

# PROPOSING A FREEDOM FROM PREDATORY MICROFINANCE LENDING

Keith D. Collett\*

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## I. INTRODUCTION

The microfinance industry is a product of a modern economy that is more global and accessible than ever before. To stay competitive in the marketplace, increasingly complex financial instruments and business models have been developed to meet demand and generate profit. Information is also more readily available and the consequences of income disparity cannot be ignored; subsequently, some of the most innovative financial players have taken action. An altruistic concern for the welfare of one's fellow man and trust in people of all economic classes has led to the development of the microfinance industry. Loans

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\* The author is a 2015 graduate with the degree of *juris doctor* at the University of Arizona, James E. Rogers College of Law in Tucson, Arizona. He serves as the Editor-in-Chief of the Arizona Journal of International and Comparative Law at the college. Special thanks to Dr. Marek Dubovec for his guidance on this topic. Thanks as well to the Editors of the Journal whose hard work made publication of this note possible.

that seem too small to be of any value to those in developed nations are enough to bring entire communities out of poverty when credit is extended to the hard-working individuals willing to put it to productive use.

The microfinance industry has boomed, and microfinance institutions are profiting enough from these small loans to operate completely independent of government and donor subsidization. As lofty as this win-win scenario seems, collecting sky-high profits has the potential to melt the wings of the industry if its philanthropic mission is forgotten. Unfortunately, some microfinance institutions have done little more than take the place of the loan sharks and moneylenders that preceded them, and borrowers are in the same impossible predicament when it comes to repayment of loans. Because consensus on the proper level of regulation within the industry seems unrealistic, and free-market forces have failed to police the organizations involved, change must come from a new direction: approaching predatory lending as an issue of human rights instead of fiscal policy or international enterprise. This Note does not suggest that access to credit be considered a fundamental right, but it does argue that institutions that extend credit to indigent borrowers must do so in an ethical and non-predatory manner or risk facing the international prosecution that follows running afoul of the human rights of a borrower. The foundation for this concept comes from many international sources, including the United Nations.

The United Nations has defined a human right as “titles, rooted in the dignity of every human being, to live and to have or to do certain things that are essential to live a life in keeping with this dignity.”<sup>1</sup> Predatory lending practices, designed to defraud and entrap the borrower into an impossible repayment scheme, certainly violate an individual’s human dignity. Financial oppression can have serious consequences, including suicide by hopeless borrowers. Only when the ruinous consequences of oppressive debt from predatory lenders are characterized as a violation of human rights will the situation be viewed with the earnestness it deserves, will the goals of reform be aligned towards improving the livelihoods of indigent borrowers, and will progress be unanimously applauded instead of seen as a political victory by business or human rights interests alone.

This Note begins by explaining the concept of microfinance and the movement as a whole. After describing the humble and compassionate beginnings, it goes on to analyze the growth of the industry and its development as a viable income source for businesses and a mainstay of international commerce. Then, the appalling conditions faced by those affected by financial oppression from traditional moneylenders is detailed, followed by an explanation of the position microfinance has in combating abuses. Also within that Part is an account of how the microfinance banks themselves have begun to occupy the oppressive position of the moneylenders who preceded them, and of the current need for continued progress towards reforming regulation. While currently the issue of microfinance abuses appears framed as a balancing between individual and commercial rights,

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<sup>1</sup> PATRICK JAMES FLOOD, *THE EFFECTIVENESS OF U.N. HUMAN RIGHTS INSTITUTIONS* 9 (1998).

this Note suggests that specifically including within general human rights the right of indigent borrowers to be free from intentional and malicious financial abuses (akin to freedom from physical bondage) will tip the scales in favor of the oppressed individuals. It is hoped that financial institutions, by in large and in respect to human dignity, will change their behavior overnight once the international community recognizes a freedom from intentional financial oppression.

The Note continues by describing the competing philosophies surrounding regulation that have so far stifled attempts to establish an international regulatory framework. A historical look into usury laws along with religious and moral undertones follows in an effort to give background and a point of reference to the current debate. Then, the proposed freedom from economic oppression is itself introduced and existing sources of support are described to try and frame the place that the proposed right would occupy in international law. Then, the current regulatory framework is explained and the efforts of current international organizations to protect the financial interests of indigent people throughout the world is described, followed by propositions of how these organizations could assume the responsibilities of implementing and enforcing the proposed protections in addition to their current goals and objectives. The final two Parts of this Note further portray the proposed framework of the right itself and the logistical progress that would likely need to be made as a result of creating the proposed freedom.

## II. THE MICROFINANCE INDUSTRY AND PREDATORY LENDING

### A. Creation and Development of the Microfinance Industry as a Whole

As the saying goes, give a man a fish and you will feed him for a day, but it is when you teach a man to fish and sustain himself that you truly free him from hunger. Muhammad Yunus, the pioneer of the microfinance industry, seemed to have the aspiration of empowering those in need as he transformed not only the strategies of philanthropy, but also whom banks perceived to be attractive borrowers.<sup>2</sup>

The concept of microfinance is both logical and uncomplicated: instead of throwing money at poverty (giving a man a fish), it extends small amounts of credit to indigent customers to foster entrepreneurship and diminish poverty sustainably.<sup>3</sup> The goals of microfinance theory are to reduce poverty, increase income, and make self-employment opportunities more available to impoverished individuals and to

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<sup>2</sup> Celia W. Dugger, *Peace Prize to Pioneer of Loans to Poor No Bank Would Touch*, N.Y. TIMES, Oct. 14, 2006, at A1, available at [www.nytimes.com/2006/10/14/world/asia/14nobel.html](http://www.nytimes.com/2006/10/14/world/asia/14nobel.html).

<sup>3</sup> James B. Greenberg, *Microfinance, Law, and Development: A Case Study in Mali*, 30 ARIZ. J. INT'L & COMP. L. 135, 135 (2013).

affect social change by lending primarily to women.<sup>4</sup> Mr. Yunus won the Nobel Prize in 2006 for his cause, which has exploded in popularity. Over 100 million people received small loans in 2005 alone.<sup>5</sup> Microfinance organizations are able to reach such a high volume of people because remarkably small amounts of money can spark the change needed to pull entire communities out of poverty; the average loan issued by Grameen Bank (founded by Mr. Yunus) is \$130 and a typical loan for an individual looking to sell small trinkets or cookies instead of panhandling is around \$12.<sup>6</sup> However, “[the loan recipients] thought it was nothing less than a miracle.”<sup>7</sup> This concept also allows profit-seeking enterprises to make money: 3,100 microfinance institutions extended credit to individuals in 130 countries in 2005.<sup>8</sup> These institutions, while initially heavily funded by local government and philanthropic donors,<sup>9</sup> have started becoming self-sustainable, and some no longer accept subsidization.<sup>10</sup>

### **B. Industry Conditions Attract Financial Organizations to Participate in the Microfinance Industry**

Private entities are particularly attracted to the microfinance market because of the astounding repayment rates of borrowers despite their indigence and because of the lack of industry regulation. When Mr. Yunus began cultivating the microfinance movement in 1976, he began by extending a personal loan of \$27 to forty-two villagers in order to free them from the abuse of their moneylender.<sup>11</sup> The borrowers repaid him after investing the loan despite the lack of collateral, co-signers, or official documentation.<sup>12</sup> In 2011, repayment rates at Grameen Bank were 97 percent.<sup>13</sup> Repayment in lending conducted without large institutional players has also seen high repayment rates; in Mali, for example, local member owned and operated savings model operations have a late payment rate of less than one percent.<sup>14</sup>

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<sup>4</sup> *Id.* at 145. See also Muhammad Yunus, *Grameen Bank, Microcredit and Millennium Development Goals*, 39 *ECON. & POL. WKLY.* 4077, 4077-78 (2004).

<sup>5</sup> Dugger, *supra* note 2, at 1.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> Yunus, *supra* note 4, at 4077.

<sup>8</sup> Dugger, *supra* note 2, at 1.

<sup>9</sup> Manfred Zeller & Richard L. Meyer, *Improving the Performance of Microfinance: Financial Sustainability, Outreach, and Impact*, in *THE TRIANGLE OF MICROFINANCE* 1, 4 (Manfred Zeller & Richard L. Meyer eds., 2002).

<sup>10</sup> Yunus, *supra* note 4, at 4079 (noting that Grameen Bank decided to stop receiving donor funds in 1995, and received its last donation in 1998.).

<sup>11</sup> Dugger, *supra* note 2, at 1.

<sup>12</sup> *Id.*

<sup>13</sup> Greenberg, *supra* note 3, at 137-38.

<sup>14</sup> *Id.* at 141.

In some cultures social pressure to repay debt is a strong incentive to repay debt on time.<sup>15</sup> Recognizing the effectiveness of this pressure, under the traditional model Grameen Bank required that its borrowers apply as a group to obtain financing. Religious stigmas against leaving behind debt after death also encourage people to repay their loans and to structure their payments in a way that allows for their debt to be repaid after death through insurance, which helps to avoid burdening their surviving family members.<sup>16</sup> Additionally, it is suggested that simply because some individuals receiving loans have never been trusted with money before, they see every penny as a serious responsibility.<sup>17</sup> In a short period of time, microfinance profits have legitimized microfinance lending as a lucrative business option for companies who keep social good at the heart of their practice. However, it is also an option for those companies who unfortunately are not concerned with social welfare.

### **C. Moneylenders and Microfinance Banks Alike Have Contributed to the Predatory Lending Crisis**

Financial entities both large and small have, in pursuit of their financial goals, preyed on poor individuals. Lacking the money to support even a meager existence, and without credible co-signers to legitimize their loan applications to traditional financial institutions, many borrowers became reliant on moneylenders “who ‘turned them into slave-labour’ with unbelievable loan conditions.”<sup>18</sup> Abuse of borrowers has many faces beyond astronomical repayment conditions. One scheme in particular consists of individuals claiming to be a part of an official microcredit institution who then organize local villagers and steal the money they had raised as a group.<sup>19</sup>

Tragically, sometimes it is the microfinance institutions themselves that financially exploit their impoverished customers. Financial stability for microfinance banks is necessary in order to achieve sustainability and to continue serving the poor.<sup>20</sup> However, some companies recognize the potential gains that

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<sup>15</sup> *Id.* at 136.

<sup>16</sup> Yunus, *supra* note 4, at 4079.

<sup>17</sup> *Id.* at 4078.

<sup>18</sup> Greenberg, *supra* note 3, at 137 (quoting Yunus, *supra* note 4, at 4077); *see also* Dugger, *supra* note 2.

<sup>19</sup> Greenberg, *supra* note 3, at 144.

<sup>20</sup> Zeller, *supra* note 9, at 5. Mr. Yunus has since been removed as the leader of Grameen Bank in part for allegations of tax fraud. Richard Hall, “What Did I Do Wrong?” *Why the Banker Who Helped Millions of Bangladeshis Out of Poverty Became His Country’s Enemy Number One*, INDEPENDENT (Oct. 27, 2013), <http://www.independent.co.uk/news/world/asia/what-did-i-do-wrong-why-the-banker-who-helped-millions-of-bangladeshis-out-of-poverty-became-his-countrys-enemy-number-one-8899838.html?origin=internalSearch>.

come with institutional expansion and entrench their loyalties in the for-profit pursuits of their companies rather than the social goals of relieving poverty.<sup>21</sup> As a result, microfinance institutions are now utilizing low interest rates, irresponsible accumulation of debt per client, and overall disregard for repayment ability that were synonymous with the moneylenders.<sup>22</sup> When extending loans to new clients, many institutions require that potential borrowers form small groups (commonly of five individuals).<sup>23</sup> These loans are typically unsecured.<sup>24</sup> Given the high repayment rates of these group loans, many banks do not perform the usual due diligence before extending credit.<sup>25</sup> This is because being more thorough in lending practices raises overhead costs, which are passed on to the borrowers in the form of higher interest rates that already average thirty percent.<sup>26</sup> However, taking additional steps to ensure potential borrowers are capable of repaying loans is essential to protecting against irresponsible borrowing and lending.<sup>27</sup>

Members of a group loan arrangement are subsequently eligible to borrow as individuals without the involvement of other parties.<sup>28</sup> The difference between the group loans and the individual loans is that the individual loans are secured with the personal belongings of the borrower.<sup>29</sup> Under this system, borrowers risk losing possessions such as silverware, clothing, and furniture, a practice that is illegal under domestic lending laws in the United States.<sup>30</sup> Microfinance banks frequently act upon their ability to claim borrowers' personal property.<sup>31</sup> Many financial institutions, however, may not resell the property to regain the value lost in the loan (the property is simply discarded); they claim the property to punish borrowers who default.<sup>32</sup> While this practice may incentivize those who must repay loans, taking what little possessions indigent borrowers may have forces desperate individuals into a more desperate position, thus compelling them to use their credit to purchase necessary household items instead of investing their funds in entrepreneurial

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<sup>21</sup> Lydia Polgreen & Vikas Bajaj, *India Microcredit Sector Faces Collapse from Defaults*, N.Y. TIMES (Nov. 17, 2010), [www.nytimes.com/2010/11/18/world/asia/18micro.html?](http://www.nytimes.com/2010/11/18/world/asia/18micro.html?)

<sup>22</sup> *Id.*

<sup>23</sup> Interview with Marek Dubovec, Visiting Adjunct Professor of Law, Univ. of Ariz. James E. Rogers Coll. of Law, in Tucson, Ariz. (Oct. 29, 2012).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Hall, *supra* note 20.

<sup>27</sup> Interview with Marek Dubovec, *supra* note 23.

<sup>28</sup> *Id.*

<sup>29</sup> The collateral provided by personal belongings is a risk management strategy employed by banks to replace the social pressure to repay present in the group setting. Marek Dubovec & Benjamin Osei-Tutu, *Reforming Secured Transactions Laws in Africa: The First African Collateral Registry in Ghana*, UCC L.J., Apr. 2013.

<sup>30</sup> See 16 C.F.R. § 444.2(a)(4) (2015).

<sup>31</sup> *Id.*

<sup>32</sup> See U.N. Comm'n on Int'l Trade Law, *Selected Legal Issues Impacting Microfinance*, ¶ 17, 45th Sess., June 25-July 6, 2012, U.N. Doc. A/CN.9/756.

pursuits. Using borrowed money in this way does not help the borrower realize a return, can virtually eliminate any chance of repaying the loan, and can be devastating to the borrower's financial position and livelihood.<sup>33</sup> Some institutions extend microloans for consumption purposes, such as purchasing food, medicine, or other expenditures that do not generate a return. According to Mr. Yunus, this practice "abus[es] the concept [of microfinance] and creat[es] debt burden."<sup>34</sup>

In some ways, particularly because of the fact that individual moneylenders are at least physically susceptible to the outrage of the people of whom they take advantage, microfinance institutions can pose a greater threat to borrowers than individual moneylenders and can afford to be more heavy-handed than the individual moneylenders.<sup>35</sup> This oppression does not result in merely a poor credit score or a loss of discretionary income like is commonly faced in the United States. Perhaps due to social pressure, the hopelessness that results from losing one's possessions, or the personal humiliation that comes with not being in control of one's destiny, insolvent borrowers have been known to sell their homes and flee their villages with dreams of making a better life for themselves and their families.<sup>36</sup> Alarming, the rate of suicide for those unable to repay their debts is growing.<sup>37</sup> In India, predatory lending has become such a widespread issue that in one impoverished district in particular, it is difficult to find a home that is not struggling with the insurmountable debt lent to the family by a for-profit microfinance bank.<sup>38</sup>

While many people think of the businesses started by microfinance recipients as simple, as owners of the businesses often sell trinkets or simple food items, the industry itself can be quite modern. One microfinance firm in Liberia, for example, does not possess any computers and processes loan requests manually.<sup>39</sup> However, payments from borrowers are taken from the borrower's cell phone in a rudimentary automatic payment system.<sup>40</sup> Taking money through this system is fairly common in developing nations and is necessary when firms like this one only make three to four dollars a day, with loan repayment terms of as low as \$1.50 a day.<sup>41</sup> This form of payment is so rooted that if a potential borrower does not have a cell phone, a microloan will not be extended.<sup>42</sup> The cost of hiring someone to transport cash payments for firms, instead of taking payments electronically, would be cost-prohibitive.<sup>43</sup>

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<sup>33</sup> Greenberg, *supra* note 3, at 161.

<sup>34</sup> Hall, *supra* note 20.

<sup>35</sup> Polgreen & Bajaj, *supra* note 21 ("The moneylenders live in the community, at least you can burn down his house. With these companies, it is loot and scoot.").

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Interview with Marek Dubovec, *supra* note 23.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> 11 U.S.C. § 522.

This is a stark juxtaposition of the type of technology and infrastructure that is available even in developing nations, with the type of poverty that has people clinging to their livelihoods dependent on the performance of their microbusinesses. Interestingly, cell phones are prevalent enough in developing nations that a firm can base a business model solely on payments received via cell phone. This means that cellular infrastructure is sufficiently in place and that individuals are used to the devices in at least their commercial, if not personal, lives. The ability to communicate so readily holds the potential for businesses financed by microloans to be more advanced with customers further away and thus expands potential markets and trading options, but only if banks extend terms that give consumers a chance to succeed.

Despite the high stakes for borrowers in these financial environments, bankruptcy protections that are taken for granted in the United States are generally unavailable to borrowers in developing nations.<sup>44</sup> The laws that do exist in these countries, known as insolvency or bankruptcy laws, extend protection to corporations but exclude individual borrowers from similarly reorganizing their debt obligations.<sup>45</sup> While countries such as Colombia and some eastern European nations are beginning to modify their insolvency laws to allow for personal insolvency proceedings, many nations that receive the focus of microfinancing such as Bangladesh, India, and many African nations still do not allow their citizens to escape debt through insolvency.<sup>46</sup>

This is the case because insolvency laws in many developing nations have not been modernized since their implementation during the countries' respective colonial period, commonly in the 1800s or early 1900s.<sup>47</sup> These laws are ineffective in regulating the financial transactions that have become commonplace in the modern global economy,<sup>48</sup> and they put borrowers at risk. Even as countries modernize their laws surrounding financial lending, professionals such as judges, court workers, attorneys, and financial professionals have to overcome a steep learning curve to fully navigate the new legal framework.<sup>49</sup>

The International Monetary Fund and the World Bank are the organizations that assist in restructuring countries in crisis.<sup>50</sup> These organizations try to make their reforms consistent with a country's existing cultural and legal

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<sup>44</sup> Interview with Marek Dubovec, *supra* note 23.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* Even the United States and the United Kingdom, countries that stem from a common legal system, have developed different frameworks surrounding insolvency. In the United States, insolvency proceedings are focused on restructuring the entity for future profitability, while the United Kingdom takes the European approach of simply liquidating the entity. Edward H. Tillinghast III, *Insolvency Solutions in Emerging and Developing Markets*, in *INSIDE THE MINDS: ADAPTING TO CHANGES IN BANKRUPTCY LAW* 7, 13 (2009).

<sup>47</sup> Tillinghast III, *supra* note 46, at 8.

<sup>48</sup> *Id.* at 8-9.

<sup>49</sup> *Id.* at 8.

<sup>50</sup> *Id.* at 9.



frameworks while bringing it in step with modern economies.<sup>51</sup> Unfortunately, improvements in the legal frameworks surrounding lending are usually reactionary, following some sort of financial crisis, and typically focus on the ability of the lender to recoup its investment.<sup>52</sup> As the country restructures, fear that lost profits will scare away future financial players and debilitate the country's ability to overcome the crisis places the focus on lenders but ignores the reforms necessary to protect borrowers.

In addition, a financial crisis usually drives reorganization of the affected country's legal framework pertaining to other practices beyond lending.<sup>53</sup> Laws surrounding financial securities, intellectual property, and antitrust law commonly change, as crises expose the weak areas of a country's regulatory framework.<sup>54</sup> The rights of individual, non-institutional players should be considered and protected in the entire reformation process, but few industries have such a dramatic and personal effect as the laws surrounding financial lending.

#### **D. Competing Ideologies Have Stifled Progress in Market Reform**

Given the dire situation many indigent people find themselves in as a result of this type of financial oppression, a change in the industry must be made to prevent future suffering. Unfortunately, given the myriad of cultures, governmental organizations, and regulatory schemes that exist internationally, paired with the relative youth of the microfinance industry, it is challenging to find the perfect balance between protecting human rights and enabling the free market. Arguments have been made favoring deregulation of the credit markets,<sup>55</sup> instead of regulation,<sup>56</sup> and challenging the perception of the effectiveness of the microfinance movement in general.<sup>57</sup> The perfect solution for alleviating financial oppression while allowing the market enough flexibility to respond to changing economic conditions might not exist. Even so, classification of the issues plaguing the

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<sup>51</sup> *Id.*

<sup>52</sup> Tillinghast III, *supra* note 46, at 9.

<sup>53</sup> *Id.* at 10.

<sup>54</sup> *Id.*

<sup>55</sup> Dale B. Furnish & William J. Boyes, *Usury and the Efficiency of Market Control Mechanisms: A Comment on "Usury in English Law" Revisited*, 30 ARIZ. J. INT'L & COMP. L. 115, 117 (2013) (arguing regulation increases costs that are passed on to consumers); see generally Matthew Saltmarsh & Cat Contiguglia, *Some Fear Profit Motive to Trump Poverty Efforts in Microfinance*, N.Y. TIMES (Aug. 28, 2009), [www.nytimes.com/2009/08/28/business/global/28micro.html](http://www.nytimes.com/2009/08/28/business/global/28micro.html).

<sup>56</sup> Robert Peck Christen & Richard Rosenberg, *The Rush to Regulate: Legal Frameworks for Microfinance* (Consultative Grp. to Assist the Poor, Occasional Paper No. 4, 2000), available at <http://www.cgap.org/publications/rush-regulate-legal-frameworks-microfinance>.

<sup>57</sup> See generally Greenberg, *supra* note 3.

microfinance industry as a human rights violation will help those striving to improve the system to view the issues under a common lens and at least unite the goals striven for. Given the devastating consequences that financial abuse has on the individuals affected, these issues should be approached from a human rights perspective.

### **E. Legal and Philosophic Undertones of Freedom from Oppressive Lending as a Human Right**

Despite its novelty, access to credit as a human right has both express endorsement and implied support.<sup>58</sup> Muhammad Yunus is one of the voices calling for access to credit as a human right and his views are implemented through Grameen Bank's commitment to credit as a human right.<sup>59</sup> This distinguishes Grameen Bank from most other lending institutions.<sup>60</sup> On a national scale, developed nations such as the United States have passed usury laws that recognize the potential harm of oppressive interest rates.<sup>61</sup> International bodies have also recognized a substantive right to be free from "imprisonment for debt."<sup>62</sup> While this is a freedom from physical imprisonment for debt and not a metaphor for limiting an individual's pursuits due to debt, it recognizes a prohibition on oppressive collection practices and values human rights in an economic sense.

The right to economic freedom is codified in the International Covenant on Economic, Social, and Cultural Rights as a right to "self-determination" and freedom to "freely pursue [one's] own economic . . . development."<sup>63</sup> One's right to self-determination and economic development are hindered when one is subjected to loan repayment terms that consume the borrower's economic and emotional livelihood due to his or her obligation to make unreasonable payments.

In addition, renowned economists have recognized the potential harm that excessive interest payments have on borrowers. Even Adam Smith, the iconic champion of free-market economics, personally endorsed a five percent usury on

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<sup>58</sup> *Id.* at 144 (citing Paul Rippey, *Princes, Peasants, and Pretenders: The Past and Future of African Microfinance*, in *WHAT'S WRONG WITH MICROFINANCE?* 109, 111-12 (Thomas Dichter & Malcolm Harper eds., 2007)).

<sup>59</sup> Yunus, *supra* note 7, at 4078.

<sup>60</sup> *Id.*

<sup>61</sup> 12 U.S.C. §§ 84-86 (2012).

<sup>62</sup> Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms art. 1, Sept. 16, 1963, Europ. T.S. No. 46, *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/046.htm>.

<sup>63</sup> International Covenant on Economic, Social and Cultural Rights art. 1(1), G.A. Res. 2200A, U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), *available at* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

any loan.<sup>64</sup> Less surprisingly, John Maynard Keynes joined Adam Smith's support of usury laws.<sup>65</sup> However, despite the history, legal framework, and pressing need for the recognition of freedom from oppressive lending tactics as a human right, violating this type of liberty interest is not recognized as a human rights violation explicitly, and penalties are not levied with sufficient severity when a violation occurs. Market forces themselves have failed to self-police the industry, and the debate over regulation is too politically charged to realize the efficient and immediate change needed to protect those currently affected by this oppression. Defining predatory lending as an affront to human rights will at least align the goals of the various players and bring about more efficient and immediate improvements to the global microfinance market.

Countries benefit from valuing and defending the human rights of their citizens and do so for a variety of different reasons. Some governments inherently believe in the value of protecting citizens and strive for a society of empowered individuals, while other governments may protect human rights due to external forces, such as pressure applied by trading partners or the international community.<sup>66</sup> Whatever the rationale, violating the human rights of one's own citizens is detrimental, and the effects of doing so are impossible to quantify given the complexity of the potential political, commercial, and diplomatic ramifications.<sup>67</sup> International rulemaking usually attacks undesirable conduct with specific new provisions.<sup>68</sup> When a breach of a human rights provision occurs, the international community becomes aware if an appropriate organization exists to address the issue.<sup>69</sup> This supports the notion that a human right against predatory lending should be recognized, as this type of oppression might be overlooked by the international community without an organization equipped and responsible for dealing with microfinance lending abuses and a global repudiation of this type of lending conduct. Beyond economic theories and corporate philosophies of individual banks, binding international laws exist to fortify the argument for recognition of economic rights worldwide.

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<sup>64</sup> Furnish & Boyes, *supra* note 55, at 122 (citing ADAM SMITH, THE WEALTH OF NATIONS, bk. II, ch. 4, ¶ 14 (1776)).

<sup>65</sup> *Id.* (citing JOHN M. KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY, ch. 23 (1936)).

<sup>66</sup> PATRICK J. FLOOD, THE EFFECTIVENESS OF U.N. HUMAN RIGHTS INSTITUTIONS 23 (1998) (explaining that other examples provided were internal pressure applied by domestic citizens, belief it promotes national stability, cultural tradition, assimilation to the norms of international law, and the material costs of withholding human rights are too high.).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

### III. OVERVIEW OF THE LEGAL AREA: THE CURRENT SOCIAL AND LEGAL FRAMEWORK OF THE MICROFINANCE INDUSTRY

#### A. Lending as a Moral, as Well as a Financial, Endeavor

Throughout the centuries and across cultures, morality has been closely intertwined with extending credit.<sup>70</sup> The Torah and the Q'uran instruct Jews and Muslims respectively that charging interest to members of one's own faith is immoral since the community at large should be treated with familial trust.<sup>71</sup> As time progressed, cultures shifted; profit-generating financial instruments became more common and religious objections to charging interest became less frequent.<sup>72</sup> However, the debate on the desirability of regulatory laws continued.<sup>73</sup> Secular moral objections became more common in the Middle Ages as a general fear arose of wealthier classes taking advantage of the poor, undereducated, and uninformed classes.<sup>74</sup> Today, charging interest has become common to the point that borrowing money without an expectation of a return seems farfetched. Even the strict ideologies that remain within religious custom allow lenders to work around the technicalities of the rule against charging interest to compete in today's global markets.<sup>75</sup> Still, the concept of morality is linked with lending practices at both a domestic and international level.

#### B. Economic Freedom as an International Human Right

The term human rights has been defined as "titles, rooted in the dignity of every human being, to live and to have or to do certain things that are essential to live a life in keeping with this dignity."<sup>76</sup> "Human rights are the ways . . . of safeguarding respect for that dignity."<sup>77</sup> It is this desire to be treated with basic human dignity that motivated the civil rights movements in the United States during the middle of the twentieth century and the anti-apartheid revolution in South Africa during the 1990s.<sup>78</sup> International bodies have included covenants on universal grants of basic human dignity in a multitude of covenants and international treaties,

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<sup>70</sup> Furnish & Boyes, *supra* note 55, at 122.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 123.

<sup>75</sup> Furnish & Boyes, *supra* note 55, at 123 (noting one example, *murabaha*, which is a strategy that allows banks to purchase an item—i.e. a house—and then sell it to a third party that makes payments to the bank over time at a pre-determined profit rate for the bank without technically violating Sharia law.).

<sup>76</sup> FLOOD, *supra* note 66, at 9.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 14.

recognizing the negative impact that living without basic human dignity can have on an individual and the devastating effect of having a two-class system where liberty is extended to one class but refused to another.<sup>79</sup>

Dignity is a very broad term, and an economic component has been recognized in the overall concept of human rights. The International Bill of Rights specifically provides for a right to work and receive a fair wage at a level high enough to provide a reasonable standard of living for the worker and his family<sup>80</sup> as well as a right to leisure.<sup>81</sup> The International Covenant on Economic, Social, and Cultural Rights recognizes an individual's freedom to pursue economic development, to dispose of his own wealth in a manner that he sees fit, and states that an individual may not be deprived of his means of survival.<sup>82</sup> These covenants spell out the binding obligations that individual nations must observe and include the human rights founded in the 1948 Universal Declaration of Human Rights.<sup>83</sup>

Seventy countries have ratified the International Covenant on Economic, Social, and Cultural Rights.<sup>84</sup> The International Bill of Rights was inspired by the 1948 Universal Declaration of Human Rights (hereinafter "Declaration"), which, while not a legally binding document at the time of adoption,<sup>85</sup> is lauded as an inspiration to those seeking to "address injustices . . . and in [the] efforts towards achieving universal enjoyment of human rights."<sup>86</sup> Eleanor Roosevelt described the Declaration as "first and foremost a declaration of the basic principles to serve as a common standard for all nations. It might well become the Magna Carta of all mankind."<sup>87</sup> Since the ratification of the Declaration, more than eighty other international documents have stemmed from its text.<sup>88</sup> While difficult to enforce, the goals expressed within these documents bind the parties that ratify them and guide the domestic policies of the member nations.<sup>89</sup>

"Dignity is the underlying concept" of the 1948 Universal Declaration of

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<sup>79</sup> See International Covenant on Economic, Social, and Cultural Rights, *supra* note 63; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/>.

<sup>80</sup> Universal Declaration of Human Rights, *supra* note 79, art. 23(1), (3).

<sup>81</sup> *Id.* art. 24.

<sup>82</sup> International Covenant on Economic, Social, and Cultural Rights, *supra* note 63, art. 1(2)-(3).

<sup>83</sup> FLOOD, *supra* note 66, at 34.

<sup>84</sup> Status of International Covenant on Economic, Social, and Cultural Rights, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en) (last visited Mar. 15, 2015).

<sup>85</sup> FLOOD, *supra* note 66, at 34.

<sup>86</sup> *The Universal Declaration of Human Rights*, UNITED NATIONS, [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml) (last visited Mar. 15, 2015).

<sup>87</sup> FLOOD, *supra* note 66, at 34 (quoting A.H. ROBERTSON & J. G. MERRILLS, HUMAN RIGHTS IN THE WORLD 26 (1989)).

<sup>88</sup> *The Universal Declaration of Human Rights*, *supra* note 79.

<sup>89</sup> *Id.*

Human Rights.<sup>90</sup> From a definitional standpoint, if the rights afforded in these documents are truly human rights, they are then enjoyed “equally by all members of the species, even though the particular ways they are manifested vary from culture to culture.”<sup>91</sup> It also follows that if a right truly exists, it must be paired with an obligation of other parties to respect that right and refrain from infringing upon it.<sup>92</sup> This seems to imply that if a right truly existed to pursue a vocation, own property, enjoy leisure, and participate in cultural and scientific endeavors, other individuals and entities are impliedly required to refrain from behavior that violates those rights.

The consequences of predatory lending rob borrowers of the dignity that is protected in these international covenants. In addition, other rights that are provided for in international covenants are also violated when predatory lending is allowed to denigrate the human dignity of borrowers. An individual’s right to property<sup>93</sup> is violated when the individual is forced to sell his home in order to make loan payments. The individual’s freedom to leisure is violated along with the individual’s freedom to choose his employment and the conditions under which he is willing to work<sup>94</sup> when the individual has to work more often or work in situations he would not otherwise risk in order to repay the debt. Finally, other established rights are indirectly violated when an individual’s time that would ordinarily be focused on family development<sup>95</sup> or cultural involvement<sup>96</sup> must instead be directed towards working as hard as possible to repay borrowed money and avoid the social pressure and humiliation that comes from default.<sup>97</sup> However, these indirect means of prosecuting predatory lending are not the optimal means to protect borrowers. A case may not involve forfeiture of property or hindrance of an individual’s ability to start and raise a family. Yet, oppressive repayment terms may subject the individual to intimidation and constrain his or her liberty.

Consistent with the focus on empowering women espoused by microfinance banks such as Grameen Bank, the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “Convention”) holds member states accountable for protecting the basic rights of women. Under the

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<sup>90</sup> FLOOD, *supra* note 66, at 18.

<sup>91</sup> *Id.* at 20.

<sup>92</sup> *Id.* at 22.

<sup>93</sup> Universal Declaration of Human Rights, *supra* note 79, art. 17; International Covenant on Economic, Social, and Cultural Rights, *supra* note 63, art. 2(2).

<sup>94</sup> Universal Declaration of Human Rights, *supra* note 79, art. 23(1); International Covenant on Economic, Social, and Cultural Rights, *supra* note 63, art. 7.

<sup>95</sup> Universal Declaration of Human Rights, *supra* note 79, arts. 16(1), (3) (Men and women “have the right to marry and form a family.” Families are recognized and protected as the “natural and fundamental group unit of society.”).

<sup>96</sup> *Id.* art. 27(1) (Cultural pursuits include “enjoy[ing] of arts” and “shar[ing] scientific advancements and its benefits.”).

<sup>97</sup> See Universal Declaration of Human Rights, *supra* note 80, art. 23(1), International Covenant on Economic, Social, and Cultural Rights, *supra* note 63, arts. 10(1), 11(1).

Convention, women have a right to equal education, healthcare, and employment.<sup>98</sup> The Convention also protects women's right to vote and run for office, which is a freedom that can affect social change very quickly.<sup>99</sup> It is also the only human rights treaty to protect women's reproductive rights and further shapes the female role within society by challenging traditional gender roles.<sup>100</sup> The Convention requires member states to abolish discriminatory legislation against women regardless of marital status.<sup>101</sup> It also requires the creation of tribunals to enforce these rights and to hold violators accountable.<sup>102</sup> The protections afforded to women by the Convention are not limited to protection from their governments: private enterprises and individuals are also required to respect the prohibition on discrimination.<sup>103</sup>

Treaties like the Convention that support liberating women seem to coincide with microfinance's goals of empowering indigent borrowers. For example, microfinance helps empower women by extending them credit to start businesses that would hardly be effective without the legal ability to fully recognize the rights described above. First, it is hypocritical to take male borrowers seriously who are fighting oppression by microfinance institutions when those same individuals oppress or at least ignore women and children. Because women are usually the primary caregivers to their children,<sup>104</sup> allowing them to access the education, healthcare, and vocational opportunities that are available to men in addition to extending credit to them in order to improve their economic situation will directly impact the opportunities available to their children.<sup>105</sup> With increased opportunities for a mother comes a more stable environment for her children to grow, learn, and become contributing members of society.<sup>106</sup> Also, seeing the mutual respect that comes with gender equality will help eliminate the cycle of oppression that can be generational.<sup>107</sup>

Businesses are not inherently in opposition to human rights progress. The philosophy that businesses are a necessary part of protecting human rights is gaining support and credibility.<sup>108</sup> In fact, many of the world's economic powers feel that

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<sup>98</sup> See generally Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Convention on the Elimination of All Forms of Discrimination against Women, *supra* note 98.

<sup>104</sup> Greenberg, *supra* note 3, at 137, 159.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 151.

<sup>108</sup> See generally Aaron Schildhaus, *Global Businesses and the Just Rule of Law*, INT'L L. NEWS, Fall 2011, at 1, 4-6.

corporations should be the leading promoters of human rights.<sup>109</sup> The Organisation for Economic Co-operation and Development (OECD) has moved towards realizing this goal by promulgating rules that allow businesses to make a difference by implementing policies protecting human rights.<sup>110</sup>

This harmony between business and individuals is called the “Just Rule of Law,”<sup>111</sup> and is premised on a legal framework that is both substantively fair and equally enforced to all.<sup>112</sup> In the microfinance context, that means that interest rates would need to be fair and extended to all potential borrowers. The Just Rule of Law philosophy has been applied primarily in the context of bribery and corruption in developing nations, but the principles can be applied to the current microfinance-lending environment. For instance, in the context of bribery, the demand for bribery decreases as governance practices improve and financial as well as political leaders no longer incentivize the practice.<sup>113</sup> Furthermore, the United Nations Convention against Corruption criminalizes the practice of soliciting bribes and attempts to limit the defenses and exceptions to rules outlawing bribery.<sup>114</sup> Likewise, it is essential to halting the practice of predatory lending that the criminalization of predatory lending is taken seriously and that penalties carry enough force to reasonably prevent the practice without bribery influencing their application.

Reformation of the legal framework that at first turned a blind eye to corruption and bribery was carried out with an eye on human rights issues.<sup>115</sup> The OECD passed the Guidelines for Multinational Enterprises (GME) in 2011, which are guidelines and recommendations for improved corporate behavior with a strong focus on respecting human rights.<sup>116</sup> The GME places the responsibility of protecting human rights on the enterprises themselves.<sup>117</sup> In fact, the responsibility of an enterprise to protect human rights in its dealings is not diminished by the actions of the state within which the enterprise conducts business.<sup>118</sup> The OECD references the Universal Declaration of Human Rights, which contains many provisions pertaining to an individual’s right to be free from economic oppression in order to retain his or her overall dignity, and the Declaration’s provisions are key to the rule of law that the GME pursues.<sup>119</sup> Specifically, the GME states that

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 4.

<sup>112</sup> *Id.*

<sup>113</sup> Schildhaus, *supra* note 105, at 5.

<sup>114</sup> United Nations Convention Against Corruption, G.A. Res. 58/4, art. 16(2), U.N. GAOR, 58th Sess., U.N. Doc. A/RES/58/4 (Oct. 31, 2003), *available at* [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

<sup>115</sup> Schildhaus, *supra* note 105, at 5.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*



enterprises should not directly participate in bribery or corrupt practices with public officials or business partners.<sup>120</sup> The GME continues by stressing the importance of creating internal controls to prevent corruption and discourage the use of the facilitation payments that have become common in doing business.<sup>121</sup> The GME also alludes to binding anti-corruption legislation such as the United States' Foreign Corrupt Practices Act<sup>122</sup> (FCPA) and the United Kingdom's Anti-Bribery Act.<sup>123</sup>

The efforts are proving effective. Companies based in countries that comply with the FCPA insist on compliance from "subsidiaries, affiliates, agents, and partners in other countries" to protect themselves from liability.<sup>124</sup> "Between 2005 and 2009, assessments of penalties under the FCPA rose from approximately \$15 million to \$2 billion."<sup>125</sup> This vigorous enforcement has human rights activists optimistic that private entities will be part of the solution to ending corruption, instead of a stumbling block.<sup>126</sup> Only with vigorous enforcement will the cost of violating the rules promulgated by international bodies tip the scale in favor of respecting human rights, and away from quick returns.

Enacting additional rules similar to the GME and the FCPA but that focus specifically on microfinance lending could be successful in regulating the microfinance arena. Placing the expectation of protecting borrowers on microlending institutions themselves and making predatory practices financially unwise by implementing financial penalties is advisable and will be discussed in greater detail in Part IV below.

### **C. Existing Efforts to Further the Prevention of Predatory Lending Practices**

This article is not the first attempt to bring predatory lending practices to light in an effort to move toward a solution to the problem. Along with the Guidelines for Multinational Enterprises described above, in January of 2013, the United Nations Commission on International Trade Law (UNCITRAL) had a Second Colloquium on Microfinance in Vienna (Vienna Colloquium) to act on its decision from the First Colloquium in January 2011 to research and work towards enabling a market for microfinance.<sup>127</sup> UNCITRAL brought together experts from government, the private sector, academia, and non-profits to discuss topics ranging from business incorporation to enhanced access to credit in order to create a

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<sup>120</sup> Schildhaus, *supra* note 105, at 5.

<sup>121</sup> *Id.*

<sup>122</sup> 15 U.S.C. §§ 78m, 78dd-1 to -3, 78ff (2012).

<sup>123</sup> Schildhaus, *supra* note 105, at 5.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 6.

<sup>126</sup> *Id.*

<sup>127</sup> *UNCITRAL International Colloquium on Microfinance*, U.N. COMM'N ON INT'L TRADE L., <http://www.uncitral.org/uncitral/en/commission/colloquia/microfinance-2013.html> (last visited Apr. 14, 2014).

framework for an improved microfinance industry.<sup>128</sup>

At the Vienna Colloquium, the rising number of entities (approaching a majority) that extend microfinance credit on an informal basis was described as a trend that will affect the microfinance industry as a whole and shape the industry in the future.<sup>129</sup> Lacking official business structure as informal lenders, microfinance entities are excluded from advantages, such as obtaining liquidity, associating with other entrepreneurs, and the facilitation of extending credit itself.<sup>130</sup> Increasing the security and flexibility of microentrepreneurs through overhauled business organizations will benefit the market and consumers by eliminating both the barriers to entry and the inefficiencies of participating in the market.

“Uncorporation,” a concept proposed at the UNCITRAL summit, is a method of achieving that goal.<sup>131</sup> This proposed business model merges the advantages of partnerships and corporate law, including simple formation procedures, pass-through taxation, and internal flexibility, with being an established legal entity with limited liability and continuity of life.<sup>132</sup>

Transparency of companies who participate in the microfinance industry is also an essential concern for the future success of the industry.<sup>133</sup> Without transparency of business practices, borrowers are affected by hidden costs that can affect their ability to decide what financial products to purchase as well as their ability to payback their loans once they take on the liability.<sup>134</sup> Self-regulation of the industry is not sufficient to protect against exploitative lending practices and not sufficient to ensure client protection.<sup>135</sup> Without the information necessary to make distinctions between competing banks and financial entities as well as understand the products offered, a fully functioning market cannot develop.<sup>136</sup> The movement towards heightened transparency has gained support, highlighting interest rate disclosure, complaint procedures, and increased financial literacy as keys to

<sup>128</sup> *Id.*

<sup>129</sup> *Papers Presented at the UNCITRAL International Colloquium on Microfinance Creating an Enabling Legal Environment for Microbusiness*, U. N. COMM’N ON INT’L TRADE L., <http://www.uncitral.org/uncitral/en/commission/colloquia/microfinance-2013-papers.html> (last visited Nov. 2, 2013).

<sup>130</sup> *Id.*

<sup>131</sup> *See generally* Erik P.M. Vermeulen, *The Uncorporation: A Revolutionary Vehicle for Microbusiness and Microfinance* (Jan. 16, 2013), *available at* [http://www.uncitral.org/pdf/english/colloquia/microfinance-2013/16-01/Presentation\\_Erik\\_Vermeulen\\_-\\_UNCORPORATION.pdf](http://www.uncitral.org/pdf/english/colloquia/microfinance-2013/16-01/Presentation_Erik_Vermeulen_-_UNCORPORATION.pdf).

<sup>132</sup> *Id.* at 5.

<sup>133</sup> *Papers Presented at the International Colloquium on Microfinance Creating an Enabling Legal Environment for Microbusiness*, *supra* note 126.

<sup>134</sup> Azish Filabi, *Price Transparency & Truth-in-Lending*, (Jan. 18, 2013), *available at* [http://www.uncitral.org/pdf/english/colloquia/microfinance-2013/18-01/UNCITRAL\\_Jan\\_2013\\_Presentation\\_Version3\\_Filabi.pdf](http://www.uncitral.org/pdf/english/colloquia/microfinance-2013/18-01/UNCITRAL_Jan_2013_Presentation_Version3_Filabi.pdf).

<sup>135</sup> *Id.* at 5.

<sup>136</sup> *Id.* at 7.

success.<sup>137</sup>

Also during the Vienna Colloquium, Dr. Marek Dubovec addressed the problem of borrower collateral and the way it affects responsible borrowing and lending.<sup>138</sup> Collateral is usually only expected from those borrowing as individuals and is commonly secured by individuals' personal possessions.<sup>139</sup> The collateral offered by the borrower determines the advanced rates at which the banks are able to lend.<sup>140</sup> However, arriving at this number can be troublesome because the possessions commonly held by those seeking access to microcredit (for items such as farm products or household items) are deemed "difficult" or "almost impossible" to value accurately.<sup>141</sup> For example, the present value of refrigerators purchased five years ago can vary widely for purposes of securing collateral because people wear out assets at different rates. Further, active markets do not exist for items such as silverware, so it is impossible to look to an index in order to determine a fair value like one would for a stock. Even assuming the institution is able to rely on its valuation of the property proposed as collateral, it is likely that the valuation will not remain accurate for the life of the loan because of deterioration of the asset.<sup>142</sup> To protect their interests, institutions frequently require collateral that exceeds the value of the loan.<sup>143</sup> This means that borrowers risk losing more in terms of social and emotional value than they receive in value from the financial institution from which they borrow. In short, banks are playing with a stacked deck in this situation. However, certain private entities are making efforts to alleviate the practice of the predatory lending.

MicroFinance Transparency (MFT) is an organization that facilitates the disclosure of microfinance pricing, and offers services such as training and education to various stakeholders in the industry; policy advising to regulators who develop the legal framework of the microfinance industry; and partnering with non-profit organizations to ensure the highest level of market participation.<sup>144</sup> MFT is dedicated to integrity and poverty alleviation and strives to help bring about a microfinance industry that operates within a free market and whose participants can

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<sup>137</sup> *Id.* at 5.

<sup>138</sup> *See generally* Marek Dubovec, *Microloans and the Function of Collateral* (Jan. 18, 2013), *available at* [http://www.uncitral.org/pdf/english/colloquia/microfinance-2013/18-01/Microloans\\_and\\_the\\_Function\\_of\\_Collateral\\_MDubovec.pdf](http://www.uncitral.org/pdf/english/colloquia/microfinance-2013/18-01/Microloans_and_the_Function_of_Collateral_MDubovec.pdf).

<sup>139</sup> Interview with Marek Dubovec, *supra* note 23.

<sup>140</sup> Dubovec, *supra* note 138, at 6.

<sup>141</sup> *Id.* at 7 (The other two categories of possessions are "relatively straightforward" and "moderately straightforward" and include items such as money-like assets and new equipment, respectively.).

<sup>142</sup> *Id.* at 8.

<sup>143</sup> *Id.*

<sup>144</sup> *What We Do*, MFTTRANSPARENCY.ORG, <http://www.mfttransparency.org/what-we-do/> (last visited Nov. 3, 2013).

make informed decisions.<sup>145</sup> Since its inception in 2008, MFT has worked with twenty-eight countries on four different continents.<sup>146</sup> Over that time the organization has amassed data from “400 institutions representing 1,300 different loan products sold to over 45 million clients,” and utilized that information to accurately reflect the current microfinance pricing.<sup>147</sup>

The efforts of the U.N. Colloquia as well as MFT and other private entities with similar goals focus on creating an enabling environment in which credit may be accessed at reasonable rates free from abusive lending practices. The variety of solutions that exist highlights the complexity of the issue that regulators, governmental leaders, non-profit organizations, lenders, and borrowers face. While predatory lending is beginning to garner more of the attention that it deserves, change is not coming fast enough. For example, while UNCITRAL is in charge of setting the standards for what constitutes sufficient regulation, the countries themselves are in charge of implementation.<sup>148</sup> U.N. participant countries have differences in government, culture, and economies that necessitate leaving implementation to those familiar with the specifics of the country; however, the current structure lacks the urgency that an issue damaging the financial, social, mental, and physical well-being of those affected should demand. Allowing countries to decide when to stop physical oppression would be outrageous, but predatory lending is not afforded the same status as a serious human rights violation despite the rising suicide rate of borrowers and the crippling effect the practice has on borrowers’ liberty.

#### **D. Current Regulatory Framework Affecting Microfinance Lending**

Even though UNCITRAL is the standard-setting body, it does not have any funding and has only a handful of experts, to develop and implement its rules; as a result, it relies on the World Bank. The World Bank strives to end extreme poverty and considers people living in impoverished conditions, often living off less than \$1.25 a day, a moral issue, given the technology and resources available in the

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<sup>145</sup> *About MicroFinance Transparency*, MFTTRANSPARENCY.ORG, <http://www.mftransparency.org/about-our-organization/> (last visited Mar. 15, 2015) (“*Our desire* is to be the venue for the Microfinance industry to publicly demonstrate its commitment to pricing transparency, integrity and poverty alleviation. *Our vision* is a Microfinance industry operating with healthy free market conditions where consumers and other stakeholders can make informed decisions.”).

<sup>146</sup> *Past Projects*, MFTTRANSPARENCY.ORG, <http://www.mftransparency.org/about-our-organization/past-projects/> (last visited Mar. 15, 2015).

<sup>147</sup> *Id.*

<sup>148</sup> Filabi, *supra* note 134, at 10.

modern economy.<sup>149</sup> The World Bank has found that in some developing nations, income inequality and “social exclusion” increase in spite of rising levels of prosperity generally.<sup>150</sup> In fact, as GDP increases in some nations so does income inequality, meaning that the wealthy become wealthier at a faster pace than those in lower income brackets.<sup>151</sup> The World Bank strives to raise the standard of living for all citizens of a given country, not simply the previously wealthy; therefore, it focuses on the bottom forty percent of income earners within a given economy to achieve “shared prosperity.”<sup>152</sup> The aim of the World Bank is to increase the share of the income pie of the poorest individuals to equal those of the wealthiest individuals as quickly as possible.<sup>153</sup> Therefore, the faster the income of the lowest forty percent of wage earners increases, the better the country is at achieving shared prosperity.<sup>154</sup> The vision of shared prosperity also includes non-monetary measures such as education, health, nutrition, and access to essential infrastructure as well as promoting the civil participation of all citizens in economic, social, and political policymaking.<sup>155</sup> Further, investments in women and youth are seen as essential parts of this social contract.<sup>156</sup> The World Bank hopes to achieve these goals as an organization, but more importantly, it hopes that its mission is consistent with the efforts of the member nations.<sup>157</sup> Many of the nations facing the most extreme levels of poverty are also those where microfinance lending is most prevalent.<sup>158</sup> For example, in 2008, 74.8 percent of the world’s poor lived in sub-Saharan Africa and South Asia, regions that include Liberia, India, and Bangladesh.<sup>159</sup> Between these two regions alone, 922.5 million people are impoverished.<sup>160</sup> Shockingly, the world economy already has the resources to end extreme poverty worldwide within this generation.<sup>161</sup> The World Bank considers “a growing economy and a fundamental concern for equity” to be essential to achieving its goal of ending

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<sup>149</sup> *Ending Extreme Poverty and Promoting Shared Prosperity*, WORLD BANK (Apr. 19, 2013), [http://www.worldbank.org/en/news/feature/2013/04/17/ending\\_extreme\\_poverty\\_and\\_promoting\\_shared\\_prosperity](http://www.worldbank.org/en/news/feature/2013/04/17/ending_extreme_poverty_and_promoting_shared_prosperity).

<sup>150</sup> *Id.*

<sup>151</sup> WORLD BANK, *THE WORLD BANK GROUP GOALS: END EXTREME POVERTY AND PROMOTE SHARED PROSPERITY* 22 (2013), available at <http://www.worldbank.org/content/dam/Worldbank/document/WB-goals2013.pdf>.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 23.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 8.

<sup>156</sup> WORLD BANK, *supra* note 151, at 27.

<sup>157</sup> *Id.* at 9.

<sup>158</sup> SUSTAINABLE DEV. SOLUTIONS NETWORK, *GLOBAL PROFILE OF EXTREME POVERTY*, 3 (2012), available at <http://unsdsn.org/wp-content/uploads/2014/02/121015-Profile-of-Extreme-Poverty.pdf>.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> WORLD BANK, *supra* note 151, at 17.

extreme poverty.<sup>162</sup>

The goals of the International Monetary Fund (IMF) are very similar to those of the World Bank. The IMF is an international organization that consists of 188 countries whose aim is to “foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world.”<sup>163</sup> The IMF is funded by quotas of member states.<sup>164</sup> The organization strives to reduce poverty around the world and assists struggling member economies through surveillance of economic trends, assistance, and training to member countries, as well as via the provision of loans to struggling economies.<sup>165</sup> The fund also tries to be proactive about avoiding economic troubles by engaging in policy dialogue and sharing its expertise.<sup>166</sup> The amount of financing a given country is eligible for is determined by that country’s quota.<sup>167</sup> The financial assistance offered to struggling countries is contingent on the implementation of a range of legislative reforms to prevent future crises.<sup>168</sup> While these reforms usually resemble the laws utilized in modern economies, the IMF takes into account the legal and cultural structure of the country itself to try and ensure the reforms are effective and practical.<sup>169</sup>

While both the World Bank and the IMF focus on alleviating poverty and supporting international efforts to improve economic situations, neither organization mentions microfinance as a way of achieving its goals. Microfinance divisions within these organizations could be created or expanded to increase the organization’s focus on microfinance without changing their existing institutional goals of alleviating poverty and equalizing income among the classes. Most of the countries receiving microfinance funding are already members of the World Bank and the IMF. Further, the World Bank’s focus on the empowerment of women and children closely mirrors the lending practices of microfinance institutions, such as Grameen Bank, which extends an immense amount of its credit to women.

The financial forecasting and educational aims of the World Bank and the IMF could also be effective in helping the microfinance arena in at least two ways. First, looking at the economies of individual nations, regions, and the world as a whole would empower microfinance institutions to evaluate the strength of the business plans of their potential borrowers. Microfinance borrowers face many

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<sup>162</sup> *Id.* at 20.

<sup>163</sup> *About the IMF*, INT’L MONETARY FUND, <http://www.imf.org/external/about.htm>, (last visited Nov. 2, 2013).

<sup>164</sup> *Id.* A country’s quota is the maximum financial contribution that nation is required to make to the IMF. The financial obligation is paid in full upon joining the IMF and based upon the country’s relative position within the world economy. The size of each country’s quota determines its additional voting power within the fund beyond the basic votes afforded to each country. *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Tillinghast III, *supra* note 46, at 2.

<sup>169</sup> *Id.*

challenges in starting new enterprises, such as living long distances from marketplaces in which to sell their goods. Another issue facing microentrepreneurs is the oversaturation of the market due to low barriers to entry. Shops with simple business plans such as selling bracelets or eggs require very little as far as start-up capital and expertise to run the business. Therefore, given the high rate of poverty, many people are likely to start similar businesses and reduce demand for their products through oversupply. This in turn devastates the price any particular business owner can expect for the same product, limits the wealth-creating and poverty-alleviating potential of the business, and eventually drives the owner out of business. Then, out of business and strapped with debt from his or her microloan, the borrower is worse off than before starting the business. In this instance, the microfinance model has actually exacerbated poverty rather than helped diminish it.

The financial forecasting and economic analysis that the World Bank and the IMF are currently doing could alleviate this disadvantage by informing borrowers about current market conditions and advising them on how and where to become most competitive as an enterprise. This in turn could help impoverished individuals find success in more advanced business models than merely selling simple goods. A borrower, for example, could decide after receiving advice that it is better for him or her to establish a business that transports raw materials to those living far from marketplaces or establish a bakery using simple goods such as eggs purchased from other micro borrowers. These two international bodies certainly have the ability to educate and facilitate change on a personal scale. Admittedly, the IMF has traditionally been an institution focused on macroeconomic policy,<sup>170</sup> so perhaps individual training could be left to the World Bank while microfinance's place in the global scheme could be debated in the forums of the IMF. These two institutions have worked harmoniously in pursuit of poverty alleviation and adopting microfinance as another strategy in their pursuit would surely strengthen the impact they have going forward.

### **E. Potential Enforcement Mechanisms of the Proposed Right**

Without a forum to enforce the right and provide a remedy, there is no real freedom for those who are suffering from predatory lending practices. The United Nations International Court of Justice (also known as the World Court) is already hearing cases of an international nature and prosecuting those who violate human rights.<sup>171</sup>

The United Nations International Court of Justice is located in the Hague.

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<sup>170</sup> Interview with Marek Dubovec, *supra* note 23.

<sup>171</sup> *The International Court of Justice*, UNITED NATIONS, <http://www.un.org/Overview/uninbrief/icj.shtml> (last visited Dec. 8, 2013).

The tribunal settles disputes brought by states and advises various U.N. agencies.<sup>172</sup> Countries communicate with the Court through either its Minister for Foreign Affairs or via an ambassador assigned to the Netherlands.<sup>173</sup> The tribunal issues final, binding judgments after a hearing and in camera deliberation.<sup>174</sup> States provide information to assist the Court in answering the question presented; those States, however, are not bound by the Court's decision nor appear as agents of the Court.<sup>175</sup> The Court may issue advisory opinions to the U.N. General Assembly and the Security Council on "any legal question" and to other agencies within the U.N. when the legal question pertains to the scope of the agency's duties.<sup>176</sup> Advisory proceedings may include oral and written hearings and again, information is received from States and other international organizations that may help the Court to answer the question presented.<sup>177</sup>

Advisory opinions could be helpful in establishing borrowers' rights, as States need guidance on how to implement these rights and also need strategies for implementation that are acceptable under international law. The Court's opinions would be a valuable way to educate participating nations without waiting for the harms necessary in a traditional trial and the expenses associated with it. The Court handles a variety of cases from different regions of the world. Currently on the Court's docket, for example, are cases pertaining to armed activities in the territory of the Congo.<sup>178</sup>

There are some complications surrounding the use of the Hague as the place to prosecute predatory lenders. First, only member states of the U.N. and those who have voluntarily submitted to the International Court of Justice's jurisdiction may be parties in contentious suits.<sup>179</sup> With States turning a blind eye to predatory lending abuses for fear of driving away the business of banks, it is unlikely that States will bring cases to the Court. Without a State's involvement, it is likely too costly to bring a suit because the banks, the victims, and the Court may be located on three different continents. Further, the information necessary to

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<sup>172</sup> *The Court*, INT'L COURT OF JUSTICE, <http://www.icj-cij.org/court/index.php?p1=1> (last visited Dec. 8, 2013).

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Private parties have not been allowed to furnish information to the Court. *The International Court of Justice*, *supra* note 171.

<sup>178</sup> *Pending Cases*, INT'L COURT OF JUSTICE, <http://www.icj-cij.org/docket/index.php?p1=3&p2=1> (last visited Mar. 15, 2015) (Democratic Republic of the Congo v. Uganda).

<sup>179</sup> States may accept the jurisdiction of the Court in three ways: "by entering into a special agreement to submit the dispute to the Court;" "by virtue of a jurisdiction clause" (dispute over an international treaty); or "through the reciprocal effect of declarations made by them under the statute whereby each has accepted the jurisdiction of the court as compulsory in the event of a dispute with another State having made a similar declaration." *How the Court Works*, INT'L COURT OF JUSTICE, <http://www.icj-cij.org/court/index.php?p1=1&p2=6> (last visited Mar. 15, 2015).



prosecute these abuses will probably be entirely within a bank's control, and the Court does not accept information provided by private entities. Despite these challenges, however, the Court's infrastructure is already established, and it could be an effective starting point for making borrower's rights a reality.

Another way to enforce the right to be free from predatory lending does not involve international tribunals. As previously stated, adversarial cases brought in international courts are expensive and impractical, especially when the countries in which these financial abuses occur are not willing or able to protect their citizens. Also, waiting to file a lawsuit until borrowers have been injured can have disastrous consequences for the injured party. People who are working endlessly to pay back a debt do not have the time or resources to seek legal counsel on the matter. To proactively handle these matters, international organizations such as the IMF and the WTO could levy fines on countries that allow predatory practices to persist. Furthermore, these organizations could incentivize compliance by increasing the aid that they already provide to developing countries when they effectuate legislation and implement other protections that help impoverished borrowers. These incentives avoid the high costs of international litigation and put pressure on even those States that would not submit to the jurisdiction of the United Nations or otherwise not cooperate with the Court. These remedies, however, will only become a reality after recognizing that microfinance is a viable poverty-alleviation measure and taking seriously the effect that predatory lending has on borrowers.

#### **IV. IMPLICATIONS**

Despite the fact that treaties and international organizations currently exist to protect international human rights, including economic freedoms, there are not any international bodies or regulations (binding or non-binding) that specifically recognize predatory microfinance lending as a human right. This is partly due to the fact that the industry is still relatively young, as its inception was only in 1976. But, as of 2014, the microfinance movement has been developing for thirty-eight years and with modern communications, the devastating effects of predatory lending are all too apparent.

As previously discussed, basic possessions may be seized from indigent borrowers and simply discarded by lenders in order to prove a point; moreover, banks are uninterested in selling the possessions to regain any real value. Without laws prohibiting collateralization with common possessions, families are more likely to be left without bedding, silverware, and clothing, placing them in an even more impoverished situation than the one they found themselves in before the bank extended the loan. Worse is what the predatory loans prevent borrowers from buying. Parents who put their finances on the line to bring their families out of poverty are suddenly unable to send their kids to school or buy food or medicine. After repossession, they have little or no personal possessions to sell and offset the costs of such necessities. Faced with insurmountable debt, the inability to provide necessary items for their family, and without personal possessions that added some

comfort to an otherwise dire situation, many borrowers resort to suicide. Desperation at the hands of predatory lending is appearing in towns across the world. In fact, it has become so commonplace that the residents of certain villages rarely find households that have not been thrust into debt by predatory lending.<sup>180</sup>

Other practices, such as physical slavery, have been officially and extensively prohibited worldwide for decades because slavery limits individual personal freedoms, prevents people from providing for their families, denies people the pursuit of a dignified lifestyle, and develops a caste system of those with rights and those without. Predatory microfinance takes away the lender's financial security and forces him or her to work extensive hours or sell personal possessions to make payments. This financial burden thus takes away the lender's ability to provide for his or her family, enjoy other personal freedoms because of lack of time, and creates a class of borrowers whose desperation not only prevents them from enjoying the rights their fellow citizens enjoy, but also at increasing rates drives them to suicide. With the microfinance industry gaining popularity and microfinance banks establishing clientele in countries around the world, the number of people effected by predatory practices will continue to grow if international organizations and their member states do not put a stop to it.

Given the fact that the U.N. is the international organization with a court system, the International Court, the U.N. should be one of the international organizations that helps creates the right to be free from predatory microfinance lending and use the Court to remedy violations of the right. This would allow the U.N. to coordinate legislative efforts with the mechanisms already in place to effectuate ratified reforms. A chance to negotiate the new laws for States in the U.N.'s forums would also be advantageous, although this process usually take longer than those seeking protection of the laws would like. This negotiation period would address the international complexity behind the problem of predatory microfinance lending by allowing representatives from all over the world to discuss how proposed legislation would affect each country individually and allow countries to voice their concerns about the legislation's effect on the local economy, the effectiveness of the legislation in eradicating any other types of predatory practices, and the best way in their view to enforce proposed legislation.

The IMF and the World Bank could also write new rules pertaining to the prevention of predatory microfinance lending. The advantage of this course of action would be the timeliness with which such rules could be implemented. While these organizations have member states that agree to follow the regulations of the two organizations, the rulemaking process is not as extensive and time-consuming as the process undertaken by the U.N. Despite this lack of input by member states at the beginning, the IMF and the World Bank could implement benchmarks for eradicating predatory lending that member countries could then implement in a way that is most conducive to preserving their economies and that avoid measures that threaten their unemployment rates. Again, given the complex nature of the problems at hand, the most effective solution will probably be a dynamic and

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<sup>180</sup> See Polgreen & Bajaj, *supra* note 21.

individualized approach, such as the one described here, that allows creativity in enforcing the centralized rules and goals of the international organization. These two organizations would be capable of implementing financial incentives and penalties that would be more effective at reducing predatory microfinance lending than the status quo.

Whether or not to allow loan collateralization through personal possessions in new provisions is a dilemma; some wonder whether allowing collateralization of such items is wise. While, on the one hand, the ability of banks to seize an individual's personal items all too often results in destroying the individual's standard of living, an indigent individual, on the other hand, has very few possessions on which they can secure funding. Banks, as profit-seeking institutions, must manage the risk of their investments to stay in business. In the microfinance context, however, the possessions seized by banks when borrowers default do not provide any type of monetary value or capital recuperation potential for banks, as a borrower's furniture, clothing, and other goods are simply thrown away. The punitive purpose of these loans is still advantageous to banks, and they might not be willing to lend to people without more than a signature to commit to repayment.

This situation seems similar to the perceived fears of banks in extending student loans in the United States. Some argue that banks are more likely to extend credit to students with no income and few, if any, financial assets, and that Congress remedied that situation by passing legislation<sup>181</sup> preventing the pardoning of student loan debt in bankruptcy.<sup>182</sup> With this assurance in hand, banks were willing to extend credit at more reasonable interest rates.<sup>183</sup> Because loans in the microfinance industry already have high interest rates, some may argue that anything that may help keep interest rates down, including collateralizing of personal possessions, should be allowed. In the end, however, a prohibition on this practice seems to be in the best interests of the borrowers despite the potential for higher interest rates. Banks enter the microfinance industry because of the high rates of return and dependable repayment tendencies despite the fact that the loans are of low dollar values. The value of the collateralized goods is of no consequence to the lending institutions, as the goal of collateralization of such goods is to impress on the borrower the seriousness of the financial obligation. Many of the developing countries where the microfinance industry has flourished, however, already take borrowing money seriously due to cultural values; therefore, banks do not need to require borrowers to risk their livelihoods and daily "comforts" in order to convey the seriousness of the transaction.

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<sup>181</sup> 11 U.S.C. § 523(a)(8) (2012).

<sup>182</sup> Fred Bauer, *Making Student Loans Dischargeable in Bankruptcy Could Be a Free-Market Idea*, HUFFINGTON POST (Apr. 5, 2012), [http://www.huffingtonpost.com/fred-bauer/student-loan-debt\\_b\\_1403280.html](http://www.huffingtonpost.com/fred-bauer/student-loan-debt_b_1403280.html).

<sup>183</sup> *Id.*

A basis for recognizing a right to freedom from predatory lending currently exists in international treaties that recognize the right to economic freedom, but the foundation needs to be expanded to specifically include microfinance before the process of deterring predatory behavior can begin.<sup>184</sup> This is the case for two reasons. First, if cases alleging violations of the right are ever litigated, prosecutors will have a specific law under which to file charges. Such laws will have defined what the proscribed practice is and what actions qualify as violating it. Second, and more optimistically, specifically defining the right to be free from predatory lending, what constitutes violation of that right, and the consequences of violating the right will give lending institutions guidelines as to what types of behavior they must avoid and the consequences of not doing so.

Raising the cost of lending in a predatory manner will also tip the scale of the cost-benefit analysis undertaken by institutions that have no interest beyond their bottom lines. If punitive costs are high enough, lending institutions will not be willing to keep themselves open to the threat of punishment for predatory practices. The nature of the microfinance industry itself shows that relatively small penalties have a substantial preventative effect.<sup>185</sup> Microfinance loans are very small compared to the credit extended in other capacities; therefore, a lender's expected return on these loans, while possibly high in percentage return, is not high enough to offset even modest potential penalties. Even if the microfinance market is assumed to be a volume industry, each violation of a right could lead to additional penalties, which dramatically increases a lender's potential liability.

Potential costs of violating anti-predatory lending laws could come in the form of high litigation costs or monetary penalties. While some type of litigation mechanism is necessary given the complexity of each case, monetary incentives should be the focus of enforcement measures. Monetary incentives should be the focus especially if a standing requirement similar to that in American litigation exists because affected parties would have to show an individualized injury or an imminent harm before a tribunal could hear the case.<sup>186</sup> For the reasons previously discussed, forcing indigent borrowers to endure the harms associated with predatory lending is a huge burden to bear. The purpose of international treaties is to promote respect for human dignity and dissuade those who would otherwise violate human

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<sup>184</sup> Hopefully the stories of oppression and resulting suicide from predatory lending will incite legislative action from individual nation states and the international organizations to which they belong.

<sup>185</sup> For example, a penalty enforced against individuals or companies that commit an antitrust violation of the Sherman Act face potential liability of \$1,000,000 or \$100,000,000 respectively. 15 U.S.C. § 1 (2012). Potential monopoly profits are much higher than the potential contained in individual microfinance loans and these figures are enough to deter monopolistic behavior. Something similar in the microfinance industry would certainly have a substantial preventative effect.

<sup>186</sup> See *Allen v. Wright*, 468 U.S. 737 (1984) (plaintiff must show an injury traceable to defendant's conduct); *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) (future harm must be imminent in order for a plaintiff to survive the standing requirement).

rights; therefore, if borrowers have to wait until standing is established, protection of the right is eviscerated at least for some individuals.

Further, court costs, especially at an international level, would prevent many, if not all of the indigent borrowers from pursuing claims against lending institutions. Even if a plaintiff was able to bring a lawsuit, the disparity in resources between the international lending institution and the indigent borrower seems to favor the alleged violator. Establishing local branches of the International Court of Justice would cut the cost of litigation and would substantially limit the docket of cases heard by the Court in The Hague. However, this would be a massive expenditure for the U.N. to establish such an infrastructure. Even if the member nations agreed to pay the costs of establishing their own courts, developing nations where microfinance predation is the most prevalent would likely have trouble committing to these costs. Staffing the court with qualified judges and attorneys well versed in the specifics of international law and human rights law is another challenge that would have to be addressed before the Court can be relied upon for any consistent role in settling these types of disputes.

Monetary incentives for compliance and financial penalties for violations are the most effective and immediate ways of proactively protecting this right and will make protecting the rights and dignity of indigent borrowers a priority overnight. As previously stated, even modest penalties could have a significant preventative effect. Further, incentivizing attorneys to take such claims could be another form of financial aid provided by international organizations seeking to increase the access indigent clients have to legal system. With the state of education in developing countries, attorneys and judges trained outside the country would have to supplement those currently living within each affected country in order to assist indigent clients, at least initially.

Beyond the necessary judicial infrastructure for implementing this new right, spreading knowledge of the new right is also essential. Individuals who have lived in oppressive financial conditions for years may not have direct access to information necessary to fully understand the right, the protections they are entitled to, and the types of recourse available when they find themselves in an oppressive lending agreement. Television ownership is increasing in African countries, and public service announcements could be very effective in spreading the word. Given the group nature of many lending arrangements in African countries, television advertisements followed by word of mouth dissemination of information to fellow members of the borrowing group could be very effective. Also, with the prevalence of cell phones and their existing prevalence in making microfinance payments, mass messages over telephone towers could have a direct and personal impact on those involved in the microfinance industry. Further, the densely populated marketplaces where many individuals go to sell the goods they purchase with microfinance funding lend themselves well to billboards and personal interactions from those trained in the new international laws.

This personal spreading of information has to be carefully monitored. Unscrupulous professionals advertising guidance through the new regulatory

scheme and seeking portions of any judicially imposed financial remedy could very easily tempt borrowers from one financially oppressive situation into another.

While regulation of the microfinance industry is necessary to protect borrowers from predatory practices, the industry can serve as a powerful poverty-alleviation method. Therefore, the above-mentioned improvements to regulation must be conducted with the end goal of perpetuating and perfecting the market, not strangling it. Creating a market atmosphere that encourages participation from a variety of institutional and individual financial lenders will only benefit consumers by driving competition which will push profits down, meaning borrowers will enjoy the lowest repayment rates the market will support. However, borrowers must be informed, and banks must not be allowed to profit from ensnaring desperate borrowers, before their full participation in the market is possible.

## V. CONCLUSION

Predatory microfinance lending abuses destitute borrowers, leaving them in life-threatening desperation in exchange for quick returns for multi-billion dollar financial institutions. While the concept of microfinance was born from a foundation of altruism and generosity, the profit-seeking motive of the banks now extending these loans has superseded the goal of poverty reduction and has tipped business practices in this area in favor of profit. Uneducated, financially illiterate victims lose their hope of paying back their loan obligations because unscrupulous loan deals conceal oppressive interest rates and other coercive repayment terms. The banks extend credit to those with a business that may not have a chance of succeeding due to overcrowded marketplaces, yet, these same banks, upon default, have the power to seize personal possessions of borrowers, such as furniture, clothing, and even silverware. Social pressure and cultural norms in many of the countries where microfinance lending occurs favor repayment of debt obligations. However, when oppressive terms take advantage of these cultural and social values, and prevent even the most earnest of borrowers from repayment, pressure drives people into depression, desperation, and even suicide.

While there are international treaties in existence that support economic freedom as a human right, very few list freedom from excessive debt as a basic human right, and no treaty mentions microfinance specifically. This is due to many factors, including the relative novelty of the microfinance industry, the potential lethargy of international bureaucracy, the polarization of free market capitalism versus human rights debate, and the obscurity of this type of oppression as an international concern. The legislative process that results from attempts to protect this right must contain a thorough analysis of the potential that microfinance has as a poverty-alleviating measure.

In order to get the movement to protect people from predatory microfinance lending the legitimacy it needs to help improve the global economic situation, such focus is necessary. In addition, an analysis of the appropriate levels of regulation versus institutional flexibility is necessary to protect consumers while

allowing businesses to compete and thus drive prices down, fill niche markets, and satisfy both consumer demand, as well as future international poverty alleviation strategies. Ultimately, any treatise protecting the right that is produced by international bodies, such as UNCITRAL, the World Bank, or the IMF, as well as domestic legislation among member nations, must be binding to carry any weight.

Guidelines without a policing measure do little to dissuade exploitative financial institutions from blindly pursuing profit and do little to protect the indigent borrowers that rely on microloans to pull themselves out of poverty. Only after illuminating the risk of oppressing consumers will companies see that they too benefit when complying with international legislation. Ideally, similar to those companies who work with the IMF, companies would serve as activists in protecting consumer rights. Companies are closer to the borrowers, and therefore, are more in touch with the concerns of specific markets than international bodies. However, until businesses stop viewing advances in the protection of human rights as unnecessary costs, full protection will not be achieved.

International organizations must also take predatory microfinance lending seriously. This has proven difficult because some countries are afraid that making banking regulation stricter will chase away foreign investment. International organizations are better equipped to pass such legislation because a country, acting alone, may fear that its legislation would kill its competitiveness within the global marketplace.

Creating a new human right will not happen overnight. Especially with the novelty of the microfinance industry and the disparity in views towards regulation, legislation establishing and protecting that right is sure to take time. However, by classifying predatory microfinance lending as a human rights violation instead of allowing it to be viewed merely as a prohibited business practice, members of international organizations as well as microfinance banks will be more likely to work towards protecting individual borrowers. Further, if a right to be free from oppressive lending is created, violations of that right could be protected in domestic courts and international tribunals, a benefit that is not currently available.

Desperate individuals need protection. Oppressive financial institutions view indigent borrowers as a quick return while the borrowers themselves see their businesses, ideas, personal possessions, and livelihoods deteriorate. It is time these abuses come out of obscurity and it is time to hold those who willfully and maliciously indenture those who cannot protect themselves, accountable.



