup>nd</sup> April 2021), online: *Britannica* <<https://www.britannica.com/biography/S-W-R-D-Bandaranaike>>.

<sup>348</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 40 – The Hon. Mr. Bandaranaike’s submission.

<sup>349</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 40 – The Hon. Mr. Bandaranaike’s submission.

<sup>350</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 42 – The Hon. Mr. Bandaranaike’s submission.

<sup>351</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 43 – The Hon. Mr. Bandaranaike’s submission.

<sup>352</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 43 – The Hon. Mr. Bandaranaike’s submission.

The sentiments of independence from colonial rule were pulsating amongst lawmakers during this time, and Mr. Bandaranaike further used the Report's finding to highlight that "the history of Ceylon records the exploitation of its commerce by the Portuguese, Dutch, the British and the Indians for over 100 years."<sup>353</sup> He continued that "even at present its entire trade is being run by foreigners, with foreign capital, foreign labour, and foreign brains. The non-Ceylonese element has kept a strong hold on business, trade and industries of the country, and few opportunities have been allowed to the average Ceylonese to engage in trade and industries either by Government or business firms."<sup>354</sup> These legislative discussions underscore the modern banking context in post-colonial Sri Lanka.

The Commission, in order to develop some type of law reform process, strongly recommended "that the State-aided Bank should assume the principal responsibilities of providing credit for internal economic activities whether related to agriculture, commerce, or industry."<sup>355</sup> By articulating the purpose of the Bank, a banking structure was contemplated for the Sri Lankan economy. The Report further advocated for the need for law reform, as the banking regulations employed were transplanted from the British systems and effectively mimicked colonial banking procedures, and had an absence of indigenous inclusion with respect to banking practices. The legislation in place was described as "too antiquated to meet the demands of present day commercial and banking

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<sup>353</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 44– The Hon. Mr. Bandaranaike's submission.

<sup>354</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 44 – The Hon. Mr. Bandaranaike's submission.

<sup>355</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 16.

activities and that the legal system of Ceylon governing them should be carefully revised.”<sup>356</sup>

### 3.2.5 The Counter-Narrative

There was much opposition to the newly proposed National Bank scheme. The colonial administration and the Chamber of Commerce appeared to be vehemently opposed, and existing business interests in Sri Lanka actively sought to thwart information during the inquiry period by the Commission.<sup>357</sup> The opposition was based on multiple considerations, such as a rapid formation of a bank would create an unsound fiscal environment, that corporate governance should include a majority of non-Ceylonese as Directors due to former banking professional experience, and that a national bank may not be necessarily required, as the existing foreign controlled institutions could offer similar services with the proper legislative amendments. Local lawmakers were not in agreement with the opposition of establishing the national banking scheme. In fact, this issue was a great political unifier, and partisan politics were left aside.<sup>358</sup>

In his advocacy for establishing an indigenous financial institution, Mr. Bandaranaike further provided a response to the issue of a collaborative arrangement with the colonial administration by using this analogy:

“Now, Sir, we are asked to follow a sort of “Little Red Riding Hood” policy. You know what happened to that unfortunate and trusting maid. She visited her

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<sup>356</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 17.

<sup>357</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 38.

<sup>358</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 48 - The Hon. Mr. Bandaranaike’s submission.

grandmother. She put on her best dress, her nicest red-riding habit and visited her grandmother, who was supposed to be very sick and dying, with some custards and other nourishing food. The grandmother turned out to be a wolf; and what happened was that poor little Red Riding Hood found herself the final habitat inside the stomach of the bogus grandmother. We must be careful in rushing to this grandmother who is going to help use this way; we must be very careful in trusting to the bona fides of this grandmother, It is because I am not personally satisfied with the bona fides of this particular grandmother that I place these facts before the House.”<sup>359</sup>

The analogy above clearly amplified the power dynamics of colonialism, where patriarchal policies were used to disempower local communities, decentralize decision-making and create dependency on the colonial administration. The above submissions by the Hon. Mr. Bandaranaike also demonstrate the disparate treatment endured by local economic endeavours, and clearly convey that change and financial inclusion during that time could only manifest in the establishment of a national bank. There appeared by to be unanimous support for the National Bank regime, and other members of the State Council of Ceylon assented. During the debates, the Hon. Mr. G.G. Ponnambalam cautioned that the National bank should be free of political interference, even if guided by the State.<sup>360</sup>

### **3.3 The Bank of Ceylon – The First National Financial Institution**

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<sup>359</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 46 – The Hon. Mr. Bandaranaike’s submission.

<sup>360</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 51 -The Hon. Mr. Ponnambalam’s submission; While doing this historic research, I came across the Hansard of this debate and was surprised to find debates and submissions included by Mr. G.G. Ponnabalam. This became a personal coup for myself – as he is my great-grand uncle. He was my grandmother’s brother and his grandchildren are my cousins. I always knew he was a significant political figure in Sri Lankan history, but I had no idea that he had any connection to the National Banking scheme or would become part of my own dissertation.

On August 11, 1939, the Bank of Ceylon was declared open by the British Governor, Sir Andrew Caldecott.<sup>361</sup> It was established during a time of Ceylon's constitutional, social and economic reform. Local leaders were intent on reconstructing an independent governance regime away from colonial rule, and the "absence or inefficiency of financial institutions" were even more pronounced.<sup>362</sup> The long and tedious journey toward creating a National Bank in spite of vehement opposition was due to the dedication and commitment of Ceylonese Ministers and State Council members, and became an expression of social and institutional change in the former Ceylon's political history.<sup>363</sup> The history of economic development and reconstructing institutions that would resist colonial interests is not apolitical; it is significant to note at this juncture that the banking enterprise in Sri Lanka is a political act and continues to be so in current times. The early operations of the Bank of Ceylon created a pathway to independence; and was able to sustain and survive the economic climate in response to World War II, and bank runs.<sup>364</sup>

The Bank of Ceylon had to adapt to local economic conditions and starting its banking activities with an *inclusive* focused framework. It developed a mechanism in the late 1950s, described as "Bank on Wheels", where a mobile banking service became

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<sup>361</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 103.

<sup>362</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 95.

<sup>363</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 96.

<sup>364</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 84.

operational.<sup>365</sup> In this context, mobile banking focuses on the historical description of a physical mobile banking service – where the banker goes to the customer.<sup>366</sup> A mobile service was created “to give banking service in places where business is not sufficient to warrant a permanent office and a permanent staff and where banking services for restricted periods of the day would be sufficient.”<sup>367</sup> This type of banking operation was also developed to “offer banking services in those towns geographically situated between branches,”<sup>368</sup> and “to serve as pilot branches to gauge the earning prospects in any given locality.”<sup>369</sup>

As banking services were intended to become more accessible to local, rural and indigenous communities, the Bank of Ceylon adopted a national priority framework to serve as a catalyst for internal trade and economic development. In 1961, the Bank of Ceylon was nationalized and became government owned.<sup>370</sup> During this time, the People’s Bank, another local bank was created by the Sri Lankan government to infuse capital into

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<sup>365</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 196.

<sup>366</sup> In contemporary literature, mobile banking refers to mobile banking using virtual platforms for electronic transactions.

<sup>367</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 196.

<sup>368</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 196.

<sup>369</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 196.

<sup>370</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 197.

the agricultural sector and work with the cooperative movement.<sup>371</sup> This newly formed government initiative prompted the Bank of Ceylon to follow suit and create lending arrangements to revive the agricultural sector; banking policies included a mandate to assist small scale farming operations, tea production and industrial expansion.<sup>372</sup> Towards the late 1960s, the Bank of Ceylon included development banking at the behest of international financial institutions, which was intended to revive the expansion of rural credit.<sup>373</sup> These inclusive types of banking operations served to illustrate that financial inclusion methods were part of Sri Lanka's banking development post-independence. This is further demonstrative of how financial inclusion was part of the legal order stemming from national self-government/ empowerment.

### 3.4 The Emergence of the Central Bank

As the colonial financial governance system became a site of resistance for local lawmakers and monetary arrangements were focused on local economic development, it was evident that an institutional oversight mechanism was needed to create domestic monetary policies. A “rigid pattern upon the behavior of money and credit” was lacking.<sup>374</sup>

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<sup>371</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 197.

<sup>372</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 197 and 200.

<sup>373</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 201.

<sup>374</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at v – Preface.



It is interesting to note that resistance towards colonial rule was also demonstrated by the type of expertise sought by Ceylon in asserting independent institutions. “For advice on the establishment of a central bank the government of Ceylon preferred to go to the Federal Reserve System of the United States rather than the Bank of England. Thus, while all the formative influences on Ceylon’s monetary and banking institutions had been British, her central bank, both in its powers and its structure, resembles those that have been recently set up on the basis of American advice in a number of underdeveloped countries.”<sup>375</sup> Regrettably, there is an absence in literature to account for the historical rise of the Central Bank, unlike other jurisdictions to illustrate “a narrative of monetary events and an analysis of their effects on the economic system”<sup>376</sup> during this period.

Eleven years later, in 1950 and two years after Ceylon’s independence (1948) from colonial rule, the Central Bank was established. It was created under the Monetary Law Act No. 58 of 1949.<sup>377</sup> As the Central Bank of Sri Lanka (hereinafter “CBSL”) is charged to: “maintain a healthy and stable economic and financial system while maximising resource utilisation effectively. These objectives are:

1. The maintaining of economic and price stability
2. The maintaining of financial system stability”<sup>378</sup>

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<sup>375</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at vi – Preface.

<sup>376</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 1.

<sup>377</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 130.

<sup>378</sup> “Overview”, online: *Central Bank of Sri Lanka* <<https://www.cbsl.gov.lk/en/about/about-the-bank/overview>>.

Further the “CBSL is advisor on economic affairs and Banker to the Government of Sri Lanka (GoSL). As agent to GOSL the CBSL is tasked with managing the Employees Provident Fund, managing the country’ s public debt, providing exchange control services and administration of foreign and government funded credit schemes to enhance access to finance for regional development.” <sup>379</sup>

The CBSL resulted after a one-man Commission was designed to emulate the American Federal Reserve System, as a federal state was envisioned by lawmakers post-independence.<sup>380</sup> The federalization project established the post-independent government, the nationalization of the Bank of Ceylon, the Central Bank as the fiscal regulator, and the countless other economic initiatives during this time were politically motivated. They were labor-centric, socialist, and patriotic. The State became a *de facto* development agency, working with international organizations and foreign experts. During this period, the government of Sri Lanka appointed John Exeter as the first Governor of the Central Bank of Sri Lanka. John Exeter was the architect of the report and an economist from the Board of Governors with the Federal Reserve System of the United

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<sup>379</sup> “Overview”, online: *Central Bank of Sri Lanka* <<https://www.cbsl.gov.lk/en/about/about-the-bank/overview>>..

<sup>380</sup> Federalism as constitutional solution was adopted to address a multi-ethnic solution in within a political fragmented regime. For a more in-depth discussion, please see A.J Wilson, *Politics in Sri Lanka, 1947–1973* (London: Macmillan, 1974) and Michael G. Breen, “The Road to Federalism in Nepal, Myanmar and Sri Lanka” (London: Routledge, 2018).

States.<sup>381</sup> The choice to appoint an American as the first Governor of the Central Bank of Sri Lanka was a deliberate act. The intent was to align with experts who were not part of the British administrative circle, as the Finance Minister remarked “because of the supervisory influence which the British people had over us for about 150 years.<sup>382</sup>” Exeter created the blue print for the Central Bank model in Sri Lanka, he situated its context within the globalized economies and drafted a procedural map of its operation.<sup>383</sup>

Through establishing a financial framework for the Island, the CBSL was charged with developing internal robust central banking procedures and creating policies for economic development. In all aspects, the CBSL was modeled after a traditional version of a Central Bank through its “structure, powers and duties.”<sup>384</sup> Through enacting the *Monetary Law Act*<sup>385</sup>, the CBSL was empowered to govern, regulate and administer monetary and economic policies in Sri Lanka. It is further empowered to employ remedial actions in response to fiscal disruptions and to ensure financial stability.<sup>386</sup> In addition, the

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<sup>381</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 260.

<sup>382</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 261.

<sup>383</sup> W.A. Wijewardena, *Central Banking Nearly Six Decades After John Exter* (Colombo: Central Bank of Sri Lanka, 2007) at 1.

<sup>384</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 261.

<sup>385</sup> Sri Lanka, *Monetary Law Act*, Cap 323.

<sup>386</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 264.

founders of the CBSL contemplated that economic doctrines were susceptible to social and political realities, and that law reform is slow to adjust, as such the governance structure had to be sufficiently flexible to adapt to local conditions.<sup>387</sup>

“Fashions in economic thinking are no less volatile than fashions in many other departments of human behavior. The heresies of one period may become orthodoxies of the next. The objectives of social and economic policy and the community’s scale of values are continually changing.”<sup>388</sup> This policy framework is presently still in place and has produced variegated national approaches to regulatory responses to Sri Lanka’s fiscal health. Under this this rubric, financial inclusion goals have been adopted throughout its economic history as discussed in preceding sections of this study.

### 3.4.1 Political Symbolism

The Central Bank was not without its critique, it was seen as a national embodiment of state power and as part of the ‘elite’ class, as many of the Governors and Deputy Governors of the Central Bank came from privileged, well-connected families and social spaces. The *revolving door and insiders* condition has been a challenge for Sri Lankan institutional change. The same individuals occupy positions of power in different economic and political spheres, thereby creating a close-knit and tight political culture. This type of interconnected transfer of knowledge and social network was also evident in this doctoral study. Many of the stakeholders interviewed in this qualitative study appeared to either

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<sup>387</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 265.

<sup>388</sup> H. A. de Gunasekara, *From Dependent Currency to Central Banking in Ceylon: An Analysis of Monetary Experience 1825-1957*, 1<sup>st</sup> ed (London, UK: Bells & Sons, 1962) at 265.

know each other socially or professionally, and had specific institutional knowledge and power to change policies around financial inclusion and economic development. To illustrate, two (2) deputy general governors participated in this study, one is now a highly paid consultant for multiple national private and non-profit microfinance institutions, and the other Deputy General Governor is the Chairperson of one of Sri Lanka's private Banks. Both appeared to have occupied different positions within financial inclusion design, development and administration throughout their careers. This phenomenon is not uncommon. It is quite evident during this qualitative that the same individuals informed the policy development of financial inclusion in Sri Lanka.

## **PART 2**

**This section provides relevant academic interventions within the context of financial inclusion, which form the literature review for this study.**

### **3.5. LEGAL INQUIRY**

Within this historical overview, this research study explores how core banking principles as articulated by the Basel Committee, and established by national legal frameworks operate at a localized level.<sup>389</sup> Using the rubric of *the financial inclusion discourse* as a point of reference, this qualitative study seeks to determine whether an erosion of financial services and access has occurred by analyzing the nexus of local banking practices to national banking legislation. The examination of banking legislation, which albeit principle-based, will include a collection of rules stemming from sources as

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<sup>389</sup> Basel Committee on Banking Supervision, *Basel III: A global regulatory framework for more resilient banks and banking systems* (Basel: Bank of International Settlements, 2010).

diverse as international standards, local governance structures, contract law, culture and ‘social capital’. Social and cultural capital in particular has been described as “non-economic glue” often used by the poor as a “remedy for market failure”; but often is omitted by financial policy.<sup>390</sup> A collateral discourse to this regulatory amalgam will be rooted in a thematic thread combining law and society approaches, law and economics, feminist legal theory and the theoretical constructs of banking law.<sup>391</sup> The legal inquiry envisioned for this project as set out below in separate sections is comprised of the theoretical perspectives, legislative framework and structural components embedded in my research paradigm.<sup>392</sup>

### 3.5.1 Analysis of segments within the Financial Inclusion Structure

The research engages in a review of the interconnected links between financial inclusion, which includes microfinance, global markets and banking regulations to test the research question discussed above. This entails a review of the microfinance providers and organization under artificial and difficult conditions, within conflict zones and constrained communities. Segments which are subject to analysis include source of funds, access to loans, credit eligibility, repayment methods, debt recovery, social collateral / peer lending and credit allocation, and credit and identification documentation within a post-war

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<sup>390</sup> (Ranking 2002, Marc Labie, Pierre-Guillaume Meon, Roy Mersland, Ariane Szafarz, “Discrimination by Microcredit Officers: Theory and Evidence on Disability in Uganda” (2010)., online SSRN <<https://ssrn.com/abstract=1722122>>.).

<sup>391</sup> (Fernando 2006, Marc Labie, Pierre-Guillaume Meon, Roy Mersland, Ariane Szafarz, “Discrimination by Microcredit Officers: Theory and Evidence on Disability in Uganda” (2010)., online SSRN <<https://ssrn.com/abstract=1722122>>., White 1995).

<sup>392</sup> Isabelle Agier and Ariane Szafarz, “Credit to Women Entrepreneurs: The Curse of the Trustworthier Sex” (2010). online: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1718574](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718574)>.

jurisdiction. Sub categories within the preceding factors are considered in this study, such as a credit distribution, creditworthiness of the applicants, anti-corruption measures, the role of Microfinance Institutions (MFIs) and disparate treatment in the delivery of financial services based either on local customs, race, religion and family status within a post-war context.<sup>393</sup>

In examining the regulation and deployment of financial inclusion, providers of those initiatives are closely examined. They are either organized as private or public institutions, thereby attracting variegated regulatory attention. For instance, MFIs play a significant role in shaping the delivery of financial services within the identified research groups. MFIs have become an influential vehicle to transform the fiscal landscape in certain communities, albeit with socio-economic challenges. In some cases, MFIs are state sponsored, thereby operating under the legal framework developed for banks and non-bank financial institutions, or simply act as mere conduits for financial inclusion.<sup>394</sup> Through an examination of the internal processes and mechanisms of the legal components of these institutions, which administer and manage the financial distribution and relationships of

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<sup>393</sup> Isabelle Agier and Ariane Szafarz, “Credit to Women Entrepreneurs: The Curse of the Trustworthier Sex” (2010). online:

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1718574](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1718574)>; Marc Labie, Pierre-Guillaume Meon, Roy Mersland, Ariane Szafarz, “Discrimination by Microcredit Officers: Theory and Evidence on Disability in Uganda” (2010)., online SSRN <<https://ssrn.com/abstract=1722122>>.

<sup>394</sup> LBO, “Enactment of Microfinance & Credit Regulatory Authority law vital: CBSL” (26<sup>th</sup> June 2020) online: *Lanka Business Online*

<<https://www.lankabusinessonline.com/enactment-of-microfinance-credit-regulatory-authority-law-vital-cbsl/>>.; see also “Directions, Circulars and Guidelines on Micro Finance”, online: *CBSL* <<https://www.cbsl.gov.lk/en/laws/directions-circulars-guidelines-for-micro-finance-institutions>>; Saman Kelegama and Ganga Tilakaratna, “Financial Inclusion, Regulation, and education in Sri Lanka” (2014) ADBI Working Paper Series No 504.

the parties in the lending-borrowing context, a particular narrative emerges as articulated by the findings of this study. In theory, MFIs operate outside the traditional banking regime, and often are cited as a vehicle to an alternate access to credit.

However, the legal relationships and the loose regulatory structure between the creditor and borrower in financial inclusion initiatives is similar to that found within the traditional banking model. These relationships are developed through group lending within communities, joint liability contracts, lending agreements, loan supervision, debt enforcement, debt recovery procedures, business practices, and security considerations. Further, the introduction of new financial products into vulnerable and post-war communities infusing a particular model of commercialization into the financial inclusion agenda. Cultural considerations underscore specific financial inclusion initiatives and how these may impact legal arrangements in a post-war jurisdiction. These emerge as financing models, which range specific to the type of project, cultural or religious features or tailored to the geographic location. For instance, some regions in Sri Lanka have adopted similar approaches in deploying custom made financial inclusion techniques. In the Eastern part of Sri Lanka, with a large population of Muslims, Amana bank has created shariah-compliant microfinance regimes.<sup>395</sup> The products created are designed to provide credit

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<sup>395</sup> Interviews conducted during fieldwork (2013). ; also see Mohammed Obaidullah and Amjad Mohamed-Saleem, “Innovations in Islamic Microfinance: Lessons from Muslim Aid’s Sri Lanka Experience” (2009) Islamic Microfinance Working Paper Series No 01-09, online: [https://www.researchgate.net/publication/228225227\\_Innovations\\_in\\_Islamic\\_Microfinance\\_Lessons\\_from\\_Muslim\\_Aid%27s\\_Sri\\_Lankan\\_Experiment](https://www.researchgate.net/publication/228225227_Innovations_in_Islamic_Microfinance_Lessons_from_Muslim_Aid%27s_Sri_Lankan_Experiment)



within an Islamic context in conformance to *shariah* law.<sup>396</sup> Similarly, the State, Aid agencies, microfinance practitioners and policy-makers, working in collaboration, have issued policy recommendations for microfinance operations within conflict or disaster zones encouraging borrowers to purchase insurance products with respect to crop insurance, farming equipment and disaster relief.<sup>397</sup> Further, these policies promote lending arrangements and joint liability contracts as being crucial elements of success. The emergence of these policies is significant and support the hypothesis contemplated. Financial inclusion is designed to provide “tiny amounts of finance to people of little means”<sup>398</sup>; however, its application has the converse effect.

### **3.6. CURRENT LEGISLATIVE FRAMEWORK: SRI LANKA**

The current legislative framework in Sri Lanka with respect to financial inclusion is fragmented. The study examines banking and financial legislation promulgated by the Government of Sri Lanka, as well as local customs and norms in understanding financial inclusion as a policy goal in a post-war landscape. During the jurisprudential review, the analysis entails a broader discussion of how this particular legal framework is situated within the global financial system. Financial inclusion conduits take many forms; they can

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<sup>396</sup> Kenneth E. Barden, “Both a Borrower and Lender Be : Can Islamic Microfinance Bring Peace to Palestine”, (2010) 27:1 World Policy Journal 97 at 101.

<sup>397</sup> See Lisa Avery, “Microcredit Extension in the Wake of Conflict: Rebuilding the Lives and the Livelihoods of Women and Children Affected by War”(2005) 12:2 Geo J on Poverty L & Pol’y 205. Microinsurance is a new initiative developed to assist borrowers in rural areas – however, this initiative is plagued with information issues, high costs and contract enforcement issues.

<sup>398</sup> ”Financial Inclusion: Overview” (2<sup>nd</sup> October 2018), online: *The World Bank* <<https://www.worldbank.org/en/topic/financialinclusion/overview>>.

be traditional banks, cooperatives, NGO-MFIs or For-Profit MFIs. Due to the sudden eruption of microfinance platforms in emerging economies, regulators have sought to create or use existing legislation to oversee these providers by either regulating the entity or the activity. In providing access to financial services, a critical regulatory issue is whether new legislation should be developed to solely address microfinance institutions, or should the general legal framework simply be applied.

Sri Lanka's legal terrain in regards to financial inclusion currently entails multiple laws that intersect depending on the entity at issue. As such, this doctoral study examines the relevant regulations, which are as follows:

1. The Microfinance Act;<sup>399</sup>
2. The Companies Act;<sup>400</sup>
3. Money Lending Ordinance;<sup>401</sup>
4. The Banking Act;<sup>402</sup>
5. The Finance Companies Act;<sup>403</sup>
6. The Debt Recovery (Special Provisions) Act<sup>404</sup>, and
7. Payment and Settlement Systems Act.<sup>405</sup>

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<sup>399</sup> Sri Lanka, *Microfinance Act, No 6 of 2016* Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 20, 2016.

<sup>400</sup> Sri Lanka, *The Companies Act No. 7 of 2007*, Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of March 23, 2007.

<sup>401</sup> Sri Lanka, *Money Lending Ordinance No. 2 of 1918* (as amended by Act Nos. 9 of 1954 and 11 of 1963).

<sup>402</sup> Sri Lanka, *Banking Act, No 30 of 1998*,

<sup>403</sup> Sri Lanka, *Finance Companies Act, No 78 of 1988*.

<sup>404</sup> Sri Lanka, *Debt Recovery (Special Provisions Act), No 2 of 1990*.

<sup>405</sup> Sri Lanka, *Payment and Settlement Systems Act No 28 of 2005*.

### 3.6.1 The Entry Point

The intertwined legal arena has an array of regulatory measures that impact financial inclusion. The most recent and long-awaited legislation, the Microfinance Act, to regulate microfinance to ensure financial access for vulnerable communities was enacted in 2016.<sup>406</sup> It was 10 years in the making, highly politicized and challenged by multiple stakeholders. The underlying issues for the regulator was to safeguard public trust and to ensure that deposit-taking in vulnerable communities is only permitted by banks.<sup>407</sup> The need for regulation of the microfinance sector became apparent due to the multiple types of commercial and non-commercial providers of financial services. The over supply of credit, the high debt, poor collateral prospects, and coercive enforcement practices have required the regulator to meet these challenges. The various banking legislative interventions affecting the services are briefly summarized below.

Commercialized financial inclusion providers, such as private entities, in Sri Lanka are incorporated pursuant the Companies Act of No.7 of 2007 (“Companies Act”), which governs the organization and administration of corporations and businesses.<sup>408</sup> In order to enjoy the benefits of corporate organization, such as limited liability status, these entities, in some cases private MFIs, must comply with the licensing and reporting requirements. Secondly, the Money Lending Ordinance is also an applicable statute to the current study. This ordinance prohibits non-residents and foreign entities carrying on “the business of

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<sup>406</sup> Sri Lanka, *Microfinance Act, No 6 of 2016* Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 20, 2016.

<sup>407</sup> S P Premaratne, “Pros and Cons of Microfinance Regulation in Sri Lanka” (2017) *Facets of Microfinance the Sri Lanka Story* 35.

<sup>408</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 8.

money lending”<sup>409</sup>, unless the Minister of Finance grants prior approval. Further, “money lending” is not statutorily defined; as such, this study may identify some regulatory gaps during the research phase.<sup>410</sup> This statute is significant as it further recognizes rights and obligations of the creditor and debtor with respect to interest rates, record keeping requirements, and “rules regarding undue influence in money lending transactions”.<sup>411</sup> Pursuant to Section 2 of the Ordinance, courts are empowered to intervene in specific lending transactions.<sup>412</sup> This Ordinance is designed to protect borrower rights and ensure procedural fairness. It is significant to note that Section 2 is inapplicable to registered banks and cooperatives; this legislative exclusion is intentional – as is possibly designed to regulate ‘informal’ money lending.

This wide-ranging web of legislation empowers the Central Bank of Sri Lanka to supervise activities related to banking, as such microfinance providers or similarly situated entities if registered as banks or specialized licensed entities fall within its purview. The *Banking Act* oversees the organization, registration, operation and liquidation of banks and the “business of banking.”<sup>413</sup> The business of banking is defined as “the business of receiving funds from the public through the acceptance of money deposits payable upon demand by cheque, draft, order or otherwise, and the use of such funds either in whole or in part for advances, investments or any other operation either authorized by law or by

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<sup>409</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 8.

<sup>410</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 8.

<sup>411</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 8.

<sup>412</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 8.

<sup>413</sup> Sri Lanka, *Banking Act, No 30 of 1998*.

customary banking practices.”<sup>414</sup> During this study, the various local lending and savings methods offered to microfinance recipients were subject to inquiry.

In addition, companies formed under the *Finance Companies Act* also participate in the commercial lending space in Sri Lanka. These institutions are engaged in “finance business”. The act defines “finance business” as “the business of accepting money by way of deposit, the payment of interest thereon” and the lending and investment funds carried out by a public company.<sup>415</sup> The *Finance Companies Act*, however, is inapplicable to banking institutions and cooperative societies; rather it regulates publicly traded companies.<sup>416</sup> As such, publicly traded companies, which engage in financial inclusion initiatives, such as microfinance, are outside the scope of the Microfinance Act.<sup>417</sup>

At the enforcement stage, the *Debt Recovery (Special Provisions Act)* permits “lending institutions” to utilize the judicial process to recover outstanding debt.<sup>418</sup> The legislation provides procedural mechanisms for lending entities, such as banks and mortgage companies, in pursuing enforcement of loan agreements. Other lenders, that do not qualify as banks, are not able to use this statute for enforcement purposes. During the fieldwork phase, the study revealed unregulated enforcement practices that are employed by banking and non-banking institutions. The legal latitude afforded to commercialized microfinance institutions by the regulator in collecting debt has not fully been addressed

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Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 9.

<sup>415</sup> Sri Lanka, *The Finance Companies Act No. 78 of 1988* (as amended by Act No. 23 of 1991).

<sup>416</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010).

<sup>417</sup> Further, the Microfinance Act exempts companies licensed under the Finance Companies Act.

<sup>418</sup> Sri Lanka, *Debt Recovery (Special Provisions Act), No 2 of 1990*.

by the stakeholders. Further, the cost benefit analysis of enforcement actions<sup>419</sup> are usually borne by the provider, and the social outcome is not ideal due to the use of coercion or stigma as a tool of enforcement.<sup>420</sup>

Finally, the *Payment and Settlement Systems Act* governs the payment, clearing and settlement systems in Sri Lanka, and it also provides for the regulation, supervision and monitoring of providers of money services.<sup>421</sup> Pursuant to the act, “money services” are services related to money including safekeeping, money transmission, cheque encashment and currency exchange.<sup>422</sup> Some non-financial institutions, such as MFIs, presumably fall under the purview of this legislation if they offer mobile banking and remittance services, or are in partnership with commercial banks. As such this is an act that requires compliance. Access to payment systems is a significant component in delivering financial services through mobile banking. Success in mobile banking is rooted in the fact that the MFIs must be member of an electronic payment platform if deploying scalable branchless banking.<sup>423</sup> Due to fast-paced convergence of business, information technology, and financial services, the underlying question is whether non-bank entities can share the space previously only reserved for banks. This is particularly an issue for MFIs, as access to national payments system is met with regulatory roadblocks. Even when an MFI possesses a commercial bank license, it does not automatically guarantee access to national payments

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<sup>419</sup> Ishan Rathnapala, “Law and Practice Relating to Money Recovery Actions in Sri Lanka” (2015) online: SSRN <<https://ssrn.com/abstract=2598345>>.

<sup>420</sup> See Chapter 4.

<sup>421</sup> Sri Lanka, *Payment and Settlement Systems Act No 28 of 2005*.

<sup>422</sup> Sri Lanka, *Payment and Settlement Systems Act No 28 of 2005*.

<sup>423</sup> Sri Lanka, *Payment and Settlement Systems Act No 28 of 2005*; See Ivatury, Gautam, and Nicole Pasricha, “Funding Microfinance Technology,” CGAP Donor Brief 23, Washington, D.C.: CGAP.

systems.<sup>424</sup> As a result, MFIs are compelled to create special arrangements with commercial banks to gain access to the national payment system.<sup>425</sup> Smaller and unlicensed MFIs lack direct access to payment systems; therefore, they are unable to provide their customers with additional services, such checking accounts.<sup>426</sup> They were compelled to use traditional financial institutions as conduits to access the payment systems structure. Despite impediments to payment systems entry, central banks in emerging economies have broadened access to financial infrastructure to further financial inclusiveness.

### *3.6.1.1 Mobile Banking*

Within the mobile banking context, payment systems are vital ingredient in the electronic payments process. “Electronic payments are a form of disruptive technology that has the potential to make cash and checks obsolete, thus changing the structure of the payments industry.”<sup>427</sup> The payment system’s value is based on its reliability, security, integrity and efficient real time payment processing. In developed nations, “the industry is shaped by its share of entry and exit” and not solely by the regulator.<sup>428</sup> Similarly, emerging markets are still grappling with legislating payment systems regulations to meet the increasing speed of innovation and the possibility of cross-border transactions.

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<sup>424</sup> CGAP, “Financial Infrastructure,” online: <https://www.cgap.org/>

<sup>425</sup> CGAP, “Financial Infrastructure,” online: <https://www.cgap.org/>

<sup>426</sup> Patricia Mwangi, “What is the Status of Financial Market Infrastructure in Sub-Saharan Africa?,”online: CGAP <https://www.cgap.org/>

<sup>427</sup> Richard Sullivan and Zhu Wang, *Nonbanks in the Payments System: Innovation, Competition, and Risk – A Conference Summary*, (Kansas: Federal Reserve Bank of Kansas City Publication,2010) at 86.

<sup>428</sup> “Richard Sullivan and Zhu Wang, *Nonbanks in the Payments System: Innovation, Competition, and Risk – A Conference Summary*, (Kansas: Federal Reserve Bank of Kansas City Publication,2010) at 83.

Electronic payment systems regulations must be in place to ensure enforceability and validity of transactions. The integrity of payment systems is heavily dependent on networks of arrangements, which transfer the value. In an MFI-led mobile banking deployment structure, access to a payment system must encompass interoperability, technical infrastructure, security protocols, and modernization features.

As MFIs gain gradual access to payment systems, regulatory oversight will be shaped by central banks to mitigate risks as a result of new entrants into the payments space. Mobile banking can be perceived as a technological innovation, which has affected the status quo in effect. As such, regulations and new policies to foster pragmatic solutions are being developed for vertical and horizontal integration within the payments systems infrastructure.<sup>429</sup> In particular, this trend has catapulted new ventures, such as new software and technology to support mobile banking within the microfinance context.

In Sri Lanka, the Central Bank of Sri Lanka (CBSL) regulates m-banking activity pursuant to the “Payment and Settlement Systems Act of 2005”.<sup>430</sup> The CBSL further requires mobile service providers to be licensed, and to have an arrangement with a custodian bank and to be compliant with national legislation with respect to consumer protection, agent relationships and electronic money.<sup>431</sup> Sri Lanka’s mobile banking

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<sup>429</sup> Richard Sullivan and Zhu Wang, *Nonbanks in the Payments System: Innovation, Competition, and Risk – A Conference Summary*, (Kansas: Federal Reserve Bank of Kansas City Publication, 2010) at 83.

<sup>430</sup> Rasheda Sultana, “Mobile Banking: Overview of Regulatory Framework in Emerging Markets” (2009). online: SSRN: <<http://ssrn.com/abstract=1554160>> at 8.

<sup>431</sup> Central Bank of Sri Lanka, “Mobile Payments Guidelines No. 2 of 2011 for Custodian Account Based Mobile Payment Services” online: CBSL [https://www.cbsl.gov.lk/sites/default/files/cbslweb\\_documents/laws/cdg/Mobile\\_Payments\\_Guideline\\_No\\_2\\_of\\_2011\\_e.pdf](https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/cdg/Mobile_Payments_Guideline_No_2_of_2011_e.pdf)



regulation is emblematic of the regulatory approach employed in emerging economies in a bank-led mobile banking model. In the context of regulation specific to mobile banking deployed by MFIs, the regulatory oversight would be extended to the type of business model used to facilitate mobile banking. For instance, the regulatory oversight would depend on whether MFIs collaborate with a telecommunications company or a bank.

In both business models, the financial or telecommunications regulator determine the appropriate standards. The extension of regulation reaches not only mobile banking providers, transactions and activities, but also partnerships and relationships of service providers. This is especially true when MFIs use third party intermediaries, such as non-bank entities, to deliver mobile banking services.

### 3.6.2 Harmonization of Legislation

As discussed above, currently microfinance institutions are governed by various legislative enactments, and are further heavily influenced by the Sri Lankan economic 2010 policy agenda, termed “*Mahinda Chintana*”.<sup>432</sup>

“The *Mahinda Chintana* vision is based on the economic philosophy that the growth in Gross Domestic Product (GDP) alone would not bring economic prosperity to the society. The *Mahinda Chintana Goal* (MCG) is to increase the GDP to provide benefits to every segment of society in a justifiable manner. The creation of prosperity to the majority of the people who cannot purely rely on market based solutions requires connectivity through roads, electricity, telecommunications, information technology, education and health services. Hence, the development strategy relies not only on promoting investments on infrastructure based on commercial and economic returns but also on the creation of equitable access to such infrastructure development to enable people to engage in gainful economic activities.”

<sup>432</sup> Sri Lanka, Department of National Planning, *Mahinda Chintana: Vision for a new Sri Lanka*, (Colombo: Ministry of Finance and Planning, 2006).

Under the newly designed “Mahinda Chintana Goal”, the Ministry of Finance and the Central Bank of Sri Lanka developed legislation to regulate microfinance institutions; however, it was heavily criticized for restricting access to foreign funds, and imposing geographic constraints on operations.<sup>433</sup> The State envisaged a separate regulator, *The Microfinance Regulation and Supervision Authority*, which would oversee all microfinance activities undertaken by nonbanks and non-cooperatives.<sup>434</sup> The conceptual legislative model was further criticized for failing to regulate cooperatives, as they are the largest microfinance providers in Sri Lanka, thereby continuing the liberalization ideology. One of the main contentions by the CBSL is that only the largest nonbank MFIs pose a significant threat to the financial landscape, and those entities should be under the purview of regulation.<sup>435</sup> At the time of this qualitative study, the bill has not yet been enacted.

### **3.7 Commercialization of Financial Inclusion**

Commercialization within the financial inclusion context is currently being analyzed by economists, business advocates and development scholars.<sup>436</sup> The shift in adopting a profit-seeking business model is currently embraced by many providers of

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<sup>433</sup> Shakila Wijewardena, *Legal Study on the Microfinance Sector in Sri Lanka* (Colombo: GTZ ProMIS, 2010) at 7.

<sup>434</sup> Sriyantha Fernando,, Jayatilleke S Bandara, & Christine Smith, “Regaining Missed Opportunities: The Role of Tourism in Post-war Development in Sri Lanka” (2013) 18:7 *Asia Pacific Journal of Tourism Research* 685.

<sup>435</sup> Sriyantha Fernando,, Jayatilleke S Bandara, & Christine Smith, “Regaining Missed Opportunities: The Role of Tourism in Post-war Development in Sri Lanka” (2013) 18:7 *Asia Pacific Journal of Tourism Research* 685.

<sup>436</sup> Benjamin Musah Abu and Issahaku Haruna, “Financial inclusion and agricultural commercialization in Ghana: an empirical investigation” (2017) 77:4 *Agricultural Finance Review* 524.

Debroah Drake and Elisabeth Rhyne, *The Commercialization of Microfinance: Balancing Business and Development* (Boulder: Kumarian Press, 2002).

financial services (even traditional banks) as they struggle to become financially self-sustaining. The rationale in this shift toward the commercialization continuum is based on the limitation of funds from depositors (if banks), donors, governments and other multi-lateral agencies.<sup>437</sup> Commercialization is described as follows:

1. Adoptions of a for-profit orientation in administration and operation, such as developing diversified, demand-driven financial products and applying cost-recovery interest rates.<sup>438</sup>
2. Progression toward operational and financial self-sufficiency by increasing cost recovery and cost efficiency, as well as expanding outreach.
3. Use of market-based sources of funds, for example, loans from commercial banks, mobilization of voluntary savings, or other nonsubsidized sources.
4. Operation as a for-profit, formal financial institution that is subject to prudential regulation and supervision and able to attract equity investment.<sup>439</sup>

Entities, such as MFIs, adopt the preceding characteristics, legal obligations ensue as they are deemed to become financial institutions within the regulatory landscape. As jurisdictions struggle to accommodate these types of unique and new business structures,

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<sup>437</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 1.

<sup>438</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at –2

<sup>439</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at pg.2

which serve twin purposes, legislators are faced by employing existing regulatory measures or developing customized legislation. Regulators in Sri Lanka are faced with similar issues as they seek to properly develop appropriate legislation to address the emergence of formalized and commercialized MFIs.<sup>440</sup>

The vast appeal in the commercialization process is predicated on efficiency and privatization theories, which are deemed to enhance microfinance institutions.<sup>441</sup> This model has become a dominant choice, as undercapitalized non-profit / non-bank vehicles of financial inclusion, such as MFIs, have become less preferred. It is significant to note that Bolivia's commercialized MFIs, *BancoSol*<sup>442</sup> and *Prodem*<sup>443</sup>, are often cited as successful microfinance providers and drivers of financial inclusion. As a result, many jurisdictions look to those models for guidance, and Sri Lanka is not an exception. In fact, proponents of commercialized MFIs in Sri Lanka refer to the Bolivian model to attest to the successful deployment of microfinance.<sup>444</sup>

Empirical studies, however, revealed that the microfinance sector in Bolivia created a 'poverty trap' by enticing clients with multiple high-interest loans, which ultimately were not recovered and written-off by the lending institutions, and thereby contributing to an financial meltdown.<sup>445</sup> Not only did the 'over-supply' of consumption loans create

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<sup>440</sup> Sri Lanka, *Microfinance Act, No 6 of 2016* Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 20, 2016.

<sup>441</sup> Milford Bateman, *Why Doesn't Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 113.

<sup>442</sup> Centre for Financial Inclusion, "Microfinance," online: <https://www.themix.org/>

<sup>443</sup> Centre for Financial Inclusion, "Microfinance," online: <https://www.themix.org/>

<sup>444</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002).

<sup>445</sup> Milford Bateman, *Why Doesn't Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 121.

distortions in the market place, but it facilitated severe over indebtedness due to the liberalization of microfinance.<sup>446</sup>

The entry of large commercial entities has changed the microfinance landscape. These commercial entities, or investors, have replaced large donors in the provision of microfinance services. Critics suggest that large donor agencies, despite infusing capital into commercialized MFIs and permitting them to operate beyond government subsidies, suffer from information asymmetry with respect to borrowers.<sup>447</sup> As such, increased interest rates are charged as a ‘rate of return’ to “judge the quality of borrowers”; and therefore, the very poor are excluded from the microfinance market due to their inability to repay with increased interest rates.<sup>448</sup> The congruency of the objective is blurred by the profit maximization objective, thereby allowing MFIs to conduct themselves as if traditional banking institutions, and deepening debt traps, gender inequality and a host of other socio-economic challenges as identified in this study.<sup>449</sup>

Bolivia serves “an instructive counterpoint”<sup>450</sup> to demonstrate how the absence of legislation and the promulgation of commercialization can have dire consequences. Pursuant to Bolivia’s banking legislation, nonbank financial entities entered the financial market place and were permitted to accept deposits in order to extend credit to

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<sup>446</sup> Alan White “Credit and Human Welfare: Lessons from Microcredit in Developing Nations” (2012) 69:2 Washington and Lee Law Review 1093 at 1105.

<sup>447</sup> Suman Ghosh and Eric Van Tassel, “Funding microfinance under asymmetric information” (2013) 101 Journal of Development Economics 8 at 5.

<sup>448</sup> Suman Ghosh and Eric Van Tassel, “Funding microfinance under asymmetric information” (2013) 101 Journal of Development Economics 8 at 5.

<sup>449</sup> See Results chapter.

<sup>450</sup> Alan White “Credit and Human Welfare: Lessons from Microcredit in Developing Nations” (2012) 69:2 Washington and Lee Law Review 1093 at 1121.

customers.<sup>451</sup> Borrowers found themselves borrowing from NGOs and profit-driven microfinance institutions, and were in fact “bicycling their loans by borrowing from one lender to pay another.”<sup>452</sup> This phenomenon is not unique to Bolivia, as other jurisdictions are susceptible to similar after effects of commercialized microfinance initiatives.<sup>453</sup> By charging ‘cost-covering interest rates’<sup>454</sup> to offset operating costs and engaging in selective (albeit discriminatory) lending practices, MFIs are employing self-sufficiency measures under the guise of commercialization.

The graph below identifies the vast differences of interest rates simply by the tracing the timeline of interest rate increase in three jurisdictions. The commercialization of providers of financial inclusion initiatives is closely linked to interest rates – the surcharge of doing business with the poor in a post-war jurisdiction!

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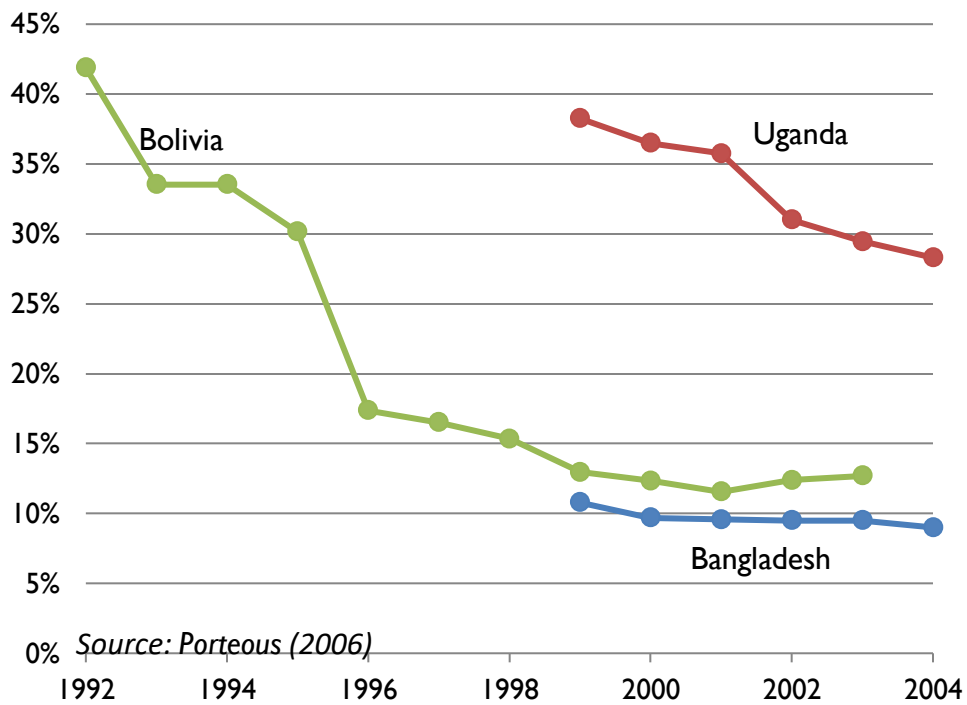
<sup>451</sup> Alan White “Credit and Human Welfare: Lessons from Microcredit in Developing Nations” (2012) 69:2 Washington and Lee Law Review 1093 at 1122.

<sup>452</sup> Alan White “Credit and Human Welfare: Lessons from Microcredit in Developing Nations” (2012) 69:2 Washington and Lee Law Review 1093 at 1122.

<sup>453</sup> S Guru Srikanth, “1029 farmers committed suicide in Andhra Pradesh last year, up from 664 in 2018”, online: The New Indian Express <https://www.newindianexpress.com/states/andhra-pradesh/2020/sep/02/1029-farmers-committed-suicide-in-andhra-pradesh-last-year-up-from-664-in-2018-2191296.html>

<sup>454</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 2.

**Figure 4: “Difference between microcredit and commercial bank interest rates in three countries with competitive microcredit markets”<sup>455</sup>**



This research study examined the interest rate structure through an institutional frame, and the analysis contemplated stakeholder rationale within the post-war conditions that were present in the absence of enforceable legislation. Literature suggests that proponents of financial inclusion projects in Sri Lanka, however, appear to be in favor of commercializing microfinance institutions. In a report, co-sponsored by the Asian Development Bank, the authors advocate for a legal and regulatory framework, which is

<sup>455</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 2.

“conducive to the proliferation of commercialized MFIs”.<sup>456</sup> The report outlines the challenges to the commercialization of microfinance in Sri Lanka by indicating that the regulatory landscape is disjointed by attempting to regulate government, donor, private and non-profit microfinance initiatives.<sup>457</sup> It further revealed that the Central Bank of Sri Lanka (CBSL) advised state banks against participating in microfinance schemes due to the unprofitability of such ventures.<sup>458</sup> Ironically, the CBSL has supervisory authority over the Rural Credit Department, which is a government agency, that administers donor and subsidy funded credit disbursements.<sup>459</sup> This appears incongruous to government policy, as profit-seeking and subsidy-provisions may seem incompatible in policy implementation.

The commercialization trajectory has affected the financial inclusion agenda by ‘un-servicing’ past microfinance recipients based on their inability to pay higher interest, failure of repayment, lack of creditworthiness and collateral. Milford Bateman suggests that ‘this financial sector dualism’ has “created a financial elite through exploiting the poor.”<sup>460</sup> His criticism is based upon the income generating MFIs, which adhere to a similar compensation structure as profit generating corporations. Bateman further challenges the method of the corporate restructuring process of MFIs, as these entities may use government subsidies and grants as start-up funding, and then are restructured to become

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<sup>456</sup> Stephanie Charitononko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 1.

<sup>457</sup> Stephanie Charitononko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 14.

<sup>458</sup> Stephanie Charitononko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 14.

<sup>459</sup> Stephanie Charitononko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 15.

<sup>460</sup> Milford Bateman, *Why Doesn't Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 124.



self-sustaining enterprise.<sup>461</sup> If the financial entity fails, the government (vis-à-vis the public) will absorb the losses; however, if the entity generates profit, then the board of directors and employees may be heavily compensated.<sup>462</sup> Bateman refers to this process as the “accumulation by dispossession Wall- Street style”.<sup>463</sup> He further laments that this typology is antithetical to the DNA of microfinance institutions, which were designed to alleviate poverty.<sup>464</sup> His strong criticism of the proliferation of unregulated microfinance institutions is based on the alarming cases of abuse and exploitation of the poor. This is further demonstrated by a phenomenon, termed ‘microfinance suicides’. In India, over lending in the State of Adhra Pradesh resulted in an increase in suicides due to the inability of repayment, which is often accompanied with shame and powerlessness.<sup>465</sup>

This study recognized the varying perspectives within the commercialization debate, as well as identified the military’s role in informing the financial inclusion initiatives in Sri Lanka. The challenges raised in the preceding section affect the impact of financial inclusion deployment; and it is significant to acknowledge that similar injustices persist in the Sri Lankan narrative.

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<sup>461</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 124.

<sup>462</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 124.

<sup>463</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 125.

<sup>464</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 130 (citing FN 35).

<sup>465</sup> Milford Bateman, *Why Doesn’t Microfinance Work? The Destructive Rise of Local Neoliberalism* (London: ZED Publishing, 2010) at 132.

### 3.7.1 Source of Funds Inquiry

Government interventions in the form of subsidies, debt forgiveness and financial grants have been derided by proponents of commercialized financial inclusion service providers as distorting the marketplace and interfering with the natural flow of capital. In some instances, government subsidies have “crowded out private banks” in providing microfinance services.<sup>466</sup> The underlying reason for commercialization has primarily been the ‘source of funds’ rationale. Commercialization allows entities, such as MFIs, to derive funds from multiple entities, such as commercial banks, hedge funds, and other private sources.<sup>467</sup>

This qualitative study explored the *source of funds* phenomenon, which is a vital component to accessible financial inclusion, operations and sustainability, and arguably, the heart of this research. The influx of State and / or private funds is heavily dependent on a plethora of uncertain economic and political contingencies when investing in financial inclusion initiatives. As such, the recent trend for non-profit or private MFIs has been to enact savings vehicles to fund loan portfolios in order to create viable loan and financial services schemes. In Sri Lanka, commercialized MFIs and nonbank microfinance entities have enacted mandatory savings accounts for its clients.<sup>468</sup> Although soliciting deposits from customers is permitted by a few highly regulated MFIs; nonbank microfinance

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<sup>466</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at pg. 20.

<sup>467</sup> Ira W Lieberman et al, “Microfinance and capital markets: The initial listing/public offering of four leading institutions” in TA Watkins and K Hicks, eds, *Moving Beyond Storytelling: Emerging Research in Microfinance* (Bingley: Emerald Group Publishing, 2009).

<sup>468</sup> Stephanie Charitonenco and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 24.

financial institutions are prohibited in engaging in such activities.<sup>469</sup> The qualitative data highlights some of these practices.

Pursuant to Sri Lanka's *Bank Act*, only financial regulated entities and banks are permitted to accept deposits, thereby creating enforcement challenges for the regulator.<sup>470</sup> Industry reports suggest that the deposit-taking prohibition is not currently enforced by the regulator in order to assist nonbank MFIs in becoming self-sustaining through the acceptance of deposits to ensure sources of liquidity and capital.<sup>471</sup> This regulatory inaction has been criticized as potentially creating fiscal instability as it places client funds at risk.<sup>472</sup> In addition, deposit insurance guarantee schemes is only applicable to formalized financial institutions.

During the period of this qualitative study, the Central Bank in Sri Lanka was grappling with an array of regulatory impediments with respect to the formalization of nonbank entities and MFIs. The legal and regulatory framework did not facilitate a clear path for nonbank entities to fall within the regulatory ambit due to banking capital requirements; as such, prudential standards governing financial institutions may not automatically attach.<sup>473</sup> Literature suggests that Sri Lanka mirrors other jurisdiction with

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<sup>469</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 24.

<sup>470</sup> Sri Lanka, *Banking Act, No 30 of 1998*.

<sup>471</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 30.

<sup>472</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 30.

<sup>473</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at 30.

respect to its “poor quality” of financial governance.<sup>474</sup> Scholars studying microfinance projects within the financial inclusion context in Bangladesh claim that the state has a maligned presence, and that regulations themselves are not sufficient in ensuring financial stability.<sup>475</sup> In certain jurisdictions, deposits trigger prudential regulation.<sup>476</sup> The failure of adequate prudential supervision has resulted in the following: a lack of proper financial reporting and accounting methods, weak institutional capacity, an absence of a set of best practices and improper oversight.<sup>477</sup>

### 3.7.2 Best Practices Framework

As financial inclusion has become a component of the proliferation of financing in emerging markets, standard-setting bodies have converged under the rubric of financial inclusion to ensure regulatory harmonization.<sup>478</sup> Further, jurisdictional considerations arise in cross-border remittance and mobile banking transfers, and financial regulators have established a global task force and working groups to foster collaborative governance

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<sup>474</sup> Naila Kabeer, Simeen Mahmud, and Jairo G Isaza Castro, “NGOs and the political Empowerment of Poor People in rural Bangladesh: Cultivating the Habits of Democracy?” (2012) 40:10 2044.

<sup>475</sup> Naila Kabeer, “Is Microfinance a ‘Magic Bullet’ for women’s Empowerment? Analysis of findings from South Asia” (2005) 40:44/45 *Economic and Political Weekly* 4709.

<sup>476</sup> Robert Peck Christen, *In Search of Credibility: Transparency and the Microfinance Industry*, *The Microbanking Bulletin* No. 5 (2001), available at [http://www.mixmbb.org/en/mbb\\_issues/07/mbb7\\_article2.pdf](http://www.mixmbb.org/en/mbb_issues/07/mbb7_article2.pdf) at 18

<sup>477</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at at 31. The concept of prudential regulation as applied to financial institutions is relevant in this study; in particular with respect to standards of performance and corporate governance considerations.

<sup>478</sup> Basel Committee on Banking Supervision, *Basel III: A global regulatory framework for more resilient banks and banking systems* (Basel: Bank of International Settlements, 2010).

guidelines.<sup>479</sup> Examples include guidelines promulgated by industry and governmental stakeholders in conjunction with CGAP<sup>480</sup>, a subsidiary of the World Bank. Multiple regulatory agencies are taking part in reframing legislation to evoke financial inclusion by designing a regulatory and supervisory set of practices tailored for financial inclusion policies and providers.<sup>481</sup>

In designing a ‘proportionate’ legal regime, regulators must weigh competing stakeholder interests, fiscal stability, and compliance and enforcement costs.<sup>482</sup> The concept of proportionality has been imported into the regulatory framework designed for financial inclusion providers. This study will further examine how ‘proportionality’ is defined and measured by regulators in Sri Lanka. Identifying country-specific factors is also part of the inquiry and whether emerging global standard setting bodies ‘influence’ the regulatory framework.<sup>483</sup> In order to curb financial instability, regulators have developed “special windows for microfinance”<sup>484</sup>, which amend existing legislation to

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<sup>479</sup> *Enhancing Cross-border payments- Stage I report to the G20: Technical background report* (Geneva, Financial Stability Board, 2020) at pg. 1.

<sup>480</sup> “About CGAP” (last accessed 19<sup>th</sup> April 2021) online: CGAP <<http://www.cgap.org/>>.

<sup>481</sup> Robert Peck Christen, Timothy R Lyman, Richard Rosenberg, *Microfinance Consensus Guidelines : guiding Principles on Regulation and Supervision of Microfinance* (Washington, DC: World Bank Group, 2003), at pgs. 7 and 14. Multiple agencies, such as communications and not just financial regulators as explained at p. 14.

<sup>482</sup> Robert Peck Christen, Timothy R Lyman, Richard Rosenberg, *Microfinance Consensus Guidelines : guiding Principles on Regulation and Supervision of Microfinance* (Washington, DC: World Bank Group, 2003), at 8.

<sup>483</sup> Basel Committee on Banking Supervision, *Basel III: A global regulatory framework for more resilient banks and banking systems* (Basel: Bank of International Settlements, 2010).

<sup>484</sup> Robert Peck Christen, Timothy R Lyman, Richard Rosenberg, *Microfinance Consensus Guidelines : guiding Principles on Regulation and Supervision of Microfinance* (Washington, DC: World Bank Group, 2003) at 14.

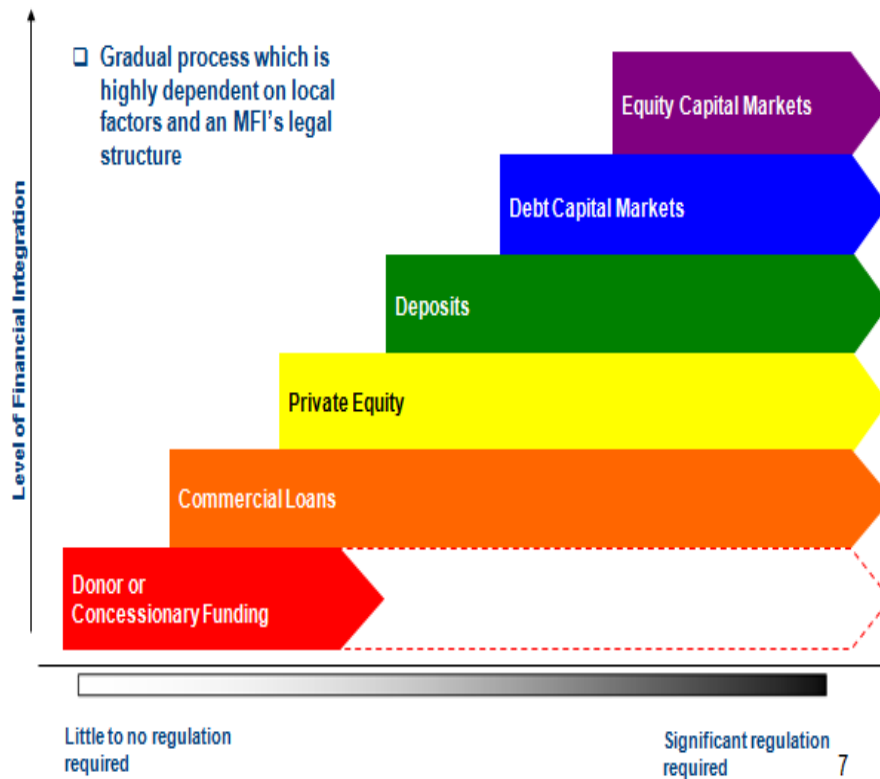
create a “distinct regulatory category”<sup>485</sup> for MFIs to determine whether prudential or non-prudential supervision should be mandated.<sup>486</sup> By using the suggested framework promulgated by the CGAP, the above referenced legislation has been employed in Sri Lanka to engage with the domestic legal literature to determine legislative policies. The elasticity of regulation has been the focus of current legal scholarship to determine how ideology underscores and shapes legislation, specifically using the ‘neutral’ application of market principles. By studying the varying approaches in assessing regulatory responses to banking mechanisms within the financial inclusion, regulators determine the archetypes and levels of supervision employed as shown below.

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<sup>485</sup> Robert Peck Christen, Timothy R Lyman, Richard Rosenberg, *Microfinance Consensus Guidelines : guiding Principles on Regulation and Supervision of Microfinance* (Washington, DC: World Bank Group, 2003), at 14.

<sup>486</sup> Robert Peck Christen, Timothy R Lyman, Richard Rosenberg, *Microfinance Consensus Guidelines : guiding Principles on Regulation and Supervision of Microfinance* (Washington, DC: World Bank Group, 2003) at 14.

**Figure 5: The Gradient of Legal Regulation**<sup>487</sup>



It is significant to note that specific deficiencies have been identified by comparing current legislation to operations on the ground in this study. By evaluating the instrumental actors to survey the institutional landscape, this study reveals the financial linkages of commercial and politicized transformation of providers of financial inclusion initiatives to the larger regulatory landscape. By reviewing the current pluralistic regulatory regime, the analysis contained within the findings of this study include a survey of the interconnected relationships fostered by the public and private sphere.

<sup>487</sup> Robert Peck Christen, Timothy R Lyman, Richard Rosenberg, *Microfinance Consensus Guidelines : guiding Principles on Regulation and Supervision of Microfinance* (Washington, DC: World Bank Group, 2003) at 14.

## CHAPTER 4: RESULTS AND ANALYSIS

This chapter presents the triangulated data, which includes the results and the analysis of this qualitative study. The sections set forth articulate the thematic findings of stakeholder interviews, coupled with observations and comments within an analytical framework, as well as scholarly contributions. The raw data has been extracted through quotations and are organized within this chapter in specific sections. The indices employed to delineate the structure of the block quotes are as follows: **P = Participant** and **I = Interviewer**.<sup>488</sup>

### 4.1 Financial Inclusion: Divergent Perspectives

The financial inclusion paradigm in this study is examined through multiple-stakeholder perspectives. By discovering how law shapes financial inclusion, these narratives serve as an evidentiary record documenting specific moments within the regulatory framework. Financial inclusion has become a global desired outcome in banking law<sup>489</sup>, and in the jurisdiction at issue, the State (the “Government of Sri Lanka” or “GoSL”) is also using financial inclusion methods for reconciliation and reconstruction

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<sup>488</sup> The interviewer refers to the researcher (myself).

<sup>489</sup> Basel Committee on Banking Supervision, *Guidance on the application of the Core Principles for Effective Banking Supervision to the regulation and supervision of institutions relevant to financial inclusion*, September 2016, online: <<https://www.bis.org/bcbs/publ/d383.htm>>.



purposes due to its post-war conditions.<sup>490</sup> Whether this is an innovative way to include the unbanked or underbanked into a system, and whether it is a form of democratization of capital is still unclear and highly politicized. Another inquiry within this study is whether the role of private industry is properly considered in this *access equation* in terms of job creation and sourcing financial inclusion funds.<sup>491</sup>

#### 4.1.1 Financial Inclusion in Sri Lanka

Financial inclusion in the form of microfinance and microcredit has been recognized as an economic policy to foster development through capital investment and savings for underserved communities. The calls for universal access to a large range of financial services at a reasonable cost include savings, which include affordable credit products, savings devices, micro-insurance, payment facilities and money transfer capabilities through delivered by sustainable institutions. According the latest report released by Asian Development Bank Institute in 2014, Sri Lanka is one of the few countries in South Asia that has accomplished financial inclusion with having highest share of adults with formal bank accounts.<sup>492</sup> There is a high level of financial access in Sri Lanka, as most communities have access to financial institutions.<sup>493</sup> The map below identifies the financial access points in 2009.<sup>494</sup>

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<sup>490</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). See also, “Functions of Central Bank of Sri Lanka,” online: <https://www.cbsl.gov.lk/en/about/about-the-bank/functions>

<sup>491</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>492</sup> ADBI Working Paper Series, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014), online: <http://www.ips.lk/wp-content/uploads/2016/12/2014.11.18.education.sri.lanka.pdf>.

<sup>493</sup> Kelegama, Saman, and Ganga Tilakaratna, “Financial Inclusion, Regulation, and education in Sri Lanka” (2014) ADBI Working Paper Series No 504.

<sup>494</sup> Anura Atapattu, “State of Microfinance in Sri Lanka”, Institute of Microfinance, 2009, online: <http://inm.org.bd/wp-content/uploads/2015/09/Sri-Lanka.pdf> at 55-60.

The history of financial inclusion in Sri Lanka been part of the national fiscal policy framework.<sup>495</sup> Microfinance is now morphed and revived into financial inclusion. According to the regulator “microfinance started in a more affective way in 1970’s with a scheme formulated by the Central Bank of Sri Lanka targeting rural farming communities.”<sup>496</sup> Financial services were unavailable as banks were only concentrated in towns.<sup>497</sup> The need to provide services to communities outside of commercial centers created an avalanche of growth in the banking sector. In 1973, the Bank of Ceylon, the largest bank in Sri Lanka, only had 56 branches nationwide.<sup>498</sup> In line with policy changes, the Bank of Ceylon developed 392 sub-branches in the phase and currently to 604 branches to create accessible financial services for the unbanked.<sup>499</sup> The regulator further explains:

*P: All other banks also came into the picture ...Actually, now we have 24 commercial banks, 9 specialized banks and 46 finance companies approved by the Central Bank of Sri Lanka authorized to accept deposits and lend loans. They have about 3811 branches scattered throughout the island and they are providing banking services too.<sup>500</sup>*

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<sup>495</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>496</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>497</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>498</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

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<sup>500</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

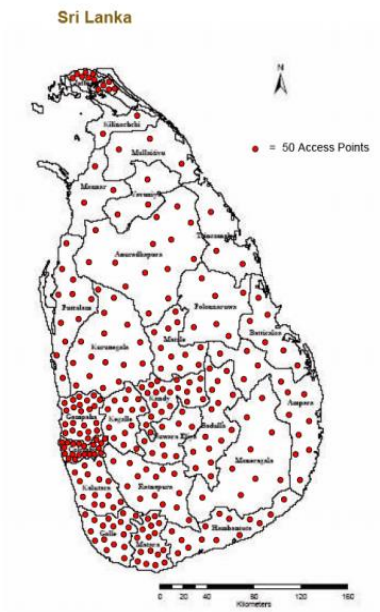


Fig 1: Microfinance access points in Sri Lanka

However, financial inclusion measures have become commercialized by offering more loan options with diversified and expanded services and products to also include clients from middle and higher income groups; in addition MFIs have followed suite.<sup>501</sup> This has led to the criticism that microfinance institutions have begun a *mission drift*,<sup>502</sup> to move away from poverty alleviation to offer services and larger loans, better credit schemes

<sup>501</sup>Vasu Kongov and Saurabh Sinha, “Microfinance sector in Sri Lanka: Opportunities and growth strategies” Intellectap: online; [https://www.findevgateway.org/sites/default/files/publications/files/intellecap\\_thought\\_note\\_sl\\_mfi.pdf](https://www.findevgateway.org/sites/default/files/publications/files/intellecap_thought_note_sl_mfi.pdf); Anura Atapattu, “State of Microfinance in Sri Lanka”, Institute of Microfinance, 2009: <http://inm.org.bd/wp-content/uploads/2015/09/Sri-Lanka.pdf> at 55-60.

<sup>502</sup> Prasenjit Roy, Ambika Prasad Pati, “Mission Drift in Microfinance: An Empirical Assessment of the Indian Situation (March 16, 2017)”. Finance India, The quarterly journal of Indian Institute of Finance. Available at SSRN: <https://ssrn.com/abstract=2968866>.

to more creditworthy individuals as a means to increase their clientele and become more profitable, thereby excluding certain segments within the community.

#### 4.1.2 Post-War Conditioning of Financial Inclusion in Sri Lanka

The over-saturation of microfinance providers and the readily available loan products in the Northern part of Sri Lanka has attracted regulatory attention.<sup>503</sup> It appears that an excessive supply of small-scale loans has re-calibrated post-war life within segments of the community; financial inclusion has taken on a new meaning. The paradigmatic shift is predicated on the over-supply and not by the inaccessibility.<sup>504</sup> Pursuant to the regulator, the statistics in the post-war region demonstrate that there are 1 million loans outstanding for 35,000 families, suggesting that each family has obtained multiple loans.<sup>505</sup> The qualitative evidence demonstrates this as follows:

*P: Now, we have 1 million, nearly 1 million population in northern province. We have number of loans nearly 1 million. So that means statistically speaking everyone has a loan with a formal bank not a financial institution.*

*That's really 100% financial inclusion...statistically speaking. And if you take, like, family, number of families we have nearly 350,000 families in northern province.*<sup>506</sup>

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<sup>503</sup> Anonymous, "Microfinance and Conflict in Sri Lanka: Towards a Sustainable Socio-Economic Development in the North and East." ProMiS- Promotion of the Microfinance Sector Sri Lanka online:

<<https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-microfinance-and-conflict-in-sri-lanka-towards-a-sustainable-socio-economic-development-in-the-north-and-east-mar-2007.pdf>>.

<sup>504</sup> Ganga Tilakaratna and David Hilme, "Microfinance and Multiple Borrowing in Sri Lanka : Another Microcredit Bubble in South Asia?" (2015) 16:1 South Asia Economic Journal 46.

<sup>505</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>506</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The substantive definition of financial inclusion remains elusive and fluid. To date, financial inclusion has not been precisely defined. The desired outcome of financial inclusion is to bring in ‘unbanked individuals’ into the formal traditional financial landscape. However, these policy-driven initiatives tended to create an over-supply of inclusion. The conceptual distinctions themselves contributed to the challenges of financial inclusion promulgation and management. Below, the conversation with the regulator uncovers the source of the acute problem of oversaturation of loans and the over-indebtedness that plagues post-war areas in Sri Lanka. The continuum of how financial inclusion is defined captures an abstract idea that financial inclusion includes affordable and accessible financial services, which are connected to the formal and regulated framework. The representative of the financial regulator below characterizes financial inclusion as “easy access to finance” with a supply and demand framework.

*P: So then it means now every house has 3 loans right, statistically speaking. It depends, like we have like, loan schemes so then what is financial inclusion that’s the biggest question.*

*Actually, there is no definition still for financial inclusion, in Sri Lanka also I haven’t seen one.<sup>507</sup> So, then the financial inclusion includes both sides so demand and supply. Here, we concentrated more on easy access to finance.*

*P: Financial literacy is one of the biggest key and easy access to finance. Easy access to finance especially through various things, ATM, bank branch or bank loan from adult like that.<sup>508</sup>*

*However, there is a greater segment of the community are being excluded for financial, especially for working capital requirements it’s excluded. Microfinance is a way to enter into that excluded group.<sup>509</sup>*

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<sup>507</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>508</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>509</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The above reference discussion reveals that easy access to financial inclusion still may exclude communities from ‘real’ and meaningful financial inclusion, and microfinance is a small step to bridge that particular gap. Microfinance, and the mechanics of microcredit create “inclusion” into an otherwise excluded demographic. The acute absence of “working capital” affects entrepreneurial innovation, and post-war reconstruction, thereby affecting economic growth.<sup>510</sup> The provision of microfinance is believed to allow communities to reimagine what is possible through small scale financing to self-created businesses in the formal and informal economy.<sup>511</sup>

#### 4.1.3 Exclusion and Barriers to Access: Banks as Vestiges of Power

The exclusion from the formal financial structure is not only limited to access to credit or retail services, but also other forms of financial access with respect to small capital loans for business infrastructure, business maintenance and repair. These services are sorely needed in the reconstruction phase in a post-war jurisdiction. In discussing the

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<sup>510</sup> Anonymous, “Microfinance and Conflict in Sri Lanka: Towards a Sustainable Socio-Economic Development in the North and East.” ProMiS- Promotion of the Microfinance Sector Sri Lanka online:

<<https://www.findevgateway.org/sites/default/files/publications/files/mfg-en-paper-microfinance-and-conflict-in-sri-lanka-towards-a-sustainable-socio-economic-development-in-the-north-and-east-mar-2007.pdf>>.

<sup>511</sup> Nina Hansen, “The Development of Psychological Capacity for Action: The Empowerment Effect of a Microfinance Programme on Women in Sri Lanka” (2015) 71:3 Journal of Social Issues 597.

K.M.N.D. Rathnayake, P.I.N. Fernando, and A.G.N.K. Fernando, “Impact of Microfinance Services on Growth of Micro Small and Medium Scale Enterprises: Empirical Evidence from Micro, Small and Medium Scale Enterprises in Kalutara district” (2019) 2:1 Journal of Management and Tourism Research 49. ; G Peiris, “Poverty and Entitlement Dimensions of Political Conflict in Sri Lanka: A Bibliographic Survey” Netherlands Institution of International Relations ‘Clingendael’ Conflict Research Unit Working Paper 7.

various exclusionary issues, a non-profit provider equated microfinance as being the ‘gap filler’ for excluded communities, due to its rapid ability to extend small scale loans with minimal compliance requirements.<sup>512</sup> In discussing access to loans and the application process with providers, several challenges were raised. These challenges range from documentation production to cultural perceptions of traditional banks.<sup>513</sup> The discussion with a microfinance provider below demonstrates the circumstances that affect the lending process at a micro-level.

*I: Is there a threshold, is there a particular position by banks or businesses or lending requirements used to assess participation in the loan program?*

*P: It's mostly the regulations and the paperwork. Now, for example, if a village person goes to a bank...when he enters the bank, he gets scared... so how can you apply a loan? Those people, this paper, that paper, filling in, all these things. So the villager feels it is not for him.<sup>514</sup>*

The above exchange articulates a subjective view of how local villagers respond to banking procedures. By imputing a narrative on villagers in this exchange, the provider articulates the discomfort and uneasiness experienced by local consumers during their formal banking interactions. In addition, the loan process and the administration of these agreements represent a documentation hurdle, which is perceived as a high compliance cost.

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<sup>512</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>513</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Banks are perceived as symbolizing old vestiges of power. Lakshmi Kumar & Jyoti Prasad Mukhopadhyay, “Patterns of Financial Behavior Among Rural and Urban Clients: Some Evidence from Tamil Nadu, India” (2013) Institute for Money, Technology & Financial Inclusion Working Paper 2013-9 online:

<[https://www.imtfi.uci.edu/files/blog\\_working\\_papers/20139\\_kumarmukhopadhyay.pdf](https://www.imtfi.uci.edu/files/blog_working_papers/20139_kumarmukhopadhyay.pdf)>

<sup>514</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

In further discussions, the provider explains why microfinance institutions are more adept to servicing clientele that are uncomfortable with traditional banking structures, which also impose stringent collateral and documentation requirements, which these consumers are unable to meet. Further, State-owned banks are more consumer-centric and are designed to serve all segments of the community.<sup>515</sup>

*P: If you look into the local banks like the bankers who are with the Bank of Ceylon or People's Bank - they are a little bit on the government thinking which, is a little bit different from the private banking sector and they will get it on a more sympathetic view than the private banker. So this – and the other thing is most of these people do not provide security, or collateral.<sup>516</sup>*

*P: As microfinance institutions, even the finance houses, we become field bankers so which, means banking is done in the field and I don't say it's minimized but still is finance for al; I even that feeling who gets involved and supporting them.<sup>517</sup>*

The above discussion raised an interesting perspective in how microfinance providers describe themselves as “field bankers” (akin to loan officers), the alternative form of traditional bankers.<sup>518</sup> These field bankers use limited documentation requirements and no collateral in loan eligibility determinations. The absence of documentation is more pronounced in a post-war area, as displacement and destruction has compounded the condition of a lack of documentation. At the time of this study, no electronic records system was employed. As such, transaction costs are low and the field bankers develop personal

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<sup>515</sup> “People’s Bank,” online: <https://www.peoplesbank.lk>

<sup>516</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>517</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>518</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



relationships with the borrowers and their communities. This process also cements the social capital that envelopes these transactions.<sup>519</sup>

The recruitment methods for loan officers is also predicated on either a familiarity with the community or an arm's length relationship, depending on the type of enforcement mechanisms are needed. In some instances, microfinance institutions will recruit loan officers from the same community because of an existing relationships and social capital. In other operations, a MFI may choose to recruit loan officers that do not have familiar connections with the community in order to avoid conflict of interest situations, or to ensure that enforcement of repayment is maintained without an implicit bias towards specific borrowers.<sup>520</sup> The discussion below establishes the varying recruitment patterns and how essential the loan officer's position is for the operation of the MFI.

*P: You know, the most important person is the Monitor. The Monitor is the person from the community. And person is the one who is directly linked with the people. He or she knows the pros and cons on the people. So it means if it is....depending on how extent the people is going microfinance. Monitors are not provided a regulation. Monitors have been given an allowance (inaudible) a certain incentive from the collection of loans. The Monitor is mostly picked within the organization and the clients.*

*P: Monitors need to win the heart of the clients as well as win the heart or the organization. Now, fortunately, unfortunately we are not doing that officers time. So that's a linkage. Now, on most microfinance organizations- there are two categories. They are calling microfinance for the sake of microfinance and they are calling microfinance for the sake of promoting development. Now, a major bank also calls microfinance if you give a small loan that is a microfinance, if you do a big loan it's not.<sup>521</sup>*

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<sup>519</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>520</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>521</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The above referenced discussion articulates very similar language used by the GoSL's military "hearts and minds" campaign, and the distinction on how MFIs are categorized either into their purpose or a tool for development, and or a fiscal agent for SMEs as opposed to individual loans.<sup>522</sup>

## 4.2 Regulatory Framework

A number of divergent stakeholders that were deemed to be 'regulators' participated in this study. The term 'regulators' for the purposes of this study is defined as any individual or institution that actively governs, administers and determines financial access and stability within communities, businesses and individuals. To illustrate, in addition to the Central Bank of Sri Lanka, Banks, and MFIs, it also refers to their *de facto* delegates such as the military and NGOs. These stakeholders create policy, or facilitate access as gatekeepers and oversee the financial services process.

Financial regulators have been defined as traditional institutions under a central bank model, charged with regulating the national financial landscape. This study broadens the definition of 'regulators' to include non-financial institutions and other institutions or entities not contemplated by financial regulations. By broadening the definition, this study aids in the departure of confining regulatory activities to a restrictive sphere, thereby examining financial activities and services more holistically.

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<sup>522</sup>Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Dharisha Bastians,, "Govt. to launch hearts and minds campaign to win support for constitution: CBK" *Daily Ft* <http://www.ft.lk/news/govt-to-launch-hearts-and-mindscampaign-to-win-support-forconstitution-cbk/56-598202>;

The different variation of ‘regulators’ defined and identified by this study is further expanded to accommodate for the continual evolution of financial services and products, which in turn create new regulatory and administrative mechanisms and institutions to regulate new innovations within the changing landscape. The evolving trajectory of who is tasked with regulating financial activity and services, and how this is accomplished are often not in tandem, but in conflict as demonstrated by the qualitative data derived in this study.

As discussed in the preceding chapter, the Central Bank of Sri Lanka (“CBSL”) is empowered to regulate and perform financial supervisory functions on a national scale. As the financial regulator, and the lender of last resort, the CBSL’s commitment to pursue financial inclusion is multidimensional, and as the data demonstrates, also includes non-financial institutions and actors. National banking policy is predicated on legislation and amendments thereto. Examples of such amendments in some cases come in the form of directives, which are directly change policy approaches.<sup>523</sup> To illustrate, “banks are instructed to have at least 10% in lending portfolios to encourage the agriculture sector to create access to finance”<sup>524</sup> In some instances, bank directives which follow international norms such as BASEL<sup>525</sup> can be onerous at a local level. The regulator explains how these directives imposed by international regulatory mechanisms affect the financial inclusion landscape.

*P: We have given a lot of directives. And now for my personal point of view that sometimes this hampers the negative impact on easy access to finance because we are giving risk-weigh minimum with respect to capital adequacy.....when they are going to calculate, so each and every different*

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<sup>523</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>524</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>525</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

*portfolio has risk-rates right, they have to multiply that rate and calculate the capital requirements.*

*So this, normally this, the low-income people or like not so developed enterprises they go for high risk, right. So, then what we'll do is they're high risk so banks are reluctant to give them lending because of their minimum capital requirements so that negatively affects this easy access to finance.<sup>526</sup>*

*In this context, actually because very good companies they have a very good rating so then they get at a low rate of interest loans. But on small enterprises or like poor people they don't have any rating compared with other western countries. Like, nearly 90% of the companies they don't have ratings here.*

*So then they will go for higher ratings so then it's very difficult to access the finance for them so that kind of things are coming from Basel.<sup>527</sup>*

The regulator above critiques the impact of BASEL rules on capital adequacy requirements, which distort the financial inclusion policy agenda. The high risk associated with lending to vulnerable communities has resulted in bank reluctance in entering this type of lending. Small businesses are also thereby excluded from larger lending products, due to the lack of adequate rating measurements. As outlined in this section, the post-war climate gave rise to other institutions, which participated in furthering financial inclusion in post-war regions.

#### 4.2.1 Regulation of Microfinance

The challenges for access to finance includes the fragmented supervisory system for financial inclusion providers.<sup>528</sup> The policy preference is not only rooted in political,

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<sup>526</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>527</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>528</sup> Sri Lanka: Sri Lankan-German Development Cooperation, *Microfinance Institutions in Sri Lanka*, (Colombo: Sri Lankan-German Development Cooperation, 2009) at 13.

social and economic aspirations of designing schemes to create bankable individuals to enhance economic development, but also deeply situated in history and culture.<sup>529</sup> At the time of this qualitative study, the *Microfinance Act*<sup>530</sup> was not enacted. The rising challenges within the financial inclusion context was the mission drift of MFIs<sup>531</sup>. The commercialization of MFIs as providers of financial services has continues to be criticized due to its disparate impact on vulnerable communities.<sup>532</sup>

Proponents argue that in order for MFIs to be successful vehicles for financial inclusion and have the capability to service the underbanked and unbanked, a better business model is required to ensure sustainability.<sup>533</sup> The organizational duality in creating a flow of funding and the ability to deliver on its mission has been challenging. In discussions, an Executive Director of a commercialized MFI explained that

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<sup>529</sup> Raneey Jayamaha, *Access to finance and financial inclusion for women* (Colombo: Central Bank of Sri Lanka, 2008); Sirimevan Colombage, *Financial inclusion in Sri Lanka : a macroeconomic perspective*, (Nawala: The Open University of Sri Lanka, 2010); *Financial inclusion - an imperative need for sustained economic growth : 19th anniversary convention of Association of Professional Bankers, Sri Lanka*, (Colombo: Association of Professional Bankers Sri Lanka, 2007).

<sup>530</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). , *Microfinance Act, No 6 of 2016* Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 20, 2016.

<sup>531</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>532</sup> Prasenjit Roy, Ambika Prasad Pati, “Mission Drift in Microfinance: An Empirical Assessment of the Indian Situation (March 16, 2017)”. Finance India, The quarterly journal of Indian Institute of Finance. Available at SSRN: <https://ssrn.com/abstract=2968866>; Milford Bateman, “Confronting Microfinance: Undermining Sustainable Development,” online: [https://www.researchgate.net/profile/Milford\\_Bateman/publication/326354505\\_Confronting\\_Microfinance\\_Undermining\\_Sustainable\\_Development/links/5b4781650f7e9b4637d1b9a2/Confronting-Microfinance-Undermining-Sustainable-Development.pdf#page=61](https://www.researchgate.net/profile/Milford_Bateman/publication/326354505_Confronting_Microfinance_Undermining_Sustainable_Development/links/5b4781650f7e9b4637d1b9a2/Confronting-Microfinance-Undermining-Sustainable-Development.pdf#page=61) at 49.

<sup>533</sup> Prasenjit Roy, Ambika Prasad Pati, “Mission Drift in Microfinance: An Empirical Assessment of the Indian Situation (March 16, 2017)”. Finance India, The quarterly journal of Indian Institute of Finance. Available at SSRN: <https://ssrn.com/abstract=2968866>.

“commercialization is good but this is extreme of commercialization...which is like a pure profit model is not that good for the people.”<sup>534</sup> This was articulated as follows:

*P: The commercialization thinking came into the scene because of the fact that you know, earlier a lot of MFIs were not concerned about sustainability; to sustain it you have to make some profits.*

*You have to charge market-based interest rates and all that. Earlier, you know it is more or less charity so deviate from charity and makes reasonable profit and sustain it while your outreach is increased. But now, commercialized you have to go into other extreme, maximum profit, this is wrong.*<sup>535</sup>

The various providers have differing licensing standards dependent on either their regional reach, or their business organization. The below chart reproduced highlights the fragmented and variegated regulatory structures within the financial inclusion context in Sri Lanka:

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<sup>534</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>535</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

Table 5.1 below gives some examples of current registrations of MFI's in Sri Lanka.

**Table 5.1: Parliamentary Act's under which MFI's are registered**

Type of MFI or Micro Finance Programs	Legal Statues (Act of parliament within which MFI is registered)	Salient Features of regulation	Cost of Regulation
Guarantee Limited Companies (Ex SEEDS, BMI, Vision Fund Lanka)	Companies Act , No 7 of 2007	Savings cannot be mobilized, 7 minimum ordinary members required. MFI with a social objective and dividends cannot be given to directors. No starting capital required.	Insignificant such as Rs 25,000 initial cost for paper work and registration fees.
Private Limited Companies (Seva Finance, Lakjaya)	Companies Act , No 7 of 2007	Savings cannot be mobilized. 2 minimum ordinary members required. MFI with a commercial objective and dividends can be given to shareholders.	Insignificant such as Rs 25,000 initial cost for paper work and registration fees
Samurdhi Banks	Samurdhi Authority of Sri Lanka Act No 30 of 1995	Government body with social objective, savings mobilization is allowed.	Not applicable
TCCS (SANASA), Cooperative rural banks	Co-operative Societies Law No. 5 of 1972 (as amended)	Savings from members and non members, loans only to the members, minimum 25 members required to ensure feasibility. Payment of dividends is possible. Annual audits and supervision is done by the government.	No initial statutory payments. 10%of the annual profit should be paid to the Cooperative fund of the Government.
NGO MFIs (majority) (Ex: WDF, Arthacharya Foundation)	Social Service Organizations (Registration and Supervision) Act No. 31 of 1980 ("the VSSO Act")	Organisations, which have social development interventions at national level or regional level in addition to MF are usually registered under this body. Annual budgets and progress reports should be submitted to NGO secretariat of the government.	No significant statutory payment required.

Village Banks or CBO's (Ex: Sarvodaya Shramadana Societies)	Societies Ordinance No. 16 of 1891 (as amended)	Village level self help organizations having usually members over 25. Savings can be mobilized by Sarvodaya societies, which were found in Sri Lanka mostly as monitory board had been given approval for the same.	No significant statutory payment required. Sarvodaya Society should have minimum capital of Rs 10,000 registration.
Village Banks under peoples company (Ex: Gemidiriya VSCO)	Companies Act , No 7 of 2007	50 members required minimum. Public or member savings are not possible.	Rs 25,000 initial cost for paper work and registration fees. This is a significant sum for village banks
CBO (Ex: Arthacharya Society)	Social Service Organizations (Registration and Supervision) Act No. 31 of 1980 ("the VSSO Act")	Village level self help organizations having usually members over 25. Savings cannot be mobilized even from the members.	No significant statutory payment required
Regional Development Banks (Licensed specialized banks ("LSBs") not exclusively micro finance only)	Banking Act No 30 of 1988 as amended by Banking Amendment Act No .30 of 1995	All banking transactions excluding opening and maintaining current (or "checking") accounts and foreign currency accounts for customers.	Significant in terms of paper work, which cost about Rs 700,000. Annual licensing fee Rs 200,000. Minimum of RS 1.5 billion capital should be maintained.
LOLC Microfinance Company	The Finance Leasing Act No. 56 of 2000 ("Finance Leasing Act")	Finance leasing business" is defined in the Finance Leasing Act as, the business of investing money for the provision of equipment under a finance lease.	Significant in terms of paper work. Fee – Rs 25,000 initially and Rs 5,000 annually afterwards.
Central Finance Company	The Finance Companies Act No. 78 of 1988 ("Finance Companies Act")	The Finance Companies Act defines "finance business" as the business of accepting money by way of deposit, the payment of interest thereon and  a) the lending of money on interest; or b) the investment of money in any manner whatsoever; or c) the lending of money on interest and the investment of money in any manner whatsoever	Significant in terms of paper work. Licensing fee Rs 25,000 initially and Rs 5,000 annually afterwards. Minimum of RS 250 million capital should be maintained.

Source: Microfinance law Study by De Serams and Company (2009), [www.cbsl.gov.lk](http://www.cbsl.gov.lk), and interviews with subject specialists

**Note:** Under MFI's formed under Companies Act there are two types of agencies such as SEEDS Child Fund, which are not for profit guarantee companies and Lak Jaya , Sewa Finance and Ceylinco Grameen Credit which are "for profit" private companies.

#### 4.2.2 Contextualization of the *Microfinance Act*

A 2009 Microfinance Industry report highlighted the regulatory barriers and held that the "methods and standards of supervision vary widely and the absence of a single regulatory and supervisory authority has resulted in the lack of uniform standards and development of a common direction."<sup>536</sup> The procedural history of the microfinance legislation in Sri Lanka suggests a politically fragmented process emerged within the

<sup>536</sup> Sri Lanka: Sri Lankan-German Development Cooperation, *Microfinance Institutions in Sri Lanka*, (Colombo: Sri Lankan-German Development Cooperation, 2009) at 13.



financial inclusion context.<sup>537</sup> On July 15, 2016, the *Microfinance Act No. 6 of 2016* was enacted as a result of multi-stakeholder lobbying.<sup>538</sup> The Lanka Microfinance Practitioners' Association (LMFN), a 71- member organization representing “NGOs, co-operatives, microfinance companies, banks, finance and leasing companies capacity development institutes and other stakeholders” have now come under the purview of the licensing and regulation division of the CBSL.<sup>539</sup> The Department of Microfinance Institutions (DSMI) at the Central Bank of Sri Lanka was established to perform supervisory functions over MFIs, with respect to stability and good governance.<sup>540</sup>

The enacted microfinance legislation empowers regulated NGOs and MFIs to engage in deposit-taking activities with specific registration requirements and corporate governance compliance measures.<sup>541</sup> Prior to the enactment of the Act, MFIs prohibited

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<sup>537</sup> “The *Act* started off as Bill No. 59, and was published in the Gazette on December 21, 2015. The First Reading of the Bill occurred on 2016-01-12, the Second Reading on 2016-05-04 and the Third Reading on 2016-05-04. It was certified on 2016-05-20. The Bill had previously gone through more than five drafts.” Also see Atapattu, Anura, *State of Microfinance in Sri Lanka*, (Colombo: Institute of Microfinance, 2009) online: <http://inm.org.bd/wp-content/uploads/2015/09/Sri-Lanka.pdf>

<sup>538</sup> “Microfinance Sector”, online: *Central Bank of Sri Lanka* <<https://www.cbsl.gov.lk/en/financial-system/financial-system-stability/microfinance-sector>>. *Microfinance Act, No 6 of 2016* Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 20, 2016.

<sup>539</sup> Regulation is need of the hour: Jayatilleke”, Daily Mirror, Oct 4, 2012: Channa Fernandopulle, “Regulation is need of the hour: Jayatilleke”, *Daily Mirror (Sri Lanka)* (4 Oct 2012) online: *The Pressreader* <<https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/20121004/282325382192710>>.

<sup>540</sup> “Microfinance Sector”, online: *Central Bank of Sri Lanka* <<https://www.cbsl.gov.lk/en/financial-system/financial-system-stability/microfinance-sector>>.

<sup>541</sup> G. Tilakaratna, “Dimensions and Dynamics of Clientship in the Microfinance Sector: Evidence from Sri Lanka” (Doctor of Philosophy, University of Manchester, 2012) at 111-115, online: *The University of Manchester* <[https://www.research.manchester.ac.uk/portal/files/54516266/FULL\\_TEXT.PDF](https://www.research.manchester.ac.uk/portal/files/54516266/FULL_TEXT.PDF)>.

savings mobilization, thereby affecting institutional sustainability and program delivery.<sup>542</sup> The current increased regulation and oversight allows for investor and depositor confidence, thereby creating a harmonized and systematic regulatory framework. Moreover, “the *Act* regulates basic aspects of capital flow and liquidity, loan loss prevention, consumer protection and best market practices as a means to develop principled and well-managed growth of the microfinance industry.”<sup>543</sup>

The Act, however, has been criticized as a centralized regulatory mechanism may thwart private enterprise due to immense state intervention.<sup>544</sup> As Premaratne argues, “moreover, there are concerns that regulation would negatively impact the flexibility of the existing system, though it may promote accountability; and the regulatory agency lacks capacity to oversee the number of established MFIs.”<sup>545</sup> The cost of supervision has also been raised as a challenge within the financial inclusion context. The financing costs contemplated will be recovered by licensing fees charged to MFIs, which are ultimately passed down to the consumer as the ‘cost of doing business increases.’<sup>546</sup> Finally, “there

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<sup>542</sup> SP Premaratne, “Pros and Cons of Microfinance Regulation in Sri Lanka” in Lanka Microfinance Practitioners’ Association, ed, *Facets of Microfinance the Sri Lankan Story* 35.

<sup>543</sup> SP Premaratne, “Pros and Cons of Microfinance Regulation in Sri Lanka” in Lanka Microfinance Practitioners’ Association, ed, *Facets of Microfinance the Sri Lankan Story* 35.

<sup>544</sup> SP Premaratne, “Pros and Cons of Microfinance Regulation in Sri Lanka” in Lanka Microfinance Practitioners’ Association, ed, *Facets of Microfinance the Sri Lankan Story* 35.

<sup>545</sup> SP Premaratne, “Pros and Cons of Microfinance Regulation in Sri Lanka” in Lanka Microfinance Practitioners’ Association, ed, *Facets of Microfinance the Sri Lankan Story* 35.

<sup>546</sup> SP Premaratne, “Pros and Cons of Microfinance Regulation in Sri Lanka” in Lanka Microfinance Practitioners’ Association, ed, *Facets of Microfinance the Sri Lankan Story* 35.

is a general fear of overcrowding within the industry as well, leading to an over-competitive market servicing a low-income sector of society.”<sup>547</sup>

#### 4.2.3 Microfinance Legislation

The Microfinance legislation enacted in Sri Lanka underwent a long and political process and was designed to weaponize poverty.<sup>548</sup> The intersection of the process of the legislation was amplified in the interviews with regulators and policymakers.<sup>549</sup> The historical absence in the oversight for microfinance providers created a slate of challenges for stakeholders due to the multiple issues. In discussion with the regulator, the issue was situated around the non-regulation of microfinance providers.<sup>550</sup> The delivery of microfinance became saturated with various providers of microfinance products and initiatives. The process of establishing the draft was peppered with political and ideological delays.<sup>551</sup> The excerpt below demonstrates the frustration in obtaining regulatory oversight for microfinance providers and services.

*P: A lot of people are involved in microfinance, not only banks, not only finance companies, other NGO's. There is no law up till now to control these guys. The legislation -it's in the draft stage still not enacted... In Sri Lanka, in the last years only, these microfinance entities have come and in*

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<sup>547</sup> Ganga Tilakaratna and Chinthani Sooriyamudali, “Regulating financial services for the poor in Sri Lanka”, *The Island* (Oct 16 2016), online: *The Island* <https://island.lk/>

<sup>548</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013) The term ‘weaponize poverty’ was coined during discussions with stakeholders, where I used it to describe the process of eradicating poverty forcefully through legislation and other measures. The phrase may have several meanings as it may be employed to describe the act of eradicating or destroying poverty, or it can also be utilized to describe a process to create poverty-creation policies to maintain oppression.

<sup>549</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>550</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>551</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

*some areas even kill the people. So then, the Central Bank wanted to put regulation on them as well, not only banks and finance companies, small NGO's as well.*

*So, it's a three-tier system right, so then first it's settled by the bankers, the Central Bank, and second thing will be handled by auditors kind of thing. Like, who is going to monitor those people? But here, we don't have any supervision mechanisms up till now so these guys can do whatever they want and that is serious. And even if somebody complained, that law and order is not sufficient to catch these guys. So, as a first step this law is good; somehow one person is going to monitor these activities.<sup>552</sup>*

The above referenced quote clearly indicates that the regulator's understanding is that there is a correlation between suicide and unregulated microfinance provision.<sup>553</sup> Due to the lack of regulatory supervision, the commercialization of microfinance services if left unchecked is able to cause damage by increasing the borrower's indebtedness.<sup>554</sup> The three-tiered system of regulatory supervision envisioned by the draft bill is predicated on the Central Bank as regulating the providers of microfinance, and by not by regulating financial inclusion products or services. The permitted microfinance services are confined to the type of business organization, or its legal formation.<sup>555</sup> Further, private microfinance providers critiqued the regulatory measures as being too overbroad; however, no specific examples were highlighted during the interview stage.<sup>556</sup> In fact, the consensus appeared to be that the regulatory climate could affect the source of funding, "if there is too much regulation, would this *dry up* lending?"<sup>557</sup> The cross-provisions of services by Banks and NGOs competing within the same area clearly contributes to over-indebtedness, as borrowers have the power to borrow from multiple financial entities without subject to

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<sup>552</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>553</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>554</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>555</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>556</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>557</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

disclosure and credit reporting mechanisms. This is due to the fact that creditors are not fully aware of the borrower's overall indebtedness.<sup>558</sup>

In Sri Lanka, many MFIs, scrambling to stay competitive and solvent, welcomed the *Microfinance Act*, as this legislative framework would allow them to obtain more permissible areas of services. As previously mentioned during this study, the *Microfinance Act* had not yet been passed by the Parliament.<sup>559</sup>

*P: If you have the microfinance act then we are legally recognized as a financial service provider...we can attract capital and give more loans but now as it is you know, we can't attract capital or deposits...because we cannot give regular loans....The judges will be "where is your license to give loans?" so we'll say "we don't have".<sup>560</sup>*

The fragmented regulatory landscape has defined and shaped the financial inclusion initiatives in Sri Lanka. This study's findings demonstrate the variegated methods used to promote and develop financial inclusion within this framework. The CEO of a MFI described lending as part of financial inclusion, specifically microfinance and microcredit below.

*P: Microfinance is not only a legal thing ...it is an art. You have to think differently not only in economic terms. You must entertain that helping others you know, they are coming up, you must be ready to appreciate that, you know, there are clients which have – who have come up with our assistance and you should be prepared to work very, very hard.*

*And so working in this microfinance is much harder than working in the bank. So that you have to be really, really dedicated to do that....banks are very much interested in collecting deposits.<sup>561</sup>*

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<sup>558</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>559</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>560</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>561</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

#### 4.2.4 The CBSL and *The Microfinance Act*: The Need for Legislative Reform

The narrative of poverty eradication designed and administered by the Central Bank captures a public-private partnership model employed in financial inclusion policy creation. During this study, no policy frameworks or legislative regimes were enacted to design specific financial inclusion measures as a stand-alone national policy. The procedures and processes are practices that are derived from pragmatic applications and less policy compliance. The regulator explains:

*P: When you group it, there is no legislation there because we copied from Grameen Bank. It is based on social mobilization and on legal compliance, it's only a practice because success stories...our main idea bring them out of poverty, once they come out of poverty then they have to think about other things also.<sup>562</sup>*

The primary goal in developing the above referenced programs for the CBSL was to alleviate poverty.<sup>563</sup> The regulator notes that there was an absence of legislation did not create this program, it was just based on customary practice and an examination of similar programs in different jurisdictions.<sup>564</sup> When asked if legislation is required to address financial inclusion or microfinance as a subcomponent within the financial sector, the regulator focused on Microfinance Legislation with respect to providers.

*P: Microfinance legislation will only help these people by eliminating those unscrupulous people that is the main thing that we know still. You know they also go there because– the other banks have not gone there. If we go and help the people why should they go...<sup>565</sup>*

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<sup>562</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>563</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>564</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>565</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The above referenced quote demonstrates concern over predatory lending and unregulated banking activity, and the ability for unregulated entities to operate and penetrate into places where traditional banks were unwilling to operate.

#### 4.2.5 The Central Bank of Sri Lanka's ("CBSL") Institutional and Policy Development

In terms of training and professional experience, the CBSL employs its own personnel situated in different departments within the regulatory agency. This process can be described as a “multi-placement revolving door method” which creates career professionals, thereby allowing specific individuals to gain expertise in one area. For instance, the primary informant interviewed on behalf the regulator’s *financial inclusion initiative* commenced his career as a branch manager at the Bank of Ceylon, and developed his expertise within a specialized area of knowledge. He held that particular position for 16 years, and was subsequently promoted to Chief Manager of the Development Banking division until his retirement.<sup>566</sup> He was later appointed to lead the Poverty Alleviation Microfinance Project (PAMP) due to his fluency in Tamil, Sinhalese and English and his vast expertise that he acquired for 33 years.<sup>567</sup> Further, he was part of the institutional history in developing microfinance credit schemes for the Bank of Ceylon in Sri Lanka.<sup>568</sup> This informant’s knowledge produced a large part of the financial inclusion policy framework that is currently employed on a national scale.

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<sup>566</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>567</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). The revolving door phenomenon established within the CBSL allowed the interviewee to return post retirement as he was one of the few high-level experts who is fluent in 3 languages and as well has private and public sector experience.

<sup>568</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The trajectory of *financial inclusion* development can be characterized as an old concept that has now been revived and repackaged as financial inclusion.<sup>569</sup> Sri Lanka designed its own financial inclusion scheme in the 1970's formulated by the Central Bank of Sri Lanka targeting the farming community.<sup>570</sup> The development scheme established agricultural service centers within 400 farming villages, in order to provide all the financial and agricultural services under one roof.<sup>571</sup> For instance, a “bank with an agricultural extension will be in there, and there will be an agricultural petty marketing book, then purchasing centers, supply of inputs, fertilizer inputs, and experts to provide technical assistance to plough the field.”<sup>572</sup> These services that facilitate the farming business is obtained under one roof, which saves time and distance for the farmer.<sup>573</sup> It was designed to be a ‘one stop shop’ to assist farmers in obtaining agribusiness services and farm financing creating a gap that was filled by this inclusive type of lending system designed by the regulator and financial institution.<sup>574</sup>

To date, financial institutions are no longer a part of the above referenced lending scheme. However, all the other services are still available to the farming communities.<sup>575</sup> This example of accessible ‘inclusive’ finance for farming communities was initially developed by the regulator to address an unmet need in rural communities, which were

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<sup>569</sup> The concept of the “Repackaged and Revived” refers to the contemporary transformation of financial inclusion initiatives, which have been part of Sri Lanka’s history.

<sup>570</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>571</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>572</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>573</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>574</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). The agribusiness services center was one-stop shop to help farmers.

<sup>575</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



designated as ‘vulnerable areas’.<sup>576</sup> The underlying rationale was to create a financial service outreach policy for underserved areas.

In 1973, banks were primarily established within towns and the Bank of Ceylon, the largest bank in Sri Lanka during that time, only had 56 branches scattered around the Island.<sup>577</sup> During this time, the Bank of Ceylon saw an opportunity to expand its services to rural areas and was able to open 392 sub-branches.<sup>578</sup> To date, the Bank of Ceylon has about 628 branches and is considered the pioneering institution for financial inclusion in Sri Lanka.<sup>579</sup> As a result of this expansion, other financial institutions followed suit, which led to a rapid ‘banking’ expansion and geographical presence, thereby creating a financial inclusive landscape.

As of 2015, there were about 3811 financial institutions providing access to financial services. The authorized financial institutions include: 24 commercial banks, 9 specialized banks and 46 finance companies approved by the Central Bank of Sri Lanka, which authorized to accept deposits and provide loan products.<sup>580</sup> These 24 commercial

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<sup>576</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>577</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>578</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>579</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

Bank of Ceylon, “About Us” (28 April 2021), online: *Bank of Ceylon* <[https://boc.lk/index.php?route=information/information&information\\_id=4](https://boc.lk/index.php?route=information/information&information_id=4)>.

<sup>580</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Saman Kelegama and Ganga Tilakaratna, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014) Asian Development Bank Institute Working Paper No 504 at 7; KPMG, *Sri Lanka Banking Report*, (Colombo: KPMG, 2018) at 17. <<https://assets.kpmg/content/dam/kpmg/lk/pdf/sri-lanka-banking-report-02.pdf>> at pg 17; Central Bank of Sri Lanka, *Financial System Stability Review 2015*, (Colombo: Central Bank of Sri Lanka, 2015) at 2. See also: [https://www.cbsl.gov.lk/sites/default/files/cbslweb\\_documents/publications/fssr/fssr\\_2015e.pdf](https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/publications/fssr/fssr_2015e.pdf); The CBSL has the following updated tallies of authorized institutions as well “Licensed Commercial Banks” (30<sup>th</sup> April 2021), online: *Central Bank of Sri Lanka* <https://www.cbsl.gov.lk/authorized-financial-institutions/licensed-commercial-banks> (1)

banks include the state-owned Bank of Ceylon and the People's Bank, private banks such as National Hatton, NDB and foreign banks.<sup>581</sup>

In addition, there are 9 specialized banks, such as loan and savings banks and development. Finally, there are 46 finance companies, and leasing companies; these are the financial institutions approved by the Central Bank.<sup>582</sup> During the period of this qualitative study, there were only a few authorized MFIs, which are functioning under on informal *ad hoc* basis as the microfinance legislation was not been passed. It is significant to note that the regulator perceives “unregulated non-bank financial institutions” with suspicion as they “tap and exploit these poor people.”<sup>583</sup>

#### 4.2.6 Regulatory Transformation and Constructing Creditworthiness

Measuring the transformation of financial inclusion is multi-dimensional. Different economic indicators used to determine the improvement of families through assessing profits from income generating activities, educational achievements, family well-being and housing conditions. During the later stages of the interview, the regulator provided an insightful intervention on the micro-transformational success he himself has identified.

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(2) <https://www.cbsl.gov.lk/authorized-financial-institutions/licensed-specialised-banks>,  
(3) <https://www.cbsl.gov.lk/authorized-financial-institutions/licensed-commercial-banks>.

<sup>581</sup> “Licensed Commercial Banks” (30<sup>th</sup> April 2021), online: *Central Bank of Sri Lanka* <https://www.cbsl.gov.lk/authorized-financial-institutions/licensed-commercial-banks>

<sup>582</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Licensed Finance Companies” (As at 13<sup>th</sup> July 2020) online: *Central Bank of Sri Lanka* <<https://www.cbsl.gov.lk/authorized-financial-institutions/licensed-finance-companies>>.

<sup>583</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Saman Kelegama and Ganga Tilakaratna, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014) Asian Development Bank Institute Working Paper No 504 at 6.

*P: We have found so many people, when we go and talk to them we sit on the floor, and talk to them but after a few months when they improve their lives, when you go they have a plastic chairs -at least two. So there is some livelihood improvement here that's what we wanted.<sup>584</sup>*

*So within 6 months, if the borrower gets an idea, okay I have a plan how to start it so you go to the bank. Now, with this I have income. I want another two machines; I need another 50,000 rupees I want to give employment ....I saw some improvement, the children are going to school with all good clothing or shoes and things, livelihood improvement this is what we expect. So naturally he will give the second loan<sup>585</sup> so income will go and he might come out of poverty. Then again because if he has ambition to that one so he go for a third loan, once he comes then he will achieve this vision.*

The above-mentioned improvements magnify how by obtaining two plastic chairs, or applying for a second loan, the daily lives of beneficiaries are deemed to be transformed. It is interesting to note that the empirical observation of how the improvement of the quality of life indicates creditworthiness, and imputes a label of a “Good Borrower”.

#### 4.2.6.1 Creditworthiness

The conceptual development of ‘creditworthiness’ is rooted in the regulator’s policy approach. The epistemology in transforming the un-bankable to the bankable – this transformative process creates eligibility, which is labelled creditworthiness. A part of this determination is predicated on the borrower’s reputation and history within the community. The construction of creditworthiness can be described as a process of collective observation through community interactions, through existing assets or collateral.<sup>586</sup> Even though the financial inclusion initiative does not require collateral to obtain financial services or access to secured credit, the regulator uses asset ownership in its creditworthiness assessment,

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<sup>584</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>585</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>586</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

thereby employing ‘asset determination’ indirectly.<sup>587</sup> The regulator uses method to assist in creating creditworthiness as a precondition to financial inclusion measures, thereby informing the credit creation.<sup>588</sup>

#### 4.2.6.2 PAMP’s Credit History, Personal History and Trust

The gel that fuses the creditworthiness determination is based up the personal relationships of the beneficiaries. Trust underscores the relationship and is a foundational component within the cultural context of financial inclusion measures.<sup>589</sup> The program administrator explains as follows:

*P: Trust is being built from the grassroots level we know<sup>590</sup>. Now here, 117,000 families are involved under the scheme on the PAMP2, from 2009 117,000 families...and nearly 55,000 families have obtained loans.*

*There is another also 20,000 families obtained loans under various other credit schemes. Though, they are socially mobilized under this project they are obtained loans from other schemes, we have various other schemes also, credit schemes. Then what happened is out of this thousand and thousand people have now come out poverty, recently with the (inaudible) about 53% of the people have come out of poverty.*

The surprising discovery during this interview is the correlation of personal relationships (vis-à-vis trust as an adhesion to the transactional and financial relationships) and poverty reduction. The regulator claims that the PAMP initiative have ameliorated poverty in these communities through microcredit. When asked if reports or documents are available to substantiate these claims, the informant explains:

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<sup>587</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>588</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>589</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>590</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*P: We have a secret document, we collected the documents, analyze it from computer... we can't give until the completion of the report.<sup>591</sup>*

Creditworthiness is not predicated on an individual's credit rating, instead information gathered by the loan officer is used to make a loan determination. Information asymmetry is a challenge in this lending arrangements, as such cultural and social mechanisms are used to fill the information vacuum. As one executive of an MFI describes informational gathering strategy:

*P: Actually, our officers, most of our staff are out, about 50% are out in the field so them they have to satisfy. They also have a checklist before they bring in the loan and they have to fulfill the requirements that they personally visit.*

*Now, there are certain criteria's like our officer has to visit about more than 4 locations of the society so that they know, especially among women, they know if someone is either so and so, so and so or they are taking not a pleasant loan they get the information.*

*The thing about women is it's easy to get the information visiting them and just make friends especially village women.<sup>592</sup>*

The above quote confirms that the social relationships cemented by the loan officer and borrower is a form of determination for creditworthiness.<sup>593</sup> Further, the troubling subtext suggests that "village women" are susceptible to information mining because of the social component.

#### 4.2.6.3 State Construction of Creditworthy Borrowers in Private Arrangements

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<sup>591</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>592</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>593</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

Further, this qualitative study found that the currency of success for MFIs is the pool of borrowers it can access. Under one MFI business model, the state is involved in borrower selection. Women development officers (WDOs) appointed by the Ministry work at the grassroots level to develop and implement government programs designed for women.<sup>594</sup> WDOs create social and economic awareness within the community; they are promote religious, educational and rehabilitation projects depending on the regional need identified by the state.<sup>595</sup> In order to offer microfinance products, the State has to partner with local MFIs due to the lack of funds.<sup>596</sup> As illustrated below, the MFIs ability to access these borrowers are dependent on collaborating with the Women Development Officers. The private-public partnership enables the MFI to enter into a market that is typically not accessible at the grassroots level.

*P: We use the WDOs for our work... we go with our officers to work with WDOs and meet the people and then WDOs advice to them, introduce them to us – to them and our officer links with them. Then after our officer visits place to place and visits project and then after provide to them a loan.<sup>597</sup>*

#### 4.2.7 Deposit-Taking Prohibitions

The regulator is aware that non-financial institutions, which operate as microfinance institutions, in some cases create savings devices. These savings initiatives are considered to be “deposit-taking”. The activity at issue is considered a “financial

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<sup>594</sup> “Women Development Officers in Sri Lanka Empowered with Transportation,” online: <https://asiapacific.unfpa.org/en/news/women-development-officers-sri-lanka-empowered-transportation>

<sup>595</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>596</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>597</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

project” is any undertaking that involves any form of retail banking or banking activity. In discussing the regulatory process, the regulator’s representative explains:

*P: If anybody is going to do a financial project, they should get approval from the Central Bank....So deposit taking it’s considered as a financial project so they should take approval from the Central Bank. Under Central Bank there can be banks and there can be financial institutions, but there cannot be NGO’s doing any deposit-taking.<sup>598</sup>*

During the field visits with non-profit MFIs, the loan officers encouraged the clients to either create their own savings account a local bank, or they collected deposits as part of the loan condition as a risk mitigation device in case of non-repayment. During one visit, an unregistered non-profit MFI asked its clients to “donate” 500 rupees into a savings account every month. By using the term “donate”, the non-profit MFI simply circumvents the definition of deposit-taking. In discussions, the regulator considered this practice as “illegal”.<sup>599</sup> The central theme around the prohibition of unregistered entities in accepting deposits is consumer protection and the absence of deposit insurance. There are multiple examples of unregistered MFIs and financial companies that that solicited deposits from potential clients in vulnerable communities, and then abscond with the funds. The risks attributed to the non-regulatory deposit-taking can have dire effects within a community.<sup>600</sup>

Deposit-taking is a lucrative practice for financial entities as it provides liquidity and viability options. However, it also creates extreme risk within financial stability regulations. And moreover, not all MFIs want to be under the purview of the financial

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<sup>598</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>599</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>600</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

regulator. In fact, savings mobilization deemed to fall under ‘deposit-taking’ authority, is not a favored position in certain instances. Deposit-taking is a highly regulated activity, thereby attracting compliance and transaction costs, which affect the MFI’s profit margins.<sup>601</sup> As one CEO of a MFI explains:

*P: We have to think twice because that will create us – that’ll be our – we will get into a situation where we will – we may, you know, need to maintain certain liquidity, certain, funding, certain money and certain deposits.<sup>602</sup>*

Imposing a mandatory savings component in conjunction with the loan are an important feature with respect to maintaining institutional risk management and solvency. The CEO below discusses how using specific language and terminology may trigger regulation.

*P: But right at the moment we are in the venture of looking at the word savings. We are hoping to make the word savings mandatory on part of the clients because we find that a lot of clients are saving, so we can link with a bank so we are trying to make it mandatory. so the client will make a saving.<sup>603</sup>*

It is interesting to note that during the field visit arranged by this MFI, it was observed that a savings component was already operational and is being administered by the loan officer. This program requirement is described as a “security deposit” which borrowers have to make in order to obtain a loan.<sup>604</sup> This type of mandatory savings device is ante- ethical to the financial inclusion policy; in fact the security deposit is akin to collateral in the event of default. To illustrate,

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<sup>601</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>602</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>603</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>604</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



*P: If the loan is \$100,000, a security deposit \$10,000 is taken so it's not a savings...<sup>605</sup> It's sort of a – it grows as a more of a security than a savings but we offer a small interest rate for that say.. about 4% interest rate.*

*And at the end of the term, say after 12 months we give it back to them, we give the 10% plus the interest back to them so they can distribute it among. So that is all we have as far as deposits happen but we don't call it savings account, we call it a security deposit.<sup>606</sup>*

During discussions around the difficulty in generating funds, creating a risk free lending environment and other financial inclusion measures, the CEO of an MFI explained the following:

*P: When we were collecting deposits, actually, we were not collecting deposits, as you know we cannot.... I mean we encourage a public savings programs. Actually most of them including our MFI we are giving loans 100% on trust with no collateral.<sup>607</sup>*

The interesting admission above demonstrates the lengths certain MFIs must undertake in order to circumvent the deposit-taking prohibition. The microcredit lending process is predicated on trust and the ancillary savings component, which act as a *de facto* collateral account which accompanies the loan. Despite the 'no collateral' criteria – these savings accounts are in fact considered collateral. In the event of non-payment, the MFI can recoup its money.<sup>608</sup>

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<sup>605</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>606</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>607</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013);

<sup>608</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

#### 4.2.7.1 Militarized Enforcement of Deposit-Taking Prohibition

As highlighted in this study, the GoSL, through its military, controlled access to its post-war regions. Commercialized and non-profit MFIs required prior approval from the Central Bank of Sri Lanka in order to pursue financial inclusion initiatives.<sup>609</sup> A commercialized MFI was prohibited from access due to regulatory breaches in its operational programming. In 2011, the CBSL determined that the commercialized MFI was using illegal deposit-taking methods by requiring its beneficiaries to create savings devices.<sup>610</sup>

*P: Our loan security fund was considered as deposit. So actually, we would collect a little bit of money when we grant the loan, with the loan instalment we collect about additional 75.2% percent that is put into this loan security fund and even that was defined as deposit. Then, we had to terminate it and that hit us very badly. So we paid back about \$200 million last year.*

*We can't fight with Central Bank. Because that is the first time in this country they gave the definition of deposits so we have to abide by the law because if try to challenge and go fight it – but what we tried to do is the other way. We tried to get this microfinance act as soon as possible then we will have another law, which allows us to take deposit.<sup>611</sup>*

The state-imposed measure prevented the MFI from expansion as its non-deposit taking status forced it to comply with the regulator. However, the newly enacted MFI legislation would have allowed them to engage in deposit-taking in the form of a savings fund and would have prevented the penalty payments.<sup>612</sup> According to the Executive Director, the ability to compel beneficiaries to participate in a savings scheme would ensure solvency, and act as a form of collateral for non-performing loans. If the *Microfinance*

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<sup>609</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>610</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>611</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>612</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*Act*<sup>613</sup> had been enacted during the investigation, the commercialized MFI would have been recognized as a bona fide financial service provider. To clarify, the interviews were conducted prior to the legislation, as such these MFIs were unregulated and were beyond the scope of the regulator's purview. This allowed MFIs to deploy services without oversight.

This legal transformation through licensing and regulation allows MFIs to mobilize savings and attract capital.<sup>614</sup> In further discussions, it remained unclear if access to the geographic location would be an automatic market for the MFI to explore, if the military failed to grant this particular MFI access to post-war areas despite its licensing compliance.<sup>615</sup> The dual regulatory problem is unique to a post-war regime – the financial regulator may recognize the entity through a legal construct; yet, the military ultimately decides who will have access to specific microfinance markets.

#### 4.2.7.2 Deposit Insurance Considerations

The absence of deposit insurance protection for micro savings customers has detrimental effects not only on individuals, but also communities.<sup>616</sup> In most jurisdictions, deposit-taking is highly regulated for the precise purpose of protecting consumer savings. In these unfortunate situations, where consumers, who are already in precarious situations,

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<sup>613</sup> *Microfinance Act, No 6 of 2016* Published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of May 20, 2016.

<sup>614</sup> Charitonenko, Stephanie and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002) at page 30 (identifying legal ambiguity); Central Bank of Sri Lanka, "Microfinance Sector," online: CBSL <https://www.cbsl.gov.lk/en/financial-system/financial-system-stability/microfinancesector>

<sup>615</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>616</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

face even more stress as a result of the loss of savings, thereby further deepening their poverty.

### **4.3 International Financial Institutions and Financial Inclusion**

This qualitative study included empirical contributions with respect to policy approaches in financial inclusion in Sri Lanka. The World Bank's focus on access to finance and financial inclusion has been a dominant entry point for a large collection of academic writings. As such, two extensive interviews were conducted with local program administrators of the World Bank. The first stage of the interviews revealed that the policy approach used was academic in nature; the insights provided were mere mirrors of other jurisdictional methods in providing access to financial services.<sup>617</sup> With respect to access to finance, and microfinance, the World Bank defers to the CBSL to enact legislation. In determining whether the legal framework is sufficient in accommodating access to finance and the deployment of microfinance, and whether the World Bank was identified as a stakeholder in these discussions, the response was in the negative.<sup>618</sup>

The World Bank takes a global approach when designing policies for the Sri Lankan economic development sector. The policies are not "home-grown"; and "Banking all those things are international accounting standards everything is global."<sup>619</sup> The harmonization efforts are vital in order to "appeal to American and European rights, and the SWIFT and payment systems."<sup>620</sup> Incorporating international standards coupled with

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<sup>617</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>618</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>619</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>620</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

the national financial regulator's existing framework is achieved through legislative interventions.<sup>621</sup> The World Bank office in Sri Lanka began its department in 2012, which is solely dedicated to developing a policy framework for Financial inclusion.<sup>622</sup> No significant findings were collected in the first stage of the interviews. However, the second stage of the interviews uncovered interesting components of these findings. These two interviews can be characterized as a cross-learning exercise for stakeholders. The diffusion of knowledge appeared to flow from the researcher to the interviewees.<sup>623</sup>

#### 4.3.1 The Second Stage

During the 'update' discussions, the World Bank and the Asian Development Bank promulgated similar financial inclusion initiatives in Sri Lanka. When asked if there were any partnership projects or schemes between these two international financial institutions, the response was merely, "We are similar types of organization."<sup>624</sup> The institutional challenges for the World Bank is not to create duplicated efforts; the institution recognizes that the mandates may collide or intersect with respect to financial inclusion.<sup>625</sup> The "need" or "demand for access to finance" has been identified as a policy mandate.<sup>626</sup> The program administrator described a staggered assessment in how this approach is perceived by policymakers:

*P: "I don't think there is duplication as such. Probably the issue is like a lot of people are talking about the cost of funding which, I presume if I'm burrowing first my choice is free money then low interest so that's how*

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<sup>621</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>622</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>623</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>624</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>625</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>626</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

*people will be looking at it<sup>627</sup>. So I don't think there is duplication, it's just the cost and whether it be sustained.<sup>628</sup>*

Further, during the first phase of this qualitative study, an interview was conducted with the Program Administrator and her staff members with respect to financial inclusion initiatives in post-war areas.<sup>629</sup>

#### 4.3.2 Post-War Reconstruction and Financial Inclusion

During the three-hour long interview, it was apparent that the local World Bank office was not aware of economic and financial development in post-war areas and had not conducted any site visits or engaged in any discussions with respect to reconstruction or financial inclusion in predominate Tamil areas.<sup>630</sup> During the interview, I offered some of my preliminary observations with respect to barriers to access to finance, such as gender and caste issues and infrastructure problems, and military governance. The local World Bank staff at that time were uninformed and unable to answer specific programmatic questions.<sup>631</sup> On our second follow-up meeting, the Program Administrator was asked if a visit to the post-war areas was accomplished. The response was as follows:

*P: Oh yes, we went into the north and the east, and we actually recall your discussion, which helped. Especially otherwise we wouldn't have like checked on these caste and things like that. We didn't specifically ask those questions but I think it alerted us.<sup>632</sup>*

It was unfortunate that the program development process did not include cross-cultural nuances nor did it consider a meaningful consideration of local conditions. Simply

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<sup>627</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>628</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>629</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>630</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>631</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>632</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

put, the recent program initiatives for financial inclusion was based upon the assumptions made by local staff in the office, who are not Tamil and were using the State's narrative in their policy design.<sup>633</sup> Another surprising finding with respect to the World Bank's perspective is the stereotypical impressions made by the staff as a result of the visit.

*P: The people are very traditional in Jaffna compared to like when we went to the east they're very much more and we also noticed like Batticaloa and Kilinochchi, they're coming up much more than Jaffna. Jaffna seems to be like caught in a trap.*<sup>634</sup>

The statement with respect to Jaffna is inaccurate; Jaffna has maintained an economic stronghold within the Northern region of region; it has its own airport, university and hospitals.<sup>635</sup> It also has the highest rate of remittance due to its powerful Diaspora. The above statement can be described as borderline discriminatory due to its stereotypical assumptions.

The World Bank is charged with designing and developing economic strategy, and "supports Sri Lanka's transition to a more competitive, inclusive, and resilient country."<sup>636</sup> As such, the expectation during the two phases of interviews was to obtain valuable insights and findings in the promulgation of financial inclusion schemes. Unfortunately, the findings were transferred from the researcher to the staff. To illustrate, the Program Administrator and the local staff were not aware that financial inclusion initiatives were a component of the GoSL's LTTE-rehabilitation framework. The staff was greatly interested in the research findings with respect to the loan program administered for ex-LTTE

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<sup>633</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>634</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>635</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>636</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

combatants.<sup>637</sup> In the expanded conversation, the staff asked questions with respect to the militarization of services and resource allocation. The findings confirmed that the military was directly involved in rebuilding the roads, the hospitals and their schools.<sup>638</sup> In response, the Program Administrator exclaimed “Everything is military labour...so beautiful.”<sup>639</sup> Again, the comment reinforces the imagery created by GoSL, that the military is the benevolent victor of Tamil communities.<sup>640</sup>

The conversation leads to the State’s narrative in attributing credit to the military for rebuilding the social structure and culture and furthering social mission or goals in post-war areas as part of the reconstruction efforts.<sup>641</sup> One local staff member simply wonders that “It’s really strange... so why do the people want the military completely out of the system?”<sup>642</sup> The careless and prejudicial comment does not consider the issues that the Tamil communities were facing with respect to the remnants of war suffered by the majority of residents in post-war areas, coupled with military occupation, surveillance and a loss of autonomy previously enjoyed before the war.

#### 4.3.3 Remittance and Dependency

During discussions, the staff at the local World Bank office mentioned that it obtains its fiscal information through either collaborations or partnerships. For instance, during the visit up North, the Program administrator and the local staff met with private

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<sup>637</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>638</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>639</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>640</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>641</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>642</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).



sector banks operating in the post-war areas.<sup>643</sup> A large part of the discussion emphasized the large-scale influx of remittance in Jaffna<sup>644</sup>, which according to the Program Administrator is “being used for consumption and for kind of painting of the... Not even for renovation of homes - it’s for painting of temples and churches”<sup>645</sup> The problematic essentialist observation about linking the remittance flows to religious infrastructure again is not supported either in literature or the findings in this study.

As policy makers of financial inclusion frameworks, the Program Administrator continued to make problematic observations about residents in the war-affected areas. These assumptions may cloud the process of creating policies. A comment below was made by the Program Administrator which highlights the stereotypes of Jaffna Tamils as previously being “hard working and educated”, but now:

*P: There seems to kind some of a problem for some of the people, they said the younger people they get money for consumption and they are like happily sitting around. And not following education and the other things is everybody is trying to go abroad so that’s their ultimate goal in life.*<sup>646</sup>

Further, there is another layer of remittance flows that has been overlooked by the financial regulator and the International Financial Institutions, which are local informal systems that are used to transfer money.<sup>647</sup> In the Tamil Diaspora, the Undiyal system, which is described to be akin to the Hawala system, has been operational in economic

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<sup>643</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>644</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>645</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>646</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>647</sup> Chris Brummer, *Soft Law and the Global Financial System: Rule Making in the 21<sup>st</sup> Century*, (Cambridge: CUP, 2012).

development and consumption smoothing.<sup>648</sup> This dominant flow of money during the post-war period was not mentioned by the World Bank staff; even though “many households in conflict areas have been sustained by remittances, and could not have survived without them.”<sup>649</sup> Again, it appeared that during the discussions with the staff at the local World Bank office were ill-informed with respect to specific issues around post-conflict economies and reconstruction.

Another significant intervention made by the Program Administrator is that remittance flows are perceived as limiting or constraining access to credit, as remittance funds cannot be used as collateral for business or housing loans.<sup>650</sup> As one staff member explained,

*P: It's not an asset for you to use<sup>651</sup> ...you can't go and pledge it to the bank because you might have to produce so much<sup>652</sup> and they said for investments they don't. So that was kind of like a little – I mean we probed and probed because we were saying, like, okay Diaspora funds are there, your returns are there, they said for consumption sometimes.<sup>653</sup>*

In terms of investment creation and loan collateral, remittance funds do not meet the documentation requirement for a loan; especially in a post-war climate. It appears that

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<sup>648</sup> Aiken, Sharryn J. and Cheran, Rudhramoorthy, The Impact of International Informal Banking on Canada: A Case Study of Tamil Transnational Money Transfer Networks (Undiyal), Canada/Sri Lanka (Spring 2005). Law Commission of Canada, Government of Canada Publications (2005) . Available at SSRN: <https://ssrn.com/abstract=2494357>

<sup>649</sup> <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/64.pdf> at 6

<sup>650</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>651</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>652</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>653</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

remittance is as part of these discussions is perceived as a form of “aid” for consumption and not long-term economic development.

#### 4.3.4 Disruption of Value Chain and Production Challenges

Part of this qualitative study revealed that MFIs are engaged in participating in the economic value chain in post-war economies. Specifically, MFIs operating in Mullaitivu, Killinochi and Jaffna have financed small-scale businesses, and as observed by one loan officer, “they’re really entrepreneurial, there is ambition or there is drive. However, in Jaffna it’s problematic they just leave everything half-off.”<sup>654</sup> The comment suggests that the value chain developed through financial inclusion is affected by work ethic, as income generating activity does not yield to production. The comparison between the 3 towns further captures the distinctive view of “Jaffna Tamils” within the post-war context.<sup>655</sup>

The primary issue for MFIs and suppliers during the entrepreneurial stage was the fact that project completion was not accomplished.<sup>656</sup> The policy approach for MFIs in post-war areas was not to engage in aid or grants, some have explicitly declared that recipients will not “get money for free, they have to contribute something.”<sup>657</sup> *Contribution* is described as an in-kind activity or income generating activity, such as sewing or handicrafts. The field officer further notes that the employees, mostly women, do not complete the tasks as required in the production phase. “They don’t do it because they have headaches or they’re sick or they’re doing this”<sup>658</sup> The missing analysis here may be the

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<sup>654</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>655</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>656</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>657</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>658</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

psychological trauma endured by the women due to the war and post-war conditions.<sup>659</sup> The inability to follow through is also attributed to dependency culture, a derivative of humanitarian aid and military occupation. In turn, the “dependency” has stifled the value-chain envisioned by the MFIs.<sup>660</sup> According to one stakeholder, the unreliable workforce in the post-war areas disproportionately affect the market, as well as the quality control process of the production.<sup>661</sup>

The proliferation of the bank presence in the Northern and Eastern part of Sri Lanka was part of the GoSL’s financial inclusion component within the post-war reconstruction project. The sheer number of banks visible in Killinochi, the former capital of the LTTE controlled area, illustrates how financial institutions clamored for market dominance within post-war areas.<sup>662</sup> In discussions, the research findings simply indicated if such a large banking presence was actually required for a small population.<sup>663</sup> The Program Administrator in affirming savings devices are required, offered a comment in response “it is safe ...in banks..I think it’s good....putting money there rather than buying drugs and things like that ...”<sup>664</sup> It is remarkable how Tamil consumers are being perceived.

#### 4.3.5 Income Generating Activity

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<sup>659</sup> Also note this publication by MSF in regards to post-war conditions and experiences of victims. K de Jong, Mulhern, M; Ford, N; Simpson, I; Swan, A; van der Kam, S. “Psychological trauma of the civil war in Sri Lanka.” 2002, 359 (9316):1517-8 Lancet online:

<https://fieldresearch.msf.org/bitstream/handle/10144/18134/lancet%20de%20jong%20sri%20lanka.pdf?sequence=1&isAllowed=y>

<sup>660</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>661</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>662</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>663</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>664</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

The Financial inclusion regime in Sri Lanka has been expanded to include the farming communities in post-war jurisdictions in order to facilitate access to credit through a World Bank sponsored warehouse financing project.<sup>665</sup> This project allows farmers affected by war to rebuild their operations using their home or land in order to provide warehouse storage.<sup>666</sup> As the local World Bank program administrator explained: “You can store something in your house you can get a receipt and you can use that receipt to get a loan...it’s going to be a Northern thing”.<sup>667</sup> It is simply a financing device to be used as collateral to access short-term credit. This project is predicated on local home or land ownership, which specifically structured for victims of war, and allows for farmers to create storage facilities, and use the receipts as collateral.<sup>668</sup>

#### 4.3.6 Non-Profit MFIs’ Participation

During the period of this study, the Government of Sri Lanka (“GoSL”) severely controlled the access of non-governmental organizations and the media through its military. The State forced international NGOs to cease their operations in the post-war areas and withheld visas for international NGO workers.<sup>669</sup> This approach was prompted by the GoSL’s distrust of western influence and LTTE sympathizers. As such, the narrative continued to be perpetuated by other stakeholders (that did not belong to the Tamil community). In fact, during the meeting with the local World Bank staff, the financial

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<sup>665</sup> World Bank, “Warehouse Receipts Financial Project,” online: <https://projects.worldbank.org/en/projects-operations/project-detail/P124091?lang=en&tab=overview>.

<sup>666</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>667</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>668</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>669</sup> DeVotta, Neil, “Sri Lanka: From Turmoil to Dynasty.” *Journal of Democracy* (2011) 2: 130-144. Project Muse at 133.

inclusion schemes developed by non-profit organizations was discussed, and how these NGOs may be operating beyond the scope of their mission with respect to ancillary humanitarian services.<sup>670</sup> One interviewee within the context of aid and dependency issues made the following comment:

*P: I mean some of these NGO's might be able to kind of do it because it's more hand-holding, talking to them, which the government agencies can't do they're not trusted right.*<sup>671</sup>

The World Bank is abdicating the “training” or “hand-holding role” to NGOs, yet the local staff echoed state sponsored propaganda with respect to the tensions and distrust of agencies and NGOs. Further, the local Program Administrator feigned astonishment at the fact that Tamil communities in Jaffna resisted state coerced Sinhala settlements within the reconstruction phase.

*P: Now, we went to the rest of the country like the Eastern province, which it was affected but none of them complain about like south coming to us. But Jaffna they say people from the south are coming, people from south are coming and doing business, we don't want people from the south coming.*<sup>672</sup>

The commentary on Jaffna Tamils is quite extensive during the discussions, and again the local Program Administrator made no reference to the fact that the communities in those areas were victims of war and were subject to settler policies deepening the political, social and psychological divide.<sup>673</sup>

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<sup>670</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>671</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>672</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>673</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

## 4.4 Private Lawmaking within the Financial Inclusion Context

### 4.4.1 The Role of Lawyers

The role of lawyers was not pronounced in this qualitative study. During the field work phases, lawyers in different sectors were part of the interview processes; however, law reform was not a point of discussion, and neither was their role in access to credit. This appears to be a surprising finding as legal frameworks are used to create entry points for market participants in the financial landscape. Questions with respect to legislative interventions with respect to collateral, borrower identification and other access considerations and consumer protection were often unanswered.<sup>674</sup> Another observation was that the legal barriers to financial inclusion initiatives were not identified or mentioned by legal personnel interviewed.<sup>675</sup> Instead, on the ground personnel, such as NGO workers, loan officers, government agents and even the military personnel, who participated were able to more aptly articulate challenges in access to financial services.<sup>676</sup>

The few local lawyers who participated in this study used existing frameworks as imagined themselves as more “as functional technocrats”, and did not critically examine the structural and regulatory landscape.<sup>677</sup> This is not a criticism of legal contribution in the Sri Lankan context. The deficiencies raised are merely an observation. The literature is quite sparse on the functions of lawyers within the promulgation of developing accessible tools to combat financial exclusion, outside the consumer protection framework. The local lawyers encountered within this study witnessed the brutalities of the civil war, some

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<sup>674</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>675</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>676</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>677</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

recounted personal experiences of trauma or perspectives that are beyond this study.<sup>678</sup> The urgency in law reform was part of a future plan, not immediate.

Law reform proponents within the international development and commercial law context have long been critical of outdated regulatory frameworks, and have called local lawyers to develop legal assessment guides and reframe diagnostic studies to propose regulatory reforms.<sup>679</sup> Multiple legal frameworks are intertwined in the financial inclusion context, such as finance, banking, commercial, employment and tax law.<sup>680</sup>

Much like the current state of commercial lawyers in the North American context, practical experiences from a borrower's perspective are limited.<sup>681</sup> International financial institutions, such as the World Bank and the ADB have actively designed resources to assist in developing commercial legislative regimes for jurisdictions in the Global South. Academic literature thus far has focused on issues which arise during the legal transformation of the non-profit model to a commercialized MFI.<sup>682</sup> Similar legal considerations are at play in the regulatory business organizational context that are dominant in commercial law discussions. However, a missing discussion within the financial inclusion context is how lawyers advocate for borrowers or vulnerable consumers

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<sup>678</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>679</sup> Heywood W Flesig, *Reforming Collateral Laws to Expand Access to Finance* (Washington DC: World Bank, 2006).

<sup>680</sup> Joanna Ledgerwood & Victoria White, *Transforming Microfinance Institutions: Providing Full Financial Services to the Poor* (Washington DC,: World Bank, 2006).

<sup>681</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); see also Heywood W Flesig, *Reforming Collateral Laws to Expand Access to Finance* (Washington DC: World Bank, 2006); Creighton R Meland Jr, "Representing clients in microfinance transactions" 17:5 *Business Law Today* 63.

<sup>682</sup> Joanna Ledgerwood & Victoria White, *Transforming Microfinance Institutions: Providing Full Financial Services to the Poor* (Washington DC,: World Bank, 2006).



beyond the consumer protection framework. The lawyers encountered during this study represented the regulator or different categories of institutions. During the research phase, I was unable to locate legal counsel that advocated for consumers of microfinance in Sri Lanka. Access to financial services, not only requires the proper financial infrastructure (i.e branches, customer service and financial literacy), but it also must include information that is easily consumer friendly and accessible via language and other means. With respect to the disclosure rules, “How are the poor expected to keep track of such complicated rules and caveats that require a lawyer’s mind and an economics degree to decipher?”<sup>683</sup> This quote highlights the need that lawyers may have a role in developing a simplified regulatory regime and applying accessible language in contractual documents.

#### 4.4.2 The Loan Agreement

The contractual relationships within the financial inclusion context is under examined in scholarly literature. This qualitative study attempted to examine the use of contractual agreements to intermediate financial relationships between the identified stakeholders. However, the data with respect to contracts and their impact on financial inclusion was nominal. The data simply revealed that the loan agreements, prepared by either remote lawyers, the internet or third-party agencies were the primary sources of traditional legal engagement.<sup>684</sup> As one stakeholder remarked, “the loan agreements are drafted by a lawyer...we just hire one and they look at it... use the same one in all the

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<sup>683</sup> Raji Ajwani-Ramchandani, *The Role of Microfinance in Women’s Empowerment: A Comparative Study of Rural & Urban Groups in India* (Bingley: emerald Publishing Ltd, 2017) at 280.

<sup>684</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

branches.”<sup>685</sup> These formalized contractual agreements are the legal mechanisms that bridge the gap from exclusion into inclusion. The technical legal glue is designed to tie the underbanked and unbanked into the formal legal and regulatory landscape.

In closer examination, these loan agreements are designed as simple two-page documents that disclose the terms and conditions of the loan and its repayment schedule. The terms do not seem commercially irregular or unusual, yet there appears to be an underlying narrative that can be examined beyond the terms and conditions of the contractual transactions. Narrative analysis has been described as providing a story of relationships.<sup>686</sup> “Life is both then lived and remembered in a series of constructed narratives.”<sup>687</sup> In Chesler and Sneddon’s article, entitled “Happily Ever After: Fostering the Role of the Transactional Lawyer as a Storyteller”, the authors suggest that “transactional lawyers are storytellers.”<sup>688</sup> The authors further apply the narrative technique to illustrate how transactional documents disclose information and set out the purpose and objectives of the parties.<sup>689</sup> The structured manner of the document frame and account for

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<sup>685</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>686</sup> Karen, Sneddon, “Happily E Happily Ever After: F er After: Fostering the Role of the Transactional Lawyer as Storyteller,” (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs)

<sup>687</sup> Karen, Sneddon, “Happily E Happily Ever After: F er After: Fostering the Role of the the Transactional Lawyer as Storyteller,” (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs)

<sup>688</sup> Karen, Sneddon, “Happily E Happily Ever After: F er After: Fostering the Role of the the Transactional Lawyer as Storyteller,” (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs)

<sup>689</sup> Karen, Sneddon, “Happily E Happily Ever After: F er After: Fostering the Role of the the Transactional Lawyer as Storyteller,” (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs) at 494.

performance, compliance and remedial measures to specific events. “These events are relayed by a narrative agent—the transactional lawyer.”<sup>690</sup>

Similarly, the loan documents examined in this qualitative study provided a glimpse of how process and language were used to create a specific financial relationship with the borrower in the financial inclusion context. The loan documents were either in English and Singhalese, or in English, Singhalese and Tamil; or simply in Singhalese. It is significant to note there was an absence of “Tamil Only” loan documents in predominately Tamil speaking areas. The subtext clearly signals that the post-war conditions also informed how lending arrangements were contemplated by private / and public commercial actors. Another observation was the boiler-plate nature of the lending agreements, which include the

1. Name of the parties<sup>691</sup>,
2. The residential address
3. The interest rate information
4. Rights and Obligations
  - a. 1-2 paragraphs

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<sup>690</sup> Karen, Sneddon, “Happily E Happily Ever After: F er After: Fostering the Role of the the Transactional Lawyer as Storyteller,” (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs) at 494.

<sup>691</sup> Karen, Sneddon, “Happily E Happily Ever After: F er After: Fostering the Role of the Transactional Lawyer as Storyteller,” (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs)

## 5. Repayment Schedule<sup>692</sup>

The above-referenced list captures a narrative about the parties. For example, the name will identify the gender / ethnicity and or religious affiliations of the borrower. Tamil, Singhalese and Christian names are distinguished and not inter-changeable, as such the ethnic background can be determined by the name.<sup>693</sup> However, religious affiliations are harder to detect by surname or family names. The address and place of residence is also an identifier of community belonging, social status and whether it is a post-war region. The interest rate information and repayment schedule provide a snapshot of creditor-category; for instance if the borrower is engaging with a bank, a finance company or a non-profit or commercialized MFI. This in turn dictates how repayment is made, and whether the borrower has to engaged in informal borrower to meet the high-interest rates. Therefore, a narrative can be drawn by an in-depth examination of the loan agreement.

Another issue to consider is how policy approaches can be captured within a transactional process. Influenced by Abreena Manji's scholarly intervention on how commercial lenders and commercial lawyers inform gender policy through contractual provisions, this study further examined whether loan agreements can be used to further

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<sup>692</sup> Karen, Sneddon, "Happily E Happily Ever After: F er After: Fostering the Role of the Transactional Lawyer as Storyteller," (2019) 20 Tenn. J. Bus. L. 491 online: [https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac\\_pubs](https://digitalcommons.law.mercer.edu/cgi/viewcontent.cgi?article=1014&context=fac_pubs)

<sup>693</sup> By way of anecdote, a Singhalese female would not be named Shanthi. Tamil surnames generally end with "n"; "m" or "I" or "Y". Singhalese last names are either Portuguese / or shorter than Tamil names. Christian names are European – such as "Elizabeth".

specific policies within the financial inclusion context.<sup>694</sup> Professor Manji's article describes this issue with respect to role of commercial banks and their resistance gender parity provisions within loan agreements with respect to land and mortgage reform laws.<sup>695</sup> Within that context, commercial banks played a vital role in challenging consent clauses, spousal ownership and similar provisions within lending agreements drafted by commercial lawyers to further gender equality.<sup>696</sup>

The loan agreements used in the Sri Lankan context were based on similar provisions, they include provisions around marital status, household income and spousal ownership. The transactional encounters are legal, and the internal procedures employed by financial service providers are operational and business strategies.<sup>697</sup> The policy approaches that can be observed upon a review of the loan documents demonstrate that marital status, the household composition and income, which will inform whether the borrower is within the state-recognized poverty threshold, in which determine access to services and entitlements. The document then is used as a tool to create financial inclusion.

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<sup>694</sup> Ambreena, Manji, "Eliminating Poverty? 'Financial Inclusion', Access to Land, and Gender Equality in International Development." *The Modern Law Review*, (2010) Vol. 73, No. 6, pp. 985-1004.

<sup>695</sup> Ambreena, Manji, "Eliminating Poverty? 'Financial Inclusion', Access to Land, and Gender Equality in International Development." *The Modern Law Review*, (2010) Vol. 73, No. 6 at 995.

<sup>696</sup> Ambreena, Manji, "Eliminating Poverty? 'Financial Inclusion', Access to Land, and Gender Equality in International Development." *The Modern Law Review*, (2010) Vol. 73, No. 6, 995 at 997.

<sup>697</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

#### 4.4.3 Lending Relationships at A Micro-Level

A typical microcredit application is 2 pages in length, and in 78% of the interviews recipients stated that they signed the lending agreements in the presence of a loan officer without full disclosure.<sup>698</sup> The uneasiness displayed by the recipients during this line of questioning was partly due climate of surveillance and post-war conditions, and to the inability to comprehend the issues around non-disclosure. Through the use of ‘plain language’, a legal relationship is triggered.<sup>699</sup> The loan documents are deemed to be a formality – ritualistic in nature for both parties at a micro-level, yet triggers a legal relationship unbeknownst to the borrower.

*P: I will say even sometimes I don't understand some words right. It's something that we tell them that it's binding. It's that you have signed an agreement that....if you default that we take action. Actually, our collection ratio is very good at the moment.*

*But we feel that the non-payment is not due to the agreement. The agreement is actually signed...we return it. Of course, the agreement is very much related to the banking process because we fall in line with the legal framework, if by chance we are to go to someone we must say that there is a legal binding relationship between us.<sup>700</sup>*

In some instances, loan guarantees are also used in the lending process, which requires two guarantors prior to the extension of credit. The individual borrower must also have a member of the group lending scheme to be a signatory.<sup>701</sup>

The type of lending structure available is highly dependent on the MFIs' business strategy in terms of outreach, geographic scope and regional demographics. When asked

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<sup>698</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>699</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>700</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>701</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

what the distinctions between these two types of lending portfolios for the institutional advantages are :<sup>702</sup> Group lending is described as “an established group linked with the states structures; an independent group with a focus on social economic development.”<sup>703</sup>

The one of the advantages of group lending from the MFI’s perspective is as follows:

*P: In the group model...we feel that we have a control over them. We feel that this group is becoming very politicized because with the politics in they feel “why should I approach the whole village if I get that leader of the women’s society I look after her I can get the whole area”. So we are trying to see how best we can improve this small group concept.*

Again this quote, demonstrates a presumptive view on gender stereotypes; control being the operative word in the market capture context.

#### 4.4.4 Training and Recruitment of Loan Officers

Another example of adopting specific procedures in order to create customer comfort or familiarity to bolster its social capital is in the way the MFIs describe *loan officers*, they are either called “field officers” or “credit officers”.<sup>704</sup> In some regions, loan officers are required to live at a hostel-like structure provided by the MFI.

*P: Most of these loan officers come from various parts of the country otherwise, they will find it difficult for finding accommodation. Secondly, if they stay in the branch they can go to the field right at 7:30am because they are there located close to the communities. And we have an employee cooking food for them.*<sup>705</sup>

Another significant factor that is employed by this particular MFI is that the loan officers are not selected from the community. The MFI specifically prohibits hiring from

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<sup>702</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>703</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>704</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>705</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

the same community in order to maintain arm's length dealings.<sup>706</sup> Past practices have demonstrated that once a loan officer becomes increasingly familiar with the borrowers, "recovery becomes a problem."<sup>707</sup> As such, loan officers and branch managers are rotated to other communities within two years.<sup>708</sup> When asked if this practice was successful in reducing improper conduct and ensuring a smooth repayment system, the response was as follows:

*P: Yeah, otherwise, if you recruit people from the same area they will do favors... Second thing is, after being there so long they can do anything now because these officers have a very strong control of the communities....*<sup>709</sup>

Not only are social relationships a risk in repayment strategies faced by MFIs but they are also faced with personnel issues. Once the loan officer receives specialized training, they are attractive employees for competing MFIs, finance companies and banks that engage in financial inclusion initiatives. As one stakeholder comments "MFI's have become helpless in the face of finance companies" as he refers to the "poaching practices" of competing microfinance providers.<sup>710</sup> He further provides anecdotal evidence:

*P: A MFI field officer was snatched by one finance company and he asked to take the customers with him. So he, through that new company, gave another loan to all these people who are having loans with this previous place. Then he left that company and joined another company. From that same set of people, he gave another loan from the other company.*

*Then he joined another company now he is another company, a finance company. And he's allowed to do this... Nobody is complaining, nobody is saying anything... Who will look into this? No one.*<sup>711</sup>

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<sup>706</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>707</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>708</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>709</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>710</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>711</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).



This example highlights the issue around employee retention and over indebtedness within communities. The competitive market exploits these communities through these multiple loans, without regulatory oversight. In discussing regulatory remedial measures, MFI executives are helpless with respect to enforcement issues.

*P: We cannot sue the Central Bank...these are very expensive methods Very expensive, we can't spend money on that unless some joint effort is taken to put it there. So now because in the last 2 or 3 years this problem is becoming really serious because of the finance companies, a handful of them are creating a hell, they destroyed the credit culture.*<sup>712</sup>

Designing employee standards are also a central focus for MFI operations; in addition to financial literacy and financial inclusion training, employees are expected to conduct themselves within a particularly social and cultural context.<sup>713</sup> Employee prohibitions include a policy of no socializing or fraternizing with the beneficiaries, no alcohol or no participation in cultural or religious events if organized by the community.

*P: The loan officers are not supposed to develop any personal relations with the people or even women...Now, if we found that they have that kind of relations we immediately remove him...if there is a conflict of interest...they have to disclose that relationship and we transfer him out of that area.*<sup>714</sup>

#### 4.4.5 CBSL's Loan Officers

The loan officers, described as "Field Officers", are appointed by the CBSL and are trained to work within post-war conditions specific to Sri Lanka.<sup>715</sup> About 70 field officers have been trained to "socially mobilize the community" and to act as a liaison between the

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<sup>712</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>713</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>714</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>715</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

banks and the beneficiaries.<sup>716</sup> These field officers are selected from local communities for a variety of reasons, such as being from within the community, employment creation for war-affected individuals, language, social capital and cultural dimensions.<sup>717</sup> In addition, due to post-war conditions the slow creation of transportation and reconstruction efforts impeded long distance travel. It was efficient to train and hire individuals from within the community.<sup>718</sup> It is important to note that the Central Bank does not consider these field officers as employees; the banks recruit these individuals to determine creditworthiness of beneficiaries within the initiative.

*I: So field officers are Central Bank employees?*

*P: No, they are not employees of ours. We told the banks to recruit and we will pay you the salary and we have provided them with motorcycles and we are reimbursing the field cost and other things. We are continuously training them...<sup>719</sup>*

The above quote highlights the expansive role in which the CBSL administers the financial inclusion initiative as an entitlement program. It incentivizes the banks to participate by optimizing its local reach in terms of training of field officers and access to communities and ex-LTTE combatants. This example demonstrates that the CBSL is engaged in this endeavor more than its regulatory and oversight paradigm.<sup>720</sup> The field officers not only act as conduits between the beneficiary, banks and regulator, but also as business consultants. They are trained to determine the feasibility of the small business initiative in order to create support for the loan application. Feasibility analysis simply

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<sup>716</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>717</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>718</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>719</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>720</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

includes whether the materials or services needed for the business are available locally; is it financially viable to travel to purchase supplies and are there individuals that the small business owner can hire?<sup>721</sup> Will the local consumer be able to purchase the services or products? In a post-war context, these questions situate the challenges for small scale entrepreneurs, as business acumen or skill, and access to credit may not be sufficient in assessing feasibility.

Another challenge for the regulator is the cost-benefit analysis with respect to training and retention issues. The field officers, equipped with high level training become attractive employees for the banks. The field officers become absorbed by the banks as loan officers and depart from the program.<sup>722</sup> The Banks are yet again benefiting by not incurring training costs – they are able to obtain ready-made loan officers and ready-made consumers! The cost-savings for the banks allows them to enlarge their profit margins just by participating in this initiative with the CBSL.

The regulator identifies this as a challenge in the program below.

*P: ....34 field officers have joined as now; but we just were informed that all the 34 have been absorbed by other banks because they are well trained people so they have been absorbed....<sup>723</sup>*

The loss of the employees affects the poverty alleviation project and its product delivery system, as the pipeline of financial inclusion transactions is stalled, thereby delaying the process. The field officers are more than mere ‘loan officers’; they are trained

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<sup>721</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>722</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>723</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

to make the beneficiaries bankable.<sup>724</sup> They assist the beneficiaries in vision planning and business strategy in order to meet the bank's lending criteria; once that is complete – “real financial inclusion” occurs.

*P: Now, they go to the bank, now only they go to the bank. Here, they started with the bank, here only the bank linkage starts– the inclusion started there. So (inaudible) socially mobilized them and now the person is going to the bank not like an ordinary person. Ordinary person go to the bank he just goes and say I'm so and so I want to take a loan. But this is another person, socially mobilized, savings, discipline and everything and they have an acceptable viable business plan that is very important. Also, when the bank looks into that one they say okay very good, this project is manageable and also okay he has experience and everything, there is a market okay, these things are realistic, he will get the loan.<sup>725</sup>*

Again, the regulator acknowledges the value that is contributed through the collaborative financial inclusion initiative. The creditworthiness of the borrower is already shaped and created by the field officers. The underwriting of these loans become less costly and less onerous for the banks.

#### 4.4.6 Enforcement of Repayment & Loan Officers & Culture

The policy orientation toward financial inclusion is peppered with multiple definitional frameworks. Unregulated non-profit microfinance institutions have been a dominant service provider for the underbanked and unbanked, yet are currently struggling to sustain their business operations.<sup>726</sup> Another challenge is to combat the mistaken assumption that the number of account-holders represents that full financial inclusion is accomplished. As one informant explains:

*P: People have many accounts but the access to credit is still a problem because you get this post-office savings bank, national savings bank,*

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<sup>724</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>725</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>726</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

*cooperatives, all sorts of institutions. But they are dominant in collection of savings, micro-savings, but they don't give out loans... and we can't collect savings.*<sup>727</sup>

The viability of the MFIs is dependent on an in-flow of funding or circulating repayment structure; the inability to collect deposits thereby has hampered the institutional sustainability.<sup>728</sup> Due to the scarcity in obtaining funds, MFIs have to concentrate on the repayment rates. In order to ensure repayment, emphasis is placed upon collection efforts. As explained, non-payment of loans appears not to be a variable considered by this particular MFI. The aggressive, and sometimes coercive enforcement mechanisms, are necessary to ensure repayment of the loans for liquidity purposes.

*P: Follow-up of loans for field officers is important...when they visit the centres and if the borrower has not turned up...the loan officer immediately visit the house of that person and get the money. And after 3:00pm, they're still some more people they'll go out again in the evening and get the money.*

*I: And if they don't have the money?*

*P: They usually have the money*

*P: Then if they're a little bit hard-core people the branch manager will go and collect the money. And nowadays, our set-up is like this: we have field officers and above them we have the branch managers. So branch manager is the only person who can approve a loan.*

*I: Okay, so the branch manager knows every single client?*

*P2: That's right for the branch....That itself is financial inclusion.*<sup>729</sup>

The above quotation represents the urgency surrounding repayment. The collection process is a built-in risk mitigation technique to create institutional solvency. Further, the

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<sup>727</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>728</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>729</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

individualization of the services and the personal relationship are also perceived to be part of financial inclusion. The personal linkages also serve as an advantage for the loan officers, due to power dynamics and familial information available to engage in possible coercive repayment methods.

The MFI model employed differs according to regional needs and culture. For example, Sri Lanka's multi-ethnic and multi-lingual borrowers have contributed to the various methodologies used in enforcement processes. The quote below exemplifies the cultural practices used to collect payments with respect to customer service. The repayment and enforcement process employed by MFIs are rooted in cultural norms. For instance, as one stakeholder described the process:

*P: The fundamental principles are the same anywhere in the world basically, but we do deviations to suit this country. For example, now in Bangladesh if a person doesn't pay the loan installment, the field officer will go and stay there, sit there and you know, until the borrower has paid. The officer will not get up and sometimes they speak very harshly to the borrower.* <sup>730</sup>

The above quote captures the challenges in adopting comparative practices within financial services delivery. The Grameen model is perceived as the beacon of a financial inclusive business model<sup>731</sup>; however, the uptake in practice is difficult to replicate.

*P: But in Sri Lanka you cannot do that. So, you have to speak to them politely, until we get the money paid and if we go and sit there for hours and hours ...these people don't like it, it works against us rather than*

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<sup>730</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>731</sup> Pankaj Jain, "Managing Credit of the Rural Poor: Lessons from the Grameen Bank," (1996) 24:1 World Development 79; Also see, Alexandra Bernasek, A. Banking on Social Change: Grameen Bank Lending to Women (2003) 16 *International Journal of Politics, Culture, and Society* 369–385.

*helping us. It's not our culture. Because they have their self-dignity though we have to respect that.*<sup>732</sup>

Cultural infusion within the repayment process and credit discipline is a vital consideration. In further discussions, “religion” was also raised as a precursor of financial inclusion activities. Religious organizations, as non-profit economic agents in various jurisdictions have been in the forefront in deploying microcredit services. Empirical studies are slowly developing to include the religious undertones used to create financial arrangements within vulnerable communities.<sup>733</sup>

There is an increasing amount of scholarly literature that has focused on Islamic finance and microcredit.<sup>734</sup> However, there is a dearth of literature with respect to the religious emphasis in Sri Lanka. This qualitative study revealed that religion may impact the delivery of financial inclusion. For instance, an Executive Director of a non-profit MFI remarked that each group meeting with borrowers “start with prayers.”<sup>735</sup> When asked to elaborate whether this is a regional or localized ritual – he stated that they were “Christian prayers...because I am a Christian.”<sup>736</sup> Another employee during the interview also added that in some communities a Buddhist Monk is asked to come to start of the meeting for spiritual guidance and to make the group members feel comfortable.<sup>737</sup>

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<sup>732</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>733</sup> Ashta, Arvind and De Selva, Rosita, *Religious Practice and Microcredit: Literature Review and Research Directions* (2012) 2:8 Postmodern Openings 33-44; Roy Mersland, Bert D'Espallier and Magne Supphellen, “The Effect of Religion on Development Efforts – Evidence from the Microfinance Industry and a Research Agenda” (2013) 41:1 *World Development* 145-156.

<sup>734</sup> Ashta, Arvind and De Selva, Rosita, *Religious Practice and Microcredit: Literature Review and Research Directions* (2012) 2:8 Postmodern Openings 33-44.

<sup>735</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>736</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>737</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

#### 4.4.7 Enforcement through Coercive Methods

MFIs are tasked with multiple levels of compliance, even if not traditionally regulatory in nature. The socio-economic fabric determines the operations and administration in the provision of microfinance services and products. The transaction costs incurred are not always fiscal encumbrance, but also communal. As seen in this study, loan officers do enjoy a status within the financial inclusion space due to the power attribution. For instance, during the enforcement process, a loan officer's job is transformed into a "recovery and training officer" is described as:

*P: I as the recovery and training officer mean that I am the person that distribute their loan, granted loan then after when they are not functioning – not repaying... then I engage with that incident. Then I go there and discuss with people and give them the opportunity – give them the opportunity to repay in the period...and sometimes again reschedule loan like that.<sup>738</sup>*

The loan officer's role is transformed into recovering non-performing loans, which requires a different skill set and familiarity with the defaulting individual. Prior to engaging with the client on a face-to-face basis in the collections process, a letter is set to the defaulting borrower requesting that a payment be made with 7 business days to avoid a visit from the recovery officer.<sup>739</sup> There is no true negotiation to reduce the payment amount; and the loan officer explains the difficulties faced by the borrowers:

*P: Most listen and there are a lot of poor people with difficulties. They are face from time to time health problems, family problems, food problems.*

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<sup>738</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>739</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



*But unfortunately, most people are in fear because they don't like to go to police or court.*<sup>740</sup>

In rare situations, defaulting individuals have been referred to the Police. When asked when is police intervention sought, the recovery officer explains:

*P: Actually 3 or 4 times after I visited the people, and they say "I paid, I paid, I paid" and really they didn't pay. Then after I send a letter, 3 letters, they didn't answer then after I phone to police.<sup>741</sup> Police then will advise to them "you are 2 month or 3 month behind you must repay that thing", actually people repay after that. They repay it because police advise to them and the police threaten them with the court; the people are scared.*

The collections process utilizes the "fear factor" in the MFIs repayment strategies. The threat of ensuing legal action allows for coercive enforcement methods; the non-payment of loans are directly linked to poverty, social pressures and consumption smoothing commitments.<sup>742</sup>

In further discussion, the police are asked by the MFI's representative to intervene in repayment efforts, even though this is a private contractual arrangement. In most cases, the police propose new terms and conditions for repayment on behalf of the MFI.<sup>743</sup> At the time of this study, "no cases have been brought before the court."<sup>744</sup> The jurisdictional conflict of civil and criminal does not appear to be an issue. The police's authority to intervene stems from the Fraud Division, which handles civil matters relating to financial crimes and money lending issues. It is unclear from the qualitative study why

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<sup>740</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>741</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>742</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>743</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>744</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

the Fraud Division is employed. With respect to assistance in collection efforts, the recovery officer depends on the police as a “defacto mediator” or “advisor”.

*P: Normally the policeman only gives advise to them<sup>745</sup> to pay because this money is used for other people for relending purposes not that this is for only you.... then you must pay that money to this organization. Then actually that they agree to pay.<sup>746</sup>*

For the past 6 years, the recovery officer has been employed with the MFI and only has sought police assistance “7 or 8 times”.<sup>747</sup> There also appears to be a consideration with respect to gender when police assistance is considered as illustrated below:

*P: Yeah, because actually I don't like to go to police with women then I advise to them I visited several times, and then I advise to them please you pay, you don't have the whole amount pay the one time you pay small amount you have to pay then 1,000 or 10,000 or 5,000 or like that they pay. Then actually, no women are the people they don't understanding how they are get loan and use that loan for correct way that is the main problem.<sup>748</sup>*

The above referenced refers a unique dispute resolution mechanism through soft coercion; there appears to be hesitation in involving the police for defaulting female borrowers. The gendered consideration is predicated on the mistaken fact that female borrowers are unable to comprehend the lending process.<sup>749</sup> The above quote provides evidence of self-admission of unequal treatment that is offered to female borrowers. The consumption smoothing activities used loan incorrectly.<sup>750</sup>

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<sup>745</sup>Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>746</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>747</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>748</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>749</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>750</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

Borrowers interpret regulatory impact or “law” on a micro-scale as the “police.”<sup>751</sup> This is explained as follows: “For a villager the word “law” is the police station. Actually, in the village the law-abiding officer is the one in the uniform”.<sup>752</sup> Customary notions and local rules operate akin to control the repayment process through a ‘threat of punishment.’ As one borrower exclaimed, “If I don’t pay, it is not good because I’ll be punished...I’ll be punished...by the police or maybe by God.”<sup>753</sup> The issuance of demand letters is rare. An Executive Director of a MFI explained:

*P: Actually...we may have a handful, about 5 or 6 out of 10,000 clients to send a letter...so it’s at a bare minimum. So... we don’t have a lawyer. In our organization, we have no lawyer....we don’t need one. People are able to make payments somehow.*<sup>754</sup>

The last sentence of the above referenced quote signals that borrowers have other means of obtaining funds to cover their repayment amounts. During the study, the informal money lender was perceived as the “lender of last resort” in specific areas.<sup>755</sup> The local money lender sets the tone of “why repayment should happen”<sup>756</sup>. Local standards are designed and created by the moneylender and these MFIs are “piggybacking” on that structure by using existing local infrastructure in which the expectations of the repayment mechanism are used by MFIs. Local norms simply become absorbed by the formalization of financial transactions. The other component discussed in the normative standards created by informal money lending is the psychological toll of shame as well.<sup>757</sup> The local lending

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<sup>751</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>752</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>753</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>754</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>755</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>756</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>757</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

commercial arrangements orchestrated through financial inclusion policies capture current practice and patterns established through customary traditions.

#### 4.4.8 The Informal Complaint Mechanism

With respect to the exorbitant interest rates and coercive repayment mechanisms employed within the informal lending market, an option for consumers is to initiate a complaint with the Department of Non-Bank Financial Institutions at the Central Bank<sup>758</sup> This mechanism is challenging. It appears to exclude rural consumers and their inability to navigate bureaucracy.<sup>759</sup>

### **4.5. The Central Bank's Initiative: Poverty Alleviation Microfinance Project (PAMP)**

The national regulator, the Central Bank of Sri Lanka (CBSL), designed a financial inclusion initiative entitled the Poverty Alleviation Microfinance Project (PAMP), which is a project funded by the Japanese government.<sup>760</sup> This project covers 14 districts, 8 districts in the north and east and 6 other joining districts. The latter areas focus on people who are affected by war.<sup>761</sup>

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<sup>758</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>759</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>760</sup> Government of Sri Lanka, *Regaining Sri Lanka: Vision and Strategy for Accelerated Development* (Colombo: Central Bank of Sri Lanka, 2003) at 72; See Central Bank of Sri Lanka, *Special Attention to Special Needs- Central Bank Focuses on Regional Development*, (Colombo: Central Bank of Sri Lanka) at 198-199; Seetha PB Ranathunga, "A Poverty Focused Policies in Post-Independent Sri Lanka: A Review of Literature" (2018) 6:4 Global Scientific Journals 141 at 141.

<sup>761</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The Poverty Alleviation Microfinance Project (PAMP), modelled after the Grameen System, was started in 2002 in 6 southern districts. The project did not include the North and East during this period due to severe war conditions.<sup>762</sup> The model was informed by the Grameen system, with an added ‘tier’ supported by the CBSL. The regulator created self-help groups between 5-8 people to create ‘creditworthiness’ and make them bankable, and then “link them” to a financial institution.<sup>763</sup> The group lending model is designed to operate as a joint liability business model, in which each member is joint and severally liable for the outstanding group debt. The replicated model of group lending is predicated on ‘credit risk mitigation’; which in turn prevents the financial institutions from absorbing losses. The policy approach which led to this Japanese-partnered initiative was to create a pilot aid project as part of a financial inclusion initiative to encourage economic growth in Sri Lanka.<sup>764</sup>

The second phase of the Poverty Alleviation Microfinance Project (PAMP2) was started on February 23, 2009 in Batticaloa, about 5 months prior to the war.<sup>765</sup> This is the Eastern part of Sri Lanka, also a designated post-war zone. The Regional Director, who is part of the regulatory apparatus, explains how the program evolved regionally:

*P: In February 2009, we started in Batticaloa then expanded to Ampara and Trincomalee. Then once the resettlement people of Vanni district started in coming to Mannar in the Mullaitivu district-- we went there first. Banking executives and general managers of People’s Bank and Bank of Ceylon in November also came. Then we started the program – because we talked to those people, the resettled people and we want to give them a hand, some assistance for livelihood.*

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<sup>762</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>763</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>764</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>765</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*So mainly the cultivators they need some financial assistance for them to restart their livelihood activities. So under the program – actually this is the PAMP2, unfortunately I don't have anything in English to you.<sup>766</sup>*

The towns referenced in the above quote are significant as those communities were under LTTE rule, and not subject to the regulator's reach. The regulator's willingness to ensure that a specialized program was developed for resettled communities as part of the post-war reconstruction appears to signal a commitment to financial inclusion as a policy goal.

The PAMP program is highly regulated by the CBSL through consumer participation and eligibility requirements. Financial institutions, such as banks and financial companies, have to first qualify under CBSL criteria to obtain "Participatory Financial Institution" status.<sup>767</sup> The CBSL considers this a 'vetting' process, as these institutions will be engaging with vulnerable communities. The selection of Participatory Financial Institutions (PFIs) is explained as follows:

*I: And who selects the people?*

*P: Actually the PFI's. PFI's authorized banks, authorize banks, first we brief them and there were 14 banks agreed to participate in this program. There is a criterion; laid down criteria in the Central Bank for the selection of these PFIs, Participatory Financial Institutions. There are banks and financial companies also that are authorized by the Central Bank.<sup>768</sup>*

*I: But how do you select the recipients?*

*P: Yes, that's the thing we brief them then there is a criteria for their involvement, past involvement, their recovery rate and all those things we look into that when they outreach to the people in those project areas.*

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<sup>766</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>767</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>768</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*P: Lending is left to the financial institutions, lending is left to them we will only select – then in the village they have to select the people below the poverty line. In Sri Lanka, Central Bank has determined any family, which draws income less than \$15,000 is poverty a month.*

*P: Under the new – the latest census and statistics it is 3,654 or something the latest one, earlier this year is 3,611 so we took it 5 per person, 5 members in the family, maybe 2, 3, sometimes. You know, some of the families, poor families they have their parents also with them so in the average we took 5 and multiplied them with 15,000.*

*Any family, which draws income less than \$15,000, is below the poverty line that is the eligibility criteria for this loan. Then, there should not be any defaulters. If they have past borrowing it's okay, if they have borrowed from any financial institutions or banks it's okay but if they have defaulted they are not eligible.<sup>769</sup>*

An analysis of the narratives suggests, the selection process establishes a regulatory framework in which the regulator in fact creates 'creditworthy' individuals for the PFIs. By identifying and pre-screening specific communities, and providing them with credit training, the PAMP effectively prepares individuals for engagement with financial institutions and creates a pool of creditworthy individuals for PFIs selection for financial services. This process is akin to double regulation, in that the CBSL pre-screens communities and individuals for the financial institutions, and then the PFIs re-screen applicants for prospective credit products and services.<sup>770</sup>

Further, the CBSL ensure that the PFIs offer lending programs in line with the financial inclusion agenda to families who are deemed to be below the poverty line. The CBSL set the poverty line at RS 15,000 per month. As noted above, the formulaic algorithm used to calculate the poverty line uses a cultural lens to include extended family and

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<sup>769</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>770</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

caregiving components.<sup>771</sup> In addition, individuals with a history of previous default of loans are automatically excluded from PAMP.

In addition to the pre-screening, the CBSL encourages group formation within a specific community. It is akin to the group lending model employed within the Grameen system. It is vital to note that the group formation is based on self-selection, potential members form their own groups without external direction. The formation of these groups is predicated on familiarity and a mandatory gender quota; gluing together formal terms and obligations through relationships with policy goals stipulated by the CBSL's financial inclusion framework. Social capital again is highlighted as the binding agent in these informal groups.

Below, the dynamics of these groups are explained:

*P: Initially, we brief them these are the criteria; then only one family member can join in this scheme. Then, maybe close proximity people - not a person from one area..., it should be very close people.<sup>772</sup>*

*P: They should all know each other, because when they form the group they should know each other because they are going to borrow. If they borrow they should have trust among others. If suppose if they default or if they take the loan and vanish then they will be held responsible. So, these are the small briefings we give them and no, we don't involve in the formation of the groups, they have to form the groups – it is self-selection.<sup>773</sup>*

*P: Neither the banks nor the Central Banks involve in the formation of group it is them. Once they form the group minimum 5 or 8 maximum and*

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<sup>771</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>772</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Only one family member can join to avoid nepotism and promote transparency through social capital. Reputation and shame within culture makes this effective.

<sup>773</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). The familiarity aspect functions efficiently as these lending transactions are predicated on trust and loyalty.



*another important thing there should be more women participation in this program. Suppose if it is a group that's 5 majority ...*<sup>774</sup>

*P: So mainly according to our statistics about 95% are women. We don't say that men should not take this but we allow that also.*<sup>775</sup>

#### 4.5.1 Gender and PAMP

In 2014, the CBSL included a budgetary allocation for female-headed families.<sup>776</sup> This policy approach contemplated was based on the post-war conditions that demonstrated that female-headed households are at risk of living in chronic poverty. During this qualitative study, a robust framework for female-headed households was not yet developed by policy makers.<sup>777</sup> The poverty alleviation microfinance project administered by the CBSL changed its emphasis towards gender participation in its financial inclusion initiative.<sup>778</sup> The Director of that project explained the rationale in focusing on delivering financial services to women, and in particular to women affected by war as follows:

*P: One main thing is when we form this program, there were about 80,000 women headed families in the north and east... we want to take them in because of the war...Not only war, even before tsunami and various things, so we want to take those people. Second, in the whole world now it is acceptable that women are the good pay back, and they have more responsibility in their family. Children, welfare and everything... women taking into consideration we have done it and Bangladesh has proved it, now, there are 7 million people, 97% of the borrowers in 7 million are*

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<sup>774</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). The self-formation and peer selection group is designed to exclude regulatory influence . The regulator PAMP will not disallow men. But, the policy stipulates that the majority of members in each group must be women.

<sup>775</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>776</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Also see Government of Sri Lanka, *Regaining Sri Lanka: Vision and Strategy for Accelerated Development* (Colombo: Central Bank of Sri Lanka, 2003) at 94.

<sup>777</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>778</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

women. They have a 98.9% recovery rate when I went to Bangladesh in 2006.<sup>779</sup>

The above narrative echoes the line of reasoning adopted by the Grameen model of microfinance, which has become an example of a successful tool of gender empowerment, repayment statistics and poverty alleviation.<sup>780</sup> However, a counter-narrative based on this qualitative study, and other studies has emerged.<sup>781</sup> Not only is over-indebtedness a by-product of the Grameen model, but it has also created controversial issues around “the economy of shame” affecting female borrowers.<sup>782</sup> Karim argues that ‘shame’ is used to coerce payments from female members by using shaming tactics, such as publicly announcing the members who did not meet their financial obligations.<sup>783</sup> This form of shaming carries social stigma within certain communities. This phenomenon has now been

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<sup>779</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Shahidue Khandker, Baqui Khalily, and Zahed Khan, "Is Grameen Bank Sustainable?" (1994) The World Bank, Human Resources Development and Operations Policy Working Paper No 23 at 11; Erin Scrapek, "The Grameen Bank Rural Credit in Bangladesh" (1999) *Sask Econ J* 33 at

33. <<https://artsandscience.usask.ca/economics/resources/pdf/sej2-scrapek.pdf>>; Lamia Karim, “Demystifying Micro-Credit: The Grameen Bank, NGOs, and Neoliberalism in Bangladesh” (2008) 20:1 *Cultural Dynamics* 5; N M Wahid Abu, “The Grameen Bank and Poverty Alleviation in Bangladesh” (1994) 53:1 *American Journal of Economics and Sociology* 1.

<sup>780</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>781</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Lamia Karim, “Demystifying Micro-Credit: The Grameen Bank, NGOs, and Neoliberalism in Bangladesh” (2008) 20:1 *Cultural Dynamics* 5; Karim, Lamia, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011).

<sup>782</sup> Karim, Lamia, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011).

<sup>783</sup> Karim, Lamia, *Microfinance and its Discontents: Women in Debt in Bangladesh* (Minneapolis: University of Minnesota Press, 2011); Lamia Karim, “Demystifying Micro-Credit: The Grameen Bank, NGOs, and Neoliberalism in Bangladesh” (2008) 20:1 *Cultural Dynamics* 130.

widely accepted, and the issues surrounding the adoption of the Grameen model are still pervasive in the regulator's application of financial inclusion initiatives. In an excerpt of an interview below, the regulator attributes these controversial issues to Bangladesh's political history as follows:

*P: There is some politics.... recently there was some research papers in which the Prime Minister of Bangladesh had also mentioned sucking the blood of the poor in the name of poverty. But you know, at the time, when these people were desperate in 1973 after the formation of Bangladesh, actually this is a self-debt.<sup>784</sup>*

#### 4.5.2 Eligibility to PAMP and Deposit-Taking Challenges

PAMP is designed to make consumers 'bankable'. In other words, the goal is to convert non-traditional borrowers to become creditworthy borrowers and introduce a savings plan.<sup>785</sup> As explained below:

*P: We are socially mobilizing them. First, we form the group, we don't promise them or we don't tell them anything about the loan. But first we have to link them to the bank of their choice.*

*So what we do is normally help them become a bank customer, when you say a bank customer you should maintain an account, and you should save that's what banks expects. So what we are trying to do with these people once they form the group you save, every week you save, not month but every week you have to do it.<sup>786</sup>*

It is significant to note that the savings mobilization plan can only be undertaken by deposit-taking institutions. In this qualitative study, it was observed that MFIs did in fact encourage their clients to use their savings products, which is in contravention to

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<sup>784</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>785</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>786</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Through transforming consumers into creditworthy recipients, 'bankability' is achieved.

legislation.<sup>787</sup> The regulator is aware of the illegality surrounding deposit-taking activities by unregulated MFIs.<sup>788</sup> The qualitative data confirms the inability to control “selling of savings products” within the microcredit process, as well as restraining the actions by loan officers that are not subject to punitive measures.<sup>789</sup>

On another note, the savings mobilization scheme imposed on vulnerable borrowers is a precondition to the loan. This type of forced savings strategy is not purely a measure to ‘change behavior’ or to create market discipline.<sup>790</sup> Rather, it allows the MFI to create an alternate source of funds for recovery. The ‘*microfinance schism*’<sup>791</sup> is ideologically faulty – a fiscally vulnerable borrower has to save prior to obtain a loan – the amount extracted for savings is basically a transaction cost for the borrower. In other words, the borrower pays more for the loan if non-payment follows.

The loan officers are ‘agents’ trained to collect savings and disburse loans on behalf of these MFIs. As discussed earlier, through the use of social capital, agents gain the trust of communities to enable these microcredit, savings and financial transactions. The loan officer then delivers the savings and repayment amounts to the designated MFI location. In some instances, loan officers have absconded with the savings, and the loan officer is

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<sup>787</sup> Anonymous, “Directions, Circulars and Guidelines on Micro Finance”, online: CBSL <<https://www.cbsl.gov.lk/en/laws/directions-circulars-guidelines-for-microfinanceinstitutions>>.

<sup>788</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>789</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>790</sup> Morduch, Jonathan, "The Microfinance Schism," (2000) 28: 4 World Development 617.

<sup>791</sup> Morduch, Jonathan, "The Microfinance Schism," (2000) 28: 4 World Development 617.

criminally charged with theft.<sup>792</sup> The following excerpt by the regulator's representative provides a bird's view of some of these challenges.

*P: Until the legislation passes, we cannot take any legal action against them in civil court, they are not supposed to take savings from these people. We have heard that they take it and go away.*<sup>793</sup>

*The loan officer knows each and everybody in the village, so he collects the money so they issue the passbook, the people signed everything. And after taking the money, they vanished and now that good boy is in the police custody.*<sup>794</sup>

Without the legislative enforcement mechanism, the CBSL is unable to regulate such behavior, namely the seduction of microfinance products and the compulsory savings component. The only remedial measures for such conduct, whereby the loan officer serves as a conduit to fraud, are criminal repercussions for the loan officer, and not the corporate actors or institutional stakeholders, who encourage illegal savings mobilization.<sup>795</sup>

#### 4.5.3 PAMP's Lending Structure

In order to address these inequities within the financial transaction process, the CBSL, in designing its financial inclusion initiatives, has included modifications to lessen the inaccessibility problems.<sup>796</sup> The creation of small groups, which consist of six (6) members, combats the geographic inaccessibility problem by only delegating the task of

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<sup>792</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>793</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Examples of Loan officers that are employed by non-regulated MFIs take their customers' savings and disappear. During the time of this research, the legislation was not passed, therefore it does not facilitate enforcement.

<sup>794</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). By using loan officers and their social capital to seduce borrowers, the MFI may benefit from the savings mobilization, and the loan officer faces criminal repercussions.

<sup>795</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>796</sup> Central Bank of Sri Lanka, *Special Attention to Special Needs- Central Bank Focuses on Regional Development*, (Colombo: Central Bank of Sri Lanka) at 198-199.

traveling to the bank to one member of the group.<sup>797</sup> The efficiency of this method enables each member to take turns in completing the group's banking activities. As stated in the preceding parts of this chapter, the creation of these groups are intended to create easy, controllable and efficient modes of governance. The regulator then forms a regional division of amalgamated groups into a society, which are registered under with the Registrar of Companies pursuant to the *Societies Ordinance Act*.<sup>798</sup>

This process of formalization of the small groups is to create inclusion using regulatory mechanisms and to create a path for oversight and compliance.<sup>799</sup> By transforming the 'unstructured' forms of organization into formal structures, the regulator simply creates entities it can regulate under its supervisory authority. Through bringing these registered societies under the purview of the regulator, banks are able to create more financial inclusion initiatives as these registered societies are considered legal entities that are eligible for credit products.<sup>800</sup>

There is a benefit for financial institutions, as they are able to obtain 'ready-made consumers,' handpicked and vetted by the regulator's custom made financial inclusion initiative. The narrative below confirms how financial institutions are motivated through participating in PAMP.

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<sup>797</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>798</sup> Sri Lanka, *Societies Act*, Capital 141 of 1949.

<sup>799</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>800</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*P: So that when happens, the banks will go there because they know there are 60 clients there.<sup>801</sup> If they want to open accounts, they send them a vehicle and open the account for them at the branch and they issue the passbook there. If they want to apply for the loan, bank officers will be ready.<sup>802</sup>*

It is interesting to note that the financial institutions provide a mobile unit, and sometimes transport to meet its newest customers in the field.<sup>803</sup> Further, during this qualitative study, the road reconstruction efforts were slow due to post-war conditions. The infrastructure projects and access to roads were solely controlled by the military. Empirical evidence suggests that as access was strictly controlled by the State, surveillance of consumers was also a concern.<sup>804</sup> The methods used by these traditional banks are analogous to the way MFIs reach their customers. However, the altruism demonstrated by the traditional financial institutions are short-lived as these banks are obtaining easy access to clients and are able to obtain low scale deposits with a low investment in marketing and outreach.<sup>805</sup> The regulator's representative explains:

*P: So the banks know that there are 60 clients there and when they formulate the group savings you see there is 100 rupees, one group saves about 600 rupees for a week, for a month 2,400, for a year?– and if you have 10 groups, how many thousands that is? And for these deposits they (the banks) are not spending any money.<sup>806</sup> In Sri Lanka or in the whole world, the banks are spending millions and millions on advertisements, paid advertisements, TV channels, and sometimes they give prizes to*

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<sup>801</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). The access to a customer base at a low investment cost is highly profitable to banks; they obtain customers without any business or marketing strategies.

<sup>802</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); The bank's motivation in providing transport services is also predicated on rural and post-war infrastructure issues (road conditions and military occupation). The military controlled access into post-war areas also suggests that the consumers are surveilled due to their participation.

<sup>803</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>804</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>805</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>806</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*communities for most deposits. But for these poor people, nothing is given.*<sup>807</sup> *It is a very minimal cost for the bank.*

The interviewee further shared that communities that had to endure resettlement in the Mullaitivu District<sup>808</sup> in 2009 contributed to the success of expansion of banks. The Mullaitivu District has the *highest headcount* for poverty in the country.<sup>809</sup> The Interviewee also explained that the Bank of Ceylon located in Mankulam<sup>810</sup> was awarded with a regional prize due the highest number of deposits sale by one group.<sup>811</sup> According to the informant, the bank received more than “1 Lakh” in deposits.<sup>812</sup> The vast amounts of deposits collected are from resettled individuals, the surge of financial liquidity not only benefitted the bank, but also neighboring communities.<sup>813</sup> By way of an example, due to the financial infusion created by ‘financial inclusion’ an international stadium in Killinochi was built as an extension of “post-war infrastructure” enhancement controlled by the military.<sup>814</sup> In further discussions, it was noted that despite a community which was

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<sup>807</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>808</sup> The Mullaitivu District was one of the most affected areas during the last stages of the war. The District was LTTE-controlled and isolated from the rest of the country, and as a result suffered brutality by the State. Saseela Balagobei and Sankeetha Aravinthakumar, “Impact of Microcredit on Living Standard of Dairy Entrepreneurs: Special Focus on Oddusuddan DS Division in Mullaitivu District” (2019) 3:2 *Indian Journal of Finance and Banking* 43-48.

<sup>809</sup> Saseela Balagobei and Sankeetha Aravinthakumar, “Impact of Microcredit on Living Standard of Dairy Entrepreneurs: Special Focus on Oddusuddan DS Division in Mullaitivu District” (2019) 3:2 *Indian Journal of Finance and Banking* 43-48.

<sup>810</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Mankulam was another significant hotspot during the war. See also Sarvananthan Muttukrishna, “Sri Lanka: putting entrepreneurship at the heart of economic revival in the north, east, and beyond,” (2011) 19:2 *Contemporary South Asia* 205-213.

<sup>811</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>812</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). The currency conversion amounts to about \$55,000 USD.

<sup>813</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>814</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



ravaged by war, within uncertainty and hopelessness, the high savings and deposit rate were extraordinary.<sup>815</sup>

#### 4.5.4 The Real Beneficiary in PAMP

The program initiative encourages banks to participate as part of the CBSL's duty to create a stable fiscal landscape pursuant to prudential regulation principles.<sup>816</sup> When asked whether the banks are obtaining financial benefits for servicing low income communities, the regulator responded:

*P: The benefits for the bank are getting the long-term low-cost deposits, very low-cost deposit -you are paying only...the saving interest of 4%. Whereas, many of these people save their money safely in the hands of the state bank so that is most benefiting ...they are not spending any money.*

*Second, now the interest rate they are getting is very high on this lending because once they lend it they can get the money reimbursed from us (the Regulator) at 4.5% we will refinance the loan.<sup>817</sup>*

*P: We refinance the loan, so if they lend it at 12%, ...4.5% we are giving, 7.5% is the real profit for them that their cost. Now these small people from the grass root level if they bring them by educating them through these process they will be your prime and corporate customers in the future, your prime customer, future customers. Every bank needs some customers; the present customers when they go you need some new generation. These people will be faithful to the bank because they know that you have brought it up.*

Through their deposit-taking capabilities, the banks are able to incur a benefit from these small scale deposits, and their primary concern is with safety within the affected communities. The Regulator essentially underwrites and subsidizes the loans, thereby

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<sup>815</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>816</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>817</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

reducing the costs of lending and risk mitigation.<sup>818</sup> PAMP in effect a risk mitigation device, as it allows the banks to participate in financial inclusion with a lower risk.

#### 4.5.5 PAMP Training of Participants

The PAMP initiative is designed to facilitate financial inclusion, yet it has a ‘self-development’ component embedded within the policy framework.<sup>819</sup> Participants have to complete five (5) modules as part of the initiative to modules create a shift in a fiscal mindset, which is possibly regarded as a form of financial literacy. The informant stressed that “poor people should have a vision, like every human being has a vision we make these people to create a vision for themselves”.<sup>820</sup> As an example, if a participant is from a farming community, land ownership is emphasized as part of a ‘long term vision’.<sup>821</sup> According to the informant, the ‘buy in’ is slow and resistance has been unshakable, as demonstrated below:

*P: So when you create a vision for maybe a farmer or a fishermen or a dairy farmer, whatever, create a vision, it's not an easy. Actually, it's not an easy thing; I've dealt with these people, dealing with these people I found they don't like change, They feel that they are born poor and they will die poor.<sup>822</sup>*

The above quote expresses “hopelessness” in a “hopeful situation.”<sup>823</sup> These contradictory reflections by participants are part of the social cohesion that cement these small groups. As part of the PAMP initiative, participants have to meet on a weekly basis

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<sup>818</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013);

<sup>819</sup> Atapattu, Anura, *State of Microfinance in Sri Lanka*, (Colombo: Institute of Microfinance, 2009).

<sup>820</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>821</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>822</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>823</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

to fulfill the second component: the mission.<sup>824</sup> Each group is tasked to create a mission through social bonding and to develop shared goals (akin to the modern day *vision board new age exercise*).<sup>825</sup> This type of group planning focuses on self-reliance, self-sustainability and the importance of savings.<sup>826</sup> “It is real savings that you sacrifice. You have to sacrifice certain money for tomorrow’s benefit that is the meaning of savings.”<sup>827</sup>

Each group is tasked to create a mission through social bonding and to develop shared goals (akin to the modern day vision board new age exercise).<sup>828</sup> This type of group planning focuses on self-reliance, self-sustainability and the importance of savings.<sup>829</sup> The savings component itself is cultural and psychological in some sense, as the informant adds that “it’s a real savings that you sacrifice. You have to sacrifice certain money for tomorrow’s benefit that is savings.”<sup>830</sup>

### ***WAR RELATED CONSIDERATIONS***

The subsequent findings identified below are a result of post-war conditions. After a 30-year long protracted civil war, the financial inclusion measures were tailored to accommodate the post-war climate.

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<sup>824</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>825</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>826</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>827</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>828</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>829</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>830</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

## 4.6. Militarization of Financial Inclusion<sup>831</sup>: Mercenaries of Credit and Tools of Surveillance

### 4.6.1 Situating Self-Identity

The primary theme of *war* permeated throughout this qualitative study and significantly intersected with financial inclusion. I myself experienced the impact of the war on a daily basis as an outsider during my field visits. During each of my research trips, stakeholders were pre-occupied with the Western and world opinion as war crimes charges were looming. My own family history shapes my perspectives of the analysis of the qualitative data; my grandfather was a Colonel in the Sri Lankan army after Independence; and my Uncles, and cousins were also in the military. These family connections afforded me access and credibility in obtaining face-to-face interviews with high ranking military officials during the post-war period of this study.<sup>832</sup>

During interviews with regulators, state actors or the military, I was often asked how I, as a Tamil Diasporic Woman, felt about the war, the State and the military. The examination of my political ideology with respect to military occupation became a constant theme. I attribute the reasons for the questions as a result of surveillance of me as a foreign investigator and curiosity. In order to complete my field work, I was able to obtain permission to stay at various army camps in Killinochi and Jaffna, as hotels were not operational or safe during that time.

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<sup>831</sup> I describe the militarization of financial inclusion as the findings extracted from the data as a result of military involvement and administration the loan programs and other financial inclusion considerations discussed in this chapter.

<sup>832</sup> My parents are Tamil, and even though I was not born in Sri Lanka, I have maintained close connections with my relatives and extended family members. This family lineage provided me with privilege and access throughout my qualitative study.

The exchange below demonstrates how I had to placate and ‘cover’ up true sentiments of Tamil survivors of war, and not further create mistrust with respect to military occupation and residents in post-war areas. The knowledge mobilization engaged in these discussions were challenging at times, as the interviewees had tremendous power of the residents at issue. But, I needed to impart that dependence on the military for daily activities was not a positive outcome of military intervention. The economic conditions and the resource dependency created by the military have also impacted the relationship with communities in post-war areas. The exchange below with a Commander of a high valued post-war region illustrates the preoccupation with the war in everyday conversations:

*P: What do you think of the army there? They have no any animosity against the army? We are helping them.*

*I: You know the sad thing is they are dependent on the army.<sup>833</sup>*

#### 4.6.2 Significance of Study

The militarization of financial inclusion uncovered in this study has been by far the most significant, and original contribution. The post-war climate transmuted banking aspirations of financial inclusion into a form of post-war reconstruction, rehabilitation and reconciliation. The cooption of financial inclusion by the military had a profound impact on communities continuing to reside in post-war areas.

The unexpected discovery in this qualitative study is rooted in the militarization of the post-war financial and economic reconstruction. The surprising results in this section provide an interesting intersection between peace building, surveillance and intentional

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<sup>833</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

systemic oversight over a particular demographic through financial inclusion. The post-war context in these daily interactions are in the forefront, thereby marring the actual rehabilitation mission. The informants in this section are the highest commanding military officers of the various regions in which the study was conducted. As such, I had to obtain special clearance, travel alone in a window-less vehicle in remote locations and without any prior knowledge or preparation.

#### 4.6.3 State Constructed Definitions

##### 4.6.3.1 Internally Displaced People

At this juncture, it is important to note the distinctions between rehabilitated detainees and internally displaced people, and how the State de facto treats both categories in a similar fashion.<sup>834</sup> Internally Displaced Persons (IDPs) are defined as "Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border" (Guiding Principles on Internal Displacement, 1998).<sup>835</sup>

The number of IDPs as a result of the 2009 Civil war is disputed; according to the General as representative of the State stated that, "there were only 200,000 IDPs".<sup>836</sup> However, according to the IDMC report, 485,000 IDPs were identified.<sup>837</sup> The variation

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<sup>834</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>835</sup> "Internal Displacement," online: <https://www.internal-displacement.org/internal-displacement>

<sup>836</sup> Interview of stakeholders in Sri Lanka during field work (December 2013)

<sup>837</sup> Kennedy Gunawardana, "Adaptation Strategies of the Sustainable Livelihood Considerations for the Internal Displacement Women in Sri Lanka" (March 11, 2017).

in the numerical quantification itself is representation of the State's narrative to underplay the trauma and brutalities endured by Tamil communities. The inclusion of this analysis is predicated on this study's thematic strand that *consumers* were created for the financial institutions through State measures of financial inclusion.

#### 4.6.3.2 Ex-LTTE Combatants

In order to fulfill the reintegration phase of the rehabilitation initiative, stakeholders have to determine the prescient definition of an "ex-combatant". The problematic assumptions during this study is that term was used interchangeably to describe inhabitants of LTTE controlled areas with actual LTTE soldiers. The underlying issue is the duality contained within the civilian and combatant context; and the changes in the individual trajectory during war, and after war.<sup>838</sup> This is a relevant inquiry as it determines the program eligibility for economic resources and services allocated for ex-combatants within the rehabilitation framework. Torjens suggests that more research is required to fully understand the success of reintegration programs, such as "how do opportunities and constraints associated with economic globalization affect combatants, such as national and international migration flows, seasonal work opportunities, investment flows and access to local regional or international capital flows?"<sup>839</sup> These inquiries are valid with respect to financial

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online: <https://ssrn.com/abstract=2931309> citing IDMC Report (2009) Internally Displaced Monitoring Centre, 2009. Civilians Displaced by Conflict Facing Severe Humanitarian Crisis, Geneva: Norwegian Refugee Council.

<sup>838</sup> Stina Torjesen, "Towards a theory of ex-combatant reintegration," (2013) 2:3 *Stability: International Journal of Security and Development* 63.

<sup>839</sup> Stina Torjesen, "Towards a theory of ex-combatant reintegration," (2013) 2:3 *Stability: International Journal of Security and Development* 63.

inclusion measures coupled with livelihood creation. The question surrounding the definitional challenges posed to the military General is reproduced below:

*I: When you say “ex-combatant” is there a particular definition you use? Or is it like a truck driver who worked for the LTTE, is he an ex-combatant? or is it actual people in those communities, or is it clerical people? or is it people who were like laborers in the farm for the LTTE?*

The response lacks clarity to some extent. The military General further explained that individuals who admitted that they were a member of the organization, whether low level or not, would be included within the rehabilitation program.<sup>840</sup> Another significant detail is that the military General intimated that “we never used the word ex-combatants in front of them, instead we call them rehabilitees.”<sup>841</sup> This is predicated upon the humanitarian aspects required as a component within the rehabilitation framework:

*P: We never wanted to even give them a feeling that they were ex-combatants. They were like sort of brothers and sisters to us so that’s the confidence that we built, developed among them. And also, they were happy to be with us...even now, though they are undergoing training and subjected to legal action.*

*So, but since government gave them a general amnesty, a pardon, so we even go to the extent of giving them leave. We give them 4 days leave, or 5 days depending on the requirement or even if there is a family reunion or family function, we do allow them to go. And also, we allow their parents or family members to come and visit them in the centers.<sup>842</sup>*

At the end of the war in 2009, there were 24 rehabilitation centers, and time of this study, there were only 3 known rehabilitation centers that were operational.<sup>843</sup>

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<sup>840</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>841</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>842</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>843</sup> Interview of stakeholders in Sri Lanka during field work (December 2013). During this time, I was also able to visit Poonthottam in the Northern part of Sri Lanka.



#### 4.6.4 The Regulator's Perspective on Rehabilitation

Sri Lanka's post-war era is peppered with a myriad of reconstruction and 'peace' initiatives promulgated by the State and other domestic and international stakeholders.<sup>844</sup> More topical is the manner in which financial institutions contributed to the reconstruction efforts through a mode of rehabilitation of ex-terrorists. The Bank of Ceylon formed a partnership with the military to create financial inclusion initiatives for women, who were previously detained as terrorist fighters, in post-war regions. For instance, in the area of Uduvil, which is located in Jaffna, the Bank of Ceylon designed a lending scheme in which an army officer will assist in selecting women who were newly released from detention centers. During this study, the stakeholders involved in this program described these beneficiaries as "ex-LTTE members".<sup>845</sup> Notably, the creditworthiness of these women is dictated by the military.<sup>846</sup>

The Regulator as part of the reconstruction and rehabilitation process specifically designed financial inclusion initiatives for ex-LTTE members, who were detained after the war. The initiatives included small business and financial literacy training. The entire process, however, is controlled by the military. According to the informant, the Supervising Colonel in the designated area must be notified that a representative from the CBSL will be arriving to conduct these training for the detainees.<sup>847</sup> The site of the camps is not disclosed due to security reasons, and the CBSL representative will be escorted into

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<sup>844</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>845</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>846</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>847</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

different camps with military personnel.<sup>848</sup> The high security zones housed multiple detention camps and it was only the low risk detention facilities that were able to be accessed by the CBSL representatives. Below is an example of how the regulator accomplished the initiative.

*P: Right after the war, I trained about 817 ex-LTTE members in 7 camps in Vavuniya...now, however, we have a one-day program for 879 ex- LTTEs. We talked about banking, first banking and how to get the loans and because they will be getting loans one day<sup>849</sup> – now they first gave the batches, people who are going to be released shortly. The colonel gave me the list of people who should get the loans.... and the people from morning 8 o'clock to 4 o'clock we told them once you go there you need some employment.*

The above quote illustrates how military personnel are engaged in loan selection and distribution. It is not the Regulator that is determining creditworthiness, it is in fact, the military as they are producing lists of individuals who should be eligible for the micro-loans pursuant to the program.<sup>850</sup>

*P: Yes, they took us, they took us into the camp. But they don't tell – like first I'll have to go and meet the Colonel then he will say today we are going to this one camp, tomorrow – like the day, they won't pre-arrange...<sup>851</sup>*

The above quote also demonstrates the security context and the secrecy surrounding the identities and locations of these detention camps. The military regulates access and deals with the financial regulator (another state arm) on a need to know basis.<sup>852</sup> The challenge within this scenario is that the private financial transactions are mediated and controlled through the military, more specifically the local military command center of the

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<sup>848</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>849</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>850</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>851</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>852</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

region. In discussions, the regulator mentions the treatment of terrorist detainees during such visits as being humane. The fact used to make this assertion is that during meal time, the terrorist detainees and the regulator are eating the same food at the same dining hall. The challenging aspect of this perspective is that the State creates a false egalitarian environment that predicated on ‘meal time’. In reality, these terrorist detainees have been subject to torture and other punitive measures by the military.<sup>853</sup>

#### 4.6.5 The Regulator’s Role in Reconstruction

At the onset of this section, I feel it is important to recognize the context of this part of the qualitative study. The interview for this stakeholder was scheduled on the anniversary of the CBSL bomb blast, which occurred on January 31, 1996. The auspicious date signified the daily financial interactions for post-war communities differed with the Sri Lankan context. While in Jaffna, at the newly created CBSL regional office, war was a constant reminder through the experiences suffered by the employees of this particular location.

In 2010, the Central Bank of Sri Lanka established its first regional branch in the northern province.<sup>854</sup> The CBSL already had 3 regional branches on a national scale prior to 2010. The regional branches simply extend the objectives of the regulator in maintaining fiscal stability and providing regulatory oversight over the financial system.

The CBSL Chief of the Region explains:

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<sup>853</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>854</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

*P: The Central Bank had 3 branches already. But this branch recently started of course after the war and they wanted to have impact on the people's living standard after the war. So they just opened and not only in northern province, they opened a branch in eastern province as well. So we have newly 2 branches for the Central Bank. And we are conducting the work which is performed by the head office, and we are doing that part here. The Central Bank has two co-objectives, one is finance and system stability, the other one is economic stability. So then this branch is also moving towards that objective but our functions may be different from head office function.*<sup>855</sup>

#### 4.6.5.1 CBSL Jaffna

The historic significance of creating a Regulatory branch in post-war Jaffna can be examined through multiple lenses. The State is furthering inclusive policy approaches to include Tamil post-war regions as part of fiscal regulation and development, or the State is exerting overt occupation of the economic landscape. It is interesting to note that the CBSL Regional office in the Northern District is simply an advisory agency, which provides “input for policy decisions”<sup>856</sup>; however, no policy decisions are made from this site. When asked how the support role to the main CBSL head office is administered, the informant explains:

*P: We simply support the head office...supervising these banks and financial institution when the head office needed our help. So we contributed financial system stability through supervision, monitoring, capacity or inquiries for investigation. And second thing, we work towards economic development...we are doing a skill development program. We are more involved in awareness programs. So one of the key awareness programs we are doing is financial interest....Also, part of all our policy*

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<sup>855</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>856</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

*impact...is the access to finance, easy access to finance is vital for economic development.*<sup>857</sup>

The policy mandate for the Northern CBSL office above describes the support work performed, which also includes an emphasis on creating financial awareness for these communities, as well as knowledge mobilization of economic conditions affecting the local and regional financial networks. The access to finance paradigm, which is in line with the national policy approach for financial inclusion, is even more pronounced in the North and East due to post-war reconstruction efforts. Further, as discussed, remittance market in the post-war region is part of the local economic infrastructure; the ebbs and flows of the funds affect the regional rate of economic development. However, again unique to the post-war climate is that these in-flows of capital are dependent on diaspora perception of local development. Below the regulator notes:

*P: Most of the people depend on finance..mainly from foreign relatives. But the thing is after this war, like, my understanding is like the inflow may be less sometime because you might have seen some people like from abroad. They come and see, they might think like, okay now it's a little bit okay we don't need to send money. So that perception also may be there, it's not like a confirmed one right, so then but it's a general view. So then they need finance back so they just depend on the banks and financial institutions.*<sup>858</sup>

The above quote provides a rationale for lower remittance rates as the war ended, and the financial support from the Tamil Diaspora slowed due to the fact that war ended. Therefore, financial institutions step in to fill those gaps. The end of the war in 2009 also marked a moment in Sri Lankan economic history – as this period is described as the “open

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<sup>857</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>858</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

market moment.”<sup>859</sup> Prior to 2009, a region of the Island was closed off due to the LTTE strong hold. According to the regulator, the open market “revealed economic gaps and inefficiencies that was under the carpet for last 30 years.”<sup>860</sup>

#### 4.6.6 Rehabilitation through Financial Inclusion

The rehabilitation program was designed to ‘transform’ LTTE combatants into civilians within the national policy. The program is described as follows:

*P: In May 2009....Now at the end of the war there were nearly 300,000 IDP's that came into Sri Lankan government, they were rescued by the Sri Lanka government actually on the last day of the war and among them there were nearly 12,000 ex-combatants. ...including 594 child combatants.*<sup>861</sup>

It is interesting to know the intentional language used by the military general in describing that 300,000 internally displaced people were “rescued” by the Sri Lankan government, namely their oppressor. The inclusion number of child combatants also indicated a signal to showcase how the State ‘saved’ child combatants. The general further explains

*P: The government gave them a pardon, a general amnesty to these all ex-combatants. They were captured... in the sense they were in the hands of LTTE.. So they were rescued by the government And they were put into the government site and sort of they came into our camps and they were placed in Manik Farm.*

The language used in the above referenced quote encapsulates the climate of the State’s positioning as the victor of the war through the defeat of the LTTE. The narrative

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<sup>859</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>860</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>861</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

designed by the State is not an accurate depiction – it self-identified itself as the “savior” of the Tamil victims,<sup>862</sup> yet continue to perpetrate crimes of war against Tamil communities. The above referenced quote reveals a somber reminder of Manik Farm<sup>863</sup>; used by the Military as a *site of safety*. Yet, its controversial role in further dehumanizing Tamil communities as site of oppression is significant in this study.<sup>864</sup>

While interviewing a former Deputy Governor of the CBSL for this qualitative study, it was intimated that the CEOs of private banks and their staff were one of the first responders to personally visit Manik Farm.<sup>865</sup> They were flown to the camp via military helicopters and were permitted to speak to the victims of the war. The irony of being flown in to assist in remittance development and jewelry pawning. This is alarming considering the banks were allowed access before other humanitarian groups.<sup>866</sup>

#### 4.6.6.1 Manik Farm: Financial Inclusion and Internment

At the end of 2009, the GoSL created Manik Farm to house 300,000 displaced individuals, who were “rescued from the LTTE”.<sup>867</sup> Financial institutions were permitted

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<sup>862</sup> Interview of stakeholders in Sri Lanka during field work (December 2013); Anonymous, “The history of the Tamil Tigers” *Al Jazeera* (28 Apr 2009) online: <<https://www.aljazeera.com/focus/2008/11/2008112019115851343.html>>.

<sup>863</sup> Human Rights Watch, “Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka” (2010) online: *Human Rights Watch* <https://www.hrw.org/report/2010/02/02/legal-limbo/uncertain-fate-detained-ltte-suspects-sri-lanka>

<sup>864</sup> Hannah Gardner, “Tamils escape the horrors of war to internment behind razor wire,” N World online: <https://www.thenationalnews.com/world/asia/tamils-escape-the-horrors-of-war-to-internment-behind-razor-wire-1.516608?videoId=5766484581001>

<sup>865</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>866</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>867</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013; Chamindry Saparamadu and Aftab Lall, “Resettlement of conflict-

to enter Manik Farm by the military as a part of their humanitarian effort.<sup>868</sup> Manik Farm has become a symbol of state-sponsored oppression against the Tamils described as a notorious IDP camp, that resembled prison-like conditions.<sup>869</sup> “Most of the arguments about Manik Farm (and other transit camps in the North of Sri Lanka) seem to get stuck on definitions and comparisons. ..Is it a concentration camp?...Is it like the camps run by the Nazis or old colonial powers?”<sup>870</sup> Media images conveyed barbed wire, family separation and captivity controlled by the military. At the end of the war, the GoSL controlled all access to these transit camps and prevented international aid agencies from inspection.<sup>871</sup> It is, however, significant to note that during this period, the military allowed banks to enter inside the camp.<sup>872</sup>

In discussing this financial access, the General in charge of that region explained that “People with money were allowed to meet with banks...inside the camp.”<sup>873</sup> He further stated that “there were people conducting commerce in the camp...because people

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induced IDPs in Sri Lanka,” (2014) online:

<https://assets.publishing.service.gov.uk/media/57a089d140f0b652dd000410/SLRC-WP10.pdf>

<sup>868</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>869</sup> Randeep Ramesh, “Harassed Tamils Languish in Prison-Like Camps in Sri Lanka,” (2009) online: The Guardian <https://www.theguardian.com/world/2009/sep/13/tamils-camps-sri-lanka>

<sup>870</sup> Randeep Ramesh, “Harassed Tamils Languish in Prison-Like Camps in Sri Lanka,” (2009) online: The Guardian <https://www.theguardian.com/world/2009/sep/13/tamils-camps-sri-lanka>

<sup>871</sup> “Sri Lanka Rejects Full Access to Tamil Camps,” (2009) online: CBC <https://www.cbc.ca/news/world/sri-lanka-rejects-full-access-to-tamil-camps-1.774996>

<sup>872</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>873</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.



have so much gold in their possession.”<sup>874</sup> The underlying rationale for allowing certain financial institutions to enter the camp before international aid organizations is troubling; the value judgment placed on asset protection is startling. Safeguarding personal property belonging to fleeing refugees was a paramount goal for the military. The official position of the military was simply to appoint themselves as protectors, akin to trustee-type relationship over the personal property. It is unclear if the property was later returned to their rightful owners (the refugees), or whether the military confiscated the personal property under the guise of terrorism-related activities by connecting specific refugees to the LTTE.

#### 4.6.6.1.1. Gold: The Power of Pawning Bleeds through the Humanitarian Crisis

The General further elaborated that people were “running with gold because in the Jaffna culture a major possession is gold. They earn and they save, they don’t enjoy much.”<sup>875</sup> This quote confirms a long held typical stereotype by the Sinhala gaze that “Jaffna Tamils are the ones with the best jobs, monopolize the professions, control the economy, have huge bank accounts, and whose women wear the most gold jewelry and expensive silk saris.”<sup>876</sup> Historically, the cultural importance of gold is a sign of status; gold is also seen as an investment; an asset that retains value and is often a mode of savings,

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<sup>874</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>875</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>876</sup> Daniel E. Velentine, *Charred Lullabies: Chapters in Anthropography of Violence* (Princeton: Princeton University Press, 1996) at 21.

and is also used to cement Hindu marriages as dowry payments.<sup>877</sup> Further, the GoSL's military released an online press release, which stated that "Gold takes an important role in the lives of the Tamil community. It not only is a tool of investment but also adorns the images of their deities in temples and at homes."<sup>878</sup>

During the late 1980s-1990s, the emergence of the LTTE as a separatist organization, required it to create a sustainable source of funds. As such it levied a gold tax, also described as a liberation tax, which each Tamil household in the Northern and Eastern region had to donate gold jewelry to fund the war.<sup>879</sup> On October 12, 2014, the President of Sri Lanka announced that the gold seized by the military, previously held by the de facto LTTE bank either as pawned assets or as illegally seized assets, would be handed over to the rightful owners.<sup>880</sup> During the ceremony only 20 owners received their

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<sup>877</sup> Andrew C. Willford, *Cage of Freedom: Tamil Identity and the Ethnic Fetish in Malaysia* (Michigan: University of Michigan Press, 2006) at 233. See also Mitra Sharafi, *Law and Identity in Colonial South Asia: Parsi Legal Culture 1772-1947* (Cambridge: Cambridge University Press, 2014) in which she outlines a similar historical view of personal property rights as it relates to jewelry acquisition and social norms (at p.156); Niromi de Soya, *Tamil Tigress: My story as a Child Soldier in Sri Lanka's Bloody Civil War* (Crows Nest, NSW: Allen and Unwin, 2011) at 82, in which she references the LTTE's "Gold Campaign" to secure funding for the organization.

<sup>878</sup> Sri Lanka Army, "LTTE Gold Handed Over to Rightful Owners to Kilinochchi," online: Defenders of the Nation, online: <https://www.army.lk/news/ltte-gold-handed-over-rightful-owners-kilinochchi>

<sup>879</sup> "The LTTE Gold Tax," online: [http://coins.lakdiva.org/ltte/uthrj\\_gold\\_tax.html](http://coins.lakdiva.org/ltte/uthrj_gold_tax.html); Sri Lanka Army, "LTTE Gold Handed Over to Rightful Owners to Kilinochchi," online: Defenders of the Nation, online: <https://www.army.lk/news/ltte-gold-handed-over-rightful-owners-kilinochchi>

<sup>880</sup> "The LTTE Gold Tax," online: [http://coins.lakdiva.org/ltte/uthrj\\_gold\\_tax.html](http://coins.lakdiva.org/ltte/uthrj_gold_tax.html); Sri Lanka Army, "LTTE Gold Handed Over to Rightful Owners to Kilinochchi," online: Defenders of the Nation, online: <https://www.army.lk/news/ltte-gold-handed-over-rightful-owners-kilinochchi>

rightful property; it is estimated that there are around 6000 individual families and religious organizations that have yet to receive their rightful property from GoSL.<sup>881</sup>

The above reflection demonstrates the significance of gold and how it motivated the military to allow financial institutions to access Manik Farms. The General further explains that “they have enough gold and money in the camp...and it has to be deposited somewhere.”<sup>882</sup> In addition, the military identified the need for small loans for IDPs for consumption smoothing.<sup>883</sup> In this discussion, a question was raised with respect to the temporary nature of Manik Farm and the time commitment expectations with respect to loan repayment. In other words, Manik Farm was intended to house IDPs on a temporary basis; International advocacy groups accused the military of intentionally holding IDPs in captivity as the “temporary nature” of the camps was used as disguise.<sup>884</sup> As such, the idea that loans would be disbursed suggested a long-term goal. The General elaborated that it was through “military action and banks intervened and acted on our instructions” to provide loans in the interim and they did not anticipate a delay in resettling people.<sup>885</sup>

*P: The President ordered me actually to resettle Tamil people...it was a big priority. One thing is he wanted is to create goodwill for the Tamil people. The*

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<sup>881</sup> “The LTTE Gold Tax,” online: [http://coins.lakdiva.org/ltte/uthrj\\_gold\\_tax.html](http://coins.lakdiva.org/ltte/uthrj_gold_tax.html); Sri Lanka Army, “LTTE Gold Handed Over to Rightful Owners to Kilinochchi,” online: Defenders of the Nation, online: <https://www.army.lk/news/ltte-gold-handed-over-rightful-owners-kilinochchi>

<sup>882</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>883</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>884</sup> Manik Farms was closed in 2012. “Sri Lanka Shuts Manik Farm IDP Camp,” online: The Hindu <https://www.thehindu.com/news/sri-lanka-shuts-manik-farm-idp-camp/article3935374.ece>

<sup>885</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

*second reason could have been a certain amount of pressure being mounted from the UN.*

*So I had to go the Manik Farm and explain to people, by that time they really wanted to go back. The delays were due to the demining process... we had to clear the landmines before people could leave the Camp.<sup>886</sup>*

The above referenced quote is problematic as the loan repayment process envisioned indicates a long-term plan, as such the military's public statement that the Manik Farm was created as temporary space for IDP may have been false. The entry of financial institutions and the extension of credit demonstrate an incompatible strategy.

During the interview, the General confirmed that the recipients of these initial small loans provided by the banks were identified and selected by the military. The extract below demonstrates the militarization of creditworthiness and the terms of the loan:

*P: The banks had about RS20 million, and we managed it... in the sense we don't handle money. That money was deposited in the bank. And out of that, on our recommendation we select ex-LTTE cadre or IDP so maybe who most needed, maybe to help women....we selected women. And for them we give 20,000 or 50,000 each and they don't have the pay back the interest for 6 months, 7 months onward they have to pay the interest and some instalment.<sup>887</sup>*

During this discussion, financial literacy as an accompanying service was addressed. As one loan officer remarked that the IDP recipients "don't understand depreciation, they don't understand interest. They get the loans but they don't understand interest. They don't understand how to market the products."<sup>888</sup> The military response was simply that even though market entrance for financial institutions was permitted, "private banks are self-

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<sup>886</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>887</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>888</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

interested.”<sup>889</sup> When pressed on the issue of the on how banks may be part of the post-war reconstruction strategy, the General responded that “private banks they are all money-oriented people”.<sup>890</sup>

#### 4.6.7 Detainees as Consumers

The detainees were segregated into categories; the determination of the category was based on the degree of involvement within the LTTE organizational structure.<sup>891</sup> The determination of involvement was made through an interview process (more like interrogation<sup>892</sup>). As these were unarmed civilians during the ‘capture’, the military general offered that only interviews were conducted in a kind and warm manner.<sup>893</sup> When pressed on why civilians were being held as “ex-LTTE combatants”, the military general responded:

*P: We did interview them because we had our own intelligence also running, right based on the records, previous records and stuff. So that screening was done to be very honest. And then the government gave them a general amnesty, and they were put to rehabilitation that’s how the rehabilitation centers came into being. Initially, it was 24,000 protective accommodation and rehabilitation centers.*<sup>894</sup>

There are 24 rehabilitation centers for adult ex-LTTE combatants; the child combatants were transported and detained separately in Colombo, the capital city.<sup>895</sup> The

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<sup>889</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>890</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>891</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>892</sup> Interrogation techniques on ex-LTTE combatants; “Sri Lanka’s ex-LTTE cadres float political party,” (March, 2017) online: The Hindu <https://www.thehindu.com/news/international/sri-lankas-exltte-cadres-float-political-party/article17408591.ece>

<sup>893</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>894</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>895</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

child combatants were effectively moved away from their families and surviving loved ones. The rationale for the separation is based on the educational facilities available in Colombo during that time.<sup>896</sup>

*P: The purpose was to mainly focused on catch-up education....Because there were a lot of potential that we saw in them and we wanted them to do their basic studies again. They got involved in sports. They were taken through spiritual training then psychological training. Having done the social profiling these were implemented for a period of – say somewhere for a duration of 3 months or maximum one year.<sup>897</sup>*

The thorough rehabilitation process employed for child combatant is notable due to the international spotlight on the brutal civil war. The ages ranged from 8-11 years old; at the time of this interview many of the former child combatants held by the State either “aged out”, returned to their families or remain in detention.<sup>898</sup> Not only were families torn apart during the civil war, but also during the ‘peace-process’.

During this qualitative interview, the General intimated that out of the 12,000 ex-combatants, 3,700 were women.<sup>899</sup> That is approximately one-third of the total detained population. Described as a “home-grown system of rehabilitation” designed solely by the Sri Lankan government, the rehabilitation includes creating life skills. Further, this system “came down from the President, it was his brainchild.”<sup>900</sup> In discussing the strategy, the General explained that there was support from NGOs, the *International Organization For Migration*, and the Tamil community. He further explained that:

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<sup>896</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>897</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>898</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>899</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>900</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

*P: With respect to the NGOs and INGOs....everything was channeled through the Sri Lankan government. So that was the beauty of it because the government was very closely monitoring the process because they wanted these ex-combatants to be reformed, rehabilitated and reintegrated into society. And our process was the centre-based and the community-based as well, the rehabilitation process because it's not only the ex-combatants but we went to the community as well because these people were rejected by the community. And there was hatred attitude towards the ex-combatants for obvious reasons because they have taken their children forcefully and all that, right I hope you understand.<sup>901</sup>*

The above reference builds the State's narrative of how the military rescued and freed the Tamil communities in those regions from the LTTE. Unfortunately, the narrative does not consider that many of the families also supported the LTTE for political, social and cultural reasons. The accuracy of obtaining community-based input was not verified, but when asked to further elaborate on the rehabilitation of the detainees, the General explained:

*P: We went for community-based rehabilitation as well and we educated the government servants. We educated the elders in the society. We educated even their families, immediate family members. And we ensured that these people will be well fitted in and that once they go back to their society. So in the centre, in the centre we ensured that they were given psychological training, they were given medication. Their health was very well looked after.<sup>902</sup>*

The General purposely pointed out that the well-fare of the detainees was a significant consideration in the rehabilitation process.

*P: So after rehabilitation, our responsibilities is also to ensure that once they go to the society that they have an inclination to start their livelihood so that livelihood assistance was provided to them. And during the process of rehabilitation we gave them vocational training which is one major key aspect of this. Which leads to a certificate, a national vocational qualification which is internationally recognized and that's up to level 3 where it's more or less equal to a diploma. And with that*

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<sup>901</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>902</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).; see also Hettiarachchi, Malkanthi, "Sri Lanka's rehabilitation program: a new frontier in counter terrorism and counter insurgency," (2013) 4:2 *Prism : a journal of the Center for Complex Operations*, 105-122.

*qualification they can even go overseas for employment. Now I have a batch of 40 masons and carpenters who will be going to Singapore very soon for employment.*<sup>903</sup>

The vocational training component includes financial inclusion initiatives, if the detainees do not opt for trade training. The overseas placements include South Korea, Japan and the Middle East; all of these countries agreed to provide employment opportunities for ex-LTTEE rehabilitated laborers.<sup>904</sup>

#### 4.6.8 Entry of Financial Institutions

Before 2009, the Northern and Eastern part of Sri Lanka were partially ‘separate’ from the State due to its LTTE stronghold. The LTTE-controlled areas functioned under a self-governance model; and the “LTTE runs a de facto state administration, which includes revenue collection, police and judiciary as well as public services and economic development initiatives.”<sup>905</sup> The LTTE administration was designed as an autonomous region within Sri Lanka.

Financial institutions were in the Eastern part operated as normal; however, in the Northern part of Sri Lanka, the LTTE had its own bank, the “Tamil Eelam Bank” (TEB) and used western union and other remittance services as its main source of fiscal inflow from the Tamil Diaspora.<sup>906</sup> The Tamil Eelam Bank was created in 1994, and later expanded to operate 11 branches and offered loan services.<sup>907</sup> As there was an absence of

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<sup>903</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>904</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>905</sup> Hettiarachchi, Malkanthi, “Sri Lanka’s rehabilitation program: a new frontier in counter terrorism and counter insurgency,” (2013) 4:2 *Prism : a journal of the Center for Complex Operations*, 105-122.

<sup>906</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>907</sup> Joanne Richards, “An institutional history of the Liberation Tigers of Tamil Eelam (LTTE)” (CCDP Working Paper series No. 10) at 49.



financial institutions, this LTTE owned and unique ‘bank’ was operated outside the purview of the State regulator and was described as a manual bank; electronic transfers were unavailable.<sup>908</sup> Pursuant to the regulator’s understanding, the Tamil Eelam Bank did accept deposits, engaged in pawning services and provided loans<sup>909</sup>. In fact, the regulator further explains that this bank did not have “non-performing loans”; the repayment rate was assessed at a 100%.<sup>910</sup>

These post-war areas were seen to be an “untapped market for financial institutions”<sup>911</sup>. The then CBSL Governor Ajith Nivard Carbal permitted 91 bank branches to operate in those conflict-affected areas. Governor Carbal explained that “We are seeing a lot of interest from financial companies (after the war) to expand into that area...the rebels ran their own banking system before their defeat.”<sup>912</sup> It is also interesting to note that the first foreign bank to establish a presence in the Northern region was HSBC, due to promise of accessing the enormous remittance market contemplated.<sup>913</sup>

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<sup>908</sup> Joanne Richards, “An institutional history of the Liberation Tigers of Tamil Eelam (LTTE)” (CCDP Working Paper series No. 10) at 49. There is an absence of detailed information and the TEB was created and operated under secrecy, and its function within the fiscal system is undocumented. The absence of such detailed information surrounding the operation and the collapse of this bank has created a narrative around the in-flow/out-flow of money was based on the Tamil Diaspora. The common understanding is that the LTTE did not have its own currency and used a remittance system.

<sup>909</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>910</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>911</sup> “LTTE Operated 11 Bank Branches in North Before its Defeat,” (February 2010) online: Deccan Herald <https://www.deccanherald.com/content/52800/lte-operated-11-bank-branches.html>

<sup>912</sup> “LTTE Operated 11 Bank Branches in North Before its Defeat,” (February 2010) online: Deccan Herald <https://www.deccanherald.com/content/52800/lte-operated-11-bank-branches.html>

<sup>913</sup> “LTTE Operated 11 Bank Branches in North Before its Defeat,” (February 2010) online: Deccan Herald <https://www.deccanherald.com/content/52800/lte-operated-11-bank-branches.html>

During the interviews with military personnel, it was suggested that the infrastructure (such as road repairs, electricity, housing for employees and supplies) had to be established in order for financial institutions to enter these post-war areas.<sup>914</sup> The General explained:

*P: The financial institutions are established, the ATM machines are fixed and working because we were able to do all the infrastructure.*<sup>915</sup>

During the period of this study, the research revealed that the previous capital of the defacto LTTE organization, Killinochi<sup>916</sup> had over 60 bank branches.<sup>917</sup> However, in Mullaitivu and Puddukuddirupu, only 2 state owned banks were visible. These two towns are known to be central to the heart of the LTTE's historical success in maintaining a stronghold for over a decade due to their camps, suicide fighter training sites, navy and air force base. It is alleged that the LTTE's intelligence was also based in those areas; as such the State has been slow in providing access to resources and services, as well as financial inclusion measures. The stark disparity in services and infrastructure was observed by the researcher. When asked if the disparity was a strategic and military decision to 'neglect' or 'delay' services to these two towns, the General avoided the direct question and responded:

*P: Yeah, yes well because Kilinochchi is a major town and a central place, but those other towns are not.*

The significant finding in this interview is two-fold; the issue around financial inclusion and who is able to access this is political and driven by military decision-making,

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<sup>914</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>915</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>916</sup> Sarath Kumara, "Sri Lanka: Fall of Kilinochchi Marks Turning Point in Civil War," (2009) online: World Socialist <https://www.wsws.org/en/articles/2009/01/sril-j05.html>

<sup>917</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

not the financial regulator. The financial services arranged and overseen by military, the data in turn is used as a tool for surveillance of vulnerable communities.

Financial institutions were invited by the State to participate in financial inclusion initiatives created for ex-LTTE combatant as part of the rehabilitation process. “The financial institutions came in once they (the detainees) were integrated (into society) after they were rehabilitated.”<sup>918</sup> When asked why the Military took such an active role in designing and propelling these initiatives, the General shared that:

*P: I mean, a lot of people are blaming the army for getting involved in this process no but actually nobody else was going to do it; the government didn't have the capacity over there that's why the army had to go and do it.*<sup>919</sup>

The inability for other stakeholders, such as non-profits and private sector actors to enter the space was predicated on the tight control of access to Northern and Eastern exercised by the Military. During the period of this study, the State prevented NGOs and other diaspora organizations to enter and contribute in those post-war regions.<sup>920</sup> Therefore, it may not be that other stakeholders were not willing to contribute to the rehabilitation process, but were dissuaded due to political and geographical prohibitions enforced by the State.

#### 4.6.9 The Role of Banks in Rehabilitation

In exploring the contribution of financial institutions in the rehabilitation process, the General explained the source of this policy initiative is based upon the President's order to

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<sup>918</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>919</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>920</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

award RS 500 million towards IDPs, rehabilitees, and other community groups as a compensatory measure for injuries sustained as a result of the war.<sup>921</sup> The President as the deemed “finance minister of Sri Lanka” determined the amount himself.<sup>922</sup> “The President received cabinet approval to release the funds to established financial institutions”<sup>923</sup>, which include the Bank Of Ceylon or People’s Bank.<sup>924</sup> The rehabilitation package envisioned a social services plan to support female-headed households, injured and disabled individuals within different financial schemes.<sup>925</sup>

*P: They were given grants worth over 250,000 rupees and then on a monthly basis the injured are being paid rupees 3,000 even today and it will be done in a lifetime. It is in addition to the other benefits that they get because in Sri Lanka most of the services are free unlike in the western world, such as education and health care. Also, there is electricity now...connections were given free of charge, where previously there was not.*<sup>926</sup>

The above quote again reinforces the State’s position in demonstrating its intention in providing a quality of life for survivors of the war in predominately Tamil areas, which were part of the LTTE reign. The underlying mission for the State was to “provide assistance to these people just to give a kick-start to their life.”<sup>927</sup>

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<sup>921</sup> Interview of stakeholders in Sri Lanka during field work (December 2013); Arandara, Rathnija, & Shanuki Gunasekera, “Financial Inclusion and Inclusive Growth” World Bank Policy Research Working Paper 9204.

<sup>922</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>923</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>924</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>925</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>926</sup> Interview of stakeholders in Sri Lanka during field work (December 2013); Government of Sri Lanka, “Rehabilitation of ex-LTTE cadres nearing completion,” (2014) online: <https://reliefweb.int/report/sri-lanka/rehabilitation-ex-ltte-cadres-nearing-completion>

<sup>927</sup> Interview of stakeholders in Sri Lanka during field work (December 2013)

In line with the State mission surrounding rehabilitation efforts, the President further allocated RS 525 million towards compensation to pre-selected ex-LTTE combatants.<sup>928</sup> These funds included micro-credit initiatives, described as *livelihood project loans*, to encourage small business creation. A ceremony at the President's residence at Temple Tree marked the initiation of this program, which included ex-LTTE combatants as guests.<sup>929</sup> The irony of this 'ceremony' again represents the State's image making strategy as depicting itself as the benevolent victor; despite the inequities that continue to exist in those very communities captured.<sup>930</sup> The reintegration of ex-combatants into society is not a novel method in peace building efforts<sup>931</sup>; yet the political, social and economic considerations become entangled in policy formation. Unfortunately, the implementation of these initiatives have not accomplished the intended outcomes. In a study by Dr. Miriyagalla suggests that the failures of ex-LTTE combatants to improve their economic conditions was due to myriad of factors, such as an absence of training, skills

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<sup>928</sup>Interview of stakeholders in Sri Lanka during field work (December 2013); "Rs. 525 m in livelihood project loans for ex-LTTE combatants," (August 2013) online: <http://www.ft.lk/article/182722/Rs--525-m-in-livelihood-project-loans-for-ex-LTTE-combatants>; Ranil Wijayapala, "Livelihood project Loans for Ex-Combatants," (2011) Sunday Observer, 28.

<sup>929</sup>Interview of stakeholders in Sri Lanka during field work (December 2013); I was promised footage from this event – which I never received.

<sup>930</sup> Interview of stakeholders in Sri Lanka during field work (December 2013)

<sup>931</sup> Ranil Wijayapala, "Livelihood project Loans for Ex-Combatants," (2011) Sunday Observer, 28; Rekawa, Asela, "A Study Into The Challenges & Failures Of Postwar Reconstruction In Sri Lanka," (October 2019) online: <https://www.colombotelegraph.com/index.php/a-study-into-the-challenges-failures-of-postwar-reconstruction-in-sri-lanka/>; citing Thalpawila, O. N. (2015) – Rehabilitation and Reintegration as a Key Activity of Post – War Peacebuilding in Sri Lanka, which uses the DDR as an analogous case study.

and meaningful access to financial services.<sup>932</sup> The study further reinforced that peace building efforts must include a mechanism to improve the economic lives of ex-combatants.<sup>933</sup>

#### 4.6.10 MFI Reconciliation and Rehabilitation

The post-war landscape has embraced reconciliation efforts from the most unlikely stakeholders. MFIs are also engaged in reconciliation through their contribution in social performance while administering financial inclusion services. An executive of a Non-Profit MFI described how face-to-face with individual borrowers is an important local custom, which demonstrates “respect, especially after the war...we must show them we all can get along.”<sup>934</sup> Further, in the context of extension of credit, social conditions in some lending arrangements are a prerequisite to obtaining a loan. Below is an example of such an arrangement, which is cloaked in a *reconciliation agenda*:

*P : Another thing is, in post-war areas we make certain social mandatory issues also. We tell them we approve a loan if all your children are going to school. So now, even before saying their children are going to school one Tamil girl even sang a Sinhala song.<sup>935</sup>*

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<sup>932</sup> Danura Miriyagalla, “Socio-economic reintegration of former LTTE combatants in Sri Lanka: self-employment, sustainable incomes and long-term peace,” (2014) 26:3 Global Change, Peace & Security 251-262.

<sup>933</sup> Danura Miriyagalla, “Socio-economic reintegration of former LTTE combatants in Sri Lanka: self-employment, sustainable incomes and long-term peace,” (2014) 26:3 Global Change, Peace & Security 251-262.

<sup>934</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>935</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

*So that is, I could say that's the –I don't know whether you are aware in microfinance organization who are likeminded like us we have a thing called social responsibility and we create peace in the community.*<sup>936</sup>

The above example is interesting as the Executive perceived the Tamil child singing a Sinhala song as reconciliation. Corporate social responsibility is a central mandate for this particular MFI, yet during discussions, the Executive Director admits that some of the healthcare, financial literacy and employment initiatives are not applied or not yet available for their borrowers due to a lack of institutional funding and infrastructure.<sup>937</sup>

#### 4.6.11 The Ministry of Rehabilitation & Its Role in Financial Inclusion

The Ministry of Rehabilitation and Prison Reforms was established in 2010, at the end of the war. It has now changed its name to the *Ministry of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs* (“The Ministry of Rehabilitation”).<sup>938</sup> This ‘name change’ is indicative of its mission, which reinforces the narrative that victims of war from Tamil descent, who are predominantly Hindu are best served through rehabilitation and prison reform initiatives.<sup>939</sup> The Ministry of Rehabilitation, through the Presidential nomination process appointed a private lawyer for a three-year term.<sup>940</sup> It

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<sup>936</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>937</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>938</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013. See also, Ministry of Rehabilitation, Resettlement & Hindu Religious Affairs, online:

[http://www.gic.gov.lk/gic/index.php?option=com\\_org&Itemid=4&id=156&task=org&lang=en](http://www.gic.gov.lk/gic/index.php?option=com_org&Itemid=4&id=156&task=org&lang=en)

<sup>939</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>940</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013,

functions under the Act passed in 1987 during the war.<sup>941</sup> Despite the Ministry's public focus on national policy, it is designed to create and work with communities in the Northern and Eastern part of Sri Lanka. As described by the government agent, this Ministry is "specially meant for north and east."<sup>942</sup> Simply put, the rehabilitation program is designed for Tamils exclusively, which is troubling at a deeper level. By designing financial inclusion initiatives disguised by rehabilitation efforts, private financial institutions are used as pawns to create further political and economic exclusion due to the regulatory microscopic oversight as revealed by this study's findings.<sup>943</sup>

#### 4.6.11.1 The Livelihood Assistance Program

The initial program was established in 1980 and it was designed to create a self-employment driven loan scheme for unemployed, widowed, and displaced individuals who were affected by the communal war due.<sup>944</sup> In 2010, this program was expanded to include ex-Liberation Tigers of Tamil Eelam (LTTE) combatants as part of the rehabilitation process.<sup>945</sup> The progression of including ex-LTTE combatants in this program is also a symbolic state gesture to demonstrate inclusive rehabilitation and

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<sup>941</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>942</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>943</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>944</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013; Bureau of The Commissioner General Rehabilitation, "Rehabilitation – A Path to Freedom: Rehabilitation of Ex-Combatants and Drug Addicts" (2013) (Original copy in Researcher's possession).

<sup>945</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013



reconstruction within communities in the Northern and Eastern regions.<sup>946</sup> As described by the interview participants, the Ex-LTTE combatants are “rehabilitated” by the Military. They are then deemed to be eligible for the loan scheme.<sup>947</sup> These ex-combatants are trained within the rehabilitation centers in secret locations throughout the island.

The rehabilitation program is designed for 1-2 years.<sup>948</sup> The training is comprised of vocational and literacy training that is used as part of livelihood program for the ex-LTTE cadres, also characterized as a “self-employment loan campaign for people who were affected by war.”<sup>949</sup> This loan campaign is akin to ‘microcredit,’ and follows the ideological underpinnings of financial inclusion. The demographic included are also ex-LTTE cadres disabilities, in the hope of making them economically independent. The loan scheme administered by the Ministry of Rehabilitation is described as the self-employment or livelihood assistance project.<sup>950</sup> As part of the loan design, the underlying rationale was to include members who sustained lifelong injuries or a disability due to the war.<sup>951</sup> Examples of contemplated income-generating activities consisted of auto-rickshaw operations, poultry farming and other small home-businesses.<sup>952</sup>

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<sup>946</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>947</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>948</sup> Interview data indicates that all state banks are part of this initiative. Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>949</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>950</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>951</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>952</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

Once the training is completed, and the detainees are ready for release, they are deemed to be generally eligible for the loan program established by the Bureau of Commissioner General Rehabilitation.<sup>953</sup>

#### 4.6.11.1.1 Process and Eligibility

The livelihood loan process involves government approval at different moments within the lending arrangements. Each individual applicant (the rehabilitated ex-LTTE combatant) must apply for the program loan at the allocated government office in the area. Participants raised the theme of “review and creditworthiness” within the mechanics of the actual determination of the loan process.<sup>954</sup> The loan review committee makes decisions on creditworthiness based on multi-agency review and interviews. As a result, a public-private partnership between financial institutions and the State is created, as are result the loans are structured to meet the State’s requirement.<sup>955</sup>

It is significant to note that the loan application used is available in three (3) languages: Tamil, Sinhalese, and English. When asked if the participants in the loan program are able to read in their preferred language of choice and whether they understand the concept of interest. The analysis of the qualitative data suggests that the disclosure of terms and access to information for loan applicants is predicated upon verbal explanations

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<sup>953</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013. See also, Bureau of The Commissioner General Rehabilitation, “State Ministry of Prison Management and Prisoners Rehabilitation Affairs,” online: <https://bcgr.gov.lk>

<sup>954</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013

<sup>955</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013

and translations by the lender and decision-makers.<sup>956</sup> The assumptions by the Committee regarding the beneficiaries' comprehension of financial formal obligations and individual entrepreneurial capability do not consider conditions of education, literacy or post-war conditions. For instance, bank officers physically follow-up on their customers to determine the feasibility and capability of the borrower's business. This practice appears to be beyond of the scope of a lending relationship. In some instances, applications are rejected based on the borrower's inability to produce adequate documents or fail to demonstrate business capability.

When asked if applications are rejected and under what rationale, the participant explained that the loan rejections are based on a "capability standard."<sup>957</sup> It appeared that the applicant was required to convince the State and the loan review committee that he or she has the "capability" to undertake the business.<sup>958</sup> Cultivation of land is a cultural and primary occupation for many communities in the Northern and Eastern part of Sri Lanka. As such, many applicants desired to return to their land and professional occupation after the war. Unfortunately, proof of land and deed information is required to approve a loan based on cultivation or farming pursuits. Due to the war, many individuals were unable to produce appropriate documentation.<sup>959</sup> The standard fails to account for the post-war

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<sup>956</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>957</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>958</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>959</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

condition in which many communities are still living in; displacement and a loss of tangible documents are part of their daily lives.

Further, the premise of the loan program is based on general eligibility upon release from the rehabilitation center. The qualitative data demonstrates that the sentiment is functional from the administrative perspective, and the source of funds are distributed by State banks, as instructed by the Ministry of Rehabilitation. The discussion further identifies that the interest rate of these loans is artificially reduced by the State to offer a lower than market rate available by non-bank financial institutions and private lenders. This loan scheme is designed to provide all applicants with a loan either through the Bank of Ceylon, the People's Bank and National Savings Bank of Sri Lanka, which are all State banks.<sup>960</sup>

The analysis reveals that loans are awarded in the range of Rs 25,000-250,000 at 4% per annum.<sup>961</sup> The applicant has to submit a project report or project proposal in addition to the application form. The loan cycles are administered with different duration periods; the repayment is structured as 6 years, 5 years or 3 years.<sup>962</sup> The applicants are encouraged to create their own business plan. There appears to be no criteria or required guide that is provided to them. It is often submitted in a form of a letter, which is 'handwritten' in Tamil. As indicated in the qualitative data, the applicants are deemed to

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<sup>960</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>961</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>962</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

be ‘not educated’; however, no accommodation is made for low literacy, communication and/or language barriers.<sup>963</sup>

Further, the Ministry appears to make a distinction in the applicants’ entry into the loan program on how the recipients were characterized by the military. An analysis of the qualitative interview below reveals how the recipients are described as “those who surrendered” and “the other people who were affected.”<sup>964</sup> The terminology used is evident of the State narrative as not addressing the human rights tragedies that affected this community through violent capture, sexual assault and illegal detention. Many of these recipients have alluded that they were captured and held illegally for many months, and did not surrender.<sup>965</sup> The Ministry further uses a double monitoring system to monitor the loan and repayment process as described below:

*I: To this date, how many loans have been issued?*

*P: So far, we have given them out to those who surrendered and the other people who were affected about 5,000, and the banks monitor the loans.<sup>966</sup>*

#### 4.6.11.2 Defining Rehabilitation and State Narrative

It is significant to note that the terminology used by the Ministry is predicated on problematic assumptions. In an interview with a government stakeholder, the issue of how “rehabilitation” is defined was discussed. An extract of the interview is recorded below and

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<sup>963</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>964</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>965</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>966</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

provides evidence of further challenging issues surrounding terminology, which in turn blurs financial inclusion initiatives. For instance, the government stakeholder explained that the definition of “rehabilitation” includes those “who are affected by war or war connected activities.”<sup>967</sup> The government stakeholder explained, “We have to rehabilitate them. Because they were ex-LTTE members and they were captured by the army or surrendered to the army.”<sup>968</sup>

An analysis of the qualitative data focuses on how the Sri Lankan state contemplates “rehabilitation.” Respondents appeared to employ the term synonymously with “resettled” and / or “war affected people.” The conceptual framing of rehabilitation connotes a particular past wrong doing that creates a “restoration of former rights, authority, or abilities.”<sup>969</sup> The distinction within terms of eligibility create a narrative of how the Sri Lankan state perceives Tamils, namely as a group that must be rehabilitated. Another interesting observation to note in the above referenced discussion demonstrates how the Government of Sri Lanka’s (GoSL) narrative permeates policy initiatives. To illustrate, the interview participant, a high level decision-maker in this particular discussion, used the term “captured” instead of acknowledging that “most ex-LTTE combatants surrendered to the military.”<sup>970</sup> The distinction again is a vital component to

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<sup>967</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>968</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>969</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>970</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

understand the context in which these initiatives are created and designed for Tamil beneficiaries to accomplish financial inclusion under this state sponsored loan scheme.<sup>971</sup>

#### 4. 6.11.3 Demand Payment and Enforcement

Enforcement and monitoring of loan repayment is an administrative component which the Ministry of Rehabilitation currently oversees as part of its rehabilitation and reconciliation efforts. The repayment mechanisms are structurally very similar to that of other microfinance initiatives; however, in this program, the State is charged in facilitating repayment.<sup>972</sup>

The methods employed appear to mimic a formalized process. In an analysis of the qualitative data below, it appears that the case managers or loan officers as the State's representative visits recipients' homes to encourage repayment. This informal method, which is beyond the scope of the ordinary collection process, may appear to be a cultural consideration. However, the power dynamics in force and the contextual setting are problematic. The recipients are former LTTE-members and /or victims of the war, and the Ministry of Rehabilitation is a representative of the GoSL, the oppressor. In conversations with some recipients, I personally observed a discomfort experienced by recipients in these *acts of familiarity* engaged by State representatives. When I asked one recipient if this 'dropping by' to facilitate repayment was stressful – I was told that they do not have a choice to prevent the Bank and State representatives from coming to their homes, or talking

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<sup>971</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>972</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

to their neighbors about their financial affairs<sup>973</sup>. By acquiescing to this practice, the recipients simply conform to this intrusive condition in order to obtain the funding and stay in the program. One recipient remarked, “We need the money and ‘it is better than war’”<sup>974</sup>

Further highlighted in this interview is the fact that the legal counsel of the Ministry of Rehabilitation stated he accompanies the loan officer in the home visits. “I myself have gone to the houses.<sup>975</sup> We go in batches everywhere, we go once in 3 months, we select some individuals, and we go and bank people are also going.<sup>976</sup>” It is important to recognize the political climate during the period of this study was challenging to visitors and Tamil survivors. The culture of military surveillance was in effect and affected the interaction of stakeholders and recipients.<sup>977</sup>

When asked about how non-performing loans are administered (the non-payment of loans), the lawyer in this interview reluctantly admitted that 500 recipients thus far were unable to meet their loan obligations.<sup>978</sup> This number troubled the lawyer, as he further disclosed that the financial institutions see this as a challenge, and consequently withhold

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<sup>973</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>974</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>975</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>976</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>977</sup> Asylum Research Centre, “Sri Lanka : Query Response-Update, The Situation of Tamils,” online: <https://www.refworld.org/pdfid/56e2e1584.pdf>; Human Rights Watch, *Why Can't We Go Home? Military Occupation of Land in Sri Lanka* (USA: Human Rights Watch, 2018)

<[https://www.hrw.org/sites/default/files/report\\_pdf/srilanka1018\\_web2.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka1018_web2.pdf)>. These two articles illustrate how military occupation affects the daily lives of Tamil communities.

<sup>978</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.



contributing more funds to the program.<sup>979</sup> These financial institutions have also threatened not to participate as partners in payments of this program, if the loans are not recovered by the Ministry of Rehabilitation.<sup>980</sup> In examining this data, the numbers of the recipients of this loan scheme in which about 5000 individuals have participated in, only 500 loans are non-performing. During this part of the discussion, I intimated that the numbers should not appear to be troubling from a statistical approach.<sup>981</sup> However, the Ministry lawyer responded by articulating how financial institutions indirectly affect the enforcement component of the program. The non-compliant loans affect the source of funds, as the “banks will not release funds unless there is a substantial amount of payback.”<sup>982</sup>

The non-repayment of loans is framed around multiple factors. For instance, environmental challenges such as floods and droughts faced by the recipients engaged in agricultural businesses were a factor for non-payment.<sup>983</sup> The veracity of the recipients’ articulation of these hardships are probed and questioned by the counsel for the Ministry of Rehabilitation, and according to the committee review “15-20% of the *excuses* for failure to repay are not genuine.”<sup>984</sup> The process of enforcement at the time of this study was to

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<sup>979</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>980</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>981</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>982</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>983</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>984</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)..

include a legal enforcement mechanism as part of the collection mechanism. Legal action appears to be a last resort measure with a knowledge that legal action elicits a particular fear within this community. From my analysis, it is unclear whether this enforcement option is used as a punitive option.<sup>985</sup> To date, no formal judicial opinions have been reported on this issue.<sup>986</sup>

It is significant to note that the program administrators are also cognizant of public perception. Despite close links with the State apparatus and the military, the administrators do not want the communities they service to know that they are connected to the military. The false imagery of arm's length dealing is maintained to assuage the fears of occupation and surveillance, yet the program is military driven. This is highlighted in the following narrative:

*P: With those people we work very closely, but not with the general army because they should be – we are very close to ordinary close. If we associate with them closely, the people don't like...<sup>987</sup> but..you know.. because the army is there they are free.<sup>988</sup>*

The above statements reflect that military occupation represents freedom for the Tamil community, when in fact it represents something else. The fear of surveillance and the memories of violence have not miraculously escaped.<sup>989</sup>

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<sup>985</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>986</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>987</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>988</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>989</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013);

“Sri Lanka: Government Slow to Return Land Create Consultative Process to End Military Occupation” *State News Service* (Oct 9, 2018)

online:<http://link.galegroup.com/apps/doc/A557501752/AONE?u=wind05901&sid=AONE&xid=920a352d>; see also Meenakshi Ganguly, ed, “Why Can't We Go Home? Military Occupation of Land in Sri Lanka” (9 October 2018) online: *Human Rights Watch*

#### 4.6.11.4 Banks Profiting and Government Underwriting Loans

The source of funding for financial inclusion initiatives are laced with multiple layers of rights and obligations between the providers and recipients.<sup>990</sup> The financial sustainability of these services is predicated on loan performance and successful program outcomes.<sup>991</sup> The recipients, on the other hand, are subject to eligibility requirements and loan compliance under the terms and conditions of the services received.

According to the Ministry of Rehabilitation, the banks are reluctant to lend due to repayment issues, which in turn affects the redistribution of funds. New applicants may not be able to obtain funding if no funds are available, as defaulting loans are not collected.<sup>992</sup> The flow of capital or source of funding serves as dual purpose for the financial institutions and the State, as the State requires funding to fulfill the needs of the program, and the banks obtain a government guarantee for non-performing loans.<sup>993</sup> In fact, as articulated below, the banks ‘profit’ if loans are non-performing as the Ministry of Treasury repays the funds at a 9% interest rate, thereby insulating the banks from a loss. This type of guarantee further mitigates risk and provides stability within the fiscal landscape.<sup>994</sup> The bank extends credit

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<<https://www.hrw.org/report/2018/10/09/why-cant-we-go-home/military-occupation-land-sri-lanka#>>.

<sup>990</sup> GoSL internal memo, “Rehabilitation of Ex-Combatants” (undated, hardcopy in Researcher’s possession).

<sup>991</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>992</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013

<sup>993</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013

<sup>994</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

to each borrower at a rate of 4%. If the loan is deemed to be non-performing, the State returns the funds to the bank at a 9% interest rate, thereby enriching the bank if borrowers are unable to pay back the loan. In other words, the bank is essentially reimbursed by the State for the loss of the loan at a 9% interest rate.

The opposing tensions within one transactional moment illustrate how financial arrangements are predicated by the commercial interest of the banks. On the one hand, banks are providing access to credit and are keen participants in the reconciliation process set out by the national political agenda. On the other hand, their investment may be rewarded, although they are lending to high risk groups knowing that they may face repayment challenges.

Government banks, such as the Bank of Ceylon, supported the livelihood assistance project for rehabilitated ex-LTTE combatants through loan facility mechanisms.<sup>995</sup> This credit allocation was offered to the agency, which administered the program. Small business proposals are submitted in conjunction with the application.

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<sup>995</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).



This chart to illustrate the lending process and was created as a result of the findings during the interview stages.

*P: Their loan applications are evaluated, checked and at times, our people fill it for them, And then it goes to the GA, and then it becomes legal to be submitted to the bank.<sup>996</sup>*

The above “our people” refers to the military intervention within the financial transaction. The lending agreement transforms into a legally binding document once the GA and the military approve the application.<sup>997</sup> The bank’s role is the conduit in providing the funds to accomplish the last step towards financial inclusion. The loan process is predicated on a pre-selection criteria designed by the military. During the interview, each ex-combatant recipient was asked if he or she knew why they were selected, they answered in the negative.<sup>998</sup>

<sup>996</sup>Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>997</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>998</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

#### 4.6.12 Program Funds not Properly Allocated for Purpose

At the time of this study, the President issued a pardon for 20,000 prisoners, who were being processed to move from prisons to the rehabilitation centers. It is interesting to note that these 20,000 prisoners were not ex-combatants, but are individuals that were sentenced through the State's criminal justice system.<sup>999</sup> There appears to be no rational reason of why these prisoners are being processed through the post-war created rehabilitation initiative. When pressed on the policy around this decision, the only answer provided was "yes...these are drug dealers, and drug addicts but not ex-combatants."<sup>1000</sup> Consequently, the pool of resources allotted for the program will be diverted to unrelated rehabilitation measures, thereby diluting the essence of the intended outcome and possibly depriving the intended recipients. It is significant to note that the role of the International Committee for the Red Cross ("ICRC") also funded a part of this financial inclusion initiative. The ICRC has historically maintained its presence in Sri Lanka for over 20 years during the protracted civil war. Prior to 2009, the ICRC was a neutral intermediary between the LTTE and the Government; after the war the organization assisted in post-war humanitarian assistance.<sup>1001</sup> As part of that assistance, the ICRC collaborated with the GoSL in establishing a specific grant to facilitate the livelihood assistance project for ex-combatants.<sup>1002</sup>

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<sup>999</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1000</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1001</sup> International Committee of the Red Cross, "Sri Lanka: ICRC assists thousands of persons in government-run sites for the displaced," online:

<https://www.icrc.org/en/doc/resources/documents/update/sri-lanka-update-090609.htm>;

also see RIN, *Sri Lanka's rehabilitated ex-combatants struggle to adjust*, 4 July 2014, online: <https://www.refworld.org/docid/53bbd8c94.html>

<sup>1002</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

#### 4.6.13 *De-facto* Occupation and Surveillance

The loan implementation is monitored by follow-up teams, which work in collaboration with the Government Agent, who serves as the regional state appointed officer.<sup>1003</sup> The Role of the Government Agent (GA) is quite significant in the post-war context; the GA as part of the State's administrative system, is appointed to "ensure the central level influence at the local level"<sup>1004</sup> and is also described as the "general field officer of the central government."<sup>1005</sup> During post-colonial period, the GA enjoyed a certain level of sovereign autonomy over regional decision-making, however, the erosion of powers has left the GA's role as more of a "government servant who plays a role of a coordinator of "samurdhi" (prosperity) program which is the main relief or poverty reduction program.....specially designed for the political purposes rather than a poverty alleviation program."<sup>1006</sup> As such, the political nature of this role affects economic and financial inclusion initiatives, not just policy allocation of resources provided to communities within the post-war context, but also specifically the Tamil community. For instance, in order for a widow to provide evidence of her spouse's disappearance, multiple processes were required.

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<sup>1003</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1004</sup> R.A.W. Ranasinghe, "Role of Government Agent in Local Administration in Sri Lanka," *International Journal of Education and Research*, Vol. 2.2 (2014) online: <https://www.ijern.com/journal/February-2014/36.pdf>

<sup>1005</sup> R.A.W. Ranasinghe, "Role of Government Agent in Local Administration in Sri Lanka," *International Journal of Education and Research*, Vol. 2.2 (2014) online: <https://www.ijern.com/journal/February-2014/36.pdf>

<sup>1006</sup> R.A.W. Ranasinghe, "Role of Government Agent in Local Administration in Sri Lanka," *International Journal of Education and Research*, (2014) 2:2 online: <https://www.ijern.com/journal/February-2014/36.pdf>

#### 4.6.14 Access to Resources and Evidence of “Disappearance”

During the interviews of recipients, it was discovered that the GA’s office appeared to have inefficient processes in place as the applications were either lost, and had to be redone; or the approval process was slow; or other intentional punitive delays were also reported to the researcher.<sup>1007</sup> During a field visit at a GA’s office in Uduvil, Jaffna revealed a troubling scene.<sup>1008</sup> There was a long line-up with military personnel and civil service personnel engaged in other tasks, and there was no actual customer service, no air conditioners, and no crowd control.<sup>1009</sup> The indifference of the civil service and the military further compounded the apathetic and inefficient climate, thereby affecting the macro lending process. Another observation that was made by the researcher is that the people who were served knew someone or had a prior familial relationship. This type of social capital becomes a challenge when displaced communities are serviced under these cultural norms. Through interviews and observations, there were 4 resettled individuals; they were new to the community and had to return to the Government Office repeatedly as they were not served due to the delays and line ups.<sup>1010</sup> In asking the General, how this affects the lending supply chain in the administration of the livelihood assistance project, he responded as follows:

*P: There was a huge capacity cap immediately after the war that is why the government felt it that there is a requirement to include GA in the process – the government felt that we need to bridge this gap using the GA.<sup>1011</sup>*

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<sup>1007</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1008</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1009</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1010</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1011</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).



In clarifying the role of militarization of civilian affairs as being perceived as the continued “occupation” of Tamil areas, the General reluctantly explains:

*P: It's not occupation at all, no not at all, they don't wear a uniform. Yes, but it is the armed forces who bridged that gap, who, when the capacity was not within the community, all the government officers who were there that's why we moved in and started supporting them. But in the Diaspora there is a huge objection for military being present there which is a threat. Because if the Diaspora is going to create a problem once again in this soil that poor people will be suffering again right. So, don't you look at it that way – look at it that way and for which, we need to ensure their security that's why military presence is required. And also on the other hand, most importantly we are an island nation. We are an island nation so we need to protect our country.<sup>1012</sup>*

The above quote references the objections raised by human rights activists and the Tamil Diaspora to the continued displacement and disruptions caused by the military in post-war regions.<sup>1013</sup> The thematic focus of this study is to examine the financial relations within the financial inclusion agenda, and these moments reflect how the militarization affects those initiatives. The data gathered is also used for surveillance and tracking individual recipients of these loans. Simply put the loan application is not a ‘private transaction’ between the borrower and the bank, but a document that requires multiple State and military interventions and approvals.

An analogous example in the challenges encountered in accessing resources within a militarized zone is when war widows attempt to obtain eligibility as “widows” in order to receive state and non-profit services. After the war, there were about 20,000 people identified as missing, human rights reports have criticized the unanswered calls by the

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<sup>1012</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1013</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

military and the government to address these deemed disappearances.<sup>1014</sup> In order to qualify for the benefits, widows had to provide a death certificate to demonstrate the death of their husband. Unfortunately, if in the case of a disappeared loved one, no death certificate is available, thereby excluding these women from obtaining services, which in turn compound economic hardships.<sup>1015</sup> The “lack of access to family lands and the income it could bring, either because it is occupied by the military, or because they cannot prove ownership, having lost documents when they fled their villages. Many of those who have returned to their land or resettled elsewhere struggle to find the funds to rebuild their houses. Post-war housing programs that require owners to contribute up to a third of the cost have helped push many women into debt. Other families have fallen into debt simply to meet basic needs after returning home following the war with no savings and little government assistance.”<sup>1016</sup> This excerpt from The Crisis Group Report not only reflects the disturbing impact on conflict-affected women, but also demonstrates the post-war conditions sustained by the State and its military.

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<sup>1014</sup> “Civil War: Rajapaksa admits that 20,000 missing people are dead” (2020) online: AsiaNewsIt <http://www.asianews.it/news-en/Civil-war:-Rajapaksa-admits-that-20,000-missing-people-are-dead-49080.html>

<sup>1015</sup> International Crisis Group, “Sri Lanka’s Conflict-Affected Women: Dealing with the Legacy of War,” (2017) Asia Report 289 online: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/289-sri-lankas-conflict-affected-women-dealing-legacy-war>

<sup>1016</sup> International Crisis Group, “Sri Lanka’s Conflict-Affected Women: Dealing with the Legacy of War,” (2017) Asia Report 289 online: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/289-sri-lankas-conflict-affected-women-dealing-legacy-war>

The above raised illustrations demonstrated how corroded the financial inclusion policy framework is within a post-war context. The study further revealed that from the State's perspective, this a minimal price to pay.

*P: In order for us to actually reintegrate people, for us to resettle people and put all infrastructure in place and give them the social life that they wanted and there is law and order in place now. So...we have to protect those people. We have to ensure that they are safe – because they have suffered a lot for 30 years so if we don't protect them and guard them from outside influences right, it's going to be a problem back again to our country<sup>1017</sup>.*

The General's comments above is the State's official position in militarizing civilian lives in post-war areas. The critique is that the military has a clear agenda to nationalize those areas and destabilize any form of Tamil nationalism

#### 4.6.15 Language as a Form of Control

*“When asked about what the official language in Sri Lanka is, a majority of Sri Lankans said that it is Sinhala only while only 15% gave the correct answer of Sinhala and Tamil.”<sup>1018</sup>*

Much has been written around language rights within the Sri Lankan context.<sup>1019</sup> Historically language has been a contentious issue between the two main warring

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<sup>1017</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1018</sup> Centre for Policy Alternatives, “A Look at Language Rights in Sri Lanka,” (Feb. 2016) online: Ilankai Tamil Sangam <https://sangam.org/language-rights-sri-lanka/>

<sup>1019</sup> Sreemali Herath, “Language policy, ethnic tensions and linguistic rights in post war Sri Lanka,” (2015) 14 *Lang Policy* 245–261, citing some of the seminal texts: Canagarajah, S. (2005). Dilemmas in planning English/vernacular relations in post-colonial communities. *Journal of Sociolinguistics*, 9(3), 418–447; De Silva, C. R. (1984). Sinhala–Tamil relations and education in Sri Lanka: The university admissions issue: The first phase 1971–77. In R. Goldman & J. Wilson (Eds.), *From independence to*

communities, it has dominated and created the pathway for the State to install an oppressive system. The *Sinhala Only Act* in 1956, which deemed Sinhala to be the official language, started the onslaught of Sinhala nationalism and in turn affected minority rights.<sup>1020</sup> Language rights at its very basic form is part of cultural and ethnic preservation, and identity forming. As such, the socio-economic and political consequences for the Tamil population were adversely affected.<sup>1021</sup> The General explained that much care was taken in the consultation process to ensure that the dignity of the Tamil culture was preserved in developing the rehabilitation policies.<sup>1022</sup> Any correspondence directed to the Northern and Eastern regions are either in English or Tamil.<sup>1023</sup>

*P: If you are sending a Sinhala letter that will be translated into Tamil, and that will be the process now. So even in the rehabilitation centre, we are running an English course, a Tamil course and a Sinhala course. Also, Tamil courses are compulsory for all of our soldiers. The trilingual policy is being put in place now and there is a separate ministry in Sri Lanka, there is a separate minister who is handling this subject.*<sup>1024</sup>

During this study, language considerations have become sub-theme with respect to financial transactions and the disclosure process lending. The linguistic, cultural and

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*statehood: Managing ethnic conflicts in five Asian Countries* (pp. 125–146). London: Palgrave Macmillan; DeVotta, N. (2003). Ethnolinguistic nationalism and ethnic conflict in Sri Lanka. In M. Brown & S. Ganguly (Eds.), *Fighting words: Language policy and ethnic relations in Asia*(pp. 105–140). Cambridge: The MIT Press.

<sup>1020</sup> From linguistic nationalism to ethnic conflict: Sri Lanka in comparative perspective. DeVotta, Neil, “From Linguistic Nationalism to Ethnic Conflict: Sri Lanka in Comparative Perspective,” (Texas: University of Texas at Austin, 2002), Ph.D thesis.

<sup>1021</sup> Subasinghe, Wasantha, “Language as a one of Vital Root Causes of the Ethnic Conflict in Sri Lanka” Proceedings of the First International Conference on Linguistics in Sri Lanka, ICLSL 2015, Department of Linguistics, University of Kelaniya, Sri Lanka.

<sup>1022</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1023</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1024</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

communication modality affect the core of financial literacy. During focus groups, and individual interviews, it was clear that communities in post-war areas simply applied for the loan without fully understanding the terms, reading the materials, thereby impacting consumer behaviour.<sup>1025</sup> Similarly, the State's rehabilitation initiative places an emphasis on language training, which is intended to enhance the peace-building intuitive and daily lived experiences of the communities affected.

#### 4.6.16 The Regulator's View of Ex-LTTE Combatants and Surveillance

During this qualitative study, success stories are shared as evidence of financial inclusive measures within the post-war reconstruction period. An ex-LTTE combatant, who participated in the above referenced loan program, established a barber shop in the small town of Mankulam and his main customers are the army – his former captors.<sup>1026</sup> The irony of these financial transactions predicated on this customer base, comprised of the oppressor, is tainted by war. Further, the informant below shared that each participant in this program will be under military surveillance:

*P: ....but what the army hierarchy told us in Vanni is that once they are released, they will be under surveillance, under military supervision because they don't want these people to regroup again and get started.*<sup>1027</sup>

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<sup>1025</sup> Shi Zhang, Bernd H. Schmitt and Hillary Haley, "Language and culture: linguistic effects on consumer behavior in international marketing research," in S. Jain, *Handbook of Research in International Marketing* (Edward Elgar Publishing: UK, 2003) online: <https://www0.gsb.columbia.edu/mygsb/faculty/research/pubfiles/853/language%20and%20culture.pdf>

<sup>1026</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1027</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

The above quote encapsulates this idea that surveillance is a condition within the lending process, and that the financial inclusion initiatives disguised as rehabilitation efforts are simply mechanisms of further surveillance. The question remains whether these lending arrangements are sold as rehabilitation?<sup>1028</sup> The repayment rate by the participants is also an added benefit for the regulator as the military appears to be part of that process as well.

*P: The army colonel said don't worry about the repayment of your loan it will be paid – "we are behind them and they can misuse it also if they take it for one purpose they have to do that one. Without their knowledge we are supervising so not to worry but so far no problem about repayment."*<sup>1029</sup>

The regulator also expresses frustration in engaging with some of the participants, not only are they victims of war, but they were detained and confined for over 2 years and have had very little educational or business training as they spent most of their lives in war related activities. When asked if psychological trauma or post-traumatic stress disorder experienced by the participants was a consideration or factor within the lending process, the regulator answered in the negative.<sup>1030</sup> *"Even the poor people, they don't have any plan or anything to start the job, they want first money then only to decide"*.<sup>1031</sup>

#### 4.6.17 Post-War Remittance Culture

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<sup>1028</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1029</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1030</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1031</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

During an interview with another high-ranking General, he explained that the entry of banks in the post-war region was due to the lucrative remittance market; and that the GoSL wanted to maintain the circulating funds from the Diaspora within the financial system.<sup>1032</sup> The graph below illustrates the percentages of income through remittance in the post-war region; which are also predominately designated Tamil areas.<sup>1033</sup> Further, the graph below is a helpful depiction of the national snapshot of remittance flows; Colombo, the capital city receives less remittance than Jaffna.<sup>1034</sup>

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<sup>1032</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013; Saman Kelegama, and Ganga, Tilakaratane, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014) ADBI Working Paper 504; Eva Gerharts, *The Politics of Reconstruction and Development of Sri Lanka* (New York, NY : Routledge, 2014) at 116; Bilesha, Weeraratne, “Migration & Remittances: Impact on Financial Behaviour of Families Left Behind in Sri Lanka” (2019) Labour and Migration Research Series No. 201, IPS.

<sup>1033</sup> IPS Research Team, “The Devil is in the Details: A Closer Look at the Remittances in Sri Lanka”, *News First* (2 July 2019), online: <<https://www.newsfirst.lk/2019/07/02/the-devil-is-in-the-details-a-closer-look-at-remittances-in-sri-lanka/>>.

<sup>1034</sup> IPS Research Team, “The Devil is in the Details: A Closer Look at the Remittances in Sri Lanka”, *News First* (2 July 2019), online: <<https://www.newsfirst.lk/2019/07/02/the-devil-is-in-the-details-a-closer-look-at-remittances-in-sri-lanka/>>.

**Figure 1: Top 5 Districts with Widest Gap in Share of Households with Migrants and Receipt of Remittances.**

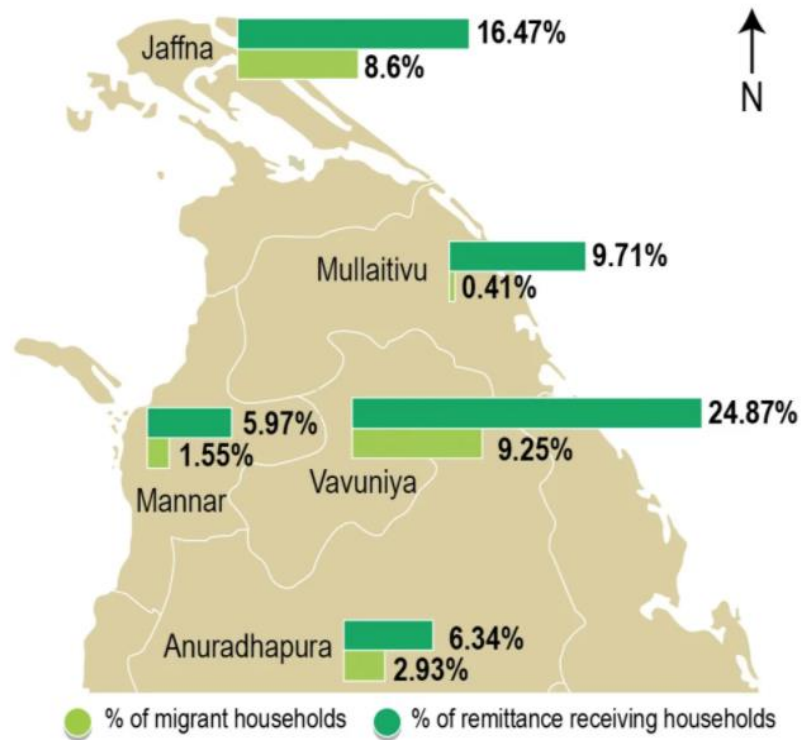
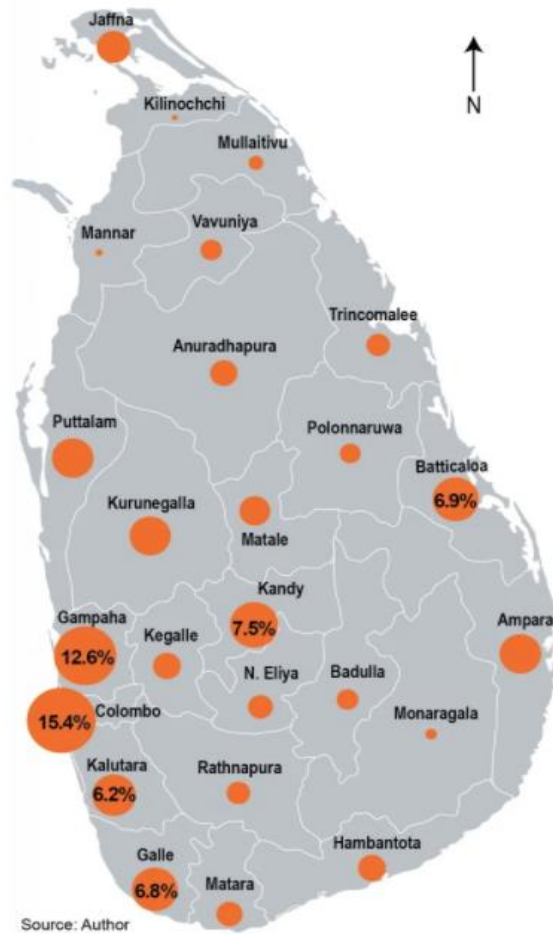




Figure 2: Share of Value of Remittances by District



Both maps highlight the remittance culture of post-war Sri Lanka, and provide a corollary narrative with respect to financial inclusion within a post-war jurisdiction.

#### 4.6.18 High-Security Zone - Interviews in Detention Facility

During the interview stage, I was permitted to enter Poonthottam, a rehabilitation detention facility, described as one of the “7 torture detention sites in northern Sri Lanka”.<sup>1035</sup> This center was identified as secret detention centre by Amnesty International.<sup>1036</sup> The surrounding circumstances are beyond the scope of this study, yet, the memories will remain with me forever. According to a military spokesperson, I was the only foreign national to enter this facility, as such I had to relinquish my passport at the entrance and I was prohibited from using my laptop or phone. The purpose of my visit was to conduct interviews with respect to the livelihood assistance project designed for ex-LTTE combatants.<sup>1037</sup> I was accompanied by heavily armed military personnel at all times, except when I was allowed to speak to 6 female ex-LTTE combatants.

As part of the livelihood project, a vocational training component must be completed by the recipient. I was allowed to talk to 28 ex-LTTE combatants during their computer training class. The individuals were male and female; and were selected to receive financial assistance through the loan fund, and were scheduled to be released within 60 days after being incarcerated between 18 months-3 years. I asked them about questions relating to financial inclusion and financial practices; the hour long discussion yielded in an unexpected finding: that the interviewees had not participated in any personal financial

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<sup>1035</sup> “Secret Detention Centres in Sri Lanka,” (November 8, 2011) online: BBC Sinhala [https://www.bbc.com/sinhala/news/story/2011/11/printable/111108\\_torture.shtml](https://www.bbc.com/sinhala/news/story/2011/11/printable/111108_torture.shtml)

<sup>1036</sup> “Secret Detention Centres in Sri Lanka,” (November 8, 2011) online: BBC Sinhala [https://www.bbc.com/sinhala/news/story/2011/11/printable/111108\\_torture.shtmlhttps://www.bbc.com/sinhala/news/story/2011/11/printable/111108\\_torture.shtml](https://www.bbc.com/sinhala/news/story/2011/11/printable/111108_torture.shtmlhttps://www.bbc.com/sinhala/news/story/2011/11/printable/111108_torture.shtml)

<sup>1037</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

transactions in over 8 years as they were fighters in the war.<sup>1038</sup> In the data collected, the findings indicated that the detained individuals expressed hopefulness; however, they did not understand interest rates or income generating strategy. For instance, when asked “how you will use the loan to create your business and make a profit?”, only 2 individuals were able to answer in general terms. The other 26 individuals responded that they would ask the military officer assigned to them, or the loan officer.<sup>1039</sup> The responses indicated that reliance on continuing military assistance may be required. It seems ironic that the captors of the interviewees will guide them toward financial inclusion.

The second set of interviews in the detention centre had a personal impact on me. I was taken into a high security space within the facility, which housed female ex-LTTE combatants, female fighters. I was given access to 6 women without military supervision, who had been detained for over 4 years and were scheduled to be released in 30 days. Their ages ranged from 21-42 years; two of the women were mothers and had 2 children each; and all 6 women experienced deep trauma.<sup>1040</sup> I later learned that the small conference room that was used to interview these women was previously used as an interrogation room. The walls were painted light yellow, and had strange metal rings attached (presumably to attach chains). There was also a drain in the floor at the corner, so that water can drain when the floors were cleaned and to “wash the blood” away as one of the guards

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<sup>1038</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1039</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1040</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

disclosed.<sup>1041</sup> I started the interview by explaining that their consent to participate was of paramount importance to me, and no one had to answer any questions or even be part of this discussion. All of the women were in fact eager to talk to me beyond the scope of this study, as they regarded me as their sister as well as a foreign and cultural anomaly.

With respect to the financial future, the women also expressed hope in their excitement of being released and being part reunited with their surviving families in their communities. The prospect of participating in the livelihood assistance project seemed to be a sign of independence for them. One woman said, “This will help me to start a tailoring business...I want to buy a sewing machine and also make clothes for my daughters and myself.”<sup>1042</sup> Another woman was part of the LTTE communications team, and had prior training in media relations and loved photography. She explained that participation in this program will help her to be “normal” in society.<sup>1043</sup> When asked what exactly did she mean, she responded “I will be like every other girl...I will buy a camera, get all the stuff to develop the film and use a computer for editing also...I will not be a prisoner or anything...I will be a normal working girl with this loan program.”<sup>1044</sup>

During these interviews, we were interrupted by another set of military personnel, which brought us all pieces of decorated butter cake and tea. One of the women then disclosed that she in fact made that cake for this interview as she was informed of my visit.

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<sup>1041</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1042</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1043</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1044</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

She further explained that her professional and experienced baking skill set was used by the military when government and military dignitaries visited the detention centre. She was asked if she will be using her baking skills as part of her income-generating business pursuant to the livelihood assistance project. She said “No....I don’t want to bake like this...it is a personal thing for me...I want to be a farmer like my family. I have some land when I come and I will meet my husband again and my children and we will use the loan to make a farming business.”<sup>1045</sup>

The strange turn of events for this study allowed this research to include rich narratives of how connected financial inclusion initiatives created as part of rehabilitation strategy has affected individuals within a post-war context.

## **4.7. Post-War Conditions and Consequences**

### **4.7.1 Impact on Commerce**

After a 30-year drawn out brutal civil war, an estimated 70,000-100,000 people died.<sup>1046</sup> The consequences of war, violence and trauma has an impact on the psyche of

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<sup>1045</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1046</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Charles Haviland, “Sri Lanka government publishes war death toll statistics”, BBC News (24 February 2012) <https://www.bbc.com/news/world-asia-17156686>; AFP, “Up to 100,000 killed in Sri Lanka’s civil war: UN”, Australian Broadcasting Corporation (20 May 2009) <https://www.abc.net.au/news/2009-05-20/up-to-100000-killed-in-sri-lankas-civil-war-un/1689524>; United States, Department of Justice, *Sri Lanka (1983- first combat deaths)*, (Washington: Department of Justice, 2009).

communities in post-war regions, which affect a community's ability to overcome the challenges of poverty and fear beyond simple 'survival'. Communities are now expected to rebuild and reconstruct pre-war conditions. The underlying non-repayment issues are predicated on multiple factors that are barriers to the income-generating venture created through various loan scheme including the Ministry of Rehabilitation Livelihood Assistance project. The recipients' inability to repay the loan amount is not based upon the mismanagement of funds, in fact, there are exogenous conditions which 'set the recipients up to fail'.<sup>1047</sup>

The post-war climate opened up the commercial market place for inter-regional trade. Prior to 2009, the Northern part of Sri Lanka was closed and adequately self-sufficient, without access to regional or global markets.<sup>1048</sup> The closed economy created an artificial separate marketplace, where agriculture and other products were mainly produced for the Northern and Eastern parts of Sri Lanka, and for the LTTE and war purposes.<sup>1049</sup> After the ceasefire in 2009, and subsequent military occupation of the Northern and Eastern part of Sri Lanka, the liberalization of the market in those areas drastically changed the fabric of economic production, labour and local financial arrangements.<sup>1050</sup> The multidimensional conditions that affected the economic growth in the war-affected areas were not only shaped by financial institutions, but also by national rhetoric and culture.<sup>1051</sup>

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<sup>1047</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1048</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1049</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1050</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Rajasingham-senanayake, Darini, "Is Post-war Sri Lanka Following the 'Military Business Model'" (2011) 46:14 Economic and Political 27.

<sup>1051</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Rajasingham-senanayake, Darini, "Is Post-war Sri Lanka Following the 'Military Business Model'" (2011) 46:14 Economic and Political 27; Foneska,

It is significant to note that ‘end of the war’ moment in itself was part of the revitalization of the tourism culture in Sri Lanka, adding to the increased foreign investment and national GDP.<sup>1052</sup> Much has been written on how tourism plays a vital component in post-war development.<sup>1053</sup> Further, the GoSL seized an unusual opportunity to capitalize on its status as the victor of the war, which produced a newly created industry described as “war tourism”.<sup>1054</sup> By employing a “triumphalist nationalism”, the military conducts sight-seeing tours for visitors to see the *warscapes*, such as LTTE detention cells, bunkers, and LTTE constructed submarines and make-shift aircrafts.<sup>1055</sup>

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Bhavani, “Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka” (2010) Centre for Policy Alternatives

<[https://www.sangam.org/2010/09/Returns\\_Resettlement.pdf](https://www.sangam.org/2010/09/Returns_Resettlement.pdf)>; Miriyagalla,

Danura, “Locking-in and locking-out business and economic reconciliation in the conflict affected region of Sri Lanka” (2014) 2:2 International Journal of Business and Economic Development 13.

<sup>1052</sup> Buultjens, J.W., Ratnayake, I and Athula Chammika Gnanapala, W.K. “Post-Conflict tourism development in Sri Lanka: implications for building resilience,” (2016) 19:4 Current Issues in Tourism 355-372.

<sup>1053</sup> Buultjens, J.W., Ratnayake, I and Athula Chammika Gnanapala, W.K. “Post-Conflict tourism development in Sri Lanka: implications for building resilience,” (2016) 19:4 Current Issues in Tourism 355-372.

<sup>1054</sup> Buultjens, J.W., Ratnayake, I and Athula Chammika Gnanapala, W.K. “Post-Conflict tourism development in Sri Lanka: implications for building resilience,” (2016) 19:4 Current Issues in Tourism 355-372; Anoma Pieris, “Southern invasions: post-war tourism in Sri Lanka” (2014) 17:3 Postcolonial Studies 266-285 (which describes Buddhist pilgrimages).

<sup>1055</sup> Jennifer Hyndman and Amarnath Amarasingam, “Touring ‘Terrorism’: Landscapes of Memory in Post-War Sri Lanka” (2014) 10:11 Geography Compass 617.



Fig. 13. Captured LTTE weapons and ships at the war museum in PTK. (Amarasingam).

This tour appears to be a fascinating experience for visitors as it is curated by the State to depict the LTTE's defeat through militarized nationalism.<sup>1056</sup> The LTTE cemetery, which is a significant site for communities in that area; however, it is desecrated and intended to humiliate the now defunct organization.

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<sup>1056</sup> Jennifer Hyndman and Amarnath Amarasingam, "Touring 'Terrorism': Landscapes of Memory in Post-War Sri Lanka" (2014) 10:11 *Geography Compass* 617.





Fig. 3. A former LTTE cemetery in Mullaitivu, being converted into an army camp (Amarasingam).

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Fig. 7. Destroyed water tank in Kilinochchi with a newly built souvenir store next to it.

The state-sponsored narrative feeds into the financial inclusion process. It produces income generating activities around war tourism by encouraging local residents to start-up businesses to supply food, crafts and souvenirs and other related productions for Sinhalese

tourists deepening the trauma inflicted by the war.<sup>1057</sup> The above referenced photograph<sup>1058</sup> captures the duality of the psyche of post-war communities.

#### 4.7.2 Market Saturation and Competition

Stakeholders engaged in financial inclusion initiatives were not always cognizant of local conditions, such as market saturation and competition issues.<sup>1059</sup>

As one loan officer described the market conditions:

*“The moment the markets opened up they (post-war communities) are competing with the other proprietors from other places. So they are, annoyed because their product is not as great, because they have been stuck and closed off for 30 years. They don’t know the new techniques and you know, there’s training involved. I don’t think it’s a bank’s job but it’s something to think about when giving a loan because they’re competing with better products and people are going to buy products that are better.”<sup>1060</sup>*

This new competition has economically affected small businesses in post-war areas. “Where there was once a time we never saw an aspirin for years, now you have plenty of choices in everything...from soda, butter and biscuits...also from abroad...Cadbury’s chocolate and Kandos.”<sup>1061</sup> The consumer choice factor, although empowering, has an indirect impact on loan repayment as “competition is also going to affect loan repayment,

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<sup>1057</sup>Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).; Jennifer Hyndman and Amarnath Amarasingam, “Touring ‘Terrorism’: Landscapes of Memory in Post-War Sri Lanka” (2014) 10:11 Geography Compass 617.

<sup>1058</sup> Jennifer Hyndman and Amarnath Amarasingam, “Touring ‘Terrorism’: Landscapes of Memory in Post-War Sri Lanka” (2014) 10:11 Geography Compass 617.

<sup>1059</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1060</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1061</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

right. If the product is not good nobody is going to buy it or whatever.”<sup>1062</sup> The theme of market saturation and competition is further highlighted in the following narrative:

*In Killinochi, there were 6 women who lived on the same street, all 6 are engaged poultry raising. They said “we’re not making money. I went to the market I was selling eggs for 100 rupees then my friend went and sold for her eggs for 80.”*<sup>1063</sup>

These women are competing against each other. In discussions with the women and their loan officer, it was suggested that two of the women needed to focus on poultry raising, the other two women should focus on creating products to assist in poultry raising and the last two women should farm vegetables.<sup>1064</sup> The loan officer further advised the women that over flooding the market with the same product “creates competition amongst friends”; and the profits will be low so they will not be able to meet the loan payment obligations.<sup>1065</sup> In this instance, it was observed that competition in this manner affects social cohesion and it changes the economic valuation of the product or service.<sup>1066</sup>

#### 4.7.3 War & Self-Sufficiency – Dependency

The ‘war’ and the aftermath are a constant presence in the daily lives of many on the Island. The self-sustaining and resiliency components is not a new concept that communities affected by war have to adopt. In fact, self-sustainability was central tenant of the LTTE survival strategy, as the group attempted to cut ties socially, politically and economically from the Singhalese state. As the regulator notes:

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<sup>1062</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1063</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1064</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1065</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1066</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*P: Yeah, so we encourage them in Jaffna what the people have done – during the wartime<sup>1067</sup> they grew their own vegetables, not only the vegetables, and things, food items, made all these jams and things. Because suppose if anything happened in one particular area bomb blast ? or something within 3 days they cannot come out of the gate so-- they don't want to starve...they have to be self-sufficient.<sup>1068</sup>*

#### 4.7.3.1 Dependency on NGOs

The focus on self-sufficiency, however, has shifted to a more dependent and reliance culture due to post-war conditions. In determining whether a particular dependency theory can be identified due to the change in societal structure in a post-war jurisdiction, the informant laments on the shift in community attitude:

*P: Another thing is you know, for the last 30 years they had a dependent mentality you know, they got everything free you know, so there is still – some people not all...<sup>1069</sup> ...Because government is giving free rice, rations and NGO's are giving them free things – because due to war.<sup>1070</sup>*

During my qualitative study, I observed that there appeared to be a heavy reliance and dependency on NGO assistance and Military humanitarian support by communities in Killinochi and Mullativu. These two towns were LTTE strongholds and cut off from the financial system for over 30 years.<sup>1071</sup> The expectation of financial support was enormous; these communities were not self-sufficient post-war as goods and services were created around the LTTE organizational apparatus. There were no financial institutions or money

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<sup>1067</sup> Jaffna used this method to survive during wartime; Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1068</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1069</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1070</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1071</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013; Jyoti Thottam, "In Sri Lanka, Victory Brings Reprisal," (January 2003) online: TIME <http://content.time.com/time/world/article/0,8599,1869439,00.html>

lenders either to create economic lifelines. One informant simply explained the dependency cycle as this: “First the LTTE took care of us, then the army took care of us and now you have these foreigners and NGOs taking care of us...we are victims of the war and we have been sitting ducks for so long...what jobs can we get? What can we learn except that someone will give us a house and food.”<sup>1072</sup>

During my discussions in these areas, I specifically asked stakeholders how do you mobilize people to create economic incentives? While in the field, I personally observed military aid to disabled families and a growing dependency on military approval. In fact, many informants were hesitant to discuss the atrocities of the war or military involvement. There appeared to be a sense of fear around surveillance. The psychological effects also affect and create distrust of financial relationships within these communities. Victims of war have experienced deep trauma. One participant in the PAMP project explained:

*P: I can sleep peacefully, that is a luxury I didn't have ...not just from the military but from the LTTE side. I mean, how many people did they kill in northern communities and how they tortured people. And you know, they fear, people were fearful. It's not love, it's not admiration, it was fear like let's be honest but nobody wants to say anything.*<sup>1073</sup>

The community resilience is predicated on hope; this hope is fueled by the rapid post-war reconstruction and the State's emphasis on economic development. The State's quest for peace building and economic growth is not necessarily spurred by altruism.<sup>1074</sup> In fact,

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<sup>1072</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from December 2013.

<sup>1073</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1074</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Sujith Xavier, “False Universalism of Global Governance Theories: Global Constitutionalism, Global Administrative Law, International Criminal Institutions and the Global South” (Toronto: Osgoode Hall Law School, 2015), Ph.D. thesis, online: <https://digitalcommons.osgoode.yorku.ca/phd/20/>

there are reports that suggest that the State peacebuilding effort and economic reconstruction agenda is in fact an alternate mode of oppression, surveillance and ‘colonialism’.<sup>1075</sup>

#### 4.7.3.2 Dependency and Remittance

The causality that between the newly created dependency and eruption in financial services is often subject to scholarly debate. However, a corollary industry that also occupies this space is the remittance market. It is significant to note that financial institutions crowd out the commercial spaces in the North and Eastern part of Sri Lanka even though economic activity was sparse. Through my own observation and discussions with various stakeholders, and community members, it was clear that the eruption of the brick-and mortar buildings and retail banking were created to support the remittance sector. There is a deep connection between the expansion of banking services and the remittance market.<sup>1076</sup>

Traditionally, functioning banks are associated with a healthy economy. In a similar vein, while I was conducting this field research in war-affected areas, I was initially hopeful when I encountered shiny and marble floored retail banking fronts. However, upon closer inspection I also noticed a form of apathy from young individuals, who used banking services, yet were not gainfully employed or nor pursuing a post-secondary education.

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<sup>1075</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Sujith Xavier, “False Universalism of Global Governance Theories: Global Constitutionalism, Global Administrative Law, International Criminal Institutions and the Global South” (Toronto: Osgoode Hall Law School, 2015), Ph.D. thesis, online: <https://digitalcommons.osgoode.yorku.ca/phd/20/>

<sup>1076</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

These individuals intimated that they were predominately supported by their diasporic family members and extended relatives. Most individuals in Jaffna had at least one family member in either Canada, Australia, UK and Germany that sent financial support through remittance.<sup>1077</sup>

The unfortunate reality is that many of the recipients of remittance do not realize that the money is earned by their relatives, who may be low-income wage earners or unskilled workers experiencing and are susceptible to social and economic inequities these foreign jurisdictions. The informant, representing the regulator recognizes these issues and also suggests that too much of financial infusion into communities does not translate into economic development. It can also create a whole host of social issues within a community that is struggling to survive after 30 years of devastation. The social problems emerging in the war affected areas are not unique to Sri Lanka, but they are new to the Jaffna peninsula. Residents complain that the social issues plaguing the younger generation and attribute the degeneration of “Tamil culture” to military occupation and influence.<sup>1078</sup>

Not only are multiple vantage points offered to explain a shift in culture and economic pursuits, but the military occupation and its effects have created and continue to have a deep impact in the daily lives of Tamils in the post-war regions.

*P: And at this point the culture has changed – now after the war, like last 2 days.. outside my hotel you can see about 100 of motorcycles... lots of youngsters come and they had liquor. They have been spoiled by the military forces and even taking drugs and when I see all these things happen where they want to destroy the*

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<sup>1077</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1078</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

*culture, Jaffna culture even though they are educated.<sup>1079</sup> See, just putting with (inaudible) they are making so many the problem they say that and this because they don't want that community to come up they want to destroy that.*

#### **4.8. GENDER**

The gender dimensions are firmly entrenched within this research as microfinance and financial inclusion discourse cite to gender empowerment through economic access.<sup>1080</sup> As part of this narrative, this research examined how power relations shape access and opportunities for women within financial inclusion initiatives in post-war Sri Lanka. As a researcher, I am personally attentive to the gender policies embedded in economic and financial policies.<sup>1081</sup>

The foundational tenets of financial inclusion as a policy agenda was originally crafted to empower women. To illustrate, microfinance was packaged and delivered as a gender empowerment and poverty eradication mechanism.<sup>1082</sup> The rapid uptake of the promise of gender parity and empowerment through economic engagements was keenly adopted by public and private national and international institutions, which has in turn produced a dearth of studies, reports and legislation. The access to financial products for women is believed to allow women to have autonomy over their financial affairs, allow them to thrive

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<sup>1079</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1080</sup> Judith Shaw, "Microenterprise Occupation and Poverty Reduction in Microfinance Programs: Evidence from Sri Lanka" (2004) 32:7 World Development 1247; Seela Aladuwaka and Ann M Oberhauser, "Out of the Kitchen-Gender, Empowerment and Microfinance in Sri Lanka" (2014) Gender and Space: Engaging Feminism and Development 35.

<sup>1081</sup> My own positionality and identity situates me in this research, and is deeply personal and affords a nuanced perspective in this qualitative study.

<sup>1082</sup> Interview of Stakeholders in Sri Lanka (June 2013-August 2013). This approach has been adopted as a policy mandate from the Grameen model, and has become a dominant modality of financial inclusion.



as entrepreneurs and be able to raise the quality of lives for themselves and their families. Proponents of these gender schemes have linked access to finance to better education, health and community building.<sup>1083</sup> However, in recent years, scholars have discovered that structural barriers and systemic biases exist within financial inclusion initiatives.<sup>1084</sup> The theme of gender was clearly pronounced in multiple areas and discussions in this study. This section will articulate some of the intersectional issues around gender and financial inclusion. Sri Lanka's civil war has been particularly damaging on gender development; it is widely accepted that conflict deeply affects women and children as they are subject to "displacement, violence, harassment, destruction and loss of property."<sup>1085</sup>

A central part of this research is designed to gain new insights in how financial inclusion providers construct gender access, outreach and financial services to women through the examination of governance and administrative mechanisms on a local level. The analysis of the data reveals an intersection of economic and banking processes, and gender and development policies in a post-war jurisdiction. The gender analysis is integrated in service, lending, legal and economic arrangements promulgated by financial services providers is not novel.<sup>1086</sup> The emphasis is placed on the gender constituent when probing into the access to credit, financial literacy initiatives, consumer redress

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<sup>1083</sup> Interview of Stakeholders in Sri Lanka (June 2013-August 2013).

<sup>1084</sup> Berger, Allen, Philip Molyneux, and John OS Wilson, ed, *The Oxford Handbook on Banking*, 3<sup>rd</sup> ed (Oxford: OUP, 2019); Demircuc-Kunt, Asli, Leora Klapper, and Dorothe Singer, "Financial Inclusion and Legal Discrimination Against Women", World Bank Policy Research Working Paper 6416.

<sup>1085</sup> Interview of Stakeholders in Sri Lanka (June 2013-August 2013); Aladuwaka, Seela, and Ann M Oberhauser, "Out of the Kitchen-Gender, Empowerment and Microfinance in Sri Lanka" (2014) *Gender and Space: Engaging Feminism and Development* 35.

<sup>1086</sup> Amartya Sen, "Development as Freedom" (2002) 84:1 *American Journal of Agricultural Economics* 252.

mechanisms, group lending structures through social capital and banking technologies in order to determine the constraints of gender equality in financial inclusion schemes. Gender equality was a metric within the legal framework as demonstrated by affirmative action type selection criteria (female only loans and services, etc.). There are multiple distinguishing features within the gender discourse that have been amplified in this qualitative study, and are examined in this section. For instance, transformative technologies, such as mobile banking are rapidly shaping development and gender related policies.<sup>1087</sup>

#### 4.8.1 Gender Empowerment through Technology<sup>1088</sup>

The technology inequity between developed and developing countries characterized as the ‘digital divide’ is closely associated with the gender divide.<sup>1089</sup> Surprisingly, however, mobile banking has also prompted changes within households, thus changing the dimensions of gender roles.<sup>1090</sup> The mere possession of a cellphone with banking capabilities affords a woman control over her finances, which can be construed as a step toward financial empowerment. “As with other domestic technologies it is expected

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<sup>1087</sup> Imran Khan, “Pakistan’s Gender Gap in Financial inclusion” (13 September 2016), online (blog): *CGAP* <<https://www.cgap.org/blog/pakistans-gender-gap-financial-inclusion>>.

<sup>1088</sup> This narrative incorporates gender dimensions from the mobile banking context. See S. E. Senthe, “Transformative Technology in Microfinance: Delivering Hope Electronically?” (2012) 13:1 *Pittsburg Journal of Technology Law and Policy* 1 at 14.

<sup>1089</sup> K. Balasubramaniam et. Al, “Using mobile phones to promote lifelong learning among rural women in Southern India” (2010) 31:2 *Distance Education* 193.

<sup>1090</sup> Apala Lahiri Chavan et al, “How Mobile Money Can Drive Financial Inclusion for Women at the Bottom of the Pyramid (BOP) in Indian Urban Centres” in Nuray Aykin, ed, *Internationalization, Design and Global Development* (San Diego: Springer, 2009) 475.

that mobile money will at first re-affirm traditional patterns, but after a series of small changes, may in the end transform them”.<sup>1091</sup> Not only does the user have ‘control’ over her own finances, but she enjoys the privilege of privacy in the use of her funds. The ‘biography’ of the user is changed by merely asserting financial control using a personal technological device through time saving and other conveniences.<sup>1092</sup> Mobile banking has allowed women the ability to conduct business from any geographic location; as “institutional boundaries” become distorted, she is has the “flexibility to exist in both domains”, namely at home and at work.<sup>1093</sup> As a result of the domestication of mobile phones, gender dynamics have been altered within the household by fostering fiscal autonomy.<sup>1094</sup> The above referenced example illustrates the deep-rooted gender dimensions within this research in conformance promulgating economic empowerment for women through financial inclusion.

#### 4.8.2 Income Inequality

Income inequality has long plagued gender parity policy goals. This inequality is even more pronounced in a post-war jurisdiction, such as Sri Lanka. The intersections between factors such as gender, poverty, war and income inequality have not been fully explored in tandem within the financial inclusion context. This study attempts to examine how these intersections operate within the financial inclusion framework. Income

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<sup>1091</sup> Supriya Singh, “Mobile Remittances: Design for Financial Inclusion” in Nuray Aykin, ed, *Internationalization, Design and Global Development* (San Diego: Springer, 2009) 515.

<sup>1092</sup> K. Balasubramaniam et. Al, “Using mobile phones to promote lifelong learning among rural women in Southern India” (2010) 31:2 Distance Education 193.

<sup>1093</sup> K. Balasubramaniam et. Al, “Using mobile phones to promote lifelong learning among rural women in Southern India” (2010) 31:2 Distance Education 193.

<sup>1094</sup> S. E. Senthe, “Transformative Technology in Microfinance: Delivering Hope Electronically?” (2012) 13:1 Pittsburg Journal of Technology Law and Policy 1 at 14.

inequality is a triggering consideration for fiscal regulators, as it denotes a lack of economic growth, a decrease in human capital and intergenerational mobility; and it can compromise financial stability considerations.<sup>1095</sup> Current literature suggests that the gender gap in access to financial services contributes to income inequality, thereby affecting economic development in many communities.<sup>1096</sup> A 2012 study conducted by Franklin Allen revealed that women are less likely to own bank accounts in comparison to their male counterparts.<sup>1097</sup> However, in this qualitative study, every single female beneficiary interviewed owned a bank account.<sup>1098</sup> It is interesting to note that female beneficiaries interviewed and residing in internally displaced camps in the Northern part of Sri Lanka also possessed bank accounts with multiple financial institutions.<sup>1099</sup> Income inequality is also a result of the changing family structure experienced in traditional households.

#### 4.8.3 Female-Headed Households

In this qualitative study, the beneficiaries interviewed were predominantly women. The themes derived from this study demonstrated an emphasis on the “male gaze” with respect to perspectives of women.<sup>1100</sup> Interestingly, the Central Bank of Sri Lanka, private

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<sup>1095</sup> Goku Aslan, “Inequality in Financial Inclusion, Gender Gaps, and Income Inequality,” International Monetary Fund, Working Paper 2017 at 3

<sup>1096</sup> Goku Aslan, “Inequality in Financial Inclusion, Gender Gaps, and Income Inequality” International Monetary Fund, Working Paper 2017 at 3.

<sup>1097</sup> Goku Aslan, “Inequality in Financial Inclusion, Gender Gaps, and Income Inequality,” International Monetary Fund, Working Paper 2017 at 8; Asli Demircuc-Kunt, Leora Klapper, and Dorothe Singer, “Financial Inclusion and Legal Discrimination Against Women”, World Bank Policy Research Working Paper 6416.

<sup>1098</sup> Interviews of Stakeholders in Sri Lanka during Field Work (June 2013 – August 2013).

<sup>1099</sup> Interviews of Stakeholders in Sri Lanka during Field Work (June 2013 – August 2013).

<sup>1100</sup> Asli Demircuc-Kunt, Leora Klapper, and Dorothe Singer, “Financial Inclusion and Legal Discrimination Against Women,” World Bank Policy Research Working Paper 6416.

financial institutions, non-governmental agencies and the military viewed most financial inclusion initiatives as an economic apparatus for women, and often labelled the beneficiaries as ‘women-headed households’<sup>1101</sup> or ‘female-headed households.’<sup>1102</sup>

Sri Lanka’s approach to financial inclusion has been gender-centric, in that most poverty alleviation tools designed with microfinance components are targeted to women. This is more pronounced in post-war areas, which have specific policy language centered around ‘widows.’ The war contributed to the increase in ‘Women Headed Households’. In 2017, a census revealed that “1.2 million households (23 percent) of the households in Sri Lanka are Women Headed Households”.<sup>1103</sup> Out of that number, about 58,121 households are headed by women in the Northern Province, which is a post-war area.”<sup>1104</sup> This large number of households are comprised of predominantly Tamil victims of war, who situated in post-war conditions. The terminology is significant, as it has a particular meaning in a post-war jurisdiction. As service providers attempt to develop policy approaches around women - who have been ‘left behind’ or ‘survived’ due to war time casualties, a variety of considerations have to be taken into account.<sup>1105</sup> Therefore, the definition of this category must be precise.

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<sup>1101</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1102</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1103</sup> Jeevan Thiagarajah, “Developing a National Plan on Women Headed Households,” (October 30, 2017) online: Daily News  
<http://www.dailynews.lk/2017/10/30/features/132856/developing-national-plan-women-headed-households>

<sup>1104</sup> Jeevan Thiagarajah, “Developing a National Plan on Women Headed Households,” (October 30, 2017) online: Daily News,  
<http://www.dailynews.lk/2017/10/30/features/132856/developing-national-plan-women-headed-households>

<sup>1105</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The current debates surrounding policy development in using this type of language includes a strong critique of the narrow interpretation and policy formulations around these initiatives. Due to the problematic definition, program delivery is not at the optimal state. The language assumes a catch-all circumstance: *women without men*. It assumes a homogenous lens to determine services required to promote gender empowerment, which creates unintended outcomes of exclusion, psychological harm or other challenges.<sup>1106</sup> In the financial inclusion framework, initiatives and policies were created under the ‘livelihood assistance’ category. As such, war-affected women and non-war affected women had to fit into the definitional criteria for program eligibility, thereby making the ‘definition’ of women and or female-headed households much more significant.

#### 4.8.3.1 Developing a Definition

The first approach used by policymakers labelled households as “women headed households” where “no adult males were present”.<sup>1107</sup> The male absence could be due to abandonment, death, temporary employment abroad, or missing in war. The definition determines the type of legal rights and obligations attributed to women for each of these conditions. This presumes an abnormality in family structure, furthering a particular narrative that ‘single women headed’ households are defective, and do not have the protection or earning capacity of an adult male, thereby creating a particular narrative that

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<sup>1106</sup> Adikaram Boyagoda, A. M. K. S. (2014). Heterogeneity and Female-Headed Households in Sri Lanka: Vulnerability and Resilience in a Transitional Development Society (Thesis, Doctor of Philosophy (PhD)). University of Waikato, Hamilton, New Zealand, online: <https://hdl.handle.net/10289/8483>

<sup>1107</sup> Ruvani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis <http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

that a female-headed household is an indicator of poverty.<sup>1108</sup> The ‘triple disadvantage’ syndrome is attributed to women due to poverty, gender discrimination and a “lack of social support systems as heads of households.”<sup>1109</sup> By constraining the definition, program delivery of entitlement and empowerment programs create disparate impact. The strict definition in policy development “often leads to misguided policy interventions that result in exclusion and eventual failures in development.”<sup>1110</sup>

In determining how to better define women-headed households, scholars have used feminist theoretical frames to understand the social, political and economic dimensions. For instance, how the term “household” is understood may differ from culture, jurisdiction and policy fields. “Feminist writers have described ‘the household’ as a geographically and historically dynamic social institution in which gender is embedded and negotiated.”<sup>1111</sup> In a recent research study developed by the Centre for Poverty Analysis, 15 categories within the definition was identified, this demonstrated a deeper confusion in defining

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<sup>1108</sup> Ruvani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

<sup>1109</sup> Ruvani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

<sup>1110</sup> Ruvani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

<sup>1111</sup> Ruvani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

women-headed households.<sup>1112</sup> Further, the formative norms and ideological gender paradigms “expressed within the household are reinforced and reflected in larger institutions of society.”<sup>1113</sup> As such, the definition used must include multiple household patterns, family structures, social and cultural aspects in creating these gender centered policy interventions.

A preferred approach in determining a definition, is the “woman-maintained household”; “the head of the household who authorizes the activities of the household including expenditures, and is accepted by all members as the head.”<sup>1114</sup> The challenges in creating an inclusive definition has a nuanced consequence in the Sri Lankan context due to the post-war conditions. Policymakers attempting to define women-headed households “struggle when deciding whether to differentiate between those women headed households with *de jure* legal standing (divorced, widowed, never-married) and those without legal proof (disappearance, abandoned, etc.)”<sup>1115</sup> The Sri Lankan cultural context

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<sup>1112</sup> Ruwani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

<sup>1113</sup> Ruwani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

<sup>1114</sup> Ruwani Fonseka, “Women-headed households: Searching for a Common Definition”(October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>

<sup>1115</sup> Ruwani Fonseka, “Women-headed households: Searching for a Common Definition” (October 2015) online: Centre for Poverty Analysis  
<http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-common-definition>



is a vital component in examining terminology or labeling specific households is absent from program delivery.

The financial regulator's position has been to include financial support within the national budget to create, develop and design specific financial inclusion initiatives for female-headed households. It was unclear during the interviews whether these economic policies were national, or specifically formulated for post-war jurisdictions. For instance, the following dialogue between myself and the participant highlighted these tensions:

*Now, if you take the budget in 2014 they have mentioned they are going to support the female-headed families so this kind of policy is coming from budget as well. The Central Bank is also working towards introduce a law scheme for women.<sup>1116</sup>*

The 'law scheme' mentioned in the above quote refers to a lending program for women affected by war. Monetary institutions and regulators designed a national mandate, which includes a policy goal of inclusion in order to create and stimulate economic growth and development. This policy goal has (as discussed in the preceding section) encompassed gender parity aspirations.

#### 4.8.4 Gender Parity in Policy Making

Women have had a significant role to play in Sri Lanka's civil war. This is articulated as follows:

“Throughout the civil war in Sri Lanka, throughout the other moments of violent conflict, it has been women-typically mothers and wives of the disappeared – who have been the face of all the disappeared, Tamil and Sinhalese, of this country; women, refusing to disappear, standing in for their loved ones who have been made invisible.”<sup>1117</sup>

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<sup>1116</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1117</sup> Government of Sri Lanka, “Rehabilitation of ex-LTTE cadres nearing completion,” (2014) online: “<https://reliefweb.int/report/sri-lanka/rehabilitation-ex-ltte-cadres-nearing-completion> at 17.

Against this backdrop, policymakers have been struggling to create inclusive language to capture all women affected by poverty and war as discussed in the preceding section. As an example, it is significant to note the issue surrounding the forced and political disappearances of individuals is a traumatic block. The absence of documentation to meet legal evidentiary standards has economic consequences for women affected in the North.<sup>1118</sup> In order to show eligibility for housing or other entitlement programs for female-headed households, a death certificate of the male must be submitted by the surviving spouse. In the disappearance cases, this certificate is unobtainable due to an absence of legal proof, thereby women are unable to produce specific documentation or evidence of their husband's death and are in a state of psychological and economic limbo. In addition, women may refuse to be included under the concept of 'women headship' due to social shame, or security issues or family structure.<sup>1119</sup> Being a single female household can be considered low class, "unlucky" and undesirable.<sup>1120</sup> Sri Lanka's culture is patriarchal in nature, which affects the method of gender inclusion and parity in program delivery.

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<sup>1118</sup> Sri Lanka's violent civil law has resulted thousands of unsolved cases of state sponsored disappearances. "In June 2016, Chandrika Bandaranaike Kumaratunga, a former president of Sri Lanka and head of the government's Office on National Unity and Reconciliation, acknowledged having received at least 65,000 complaints of disappearances since 1995." Government of Sri Lanka, "Rehabilitation of ex-LTTE cadres nearing completion," (2014) online: "<https://reliefweb.int/report/sri-lanka/rehabilitation-ex-ltte-cadres-nearing-completion> at 17.

<sup>1119</sup> Ruwani Fonseka, "Women-headed households: Searching for a Common Definition" (October 2015) online: Centre for Poverty Analysis <http://www.ft.lk/article/483071/Women-headed-households:-Searching-for-a-commondefinition>

<sup>1120</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

#### 4.8.4.1 Widows

In Tamil and Sinhalese culture, cultural expressions affect all social, economic and political activities. For instance, it is common practice in commercial dealings to consult astrologers for an auspicious date for signing a contract, starting a new business or moving into a home. Religious ceremonies are also at the forefront of these new beginnings.<sup>1121</sup> In a similar vein, certain customs have remained that are perceived to be inauspicious, such as death or divorce. Widows are excluded from these ceremonies and carry a particular social stigma. This cruel reality is amplified due to the post-war condition.<sup>1122</sup> An analysis of the qualitative data suggested that widows were not included in certain lending arrangements due to their cultural stigma in the community. When asked about this issue, the executive director of a private microfinance institution responded:

*P: We don't treat the widows differently, it is custom for us that's all.*<sup>1123</sup>

#### 4.8.5 Gender Focus in the PAMP Program

The PAMP initiative recognizes the need to focus on access to financial services for women as part of the financial inclusion platform. The policy approach is to create gender empowerment through leadership.

*P: Now, in our system we are encouraging and empowering the women. So when they come as a group leader she has power.*<sup>1124</sup> We told them that

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<sup>1121</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1122</sup> Alyssa Banford Witting et al, "The stigma of widowhood in war and disaster affected communities of Sri Lanka: Contextual paths between trauma exposure and mental health distress" (2019) 55:4 International Journal of Psychology 647.; Jelena Smoljan, "The relationship between peace building and development" (2010) 3:2 Conflict, Security & Development 233.; and Hideaki Shinoda, "Peace-buidling and State-building from the perspective of historical development of International Society" (2018) 18:1 International Relations of the Asia-Pacific 25.

<sup>1123</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1124</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*when you go to the bank, you can go talk to them; you have the call so we empower them.*<sup>1125</sup>

Empowerment is envisioned by the program initiative as creating a collective source of stakeholder rights.<sup>1126</sup> To illustrate, the informant described how the local bank branch manager in Batticaloa travelled to a rural community to meet the newly formed groups. During his visit with the group members, who were all women, the bank branch manager asked them to visit the bank to open personal accounts. The group leader, stood up and stated “Why should we come to your bank, why are you expecting us to come there? We are 60 people here...if you want - you come here and you open the account.”<sup>1127</sup> The informant described this exchange as an expression of courage fueled by her group leadership position. The group dynamic not only provides an efficiency mechanism for financial services providers, but also provides a platform for group members to develop a collective voice.<sup>1128</sup>

*P: So when we form the society we also brief them. When we talk about the society usually there is a government officer supervising. But here is the people’s power, we told them nobody is above you, you are the power, you collect your power, do whatever you like so they got encouraged.*<sup>1129</sup>

The above quote illustrates not only the internal change in personal empowerment, but also a transformation in an informal governance model; or a democratization of financial empowerment through the use of these group formation models. The question remains: does the strength in numbers empower women or provides an added benefit for the banks

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<sup>1125</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1126</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1127</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1128</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1129</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

and their bottom line? In other words, is there a lowered risk and lowered investment for a higher return for the banks?

#### 4.8.6 The Lack of Representation: Loan and Field Officers

Further, this qualitative study revealed that the loan officers and field officers used by either state regulators, and non-profit and commercialized MFIs were only male. This is a significant finding as it demonstrates social and cultural gender dynamics. As one stakeholder explained, “the field or credit officers are men and the office assistants are women, and some other helpers are women...and in some branches we have hired female credit officers.”<sup>1130</sup> When I asked why there was such a distinct gender division of labor, I was told that the “women could not stay in the office late; that they had to go home and could not stay in the village, could not advise on collections and were not keen on being loan officers.”<sup>1131</sup> It seemed obvious that the male executives were uncomfortable when it was pointed out that the majority of participants and borrowers in the financial inclusion endeavor were female.

#### 4.8.7 Gender and Social Capital: Group Lending in the PAMP Program

Multiple schemes examined by scholars, and in this qualitative study were predicated on a group lending component. Boyagoda’s study demonstrates that female-headed households rely and are enriched by social capital<sup>1132</sup> and was the largest contributor to the

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<sup>1130</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1131</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1132</sup> Adikaram Boyagoda, A. M. K. S. (2014). *Heterogeneity and Female-Headed Households in Sri Lanka: Vulnerability and Resilience in a Transitional Development Society* (Thesis, Doctor of Philosophy (PhD)). University of Waikato, Hamilton, New Zealand, online: <https://hdl.handle.net/10289/8483>

success of financial inclusion initiatives. In this study, it was clear that many of the stakeholders and beneficiaries of microfinance loans participated in ‘group lending schemes’. These schemes varied in formation eligibility and internal lending processes.

*P: We brief the women - these are the criteria then only one family member can join in this scheme. Then, maybe close proximity people, not a person from one area and a person from no, it should be very close people.<sup>1133</sup> When they form the group they should know each other, because they are going to borrow together. If they borrow, they should have trust among others. If suppose if they default or if they take the loan and vanish then they will be held responsible. These are the small briefings we give them. We are not involved in the formation of the groups, they have to form the groups.<sup>1134</sup>*

*I: So it's self-selection?*

*P: Neither the banks nor the Central Bank is involved in the formation of group. Once they form the group, minimum 5 or 8 maximum is allowed. There should be more women participation.*

The above exchange demonstrates that the participants must know each other, as these transactions are predicated on trust and loyalty, and familiarity. The joint liability incurred by members requires social capital and is further reinforced through culture.

#### 4.8.8 Gender and Social Capital: MFI Program

Field officers of the MFI become heavily involved within the community.<sup>1135</sup> An Executive Director explains the role of the field officer as follows:

*P: The Field officer needs to get embedded with the community. Then, you know, the people will say “we can't lie by looking at your face”. If the field officer gets into that level I think that creates trust.*

The above quote exhibits the institutional strategy in creating a particular relationship between the field officer and the borrower. Field officers are intimately linked

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<sup>1133</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1134</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1135</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

with the individual and community, which thickens the social capital framework. Social capital has extensively been studied and tested, and has long been identified as a foundational component within the financial inclusion discourse.<sup>1136</sup> Social capital can be described as a non-economic resource that institutional stakeholders employ in cementing rights and obligations within communities. Not only does social capital depend on localized cultural understandings, but also its role in financial intermediation cannot be ignored. The excavated examples further demonstrate how social capital is being manipulated within the financial inclusion context, akin to development interventions as described by other scholars examining the relationship of policy networks deployed in microfinance initiatives.<sup>1137</sup> Here, the trust factor is predicated on communal social networks, which are essentially exploited through social coercion by the institutional stakeholder. However, institutional providers of microfinance relying on social capital must balance the challenges associated with deep familiar connections as outlined below:

*P: Too much familiarity with money is also another problem. In banking terminology, we keep our distance between the customer and the bank manager primarily because it leads into some other nefarious activities. So that also you have to keep the borderline, but here it is very difficult. If you have a borderline like a banker and the customer.... this whole concept fails for us.*<sup>1138</sup>

The old adage of “familiarity breeds contempt” is identified as a potential risk in the service delivery. If the field officer appears too familiar or “too lax”, then the borrowers may take him for granted. If he appears “too distant” the trust component is not fully cultivated.<sup>1139</sup>

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<sup>1136</sup> Katharine N Rankin, “Social Capital, Microfinance and The Politics of Development” (2002) 8:1 Feminist Economics 1.

<sup>1137</sup> Katharine N Rankin, “Social Capital, Microfinance and The Politics of Development” (2002) 8:1 Feminist Economics 1.

<sup>1138</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1139</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The lack of community linkages interlaced with microfinance providers threatens to upend social capital required to accomplish institutional missions of microfinance provision.<sup>1140</sup>

The findings indicate that a true commercial relationship cannot be established as the model employed for financial inclusion would fail. It is significant to note that the gender component within the social capital paradigm is central in developing the desired outcome of outreach, lending arrangements and repayment within female borrowers.<sup>1141</sup>

Local NGOs and other smaller commercial entities use these established community mediation boards to enforce contractual payment obligations.<sup>1142</sup> Despite the informal threads and processes employed in microcredit lending schemes, the contractual obligations remain. As discussed below, social capital is clearly embedded within the formal transactional nature of financial arrangements. The glue that appears to bind these lending agreements are based on trust and friendship, which are attributed to the close relationships between the borrower and the lender designed by the microfinance institution. In other words, repayment obligations are fostered through informal and artificial cultural and social currency as highlighted in the narrative below:

*P: What we work on this, this is your money you got to pay; this is your obligation that you loan this money you got to pay.*

*I: But if they say I don't want to pay and they just walk off?*

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<sup>1140</sup> A Vidya, "Social Capital a Mediator of Financial Inclusion Development in Rural Kerala" (2017) 5:9 International Journal for Scientific Research and Development 547.

<sup>1141</sup> Mohamed Munas and Gayathri Lokuge, "Community Mediation: A Just Alternative? Expectations and Experiences of Community Mediation Boards in the Northern Province" (March 2016) Centre for Poverty Analysis Working Paper No 21.

<sup>1142</sup> Mohamed Munas and Gayathri Lokuge, "Community Mediation: A Just Alternative? Expectations and Experiences of Community Mediation Boards in the Northern Province" (March 2016) Centre for Poverty Analysis Working Paper No 21.



*P: No, they can't walk off - then we will go to the mediation board and get the money back that's all.*

*I: But, what is that mental drive for them to pay?*

*P: Actually, mental drive is we developed closely with them that is a friendship.*

*I: Does friendship mean trust?*

*P: Trust, yes.<sup>1143</sup>*

#### 4.8.9 Gender and Inequity in Financial Inclusion

The endemic nature of human behavior within a post-war setting continues to perpetuate discriminatory conduct. For example, access to banking and finance transactions must maintain some type of neutrality in their application for financial inclusion to be accomplished. The NGO sector is aware of the social realities on the ground. For example, one MFI, operating in a post-war area close to Jaffna, specifically selects a loan officer from that particular community or social class. They described this decision as following: “they only work with that group ...so they don't get exposed to this and that one person will talk to somebody else who will take the deposit to the bank and won't have this you know, exclusionary I guess, experience in that sense.”<sup>1144</sup> In order to adhere to the sensitive nature dictated by these social norms, this particular NGO developed language to empower its consumers. For instance, the term “beneficiary” is not used by this organization; instead consumers are described as “stakeholders”.<sup>1145</sup>

*P: We don't use the word beneficiary now we call it stakeholder. In the NGO sector we use the word stakeholder. The word beneficiary itself...it's a trap...we are straight away putting that person down.<sup>1146</sup>*

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<sup>1143</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1144</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1145</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1146</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The challenges in creating appropriate terminology is based on the inaccurate definitions used to capture the relationship of the parties. As the Executive Director of a NGO explains:

*P: In the microfinance sector, the word stakeholder is not appropriate so we collectively agree that we call them “clients” ...they are our clients but it is not localized. But this word client is not blending with our culture – we can’t also call them customers. For example, to a villager if you’re a ‘client’ ... when you translate in Sinhala it becomes something else <sup>1147</sup>*

The cultural implications of labelling consumers or recipients of microfinance seems to have created a ‘lost in translation problem’.<sup>1148</sup> As part of the NGO governance mandate, constant customer development is required in order to provide accessible and cost-effective services. MFIs have long examined its client pools for customer segmentation purposes to customize their products and services accordingly.<sup>1149</sup> By identifying cultural challenges in addressing and working with consumers of microfinance, this particular NGO uses the localized knowledge to create tailor made financial services as part of financial inclusion. Throughout the study, stakeholders referred to their customers based on institutional and cultural aspects.

<b>Entity</b>	<b>Label</b>
Banks	Clients
Government sponsored	Recipients
MFIs and Initiatives	Beneficiaries

<sup>1147</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1148</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1149</sup> “The Partnership for Financial Inclusion: Who Are the Microfinance Clients?” online: <http://documents1.worldbank.org/curated/en/748941531290617791/pdf/128213-BRI-PFFI-Field-Notes-3-Microfinance-clients-1-20-2016-PUBLIC.pdf>

The financial lending devices are only offered to women. When asked if this is line with the policy approaches employed by financial inclusion framework, the Executive Director of a commercialized MFI provided the four (4) specific reasons for female-only loan services:

*P: There are several reasons one is that these group meetings are held during the day and very often men are not available at that time in the households. Women, most of the women are available, even if they work... they work somewhere close by not very far. Men, you know, some Colombo men they may be working in another region, it's difficult. But women are not like that most of them. So even if they are working, they can just rush to the centre meeting and go back.*

*Secondly, as you know, generally it is accepted these women need economic empowerment. This is socially desirable.*

*Third, the misuse of loans is much less among women compared to men. So there are loan obligations. So that's why women are better customers.*

*Fourth, is you can have a bigger impact to the family by the poverty alleviation aspect through women rather than men. But still, if the husband has a small income-related project for that project the wife can take a loan.*

The multi-pronged explanation appears to be rooted in pragmatism from an institutional perspective. Critics have argued that these group lending schemes are far from social and economic empowerment vehicles; rather they perpetuate gender norms that adversely affect women.<sup>1150</sup> The reasons articulated above also demonstrate a cultural belief system with respect to gender repayment, which was a constant theme within this study. The post-war female-headed household context provided stakeholders with a ripe space in which to deploy these microfinance schemes solely designed for women.

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<sup>1150</sup> Lamia, Karim, "Demystifying Micro-Credit: The Grameen Bank, NGOs, and Neoliberalism in Bangladesh" (2008) 20:1 Cultural Dynamics 5.

The cultural linkages affect gender dynamics through these financial relationships.<sup>1151</sup> As mentioned in the last sentence of the above-referenced quote – women apply for loans on behalf of their husbands or on behalf of the family owned business. This arrangement was typical of the recipients of microfinance services in the Sinhalese communities.<sup>1152</sup> The microcredit eligibility is predicated on demonstrating a viable business plan for “productive purposes...or income generating activities.”<sup>1153</sup> The individual borrower would then have to “describe her husband’s project to the field officers.”<sup>1154</sup> According to a field officer’s comment, “this will bring in money to the family.”<sup>1155</sup> Start-ups or new business initiatives are not funded; and have to be self-funded and operational for six months prior to the loan process.<sup>1156</sup> The verification process in determining the period of business operations is also unique in nature. Data collection is not based on a computerized system or credit survey, instead community engagement is required as outlined below.<sup>1157</sup>

*P: So we can ask the neighbors and crosscheck all the data’s that they give in the application, our field officers go and check. They know the community well enough and also know the neighbors. The field officers inquire from the neighbors whether she is actually doing it and how is the project is doing. And with bigger loans, the district manager is also going to check, although, district manager doesn’t approve it, he will go and have a look at the project.*<sup>1158</sup>

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<sup>1151</sup> Lamia, Karim, “Demystifying Micro-Credit: The Grameen Bank, NGOs, and Neoliberalism in Bangladesh” (2008) 20:1 Cultural Dynamics 5.

<sup>1152</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1153</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1154</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1155</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1156</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1157</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1158</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The social fabric and social surveillance are clearly an unorthodox cross check methodology employed by these institutional economic actors; the verification system used in itself is based on familiar relationships and may sometimes not be accurate or be prone to human manipulation (village gossip; cultural stigmatization based on externalities).

As discussed above, the lending arrangements within these communities are not simply commercial and impersonal. The close consumer engagement in some instances produces conflict and challenges for creditors and borrowers. During this qualitative study, no formal conflict resolution mechanism was identified within the microfinance context.<sup>1159</sup> In fact when an Executive Director of a commercialized MFI was asked if there was an internal or external complaint resolution process for borrowers, the response was as follows: “Actually until you asked this question it never occurred to us.”<sup>1160</sup>

#### 4.8.10 Discrimination in Lending

As indicated in the preceding paragraphs, financial inclusion measures through microfinance was packaged as an economic empowerment tool for women, and is also being employed in that fashion in Sri Lanka.<sup>1161</sup> The qualitative data revealed that despite

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<sup>1159</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1160</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1161</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Seela Aladuwaka and Ann M Oberhauser, “Out of the Kitchen-Gender, Empowerment and Microfinance in Sri Lanka” (2014) *Gender and Space: Engaging Feminism and Development* 35; Shohani Upeksha Badullahewage, “Financial Inclusion and Women’s Economic Empowerment in Northern Sri Lanka” (2019) *10:8 International Journal of Business and Social Science* 128; Rathnija Arandara and Shanuki Gunasekera, “Financial Inclusion and Inclusive Growth” World Bank Policy Research Working Paper 9204; Asli Demirguc-Kunt, Leora Klapper, and Dorothe Singer, “Financial and Legal Constraints to

the rampant eruption of financial inclusion initiatives in specific communities, loan applicants reported discriminatory treatment during the lending process, but expressly prohibited me from documenting that information. They simply wanted me, as the researcher, to be aware of it, but not “rock the boat.”<sup>1162</sup> The prevailing climate within communities affected by war and poverty exhibit a collective trauma, which are highlighted in these personal interactions. During the interviews, many recipients did not want to appear to be ‘agitators’ or ‘troublemakers’, rather the invisibility adopted has been a survival technique; this was particularly observed among women.<sup>1163</sup>

Loan officers, as agents for financial inclusion schemes, are specifically trained to engage with women in the community in order to deliver these selective small-scale loans to women. Within those social groups, discrimination is experienced through cultural and social bias among the women. For instance, the marital status of women, age and pedigree within the community determine the power dynamics within a group.<sup>1164</sup> The narrative of the qualitative data highlights the underlying rationale of the *gender only lending policy*.

The Executive Director explains that the gender component in the delivery of microfinance loans is partly due to efficiency, as the availability of women during normal

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Growth: Does Firm Size Matter?” (2005) 60:1 The Journal of Finance 137.

<sup>1162</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>1163</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>1164</sup> Seela Aladuwaka and Ann M Oberhauser, “Out of the Kitchen-Gender, Empowerment and Microfinance in Sri Lanka” (2014) *Gender and Space: Engaging Feminism and Development* 35; Shohani Upeksha Badullahewage, “Financial Inclusion and Women’s Economic Empowerment in Northern Sri Lanka” (2019) 10:8 *International Journal of Business and Social Science* 128; Rathnija Arandara and Shanuki Gunasekera, “Financial Inclusion and Inclusive Growth” World Bank Policy Research Working Paper 9204; Asli Demirguc-Kunt, Leora Klapper, and Dorothe Singer, “Financial and Legal Constraints to Growth: Does Firm Size Matter?” (2005) 60:1 The Journal of Finance 137.

office hours facilitates the program. In regard to gender empowerment and poverty alleviation as a social goal, women are better clients due to their repayment power. However, in closer examination, the gender consideration is essential to the programs' sustainability (essentially to repayment and enforcement). The loans are specifically targeted towards women; however, this does not necessarily translate into only funding female entrepreneurship. Women often act as credit conduits for their spouses; as they take on the loan obligations on behalf of their husbands.<sup>1165</sup> The husband's business gets the money and the wife bears the legal liability of the contractual and financial obligations of the loan. In directly upholding the patriarchy, these practices succumb women to debt and collection practices. It is significant to note that the re-victimization of women through credit and the psychological shame, and sociological conditions in fact create exclusion as contrary to policy aspirations of financial inclusion.

The below discussion further illuminates the underlying rationale in providing loans for "productive purposes".<sup>1166</sup> The microfinance provider determines loan eligibility as if "all income-generating activities" enhance the well-being of the family. The extension of

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<sup>1165</sup> Mathilde Bauwin, "Relationship in Microfinance: Do Women Benefit As Much as Men?" in Michael O'Connor and Joana Silva Afonso, eds, *Emerging Challenges and Innovation in Microfinance and Finance Inclusion*, (Cham: Springer, 2019); Eric Yanfei Zhao and Tyler Wry, "Not All Inequality is Equal: Deconstructing the Societal Logic of Patriarchy to Understand Microfinance Lending to Women" (2016) 59:6 *Academy of Management Journal* 1994; Sylvain Dessy and Jacques Ewoudou, "Microfinance and Female Empowerment" (2006) *Cahier de Recherche Working Paper No. 06-03*; Mudiyansele, Nadeera Ranubahu and Mary Barrett, "Effectuation thinking and the manifestation of socio-cultural complexities in Sri Lankan female entrepreneurs' business decisions" (2018) in S Yousafzai et al, eds, *Contextual Embeddedness of Women's Entrepreneurship* (Abingdon: Routledge- Taylor and Francis, 2018); John Adams and Frank Raymond, "Did Yunus Deserve the Nobel Peace Prize: Microfinance or Macroeconomics?" (2008) 42:2 *Journal of Economic Issues* 435.

<sup>1166</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

the policy rationale to ensure the elevated economic conditions of the family inadvertently exclude single, widowed and childless women who are unable to demonstrate ‘family well-being’ thereby excluding members from either obtaining a smaller loan or not meeting the eligibility criteria.

*I: What about in terms of – what are these loans used for, consumption smoothing or just entrepreneurship?*

*P: No, no, only for productive purposes.. all income-generating activities .anything, legal that brings in income That brings in money to the family.<sup>1167</sup>*

Notions of “banking” or “financial inclusion” are not neutral – they take on a different meaning.

#### 4. 8.11 Religion as a Determination for Creditworthiness

To date, many of the stakeholders who provide microfinance admit that 95% of their borrowers are women. Intuitively, these initiatives may face challenging barriers at a local level; however, in some cases the unwillingness to accept ‘gender empowerment’ as a goal was identified in this qualitative study.

*P: I don't say gender balance is bad ... in our culture it's something different. Gender balance is a European concept.<sup>1168</sup>*

The Executive Director of an MFI believes that gender parity within the financial inclusion is a colonial transplant.<sup>1169</sup> More troubling during this interview is the religious undertone

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<sup>1167</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1168</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Mudiyansele, Nadeera Ranubahu and Mary Barrett, “Effectuation thinking and the manifestation of socio-cultural complexities in Sri Lankan female entrepreneurs’ business decisions” (2018) in S Yousafzai et al, eds, *Contextual Embeddedness of Women’s Entrepreneurship* (Abingdon: Routledge- Taylor and Francis, 2018).

<sup>1169</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



that accompanies the lending process and that the disbursement of funds is faith based. The recipients do not have to be Christian, yet may be aware that this is a faith based MFI.<sup>1170</sup>

*P: Also, our vision is based on a Christian perspective. To have a theological base for anything is social base because you know, theology is not, how should I say, theology is not a strange thing.<sup>1171</sup> So likewise, our organization, also our mission and our values are based on Christian principles.<sup>1172</sup>*

In further discussions, the Executive Director stated that he “had never heard of a Christian taking it” (a loan), but is assisting a Church in a post-war region on promoting microcredit in order to raise money for the church and the community.<sup>1173</sup>

#### 4.8.12 Unexpected Findings: Sex Workers & Post War Conditions

During the second phase of this qualitative study, I was able to visit the Coastal City, Trincomalee in the Eastern part of Sri Lanka.<sup>1174</sup> This port city is known for its beautiful beaches and its rich tourist attractions. However, during the long civil war, Trincomalee was a hotspot and served as an LTTE stronghold. The majority of the population is Tamil, with a small Muslim minority. Post-war, the GoSL designated this City as a high security zone, in which the military was able to control the relocation, displacement and reconstruction efforts.<sup>1175</sup> In addition, Trincomalee served as a ‘microfinance hub’ for NGOs which promoted small scale enterprises to support Tourism. It is within that context, I embarked on my journey to visit a local NGO, which was deemed

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<sup>1170</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1171</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1172</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1173</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1174</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1175</sup> Bhavani, Foneska, “Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka” (2010) Centre for Policy Alternatives

<[https://www.sangam.org/2010/09/Returns\\_Resettlement.pdf](https://www.sangam.org/2010/09/Returns_Resettlement.pdf)>.

to be successful in the area. Upon my arrival, the Executive Team met with me at a local restaurant filled with Tourists; they believed that my presence at the site of operations would attract military scrutiny as high surveillance was in effect during this time.<sup>1176</sup> They also believed that the Muslim population that was served was too vulnerable to be “exposed to a foreign visitor.”<sup>1177</sup> Instead, I was urged by the Executive Director of the NGO to meet an advocacy group that worked with over-indebted individuals against financial institutions.<sup>1178</sup> Again, the advocacy group apologetically refused to grant me access due to the “surveillance culture” within the Trincomalee region.<sup>1179</sup>

However, on my second day attempting to connect with different organizations in the area, I received a call from the front desk of my hotel asking me to meet a journalist in the lobby. He had asked the front desk personnel to speak with the “banking lawyer” – who I am assuming had some informal intel – that I was a “banking lawyer.” Upon meeting the journalist, I was asked to accompany him and a filmmaker to a small town located in the outskirts of the City. I immediately decided to go with them and meet potential microfinance recipients. I was told that the recipients were unique, as they were perceived to be sex workers and their children and were “banished” to this small town and only the Church was assisting these women through microfinance.<sup>1180</sup> During my discussions with

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<sup>1176</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1177</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1178</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1179</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1180</sup> These women were labelled as sex-workers, yet they themselves do not consider this their profession. They were culturally targeted for either having intimate relationships with either soldiers, truck drivers or married men. Some of these women were also “mistresses to elite men in the community”. The discussions were deeply moving, and are beyond the scope of this study. Interview of stakeholders in Sri Lanka during field work (December 2013).

three women, I was informed that they were given small sum loans if they attended the local church.<sup>1181</sup> I asked if religious conversion was a precondition to obtaining the loan, and the women responded in the negative. The Church expected these women to attend church on Sundays and to discuss their business plans – which ranged from making desserts to making palmyra leaf ornaments.<sup>1182</sup> According to the women, they repaid small installments and these amounts were based upon their current weekly ability. Therefore, each Sunday they had to make a nominal payment towards the loan. The Church also provided these women with clothing, and food items for themselves and their children which was beyond the scope of the lending arrangements. No loan documents were employed in any of these transactions, and the loan cycle and payment structure were all maintained through a simple notebook administered by the Church helper.<sup>1183</sup> Even though these women did not consider themselves Christian, they were amenable to church attendance due to the economic benefits they received. According to the recipients, about 34 women participated in this religious development business initiative.<sup>1184</sup>

The findings of this study did not directly identify religion as a specific coercive force. However, it is interesting to note that religion was employed as more ceremonial in nature. It was the common link between the MFI and the group members; and also as a cultural and religious bond between the borrowers. In the multiple focus groups conducted and interviews held, the research did not yield one result in which a stakeholder mentioned “Hinduism” within the financial inclusion context. In fact, the absence of such a finding

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<sup>1181</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1182</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1183</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1184</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

is surprising, as the majority of the interviewee beneficiaries were Tamil, who are usually Hindu. It is unclear if the post-war climate and the resulting conditions contributed to the absence of such findings in which religion was not discussed within financial relationships. Other scholars studying microfinance and development schemes in other jurisdictions, nevertheless, have linked spiritual linkages from Hinduism to microfinance programming for borrower comfort.<sup>1185</sup> In the Sri Lankan context, that aspect in financial inclusion was not apparent as discussed above. The academic context of religion within this section is based on the fact that this study has showcased the multi-layered regulatory entities that affect individuals and communities within a post-war jurisdiction. The financial transactions and arrangements envisioned by policymakers within financial inclusion fails to consider the intimate practices that entrench the daily lives of underbanked communities.

#### **4.9. The Undercurrents Affecting Policy Implementation in Financial Inclusion**

The underlying issues of post-war conditions and political, as well as segregationist policies affect the uptake of meaningful financial inclusion. The aftermath of the war and the State obsession with the LTTE frame the financial realities of the Tamil community.

##### **4.9.1 The Political Question: Defeating the Enemy**

The Liberation of Tamil Tigers of Tamil Ealam (LTTE), an armed secessionist group, designated as a terrorist organization in 2008 by Canada and the United States, were defeated by the Sri Lankan government in 2009.<sup>1186</sup> This study was conducted during the aftermath of the war, and during the post-war reconstruction period. In the multiple stages

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<sup>1185</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1186</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

of field work for this doctoral study, the political climate was divided. The Tamil diaspora claimed that the State had engaged in war crimes.<sup>1187</sup> The State in the after-math of the war emerged as the victor against the terrorist group, and the ‘saviour’ for Tamils.<sup>1188</sup> During the qualitative interviews, it was clear that these perceptions continued to permeate the post-war psyches of survivors. From a macro-level context, the political divisions were based on the Diasporic narrative, specifically that the LTTE was seen as the representation of Tamil voices; they were perceived as “Freedom Fighters”.<sup>1189</sup> However, the study revealed that that not all Tamils subject to LTTE rule were in favor of the organization. A participant in one of the microfinance schemes wanted to disclose an “aside comment” to advise that not all Tamils were “Pro-LTTE”. She wanted “me to know the truth”.<sup>1190</sup>

*P: Young sister<sup>1191</sup>, because a lot of these people they have fear, they lived in fear. Everybody thinks the Tamil people were pro-LTTE. We were not pro-LTTE, we were afraid. They took our children, we were living in fear we didn't have a choice. You're either are nice to them or you're not. You either make life easy or you're not. So for 30 years these people have been*

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<sup>1187</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Elizabeth Leman, “Litmus Test of Our Resolve: War Crimes and International Humanitarian Law in Sri Lanka” (2013) 5 *Elon L Rev* 301; Nihal Jayasinghe and Daley J Birkett, “A War Crimes Tribunal for Sri Lanka? Examining the Options Under International Law” (2014) 46 *Case Western Reserve J International L* 567.

<sup>1188</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Roger Mac Ginty, “Gōta’s War: The Crushing of Tamil Tiger Terrorism in Sri Lanka” Book Review of *Gōta’s War: The Crushing of Tamil Tiger Terrorism in Sri Lanka* by C.A. Chandraprema, (2013) 102:2 *The Round Table: The Commonwealth J of Intl Affairs* 208.

<sup>1189</sup> “The history of the Tamil Tigers” *Al Jazeera* (28 Apr 2009) online: <https://www.aljazeera.com/focus/2008/11/2008112019115851343.html>; Rebekka Friedman, “Remnants of a Checkered Past: Female LTTE and Social Reintegration in Post-War Sri Lanka” (2018) 62 *Intl Stud Q* 632 at 635.; Tom O’Neill, “In the path of heroes: second-generation Tamil-Canadians after the LTTE” (2015) 22:1 *Identities: Global Stud in Culture and Power* 124.; Peter Chalk, “The Tigers Abroad: How the LTTE Diaspora Supports the Conflict in Sri Lanka” (2008) 9:2 *Georgetown J of Intl Affairs* 97.

<sup>1190</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013);

<sup>1191</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); The participant called me “Thankashi” – which is Tamil for “younger sister”.

*in this, like, hostage situation, like, mental hostage, right...now again we are in a hostage like situation with the army.*<sup>1192</sup>

#### 4.9.2 Tamil Nationalism

The State, through its policies within the post-war era, has vowed to eliminate the rise of “Tamil Nationalism”.<sup>1193</sup> The policies used to police, occupy, surveil and exclude members of the Tamil advocacy, or political apparatus are disguised as anti-terrorism laws.<sup>1194</sup> During the interviews with State officials, a common theme that emerged was that a unifying Tamil political party will revive the war, and create another separatist group.<sup>1195</sup> The notion that Tamil identity is mutually exclusive with terrorist or separatist demands was a misconception that was echoed by multiple State officials and Sinhalese private citizens during the interviews.<sup>1196</sup>

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<sup>1192</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1193</sup> “Sri Lanka: Antiterrorism Laws Used to Muzzle the Press” (27 Apr 2007) online: *Human Rights Watch* < <https://www.hrw.org/news/2007/04/12/sri-lanka-antiterrorism-laws-used-muzzle-press>>; Ben Doherty & Daniel Flitton, “Sri Lankans held under terror laws” *The Age* (16 September 2011)

online:<<http://go.galegroup.com.ezproxy.uwindsor.ca/ps/i.do?id=GALE%7CA279656705&v=2.1&u=wind05901&it=r&p=AONE&sw=w>>; “Tight grip on Tamil suspects” *The Sydney Morning Herald* (2 September 2011) online:<<http://go.galegroup.com.ezproxy.uwindsor.ca/ps/i.do?&id=GALE|A279500825&v=2.1&u=wind05901&it=r&p=AONE&sw=w>>.

<sup>1194</sup> “Sri Lanka: Antiterrorism Laws Used to Muzzle the Press” (27 Apr 2007) online: *Human Rights Watch* < <https://www.hrw.org/news/2007/04/12/sri-lanka-antiterrorism-laws-used-muzzle-press>>; Ben Doherty and Daniel Flitton, “Sri Lankans held under terror laws” *The Age* (16 September 2011),

online:<<http://go.galegroup.com.ezproxy.uwindsor.ca/ps/i.do?id=GALE%7CA279656705&v=2.1&u=wind05901&it=r&p=AONE&sw=w>>; “Tight grip on Tamil suspects” *The Sydney Morning Herald* (2 September 2011) online:<<http://go.galegroup.com.ezproxy.uwindsor.ca/ps/i.do?&id=GALE|A279500825&v=2.1&u=wind05901&it=r&p=AONE&sw=w>>.

<sup>1195</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1196</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The issues surrounding Tamil political activity emerged during discussions of financial inclusion in post-war areas and how the regulatory structure may enhance access to finance through various measures. The State officials often would discuss the then election of a Tamil party (TNA) to voice their discomfort to a Tamil political party that governs the post-war areas, as this new governance may hinder financial inclusion.<sup>1197</sup> When I inquired further and asked “why” provincial governance issues would affect financial inclusion, the question remained unanswered.<sup>1198</sup> The discomfort displayed toward Tamil nationalism or political mobilization appeared to be rooted more in ideological underpinnings than in concrete fiscal considerations.<sup>1199</sup> Below, an excerpt represents this important discussion:

*P: This has been done by the Tamil politicians TNA. Their idea is to separate ordinary people from the army from the other part of the country because they want people to speak about Tamil nationalism, separatism.*<sup>1200</sup>

*I: Right, but they are saying nationalism is not the same as separatism they are saying it is two distinct things. So they said – so I talk to people, I didn’t talk to TNA but I talked to people and I said why did you vote for the TNA, why didn’t you vote for the government? They said we voted for somebody who looks like us, like, who is from our community. It’s like, you know, in Obama a lot of African Americans voted for Obama because he is a black president, right – same situation. And I said what do you believe that the TNA, do you think that they want a separate place again? They said no, it’s identity, it has nothing to do with (this is what they were saying) it has nothing to do with a separate state it’s more Tamil culture and Tamil identity.*<sup>1201</sup>

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<sup>1197</sup> “Sri Lanka’s Main Tamil Party TNA gets Opposition Status in Parliament,” (September 2015) online: The Economic Times

<https://economictimes.indiatimes.com/news/international/world-news/sri-lankas-main-tamil-party-tna-gets-opposition-status-in-parliament/articleshow/48784437.cms?from=mdr>

<sup>1198</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1199</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1200</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1201</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The financial regime is also politicized through this perspective. The way loan agreements and language rights and human resource decisions are made in financial institutions follow a similar *modus operandi*.

#### 4.9.3 Language

“Language” as a form of oppression and regulation has been a theme that has interwoven this study. The undercurrents of political and economic exclusion have used language as a tool to create inequities.<sup>1202</sup> Similarly, in the access of financial services and within the financial inclusion framework, “language” in Sri Lanka was a prominent feature that either demonstrated exclusion or dominance depending on the research site visits or which stakeholder was interviewed.<sup>1203</sup> For instance, a regional microfinance provider only used Sinhalese loan agreements in their operations, despite the fact that they serviced Tamil and Muslim beneficiaries.<sup>1204</sup> It appeared that on a national scale, the provision of services was exclusively created for the Sinhalese community.

The discussion below describes the geographic segregation experienced by the various communities; how providers determine whether to expand in certain markets; and whether they service communities that already experience a microfinance presence.<sup>1205</sup> It appears from the data collected that expansion of microfinance delivery is based on profitability and commercial interest.<sup>1206</sup> During the time of these interviews, post-war areas were seen as lucrative due to their ‘untapped’ market and low regulatory access to

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<sup>1202</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1203</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1204</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1205</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1206</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



communities within the newly built military sponsored infrastructure and reconstruction.<sup>1207</sup>

*P: In up-countries, there are also Tamil communities. We are not that involved in up-country - especially in the Tamil community - we are not involved. But one major involvement right at the moment our organization is that we go to the post-conflict area so we are working in.*<sup>1208</sup>

In establishing a policy framework for financial inclusion in the post-war areas, the national regulator relies on a national, rather than a regional policy approach. For instance, during the time of this qualitative study, financial literacy was a sub-issue examined by the regulator in order to determine the effectiveness of financial inclusion.<sup>1209</sup> In the interview stage of this study (2016), the public documents were available in English and Sinhalese. The policy documents created were not tailored for the Northern and Eastern part of Sri Lanka.<sup>1210</sup>

#### **4.10 Barriers Identified by the Regulator**

When asked if the CBSL has the ability to create a governance or enforcement mechanism to regulate non-bank financial institutions, the regulator discussed the difficulty with enforcement and consumer protection. It is important to note that the MFI Bill had not been passed when these interviews were conducted.<sup>1211</sup> The discussion below reveals that

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<sup>1207</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1208</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1209</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1210</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1211</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

instead of focusing on unregulated financial activity, an emphasis is placed on consumer empowerment through financial literacy programs through a consumer protection lens.

*P: We now give a 2 day program to brief people - bank customers, government servants, school children and everything, we brief them in financial literacy, which include all these type of activities not to trap with these unscrupulous people<sup>1212</sup> and don't go for finance institution other than banks because of the high rate of interest.*

*And recently you know, also these internet people have been lost millions and millions of rupees for want of greedy of interest because normally bank is 4% or 5% interest for the savings and about 13-20% in their savings products, then people invest their money and after they give the money they vanish so, so many peoples have lost their money.<sup>1213</sup>*

Not only are borrowers subject to high interest rates, which they may not fully comprehend, but they also are encouraged to use unregulated savings products, which is in contravention to deposit-taking legislation promulgated by the CBSL.<sup>1214</sup> In some cases, as mentioned above, consumers have lost their savings by trusting unregulated entities that engage in micro-level financial inclusion.

Another dimension to this issue is that heightened regulatory requirements imposed on financial institutions are often passed on to the consumer. For instance, a bank will require the consumer to meet eligibility requirements for credit products, whereas non-regulated entities will have lower lending requirements to provide meaningful financial

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<sup>1212</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013.) The regulator's representative described unregulated entities and commercialized MFIs as trapping poor people with high interest rates, thereby affecting lending. The low standards of just "giving away money" has created a challenge.

<sup>1213</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>1214</sup> Anonymous, "Directions, Circulars and Guidelines on Micro Finance", online: CBSL

[https://www.cbsl.gov.lk/sites/default/files/cbslweb\\_documents/laws/cdg/bsd\\_LSB\\_Up\\_to\\_30\\_Nov\\_2013\\_compressed\\_0.pdf](https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/cdg/bsd_LSB_Up_to_30_Nov_2013_compressed_0.pdf)

inclusion. The narrative exchange below between myself and the interviewee highlights the consumer frustration with the onerous requirements imposed by formal financial institutions.

*P: Similarly, the lending is also the same, they go to the people they simply give the money. So they criticize us saying that your various methods and your loan procedures and granting loans are not good, see... those other people are just giving us money at home.*<sup>1215</sup>

Simply put, not only are the high interest products an issue, but the lower lending standards are also offered to lure borrowers into predatory relationships. The two contrasting lending requirements and procedures between unregulated financial institutions and formal financial institutions are shaped by the borrower perspective. For instance, in numerous discussions with borrowers throughout this study, banks were seen as more “unpopular”, “predatory” and “evil” due to their stringent conditions and are perceived not to be ‘consumer friendly’, thereby deepening distrust for traditional financial institutions.<sup>1216</sup>

The incongruity in these perceptions are based on misconceptions due to the fact that unregulated MFIs are actually more predatory due to their high interest rates and repayment enforcement practices. The discussion below illustrates the regulator’s view on unregulated MFIs and their irresponsible lending and financial activities within the financial inclusion landscape.

*P: They get poor people, they get the money but they don’t know what to do with the money and people who give that, MFIs also just when they give the money they eligible to get the money back with interest.*<sup>1217</sup> They have no

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<sup>1215</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1216</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1217</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*interest of how whether they are going to invest it and how the people are going to generate income.*

*One example, I met a lady in Mullaitivu district, she's a widow and she got 10,000 rupees. So I asked her how are you repaying it? She said monthly "I have to pay 1,150 rupees and that loan to has to be repaid within 10 months time." So I asked how much interest are you paying? She doesn't know<sup>1218</sup>.*

*She says "I don't know but they will come and collect it weekly" and suppose if you don't pay no they won't get it.. She said "they will sit there until I pay the money". So, if you don't have money, are you going to borrow at the higher rate even or are you pay it or even suppose if anything are you go and mortgage it? So what are you going to do with that money and I asked what did you do with that money, "we spent it".*

Again, the empirical evidence demonstrates that these loans are extended by unregulated MFIs as part of the financial inclusion efforts. However, these loans are used for daily living expenses, also described as "consumption smoothing"<sup>1219</sup> rather than business or income generating activities.<sup>1220</sup> As money is fungible, and the loan may not be used for the intended or earmarked business purposes; financial service providers have augmented their credit offerings to assist their customers with emergency loans or a weekly forbearance option.<sup>1221</sup>

The enforcement of installment plans when the borrower default by the unregulated financial institutions creates another challenging hurdle for regulators. The methods used are predatory, coercive and beyond the rights and obligations contained within the initial

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<sup>1218</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Atish R. Ghosh, Jonathan D. Ostry, The Current Account in Developing Countries: A Perspective from the Consumption-Smoothing Approach, *The World Bank Economic Review*, Volume 9, Issue 2, May 1995 at 305–333, <https://doi.org/10.1093/wber/9.2.305>

<sup>1219</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1220</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1221</sup> Joanna Ledgerwood and Victoria White, *Transforming Microfinance Institutions: Providing Full Financial Services to the Poor* (Washington DC,: World Bank, 2006).

lending agreements.<sup>1222</sup> The narrative below depicts some of the harsh actions taken against defaulting borrowers.

*P: They will recover the loan, in one case I saw that they couldn't pay, they took the TV; so whatever equipment they will take it and go.<sup>1223</sup> These are unauthorized MFI's. Because they can't go and deal with the people in the town... they go and deal with the poor people only.<sup>1224</sup> The poor people, normally the financial institution has a closed door for them, now so there is another alternative for these people. But here they are not going to look into whether you are bankable or un-bankable, they just give the loan and recovery the money.<sup>1225</sup>*

As mentioned in the above quote, the “target consumer” is either geographically and socially marginalized, or both. The sheer ‘desperation’ for a substitute to aid or access to emergency funds has transformed small micro business loans into consumption loans. The borrower’s unmet financial need also corresponds to their eligibility category. The “bankability” of consumers is not a large consideration for these unregulated MFIs; in fact, they pursue victims of war and deemed to be *unbankable*.<sup>1226</sup>

The precondition to participate in the PAMP project is to transform a consumer into a ‘bankable’ consumer; this is anchored on the regulator’s criteria of creditworthiness for the financial institutions. The nomenclature around bankability is not just about semantics, but it is a politically-loaded term. The regulator has not defined the actual concept of

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<sup>1222</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1223</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The regulator’s representative describes that the enforcement of loans is accomplished through taking consumer collateral of their possessions (such as TVs, pots and pans, fans, livestock, pets and jewellery). These financial transactions become precarious perpetuate poverty and trauma as these families are victims of war, and have already experienced deep loss, dispossession, and displacement.

<sup>1224</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1225</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1226</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

‘bankability’ – the issue is whether creditworthiness is defined through a transactional history of remittance recipients or consumers who are earning a living, rather than dependents?

It is interesting to note that the use of funds by the borrower are not as stringently monitored as the repayment ability or process. The tactics used by loan officers in loan repayment methods is by (1) being physically present until the borrower pays the installment or (2) taking consumer collateral in lieu of payment may seem to be a minimal price to pay for non-payment. The close physical proximity of the loan officer may not pose a threat as the borrower has a prior friendly relationship with him<sup>1227</sup>, and the ‘collateral’ taken by the loan officer may be replaced or borrowed from family members or neighbors. These are victims of war that have suffered unthinkable trauma. The psychological impact of the scarcity of resources may adversely affect individuals, families and communities, thereby creating collective trauma. However, some scholars insist that microfinance could also be used to ease post-traumatic stress, as credit officers become agents of trauma healing through their interaction with loan recipients. Borrowers or savers are able to talk business and future prospects, which helps trauma and war memories to fade. ‘Credit plus’ approaches in conflict-affected environments include non-financial

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<sup>1227</sup> During this qualitative study, all loan officers were men. There were no female loan officers in any of the initiatives or schemes examined during the period of study. When asked, I was advised that (1) women did not apply, or (2) culturally it is not safe or proper for women to become loan officers in the field. They are apparently “better suited for office work”. In other jurisdictions, the gender dynamics of loan officers have been explored, in which the male loan officer was able to coerce repayment due to gender. See Marrit van den Berg, Robert Lensink & Roselia Servin, “Loan Officers’ Gender and Microfinance Repayment Rates” (2015) 51:9 *The Journal of Development Studies* 1241-1254.

services, such as health education, literacy, human rights and reconciliation awareness, as well as psychological counselling.<sup>1228</sup>

Unfortunately, these financial transactions not only become precarious for borrowers, but they also have the capacity to perpetuate poverty and economic disempowerment, thereby creating financial exclusion. Furthermore, both of these enforcement mechanisms are not legal remedies; they are in fact *ultra vires* action taken by the lender. The physical occupation and mild harassment is beyond the contractual remedies that the borrower assented to, and the taking of collateral in an unsecured loan transaction is beyond the lender's rights.

The CBSL's inability to enforce regulatory compliance due to the lack of legal jurisdiction has thwarted consumer protection from predatory lenders. Instead, the regulator has shifted towards consumer protection awareness by providing consumers a list authorized banks, and 'safe' financial institutions. The cautionary notice "don't invest your money in any other finance company unless it is on the list."<sup>1229</sup> In discussion with participants in the PAMP program, it is clear that the provision of notices is not an adequate

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<sup>1228</sup> Pascal Marino, "Beyond economic benefits: the contribution of microfinance to post-conflict recovery in Asia and the Pacific," The Foundation of Development Corporation, April 2005, online: <https://www.gdrc.org/icm/country/fdc-afgan.pdf> at 2; Omar Sheikh Osman, "The role of microfinance post trauma: the case of Syria" (2020) *Journal of Sustainable Finance & Investment* 10.

<sup>1229</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

means of consumer protection, as many participants do not read notices or letters.<sup>1230</sup> These individuals are “more interested in rebuilding” their lives after the war.<sup>1231</sup>

#### **4.11 Conditions that Malign Financial Inclusion**

This qualitative study amplified the multiple challenges and barriers towards meaningful financial inclusion was predicated upon existing policy decisions and cultural settings within financial transactions. A challenging aspect of financial inclusion deployment is the profit prioritization over communities ravaged by war, which has led to over indebtedness.<sup>1232</sup> For instance the loan repayment problem was articulated by the Kilinochchi District Secretary Suntharam Arumainayaham that “The top priority of these micro-finance companies is not to develop the livelihood of the war-affected, but to exploit them even further, for profit” and that “the issue of indebtedness also leads to other social issues including family breakups due to poverty. People are compelled to obtain more loans to settle other loans. These conditions finally lead to suicides”.<sup>1233</sup> In situations of drought and high debt, which exist in most parts of northern Sri Lanka, microfinance which was once seen as a boon often ends up becoming a debt trap.<sup>1234</sup> These conditions can be traced to the commercial and cultural motivations as described in this section.

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<sup>1230</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1231</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1232</sup> “People urge urgent end to exploitation by micro-finance companies”, The Sunday Times, October 8 2017, online: <http://www.sundaytimes.lk/171008/news/people-urge-urgent-end-to-exploitation-by-micro-finance-companies-263058.html>

<sup>1233</sup> “People urge urgent end to exploitation by micro-finance companies”, The Sunday Times, October 8 2017, online: <http://www.sundaytimes.lk/171008/news/people-urge-urgent-end-to-exploitation-by-micro-finance-companies-263058.html>

<sup>1234</sup> “People urge urgent end to exploitation by micro-finance companies”, The Sunday Times, October 8 2017, online: <http://www.sundaytimes.lk/171008/news/people-urge-urgent-end-to-exploitation-by-micro-finance-companies-263058.html>



#### 4.11.1 Source of Funds

The “source of funds issue” for MFIs has been a business challenge for financial services providers; it ultimately determines the institutional sustainability and the viability of the financial inclusion initiatives. For clarity purposes, the source of funds inquiry refers to the fungible or liquidity aspect of lending money. This issue preoccupies MFI management – as it requires MFIs to have the ability to obtain and then retain funding. The ability to obtain funding is difficult, and the high-risk repayment considerations are even more challenging. As one stakeholder describes this conundrum, “Suppose we get funding to give loans for 1 year, and then there are built in costs for the borrower – so each repayment with interest puts back a little more money back into our organization. That’s a good thing – but what if there is flood or a crisis and no one repays the money we gave as credit? We have to close our microfinance organization.”<sup>1235</sup>

The various models of financial services providers within the financial inclusion context have created challenges for regulatory oversight. For instance, the development of microfinance and micro-credit regimes in Sri Lanka have disrupted the traditional image of a local MFI engaged in charitable or non-profit / or co-op financial inclusion efforts in rural and agricultural areas.<sup>1236</sup> However, now more than ever, commercialized MFIs are

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<sup>1235</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1236</sup> M. Jayadev and Rudra Narashimha Rao, “Financial resources of the microfinance sector: Securitisation deals – Issues and challenges Interview with the MFIs Grameen Koota and Equitas,” (2012) 24:1 IIMB Management Review 28-39, online: <https://www.sciencedirect.com/science/article/pii/S0970389611001248/> Stephanie Charitonenko and Dulani de Silva, *Commercialization of Microfinance in Sri Lanka*, (Manila: Asian Development Bank, 2002).

interconnected with financial markets.<sup>1237</sup> The business models range from commercialized MFIS to traditional banking structures.<sup>1238</sup>

The ability to engage in financial services requires capital flows and solvency, and the ability to attract sufficient capital. As one stakeholder explained the struggles faced by local commercialized and non-profit MFIs is raising capital is based on creditworthiness and collateral.<sup>1239</sup>

*P: Our problem is the security....This microfinance sector in Sri Lanka, usually people talk about why don't you raise from the local market such as our banks. They ask us for security, very high, very good security, our thinking is different. We don't put money in buildings and all these things because we are using very old vehicles and very simple building, we don't have air conditioning units, we really have nothing. Because we use that money for grant of loans so when these banks come in and whether you have property.*<sup>1240</sup>

The absence of valuable collateral severely impacts the institution's ability to obtain bank loans, which inhibits their lending practices to fulfill financial inclusion goals. Non-profit microfinance institutions are further disadvantaged due to a decrease in donor funds; as one stakeholder remarked "Here, in Sri Lanka you can't be a NGO anymore.. there we have approached so many international lenders and donors. One big problem is we are not legally recognized as a financial institution."<sup>1241</sup>

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<sup>1237</sup> M. Jayadev and Rudra Narashimha Rao, "Financial resources of the microfinance sector: Securitisation deals – Issues and challenges Interview with the MFIs Grameen Koota and Equitas," (2012) 24:1 IIMB Management Review 28-39, online:

<https://www.sciencedirect.com/science/article/pii/S0970389611001248/>

<sup>1238</sup> M. Jayadev and Rudra Narashimha Rao, "Financial resources of the microfinance sector: Securitisation deals – Issues and challenges Interview with the MFIs Grameen Koota and Equitas," (2012) 24:1 IIMB Management Review 28-39, online:

<https://www.sciencedirect.com/science/article/pii/S0970389611001248/>

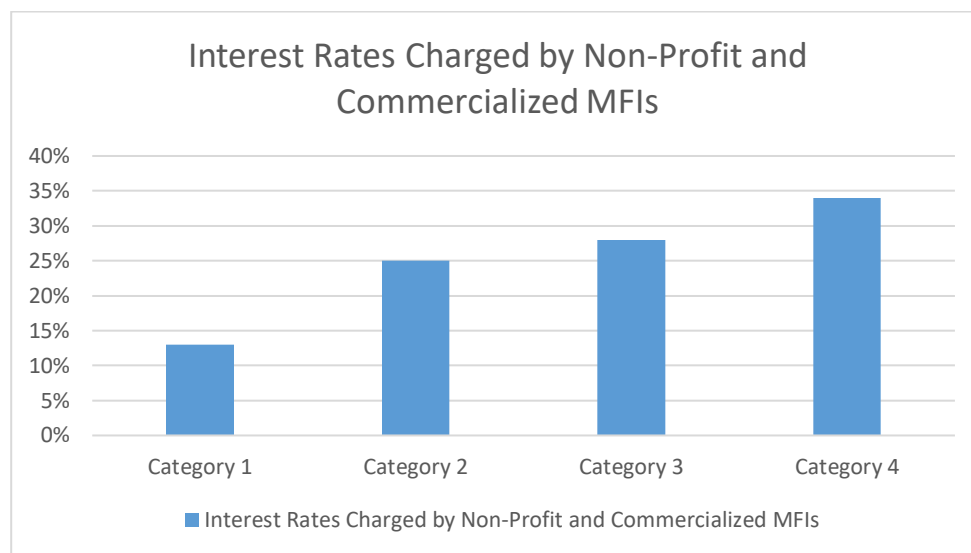
<sup>1239</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1240</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1241</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

#### 4.11.2 Variegated Interest Rates in Lending Arrangements

This study revealed a range of interest rates, which are either paid by the borrower as a flat rate or in monthly charges. The interest rates charged by non-profit and commercialized MFIs are as follows: 13%, 25 %, 28% and 34%.<sup>1242</sup>



The lowest interest rate identified is 13%, which is charged as a flat rate in order to create a “competitive rate for microfinance recipients.”<sup>1243</sup> The purpose designing a flat rate is to assure the borrower that no other hidden fees will be attributed to the loan. According to the one microfinance institutional stakeholder, borrowers in a highly dense MFI penetration are usually “experts” on how much each of MFI will be charge for each loan.<sup>1244</sup> They may not know the interest rate, but some borrowers will shop around to see how much each loan will cost them after repayment.<sup>1245</sup> As such, the flat rate interest attribution is merely rooted in obtaining a competitive advantage, and not in altruism.

<sup>1242</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1243</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1244</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1245</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The average rate charged in microfinance loans is between 25%-28%. In 2016, Sri Lanka's Ministry of Finance has instituted a usury cap for MFIs at 30% to combat the cycling of debt due to high interest rates and suicide reports.<sup>1246</sup> These interest rates appear non-consequential, however, they have a detrimental impact on vulnerable borrowers.

Interest rates surrounding lending products are the primary source of income for many financial services providers, but are detrimental to borrowers. Research further suggests that the high interest rates imputed on microcredit arrangements contributes to the cycle of indebtedness.<sup>1247</sup> The regulator's representative explains:

*P: When we give loans - we charge 1% per month, per month, but they charge 4%, 5%, 10% even per month. So when we go and educate these people on financial issues, we told them now 'if you take 50,000 rupees from one person you have to pay 5,000 rupees as interest for a month if it is 10% per month so for a year you're going to pay 60,000 rupees.'*<sup>1248</sup>

*P: So we pay an investment of 50,000 can you pay interest of 60,000? Then there is a surplus to repay the capital and that is a surplus for you to exist; they don't understand. But if they take the 50,000 from the bank they have to pay only 4,000 rupees for a year.*<sup>1249</sup>

The challenges in ranges of interest rates imputed on the credit products described above result in the high repayment rates, which is a detriment to the already vulnerable consumer. Interest rates offered by banks are more reasonable, however, specific

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<sup>1246</sup> Nicholas Galimberti, "MICROCAPITAL BRIEF: With Delinquency Up 24%, Sri Lanka Paying Off Women's Microfinance Loans, Capping Microloan Interest Rates," August 6, 2018 online: <https://www.microcapital.org/microcapital-brief-with-delinquency-up-24-sri-lanka-paying-off-womens-microfinance-loans-capping-microloan-interest-rates/>

<sup>1247</sup> Stephanie Charitonenko and Dulan de Silva, *Commercialization of Microfinance in Sri Lanka* (Manila: Asian Development Bank, 2002).

<sup>1248</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1249</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

communities are not eligible due to a lack of creditworthiness.<sup>1250</sup> “Who else can they turn to?” as one of the interviewee’s exclaimed.<sup>1251</sup>

During the focus groups with beneficiaries in Mullaitivu, Killinochi and Batticaloa, a common theme emerged. In discussing the access and process in receiving loan services and products, beneficiaries were asked whether they understood the terms and conditions of the loan. For example, when asked if beneficiaries understood the interest rates offered by the lender, the answer substantively was in the negative. During specific interviews in Mullaitivu, the beneficiaries were accompanied by the loan officer, who would provide the interest rate.<sup>1252</sup> The beneficiaries, however, are not sure how the interest is applied or calculated. Pursuant to the regulator, any interest rate above 28% is considered an “illegal scheme”.<sup>1253</sup>

#### 4.11.3 Debt and Death: The Over Supply of Loans

Sri Lanka is plagued with issues surrounding over indebtedness, and recipients are trapped in a “cycle of debt.”<sup>1254</sup> On August 15<sup>th</sup>, 2019, *The Economist* published an article which confirmed the data in discovered in this study, which illustrates that over-

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<sup>1250</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1251</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1252</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1253</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1254</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

indebtedness was as result of a flooding of microfinance services and products.<sup>1255</sup> The “unintended consequences of financial inclusion” has been flagged as not only a *mission drift*, but also as perpetuating financial exclusion.<sup>1256</sup> This phenomenon in the disbursement of microcredit loans is not uncommon. The ‘dangers’ articulated by empirical studies and scholarly literature articulates that these “debt traps” further economically disempower recipients.<sup>1257</sup> In order to repay one loan, the recipient either has to borrow from another financial institution, from an informal source or participate in a pawning arrangement. The extensive documentation demonstrates that the ‘multiple loan’ condition is predicated on various systemic failures. For instance, the interest rates are either too high, the initial loan amount is not sufficient to enhance the business venture, low financial literacy, and an absence of credit reporting mechanisms and predatory lending.<sup>1258</sup>

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<sup>1255</sup> Saman Kelegama and Ganga Tilakaratna, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014) ADBI Working Paper Series No 504; Shirantha Heenkenda, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online: [https://www.researchgate.net/publication/281409218\\_Inequalities\\_in\\_the\\_Financial\\_Inclusion\\_in\\_Sri\\_Lanka\\_An\\_Assessment\\_of\\_the\\_Functional\\_Financial\\_Literacy/citation/download](https://www.researchgate.net/publication/281409218_Inequalities_in_the_Financial_Inclusion_in_Sri_Lanka_An_Assessment_of_the_Functional_Financial_Literacy/citation/download); Ashenafi Fanta and Daniel Makina, “Unintended Consequences of Financial Inclusion” in *Extending Financial Inclusion in Africa*, Chapter: 11 (Cambridge: Academic Press, 2019); Central Bank of Sri Lanka, “Microfinance Sector,” online: CBSL <https://www.cbsl.gov.lk/en/financial-system/financial-system-stability/microfinancesector>

<sup>1256</sup> Ashenafi Fanta and Daniel Makina, “Unintended Consequences of Financial Inclusion” in *Extending Financial Inclusion in Africa*, Chapter: 11 (Cambridge: Academic Press, 2019).

<sup>1257</sup> Saman Kelegama and Ganga Tilakaratna, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014) ADBI Working Paper Series No 504.

<sup>1258</sup> Saman Kelegama and Ganga Tilakaratna, “Financial Inclusion, Regulation, and Education in Sri Lanka” (2014) ADBI Working Paper Series No 504.

The lack of a credit reporting system also contributes to the Financial institutions are also not aware of other non-profit MFIs or money lenders / informal loans that have extended loans to their customers. The non-repayment of loans does not only disqualify individuals from future borrowing, but it also can be destructive within a family as the cycle of debt traps families into simply engaging in repayment, and not wealth accumulation.<sup>1259</sup> These financial structures often operate as separate entities. Not only do these challenges affect the financial lives of borrowers, but also their psychological well-being.<sup>1260</sup> “ In parts of Sri Lanka’s north and east, some women keep track of their microloans by the day of the week the collectors come. Others identify the lenders by the colours of their collectors’ shirts. Monday loan, Tuesday loan, blue shirt, yellow shirt: small, unsecured loans promoted by the government after the decades-long civil war ended in 2009 have enmeshed many women in hopeless debt. A central-bank official says his employees have talked desperate borrowers out of killing themselves. At least 170 committed suicide last year.”<sup>1261</sup>

The over-indebtedness issue has been recognized by the Stakeholders; however, the framing of the issue is problematic as articulated below. An analysis of the qualitative data indicates that there are circumstances as described below where the Ministry Lawyer places blame on the financial institutions, and uses the following rationale to explain the cycle of debt problem - “They don’t pay the bank.”<sup>1262</sup> It was further suggested that “the banks

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<sup>1259</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1260</sup> “Microfinance is Driving Many Sri Lankan Borrowers to Despair,” (August 15, 2019) online: *The Economist* <https://www.economist.com/finance-and-economics/2019/08/15/microfinance-is-driving-many-sri-lankan-borrowers-to-despair>

<sup>1261</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1262</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

should be careful because releasing a loan to somebody...they should know if that borrower has taken other loans and the risk should fall on the banks.”<sup>1263</sup> The shifting of “blame” to the financial institutions abdicates the role of the State in these transactions, when it was initially the state that invited the banks to participate and they are also part of the decision-making process. <sup>1264</sup>

Stakeholders within the financial inclusion regime are attempting to combat the over-indebtedness problem through internal mechanisms. For instance, a commercialized MFI has established a policy which prevents a borrower from obtaining a second loan if repayment is delayed or in default.<sup>1265</sup> A record is maintained and an internal credit system is created; however, as one stakeholder remarked “But the problem is not we don’t have a system for exchanging information between other MFIs or banks.”<sup>1266</sup> He further added that “handful of borrowers are creating a hell, they destroyed the credit culture.” <sup>1267</sup> The information asymmetry has contributed to the over-indebtedness issues and the resulting non-performing loans, which has in the past led to systemic institutional failures within the microfinance industry, as such affecting the financial inclusion mission.

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<sup>1263</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1264</sup> Data derived from interviews conducted with stakeholders in Sri Lanka from June 2013-August 2013.

<sup>1265</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Annamaria Lusardi, and Peter Tufano, “Debt Literacy, Financial Experiences and Overindebtedness,” (2015) 14: 4 *Journal of Pension Economics and Finance* 332-368.

<sup>1266</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1267</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).



In 1990, Sri Lanka enacted the Credit Information Bureau of Sri Lanka (“CRIB”).<sup>1268</sup> However, the credit information reporting is confined to banks, finance and leasing companies only.<sup>1269</sup> The credit history of microcredit recipients is not captured; thereby compounding the over-indebtedness within vulnerable communities. The Committee for the Abolition of Illegitimate Debt has characterized this as “an issue of private indebtedness”, and has identified the brutal realities of microcredit regimes in Sri Lanka.<sup>1270</sup> Creating a separate private credit bureau appears to be a discussion that may be on a wish list – but has not been adopted.<sup>1271</sup>

The study in the North and East was developed to examine the unique financial arrangements that emerged in post-war context with respect to financial inclusion in Sri Lanka. In the North, there are the regulator has discovered that most individuals have a loan.

*P: Now, northern province, actually I do collect data in the northern province and I'm interested to see what's happening in the north. Now, we have 1 million, nearly 1 million population in northern province. We have number of loans nearly 1 million. So that means statistically speaking everyone has a loan...with a formal bank not a financial institution.*<sup>1272</sup>

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<sup>1268</sup> “Credit Information,” online: <https://www.cbsl.gov.lk/en/financial-system/financial-infrastructure/credit-information>

<sup>1269</sup> “Credit Information,” online: <https://www.cbsl.gov.lk/en/financial-system/financial-infrastructure/credit-information>

<sup>1270</sup> Nathan Legrand, “In Sri Lanka, Resistance to Private Indebtedness is a Strategic Issue,” March 3, 2020 online: <http://www.cadm.org/In-Sri-Lanka-Resistance-to-Private-Indebtedness-Is-a-Strategic-Issue>

<sup>1271</sup> Jessica Schicks, “Over-Indebtedness in Microfinance – An Empirical Analysis of Related Factors on the Borrower Level” (2014) 54 World Development 10.

<sup>1272</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

At first blush, this actually depicts a 100% financial inclusion.<sup>1273</sup> The number of loans suggests that the lending services are available, yet repayment and the quest to ameliorate poverty are not accomplished. According to the regulator, the absence of a credit reporting regime complicates the over-indebtedness. In some instances, families have taken multiple loans from different financial providers to service one business venture. For instance, each family member received a loan, yet typically one household will be subject to 4-5 loans.<sup>1274</sup>

As highlighted in the narrative by a CEO of a private microfinance institution below, the over-indebtedness is attributed to the over-supply of microfinance loans. In this narrative, the interviewee describes the rampant bidding of loans to communities, and the powerful enforcement mechanism employed in collections.

*P: Yes, definitely, now I was in Mannar<sup>1275</sup> - I was so amazed you know, we went for a review. Now, most of our clients, you know, we are concerned about them in the post-war places - now it has become a big competition. But with finance houses they are giving loans over the counter, it is a big issue without reviewing without they just, you know, on the road they sign it and give the leasing. Their level of collection is very powerful. Their level of demand of collection is very powerful so they are not worried to give the money.<sup>1276</sup>*

#### 4.11.4 Ancillary Services Needed

As indicated in the above referenced sections, the rampant availability of microfinance has created a point of ‘saturation’. In all phases of this fieldwork, and during the qualitative

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<sup>1273</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1274</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>1275</sup> Mannar is a predominantly Christian-Tamil coastal town, that has been heavily affected by the civil war through Indian Peacekeepers, LTTE, and military operation. It is also a post-war area.

<sup>1276</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

interviews with microfinance recipients, a common theme around ‘over-supply of microfinance’ emerged.<sup>1277</sup> The provision of microfinance has reached a plateau; there was a notable absence of the ancillary services required to enhance the efficiency of financial inclusion initiatives.<sup>1278</sup> These ancillary services are comprised of financial literacy, marketing and branding techniques, innovation management and diversification of products.<sup>1279</sup>

While conducting field research in Panadura, located in the Southern region of Sri Lanka, a couple that designed and built wooden toys for the tourism industry participated in the study. The couple invented and designed a specific machine, and specialty molds to manufacture wooden toys.<sup>1280</sup> The prototype is the only machine in existence according to the loan officer; other wood toy makers do not have machines to create these products.<sup>1281</sup> When asked if the couple ever discussed or attempted to ‘protect’ their invention, they replied in the negative. In fact, the only other person who has knowledge of this machine is the loan officer.<sup>1282</sup> This example highlights the need for microfinance support with business strategy and services that is structured for entrepreneurs in developing areas. The intellectual property aspects are also a value that must be considered by providers. NGOs are typically not equipped to impart expertise in business and marketing strategies.<sup>1283</sup>

#### 4.11.5 A Lack of Financial Literacy

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<sup>1277</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>1278</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013)

<sup>1279</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1280</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1281</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1282</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1283</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

Despite financial literacy being advanced as a policy aspiration within financial inclusion, the study reveals that financial literacy as a stand-alone component has not been introduced within these financial initiatives. Heenkenda suggests that, “A financially literate person has the skills, attitude, knowledge, and behaviors sufficient to be aware of financial opportunities and making choices to suit the circumstances, and taking effective action to improve their wellbeing.”<sup>1284</sup> Scholarly interventions have held that low financial literacy can impede financial inclusion initiatives, and in order to create successful inclusion financial literacy is a vital ingredient. It was a challenging task in designing questions for stakeholders with respect to the borrowers or recipients’ financial literacy. During the interview stage, there were moments that the questions had to be contextualized and redefined. For instance, the appeared to be distinctions around “financial capability”, “economic literacy” and “financial knowledge”.<sup>1285</sup> Below is an “extreme” definition employed by an Executive Director of a MFI with respect to financial literacy:

*P: Nowadays education is very high they can read anything.. there is a high literacy rate in Sri Lanka...reading these things are not a problem and they understand interest rate, they know everything about it.*<sup>1286</sup>

According to the Central Bank of Sri Lanka’s annual report, the literacy rate is measured at 92%, which is higher than other comparable nations in South Asia.<sup>1287</sup> The confusion surrounding the literacy rate with financial literacy was common during the

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<sup>1284</sup> Heenkenda, Shirantha, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online:

[https://mpr.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf)

<sup>1285</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Heenkenda, Shirantha, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online:

[https://mpr.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf)

<sup>1286</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1287</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

study. When pressed on some of the definitional issues, the Executive Director maintained that the financial knowledge acquired by vulnerable recipients is based on their financial interactions within the informal economy. “They may fully understand how interest rates work...they have dealings with the informal sector and have to pay back the local money lender or other family member.”<sup>1288</sup>

In order to promote financial literacy, actual and meaningful access to financial products and services is needed; “combined with the ability, knowledge, skills, attitudes, and behaviors to make sound, personal financial decisions.”<sup>1289</sup> As academic literature and empirical studies have demonstrated, financial literacy is a precursor to successful financial inclusion.<sup>1290</sup> The CBSL has long recognized the importance of financial literacy on a general scale, and in it its promotion of financial inclusion as part of its fiscal stability framework.<sup>1291</sup> Yet, scholars have criticized the lack of advancement in this area. Studies have indicated that national financial inequities persist due to a low financial literacy rate.<sup>1292</sup>

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<sup>1288</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1289</sup> Shirantha Heenkenda, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online: [https://mpr.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf) at 4.

<sup>1290</sup> Shirantha Heenkenda, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online: [https://mpr.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf) at 4; Cole, S., & Fernando, N, “Assessing the Importance of Financial Literacy,” (2008) 9:2 ADB Finance for the Poor 289.

<sup>1291</sup> Shirantha Heenkenda, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online: [https://mpr.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf) at 6.

<sup>1292</sup> Shirantha Heenkenda, “Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy,” (2014) online: [https://mpr.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf) at 6.

Qualitative interviews revealed that borrowers in microcredit relationships did not understand the interest rates or the risks of pursuing multiple loans.<sup>1293</sup> Currently, this area is underexplored with respect to borrower understanding and financial literacy; however, consumer advocates have raised the alarm that vulnerable communities are subject to predatory financial service providers due low financial literacy.<sup>1294</sup> There may be some veracity to this claim, but the depth of vulnerability in this context is much more nuanced. As demonstrated by the findings of this study, poverty, and gender inequity within post-war conditions also contribute to informing an individual's choice in opting in or out of financial literacy aspirations. According to one study using "a household survey conducted in Sri Lanka the majority of the poor were usually characterized by low financial literacy."<sup>1295</sup>

Daily financial planning and household budgeting, disclosure of terms, such as interest rates, savings devices and formalized relationships with financial institutions all fall within the ambit of consumer financial literacy. However, the information asymmetry affects consumer access, uptake and application of financial transactions. It appears from this study's findings and other empirical studies that a lack of "financial literacy remains a major obstacle to financial inclusion."<sup>1296</sup> Suggested policy approaches have advanced the

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<sup>1293</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1294</sup> "Poor Financial Literacy in Sri Lanka Helping Scammers," December 5, 2018 online: Economynext <https://economynext.com/poor-financial-literacy-in-sri-lanka-helping-scammers-12455/>

<sup>1295</sup> S.S. Colombage, "The Potential of Using Mobile Money Systems for Enhancing Financial Inclusion in Sri Lanka," (2010) 1:2 Sri Lanka Journal of Advanced Social Studies 3-24.

<sup>1296</sup> Shirantha Heenkenda, "Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy," (2014) online: [https://mpr.aub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpr.aub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf) at 6.

claim that an absence of financial literacy initiatives and its user applicability remain barriers to access to financial services. As such, financial inclusion cannot be achieved.<sup>1297</sup>

In the multiple interviews conducted in this qualitative study, the theme that emerged amongst financial inclusion experts and regulators appeared to include a need to offer ancillary services to augment financial services and products. This form of consumer protection would manifest through business training, entrepreneurial assistance and financial literacy programs. As demonstrated below, the regulator emphasized the need for more financial literacy training and education at the consumer level as follows:

*P: Actually, people think financial literacy is only for this grass-root level people or poor people or uneducated people, it's not the case. If you see, like, as correctly stated all levels of people need financial literacy.*<sup>1298</sup>

In further discussion, the regulator's approach, whose role in implementing these types of services would fall on all stakeholders engaged in promulgating financial inclusion initiatives.<sup>1299</sup> However, non-governmental and private actors appear to expect the regulator to take the lead in such policy implementation.<sup>1300</sup> The below discussion suggests that the regulator's position is based on the multi-stakeholder approach in financial literacy initiatives.

*P: For me, all people have responsibilities, Central Bank, bankers, NGO's; everybody promotes some of these people in their standard of living so we have to promote, so everybody has these responsibilities. The coordination is lacking, the problem is like, we are doing something or skill development or financial literacy but the coordination is lacking nobody knows what we are doing. So, when I say I'm from Central Bank they think okay, so are you*

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<sup>1297</sup> Shirantha Heenkenda, "Inequalities in the Financial Inclusion in Sri Lanka: An Assessment of the Functional Financial Literacy," (2014) online: [https://mpra.ub.uni-muenchen.de/67293/1/MPRA\\_paper\\_54419.pdf](https://mpra.ub.uni-muenchen.de/67293/1/MPRA_paper_54419.pdf) at 6.

<sup>1298</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1299</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1300</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*giving loans? So, they treated us like other banks, we are not other banks.*  
<sup>1301</sup>

*P: The consumers expect things and they presume that the CBSL is also one of the banks here.*<sup>1302</sup>

#### 4.11.6 Over flooding the Marketing

As noted in this study, the rapid increase of financial service providers in the commercial and non-commercial sector has affected the initial promise of financial inclusion. The over-flooding in this market has caused multiple adverse consequences, such as over-indebtedness. When asked about the extended proliferation of financial inclusion schemes, the program administrator responded that:

*P: From our perspective, I think there is a need, whether it is huge or not, but we see unemployment rates are coming down which most likely people seem to be employed and self-employed.*<sup>1303</sup>

The above quote makes an interesting causal link from financial inclusion to the decrease in unemployment. The institutional approach is based on the ‘scarcity of finance’ regime. During this discussion, when asked if any studies demonstrated this particular correlation, the program administrator was unable to provide any supporting information.<sup>1304</sup> However, measuring the unemployment within a post-war jurisdiction may not be a feasible exercise during the period of study.

#### 4.11.7 The Informal Economy

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<sup>1301</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1302</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1303</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).

<sup>1304</sup> Interview of stakeholders in Sri Lanka during field work (December 2013).



The informal economy is predicated on informal financial services. The “informal economy has been variously described in the literature – the ‘unorganized sector’, ‘unregistered economy’, ‘third economy’, ‘parallel economy’, ‘non-institutional’, ‘bazaar economy’, ‘lower circuit’, ‘black economy’, ‘shadow economy’, ‘underground economy’, ‘peasant form of production’, ‘peddlers’, ‘the unremunerated’.”<sup>1305</sup> The dual economic conditions in post-war areas have been studied at length, and have produced empirical knowledge of how financial participants use these informal channels to survive.<sup>1306</sup>

Prior to the rapid uptake of financial inclusion initiatives, most Sri Lankan communities utilized money lenders as a source of credit and an inter-regional remittance system.<sup>1307</sup> The money lender is a traditional fixture in financial arrangements in the village structure, and also part of the daily experience of individuals and businesses. The informal financial services continue to be highly active.<sup>1308</sup> To date, banks and microfinance institutions have now attempted to replace the traditional money lender. Again, the financial inclusion paradigm promulgates access to finance intended to displace the need for moneylenders. As demonstrated below, the motivation in replacing money

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<sup>1305</sup> Nimal Sandaratne, “The Informal Sector in Sri Lanka: Its Nature and Extent and the Impact of Globalisation” Working Paper at 3, online: *Semantic Scholar* <<https://pdfs.semanticscholar.org/4692/c6e56aff59c02dcd1f015ecb3564226d484e.pdf>>.

<sup>1306</sup> Nimal Sandaratne, “The Informal Sector in Sri Lanka: Its Nature and Extent and the Impact of Globalisation” Working Paper at 3, online: *Semantic Scholar* <<https://pdfs.semanticscholar.org/4692/c6e56aff59c02dcd1f015ecb3564226d484e.pdf>>; Muttukrishna Sarvanathan, “Informal Economy in the Conflict Region of Sri Lanka: An Exploration” Point Pedro Institute of Development Working Paper 6.

<sup>1307</sup> Association of Professional Bankers- Sri Lanka, *Informal Markets for Financial Services in Sri Lanka* (Colombo: Central Bank of Sri Lanka, 2007); Nimal Sandaratne, “Informal Finance in Transition” (2003) 4:2 Sri Lanka Economic Journal 31.

<sup>1308</sup> Association of Professional Bankers- Sri Lanka, *Informal Markets for Financial Services in Sri Lanka* (Colombo: Central Bank of Sri Lanka, 2007); Nimal Sandaratne, “Informal Finance in Transition” (2003) 4:2 Sri Lanka Economic Journal 31.

lenders stemmed from the high interest rate and coercive repayment penalties imputed on borrowers.

*P: Have you heard of this Polymuthalaly?<sup>1309</sup> you know the person who we are replacing. That's every village, traditionally; there is a rich man who gives loans at a high interest. He is a moneylender so that person understand the cultural background of microfinance. That person plays a very big role. So, which, means they say okay money.*

*So, he does the calculation, okay you bring rice, to replace the loan you bring me rice or you bring your product. If you don't pay in cash, I'll take your cow. So, like ours, we really replace that position.*

*So, I see, you know, in microfinance it's not only giving and taking. We have a whole pre-process and a post-process. Pre-process is a level in which we study the person, train the loan officer - we have a lot of very valuable services.<sup>1310</sup>*

In this study, the data revealed that the money lender regime is still an effective source of credit for many local businesses and individuals.<sup>1311</sup> The reality is that communities are still relying on informal moneylenders to repay their formal creditors and in some cases with 'collateral' in the form of the harvest or other personal items.<sup>1312</sup> The traditional local moneylender is sometimes more trusted than the new MFI initiatives; the moneylender's services within a village setting is part of the borrower's consumption smoothing process. If she does not have sufficient funds to pay the MFI loan installment, then she can borrow from the moneylender at a higher interest. The cycle of borrowing produces higher costs for the borrower and over indebtedness.

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<sup>1309</sup> This term is used to refer to the local money lender in the community.

<sup>1310</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1311</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1312</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

In the post-war context, the informal financial services are even more amplified.<sup>1313</sup>

The need or the benefit for consumers in resorting to moneylenders has been characterized as follows:

1. Proximity
2. Comfortable atmosphere
3. Quick credit
4. All-time access
5. Freedom of deployment
6. Repayment flexibility
7. Lower transaction cost<sup>1314</sup>

An added dimension to this analysis is that the capital earned by the money lender is usually re-invested into the community, or re-distributed to local individuals. The formal microfinance providers are replacing a normative legal order and creating an external distribution of money regime, which is leaving the community.

#### **4.12 Barriers to Financial Inclusion: Intersections of Culture**

Historically, financial inclusion has been embedded as a desired policy outcome in Sri Lanka. The pioneering efforts have been described in this dissertation in Chapter Three.<sup>1315</sup> Sri Lanka's post-war moment within the financial inclusion discourse is notable as it places credit within a political context. More precisely, culture plays a significant role in financial relationships, which appear in the credit and lending process.<sup>1316</sup> In discussions with recipients, as well as other stakeholders, cultural aspects are constantly submerged in

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<sup>1313</sup> Muttukrishna Sarvanathan, "Informal Economy in the Conflict Region of Sri Lanka: An Exploration" Point Pedro Institute of Development Working Paper 6.

<sup>1314</sup> Association of Professional Bankers- Sri Lanka, *Informal Markets for Financial Services in Sri Lanka* (Colombo: Central Bank of Sri Lanka, 2007) at 124. The list is reproduced as a quote.

<sup>1315</sup> Please refer to chapter 3 (History and Literature Review).

<sup>1316</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

financial transactions.<sup>1317</sup> In Jaffna, which is deemed to be a Tamil-designated area, caste has been a historical blemish.<sup>1318</sup>

Caste is still prevalent in silent segregation within the Tamil community.<sup>1319</sup> There is anecdotal evidence where certain members of the Tamil community are not being able to enter the bank managers' office because of the caste difference.<sup>1320</sup> The regulator acknowledges this issue on "the off the record basis"; and further emphasizes that communities in remote and rural areas are less likely to approach a traditional bank due to the geographic distance, a lack of transportation, and loss of time and loss of income, which deepen financial inaccessibility.<sup>1321</sup> The narrative below encapsulates these cultural barriers as experienced by vulnerable communities when interacting with banking institutions:

*P: In a remote area, the closest financial institution is about 25 kilometers away. One man said now if "I'm going to the bank" that particular person told me if "I'm going to the bank, there is only one bus available from my place in the morning. When I take the bus, I go to the bank, first question he asked me do you think your bank people will receive or welcome a person like me, I'm a farmer I don't wear shirt, you don't welcome me."<sup>1322</sup> .... he's an uneducated person or something.*

*Then he ask me the other questions, "I will go to the bank I'll have to get the form, I will go around here and there ...you have to go here and there to get the form." He doesn't know where the inquiry counter is; when he*

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<sup>1317</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1318</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Paramsothy Thanges, "Caste and Social Exclusion of IDPs in Jaffna Society," (2008) 1:2 Colombo Review 1, online: <http://archive.cmb.ac.lk:8080/research/handle/70130/1102>

<sup>1319</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1320</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1321</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1322</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*gets the form, he'll have to complete it, he'll have to get the assistance from somebody.*<sup>1323</sup>

*Once you complete it then you'll have to follow certain procedures, and then you have to go and deposit the money by standing in the queuing thing, then you have to get your passbook authorized and things. "By the time when I come in the evening only is the next bus to my home – it takes the whole day."*<sup>1324</sup>

The multiple forms and documentation required in these financial transactions are onerous, and perpetuate inaccessibility due to the varying levels of literacy, and customer-comfort required to navigate a simple, yet bureaucratized system.<sup>1325</sup> An additional layer to this issue is that customer service policies employed by banks do not consider the “intimidation factor”; many individuals who reside in rural areas are also intimidated by the bank as a structure and their personnel.<sup>1326</sup> Moreover, the loss of time corresponds to the loss of income, which makes this process inefficient and costly to the rural borrower.

*P: He also says “I lost my income also because otherwise in the day I can earn, if I work somewhere I can earn a few thousand rupees but that also gone”. This is only for the purpose of obtaining a checking account. Suppose if I want to get a loan how many times I have to visit your bank, “go get the forms and come again and you say no this is wrong, this is wrong do this and I'll have to come back. Again I'll have to complete it and give, okay you accept it, then you say you come another day to sign the documents, you'll have to sign the documents ..and you say that another day you come to get your loan.*

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<sup>1323</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Due to the inaccessibility to forms, consumers are unable to navigate the system.

<sup>1324</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1325</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Savita Shankar, “Financial Inclusion in India: Do Microfinance Institutions Address Access Barriers?” (2013) 2:1 ACRN Journal of Entrepreneurship Perspectives 60-74; Ghada Barsoum, “Who Gets Credit? The Gendered Division of Microfinance Programs in Egypt,” (2006) 27:1 Canadian Journal of Development Studies / Revue canadienne d'études du développement 51-64.

<sup>1326</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*So he said how much of money I'd have to spend and time, I don't want this. There is a person, there is a moneylender close by in our village he gives me – I know he's charging 120% per year, I know very well my hard earned money is going to him but no other alternative is the reason.*<sup>1327</sup>

The 'red tape' process, is a term used by certain stakeholders, which affects self-employed individuals, due to the loss of income experienced as a result of time constraints and social discomfort. As explained above, the local moneylender is perceived to be more familiar and accessible in the provision of financial services in rural areas and therefore, the preferred alternative to traditional banks even if the interest and transaction costs are exorbitant.<sup>1328</sup> This demonstrates that the consumers in rural areas are willing to pay a higher transaction costs, thereby creating a competitive market between the moneylenders and the financial institutions.<sup>1329</sup>

#### 4.12.1 Cultural Dimensions in Financial Inclusion

The thematic strand of culture and shame are intrinsically linked in the financial inclusion discourse. Traditional banking legislation ignores the cultural and social components within financial transactions. This study, however, revealed that an underlying theme that governed these financial arrangements within the financial inclusion landscape was culture within a post-war jurisdiction. In discussions with stakeholders, the cultural components around money, credit, debt religious and ethnic perspectives were a focal point. However, the policies that have emanated from the State do not identify any cultural

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<sup>1327</sup>Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1328</sup>Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Guganeshan, Mithula and Perampalam, Suthaharan, Understanding ICT's Role in Microfinance to Improve Financial Inclusion in Northern Sri Lanka (September 27, 2017). Available online: SSRN: <https://ssrn.com/abstract=3043721>; Kelegama, Saman and Tilakaratane, Ganga, Financial Inclusion, Regulation, and Education in Sri Lanka (2014) ADBI Working Paper 504.

<sup>1329</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

aspects in the literature; but the empirical data clearly suggests that many of the perspectives around these financial arrangements are informed by culture.<sup>1330</sup>

#### 4.12.1.1 Shame

For instance, shame, which can be characterized as a ‘public emotion’ and a ‘social punitive’ force has been linked to microfinance recipients in multiple scholarly debates.<sup>1331</sup>

As borrowers struggle to meet the repayment amounts on a weekly or monthly basis, they are often caught in a vicious cycle. The debt owed can be characterized as a tipping point, or a moment that can lead to sudden financial deterioration. This is even more acute in post-war areas; “the debt issue among families who, post-war, resettled in the north and eastern provinces has become endemic.”<sup>1332</sup> Below is an excerpt described by a government policy-maker that demonstrates how shame and debt are interconnected within the lending structure, and clearly shaped by culture.

*“In the past, having a debt in the Sinhalese and Tamil culture, it’s shamed, right, people are shamed. Yes, I think till 2009 especially in the north people are ashamed if they cannot pay loans. I have said that in meetings in Jaffna and now it is not so.*

*I talked to somebody from the Central Bank and they said in the 1970’s and 80’s they would give money to Tamil community because they knew they would get the money back but now the culture has shifted.<sup>1333</sup> The culture has shifted because are not – do you also find that people are much more – they expect too much for you?<sup>1334</sup> They expect many things from the government or any donor.<sup>1335</sup>*

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<sup>1330</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1331</sup> Chathuri Dissanayake, “As communities in north, east Sri Lanka drown in debt, government struggles to regulate micro-finance,” First Post – July 30, 2018.

<sup>1332</sup> Chathuri Dissanayake, “As communities in north, east Sri Lanka drown in debt, government struggles to regulate micro-finance,” First Post – July 30, 2018.

<sup>1333</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1334</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1335</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

The above statement highlights the ‘dependency’ component within the culture shift, which impacts lending processes and arrangements.

#### 4.12.1.2. Tamil Work Ethic

The study revealed that policymakers use traditional stereotypes to make assumptions on the current work ethic of Tamil youth. A prevalent stereotype of the Tamil community is that they are fiscally responsible, highly educated and have an excellent work ethic. This perspective of the “Tamil” was a common theme that was imparted towards me during my interviews.<sup>1336</sup> For example, a stakeholder highlighted this theme of Tamil work ethic in the following narrative:

*“The want money for nothing, they don’t want to work also because I have heard from an elderly person in Jaffna telling me that young people do not wish to work, to not engage in cultivation, unlike those days.”<sup>1337</sup>*

The post-war period has created a dent in this stereotypical notion of how the State imagines the “Tamil” as demonstrated by the above-referenced statement by a State official. As businesses struggle to obtain skilled labor to participate in reconstruction and manufacturing projects in the North, a particular narrative has emerged.<sup>1338</sup> Despite a young labor force, there is a high unemployment rate. Employers cite “no shows” and

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<sup>1336</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1337</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). Anne Gaul, “Where Are the Minorities? The Elusiveness of Multiculturalism and Positive Recognition in Sri Lankan History Textbooks” (2014) 6:2 J of Educational Media, Memory, and Society 87.

<sup>1338</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). “Peculiarities of labour shortage in Sri Lanka”, *The Sunday Times* (11 March 2018) online: <<http://www.sundaytimes.lk/180311/business-times/peculiarities-of-labour-shortage-in-sri-lanka-285426.html>>. “Sri Lanka labour supply to shrink, female workers can fill gap”, *economy next* (21 February 2019) online:<[https://economynext.com/Sri\\_Lanka\\_labour\\_supply\\_to\\_shrink,\\_female\\_workers\\_can\\_fill\\_gap-3-13445.html](https://economynext.com/Sri_Lanka_labour_supply_to_shrink,_female_workers_can_fill_gap-3-13445.html)>.



“low interest” to explain the phenomenon.<sup>1339</sup> The flood of remittance from the Tamil diaspora is also used a rationale for the plague of unemployment.<sup>1340</sup>

#### 4.12.1.3 Cultural and Social Stigma

During the interview phase of this study, it was observed that members in group lending arrangement faced internal discriminatory treatment, thereby demonstrating that these lending models reinforce social stigmas.<sup>1341</sup> For instance, widows, single mothers and caste issues are not treated equally in that particular group. In examining how MFIs respond to such incidents, the Executive explains:

*P: When it is a small group of course you may have that stigma. You know, I may have to agree with you that they select people, each one select each other on preference. But the word widow or single parent... that don't apply now in our country I don't think<sup>1342</sup>*

The post-war conditions have altered the cultural stigma associated with gender considerations, as many of the individuals are women. The survivors of war; the social stigma in some cases is perpetuated by the women themselves and the self-discrimination has decreased due to the realities sustained by the community. In fact, the Executive further emphasizes that these groups “will be more attracted to get her in.”<sup>1343</sup>

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<sup>1339</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013). “Peculiarities of labour shortage in Sri Lanka”, *The Sunday Times* (11 March 2018) online: <<http://www.sundaytimes.lk/180311/business-times/peculiarities-of-labour-shortage-in-sri-lanka-285426.html>>. “Sri Lanka labour supply to shrink, female workers can fill gap”, *economy next* (21 February 2019) online: <[https://economynext.com/Sri\\_Lanka\\_labour\\_supply\\_to\\_shrink,\\_female\\_workers\\_can\\_fill\\_gap-3-13445.html](https://economynext.com/Sri_Lanka_labour_supply_to_shrink,_female_workers_can_fill_gap-3-13445.html)>.

<sup>1340</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013); Matt Withers, “Temporary labour migration and underdevelopment in Sri Lanka: the limits of remittance capital” (2019) *Migration and Development* 1.

<sup>1341</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1342</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1343</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

*P: Because there is a cultural linkage happening....she has no husband “so let’s help her, let’s take her in”, I look at it positively. But if a person try to force in with a big power, she has money with power they might resent<sup>1344</sup> but I think that is not there. I could say now, even to the group, even the groups met and the husbands were outside.<sup>1345</sup>*

The collective well-being of a community appeared to be a common theme within these lending groups. The shift in culture is to ensure that the most vulnerable are included; in fact, women are driving the process of inclusion and are experiencing economic empowerment.<sup>1346</sup> During a focus group discussion, a group member exclaimed that “Those days, in the past, it was only we depended on men to give us the salary now, we are proud that we have some money in our hand”.<sup>1347</sup>

As with any brutal conflict, the survivors are women and children, the absence of men created the “female headed household” as discussed in the preceding section.<sup>1348</sup> Despite the changes within family structures, the cast issue is a cultural remnant that affects financial inclusion in the North and Eastern regions of Sri Lanka. In this study, discriminatory treatment was reported within traditional financial institutions. In one instance, a recipient shared that a bank manager refused allow her to use his pen as she was from a different caste.<sup>1349</sup> In another instance, a farmer was not permitted to enter the bank manager’s office in order to fill out the loan application, as such he had to complete the application in the lobby, a public space. During this particular interview, I offered to call the bank and inquire if we could file a complaint, the farmer responded and said “what are you talking about.. how can I complain I have to deal with this bank manager,

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<sup>1344</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1345</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1346</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1347</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1348</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1349</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

he is part of the community.<sup>1350</sup> These two examples provide a glimpse in the daily experiences of consumers attempting to access financial services, which reveal that financial inclusion is thwarted by structural inequities.<sup>1351</sup>

## CHAPTER 5

### CHAPTER 5: CONCLUSION

*“Today, in the twentieth century, we know that all the people who inhabit our island have culture. It may have deteriorated somewhat into militarized and consumerised culture, but it is still “culture”.*<sup>1352</sup>

This qualitative study has produced specific knowledge with respect to financial inclusion within a post-war jurisdiction. The quote referenced is apt description, which encapsulates the cultural shifts observed within the financial inclusion discourse. At the outset of this study, the research inquiry rested on the narrow issue with respect to the impact of commercialization on financial inclusion initiatives. However, the qualitative

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<sup>1350</sup> Interview of stakeholders in Sri Lanka during field work (June 2013-August 2013).

<sup>1351</sup> Guy Stuart, “Caste Embeddedness and Microfinance: Savings and Credit Cooperatives in Andhra Pradesh, India” (September 2006). KSG Working Paper No. RWP06-037. Available online: SSRN: <https://ssrn.com/abstract=902388>; Marc Labie and Pierre-Guillaume Meon, Mersland, Roy and Szafarz, Ariane, “Discrimination by Microcredit Officers: Theory and Evidence on Disability in Uganda” (2015) 58 Quarterly Review of Economics and Finance 44-55, available online: SSRN: <https://ssrn.com/abstract=2784205>; Juliana Siwale, “Microfinance and Loan Officers’ Work Experiences: Perspectives from Zambia,” (2016) 52:9 The Journal of Development Studies 1289-1305; Duggan, C.S.M. “Doing Bad by Doing Good? Theft and Abuse by Lenders in the Microfinance Markets of Uganda” (2016) 51 St Comp Int Dev 189–208.

<sup>1352</sup> Michael Roberts, *Fire and Storm – Essays in Sri Lankan Politics* (Sri Lanka: Vijitha Yapa Publications, 2010).

data revealed so many other contributing factors as outlined in Chapter 4. Most notably, the militarization of financial inclusion and the feminization of credit.

Sri Lanka's path towards financial inclusion is rooted in its history. The financial evolution experienced from its pre-colonial and agrarian stage to a plantation economy underscored by colonial oppression and more recently, political instability have amplified the need for financial inclusion due to the fiscal exclusion created by institutional development and changes.<sup>1353</sup> It was designed to include local and homegrown communities, and not for the colonial government. The historical overview provides some insights on the current challenges that are highlighted by communities within post-conflict areas. The protracted civil war intertwined within the multi-ethnic historical past also contributed to the conditioning of financial inclusion initiatives. As Michael Roberts, his book of essays, explains "We, Sri Lankans, have too much history. Such history-talk has been a powerful powder serving to ignite or exacerbate the ethnic conflict."<sup>1354</sup> The rehabilitation and reconstruction efforts have produced a new understanding of how financial inclusion is deployed in post-war communities, which are still oppressed. The by-product of micro-credit manifested over-indebtedness, which further amplified the social and economic inequities.

The legal landscape, fragmented in specific spaces, however, has been shaped by policy decisions and transplanted regimes from the Grameen model. Historically, the creation of a national bank, the Bank of Ceylon, was transformative in that it was a step towards the adoption of financial level as from a national and political perspective. During

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<sup>1353</sup> Please refer to chapter 3 of this study.

<sup>1354</sup> Michael Roberts, *Fire and Storm – Essays in Sri Lankan Politics* (Sri Lanka: Vijitha Yapa Publications, 2010).

this research project, the definition of financial inclusion was uncontested by the regulatory agencies; however, as the findings demonstrate financial inclusion can be informed by the State and its providers from different vantage points. Recently, in order to streamline financial inclusion initiatives and develop a more harmonized framework, the IFC launched a partnership with the CBSL.<sup>1355</sup>

*~The Dynamics Between Culture and Social Capital~*

This study included an examination of banking legislation, which albeit principle-based, included a collection of rules stemming from sources as diverse as international standards, local governance structures, contract law, culture and ‘social capital’. The findings mirrored the academic literature on social capital arrangements within the financial inclusion context.<sup>1356</sup> Social capital in particular appeared to be the “non-economic glue” used by the poor as a “remedy for market failure”; but often is omitted by financial policy.<sup>1357</sup> Social capital has also been described as a vital component in resource accessibility.<sup>1358</sup> These observations held true in the data collected in this study.

*~The Feminization of Credit~*

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<sup>1355</sup> International Finance Corporation “Central Bank of Sri Lanka and IFC Launch the Country’s First National Financial Inclusion Strategy to Boost Financial Inclusion for All,” March 2021 online: <https://pressroom.ifc.org/all/pages/PressDetail.aspx?ID=26228>

<sup>1356</sup> HMWA Herath, LHP Guneratne, and Nimal Sanderatne, “Impact of Microfinance on Women’s Empowerment: A Case Study on Two Microfinance Institutions in Sri Lanka” (2015) 38:1 Sri Lanka Journal of Social Sciences 51.

<sup>1357</sup> Ananya Roy, *Poverty Capital: Microfinance and the Making of Development*” (London: Routledge, 2010).

<sup>1358</sup> Babajide, A., Obembe, D., Solomon, H. and Woldesenbet, K. Forthcoming. Microfinance and Entrepreneurship: The Enabling Role of Social Capital. *5th European Research Conference on Microfinance*. University of Portsmouth 12 - 14 Jun 2017, online: <https://westminsterresearch.westminster.ac.uk/item/qqz2z/microfinance-and-entrepreneurship-the-enabling-role-of-social-capital>

A further collateral discourse to this regulatory amalgam was predicated upon in a thematic thread combining gender development and the theoretical constructs of banking law.<sup>1359</sup> This study demonstrated a dynamic tension between banking modalities (which are gendered and highlighted through post-war conditions) and financial inclusion. The feminization of credit arrangements that were uncovered through this study demonstrated that the financial inclusion policy approach was targeted towards vulnerable women. The findings denote that the emphasis is placed on large scale small sum lending, and not on small business development. The initiatives that were examined in this study were designed to facilitate poverty amelioration, yet forced its customers to use microfinance products as a superficial panacea instead. The vast amounts of borrowers were trapped in a cycle of over indebtedness. Instead of fiscal liberation, these borrowers were caged by debt incurred due to post-war conditions and consumer smoothing needs.

*~Debt Traps~*

The qualitative fieldwork supports the established narrative that over-indebtedness is not simply a cash flow issue for the borrower. This troubling phenomenon is multilayered. The lending process does not account for the borrower's perspective within the transactional moment. During conversations, the borrower was often unable to articulate how she will be able to pay back the loan. "Those who experience scarcity experience it not only now but typically also later."<sup>1360</sup> This quote encapsulates the lack of

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<sup>1359</sup> Lamia Karim,, "Demystifying Micro-Credit: The Grameen Bank, NGOs, and Neoliberalism in Bangladesh" (2008) 20:1 Cultural Dynamics 5; Ananya Roy, *Poverty Capital: Microfinance and the Making of Development*" (London: Routledge, 2010).

<sup>1360</sup> Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013) at 109.

consideration employed in designing loan programs within the financial inclusion context. Mullainathan and Shafir describe the borrower's cognitive dissonance during this process as the "bandwidth tax"<sup>1361</sup>, where the borrower does not consider the future of repayment obligations when obtaining the loan. Another term used to describe this This study uncovered this type of "tunneling"<sup>1362</sup> or "general myopia"<sup>1363</sup> which "creates a bias towards borrowing"<sup>1364</sup> thereby increasing indebtedness.

A further highlighted issue in microcredit regimes is small business development. The empirical data demonstrated the challenges in creating income-generating businesses within a post-war context. These microbusinesses are assessed by the loan officer and a plan by the MFI (on behalf of the borrower) is made for profit. However, this approach resulted in over supply of goods and services, thereby creating market deterioration and lower profit-margins. The borrowers are simply competing against each other with the same product within the small market. The stakeholders have recently taken notice, and are utilizing business strategies to shift such results. Again, these strategies are available for medium and larger businesses through the international financial organization programs.<sup>1365</sup>

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<sup>1361</sup> Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013) at 110.

<sup>1362</sup> Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013) at 110.

<sup>1363</sup> Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013) at 114.

<sup>1364</sup> Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013) at 110.

<sup>1365</sup> "World Bank Helps to Promote Access to Finance for Small and Medium Enterprises in Sri Lanka," online: The World Bank <https://www.worldbank.org/en/news/press-release/2010/09/08/world-bank-helps-promote-access-finance-small-medium-enterprises-smes-sri-lanka>

This study offered a set of observations, which can be developed further. The stark absence in legal research with respect to banking frameworks and consumer cognitive decision-making is a new terrain that may be explored. The consumer and / or borrower choices made within the aspirational goals of democratizing financial services is largely examined by economists<sup>1366</sup>, yet the current legislation does not reflect such findings. Linking culture to banking practices or to rehabilitation efforts from a policy perspective may result in alternate findings. The law as an instrumentality of maintaining normative fiscal order has demonstrably created a measure of uncertainty within vulnerable communities. Despite regulatory oversight, predatory arrangements by MFIs continue to operate in these spaces. The debt traps are not only a result of the scarcity mindset model<sup>1367</sup> studied in economic theory, but also due to the fragmented rule-making process.

~*Setting Aside Assumptions*~

The theoretical and methodological chapter<sup>1368</sup> outlined the parameters of this study, and have contributed to the findings, which are recorded in chapter 4. The findings are clearly informed by the method employed to extract the lived experiences of stakeholders. The field-work was a life changing process for me as a researcher and scholar, as I was able to experience how banking law permeated everyday lives. Prior to the commencement of the field-work, the research assumptions were based on normative frameworks derived from scholarly interventions. To illustrate, according to the financial

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<sup>1366</sup> Abhijit v. Banerjee and Esther Duflo, *Poor Economics : A Radical Rethinking of The Way To Fight Global Poverty* (New York City: Public Affairs, 2012) at 54.

<sup>1367</sup> Sendhil Mullainathan and Eldar Shafir, *Scarcity: Why Having Too Little Means So Much* (New York: Times Books, 2013).

<sup>1368</sup> Please refer to chapter 3.



inclusion metric designed by the World Bank, a large population within the Global South is either unbanked or underbanked. Indicators used to measure successful countrywide financial inclusion measures included bank account ownership.<sup>1369</sup> However, in this study every participant had bank access and owned bank accounts, yet meaningful financial inclusion was not fully accomplished.

The empirical grounding demonstrated how the creating of post-war infrastructure affected financial inclusion in Tamil communities in the Northern and Eastern regions. The asymmetrical conversations around the access to these financial services and microcredit arrangements were highlighted in the findings.

Financial *exclusion* continues to illustrate predatory lending schemes and the need for informal channels of lending, politicized methods of financial service deployment, cultural silos between vulnerable communities and traditional institutions and gender disparities in economic allocations. The CBSL's own financial inclusion scheme, PAMP, can be described as a blueprint for financial inclusion policy creation. The regulator used its own "tried and tested" or "wait and see approaches" in program development. However, the challenges described in the qualitative data are culturally established and not clearly addressed by the regulator. To combat and account for religious and ethnic barriers, these considerations must be a part of the financial inclusion discourse, and must be imported into the legal framework.

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<sup>1369</sup> "Account Ownership at a Financial Institution or with a Mobile Money Service Provider," (2018) online: The World Bank <https://data.worldbank.org/indicator/FX.OWN.TOTL.ZS>

The legal relationships and the loose regulatory structures between the creditor and borrower in financial inclusion initiatives are similar to that found within the traditional banking model. These relationships are developed through group lending within communities (which are predicated upon communication and social ties), joint liability contracts, lending agreements, loan supervision, debt enforcement, debt recovery procedures, business practices, and collateral considerations. Further, the introduction of new financial products into vulnerable and post-war communities infusing a particular model of commercialization into the financial inclusion agenda has produced socio-economic challenges. As raised above, post-war and cultural considerations underscore specific financial inclusion initiatives and how these impact legal arrangements in a post-war jurisdiction. These emerge as financing models, which range specific to the type of project, are tailored to the geographic location. For instance, some regions in Sri Lanka have adopted similar approaches in deploying custom-made financial inclusion techniques that are beyond the scope of the regulatory mechanisms as observed in the Military's lending scheme.

*~Post-War Dynamics~*

The study further revealed that the private and State commercialization of financial inclusion initiatives. The commercialization of financial inclusion is not an uncommon symptom of the rapid proliferation in developing regions, however, what is an anomaly in this case is how financial inclusion is used as rehabilitation and oppression device at the same time. As demonstrated in the empirical data, the elements of militarization are highly visible in financial inclusion initiatives established in post-war regions. The method of surveillance and reward within the ex-LTTE rehabilitation livelihood program is

concerning due to the military and State control over the program recipients and their economic livelihood. Touted as a peace-dividend in Tamil regions, these programs reinforce State hegemony and control. As the findings have illustrated, financial inclusion is not only about financial access or transactions, or a simply a ‘regulatory task’, but is much more nuanced. Through culture and socio-economic considerations, the deployment for financial inclusion demonstrated a complex web of political and symbolic components.

The primary contribution in this study is the militarization aspect, which has colored contemporary financial inclusion. The military, as the unlikely stakeholder, emerged in this research. Its presence propelled specific financial inclusion modalities within the post-war areas, which has transformed the genealogy within the financial inclusion discourse. This study further demonstrated the social production of norms created through post-war conditions due to the following factors: military occupation, familiarity with civilians and post-war surveillance and a continued oppressive control over the everyday lives of Tamil communities. Dr. Santhirasegaram, an economist, suggests that the economy in Sri Lanka has been driven by the military, and that traditional economic initiatives in poverty reduction are distorted.<sup>1370</sup> He further writes that “Sri Lanka’s poverty reduction is pork barrel ethnic political phenomenon, not an economic phenomenon.”<sup>1371</sup>

One of the highlights, as well as traumatic moments in my research was during my interactions with detained ex-LTTE combatants. I was able to secure access from the Military to access a detention center in a designated high security zone. During my visit, I

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<sup>1370</sup> S. Santhirasegaram, “Military and Poverty: A Critical Study in Sri Lanka,” (2013) 8 *Developing Country Studies* 90 at 96.

<sup>1371</sup> S. Santhirasegaram, “Military and Poverty: A Critical Study in Sri Lanka,” (2013) 8 *Developing Country Studies* 90 at 96.

was unable to use my computer or voice recording devices. However, I was able to speak to detainees in multiple categories, who were segregated by age, gender and organizational involvement. The “Poonthotam Rehabilitation Center” was a facility which offered skills training for ex-LTTE combatants. During my time at the facility, I was informed that I was the only non-military and foreign individual that was able to meet the former combatants. I had the opportunity to speak to a group of former female combatants, and other ex-combatants that were enrolled in computer classes and carpentry. The common discussion centered on the hope of creating a future. Some women expressed a deep sense of loss of family, children and loved ones and did not believe that they would re-enter the community due to the atrocious treatment they had endured in captivity. Others seemed more optimistic in learning skills and believed that the loan program would provide them with the necessary assistance to create a small business.

~Future Directions~

The research produced from these encounters have altered my perspective and my research approaches. This study was clearly more valuable to my personal growth as an individual and as a teacher; it has enriched my pedagogical abilities. Drawing upon these insights, access to financial services are not simply creating a proliferation of lending products. Future directions of this study can examine if banking and finance regulatory reform requires more of a holistic approach through a consideration of the findings uncovered in this study.

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