

9-28-2009

Exploring the Human Rights Implications of Microfinance Initiatives

Rebecca Farrer
J.D., Stetson University College of Law

Follow this and additional works at: <http://scholarship.law.cornell.edu/ijli>

The *International Journal of Legal Information* is produced by The International Association of Law Libraries.

Recommended Citation

Farrer, Rebecca (2008) "Exploring the Human Rights Implications of Microfinance Initiatives," *International Journal of Legal Information*: Vol. 36: Iss. 3, Article 6.
Available at: <http://scholarship.law.cornell.edu/ijli/vol36/iss3/6>

This Article is brought to you for free and open access by the Journals at Scholarship@Cornell Law: A Digital Repository. It has been accepted for inclusion in *International Journal of Legal Information* by an authorized administrator of Scholarship@Cornell Law: A Digital Repository. For more information, please contact jmp8@cornell.edu.

Exploring the Human Rights Implications of Microfinance Initiatives

REBECCA FARRER*

Poverty does not belong in a civilized human society. It belongs in museums. – Grameen Bank founder Muhammad Yunus

Give a man a fish, he'll eat for a day. Give a woman microcredit, she, her husband, her children and her extended family will eat for a lifetime. – Bono

Introduction: Exploring Human Rights Implications of Microfinance Initiatives

This Article explores Microfinance and microcredit (“MFI”) programs from several perspectives, with particular emphasis on human rights issues. These programs involve making small loans to people who would otherwise be unable to borrow money to facilitate them starting their own businesses: frequently, the programs focus on women borrowers in developing countries. The emphasis of MFI programs on women in developing countries makes it important to consider these programs in terms of both women’s and indigenous rights, while MFI as an approach to poverty merits a discussion of economic rights. Part I of the article will explore the concept and scope of current MFI programs, describing key components of these programs and assessing comments from both fans and critics. The Grameen Bank, which has been studied extensively and has acted as a model for several other programs, will be examined in detail. Part II of this Article considers MFI in the context of human rights considerations, including economic, indigenous, and women’s rights. One particular aspect of Grameen’s program, namely the use of Sixteen Decisions, is also critiqued, applying organizational behavior theory. Part III will compare MFI with other approaches to poverty, including

* The author recently graduated with her J.D. from Stetson University College of Law. She is pursuing work in Washington, D.C. She would like to thank Professors Kristen D. Adams and Marco J. Jimenez for their invaluable advice and mentorship, and her parents and daughter Emily for all their love and support.

property rights initiatives, women's cooperatives and social enterprise approaches.

Microcredit and microfinance ("MFI") programs are increasingly touted as a key solution to making the world a better place.

¹ These programs, largely offered to women, have already changed individual lives and families, and there is great potential to change more. Muhammad Yunus, founder of Grameen Bank and winner of the Nobel Peace Prize in 2006 for his extensive work with MFI, says microfinance and microcredit programs can literally end world poverty.²

Part I: Microfinance

Microfinance is essentially a very simple concept. The idea is to take small amounts of money, and loan this money to someone who otherwise couldn't get a loan so the person can start a business. This simple concept is being employed broadly right now, all around the world.³ Groups

¹ The word "microcredit" refers specifically to the giving of small (micro) loans (credit) to clients while the term "microfinance" is broader and encompasses loans, savings, insurance, leasing and other financial services. Since most microcredit programs have grown in scope and most providers of microcredit also offer their clients access to other financial services, this paper will generally use the term "MFI" to describe initiatives that involve microcredit and microfinance, except when commentary is specific to "microcredit" programs only, or where "microcredit" has a meaning separate from "microfinance".

² MUHAMMAD YUNUS, *CREATING A WORLD WITHOUT POVERTY* (2007), p. 237-248 (speech delivered in Oslo, Norway, December 10, 2006 after receiving the Nobel Peace Prize).

³ There are currently microfinance initiatives on every continent. For more info by continent, visit CGAP (Consultative Group to Assist the Poor) at their website at <http://www.cgap.org/p/site/c/> or the Microcredit Summit Campaign at <http://www.microcreditsummit.org/> (Both groups track and report on microfinance initiatives internationally and provide other resources and information in microfinance). CGAP self-describes as a leading independent source for information on the microfinance industry. It is housed at the World Bank but is an independent entity, with a mission to encourage commercial investments in microcredit, and to be a source for information on microcredit. The Microcredit Summit Campaign is a project of the RESULTS Educational Fund, a U.S.-based grassroots advocacy organization committed to ending hunger and poverty. The first Microcredit Summit was held in February 2-4, 1997, attended by more than 2,900 people from 137 countries in Washington, DC. A nine-year campaign was launched to reach 100 million of the world's poorest families, especially the women of those families, with

who hand out the money include non-governmental organizations,⁴ banks,⁵ private educational institutions,⁶ governments,⁷ and the United Nations.⁸

credit for self-employment and other financial and business services by the year 2005. In November 2006, the Campaign was re-launched to 2015 with two new goals – (1) to ensure 175 million of the world's poorest families receive credit by end of 2015 (2) ensure that 100 million families rise above the US \$1 a day threshold.

⁴ The number of NGOs involved in microfinance has expanded rapidly from the 1990's to the present day. See Catherine A. Madsen, *Note & Comment: Feminizing Waste: Waste-Picking as an Empowerment Opportunity for Women and Children in Impoverished Communities*, 17 COLO. J. INT'L ENVTL. L. & POL'Y 165 (Winter, 2006) at 192 (citing to Yujiro Hayami et al., Found. For Advanced Studies on Int'l Dev., *Waste Pickers and Collectors in New Delhi: Poverty and Environment in an Urban Informal Sector* 3-4 (2003) at 22). See CGAP website, *supra* note 3 (Ownership structures: MFIs can be government-owned, like the rural credit cooperatives in China; member-owned, like the credit unions in West Africa; socially minded shareholders, like many transformed NGOs in Latin America; and profit-maximizing shareholders, like the microfinance banks in Eastern Europe. The types of services offered are limited by what is allowed by the legal structure of the provider: non-regulated institutions are not generally allowed to provide savings or insurance).

⁵ See *Banking the Underserved: New Opportunities for Commercial Banks*, Financial Sector Team, Policy Division of CGAP for detailed analysis of bank MFI programs in Haiti, Peru, Sri Lanka, Uganda, Mongolia and South Africa, CGAP website, *supra* note 3. See also Mayada M. Baydas, Douglas H. Graham and Lisa Valenzuela, *Commercial Banks in Microfinance: New Actors in the Microfinance World*, available at <http://www.unCDF.org/mfdl/readings/CommBanks.pdf> (chart on p. 8 lists banks in Africa, Asia and Latin America involved in Microfinance, and report analyzes success of each institution and contributing factors). See generally European Investment Bank website at <http://www.eib.org/> for information on microfinance in Europe (European Investment Bank is the lending bank of the European Union. The EIB was founded in 1958 in the Treaty of Rome and undertakes microfinance initiatives in Europe).

⁶ Stetson University (Deland, Florida) created a Center for Holistic Microcredit Initiatives (CHOMI) and granted a small amount of money (\$2500) to villagers in Manio Village in Kilimanjaro, Tanzania. These funds were used to underwrite a credit association and loans given to villagers, who invested in farming of local crops. For more information, visit Stetson University website at <https://www.stetson.edu/secure/programs/articles/view.php?type=oldstories&id=208>.

⁷ The United States government has invested in microfinance through USAID. See http://thehague.usembassy.gov/mrs._arnall_microfinance/ for speech delivered by Dawn Arnell, wife of US Ambassador to the Netherlands in 2006 (noting that USAID is the leading donor for microfinance and that USAID initiatives reach 3.85 million entrepreneurs.) See also USAID website at <http://www.usaid.gov/policy/budget/cbj2007/si/microfinance.html> for details on USAID programs as of 2007 (noting that USAID takes a bilateral approach to lending and estimating that over 6 million low-income people throughout the developing

Those who receive the money are in many countries,⁹ and a high percentage of them are female.¹⁰

Before addressing how many MFIs there are or how MFI works, it is important to clarify what MFI goals are. First, and perhaps foremost,

world have access to microfinance as a result of USAID programs). Queen Noor of Jordan has been a very active advocate for microfinance. She chairs the Noor Al-Hussein Foundation, which funds microfinance initiatives in Jordan through the Jordan Micro Credit Company
<http://www.nooralhusseinfoundation.org/index.php?pager=end&task=view&type=content&pageid=80>.

⁸ Madsen, *supra* note 4, footnote 221 citing to Yoko Myashita, *Microfinance and Poverty Alleviation: Lessons from Indonesia's Village Banking System*, 10 PAC. RIM L. & POL'Y J. 147, 162-163 (2000)) on U.N. involvement; and at footnote 222, citing to Mayra Buvinic et al., Overseas Development Counsel, *Investing in Women: Progress and Prospects for the World Bank* 51 (1996) on involvement of international development agencies and the Asian Development Bank. *See also* Grameen Bank website at http://www.grameen-info.org/index.php?option=com_content&task=view&id=42&Itemid=92&limit=1&limitstart=7 (stating that "since its creation in 1966, the United Nations Capital Development Fund (UNCP) has been the channel for UNDP to fund microfinance interventions. It has so far approved more than US\$ 100 million of investment credit activities, the majority being microfinance related... At the present time, UNCDF has an active microfinance portfolio of about \$40 million, of which 70 percent is in Africa, 20 percent in Asia and 10 percent in Latin America.").

⁹ Different groups have attempted to quantify how many MFI borrowers there are. *See* CGAP website, *supra* note 3, Global Estimates, for statistics comparing CGAP (estimating 152 million borrowers in 2004), World Savings Bank Institute (estimating 190 million in 2005), and The Microcredit Summit (estimating 133 million in 2007). Differences in estimates may be the result of differences in methodology (if a group is borrowing, is every member of the group counted or just those who sign the paperwork on behalf of the group), the types of institutions being included, and may also reflect the difficulty in tracking these numbers given the immense number of MFI borrowers. There are examples of MFI initiatives on every continent.

¹⁰ *See* Susy Cheston & Lisa Kuhn, *Empowering Women Through Microfinance (Draft)* stating that "According to the *State of the Microcredit Summit Campaign 2001 Report*, 14.2 million of the world's poorest women now have access to financial services through specialized microfinance institutions (MFIs), banks, NGOs, and other nonbank financial institutions. These women account for nearly 74 percent of the 19.3 million of the world's poorest people now being served by microfinance institutions." Publication sponsored by UNIFEM and available at http://www.microcreditsummit.org/papers/empowering_final.doc

microfinance has been lauded as a means to address poverty.¹¹ Poverty, of course, is a global issue. The World Bank's latest estimates show that 1.5 billion people were living in poverty in 2005.¹² This 2005 statistic defines poverty as living on less than \$1.25 per day.¹³ Microfinance is viewed as a very powerful approach to addressing worldwide poverty.¹⁴ The United Nations declared 2005 the International Year of Microcredit.¹⁵ The UN Secretary General at that time, Kofi Annan, noted that access to microfinance "helps alleviate poverty by generating income, creating jobs, allowing children to go to school, enabling families to obtain health care, and empowering people to make choices that best serve their needs."¹⁶

¹¹ See Yunus, *supra* note 2, at p. 19 (noting that "there are almost as many definitions of poverty as there are individuals and groups studying the problem. A recent World Bank study mentions thirty-three different poverty lines developed and used by particular countries in addressing the needs of their own poor people" and noting the "widely used poverty benchmark of an income equivalent to one dollar a day or less").

¹² Source: Fact Sheet: End Poverty by 2015, UN Millennium Goals, UN Headquarters, September 25, 2008, available at <http://www.un.org/millenniumgoals/2008highlevel/newsroom.shtml>. This World Bank Fact Sheet Report also notes that the recent increases in the price of food is expected to affect another 100 million people, pushing them also into poverty, and identifies microfinance as first one its list of "things that have worked" to address poverty. The report states "microfinance has helped many of the world's poor to increase their incomes through self-employment and empowerment."

¹³ *Id.*

¹⁴ *Id.* Also noting that in 2006, microfinance institutions provided loans to 113 million clients worldwide and highlighting the work of three groups in particular: (1) Grameen Bank of Bangladesh, which started with 10 members in 1976 and now has 7.5 million borrowers, with over 65% having lifted themselves out of extreme poverty; (2) ACCION International in Latin America, and (3) Self-Employed Women's Association (SEWA) Bank in India.

¹⁵ Lisa Avery, *Microcredit Extension in the Wake of Conflict: Rebuilding the Lives and Livelihoods of Women and Children Affected by War*, 12 GEO. J. POVERTY LAW & POL'Y 205, 224 (Summer, 2005).

¹⁶ Jay Lee, *Note: Equity and Innovation: Using Traditional Islamic Banking Models to Reinvigorate Microlending in Urban America*, 16 IND. INT'L & COMP. L. REV. 523 (2006) (discussion of equity lending under traditional Islamic banking practices and how such lending might be applied in an urban context in the United States, and at footnote 6 referencing the General Assembly Greenlights Programme for International Year of Microcredit 2005: Observance will Promote Access to Financial Services and Empowerment of Poor, Especially Women, M2 Presswire, Dec. 31, 2003).

Poverty has a particularly profound effect on women. “Women earn only ten percent of the entire world’s income despite making up over fifty percent of the world’s population, and they own less than 10% of the world’s property”.¹⁷ It is common in several parts of the developing world for women to be responsible for providing food and water for their families. MFIs have specifically focused on women,¹⁸ and the majority of those receiving microfinance loans are female.¹⁹

It is difficult to find definitive numbers of how many people receive MFI assistance.²⁰ However, CGAP (Consultative Group to Assist the Poor) estimates that there are currently 133 million clients, 93 million of which qualify as the “poorest on the planet”.²¹ Almost 90 percent of these loans are funded by 67 institutions (only 2% of the MFIs).²²

CGAP notes, however, that there is a more important message to take from these statistics. The worldwide number of poor people that have access to credit is nowhere near the market potential. Given that almost 3 billion people live on less than two dollars a day, clearly the battle to bring financial access to as many people as possible is a very long way from being won.²³ This underscores both the critical need for programs addressing poverty, and the possible potential for MFI. Microfinance has also been

¹⁷ Rachel Errett Figura, *An End to Poverty through Microlending: An Examination of the Need for Credit by Poor, Rural Women and the Success of Microlending Programs*, 8 NEW ENG. INT’L & COMP. L. ANN. 157 (2002) at p. 159, and footnote 26, citing Yoko Miyashita, *Microfinance and Poverty Alleviation: Lessons from Indonesia’s Village Banking System*, 10 PAC.RIM L. & POL’Y 147, 157 (2000) – who in turn is citing Microcredit Summit Report, The Microcredit Summit, Declaration and Plan of Action, Feb. 2-4, 1997 at <http://www.microcreditsummit.org/declaration.htm>.

¹⁸ Microfinance agencies have provided access to credit and savings options to more than 3 million women small borrowers in developing countries. *See* Madsen, *supra* note 4, citing to Buvinic.

¹⁹ Figura, *supra* note 17, at 168 (“on average, sixty-four percent of MFI clients are women”) citing Jaffer at 186.

²⁰ As noted, *supra* note 9, there are very pragmatic difficulties in giving definitive numbers. First, there are several different programs with different terms (microcredit vs. microfinance). Second, there are difficulties in getting reports on specific numbers of recipients from all the programs. Third, there are very few groups with the resources to devote to tracking down reports from recipients and donors.

²¹ CGAP website, *supra* note 3.

²² *Id.*

²³ *Id.*

advanced as an excellent way to involve women in the global economy, with a particular focus in women in developing countries who have traditionally been limited in their access to and participation in economic markets.

Finally, microfinance has been advocated as a financially sound investment that allows a financial, government or other institution to lend money to a new group of customers. There is a very high payback rate in MFI programs, with Grameen Bank quoting 98%.²⁴ This is impressive, and much higher than the usual loan repayment rate.²⁵

The three goals of poverty alleviation, empowerment of women, and financial profitability, are often cited as jointly achievable by MFIs, particularly by Grameen Bank, one of the largest and most prominent MFIs. These goals differ from each other, however, and at times may result in different measurements of success.²⁶ The differences in the three goals also become significant when human rights considerations are taken into effect.

One aspect of microfinance programs is particularly important. MFIs loan money to poor people who do not have any collateral so MFIs do not require the standard “material” collateral. Instead, most MFIs require some form of what has been termed “social collateral.” This will be discussed in detail in the subsequent discussion of Grameen Bank.

²⁴ Muhammad Yunus, *How Legal Steps can Help to Pave the Way to Ending Poverty*, ABA HUMAN RIGHTS MAGAZINE (Winter 2008, Vol. 35 No. 1).

²⁵ The best comparison for loan repayment on microfinance loans is the loan repayment for small business loans. For statistics on U.S. small business loan repayment, see Robert De Young, Dennis Glennon & Peter Nigro, *Borrower-Lender Distance, Credit Scoring, and the Performance of Small Business Loans*, FDIC Center for Financial Research (Working Paper No. 2006-04) (March 2006) (this paper reports on a study by the FDIC involving 29,577 loans made by US commercial banks between 1984 and 2001. Table 1 includes the default rate on loans, with default rate on small business loans ranging from 4.85% to 26.59%, with a mean average default rate of 15.22%). Available at http://www.fdic.gov/bank/analytical/cfr/2006/wp2006/CFRWP_2006_04_DeYoungGlennonNigro.pdf

²⁶ For a fuller discussion of possible conflicts between financial and social development goals, see Todd Arena, *Social Corporate Governance and the Problem of Mission Drift in Socially-Oriented Microfinance Institutions*, 41 COLUM. J.L. & SOC. PROBS. 269 (Spring, 2008).

The Grameen Bank Example

Grameen Bank offers an excellent example of the interplay of MFIs three goals, particularly the concept of social collateral. A study of Grameen also demonstrates the actual workings of an MFI that has been in operation since 1974²⁷ and was one of the earliest MFIs.²⁸ Its founder, Muhammad Yusuf, was recently recognized with the Nobel Peace Prize and has written best-selling books about the Bank and his vision of microfinance.²⁹ Partners and investors include the Gates Foundation.³⁰ Grameen Bank has also been much studied and written about. Grameen means “village” in Bangla³¹, which is fitting, given the program’s focus on the grassroots villages and population of Bangladesh and Grameen Bank’s targeting of poor women as borrowers.³²

Other programs have attempted to model themselves on the Grameen Bank approach. There are some key elements of the Grameen Bank

²⁷ MUHAMMAD YUNUS, *BANKER TO THE POOR: MICROLENDING AND THE BATTLE AGAINST WORLD POVERTY* (1999); YUNUS, *supra* note 2. *See also* Grameen Bank website at <http://www.grameen-info.org/>

²⁸ While Muhammad Yunus is often credited as having created microfinance (*see* Figura article, *supra* note 17 at 166, stating microcredit was “created in 1976 by Muhammad Yunus”) and the story of his first loan to a Bangladeshi woman working on a stool is frequently told, the Self Employed Women’s Association (“SEWA”) predated Yunus’s first loan and Grameen Bank. SEWA was started in 1971 in India and is acknowledged as a continuing major force in MFI. *See* Avery article, *supra* note 15, particularly p. 219-220; *See also* Rekha Mehra, *The Role of NGO’s: Charity and Empowerment: Women, Empowerment, and Economic Development*, 554 ANNALS 136 (November, 1997) for a general discussion of SEWA in India.

²⁹ *Supra* note 26.

³⁰ In August 2006, the Gates Foundation gave a \$1.5 million grant to Grameen. This loan is a 3 year, unrestricted grant to support Grameen Foundation’s strategic mission to reach five million additional new families. Press release available at <http://www.gatesfoundation.org/press-releases/Pages/grameen-microfinancing-five-year-plan-060829.aspx>

³¹ *Id.* at footnote 131, citing David Bornstein, *The Price of a Dream* 43 (1996) Bornstein at 20.

³² *Id.* citing Bornstein, at p. 140.

approach that are found in most MFIs. Jameel Jaffer in his article on Microfinance³³ suggests the following elements are common to most MFIs:

- (1) small loans are provided (generally of a few hundred dollars or so) to borrowers without conventional collateral;
- (2) terms of these loans are short (usually less than two years);
- (3) the MFI normally requires that loan proceeds be used for investment in productive capital like equipment (processing industries, agriculture), materials (crafts, production) or livestock (dairy farming), rather than in consumption; and
- (4) interest rates are usually somewhat higher than those charged by formal sector banks, but are less than those charged by alternate sources: local moneylenders or loan sharks.³⁴

The above four factors differentiate Grameen Bank and other MFIs from formal sector banks that are not willing, suited, or capable of being lending agents to the very poor, particularly to very poor women in rural developing countries. Because MFIs focus on poor people, MFIs have developed substitute guarantees for traditional collateral. These include social collateral approaches like peer-lending, and can also include character references, group-based joint liability schemes, and compulsory savings requirements.³⁵

Under the Grameen Bank's MFI, women form five-member groups in their community or village.³⁶ Group members choose fellow members and are jointly responsible if anyone defaults on a loan.³⁷ This group responsibility and liability is what constitutes "social collateral." Only two of the five group members receive the original loans, and until these are paid off, the other members cannot receive their loans. The implications of this will be discussed more fully in Part II of the paper in the discussion of human rights implications, but even a cursory consideration reveals some potential concerns with this approach.

³³ Jameel Jaffer, *Microfinance and the Mechanics of Solidarity Lending: Improving Access to Credit Through Innovations in Contract Structure*, 9 J. TRANSNAT'L L. & POL'Y 183-184.

³⁴ Figura, *supra* note 17, at 164, citing Jaffer.

³⁵ *Id.* citing Yoko Miyashita, *Lessons from Indonesia's Village Banking System*, 10 Pac. Rim L. & Pol'y 147 (Dec. 2000).

³⁶ *Id.*

³⁷ *Id.* citing Jaffer at 198.

Grameen Bank counts on the group members to ensure their borrower makes loan payments, and initially the Bank was very strict about payments.³⁸ Both proponents and critics acknowledge that the peer-pressure exerted by the group on the borrower is often shame-based.³⁹ The combined pressure from peers and loan officers can be intense, and studies have documented some early tragedies, including one woman who killed herself as a result of this pressure.⁴⁰

In response to its early experiences, Grameen Bank made some important adjustments to its program in 2002, replacing its original program (Grameen Bank Basic or “GBB”) with a more forgiving version of the program (Grameen Bank II or “GBS”).⁴¹ Grameen Bank II allows the borrower to slow down loan payments during difficult times so that instead of being “in default” of payments, the borrower can opt to pay a higher interest rate for a short period of time, in order to stay in the program and still meet her obligations.⁴² This allows the Bank to ease the pressure it exerts on the borrower. But, of course, the Bank cannot regulate how the other group members exert their pressure on a borrower, nor can the bank regulate additional pressures group members are exposed to at home.

In her article on the Grameen Bank,⁴³ Rashmi Dyal-Chanda observes that:

the greatest opportunity for mischief results from the combination of a formal loan document (in which the female borrower is solely liable to the microlender), the informal solidarity circle (in which female borrowers are subject to social pressures), and whatever unregulated additional social

³⁸ See generally Rashmi Dyal-Chanda, *Article: Reflection in a Distant Mirror: Why the West has Misperceived the Grameen Bank's Vision of Microcredit*, 41 STAN. J. INT'L L. 217 (Summer, 2005) for a critical analysis of Grameen Bank, particularly referencing early studies of Grameen Bank by Aminur Rahman and David Bornstein. See also *infra*, note 40, on Bank's new “revamped” system (Grameen II).

³⁹ *Id.* at 263 referencing several studies that report that women are easier to control than male borrowers, and quoting bank workers as saying that women are “shy”, “submissive” and “immobile”, and at 297.

⁴⁰ *Id.*, referencing Rahman's article reporting on the Grameen Bank (“Rahman tells of a defaulting female borrower who was looked by bank workers inside a bank building as punishment...because the woman faced shame, social ostracism, and violence, she hanged herself inside the bank building”).

⁴¹ YUNUS, *supra* note 2, p.60-66.

⁴² *Id.*

⁴³ See generally Dyal-Chanda, *supra* note 38.

pressures the female borrowers are subjected to at home (including confiscation of loan funds by family members).⁴⁴ These social pressures will be discussed in depth in the discussion of women's rights and microfinance in Part II.

The Grameen Bank MFI includes in its long-term objectives "reduction of poverty, family size, and under and unemployment."⁴⁵ To further these objectives, all borrowers must agree to the Sixteen Decisions,⁴⁶ which were developed by a group of borrowers, and must be recited at every weekly loan payment meeting between the borrower and her loan officer.⁴⁷

Grameen has impressive results. As of October 31, 2008, Grameen Bank had dispersed \$7,427,000,000 and had collected \$6,630,290,000 since inception.⁴⁸ As of October 31, 2008, Grameen has 1,204,723 groups and 140,539 centers, and 661,945 houses have been built with loaned monies.⁴⁹ Grameen's program requires borrowers to save a certain amount of their earnings, which are invested in the Bank, and the Bank offers borrowers microlending insurance programs. This insurance program provides a sense of relief for borrowers and also represents another opportunity for the Bank to make money.

Grameen Bank started with a goal to be self-sustaining, and its initial program was criticized by some for being too harsh, while others defended the Bank as behaving the way any financial institution would.⁵⁰ In the original program, there were no excuses for missed or late payments. This changed when Grameen Generalized System [Grameen II] was implemented between April and August of 2002.⁵¹ Along with the option to go to a slower

⁴⁴ *Id.* at p. 286.

⁴⁵ Figura, *supra* note 17, footnote 149, citing Shelley Feldman, *The Role of NGO's: Charity and Empowerment: NGOS and Civil Society: (Un)stated Contradictions*, 554 ANNALS 46, 57 (1997).

⁴⁶ For a complete list of the Sixteen Decisions, see Part II, *infra*.

⁴⁷ Dyal-Chanda, *supra* note 38.

⁴⁸ Available at Grameen Bank website at http://www.grameen.info.org/-index.php?option=com_content&task=view&id=453&Itemid=527 (last visited on November 19, 2008).

⁴⁹ *Id.*

⁵⁰ Figura, *supra* note 17 (stating that the Bank had to be strict in order to ensure repayment and points out that people agreed to this going in.) But note also, that Grameen Bank has modified this with Grameen II.

⁵¹ Grameen website, *supra* note 26. See article entitled *Lessons Learned Over a Quarter of a Century* by Muhammad Yunus.

payment schedule in return for higher interest fees, Grameen II also includes pension plans, self-guaranteed loan insurance, and a community star system.⁵² Here is what Muhammad Yunus said about Grameen II:

The central assumption underlying GGS [the new program] remains the same as it was behind GCS [the classic program] – the firm belief that the poor people always pay back their loans... There is no reason for a credit institution dedicated to provide financial services to the poor to get uptight because a borrower could not pay back the entire amount of a loan on a date fixed at the beginning... We see no reason why the sky should fall on anybody's head because a borrower took longer time to pay back her loan. Since she is paying additional interest for the extra time, where is the problem?... This is a goal of Grameen... to not fall into the logical trap of the conventional banking and start looking at their borrowers as some kind of "time-bombs" who are ticking away and waiting to create big trouble on pre-fixed dates... one can benefit enormously by having trust in them, admiring their struggle for and commitment to have decent lives for themselves.⁵³

Muhammad Yunus also frequently highlights the social advancements in Bangladesh that he and the Grameen Bank attribute to their program.⁵⁴ The Sixteen Decisions definitely focus on social changes, and the group meetings are also used to provide educational information on birth control, and clean practices for waste and water.⁵⁵ "A number of studies have concluded that, as a result of the Bank's involvement, borrowers have been more likely than the general population to use birth control, to be more articulate, and at least be aware of the positive effects of the directives."⁵⁶ All the accolades and honors aside, Grameen Bank is not without critics.

Criticisms of Grameen Bank and Microfinance

Grameen Bank introduced Grameen Bank II in 2002 to address some early criticism of the program, namely that the Bank was too rigid (delete

⁵² Lee, *supra* note 16 at 529.

⁵³ Yunus, *supra* note 50.

⁵⁴ YUNUS, *supra* note 2, p.p. 103-109 detailing improved social conditions in Bangladesh.

⁵⁵ Figura, *supra* note 17 at p. 175 and footnote 177.

⁵⁶ Dyal-Chanda, *supra* note 38 at 258, and footnotes 192, 193 and 194.

around) regarding payments. But there remain fundamental questions regarding whether Grameen Bank, and other MFIs can honor two of their primary goals at the same time: combining market principles and financial responsibility with poverty alleviation.⁵⁷

There are several other potential issues as well. There are criticisms of how well MFIs address poverty alleviation. It is up to members to select their own group members, and often the poorest members of the community are excluded.⁵⁸ A field study in Malawi of a group-lending MFI revealed that certain women were being systematically excluded from groups: namely, women living with HIV or AIDS.⁵⁹ Upon closer inspection, a practical reason for this overt discrimination became evident. Since the MFI was set up so that no member could leave the group during the term of the loan, most women did not want to include a woman with HIV or AIDS in the group because they believed she could die and jeopardize their existing loan and access to future loans.⁶⁰ This highlights a general criticism of both Grameen Bank and other MFIs, namely that these programs don't reach the poorest of the poor.⁶¹

⁵⁷ For further discussion of the conceptual relationship between market principles and poverty alleviation, see Kenneth Anderson, *Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets?* 5 YALE H.R. & DEV. L.J. 85, 86-87 (2002) (Positing that there is a fundamental ambivalence about globalizing markets which is reflected in attitudes towards microcredit as well., particularly visible in microcredit's own highly ambivalent application of markets and market principles in international development work with the world's poor).

⁵⁸ Dyal-Chanda, *supra* note 38, at 254 and footnote 171, Bornstein citing Helen Todd's report, *Women at the Center, Grameen Bank Borrowers After One Decade* 23 (1996).

⁵⁹ See generally Chi Mgbako, Jeanmarie Feinrich and Tracy E. Higgins, *Women, Children, and Victims of Massive Crimes: Legal Developments in Africa: Special Report: We Will Still Live: Confronting Stigma and Discrimination Against Women Living With HIV/AIDS in Malawi*, 31 FORDHAM INT'L L.J. 528 (January, 2008).

⁶⁰ *Id.*

⁶¹ See Figura, *supra* note 17, at 175 and footnote 180 citing White at 332. The criticism that MFI programs do not always reached the poorest people is also made about other programs designed to help the poor. See also Kristen David Adams, *Do We Need A Right to Housing?* (forthcoming 2009) (on file with author) for a discussion of federal housing programs in the United States, noting Rachel G. Bratt's observation that "the primary purposes of federal housing programs have been to create jobs and respond to the needs of what Bratt calls the "submerged middle class."", citing to Rachel G. Bratt's *A Right to Housing Redux*, J. HOUSING & COMMUNITY DEV., Nov./Dec. 2004, at 6, 8.

Chi Mgbako, Jeanmarie Feinrich, and Tracy E. Higgins, authors of the article describing this study, recommend that lending groups adapt their programs to ensure equal access for all members of the community. They suggest that special groups could be formed for women living with HIV/AIDS, and that relaxed standards should be introduced to make it easier for these women to participate as members of groups.⁶²

As noted earlier, another criticism of MFIs is that some studies show that men in the household take control of their wives' loan money.⁶³ Some programs, including Grameen, require borrowers to set up savings accounts in their own names, which may ensure borrowers still have some control of funds.⁶⁴ But the involvement of other family members (e.g. husbands, in-laws) in confiscating a borrower's funds raises important women's rights concerns as well.

Additional criticisms of Grameen Bank and other MFIs will be discussed in Part II in the analysis on human rights implications, notably from the perspective of the indigenous perspective, and in terms of women's rights. Scholar Dyal-Chanda, in particular, suggests that the Grameen Bank model has been misperceived by Westerners in their zeal to apply it to situations in the United States, and her in-depth critique of Grameen Bank⁶⁵ is discussed in detail in Part II.

Probably the most serious criticism that has been leveled against MFIs relates to whether these programs have any impact on poverty reduction. In 1997, a report to the Secretary General of the United Nations said that resources being spent on MFIs could be put to better use in helping rid the world of poverty, and implied that microcredit was squandering aid.⁶⁶ This report was commissioned by the U.N. Department of Economic and Social Affairs, and the response reflected the positions of governments from the developing world.⁶⁷ Some suggested that the governments were uneasy with the implications of MFIs, and the potential for activating the grassroots

⁶² *Id.*

⁶³ *Id.* at 176 and footnote 187, citing White at 332-333.

⁶⁴ *Id.*

⁶⁵ Dyal-Chanda, *supra* note 38.

⁶⁶ Figura, *supra* note 17, at 178 and footnote 199 (Report to Secretary General of the United Nations).

⁶⁷ *Id.*

population.⁶⁸ Regardless of the motivations for the specific criticisms, the U.N. report clearly indicates that microfinance is not universally adored.

Whatever criticisms one can level at MFIs on a general or conceptual basis, Grameen Bank can clearly point to the practical impact their program has had on Bangladesh. In her article examining the success of microlending,⁶⁹ Rachel Errett Figura points out that, when Muhammad Yunus formed Grameen, Bangladesh was so poor it was known as the Fifth World and labeled an “international basketcase.”⁷⁰ Figura notes “2 million people (poorest of the poor) have been served by Grameen Bank and [the] repayment rate is comparable to that of Chase Manhattan Bank.”⁷¹ She also notes that “borrowers have increased their income one-third over other Bangladeshi poor, forty percent of borrowers consume the recommended daily caloric requirements, fifty-eight percent of borrowers have surpassed the extreme poverty line.”⁷² Figura concludes, “It is unclear how this could be viewed as unsuccessful.”⁷³

Grameen Bank is probably the most visible of the MFIs but there are several others, including Accion International, FINCA,⁷⁴ and the Women’s World Bank.⁷⁵ Clearly, each of these groups has several individual clients who have set up and are running businesses.

Still, MFIs should face tough scrutiny. Even though there is a great deal of money being spent on these programs, they are not the only potential

⁶⁸ *Id.* at 179 and footnote 210 citing Craig Turner, “UN Report Slams Loan Plans for Poor; Finance: ‘Microcredit’ Programs to Encourage Entrepreneurship in Developing Countries are Overrates, Study Says”, L.A. TIMES, Sept. 2, 1998 at A4.

⁶⁹ Figura, *supra* note 17.

⁷⁰ *Id.* at footnote 214, citing Borstein at p.22.

⁷¹ Figura *supra* note 17 at 180 and footnote 220, quoting Bornstein at 19-20.

⁷² *Id.*, at footnote 224.

⁷³ *Id.* at 180.

⁷⁴ FINCA (Foundation for International Community Assistance) is the microenterprise peer-lending group funded by USAID. *See* Avery, *supra* note 15 at 222 (noting that FINCA opened its first program in Costa Rica in 1985 and delivered services to 200 borrowers within one year; and in 2002, FINCA disbursed \$136 million to 227, 388 clients in 20 countries in Africa, Asia, and North and South America).

⁷⁵ *See* Lee, *supra* note 16 at 524 and footnote 13, describing Women’s World Bank as a non-profit lending association that has expanded into fifty nations in Africa, Asia, Latin and North America since its founding in 1979. *See* also WWB website at <http://www.swwb.org/>

approach that can be taken to address to alleviate poverty, empower women, and advance social change.⁷⁶ How well MFIs meet these goals, and how they do so should be examined.

Part II: Human Rights Implications of Microfinance Initiatives

There are several different human rights lenses through which MFIs can be analyzed: economic rights, women's rights and indigenous rights, are just three. One should also note the special tension of indigenous and women's rights that results from local customary law, and the special circumstances that surround women in times of war.

A. Microfinance and Economic Rights

The Universal Declaration of Human Rights contains two covenants and sets of rights: the "traditional" civil and political rights, as well as economic, social and cultural rights.⁷⁷ The United Nations adopted two separate International Covenants, one to deal with civil and political rights, the *International Covenant on Civil and Political Rights* (ICCPR)⁷⁸ and the other to deal with economic, social and cultural rights, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).⁷⁹ The ICESCR enshrines for each person "the right to work, which includes the right of everyone to the opportunity to gain his living by work he freely chooses or accepts."⁸⁰

These two types of rights have been characterized as quite distinct, with civil and political rights described as "negative rights" and economic, social and cultural rights being described as "positive rights".⁸¹ The term

⁷⁶ In Part III, other approaches are explored including ROSCAS (Rotating Self Credit Associations), women's cooperatives, and social enterprise approaches.

⁷⁷ HENRY STEINER, PHILIP ASTON & RYAN GOODMAN, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* (Oxford University Press, 2008), p. 263.

⁷⁸ ICCPR, entered into force March 23, 1976, available at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

⁷⁹ ICESCR, New York 16 December 1966, available at <http://www.ohchr.org/english/countries/ratification/3.htm>

⁸⁰ *Id.* Article 6, p.1.

⁸¹ STEINER, ASTON & GOODMAN, *supra* note 77 at p. 317, excerpt by Cass R. Sunstein, *Against Positive Rights*, 2/1 EAST EUR. CONSTIT'AL REV. 35 (1993) (arguing that positive rights should not be included in constitutions because they are non-justiciable).

“negative rights” refers to a right that individuals possess, but one that must be asserted when threatened.⁸² For example, the right to free speech is asserted when somebody tries to take away or “negativize” someone’s expression of speech.

Positive rights, in contrast, refer to rights that must be manifested by some sort of “positive” action. For example, if there is a right to housing, no one starts with a house that someone is trying to take away, so some sort of positive action would be required to manifest a person’s right to a house.⁸³ There is little debate about the universal right to negative rights but positive rights are more controversial. Some scholars argue that a true right must be enforceable and measurable, and question whether positive rights are truly enforceable.⁸⁴ Other scholars have focused on how positive rights could be enforced, and have proposed approaches to do so.⁸⁵ Still others focus their

⁸² See Adams, *supra* note 62, for a comprehensive discussion of “positive” and “negative” rights, also characterized in legal jurisprudence as “rights” and “liberties”, noting that “One way of framing the argument regarding the appropriateness of redistributive rights is as a conflict between “rights” on the one hand and “liberties” on the other. In this conception, as recognized by H.L.A. Hart and others, “rights” are positive entitlements *to* something, while “liberties” are freedom *from* something, including the freedom from having some of one’s money taken to support another person’s entitlements. An alternative way of describing “rights” and liberties” is as “positive rights” and “negative rights,” respectively.” Adams also notes Dworkin’s analysis which states the perceived tension between rights and liberties is a false conflict, and that society perceives liberty for advantaged groups and equality for disadvantaged groups.

⁸³ *Id.* for comprehensive discussion on rights related to housing.

⁸⁴ *Id.* SUNSTEIN at p. 283 and article by Aryeh Neier, *Social and Economic Rights: A Critique*, 13/2 HUM. RTS. BRIEF (2006) (arguing that economic and social rights should only be legislated where the right can be measured (i.e. each child’s right to a free primary school education vs. broader claims for shelter, housing or other economic resources)).

⁸⁵ See Albie Sachs, *Social and Economic Rights: Can They Be Made Justiciable?* 53 SMU L. REV. 1381 (2000); See also Katherine Young, *Article: The Minimum Core of Economic and Social Rights: A Concept in Search of Content*, 33 YALE J. INT’L L. 113 (Winter, 2008); see also Ubong E. Effe, *Sub-Saharan Africa: A Case Study on How Not to Realize Economic, Social and Cultural Rights, and a Proposal for Change*, 3 NW. U. J. INT’L HUM. RTS 2, 79 (2005) (suggesting a mechanism designed to address violations of the International Covenant on Economic, Social and Cultural Rights in Africa); see also Mark. S. Kende, *The South African Constitutional Court’s Embrace of Socio-Economic Rights: A Comparative Perspective*, 6 CHAP. L. REV. 137 (2003); Danwood Mzikenge Chirwa, *Toward Revitalizing Economic, Social, and*

efforts on articulating economic, social and cultural rights as equally important to civil and political rights, whether these rights are enforceable or not.⁸⁶

Debates about enforceability and justiciability aside, poverty is increasingly in the spotlight and the concept of economic rights is increasingly referenced. UNESCO has launched a program “emphasizing that freedom from poverty is a human right, a global imperative, and a top priority for governments and the international community.”⁸⁷ Esther Ocloo, founder of Women’s World Banking, says “credit for women is our right and we must fight for it.”⁸⁸

On November 19, 2008, the Third Committee of the UN General Assembly adopted by consensus the Optional Protocol ICESCR, which was proposed by the Third Committee of the U.N.⁸⁹ Fifty-two member states have so far co-sponsored the resolution, which will receive final adoption by the General Assembly in plenary session on December 10th.⁹⁰ The addition of the Optional Protocol to the ICESCR underscores the belief of United Nations members that the rights embodied in the ICESCR, including economic rights, are important.

Cultural Rights in Africa: Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, 10 HUM.RTS. BR. 14 (2002).

⁸⁶ See Deborah K. Dunn and Gary Chartier, *Recent Development: Pursuing the Millennium Goals at the Grassroots: Selecting Development Projects Serving Rural Women in Sub-Saharan Africa*, 15 UCLA Women’s L.J. 71, 74 (Fall, 2006). See also Amnesty International USA website for information on AI’s seven year global campaign beginning in 2008 to highlight economic, social and cultural rights (quoting AI’s Secretary General Irene Khan, “I wouldn’t like to think that we used to work on civil and political rights, we’re going to stop working on them now, and we’re going to shift to working on economic, social and cultural rights. That’s not the idea at all... We will try to bring those rights together by looking at how people suffer human rights abuses, and show that human rights are actually invisible whole... I hope that Amnesty International will in the future stand not only for prisoners of conscience, but also for prisoners of violence, for prisoners of illiteracy, for prisoners of poverty”). Available at <http://www.amnestyusa.org/get-activist-toolkit/about-amnesty/economic-social-and-cultural-rights/page.do?id=1101300>.

⁸⁷ STEINER, ASTON AND GOODMAN, *supra* note 77 at 308.

⁸⁸ Lee, *supra* note 16, footnote 14.

⁸⁹ Amnesty International Website, <http://www.amnesty.org/en/news-and-updates/good-news/un-adopts-key-economic-social-and-cultural-rights-instrument-20081119>

⁹⁰ *Id.*

Freedom from poverty is still by no means a universally agreed upon human right. Nor is it clear what role microfinance initiatives would play in asserting this right even if an economic right to be free from poverty was acknowledged as a universal human right. This is evident when one considers the earlier controversy from developing nations as to whether MFIs effectively address poverty.⁹¹ MFI programs might be more properly characterized as functioning within some sort of “right to credit,” which isn’t specified in any of the international covenants, although it might be implied in the provisions of the ICESCR “right of everyone *to the opportunity* to gain his living” (emphasis provided).⁹² The recent crises in the world economies have led many to note that we are in the midst of a huge change in the global economy.⁹³ As more people lose their jobs and homes, poverty will become more prevalent, and this will increase the focus on and advocacy for “economic rights.”

B. Microfinance and Indigenous Rights

One of the most comprehensive critiques of the Grameen Bank in particular has been undertaken by legal scholar Rashmi Dyal-Chanda.⁹⁴ Dyal-Chanda says that many in the Western world applaud the Grameen Bank for its apparent “indigenoussness”.⁹⁵⁹⁶

Dyal-Chanda focuses on three key aspects of the Grameen Bank model in her critique: (1) the solidarity circle device; (2) the Sixteen Decisions; and (3) the use of women as lending targets.⁹⁷ Of these three, two are common to several MFIs and one is distinct to the Grameen Bank. As previously noted, the solidarity circle is a form of social collateral, and has been used by other MFIs. Similarly, the Grameen Bank’s focus on female

⁹¹ See *supra* note 65 (noting study presented to UN questioning effectiveness of microfinance initiatives).

⁹² ICESCR, Article 6, p.1.

⁹³ See *Hunger and Homelessness Increase in American Cities: A Report by the U.S. Conference of Mayors 2008* (December 14, 2008) available at http://www.citymayors.com/features/uscity_poverty.html (This report reveals that on average, cities reported a 12 percent increase in homelessness from 2007 to 2008, with 12 cities (63%) reporting an increase in homelessness because of the foreclosure crisis).

⁹⁴ Dyal-Chanda, *supra* note 38.

⁹⁵ *Id.* at 221.

⁹⁶ *Id.*

⁹⁷ *Id.* at 222, footnote 25 commenting that she is downplaying other aspects that have led to the Bank’s overall success and focuses exclusively on these three aspects.

customers is common to most MFIs; however, the precepts expressly embodied in Grameen's Sixteen Decisions Doctrine are exclusive to the Grameen Bank.

1. Criticisms of the Solidarity Circle, The Sixteen Decisions and the Targeting of Women

Dyal-Chanda is not alone in noting that the solidarity circle produces a benefit for the Bank. By effectively leaving it up to the borrowers in the circle to determine whether each individual borrower is a good credit risk,⁹⁸ the Bank reduces its overall transaction costs in both pre-loan credit check approvals, and in ongoing enforcement of loan payments.

Dyal-Chanda observes that the approach seems attractive to many because it appears to replicate a very popular indigenous leading device: RCAs (rotating credit associations), also known as ROSCAs (rotating savings and credit associations).⁹⁹ But Dyal-Chanda distinguishes indigenous programs like RCAs and ROSCAs from the Grameen approach, because RCAs and ROSCAs are cooperative self-help networks within the community, unlike the Grameen Bank's institutional approach.¹⁰⁰

Dyal-Chanda also believes that the Grameen Bank's solidarity cycle and entrepreneurial model play into Western perceptions that have largely influenced the Community Economic Development (CED) Movement.¹⁰¹ She notes that Westerners like the "entrepreneurial model," and says that "the possibility that individuals, no matter how poor, can succeed by 'going

⁹⁸ *Id.* at 225 and in footnote 39, citing Mohammad A. Auwal & Arvind Singhal, *The Diffusion of Grameen Bank in Bangladesh: Lessons Learned About Alleviating Rural Poverty*, 14 *Knowledge: Creation, Diffusion, Utilization* 7, 16 (1992).

⁹⁹ *Id.* at 226 and footnote 43, citing Cao, *supra* note 5; Thierry van Bastelaer, *Imperfect Information, Social Capital and the Poor's Access to Credit* 6-8 (Center for Institutional Reform and the Informal Sector Working Paper 234, 2000) (commenting that these indigenous lending approaches distribute funds either randomly, by auction, or by collective decision).

¹⁰⁰ RCAs and ROSCAs are indigenous. For a more in-depth discussion of these approaches, *SEE* SHIRLEY ARDENER & SANDRA BURMAN, *MONEY-GO-ROUNDS: THE IMPORTANCE OF ROTATING SAVINGS AND CREDIT ASSOCIATIONS FOR WOMEN* (1995); *see also* Rosemary Coombe, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, 10 *AM. U.J. INT'L L. & POL'Y* 791 (1995).

¹⁰¹ *Id.* at 231-232 and note 66, citing a number of quotes from prominent Americans linking business ownership with the "American dream".

it alone' is a potent one in a culture where rugged individualism is closely associated with the pursuit of the American dream."¹⁰² Dyal-Chanda questions how microcredit can truly be indigenous in a culture with a high number of Islamic women, when Islamic legal codes forbid the giving of credit in return for interest and cultural Islamic notions about purdah forbid women from working outside the home.¹⁰³

Dyal-Chanda sees a similar Western value bias in the Sixteen Decisions. She notes that they include the "Protestant ethic," political participation, and formality.¹⁰⁴ The Sixteen Decisions were developed by a group of initial recipients of Grameen loans,¹⁰⁵ but Dyal-Chanda questions whether they have meaning for the women borrowers who are required to recite the list of decisions weekly, every time they make a loan payment.

Dyal-Chanda also questions whether the targeting of women for these programs reflects the social agenda of the Bank or the true wishes of the women.¹⁰⁶ She states that implicit in all MFI programs is the assumption that women want to start their own microenterprises. Some Bangladeshi women have expressed the view that it is not their place to handle money, and this thinking has been characterized by the Grameen Bank as patriarchal, sexist and oppressive.¹⁰⁷ Dyal-Chanda notes that the solidarity circle looks like "a laboratory for cultivating social and even political organization, creating community bonds, and seeking to democratize, where such tendencies may have previously been latent or even nonexistent."¹⁰⁸

Finally, Dyal-Chanda accuses western thinkers of narcissism: "by failing to ask real questions about core values, the Western development community succeeds in seeing a reflection of itself."¹⁰⁹ Much of the criticism of MFIs in general, and of the Grameen Bank in particular seems to stem from the Sixteen Decisions, and it is worth studying these in detail to get a better understanding.

¹⁰² *Id.*

¹⁰³ *Id.* at 296 and footnotes 381 and 382. *But see* Lee, *supra* note 16 (for a discussion of the possibility of having microlenders assume part of the loan risk through trustee financing).

¹⁰⁴ *Id.* at 233.

¹⁰⁵ *Id.* at 292-293 and footnote 370.

¹⁰⁶ *Id.* at 291.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 298.

¹⁰⁹ *Id.* at 295.

2. The Sixteen Decisions

The Grameen Bank's social change goal is evident in the Sixteen Decisions. The inclusion of behavior not related to business requirements in the context of a business arrangement is questioned by Dyal-Chanda, who notes this approach is inconsistent with general rule-of-law principles. She contrasts the non-business-related requirements with the usual approach to loans, which require clear and unambiguous contracts with specific conditions and considerations.¹¹⁰ The human rights implications of behavior-based requirements will be explored further in the subsequent section on the implications for women's human rights, but even setting those concerns aside and assuming that the Decisions can be reconciled with a borrower's human rights, a review of the Decisions themselves reveals some other concerns from an organizational behavior perspective.¹¹¹ These concerns may explain why U.S. microlenders that have adopted other aspects of the Grameen Bank model have not included conditions like the Sixteen Decisions in their loan transactions, but have instead opted for training programs.¹¹²

Organizational behavior theory utilizes concepts from the behavioral and social sciences as a basis for understanding human behavior within organizations. There is obvious value for any organization to have a clear mission statement¹¹³ and set of guiding principles¹¹⁴ that everyone in the organization understands and commits to support. Generally, organizations have a broad mission statement which is supported by a set of guiding principles. The organizational mission and guiding principles remain consistent, and are then translated into more detailed organizational objectives, which result in policies, which in turn guide the organization's specific procedures and rules.

This hierarchy of going from a general mission statement to specific concrete rules and procedures is an important one, in part because the mission statement provides the organizational consistency, but also because

¹¹⁰ *Id.* at 281-286.

¹¹¹ Organization behavior theory involves applying psychology and sociology principles to behavior in organizations. *See generally*, JOHN MINER, ORGANIZATION BEHAVIOR FOUNDATIONS THEORIES AND ANALYSES (Oxford University Press, 2002).

¹¹² Dyal-Chanda, *supra* note 38 at 283 and footnote 319.

¹¹³ Miner, *supra* note 111. *See also* Jon Rose, *Key Features of Organizational Development, Professional Development and Improved Productivity* (2006) available at <http://www.drugnet.bizland.com/Practice/orgdev.rtf>

¹¹⁴ *Id.*

the larger mission statement and guiding principles provide the underlying reasons for the actual procedures and rules. This makes it easier for individuals in the organization to understand the mission and principles, and it also ensures that the organization can change and adapt its day to day objectives and processes while continuing to adhere to its greater mission. If at any time during the organization's life span, a rule or procedure is at odds with the organization's broader mission, people in the organization can question the specific rule or procedure, and adjust so the rule or procedure better meets the mission. This allows the mission statements and guiding principles to remain largely unchanged, while shorter-term objectives, goals, procedures and rules are adjusted to changing needs.

A close examination of the Sixteen Decisions reveals that they combine mission, guiding principles, objectives, goals, procedures and rules in the same document, and in no specific order. The Sixteen Decisions¹¹⁵ are:

1. We shall follow and advance the four principles of Grameen Bank – Discipline, Unity, Courage and Hard work – in all walks of our lives.
2. Prosperity we shall bring to our families.
3. We shall not live in dilapidated houses. We shall repair our houses and work towards constructing new houses at the earliest.
4. We shall grow vegetables all the year round. We shall eat plenty of them and sell the surplus.
5. During the plantation seasons, we shall plant as many seedlings as possible.
6. We shall plan to keep our families small. We shall minimize our expenditures. We shall look after our health.
7. We shall educate our children and ensure that they can earn to pay for their education.
8. We shall always keep our children and the environment clean.
9. We shall build and use pit-latrines.
10. We shall drink water from tubewells. If it is not available, we shall boil water or use alum.
11. We shall not take any dowry at our sons' weddings, neither shall we give any dowry at our daughters [sic] weddings. We shall keep our centre free from

¹¹⁵ YUNUS, *supra* note 26, at p. 135-137.

- the curse of dowry. We shall not practice child marriage.
12. We shall not inflict any injustice on anyone, neither shall we allow anyone to do so.
 13. We shall collectively undertake bigger investments for higher incomes.
 14. We shall always be ready to help each other. If anyone is in difficulty, we shall all help him or her.
 15. If we come to know of any breach of discipline in any centre, we shall go there and help restore discipline.
 16. We shall take part in all social activities collectively.¹¹⁶

Clearly, this list comprises both guiding principles and rule-based actions. Some of the “decisions” are very much aspirational and are not easily measurable — for example, the commitments to bring prosperity (#2) or not inflict injustice (#12) — while others are very specific and easily measurable — to grow vegetables year-round (#4), and to build and use pit-latrines (#9).

With respect to the Sixteen Decisions, one should note that guiding principles have been merged with rules. The Grameen Bank considers the Sixteen Decisions a key to their success in effecting social change in Bangladesh, and borrowers are required to recite the Decisions regularly. The merging of guiding principles and action items is slightly awkward in terms of organizational behavior theory. Repeating a guiding principle or aspirational value could be compared to reciting the Oath of Allegiance, but repeatedly reciting an action item like building a pit-latrine is different. Either the pit-latrine has been built or it has not. Reciting a commitment to build one loses meaning once the pit latrine is built, and renders the commitment ineffectual if the pit latrine has not yet been built.

Also, simply reciting a list of commitments may not be the best way to ensure the commitments are met. It might be more useful for both the Bank and the borrowers to focus on how the borrowers are working with the Sixteen Decisions, and how the Bank might better assist them in doing so.

¹¹⁶ http://www.grameeninfo.org/index.php?option=com_content&task=view&-id=22&Itemid=109 (Last visited May 21, 2009).

An organization should sit up and take notice when one of its guiding principles or rules is ignored. This can cause problems if the organization does nothing to address the inconsistency. This lack of congruence between a stated principle and actual practice is referred to as “cognitive dissonance.”¹¹⁷ Cognitive dissonance can undermine an organization’s integrity because the organization’s expressed values are at odds with its practices. Some studies have suggested that Decision #11, related to dowry, is often ignored by borrowers.¹¹⁸ If that is true, it raises concerns because this particular Decision is stated very specifically in clearly measurable terms: one either takes or pays dowry, or one does not. If borrowers are ignoring this decision and the members of the lending organization (loan officers and executives) are aware of this and do not address it, this represents a classic case of “cognitive dissonance.” These observations, however, do not diminish the impact the Sixteen Decisions have had on Grameen Bank borrowers, nor in any way do they undermine the social changes attributed, in part, to the use of the Decisions.

There is another more subtle way in which the Sixteen Decisions may have contributed to the social change agenda, and advancement of women in Bangladesh. In a community or family where a female borrower faces resistance to changes she is trying to make, whether the resistance comes from her husband, family or village, she can use the Sixteen Decisions as a defense for her actions. Since she is required to adhere to the Sixteen Decisions in order to keep her loan, the female borrower can argue that she is just following the rules, even as she actively participates in advocating for her own reproductive choices, control of her own income, and education for her children.

3. Indigenous Rights and Customary Law

¹¹⁷ “Cognitive dissonance is a psychological phenomenon first identified by Leon Festinger. It occurs when there is a discrepancy between what a person believes, knows and values, and persuasive information that calls these into question. The discrepancy causes psychological discomfort, and the mind adjusts to reduce the discrepancy. In ethics, cognitive dissonance is important in its ability to alter values, such as when an admired celebrity embraces behavior that his or her admirers deplore. Their dissonance will often result in changing their attitudes toward the behavior.” Source for definition:

http://www.ethicsscoreboard.com/rb_definitions.html

¹¹⁸ Dyal-Chanda, *supra* note 38 at 259 and footnote 197.

Before turning to women's human rights issues, it is important to note (of) the special tensions between customary law in several indigenous cultures and women's human rights.¹¹⁹ The tensions between customary law, which often limits a woman's property ownership rights, choice of marriage partner, rights within marriage, and right to earn income, and international human rights law, which recognizes women's rights,¹²⁰ is complex and has been addressed by many scholars and in numerous law review articles.¹²¹

¹¹⁹ For full discussion of tensions of customary tribal law and women's human rights, see author's paper,

Addressing the Tension of Laws in Legal Pluralism: Women's Rights in Africa, exploring the interaction of customary tribal, law established by colonizers, and international human rights laws. Available from author.

¹²⁰ CEDAW, Convention to Eliminate Discrimination Against Women. 185 countries have ratified CEDAW (over 90% of the members of the United Nations). For information on CEDAW, see <http://www.un.org/womenwatch/daw/cedaw/states.htm>.

¹²¹ See, e.g. Tamar Ezer, Kate Kerr, Kara Major, Aparna Polavarapu & Tina Tolentino, *Report: Child Marriage and Guardianship in Tanzania: Robbing Girls of Their Childhood and Infantilizing Women*, 7 GEO. J. GENDER & L. 357, 360 (2006); Brenda Oppermann, *The Impact of Legal Pluralism on Women's Status: An Examination of Marriage Laws in Egypt, South Africa, and the United States*, 17 HASTINGS WOMEN'S L.J. 65, 80-81 (Winter 2006); Penelope E. Andrews, *Symposium: Violence Against Women in South Africa: The Role of Culture and The Limitations of the Law*, 3 MICH. J. RACE & L. 307, 320 (Spring 1998); See also Valerie Bennett, Ginger Faulk, Anna Kovina and Tajana Eres, *Inheritance Law in Uganda: the Plight of Widows and Children*, 7 GEO. J. GENDER & L. 451 (2006) (analyzing women's lack of inheritance rights in Uganda; Celestine I. Nyamu, *How Should Human Rights and Development Respond to Cultural Legitimization of Gender Hierarchy in Developing Countries?* 41 HARV. INT'L L.J. 381, 406-407 (Spring, 2000); Jessica Neuwirth, *Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action*, 18 HARV. HUM. RTS. J 19 (Spring, 2005) (referencing wife obedience still in effect in Algeria, Mali, Sudan and Yemen at 19,23; and restricted property rights in Lesotho, right to work controlled by husband in Cameroon, and women prohibited from working at night in Madagascar at 19, 24. Also noting that the assault of a wife is not an offense in Penal Code of Northern Nigeria if inflicted "by a husband for the purpose of correcting his wife, "so long as it" does not amount to the infliction of grievous hurt."); Katherine M. Weaver, *Women's Rights and Shari'a Law: A Workable Reality? An Examination of Possible International Human Rights Approaches Through the Continuing Reform of the Pakistani Hudood Ordinance*, 17 DUKE J. COMP. & INT'L L. 483 (Spring, 2007) (for discussion of changing rights of women in Pakistan under Sharia law); Johanna E. Bond, *Women, Children, and Victims of Massive Crimes: Legal Developments in*

Shana Hofstetter focuses on this tension specifically in relationship to microfinance in her article entitled *The Interaction of Customary Law and Microfinance*,¹²² in which she analyzes the effect of customary law and cultural norms on microfinance programs in the Dominican Republic, Morocco and Bangladesh. Hofstetter notes that customary law and traditional norms can hinder the goals of microfinance.¹²³ Customary law is defined as “law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws.”¹²⁴ Hofstetter explores in detail the impact customary law and norms have on women’s microfinance initiatives in Morocco,¹²⁵ the Dominican Republic,¹²⁶ and in Bangladesh (with focus on Grameen Bank).¹²⁷ She notes the ways in which certain principles in Shariah law limit women in business. Under the principle of Ta’ah, or obedience, a wife requires permission to leave her home, and she cannot be away from home for more than one night at a time.¹²⁸ Both of these rules limit a woman’s ability to run a business effectively, and limit her access to suppliers and customers.¹²⁹

Another traditional Shariah concept, the idea of “ird,” refers to the honor or moral purity of a group. A woman may limit her actions out of concern for how she is impacting the “ird” of her husband and extended

Africa: Article: Constitutional Exclusion and Gender In Commonwealth Africa, 31 *FORDHAM INT’L L. J.* 289 (January, 2008); Sarah Crutcher, *Stoning Single Nigerian Mothers for Adultery: Applying Feminist Theory to an Analysis of Gender Discrimination in International Law*, 15 *HASTINGS WOMEN’S L.J.* 239 (Summer, 2004) (for analysis of case in Nigeria of Amina Lawal Kurami, sentenced to being stoned to death due to pregnancy, referencing Sharia law in Nigeria, Nigeria’s ratification of CEDAW, and the international outrage at the Sharia Court’s decision).

¹²² Shana Hofstetter, Note: *The Interaction of Customary Law and Microfinance: Women’s Entry into the World Economy*, 14 *Wm. & Mary J. of Women & L.* 337 (Winter, 2008).

¹²³ *Id.* at 342.

¹²⁴ *Id.* at 341 (referencing Black’s Law Dictionary 413 (8th ed. 2004)).

¹²⁵ *Id.* at 342-345 (for a full discussion of the impact Islamic Shariah law has on Moroccan women borrowers).

¹²⁶ *Id.* at 346-348 (for the impact the cultural norm of ‘machismo’ has on women borrowers in the Dominican Republic).

¹²⁷ *Id.* at 353-359 (for detailed analysis of Grameen Bank as a model for using customary law as a catalyst for social change).

¹²⁸ *Id.* at 344.

¹²⁹ *Id.*

family.¹³⁰ Traditional Shariah concepts have led to women focusing on businesses associated with traditional gender roles like embroidery or sewing, or trading in small goods, resulting in smaller businesses and very high rates of competition among women's micro-enterprises.¹³¹

In the Dominican Republic, the constraints are cultural in nature. There, the issues are not with the formal law, but rather with the cultural norm of "machismo" which allows men to father children outside their marriages, and places a heavy burden on women to provide for their children's emotional and financial needs.¹³² Again, Hofstetter notes that this cultural norm results in women choosing smaller businesses that can be located in their homes or neighborhoods, while it also lessens the amount of time a woman can devote to her business.¹³³

Hofstetter sees the Grameen Bank as utilizing women's customary group norms in the use of social capital¹³⁴ in a positive way. She notes that the peer group approach utilizes women's traditional emphasis on social networks; noting that women in Kenya responded to the group pressure aspect of social collateral more than men did,¹³⁵ and that a study in Zimbabwe showed that women were more willing to sanction other members, and that female sanctions in groups were more effective than male sanctions in groups.¹³⁶

These examples reveal that one should keep in mind the impact of customary law on women while considering women's human rights relative to microfinance. This is especially true in the context of MFIs because MFIs often focus on poor women in developing countries where customary law is far more common.

C. Microfinance and Women's Human Rights

¹³⁰ *Id.* at 345.

¹³¹ *Id.* referencing Inez Murray & Nadira Barkalli, Women's World Banking, Gender Baseline Survey: Morocco (1) (2005).

¹³² *Id.* at 346-347.

¹³³ *Id.* at 347-348.

¹³⁴ *Id.* at 348-351.

¹³⁵ *Id.* at 351.

¹³⁶ *Id.* at 351.

Microfinance borrowers worldwide are predominantly women.¹³⁷ This is a very deliberate choice on the part of those who design MFIs, and is an extension of an earlier development trend, dating back to the 1970's, when international development agencies began to view women as an untapped resource in the developing world.¹³⁸ Katherine Spengler describes this as a "complex progressive movement involving issues of poverty, development, empowerment, and social change."¹³⁹ International institutions and The Women in Development (WID) movement focused on the notion that women, if properly developed, would lead to the advancement in developmental policies for the third world.¹⁴⁰

But Spengler says that the assumptions made by the international aid community in the 1970's were detrimental to both the goals of micro-finance programs and to the women involved in the programs for several reasons.¹⁴¹ First, the international aid community underestimated exactly how responsible the women were for the economic well-being of their families.¹⁴² Aid groups assumed that women's need for income was temporary and supplemental, rather than understanding the critical role women played in a family's economic survival. Second, international aid groups failed to treat women's economic aid as a comprehensive issue that needed to be implemented into existing national development programs.¹⁴³ Finally, income generation and production projects rarely took traditional and

¹³⁷ Grameen Bank estimates that 97% of their borrowers are female but the same difficulties in calculating the number of microfinance loans present in ascertaining specific numbers. See at <http://www.grameen-info.org>

¹³⁸ See Katherine Spengler, Note & Comment: Expansion of Third World Women's Empowerment: The Emergence of Sustainable Development and the Evolution of International Economic Strategy, 12 COLO. J. INT'L ENVTL. L. & POL'Y 303 (Summer 2001) (historical perspective on economic development strategy).

¹³⁹ *Id.* and referencing The World Resources Institute, World Resources: A Guide to the Global Environment 1994-95, 44 (1994)

¹⁴⁰ Spengler, *supra* note 137, and in footnote 25, referencing Barbara ROGERS, THE DOMESTICATION OF WOMEN: DISCRIMINATION IN DEVELOPING SOCIETIES 9-10 (St. Martin's Press 1980); at 306-307 and footnote 27, referencing Ester Boserup, whose book (WOMEN'S ROLE IN ECONOMIC DEVELOPMENT (St Martin's Press, 1970)) and work are largely credited with fostering WID (the goal being to allow women to transition into economic sectors, whether as agricultural workers or as industrial hands). See also, Mehra, *supra* note 28, commenting on Boserup's studies.

¹⁴¹ *Id.* at 317.

¹⁴² *Id.* and citing Mehra, *supra* 28 at 141.

¹⁴³ *Id.*

customary discrimination into account, including women's continued entrenchment in the informal community.¹⁴⁴

As a result of these faulty assumptions, early development programs focused on using women in small, traditionally based businesses, and focused more on welfare goals, rather than development. Spengler notes that this changed in the 1980's when the international community observed that "developing countries and the majority of women inhabitants were starving, stricken, and worse off than before these programs were implemented."¹⁴⁵ This led to a new developmental path of "sustainable development," which focused on development that had to sustain human progress for the entire planet.¹⁴⁶ This was fully articulated in 1992 at the UNCED in Rio de Janeiro.¹⁴⁷ Agenda 21 at the Rio Conference noted the critical role for women to play and the need to empower women.¹⁴⁸ Microfinance and microcredit programs were, and continue to be, largely embraced as consistent with this new development agenda.

There are some general observations that have been made about development programs and women's rights and lives. Mayra Buvinic coined the phrase "project misbehavior"¹⁴⁹ for past development programs that pursued welfare goals rather than development goals.¹⁵⁰ Subsequent development and feminist scholars continue to caution that MFI programs need to pay attention to their own systemic biases. An example of a systemic bias would be a program that focuses more on traditional skill sets associated with women's traditional roles (home skills like sewing, knitting, crafts) rather than on skills that are more economically profitable, like farming, trading or providing services.

¹⁴⁴ *Id.* footnote 113, citing INSTRAW (UN International Resource and Training Institute for the Advancement of Women), Credit for Women 15 at 19-20, U.N. Doc INSTRAW Ser. B/51, U.N. Sales No. E.96.III.C.2 (1995) (observing that initial programs pursued welfare goals rather than development goals).

¹⁴⁵ *Id.* at 325-326 and referencing Martha Alter Chen, *Introduction to Seeds 2: Supporting Women's Work Around the World* (Ann Leonard ed., 1995).

¹⁴⁶ *Id.* (defining sustainable development as a way to protect natural resources while at the same time allowing for the increased production of necessities in order to meet the needs of a growing population, and in footnote 200 cites to World Resources Institute, *World Resources: A Guide to Global Environment 1992-93*, 2 (1992)).

¹⁴⁷ *Id.* at 328.

¹⁴⁸ U.N. BLUE BOOK SERIES VOL. VI, THE UNITED NATIONS AND ADVANCEMENT OF WOMEN 1945-1995 at 54-55, U.N. Doc. ST/DPI/1679 (1995).

¹⁴⁹ Mehra, *supra* note 28, citing Buvinic.

¹⁵⁰ *Id.* footnote 11.

MFIs are not the sole approach used to stimulate women in development, but it is a high profile and growing area, and the same concerns raised by feminists about the types of jobs women engage in, relate also to MFI. Rehka Mehra says women's roles as mothers and wives have dominated development thinking.¹⁵¹ This is not unique to development thinking but also permeates other approaches to women in the workplace in developed nations and their multiple roles as wives, mothers and workers.¹⁵² Nor are the balancing issues that face women unique to women who run their own businesses in MFIs. Some concerns are common to all women who have both family and work obligations, regardless of income level, size of family, type of work, or community, but these concerns tend to amplify when the customary societal norms previously discussed are involved.

Lucie E. White, writing in 1998, noted that legal feminists had tended to ignore the systemic political and economic inequalities that gender entails, "turning away from the question of law's proper role in shifting 'private-sector' and 'intra-household' distributions of wealth and power" and instead focusing on "tactics that women can use from within their highly constrained situations to enhance their own well-being and power".¹⁵³ White also raises several considerations regarding MFIs and women's human rights. She states that feminist advocates of microenterprise assistance need to think about how the businesses women are starting promote gender equity or women's empowerment, particularly noting that, when women start businesses that must use "sweatshop strategies" to stay afloat, it does neither.¹⁵⁴

White raises similar concerns to those previously cited in Dyal-Chanta's critique of Grameen Bank's MFI program and Hofstetter's analysis of customary law, namely, that women can get stuck in low-skill, low-pay businesses with low profit margins.¹⁵⁵ She also echoes concerns previously noted, that loan circles do not tend to reach the poorest women in rural

¹⁵¹ *Id.* at 142.

¹⁵² *Id.*

¹⁵³ Lucie E. White, Article: Feminist Microenterprise: Vindicating the Rights of Women in the New Global Order? 50 Me.L.Rev.327 (1998).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 33 and citing in footnote 19 to Julie Korraine, *Critique of the Cambridge Child Care Resource and Referral Network's Child Care Enterprise Support Program* (Child Care Action Campaign Issue Brief, 1996); also citing to Peter Pitigoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1758 (1993).

villages, that powerful men in women's household networks may control the use of loan funds, and that, "without earmarked funding, staffing and fiscal and ideological incentives, loan circles do not tend to engage in activities of mutual support, education, social or individual capacity building and the like."¹⁵⁶ Finally, White notes that the pressure tactics used by some women on others to repay their loans may not empower women but rather deepen their enmeshment in *traditional relationships of domination*.¹⁵⁷ (emphasis provided).

How MFIs treat women in terms of "traditional relationships of domination" is a recurring theme amongst others who have studied MFI programs. Linda Mayoux¹⁵⁸ noted that microfinance staff for some MFI programs openly stated that the main motivation for targeting women is that they are perceived as more conscientious and "docile."¹⁵⁹ Dyal-Chanda cites studies done in the mid 1990's that focused on several Grameen Bank practices that reinforced a hierarchy with bank workers at the top and borrowers at the bottom, and notes that Bank practices requiring borrowers to "chant slogans," "perform physical exercises" and call their loan officers "sir"¹⁶⁰ ran counter to the goal of empowering female borrowers. It must be noted that several of these studies were done in the mid-1990's, and it is very likely they reference outdated attitudes or practices. But the underlying concern remains valid: how MFIs operate can either encourage or restrain female empowerment. White encourages feminists to critically examine MFIs from the perspective of both sociocultural and economic change:

If loan circles are promoted because such circles can stimulate wide processes of sociocultural change, then the resources for facilitating the circle's educational, support, and consciousness-raising activities must be secured in order

¹⁵⁶ *Id* at 331-332 and footnote 16 citing to Jude L. Fernando, *Nongovernmental Organizations, Micro-Credit and Empowerment of Women*, 554 ANNALS AM. ACAD. POL. & SOC. SCI. 150 (Special Issue, The Role of NGO's: Charity and Empowerment, Jude Fernando & Alan Heston eds., 1997) at 161-64.

¹⁵⁷ *Id.* at 332.

¹⁵⁸ Linda Mayoux, *Women's Empowerment and Participation in Micro-Finance: Evidence, Issues and Ways Forward*, reprinted in *Sustainable Learning for Women's Empowerment: Ways Forward in Micro-Finance 2* (Linda Mayoux ed., 2003) and available online at <http://www.microfinancegateway.org/content/article/detail/3765>

¹⁵⁹ *Id.*

¹⁶⁰ Dyal-Chanda, *supra* note 38 at 258 and footnote 196, citing several reports that were conducted by Grameen Bank and previously available at the Grameen website, including David Bornstein, *The Price of a Dream* 19, 26 (1996); Alex Counts, *Give Us Credit* xiii (1996).

for the circle to work. If technical assistance for microenterprises is promoted because such businesses can enhance women's power in a neighborhood's political and economic structure, while revitalizing its social fabric, then the program must have access to a pool of women with a solid base of both vision and skills, and the neighborhood must be in a position to support the range of businesses that these women are likely to start.¹⁶¹

MFIs are not the sole approach to development, and other approaches will be discussed more fully in Part III. But, as long as MFIs promote themselves as a method of empowering women, the women's rights concerns raised by these feminist scholars should be addressed by each program.

This is true of all the human rights implications relative to economic, indigenous and women's human rights. The increased involvement of banks and other financial institutions in MFI programs, as well as Grameen's own continued experience indicate that MFI programs can be financially profitable. As MFI programs continue to work towards alleviating poverty and empowering women, it is critical that they consider the implications their programs have in terms of advancing economic, indigenous, and women's human rights.

Women's Rights in Times of War

There is another special situation that needs to be addressed. Women and children are particularly affected by war.¹⁶² And yet even in the most dire situations where women are living in extreme conditions in refugee camps, there are still women who seek assistance to start a business.¹⁶³ In her article, *Microcredit Extension in the Wake of Conflict*, Lisa Avery refers to refugees in the Kakuma camp on Kenya's Sudan border who approached the IRC (International Rescue Committee) for funding to expand their small soap production venture.¹⁶⁴ The IRC responded by giving administrative support and monitoring assistance in addition to extending credit under its

¹⁶¹ White, *supra* note 152 at 333.

¹⁶² Avery, *supra* note 15.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 236.

Microcredit program.¹⁶⁵ With help from the IRC, the group was able to produce a high quality product for the use of the entire camp population and hire an additional forty men and women to operate their business.¹⁶⁶

Avery tells of Jane Murekeyisoni, a refugee from Rwanda who lost her husband and home in the 1994 genocide.¹⁶⁷ Jane received a small loan from World Relief, started a laundry business catering to local taxi drivers, and then went on to expand her business to provide shoe repair service.¹⁶⁸ Avery also references Grameen Bank's microcredit work in Kosovo after the war.¹⁶⁹ Grameen Bank reached 1200 borrowers within its first year in Kosovo, with borrowers running businesses in dairy farming, food sales and sewing enterprises.¹⁷⁰

Microcredit programs in war-torn areas have direct application to addressing women's human rights. It is often women who are left to support their households after wars. Furthermore, abuse of refugees in humanitarian aid distribution sites has been well-documented.¹⁷¹ The more self-reliant a woman can be, the safer she and her children will be.

Summary of Human Rights Implications

Clearly, microfinance programs have an impact on human rights, and it is important to consider how MFI programs affect the human rights of the people and communities involved. Microfinance has great potential to empower people economically and engage women in developing nations in the global economy in ways they have never been involved before. But as MFI programs are developed, introduced and administered, they will be greatly strengthened by considering the human rights implications relative to economic, indigenous and women's rights.

¹⁶⁵ *Id.* and footnotes 276 & 277 citing Karen Jacobsen, *Livelihoods in Conflict: The Pursuit of Livelihoods by Refugees and the Impact on the Human Security of Host Communities*, INT'L MIGRATION, SPECIAL ISSUE 2 (vol. 40(5) at 16).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 217.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 218.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* and footnote 121, Women's Comm'n for Refugee Women and Children, *Rights, Reconstruction and Enduring Peace: Afghan Women and Children After the Taliban* (Dec. 31, 2001), at <http://www.reliefweb.int/w/rwb.nsf/0/725d9c085ced542-e85256b360056e43d?OpenDocument>

Part III: Microfinance Relative to Other Approaches

Microfinance focuses on an individual entrepreneur starting her own business. Even though group-lending has been incorporated into several MFI programs, in MFI programs, the group does not jointly conceive of a business and then jointly run it. This differentiates MFI from more cooperative ventures.

Microfinance also focuses on fostering businesses pre-inception. Another option would be to find businesses that are already in existence, preferably in the early stages, and support them with funding so they can grow to full potential. Still another approach would be to secure other rights for women, like a right to own property. If a woman owned her own home or land, this would greatly reduce the costs of running a business or growing farm crops, and could result in more women running successful businesses.¹⁷²

Women's Cooperatives

Women's cooperatives have been initiated and run in several developing nations. Deborah Dunn and Gary Chartier¹⁷³ compared several grassroots projects that were initiated in sub-Saharan Africa in an effort to isolate what factors led to success. They write that these projects suggest the extension of human rights protections to women (including protection of their property rights and provision of opportunities to control their work lives) can be a vital means of ensuring social and economic benefits accrue to entire communities.¹⁷⁴ They echo that "targeting and involving rural women is critical to the overall plan for improving the lives of rural people in sub-Saharan Africa."¹⁷⁵

Women's cooperatives involve setting communal goals and sharing the challenges and profits as a group. While Dunn and Chartier focused on grassroots projects in sub-Saharan Africa that were initiated by international groups like Heifer Project International (HPI), Catholic Relief Services, and

¹⁷² Anthony Faiola, *Women Rise in Rwanda*, WASH. POST, May 16, 2008 available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/15/AR2008051504035.html?referrer=emailarticle>

¹⁷³ Dunn and Chartier, *supra* note 84.

¹⁷⁴ *Id.* at 73-74.

¹⁷⁵ *Id.* at 92-93

the United Nations Development Fund for Women (UNIFEM)¹⁷⁶ as well as a local community-initiated project (the Ithuseng Cooperative in South Africa),¹⁷⁷ their observations about what worked and what didn't are more widely applicable to cooperatives in general. Dunn and Chartier identify five different factors for measuring success:

1. savings in time;
2. realistic opportunities for learning;
3. increased income levels;
4. empowerment of women, and
5. project sustainability.

Dunn and Chartier note that the Ithuseng Cooperative can help “clarify ways in which projects can most effectively foster human rights and achieve development goals.”¹⁷⁸ The brick-making cooperative was located in the village where the women lived so there was no need to travel to get to work. The resources needed to make the bricks (sand and water) were readily available, and women could bring their babies to the cooperative and nurse them throughout the day.¹⁷⁹ There were realistic opportunities for learning as well. Many of the women had previously worked at brickyards so they didn't have to master new techniques or technologies. However, the opportunity to manage the business and run a bank account presented new growth, and literacy classes were provided on site to strengthen the skills of those who couldn't read.¹⁸⁰ The women earned money but didn't have to make a substantial capital investment, and as co-owners, all women shared in the cooperative's profits. The women used the profits to build two daycare centers in the village, and most participants indicated their standard of living improved after participating in the project.¹⁸¹ The project has potential to be completely self-sustaining, as well.¹⁸²

This is not to suggest the project was without challenges. Problems included difficulties within the group – most of the participating women did not know each other before meeting. There were also production complications when a drought occurred. During the months when profits were low, the Community Health Center (sponsoring organization) had to

¹⁷⁶ *Id.* at 93.

¹⁷⁷ *Id.* at 100-110.

¹⁷⁸ *Id.* at 100.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 101.

¹⁸¹ *Id.*

¹⁸² *Id.*

subsidize the cooperative. Dunn and Chartier also note that when the cooperative was profitable, the participants asserted their ownership of the project; however, when it was less profitable, they claimed they were merely employees of the cooperative and not responsible for its problems.¹⁸³

Another example of a very exciting women's cooperative involves the Amal Oil Cooperative in Morocco. This project is the brainstorm of Zoubida Charrouf, a professor from the Faculty of Sciences at Rabat. A report on the program, written in 2006, details the work that Charrouf has done with the "argan" or "Moroccan ironwood tree, a tree that grows only in Morocco."¹⁸⁴ While it has decreased greatly, with more than a third of the argan forest disappearing in the last century, it is still the second most important forest species in Morocco.¹⁸⁵ The argan is an oil-producer, and women have traditionally relied on both the oil and the wood. Charrouf focused her research efforts to conserve the argan tree by involving the community in putting the tree's products to economic use. She worked with destitute and illiterate women who have traditionally depended on the argan tree, using its wood as fuel, its leaves and seeds as feed for goats, and the tree's oil, which is reputed to have almost magical qualities, for medicinal and beautifying purposes. Extracting the oil is difficult and time-consuming, so Dr. Charrouf formed a cooperative to mechanize the process, and she involved local destitute and illiterate women, most of them widowed or divorced, to run it.¹⁸⁶ As of 2006, the Amal¹⁸⁷ oil cooperative, in Tamanar, 70 kilometres south of Essaouira, employed nearly 50 women on a full-time basis, and another 100 part-time, and had the distinction of being the first female-run argan oil cooperative in Morocco.¹⁸⁸

¹⁸³ *Id.* at 102.

¹⁸⁴ From an online article entitled "Amal as in Hope", which was available at www.idrc.ca/en/ev-5416-201-1-DO_TOPIC.html online (copy retained by author, on file, October 2008) (This article was written by Narjis Rerhaye, a Moroccan journalist, and highlighted the work of Dr. Charrouf in pioneering the extraction of oils with local women working in a cooperative. Note: this article is no longer available and may have been withdrawn because argan tree oils are now being sold and distributed in the United States under Argan Oils, available at <http://www.arganoils.com/>. News/research section references the work of Dr. Charrouf).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* "Amal" means hope in Arabic.

¹⁸⁸ *Id.*

The Canadian government's International Development Research Center (IDRC) and the Canadian International Development Agency (CIDA) helped by providing funding for the argan oil cooperative in Morocco.¹⁸⁹ The words of the women themselves document what this has meant to them. "My life has really changed. It used to be that I could never leave my house. Today I am earning an income and can send my children to school." "We want to earn respect and show we can take care of ourselves. We don't want to depend on anyone." "Men used to forbid their wives to work here. Now they come and ask for jobs for their wives."¹⁹⁰

In searching for more current knowledge on the Amal cooperative, it was apparent that Argan oils are now being sold internationally, and the website references Dr. Charrouf's research.¹⁹¹ The Amal Cooperative is one more example of a women's cooperative that was initiated on a grassroots level, and was funded by development money.

Supporting Women Entrepreneurs in Ways Other than Microfinance

Another way to support women who have started businesses is by helping them gain greater access to global markets. Terry Dworkin and Cindy Schipani¹⁹² discuss technology mentoring programs used to help female entrepreneurs, notably by UNIFEM (United Nations)¹⁹³, whose International Membership Committee and program "Bridging the Gender Digital Divide Through Strategic Partnerships" has helped expand the success of Rwandan entrepreneurs who employ Rwandan female artisans,

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Available at: <http://www.arganoils.com/>

¹⁹² Terry M. Dworkin and Cindy A. Schipani, *Linking Gender Equity to Peaceful Societies*, 44 AM. BUS. L.J. 391 (Summer 2007)

¹⁹³ *Id.* at 406. *See also*

<http://www.wougnet.org/Documents/UNIFEM/EmpowerRwandaWomen.html> for a full discussion of the program, and all the groups involved in this project, go to <http://www.wougnet.org/Documents/UNIFEM/EmpowerRwandaWomen.html> noting ("An International Business Mentoring Committee is being set up to support innovative initiatives linking women's associations with foreign markets and investors. An example is a partnership between KIST, RITA, RwandaTel, the Ministry of Gender and the Ministry of Communications, to scale up through ICTs the activities of AVEGA, the association of widows of the genocide. AVEGA is already acting as focal point for many Rwandan women producers of local crafts, some of which have been sold on the international market through intermediary organizations", and referencing http://www.bpeace.com/projprog_rwanda.php).

and promoted international sales.¹⁹⁴ Since 2005, Macy's has been selling products such as peace baskets, Christmas ornaments, and women's satchels, all made by Rwandan women.¹⁹⁵ For the Rwandan artisans and entrepreneurs, access to Macy's customer base greatly expands the market for their products, and Macy's benefits as well, by offering high quality goods at reasonable prices to its customers.¹⁹⁶

Strengthening Women's Property Rights

Yet another approach that could have a tremendous impact on women's rights would be to increase women's property rights. Juliette Ayisi Agyei¹⁹⁷ notes the tremendous impact changes in property ownership had on women in Ghana. This has been a particular goal of the DWM (December Women's Movement), a national woman's movement, founded in 1982 by the wife of the head of state, Nana Konadu Agyeman Rawlings.¹⁹⁸ In 1985, the DWM forced the government into enacting a set of new laws covering customary marriage and divorce, administration of estates, and intestate succession.¹⁹⁹ Agyei says, "More than anything else, these laws have been instrumental in assuring Ghanaian women equal treatment under the law."²⁰⁰

¹⁹⁴ *Id.*

¹⁹⁵ Dworkin and Schipant, *supra* 191at footnote 78, citing Keiko Morris, *Macy's Sells Rwandan "Peace Baskets,"* KNIGHT RIDDER TRIB. BUS. NEWS, Mar. 15, 2006, at 1. *See also* Macy's website at http://www1.macys.com/campaign/rwanda/index.jsp?cm_sp=SEARCH_MERCH--HOME--RWANDA

(last visited November 23, 2008) to get information on the Rwandan artisan items being sold through Macy's.

¹⁹⁶ It would be of interest to know who buys these products from Macy's, and whether the idea of supporting women in the developing world is a factor in their decision making. I was unable to find any data on this but if Macy's customers value purchasing actions that support women in the developing world, Macy's may gain from their promotion of these products in reputation terms by being perceived as "socially conscious". This could attract new customers, or attract a different market segment, resulting in more sales and profits for Macy's.

¹⁹⁷ Juliette Ayisi Agyei, Note: African Women: Championing Their Own Development an Empowerment-Case Study, Ghana, 21 WOMEN'S RIGHTS L. REP. 117 (Spring, 2000).

¹⁹⁸ *Id.* at 126.

¹⁹⁹ *Id.* at 127.

²⁰⁰ *Id.* and at footnote 167, citing KEVIN SHILLINGTON, GHANA AND THE RAWLINGS FACTOR, 155-56 (1992).

In 2005, the Commission on the Legal Empowerment of the Poor (LEP) was created under the auspices of the United Nations Development Program, with a mission “built on the conviction that poverty can only be eradicated if governments give all citizens, especially the poor, a legitimate stake in the economy by extending access to property rights and other legal protections to populations and areas not currently covered by the rule of law.”²⁰¹ Karol Boudreaux explores how changes in titling have worked in South Africa, concluding that major institutional reforms are needed to use property to empower the poor.²⁰²

Rwanda provides an interesting example of a country where property has transferred to women as a result of a humanitarian crisis.²⁰³ In Maraba, a southern village in Rwanda, several women found themselves in charge of family-owned coffee plantations after all their male relatives died in the 1994 Rwandan genocide.²⁰⁴ Women who inherited property showed more willingness than men to embrace new techniques aimed at improving quality and profit, resulting in female farmers outdoing their male counterparts, numbering about half of all farmers in the village’s cooperative and producing 90 percent of its finest quality beans for export.²⁰⁵ A recent article in the Washington Post quoted Rwandan officials as stating that women invested more profits in the family, renovated homes, improved nutrition, increased savings rates, and spent more on children’s education.²⁰⁶ Agnes Matilda Kalibata, minister of state in charge of agriculture, stated
 Rwanda’s economy has risen up from the genocide and prospered greatly on the backs of our women. Bringing women out of the homes and fields has been essential to our rebuilding. In that process, Rwanda has changed forever... We are becoming a nation that understands that there are huge financial benefits to equality.²⁰⁷

²⁰¹ Karol C. Boudreaux, *Article: The Legal Empowerment of the Poor: Titling and Poverty Alleviation in Post-Apartheid South Africa*, 5 HASTINGS RACE & POVERTY L.J. 309 (Summer, 2008); *see also* <http://www.undp.org/legalempowerment/faq/>

²⁰² *Id.*

²⁰³ Faiola, *supra* 170.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

While the conditions that have led to this change in Rwanda were tragic, the impact on the women in the country has been very positive. Legal reforms were passed in 1999, enabling women to inherit property, and women began rising to higher levels of political power, and now hold about 48% of the seats in Rwanda's parliament.²⁰⁸ Rwandan women own about 41% of businesses, compared to 18% in Congo. Rwanda also has the second-highest ratio of female entrepreneurs in Africa, behind Ghana with 44 percent.²⁰⁹

Clearly, property ownership can play a major role in improving women's economic empowerment. Laws that allow women to inherit and own property can work in conjunction with other practices that allow women to work outside the home, own their own businesses, and support women's access to global markets.

Social Enterprise

It is beyond the scope of this article to study social enterprise approaches in detail, but this approach also offers some promising potential for both alleviating poverty and empowerment of women within their societies. Social enterprise describes any non-profit, for-profit or hybrid corporate form that utilizes market-based strategies to advance a social mission.²¹⁰ Social enterprise approaches are an extension of sustainable development theory, dedicated to developing a social sector of the economy by applying business strategies to generate social value.²¹¹ This can be a relatively small venture, like a Goodwill Thrift store, or can be much larger, like hospitals or public education institutions that introduce a profit-earning portion of their business in order to help support their operation and reduce their dependency on grant monies.²¹²

²⁰⁸ *Id.*

²⁰⁹ *Id.* quoting the World Bank.

²¹⁰ Social Enterprise Alliance website at <http://www.se-alliance.org/>.

²¹¹ *Id.*

²¹² *Id.*

Some sample projects that have been advanced under a social enterprise program called NESsT (Nonprofit Enterprise and Self-Sustainability Team)²¹³ include the following: a home-delivery organic food service by Open Garden Foundation in Gondollo, Hungary, that finances its sustainable agriculture and education programs; Betlam in Czech Republic operates a construction company as a means of supporting its work with the severely mentally and physically disabled.²¹⁴ It would be interesting to take a social enterprise approach to a village or community, and see how this approach could work to support and sustain the community's needs.²¹⁵ Conceivably, all members of the community, both men and women, could be involved in profiting in a social enterprise approach.

Conclusion

Clearly, there are several different approaches to addressing poverty by supporting women's economic initiatives, whether through MFIs, women's cooperatives, increased property rights or social enterprise programs. All offer different approaches, and there may be advantages to offering more than one approach.

Some women will want to be entrepreneurs, and MFI may meet their needs perfectly. Other women may prefer to work as part of a collective project and prefer women's cooperatives. There may be villages or communities that want to take on a social enterprise program, and involve both men and women in the same project. Depending on what business is most profitable in the area, increased property rights for women may be the critical variable that makes a difference between women being able to effectively enter the workforce or not.

In understanding what approaches work best and why, it is critical to pay careful attention to the human rights implications of the various

²¹³ NESsT website at <http://www.nesst.org/>.

²¹⁴ See <http://www.nesst.org/documents/NESsTUniqueandUniversal-paperMay2003.pdf>.

²¹⁵ The author had conversations with Sherry Sacino, who has studied social enterprise. Ms. Sacino referenced ongoing discussions of business investors on a plan to work with villages in Africa to build resorts that would allow employment opportunities for locals but would use the profits to support child care centers, schools, and hospitals.

programs, in both their design and their application. Consideration of economic, indigenous and women's human rights can only strengthen any program aimed at addressing global poverty.

In his article musing on whether the Microcredit programs fulfill or bely the universal morality of globalizing markets,²¹⁶ Kenneth Anderson ends "on a note of ambivalence" with a poem by David Whyte.²¹⁷ This article ends with the same poem, but with a sense of hope, that MFI has and can make a difference in people's lives, and that in this time of "loaves and fishes," MFI can be "one good word" that helps multiply both loaves and fishes for all.

Loaves and Fishes

This is not the age of information.
This is not
the age of information.

Forget the news,
and the radio,
and the blurred screen.

This is the time of loaves
and fishes.

People are hungry,
and one good word is bread
for a thousand.

– David Whyte

²¹⁶ Kenneth Anderson, *Microcredit: Fulfilling or Belying the Universalist Morality of Globalizing Markets?* 5 YALE H.R. & DEV. L.J. 85 (2002)

²¹⁷ *Id.* at 122, poem by David Whyte, from *THE HOUSE OF BELONGING*, in Alan Rugman, *The End of Globalization 1* (2000) at 88.