

# The Interaction of Customary Law and Microfinance: Women's Entry into the World Economy

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# THE INTERACTION OF CUSTOMARY LAW AND MICROFINANCE: WOMEN'S ENTRY INTO THE WORLD ECONOMY

## ABSTRACT

This note examines the complicated relationship between microfinance and customary law. Microfinance, the practice of giving small, collateral-free loans to the poorest members of society, has gained great popularity in the last thirty years. These loan programs specifically target women and use women's traditional emphasis on groups to ensure success. Customary law can hinder microfinance ventures because of the restrictions these laws place on women's roles and responsibilities. Case studies on the Dominican Republic, Morocco, and Bangladesh explore how individual customary laws can hinder microfinance programs and women's micro-businesses. This note also discusses how microfinance programs act as catalysts of social change, affecting customary laws and women's status in their communities and homes.

## INTRODUCTION

### I. MICROFINANCE IN THE CONTEXT OF CUSTOMARY LAW

A. *Morocco and Shariah Law*

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## INTRODUCTION: THE RISE OF MICROFINANCE

Gender disparities in developing countries continue despite progress over the last half century.<sup>1</sup> No region in the world can claim complete equality between men and women in terms of social, economic, or legal rights.<sup>2</sup> The International Covenant on Civil and

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1. WORLD BANK, *ENGENDERING DEVELOPMENT THROUGH GENDER EQUALITY IN RIGHTS, RESOURCES, AND VOICE* 3 (2001) [hereinafter *ENGENDERING DEVELOPMENT*].

2. *Id.* at 4. Economic rights are defined in this note as those rights listed in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and an overall ability to participate in the economic marketplace. Legal rights are those embodied in the International Covenant on Civil and Political Rights (ICCPR).

Political Rights,<sup>3</sup> which is ratified by 160 parties,<sup>4</sup> includes the right to freedom and liberty of movement,<sup>5</sup> the right to privacy,<sup>6</sup> and the right to freedom of thought,<sup>7</sup> among others. The treaty guarantees the right to equality before the law,<sup>8</sup> yet women in Botswana, Namibia, Lesotho, and Swaziland have no independent right to manage property.<sup>9</sup> In parts of sub-Saharan Africa, a husband has the right to claim his wife's labor, but a wife cannot make the same claim to her husband's labor.<sup>10</sup> Across the globe, women account for less than 10% of elected officials in national assemblies.<sup>11</sup>

The economic rights of women are even more limited than their legal rights, especially in South Asia and sub-Saharan Africa.<sup>12</sup> The International Covenant on Economic, Social and Cultural Rights guarantees the right to an education,<sup>13</sup> yet in South Asia and sub-Saharan Africa girls have consistently lower enrollment rates<sup>14</sup> and receive fewer years of schooling than boys.<sup>15</sup> In sub-Saharan Africa, 62% of primary school-age boys attend classes compared to 58% of girls.<sup>16</sup> The difference is greater in South Asia where 78% of boys attend school but only 71% of girls attend.<sup>17</sup> Legal inequality and a lack of education can lead to women's exclusion from economic life, especially as the world economy grows more information-based and less focused on traditional modes of production.<sup>18</sup> For example, women in several African countries are less productive than men because they

3. International Covenant for Civil and Political Rights, G.A. Res. 2200 (XXI), U.N. Doc. A/6316 (Dec. 16, 1966).

4. OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, <http://www2.ohchr.org/english/bodies/ratification/4.htm> (last visited Jan. 15, 2008).

5. International Covenant on Civil and Political Rights, *supra* note 3, at ¶ 12.

6. *Id.* at ¶ 17.

7. *Id.* at ¶ 18.

8. *Id.* at ¶ 14.

9. ENGENDERING DEVELOPMENT, *supra* note 1, at 37.

10. *Id.*

11. WORLD BANK, GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS 4 (2003), available at [http://www.mdgender.net/upload/monographs/WB\\_Gender\\_Equality\\_MDGs.pdf](http://www.mdgender.net/upload/monographs/WB_Gender_Equality_MDGs.pdf) [hereinafter GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS].

12. ENGENDERING DEVELOPMENT, *supra* note 1, at 38.

13. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), ¶ 13, U.N. Doc. A/6316 (Dec. 16, 1966).

14. ENGENDERING DEVELOPMENT, *supra* note 1, at 42 fig.1.2.

15. *Id.* at 42 fig.1.2.

16. U.N. Econ. & Soc. Council [ECOSOC], The Millennium Development Goals Report 2006, at 7 (2006), available at <http://mdgs.un.org/unsd/mdg/resources/static/products/progress2006/MDGReport2006.pdf>.

17. *Id.*

18. See ENGENDERING DEVELOPMENT, *supra* note 1, at 44.

cannot access the same “productive inputs and human capital.”<sup>19</sup> The World Bank estimates that if women in sub-Saharan Africa had equal access to these resources the total agricultural outputs of Africa would increase by an astonishing 6 to 20%.<sup>20</sup> To compound the problem, gender disparities in education and health are greatest among the poorest members of society.<sup>21</sup>

Gender inequalities have a large effect on individual women’s lives and the lives of their families.<sup>22</sup> The inequalities, however, take an even greater toll on society as a whole.<sup>23</sup> Gender disparity is linked to higher rates of poverty and illness,<sup>24</sup> as well as lower rates of economic efficiency and progress.<sup>25</sup> International institutions such as the World Bank and the United Nations have not been blind to this problem.<sup>26</sup> In September 2006, the World Bank announced a new initiative devoting \$24.5 million over four years to economically empower women in developing countries.<sup>27</sup> The program is specifically dedicated to improving women’s competitiveness in the product, financial, land, and labor markets.<sup>28</sup> The United Nations addressed women’s issues in its Millennium Development Goals (MDGs), a set of economic and human rights targets meant to be achieved during the first fifteen years of this century.<sup>29</sup> The MDGs include the goals of promoting gender equality and empowering women, achieving universal primary education, and improving maternal health care.<sup>30</sup>

These announcements aside, the most innovative and perhaps most effective change for women has been the spread of microfinance institutions.<sup>31</sup> Microfinance is the practice of lending small sums of money to the poor, who would not normally be served by the financial

19. GENDER EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS, *supra* note 11, at 7.

20. *Id.*

21. ENGENDERING DEVELOPMENT, *supra* note 1, at 6.

22. *Id.* at 8.

23. *Id.*

24. *See id.*

25. *Id.* at 10.

26. *See infra* notes 27-30 and accompanying text.

27. Press Release, World Bank, Giving Women Economic Opportunity is Smart Economics (Sept. 16, 2006).

28. WORLD BANK, GENDER EQUALITY AS SMART ECONOMICS: A WORLD BANK GROUP GENDER ACTION PLAN 9 (2006), available at <http://siteresources.worldbank.org/INTGENDER/Resources/GAPOct5.pdf>.

29. Kofi A. Annan, Op-Ed., *Trade and Aid in a Changed World*, N.Y. TIMES, Mar. 19, 2002, at A23.

30. U.N. Millennium Development Goals, <http://www.un.org/millenniumgoals/> (last visited Jan. 15, 2008) (referring to Millennium Development Goals 2, 3, and 5).

31. *See* Ole Danbolt Mjøs, Chairman, Nor. Nobel Comm., Nobel Peace Prize 2006 Presentation Speech (Dec. 10, 2006), available at [http://nobelprize.org/nobel\\_prizes/peace/laureates/2006/presentation-speech.html](http://nobelprize.org/nobel_prizes/peace/laureates/2006/presentation-speech.html).

industry.<sup>32</sup> These loans are usually given without a demand for collateral,<sup>33</sup> so they are accessible to the poorest members of society, who do not own property that can be used as collateral such as houses or cars.<sup>34</sup> Microfinance institutions play a “complementary role” to traditional banking services by lending to people who would usually be considered too risky.<sup>35</sup> Many institutions also provide broader services such as insurance and savings plans because their clients also have difficulties accessing these types of financial services.<sup>36</sup>

Muhammad Yunus, who won the Nobel Peace Prize in 2006, started the microfinance experiment thirty years ago.<sup>37</sup> He opened the Grameen Bank, which had the institutional goal of giving small collateral-free loans to the residents of rural Bangladesh.<sup>38</sup> The program seeks to “extend banking facilities to poor men and women; eliminate the exploitation of the poor by money lenders; create opportunities for self-employment . . . ; [and] bring the disadvantaged, mostly the women from the poorest households, within the fold of an organizational format which they can understand and manage by themselves.”<sup>39</sup> Because of its outstanding success in poverty alleviation, the Grameen Bank itself was awarded the Nobel Peace Prize in 2006 along with Mr. Yunus.<sup>40</sup>

Microfinance has taken the field of development by storm.<sup>41</sup> It has spread beyond Bangladesh to all regions of the world,<sup>42</sup> “more than 70 million of the world’s poorest families have access” to these institutions.<sup>43</sup> The Grameen Bank alone serves more than seven million borrowers as of September 2007.<sup>44</sup> The United Nations declared 2005 to be the “International Year of Microcredit” and explicitly

32. Michael S. Barr, *Microfinance and Financial Development*, 26 MICH. J. INT’L L. 271, 279 (2004).

33. *Id.* at 279.

34. *Id.*

35. *Id.*

36. Isobel Coleman, *Defending Microfinance*, 29 FLETCHER F. WORLD AFF. 181, 182 (2005); see also Connie Bruck, *Millions for Millions*, NEW YORKER, Oct. 30, 2006, at 62, 73.

37. Press Release, Nor. Nobel Comm., The Nobel Peace Prize for 2006 (Oct. 13, 2006), available at [http://nobelprize.org/nobel\\_prizes/peace/laureates/2006/press.html](http://nobelprize.org/nobel_prizes/peace/laureates/2006/press.html).

38. Coleman, *supra* note 36, at 182.

39. A Short History of Grameen Bank, <http://www.grameen-info.org/bank/hist.html> (last visited Jan. 15, 2008).

40. Press Release, The Nobel Peace Prize for 2006, *supra* note 37.

41. See Paul B. Brown, *Helping the Poor Do Business*, N.Y. TIMES, Feb. 25, 2006, at C5; Bruck, *supra* note 36, at 62, 64; Nicholas D. Kristof, Op-Ed., *Do-Gooders with Spreadsheets*, N.Y. TIMES, Jan. 30, 2007, at A21.

42. See Brown, *supra* note 41.

43. Coleman, *supra* note 36, at 182.

44. Grameen Bank: Bank for the Poor, <http://www.grameen-info.org/bank/index.html> (last visited Jan. 15, 2008).

linked microfinance to the achievement of the Millennium Development Goals.<sup>45</sup>

Women make up 97% of Grameen Bank's customers<sup>46</sup> and are specifically targeted for microfinance programs for a number of reasons. As discussed above, women have fewer legal rights and economic resources than men,<sup>47</sup> and thus women are more likely to have limited access to credit and the labor market.<sup>48</sup> In fact, banks in developing countries traditionally lent only to men, excluding women entirely.<sup>49</sup> Microfinance addresses this gender-specific need.<sup>50</sup> Second, women have higher rates of loan repayment.<sup>51</sup> the Grameen Bank boasts a 98% repayment rate.<sup>52</sup> In short, loaning to women makes good economic sense. Third, gender creates a difference in the range of social benefits accruing from the loan. Yunus himself has stated that Grameen Bank developed the policy of lending to women, not only because of their high repayment rates, but also because "families benefitted more when the women controlled the [loan] money."<sup>53</sup> Loans to women have a greater impact on household expenditures and the education levels of female children.<sup>54</sup> Child survival increases twenty times more and child nutrition improves by 4 to 8% more than with loans to men.<sup>55</sup>

In several ways, microfinance confronts customary law. Customary law is defined as "[l]aw consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws."<sup>56</sup>

This Note explores the tensions between customary laws and microfinance. Part I of this Note looks at how customary law may help and hinder women's micro-businesses. Morocco and the Dominican

45. Press Release, U.N. Secretary-General, Message on the Launch of the International Year of Microcredit, U.N. Doc. DEV/2492:OBV/492 (Nov. 18, 2004); Press Release, U.N. Dep't of Pub. Info. & Year of Microcredit Secretariat, U.N. Launches International Year of Microcredit 2005, U.N. Doc. DEV/2493:GA/EF/3098 (Nov. 18, 2004).

46. Muhammad Yunus, Grameen Bank at a Glance (Oct. 2007), <http://www.grameen-info.org/bank/GBGlance.htm> (last visited Jan. 15, 2008) [hereinafter Grameen Bank at a Glance].

47. GENDER, EQUALITY & THE MILLENNIUM DEVELOPMENT GOALS, *supra* note 11, at 4.

48. Coleman, *supra* note 36, at 185.

49. Bruck, *supra* note 36, at 62.

50. *Id.*; Coleman, *supra* note 36, at 185.

51. Coleman, *supra* note 36, at 185.

52. Grameen Bank at a Glance, *supra* note 46.

53. Bruck, *supra* note 36, at 62.

54. JENNEFER SEBSTAD & GREGORY CHEN, MGMT. SYS. INT'L, OVERVIEW OF STUDIES ON THE IMPACT OF MICROENTERPRISE CREDIT 16 (1996).

55. See Coleman, *supra* note 36, at 185.

56. BLACK'S LAW DICTIONARY 413 (8th ed. 2004).

Republic are case studies that examine how the customary laws of Shariah, in the case of Morocco, and machismo, in the case of the Dominican Republic, interact with microfinance loans. Part II focuses on how customary law has adapted to the introduction of microfinance and women's new financial strength. This section focuses on Bangladesh and how the Grameen Bank's social program has successfully changed customary laws over the past thirty years. It investigates how microfinance leads to changes in custom and the traditional power distribution in families and communities.

## I. MICROFINANCE IN THE CONTEXT OF CUSTOMARY LAW

### A. Morocco and Shariah Law

Customary law and traditional norms can hinder the goals of microfinance. In Morocco, "women's micro businesses are less likely to grow than those of Moroccan men."<sup>57</sup> It is important to note that traditional gender roles in Islamic customary law, and not inequality in the legal code, restrict these businesses.<sup>58</sup> In 2004, King Mohammed VI radically reformed the *Mudawana* or Code of Personal Status.<sup>59</sup> The *Mudawana* governs family law, such as marriage, child custody, and inheritance.<sup>60</sup> The new Code declares that marriage is "under the direction of [both] spouses,"<sup>61</sup> recognizing the contributions of both wives and husbands to the marriage.<sup>62</sup> The new law codifies women's equal personal and economic status.<sup>63</sup> Thus, Morocco's formal legal status is in line with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), of which Morocco is a

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57. INEZ MURRAY & NADIRA BARKALLIL, WOMEN'S WORLD BANKING, GENDER BASELINE SURVEY: MOROCCO 1 (2005).

58. *See id.*

59. Laura A. Weingartner, Comment, *Family Law & Reform in Morocco — The Mudawana: Modernist Islam and Women's Rights in the Code of Personal Status*, 82 U. DET. MERCY L. REV. 687, 687 (2005).

60. *Id.* at 693.

61. CODE DU STATUT PERSONNEL, art. 4 (Morocco).

[L]e mariage est un pacte fondé sur le consentement mutuel et une union légale et durable, entre un homme et une femme. Il a pour fin la vie dans la fidélité, la pureté et la fondation d'une famille stable sous la direction des deux époux conformément aux dispositions du présent code. [Marriage is a pact founded on mutual consent and is a legal and lasting union, between a man and a woman. Its goal is a life of fidelity, purity, and the foundation of a stable family under the direction of two spouses, conforming with the clauses of this code.]

62. Weingartner, *supra* note 59, at 697.

63. *Id.* at 698.

signatory.<sup>64</sup> CEDAW states that women should have the same rights and responsibilities during marriage<sup>65</sup> and that women have the right to a profession and an occupation.<sup>66</sup>

Nevertheless, traditional inequality within the marriage continues because of the influence of Islamic law, also known as Shariah.<sup>67</sup> For example, Morocco made a reservation to CEDAW saying that it would pursue the treaty provisions only when “[t]hey do not conflict with the provisions of the Islamic [S]hariah.”<sup>68</sup> In other words, when the application of Islamic law results in inequality, Morocco’s legal system continues to enforce that inequality. King Mohammed VI reformed the *Mudawana* with “strict respect”<sup>69</sup> to Shariah law, and the new Code is not meant to completely overrule Islamic precedent.<sup>70</sup> It continues to endorse polygamy<sup>71</sup> and unequal child custody decisions.<sup>72</sup>

Another source of inequality is the actual application of the reformed *Mudawana*.<sup>73</sup> Moroccan judges may be unwilling to apply the new law as it is written.<sup>74</sup> Islamists in Morocco held massive demonstrations against the reform and the new law was not welcomed in all of society.<sup>75</sup> Judges have the right to use Shariah law as a gap-filler in cases where the *Mudawana* is silent on an issue.<sup>76</sup> Moreover, the illiteracy rate among rural women is 85%,<sup>77</sup> and the overall illiteracy rate for women is 39.6%.<sup>78</sup> Thus, many women cannot read the new

64. See Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], Meeting of States Parties, N.Y., N.Y., June 23, 2006, *Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to the Convention on the Elimination of All Forms of Discrimination Against Women*, 22-23, U.N. Doc. CEDAW/SP/2006/2 [hereinafter *Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to CEDAW*].

65. Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], G.A. Res. 34/180, ¶ 16(1)(c), U.N. GAOR, 34th Sess., 107th plen. mtg., U.N. Doc. A/Res/34/180 (Dec. 18, 1979).

66. *Id.* at ¶ 16(1)(g).

67. HUMAN RIGHTS WATCH, COUNTRY SUMMARY: MOROCCO (2006), available at <http://hrw.org/wr2k6/pdf/morocco.pdf>; Weingartner, *supra* note 59, at 693.

68. *Declarations, Reservations, Objections and Notifications of Withdrawal of Reservations Relating to CEDAW*, *supra* note 64, at 22. Reservations allow nations to limit or modify the treaty conditions. In this case, Morocco limited the Convention to include only those provisions that comply with its religious heritage.

69. CODE DU STATUT PERSONNEL, Préambule.

70. Weingartner, *supra* note 59, at 708.

71. CODE DU STATUT PERSONNEL, art. 40.

72. Weingartner, *supra* note 59, at 711.

73. HUMAN RIGHTS WATCH, *supra* note 67.

74. Weingartner, *supra* note 59, at 711.

75. *Id.* at 709-710.

76. HUMAN RIGHTS WATCH, *supra* note 67.

77. Weingartner, *supra* note 59, at 711.

78. CENT. INTELLIGENCE AGENCY, WORLD FACTBOOK: MOROCCO, <https://www.cia.gov/library/publications/the-world-factbook/geos/mo.html> (last visited Jan. 15, 2008).



law or newspaper articles about the reforms. To make equality possible, the government must institute a public education campaign to teach women about their new rights.<sup>79</sup>

The marital inequality that results from certain Islamic customary laws has a deleterious effect on women's micro-businesses.<sup>80</sup> In traditional Muslim marriages the husband is considered the family's financial provider.<sup>81</sup> He owes the wife "maintenance," which includes food, clothing and housing.<sup>82</sup> In return, the wife must follow the principle of *ta'ah*, or obedience.<sup>83</sup> *Ta'ah* is a wife's duty to not leave the home without the permission of her husband.<sup>84</sup> Single women must ask permission of fathers or brothers.<sup>85</sup> Although there are no statistics on how many women ask for permission and are refused, one can assume that some women are kept out of the labor market as a result. Moreover, *ta'ah* dictates that a woman cannot be away from home for more than one night at a time.<sup>86</sup> For some women, business trips of any kind are out of the question because the women are not allowed to sleep away from home.<sup>87</sup> The inability of the business owner to travel can limit her access to suppliers and to customers.

The customary laws of marriage also limit the time a woman can devote to a business. The formal law of the *Mudawana* states that both parents must provide their children with rights such as protection, healthcare, food, and education.<sup>88</sup> In practice, however, men rarely take on household responsibilities because it is considered shameful and part of the wife's obligations towards marriage.<sup>89</sup> Therefore, women must complete all of their household duties before working.<sup>90</sup> Family obligations are the absolute priority, and the level of household cleanliness and cooking must not suffer as a result of business interests.<sup>91</sup> Responsibilities for cleaning and child-care mean that women's businesses are more likely to be based in their homes.<sup>92</sup>

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79. *Id.*

80. See generally MURRAY & BARKALLIL, *supra* note 57 (discussing challenges to Moroccan female-run micro-businesses).

81. *Id.* at 5.

82. JOSEPH SCHACHT, AN INTRODUCTION TO ISLAMIC LAW 167 (1964).

83. MURRAY & BARKALLIL, *supra* note 57, at 5.

84. Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 AM. U. J. INT'L L. & POL'Y 1, 12 (1997).

85. MURRAY & BARKALLIL, *supra* note 57, at 9.

86. *Id.*

87. *Id.*

88. CODE DU STATUT PERSONNEL, art. 54.

89. MURRAY & BARKALLIL, *supra* note 57, at 7.

90. *Id.*

91. *Id.*

92. *Id.* at 9.

Women also tend to work limited hours in the afternoon and evening and cannot dedicate the entire day to their micro-enterprises.<sup>93</sup> Ultimately, this situation will lead to smaller, less successful businesses because women have less time to advertise, develop new products, or even keep regular business hours.<sup>94</sup>

The traditional idea of *ird*, or honor, limits both the size and types of enterprises. *Ird* refers to “the honor or moral purity of a group, its prestige in the community, and its strength.”<sup>95</sup> A woman’s actions can have a detrimental effect on the *ird* of her husband and extended family.<sup>96</sup> It is important that women’s activities are deemed appropriate and do not hurt the honor of the family.<sup>97</sup> As a result, women crowd into two or three types of businesses associated with traditional gender roles.<sup>98</sup> In a survey of 108 microfinance recipients, 34% of the women worked in embroidery or sewing, and another 30% traded small goods.<sup>99</sup> When women do break this customary law, other members of society subject them to “some form of social sanction such as name calling and, in some cases, sexual harassment.”<sup>100</sup> Honor also re-enforces the practice of female segregation.<sup>101</sup> Women do not interact with non-kin males<sup>102</sup> and cannot sell their wares in markets.<sup>103</sup> Thus they must work from home.<sup>104</sup> Overall, these factors lead to smaller businesses and very high rates of competition among women’s micro-enterprises.<sup>105</sup>

Families consider women’s income supplementary even if it is the primary income of the household.<sup>106</sup> Therefore, women tend to spend money on the home and children instead of reinvesting in their business.<sup>107</sup> As mentioned above, this can lead to a better standard of living for all family members.<sup>108</sup> On the other hand, it is another factor keeping women’s businesses smaller than those of men.<sup>109</sup>

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93. *Id.* at 7.

94. *See id.*

95. MOUNIRA M. CHARRAD, STATES AND WOMEN’S RIGHTS: THE MAKING OF POSTCOLONIAL TUNISIA, ALGERIA, AND MOROCCO 63 (2001).

96. *Id.*

97. *Id.* at 63-64.

98. MURRAY & BARKALLIL, *supra* note 57, at 10.

99. *Id.* at 10 tbl.2.

100. *Id.* at 10.

101. CHARRAD, *supra* note 95, at 64.

102. *Id.*

103. MURRAY & BARKALLIL, *supra* note 57, at 10.

104. *See id.*

105. *Id.*

106. *Id.* at 11.

107. *Id.*

108. Coleman, *supra* note 36, at 185.

109. MURRAY & BARKALLIL, *supra* note 57, at 11.

*B. Machismo in the Dominican Republic*

Women in the Dominican Republic face similar constraints on their micro-enterprises.<sup>110</sup> Because the Dominican Republic is predominantly Catholic and not Muslim,<sup>111</sup> customary Islamic law does not influence marriage relationships. Instead the customary law of “machismo” rules the inner workings of the family.<sup>112</sup> As in Morocco, formal Dominican law does not match the customary practices.<sup>113</sup>

One example of the difference between formal and customary law is the financial responsibility of husbands and wives.<sup>114</sup> The *Código Civil* (Civil Code) states that spouses share the responsibility for food and the education of the children.<sup>115</sup> In contrast, under customary law men are the heads of the household and solely responsible to make ends meet.<sup>116</sup> This financial responsibility extends only to food and housing.<sup>117</sup> Men traditionally use leftover income on recreation, such as alcohol, designer clothing, cars, and other luxury items that denote status in the community.<sup>118</sup> Women must pay for extra family expenses, including clothing, school fees, medicine, and furniture.<sup>119</sup>

This financial arrangement has major effects on women’s micro-businesses. Under the *Código Civil*, women have the right to start businesses and can sell or mortgage personal items in connection with that business without the permission of their husbands.<sup>120</sup> Nevertheless, instead of women using their personal goods to support their

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110. See generally INEZ MURRAY, WOMEN’S WORLD BANKING, WWB GENDER STUDY: THE CAPACITY OF POOR WOMEN TO GROW THEIR BUSINESSES IN THE DOMINICAN REPUBLIC (2006). Murray reports the findings of the study of Women’s World Banking on “the effects of gender-related household dynamics on the ability of poor women to grow their businesses” in the Dominican Republic. *Id.* at 1.

111. CENT. INTELLIGENCE AGENCY, WORLD FACTBOOK: DOMINICAN REPUBLIC, <https://www.cia.gov/library/publications/the-world-factbook/geos/dr.html> (last visited Jan. 15, 2008).

112. MURRAY, *supra* note 110, at 15.

113. Compare MURRAY, *supra* note 110, with CÓDIGO CIVIL (Dom. Rep.).

114. Compare MURRAY, *supra* note 110, at 34, with CÓDIGO CIVIL, art. 203.

115. CÓDIGO CIVIL, art. 203. “Los esposos contraen por el solo hecho del matrimonio, la obligación común de alimentar y educar los hijos.” [The spouses contract by the mere fact of marriage the common obligation to feed and educate their children.]

116. MURRAY, *supra* note 110, at 15.

117. *Id.* at 19.

118. *Id.* at 15.

119. *Id.* at 19.

120. CÓDIGO CIVIL, art. 220. “La mujer tiene el derecho de ejercer una profesión sin el consentimiento de su marido; puede siempre, para las necesidades de esa profesión, enajenar y obligar, sus bienes personales en plena propiedad, sin el consentimiento de su marido.” [The woman has the right to exercise a profession without the consent of her husband; if necessary for the profession, she can always sell or mortgage her personal goods, without the consent of her husband.]

businesses, the money flows in the opposite direction.<sup>121</sup> Women funnel money into their households to fulfill familial needs instead of investing in their businesses.<sup>122</sup> Women's businesses stay small and under-funded.<sup>123</sup> This is especially frustrating given the fact that some of the husbands' incomes are used for recreational activity.<sup>124</sup>

Another example of a mismatch between customary and formal law is infidelity within the marriage.<sup>125</sup> The Dominican *Código Civil* clearly states that spouses owe each other fidelity.<sup>126</sup> Machismo, on the other hand, allows men to have children outside of the marriage.<sup>127</sup> Again, this customary law can limit the success of women's businesses. First, men with multiple families have less time to assume parenting roles.<sup>128</sup> Women undertake the lion's share of child-rearing and other household responsibilities, such as cooking and cleaning.<sup>129</sup> Therefore, women prefer working part-time jobs or jobs with flexible hours.<sup>130</sup> These time restraints limit the types of businesses women can pursue and the size the business can attain.<sup>131</sup> Second, men who are responsible for multiple families must spread their financial resources across all the families.<sup>132</sup> Consequently, each family is poorer.<sup>133</sup> This puts a strain on women and means even less investment in their businesses as women shift their finances towards household needs.<sup>134</sup> Finally, infidelity can foster an atmosphere of distrust, which hampers development of joint businesses and cooperation.<sup>135</sup> In fact, one important indicator of the future success of a micro-enterprise is cooperation within the family network.<sup>136</sup>

Because of the constraints detailed above, women prefer businesses that are conveniently located in their homes or neighborhoods so they can keep up with their household responsibilities.<sup>137</sup> If the business is located within the home, space is restricted and household

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121. MURRAY, *supra* note 110, at 34.

122. *Id.*

123. *Id.*

124. *Id.*

125. Compare MURRAY, *supra* note 110, at 15, with CÓDIGO CIVIL, art. 212.

126. CÓDIGO CIVIL, art. 212. "Los cónyuges se deben mutuamente fidelidad, socorro y asistencia." [The spouses owe each other fidelity, help, and assistance.]

127. MURRAY, *supra* note 110, at 15.

128. *See id.* at 19-20.

129. *Id.* at 16.

130. *Id.* at 42.

131. *Id.* at 45.

132. *Id.* at 15.

133. *Id.* at 19.

134. *Id.* at 34.

135. *Id.* at 19.

136. *Id.* at 19, 42.

137. *Id.* at 45.

duties can distract from business growth.<sup>138</sup> Businesses located in the neighborhood may have less opportunity to gain clients with sizeable disposable incomes because microfinance is geared towards the poorest populations.<sup>139</sup> Concentration in certain neighborhoods limits the spaces available for businesses and can crowd the market.<sup>140</sup> As in Morocco, the types of women's businesses must be socially acceptable.<sup>141</sup> Food preparation, sewing, sales, domestic work, and beauty salons are the most popular types of business.<sup>142</sup> This means very high competition between women's micro-enterprises and a limited opportunity for growth.<sup>143</sup>

In summary, customary law works in several ways to limit women's micro-businesses.<sup>144</sup> Microfinance institutions tend to focus on the poorest neighborhoods and women often join in groups.<sup>145</sup> The participating women then open similar businesses<sup>146</sup> that are located either in their homes or within the neighborhood.<sup>147</sup> The competition rate is high<sup>148</sup> so these businesses have a smaller chance of survival. Women also cope with limited resources in both time and money because of their household responsibilities.<sup>149</sup>

### *C. Customary Law as a Catalyst for Success*

Fortunately, customary law and traditional norms do not always work against women's businesses: they may add to the success of microfinance.<sup>150</sup> For example, women traditionally learn to value their social groups, such as extended families or tribes,<sup>151</sup> a trait which can lead to successful loans and prosperous businesses.<sup>152</sup> Social capital, which is the value of social networks, is defined as "shared norms or

138. *Id.*

139. *See supra* text accompanying notes 32-36.

140. MURRAY, *supra* note 110, at 43; Geoffrey K. Turnbull & Jonathan Dombrow, *Spatial Competition and Shopping Externalities: Evidence from the Housing Market*, 32 J. REAL EST. FIN. & ECON. 391, 391 (2006).

141. MURRAY, *supra* note 110, at 43.

142. *Id.*

143. *Id.*

144. *See supra* text accompanying notes 57-142.

145. Grameen Bank Credit Delivery System, <http://www.grameen-info.org/bank/cds.html> (last visited Jan. 15, 2008).

146. MURRAY, *supra* note 110, at 43.

147. *Id.* at 45.

148. *Id.* at 43.

149. *Id.* at 42.

150. *See infra* text accompanying notes 151-208.

151. Susan Johnson, *Gender Norms in Financial Markets: Evidence from Kenya*, 32 WORLD DEV. 1355, 1370 (2004).

152. MURRAY, *supra* note 110, at 42.

values that promote social cooperation.”<sup>153</sup> Social capital within a group can be very positive; it teaches people “social virtues such as honesty, reciprocity, and dependability that they can then apply to relationships with other people.”<sup>154</sup> Social capital has many benefits, including reducing the probability of being poor.<sup>155</sup> In fact, at low income levels the financial returns on social capital investment are greater than the returns on human capital investment.<sup>156</sup> In a microfinance context, this means participation in a loan group has a greater economic effect than an equal amount of time spent on education or training.<sup>157</sup> Social networking and relationships have a direct economic pay-off.<sup>158</sup> This demonstrates the significance of social capital and how it directly leads to economic opportunities.

Women are especially well-suited to exploit social capital because of their traditional emphasis on social networks.<sup>159</sup> Groups “have been and remain a means through which women learn about and fulfill both their social and economic roles.”<sup>160</sup> This means women can become both financially and emotionally invested in their microfinance groups. Moreover, women have less mobility than men and typically have less chance for interaction outside of their family units.<sup>161</sup> Therefore, the microfinance groups are one of the only available ways to build social capital.<sup>162</sup>

Microfinance institutions take advantage of the customary group dynamic of women in a number of ways. First, institutions encourage and create social capital to ensure repayment of the loans.<sup>163</sup> One of the Grameen Bank’s Decisions, or mottos, is “[w]e shall take part in

153. Francis Fukuyama, *Social Capital and Development: The Coming Agenda*, 22 SAIS REV. 23, 27 (2002). See generally ROBERT D. PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 163-85 (1993) (discussing the role of social capital in ensuring Italian institutional success); ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF THE AMERICAN COMMUNITY (2000) (discussing the decline of organized social groups in the United States and the implications for groups and individuals).

154. Fukuyama, *supra* note 153, at 30.

155. Christiaan Grootaert, *Social Capital, Household Welfare and Poverty in Indonesia* 63 (Environmentally & Socially Sustainable Dev. Network, World Bank, Working Paper No. 6, 1999), available at <http://www.worldbank.org/html/dec/Publications/Workpapers/wps2000series/wps2148/wps2148.pdf>.

156. *Id.*

157. *Id.* at 34-35.

158. *Id.* at 42.

159. Johnson, *supra* note 151, at 1370.

160. *Id.*

161. See GRAMEEN BANK & EMBASSY OF NOR./BANGL., GRAMEEN BANK AT 20: IMPACT AND FUTURE CHALLENGES 23 (1999), available at <http://www.norad.no> (select English; search for “Grameen Bank”; follow “Norads direktør gratulerer fredsprisvinnerne” hyperlink; follow “Last ned rapporten” hyperlink).

162. *Id.*

163. *Id.*

all social activities collectively.”<sup>164</sup> The Decisions are recited at every group meeting,<sup>165</sup> and no one can become a member until she has memorized all of them.<sup>166</sup> The entire Grameen program aims to create an environment of group solidarity.<sup>167</sup> For instance, borrowers initially organize themselves into groups of five, with only two women eligible for loans.<sup>168</sup> The other members of the group become eligible for loans after the first two women start to repay the principal and interest of the initial loan.<sup>169</sup> Undoubtedly, the first loan recipients will feel a sense of loyalty to the group and some pressure from those group members who must wait for their loans.<sup>170</sup> Furthermore, if any member of the group defaults on her loan, the other members will be barred from further borrowing.<sup>171</sup> The group members are invested in each other’s actions, and the group succeeds or fails as a whole.<sup>172</sup>

The group pressure not to default can be described as a “shame factor.”<sup>173</sup> A study of the Fundación para el Desarrollo Integral de Programas Socioeconómicos (FUNDAP),<sup>174</sup> a microfinance institution in Guatemala, found that group borrowing creates a moral obligation to repay.<sup>175</sup> FUNDAP uses an approach similar to the one used by the Grameen Bank, described above.<sup>176</sup> The study showed that the group dynamic helped ensure loan repayment.<sup>177</sup> The group helped those borrowers who encountered hardship to repay their loans and also threatened and sanctioned debtors who were remiss.<sup>178</sup> The group effectively shamed negligent members into better behavior.<sup>179</sup> In Kenya, group members repossessed household goods of women who did not repay.<sup>180</sup> Kenyan women stated they would rather borrow

164. The 16 Decisions of Grameen Bank, <http://www.grameen-info.org/bank/the16.html> (last visited Jan. 15, 2008).

165. Coleman, *supra* note 36, at 185.

166. GRAMEEN BANK & EMBASSY OF NOR./BANGL., *supra* note 161, at 30.

167. Grameen Bank Credit Delivery System, *supra* note 145.

168. *Id.*

169. *Id.*

170. Bruce Wydick, *Can Social Cohesion be Harnessed to Repair Market Failures? Evidence from Group Lending in Guatemala*, 109 *ECON. J.* 463, 474 (1999).

171. Beatriz Armendáriz de Aghion & Jonathan Morduch, *Microfinance: Where Do We Stand?*, in *FINANCIAL DEVELOPMENT AND ECONOMIC GROWTH: EXPLAINING THE LINKS* 135, 138 (Charles A.E. Goodhart ed., 2004).

172. *Id.*

173. See Wydick, *supra* note 170, at 465.

174. FUNDAP is the Fundación for the Integrated Development of Socioeconomic Programs. *Id.* at 465 n.3.

175. *Id.* at 474.

176. *Id.* at 465.

177. Wydick, *supra* note 170, at 466.

178. *Id.* at 474.

179. *Id.*

180. Johnson, *supra* note 151, at 1368.

money from a friend than default on their loan.<sup>181</sup> The inability to repay is shameful, embarrassing, and could “‘spoil’ the group.”<sup>182</sup>

Women are more responsive to this kind of social pressure than men.<sup>183</sup> Kenyan men reported a number of failed men’s groups and attributed the failure to a more individualistic culture.<sup>184</sup> Men “did not like the strictness of the rules involved in groups and the fines they would incur if they did not attend” meetings.<sup>185</sup> They were also wary of being viewed as dependent and, therefore, inferior.<sup>186</sup> Instead, men preferred to solve their financial problems privately.<sup>187</sup> Overall, the social capital in men’s groups is much lower, as demonstrated by the lack of trust and cooperation.

Furthermore, a study in Zimbabwe showed that women were more willing to sanction other members and that female sanctions were more effective.<sup>188</sup> There is no definite explanation for why women excel in these situations. Clearly, customary laws keep women focused on domestic life, which is less individualistic and more group-oriented. Perhaps the experience of child-rearing teaches women more effective ways to discipline group members.

Microfinance institutions also use women’s social capital as a source of information.<sup>189</sup> One of the major problems with finance in developing countries is the lack of available information about potential debtors.<sup>190</sup> Because banks are unable to differentiate between high risk and low risk debtors, everyone suffers from higher interest rates.<sup>191</sup> The group lending context solves this problem by using potential debtors’ knowledge about their friends and neighbors.<sup>192</sup> As explained above, the Grameen Bank program gives individual loans to women, but the women must approach the Bank as a group of five.<sup>193</sup> If any of the five women defaults on her loan, all five members will be barred from further loans.<sup>194</sup> Therefore, women must pick their group members carefully and will use the knowledge they have from prior

181. *Id.* at 1367.

182. *Id.*

183. *See id.* at 1370.

184. *Id.* at 1368.

185. *Id.*

186. *Id.*

187. *Id.*

188. Abigail Barr & Bill Kinsey, *Do Men Really Have No Shame?* 23-24 (Dep’t for Int’l Dev., Working Paper No. 2002-05, Oct. 2002).

189. *See* Armendáriz de Aghion & Morduch, *supra* note 171, at 138.

190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*



dealings to choose the most responsible partners.<sup>195</sup> This system also reinforces the group interdependence of the women and encourages them to become involved with monitoring each other's projects.<sup>196</sup> The women debtors will try to ensure the other group members choose less risky businesses so no defaults will occur.<sup>197</sup> Thus, the Grameen Bank benefits by having a built-in check on risky projects.<sup>198</sup>

Women's social capital is beneficial not only to the sponsoring microfinance institution, but also to the members themselves. For example, these groups provide a client base for new businesses.<sup>199</sup> In Morocco, men and women are generally separated from each other because of customary Islamic law.<sup>200</sup> Outside of the home, women are generally confined to the *hammam* (public bath house) and ceremonies such as weddings and funerals for which they are primarily responsible.<sup>201</sup> Women can use this gendered space to make business connections, and most rely on word-of-mouth advertising and recommendations to expand their client base.<sup>202</sup>

In the Dominican Republic, social networks allow women to grow their businesses.<sup>203</sup> Although women are primarily responsible for children and caring for the elderly, which can take time away from micro-enterprises, female family members can help by assuming some of the household responsibility.<sup>204</sup> By babysitting, cooking and cleaning, female family members, especially elderly mothers who may live in the home, can give the entrepreneur more time to run her business.<sup>205</sup>

Interestingly, women's customary roles may contribute to micro-finance success. As explained above in the Moroccan and Dominican examples, women are the ultimate managers of the household.<sup>206</sup> Poor women are accustomed to coping with scarce resources, and they bring these skills to the management of their small loans.<sup>207</sup> After

195. *Id.* at 138-9.

196. *Id.* at 139.

197. *Id.*

198. *Id.*

199. See MURRAY & BARKALLIL, *supra* note 57, at 11.

200. *Id.*

201. *Id.*

202. *Id.*

203. MURRAY, *supra* note 110, at 42.

204. *Id.*

205. *Id.*

206. See *supra* text accompanying notes 83-108, 118-35.

207. Muhammad Yunus, *Microcredit, Information Technology, and Poverty: The Experience of Grameen Bank*, 8 BROWN J. WORLD AFF. 233, 238 (2002) [hereinafter *Microcredit, Information Technology, and Poverty*].

noting this particular expertise, the Grameen Bank started to target women for its program.<sup>208</sup>

Customary law works to both help and hinder microfinance for women. Microfinance institutions should craft their programs to take advantage of some aspects of customary law. They can also incorporate programs to try to overcome certain difficulties, such as providing child-care so women will have more time to devote to their businesses.<sup>209</sup>

## II. MICROFINANCE AS AN AGENT OF CHANGE IN WOMEN'S LIVES

Microfinance also acts to change customary law in society. Some microfinance institutions even have explicit social programs that extend far beyond prudent money management.<sup>210</sup> For example, during the meetings of Grameen Bank loan groups, borrowers recite the "Sixteen Decisions."<sup>211</sup> Eight loan groups, totaling forty women, meet weekly with a Grameen Bank representative.<sup>212</sup> Loans are repaid and disbursed at these meetings,<sup>213</sup> and the Decisions are recited aloud.<sup>214</sup> The Decisions are:

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

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208. *Id.*

209. MURRAY, *supra* note 110, at 71.

210. *See* Grameen Bank Credit Delivery System, *supra* note 145.

211. Coleman, *supra* note 36, at 184-85.

212. Armendáriz de Aghion & Morduch, *supra* note 171, at 138.

213. *Id.*

214. Coleman, *supra* note 36, at 184-85.

keep our centre free from the curse of dowry. We shall not practice child marriage.

12. We shall not inflict any injustice on anyone, neither shall we allow anyone to do so.

13. We shall collectively undertake bigger investments for higher incomes.

14. We shall always be ready to help each other. If anyone is in difficulty, we shall all help him or her.

15. If we come to know of any breach of discipline in any centre, we shall all go there and help restore discipline.

16. We shall take part in all social activities collectively.<sup>215</sup>

These affirmations include business skills and a commitment to fellow borrowers (Decisions 1, 2, 13, 14, and 15) but they go much further. There is a real commitment to better health (Decisions 3, 4, 5, 6, 8, 9, and 10) and social change (Decisions 6, 7, 11, 12, and 16).

One example of how Grameen Bank is trying to change customary law is Decision 6, a commitment to having smaller families.<sup>216</sup> Bangladesh, which is slightly smaller than the state of Wisconsin,<sup>217</sup> contains over 150 million people.<sup>218</sup> Population growth became a problem when mortality rates drastically dropped between 1900 and 1960.<sup>219</sup> As a result, the Bangladeshi population growth rate skyrocketed to 2.26% a year.<sup>220</sup>

There are a wealth of hypotheses explaining why the Bangladeshi culture demands having a large family. First, children are an economic asset because of their labor contributions to the household and their potential as wage earners.<sup>221</sup> Children can act as insurance against catastrophic events that may happen to the family: children may start to work and earn money if the sole wage-earner dies or is disabled.<sup>222</sup> Second, religion could play a role because the use of contraception is controversial in Islam,<sup>223</sup> and 85% of Bangladeshis are Muslim.<sup>224</sup>

215. The 16 Decisions of Grameen Bank, *supra* note 164.

216. *Id.*

217. Bimal Kanti Paul, *Changes in Reproductive Behavior in Bangladesh*, 87 GEOGRAPHICAL REV. 100, 100 (1997).

218. CENT. INTELLIGENCE AGENCY, WORLD FACTBOOK: BANGLADESH, <https://www.cia.gov/library/publications/the-world-factbook/geos/bg.html> (last visited Jan. 15, 2008) [hereinafter WORLD FACTBOOK: BANGLADESH].

219. Paul, *supra* note 217, at 103.

220. *Id.*

221. W.C. Robinson, *High Fertility as Risk-Insurance*, 40 POPULATION STUD. 289, 291-92 (1986).

222. *Id.* at 291.

223. Zulie Sachedina, Comment, *Islam, Procreation and the Law*, 16 INT'L FAM. PLAN. PERSP. 107, 108-09 (1990).

224. Michael M. Bernhart & M. Mosleh Uddin, *Islam and Family Planning Acceptance in Bangladesh*, 21 STUD. FAM. PLAN. 287, 287 (1990).

Whatever the underlying reasons, having a large family was the rule, and it was one of the only ways for women to gain respect and status in rural Bangladesh.<sup>225</sup> A young woman moves into her husband's home when she marries.<sup>226</sup> Her mother-in-law supervises all of her actions, and young brides have little say over household decisions or expenditures.<sup>227</sup> One of the main ways a wife can contribute to the household is by giving birth to sons, who become wage earners and support the parents later in life.<sup>228</sup> Thus, by having children and showing competence in her household duties, a woman can gain social recognition and security.<sup>229</sup>

The introduction of microfinance in Bangladesh helped shatter this customary law of large-scale families. First, microfinance removed the need to have big families.<sup>230</sup> A successful microfinance business brings in household income so it is less important to have children as a form of economic insurance.<sup>231</sup> Women had a new avenue for gaining respect and did not have to gain status only through fertility.<sup>232</sup> Second, the Grameen Bank institutionalized the idea of smaller families and women had to commit to this new custom before they could gain access to loans.<sup>233</sup> Women not only have to memorize the Decision but they must repeat it at each weekly meeting.<sup>234</sup> Although there are no formal sanctions for women who have a large number of children, there are probably informal social sanctions. Just as women are ashamed to not repay their loans, there may be a "shame factor"<sup>235</sup> associated with breaking one of the Sixteen Decisions.

The link between microfinance and the birth rate is undeniable. Studies show that contraceptive use is eleven percentage points higher in villages reached by Grameen Bank than in similar villages without the program.<sup>236</sup> Grameen Bank currently reaches 89% of poor families

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225. See Akiko Nosaka & Bradford W. Andrews, *Institutionalized Powerlessness in Context: The Static and Dynamic Nature of Women's Status in Rural Bangladesh*, 6 J. INT'L WOMEN'S STUD. 149, 153 (2004).

226. *Id.*

227. *Id.*

228. *Id.*

229. *See id.*

230. *See* W.C. Robinson, *supra* note 221, at 294.

231. *Id.* at 291.

232. Muhammad Yunus, Founder & Managing Dir., Grameen Bank, Speech at the Council on Foreign Relations: Ending Global Poverty (Nov. 16, 2006), available at [http://www.cfr.org/publication/12110/ending\\_global\\_poverty\\_rus\\_transcript\\_federal\\_news\\_service.html](http://www.cfr.org/publication/12110/ending_global_poverty_rus_transcript_federal_news_service.html) [hereinafter Speech at the Council on Foreign Relations: Ending Global Poverty].

233. The 16 Decisions of Grameen Bank, *supra* note 164.

234. Coleman, *supra* note 36, at 184-85.

235. *See supra* text accompanying notes 172-87.

236. Sidney Ruth Schuler & Syed M. Hashemi, *Credit Programs, Women's Empowerment, and Contraceptive Use in Rural Bangladesh*, 25 STUD. FAM. PLAN. 65, 70 (1994).

in Bangladesh,<sup>237</sup> and the Bangladeshi birth rate is an average of just over three children per woman.<sup>238</sup> Before the Grameen Bank started, the birth rate was twice as high. By rejecting the customary law and empowering women, Grameen Bank created real cultural change.

Another example of an evolution in customary law is the Bangladeshi dowry system and child marriage. Changes in formal laws have not brought equal changes in the customary dowry system.<sup>239</sup> The Dowry Prohibition Act of 1980, as amended in 1986, prohibits all forms of dowry and makes dowries punishable by up to five years in prison.<sup>240</sup> Nevertheless, the dowry system remains prevalent among the rural poor.<sup>241</sup>

Dowries perpetuate a cycle of poverty because each family forced to pay a dowry for a daughter will demand an equivalent or higher dowry upon the marriage of a son.<sup>242</sup> Families try to recuperate the money spent on daughters by passing the cost along to the next family.<sup>243</sup> Often brides do not bring the promised dowry, which results in violence against the bride and hundreds of deaths per year.<sup>244</sup> The Grameen Bank developed Decision 11 in response to members' concerns.<sup>245</sup> Decision 11 states "[w]e shall not take any dowry at our sons' weddings, neither shall we give any dowry at our daughters [sic] wedding. We shall keep our centre free from the curse of dowry. We shall not practice child marriage."<sup>246</sup> If families with sons refuse to take dowries, then the pressure of paying a dowry for the daughters

237. Press Release, Indo Asian News Serv., Credit Should Be Accepted as Human Right: Yunus (Feb. 13, 2006), available at <http://www.indiaprwire.com/pdf/news/17250.pdf>.

238. WORLD FACTBOOK: BANGLADESH, *supra* note 218.

239. U.N. Econ. & Soc. Comm'n for Asia and the Pacific [UNESCAP], Dhaka, Bangl., Dec. 14-16, 1997, *Report of the Subregional Expert Group Meeting on Eliminating Violence Against Women 4* (Dec. 14, 1997), available at <http://www.unescap.org/esid/GAD/Issues/Violence/dhak-rep.pdf>.

240. Women for Women, *Violence Against Women in South Asia: Subregional Overview 23* (1999) (unpublished report prepared for UNESCAP Expert Group Meeting on Eliminating Violence Against Women), available at <http://www.unescap.org/esid/GAD/Publication/DiscussionPapers/03/series3.pdf>.

241. Women's International Network, *Bangladesh: Country Reports on Human Rights Practices for 1996*, 23 WIN NEWS 15 (1997).

242. See Christine I. Wallich, World Bank Country Dir. for Bangl., Speech at World Bank Workshop on Involvement of Local Government Institutions in Promoting Birth and Death Registration and Eradicating Child Marriage and Dowry in Bangladesh (Dec. 20, 2003).

243. *Id.*

244. Rokhsana Nazneen, *Violence in Bangladesh*, in *VIOLENCE AGAINST WOMEN: PHILOSOPHICAL PERSPECTIVES* 77, 81 (Stanley G. French et al. eds., 1998).

245. See Speech at the Council on Foreign Relations: Ending Global Poverty, *supra* note 232.

246. The 16 Decisions of Grameen Bank, *supra* note 164.

is alleviated.<sup>247</sup> This cultural support could prove much more effective than the legal prohibition. Popular opinion is against the dowry system.<sup>248</sup> Microfinance participants have a better ability to refuse participation. These mothers can point to the Sixteen Decisions as a reason for not providing a dowry for their daughters.<sup>249</sup> They also have the group support of their fellow borrowers, which can bolster their resolve.<sup>250</sup>

Decision 11 also prohibits child marriage.<sup>251</sup> This is an especially important issue for women because child marriage affects more girls than boys.<sup>252</sup> The Bangladeshi law blatantly discriminates between boys and girls.<sup>253</sup> The Child Marriage Restraint Act of 1929 allows males to make a valid marriage contract starting at age twenty-one, but females can marry three years earlier, at age eighteen.<sup>254</sup> If one marries below the appropriate ages, the marriage is not automatically void but merely can be voided when that spouse reaches the age of majority.<sup>255</sup> Even these weak legal restrictions are not followed and South Asia, including Bangladesh, has the highest rate of child marriage in the world.<sup>256</sup> About 58% of Bangladeshi girls marry between the ages of sixteen and eighteen despite the law.<sup>257</sup>

Child marriage can have a devastating effect on a female's life. A child bride is more vulnerable to health problems as a result of early sexual intercourse and pregnancy.<sup>258</sup> She is less likely to be educated or employed and her children are also less likely to obtain higher levels of education.<sup>259</sup> Her financial prospects are poor, and "[t]he majority of affected girls become condemned to a life of financial and social insecurity."<sup>260</sup> In short, child marriage promotes the cycle of

247. Speech at the Council on Foreign Relations: Ending Global Poverty, *supra* note 232.

248. SAJEDA AMIN, POPULATION COUNCIL, EMPOWERING ADOLESCENT GIRLS IN RURAL BANGLADESH: KISORI ABHIJAN 4 (2007).

249. See The 16 Decisions of Grameen Bank, *supra* note 164.

250. See *supra* text accompanying notes 149-205.

251. The 16 Decisions of Grameen Bank, *supra* note 164.

252. INT'L PLANNED PARENTHOOD FED'N, ENDING CHILD MARRIAGE: A GUIDE FOR GLOBAL POLICY ACTION 10 (2006), available at [http://www.unfpa.org/upload/lib\\_pub\\_file/662\\_filename\\_endchildmarriage.pdf](http://www.unfpa.org/upload/lib_pub_file/662_filename_endchildmarriage.pdf).

253. Kamrul Hossain, *In Search of Equality: Marriage Related Laws for Muslim Women in Bangladesh*, 5 J. INT'L WOMEN'S STUD. 96, 98 (2003).

254. *Id.*

255. *Id.*

256. INT'L PLANNED PARENTHOOD FED'N, *supra* note 252, at 9-10.

257. MARY K. BURKET ET AL., PATHFINDER INT'L, RAISING THE AGE OF MARRIAGE FOR YOUNG GIRLS IN BANGLADESH 1 (2006), available at [http://www.pathfind.org/site/DocServer/PF\\_Bangladesh\\_FINAL.pdf?docID=6601](http://www.pathfind.org/site/DocServer/PF_Bangladesh_FINAL.pdf?docID=6601).

258. INT'L PLANNED PARENTHOOD FED'N, *supra* note 252, at 11.

259. *Id.* at 14.

260. *Id.* at 15.

poverty and dependence that microfinance tries to stop. It seems natural that a microfinance institution devoted to helping the poor overcome poverty would target a customary law that not only limits the economic prospects of one generation, but has drastic effects on the second and third generations as well.

The combination of social pressure and economic growth could help stem child marriage. Parents who delay marriage for their daughters often based their decision on her employment.<sup>261</sup> Continued education can also justify a girl's single status.<sup>262</sup> Grameen Bank addresses both of those concerns. First, girls can be employed in their mothers' microfinance businesses.<sup>263</sup> Second, members commit to sending their children to school.<sup>264</sup>

Decision 7, where members commit to educating their children,<sup>265</sup> is also a challenge to customary law. Fifty-seven percent of the Bangladeshi population is illiterate<sup>266</sup> and women's education is especially underdeveloped.<sup>267</sup> Girls receive a lower quality education than boys do, and their schools are overcrowded.<sup>268</sup> One explanation for why there is cultural reluctance to educating girls is because brides join their husbands' families upon marriage.<sup>269</sup> Families do not want to spend resources educating daughters when all of the benefits of that education will transfer to another family.<sup>270</sup> Therefore, Decision 7 is notable in its commitment to education for both genders.<sup>271</sup>

In 1991, only 20% of Bangladeshi females could read, making the literacy rate one of the lowest in the world.<sup>272</sup> Today, over 50% of Bangladeshi girls are enrolled in school.<sup>273</sup> Bangladesh is one of three South Asian countries that have reached gender parity in its primary schools.<sup>274</sup> In fact, a U.N. report credits the Bangladesh

261. *Id.* at 19.

262. *Id.*

263. MURRAY, *supra* note 110, at 42.

264. *See* The 16 Decisions of Grameen Bank, *supra* note 164.

265. *Id.*

266. BURKET ET AL., *supra* note 257, at 4.

267. *Id.* at 3.

268. ALEXANDRA MATHIEU, U.N. GIRLS' EDUC. INITIATIVE, REACHING THE GIRLS IN SOUTH ASIA: DIFFERENTIATED NEEDS AND RESPONSES IN EMERGENCIES 45 (2006), available at [http://www.ungei.org/resources/files/unicef\\_Reachinggirlsinsouthasia.pdf](http://www.ungei.org/resources/files/unicef_Reachinggirlsinsouthasia.pdf).

269. *Id.*

270. *Id.*

271. *See* The 16 Decisions of Grameen Bank, *supra* note 164.

272. In Bangladesh, a School Success, <http://www.worldbank.org> (search for "a school success"; then follow "Education — In Bangladesh, a School Success" hyperlink) (last visited Jan. 15, 2008).

273. *Id.*

274. MATHIEU, *supra* note 268, at 44 (naming Sri Lanka and Maldives as the other two countries that have reached gender parity).

Rural Advancement Committee, a microfinance non-governmental organization, for the reversal of the educational gender gap.<sup>275</sup> The Bangladesh Rural Advancement Committee emphasized girls' education and educating children from even the poorest families.<sup>276</sup>

Grameen Bank's figures are also astounding. The institution claims that 100% of its members' children are in school.<sup>277</sup> This includes seven million families.<sup>278</sup> There are also over twelve thousand students in graduate schools.<sup>279</sup> The demand for education was so large that Grameen Bank started a student loan program.<sup>280</sup> The program gives loans that cover all of the costs of education and repayment only begins after the student begins her professional life.<sup>281</sup>

This emphasis on education, including female education, has dramatic effects on society. Educated women are more likely to use reliable birth control methods and seek medical care.<sup>282</sup> This leads to lower mortality rates among mothers and children and stems the spread of HIV/AIDS and other infectious diseases.<sup>283</sup> Educated mothers are more likely to send their own children to school, which creates a virtuous cycle of education and opportunity.<sup>284</sup> In short, the education of daughters spreads the benefits of the microfinance institution into the next generation.

## CONCLUSION

This note has examined the complicated relationship between microfinance institutions and customary law. Perhaps the most valuable contribution of microfinance is that it not only changes society's norms but it also changes the women themselves. Microfinance serves to empower women and change their status as second class citizens.<sup>285</sup> The case studies of Bangladesh, Morocco, and the Dominican Republic demonstrate how custom, religion, and poverty can keep women from

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275. *Id.*

276. *Id.*

277. *Microcredit, Information Technology, and Poverty*, *supra* note 207, at 237.

278. Speech at the Council on Foreign Relations: Ending Global Poverty, *supra* note 232.

279. *Id.*

280. *Id.*

281. *Microcredit, Information Technology, and Poverty*, *supra* note 207, at 237.

282. Girls' Education: A World Bank Priority, <http://www.worldbank.org> (search for "girls' education"; then follow "Education — Girls' Education" hyperlink) (last visited Jan. 15, 2008).

283. *Id.*

284. *Id.*

285. Speech at the Council on Foreign Relations: Ending Global Poverty, *supra* note 232.



full participation in society.<sup>286</sup> Microfinance, on the other hand, promotes participation.<sup>287</sup> It is a "process of human transformation."<sup>288</sup> Women transform from being submissive and secluded<sup>289</sup> to being independent and publicly active.<sup>290</sup> For example, Grameen Bank borrowers must vote in elections, thrusting women into the political sphere.<sup>291</sup> In 1996, for the first time in Bangladeshi history, more women than men voted in the national election.<sup>292</sup> In 1997, over 2000 Grameen borrowers ran as candidates and were elected to local office.<sup>293</sup> Microfinance "has helped tremendously in changing the whole status of women in Bangladesh."<sup>294</sup>

Women also gain status within their homes. In the Dominican Republic, the traditional law of machismo rules that whoever earns the money can decide how to spend it.<sup>295</sup> For the first time in their lives, women are making monetary contributions and are gaining a voice in household expenditures.<sup>296</sup> Women are further breaking down gender norms by insisting their sons do housework.<sup>297</sup> Unlike their fathers, this generation of boys will not consider housework as an exclusively female activity.

Although a series of studies link microfinance with increased domestic violence,<sup>298</sup> microfinance ultimately protects women in their homes.<sup>299</sup> Women who participate in microfinance programs gain autonomy and redefine their roles.<sup>300</sup> This can bring them into conflict with men who are uncomfortable with the changes.<sup>301</sup> Nevertheless, domestic violence drops when women provide a high level of income.<sup>302</sup> Microfinance "reduce[s] women's vulnerability to men's

286. See *supra* Part II.

287. *Microcredit, Information Technology, and Poverty*, *supra* note 207, at 236.

288. *Id.*

289. Nosaka & Andrews, *supra* note 225, at 162-63.

290. *Microcredit, Information Technology, and Poverty*, *supra* note 207, at 236.

291. *Id.* at 237.

292. *Id.*

293. *Id.*

294. Speech at the Council on Foreign Relations: Ending Global Poverty, *supra* note 232.

295. MURRAY, *supra* note 110, at 53.

296. *Id.* at 54.

297. *Id.* at 57.

298. See Rosamund Ebdon, *NGO Expansion and the Fight to Reach the Poor: Gender Implications of NGO Scaling-up in Bangladesh*, 26 *IDS BULL.* 49, 55 (1995); Sidney Ruth Schuler et al., *Credit Programs, Patriarchy and Men's Violence Against Women in Rural Bangladesh*, 43 *SOC. SCI. & MED.* 1729, 1738-39 (1996).

299. GRAMEEN BANK & EMBASSY OF NOR./BANGL., *supra* note 161, at 26.

300. *Id.*

301. *Id.*

302. *Id.*

violence [overall] by strengthening their economic roles and making their lives more public.”<sup>303</sup>

Most importantly, women gain status in their own minds. In the Dominican Republic, women who started their own businesses felt “more creative, intelligent, innovative, proactive, inclined toward planning, and better organized.”<sup>304</sup> They gain self-confidence and, with that, an increased ability to make decisions and mold their own lives.

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303. *Id.* at 27.

304. MURRAY, *supra* note 110, at 54.

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