

Conference Report



“IMPROVING MICROFINANCE CLIENT PROTECTION IN AFRICA, SHARING EXPERIENCES BETWEEN MICROFINANCE SERVICE PROVIDERS AND CUSTOMER ADVOCATES IN EASTERN AND SOUTHERN AFRICA

9 - 11TH March 2005

Birchwood Executive Hotel, Johannesburg, SOUTH AFRICA

AFMIN

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Patrick McAllister
1 April 2005

Introduction

In the line with its mandate of "Building people and systems that work for the poor in Africa", the Africa Microfinance Network, (AFMIN) in partnership with SEEP Network, Micro Enterprise Alliance (MEA), the Ford Foundation, and the Microfinance Regulatory Council, (MFRC) organized a three-day workshop on "Improving Microfinance Client Protection in Africa." The workshop was held on 9 - 11 March 2005, at Birchwood Executive Hotel, Johannesburg, South Africa.

Objectives of the Conference

The overall objectives of the conference were to:

- Share experiences between microfinance service providers, customer advocates and microfinance regulators in Eastern and Southern Africa; and
- Explore ways to develop a microfinance client protection initiative in Africa.

Participants

The conference on improving microfinance client protection which brought together 22 participants from Malawi, Zimbabwe, Uganda, USA, South Africa and Ivory Coast, was composed of microfinance practitioners, consumer protection advocates and regulators.

Major events of the workshop

On the agenda, 4 major events were scheduled, including:

- Field visits conducted to TEBA Bank, Blue Dot Housing and the Microfinance Regulatory Council (MFRC);
- Two days of exchange on reasons why African consumers of financial services need protection and an introduction to South African consumer advocacy models;
- Presentation of papers from other participating countries on role of government in consumer protection;
- Conclusions and recommendations from participants on how to address consumer protection of microfinance clients the issue in each participating country.

Executive Summary

The conference was officially opened with words of welcome by Roland Pearson, Jr., Board representative of the Micro Enterprise Alliance (MEA) and an address by Celestin Gatera, AFMIN Programs Director focusing on the importance of developing effective consumer protection policies for microfinance clients in Africa. These policies should serve as a means for educating consumer about their rights and their obligations: the right to access financial services and other accompanying services; the obligation to respect the ethics and norms of the microfinance industry as well as its dynamics. The conference should be seen as a way to bring together experiences and ideas from other countries in East Africa, as represented by organizations present at the conference that are concerned about protecting consumers and have initiated this movement in their respective countries.

Following the opening sessions, participants broke off into two groups for site visits to two microfinance practitioners in South Africa, TEBA Bank and Blue Dot Housing. During these field visits, participants were able to see pro-consumer microfinance and examples of consumer protection through information on client's rights and obligations, the accessibility of posters that provided minimum information on operations to be known by the client, and the disclosure of telephone numbers in case the client wants to meet the General Manager.

After the MFI visits, participants spent the afternoon at the Microfinance Regulatory Council (MFRC) whereby they were introduced to its background, achievements and challenges. Participants appreciated the relevance of the MFRC within microfinance in South Africa and how much it has contributed to enhance trust through transparency in the industry. Based on the number and the type of members participating in this regulatory body, participants were unanimous on how it has contributed to the increase of awareness from all stakeholders throughout the microfinance industry in South Africa. At the same time, participants highlighted the great need for having such an independent institution in every country, where all key actors are represented for a common cause.

Also, because of the unique mission of the MFRC to serve both clients and the financial institutions, participants concluded that MFRC members have developed a spirit that the consumer is the king", has a bill of rights, has the right to choose specific financial services, has the right to transparent information, has the right to safety, and the right to be heard. At the same time, the MFRC seeks to support the financial services providers as well.

The second day of the conference included presentations from government representatives where participants were introduced to what has been done so far in terms of protecting clients and the role of government in consumer protection in general, in South Africa, Uganda and Zimbabwe.

Though the relationship between a microfinance institution and its clients represents a business-to-consumer relationship, participants pointed out that microfinance institutions by their nature serve the most socially and economically vulnerable people. They recognized that information asymmetries and unequal power relationships are exacerbated in situations where consumers have low literacy and skill levels. Based on this observation, participants recommended that it is the responsibility of microfinance institutions to incorporate the needs of their clients into their business models. Likewise, they should provide products and services that are competitively priced and best suited to the client's needs. They should offer better customer service and process complaints by providing concrete solutions.

Looking at experiences from the three countries above mentioned, participants agreed that, in order to produce a sound consumer protection policy in African countries, certain guidelines should be taken into considered :

- Stakeholders should define the problem by conducting research with all role players on all issues,

- The results should be utilized to formulate principles on consumer protection,
- Laws should be enacted that provide adequate protection for consumers.

At all levels, even the most vulnerable must be included, no matter how long it will take to develop such an inclusive policy.

The primary importance of consultation and education at all levels was provided as a strong motive for a sound consumer protection policy. This emphasis is seen in the recent publication from the SEEP Network, "Trust Through Transparency, Applicability of Consumer Protection Self-Regulation to microfinance."

Participants observed that without a sound consumer protection policy, it is obvious that the government will continue to be in an uncomfortable position of having to intervene on an emergency basis, and the good image of the microfinance sector will be tarnished. In order to pre-empt such conflict, microfinance institutions and the networks that represent them have to formulate, adopt and publicize a code of practice for consumer protection. In this way, all parties (MFI employees, customers, and government) will understand how the consumer is to be treated, and the consumer will know possible available recourse.

Participants were introduced to the benefits of implementing a microfinance client protection policy at MFI and Network/Association level. These include, at MFI level, enabling consumers to differentiate between those that disclose their practices related to consumer issues and those that do not. At the Network/Association level, if all network members could adopt a similar code, thereby increasing the confidence of consumers in all member institutions and increasing the government's confidence in the ability of the microfinance industry to regulate itself.

Considering the way forward, participants broke by country into smaller discussion groups and drafted a consumer initiative to be implemented in the near future, based on the principles developed together. As suggestions, participants highlighted the importance of having a consumer protection policy in every country. They acknowledged that this will be reached by developing trust through transparency in the microfinance industry in Africa. Participants recommended that the AFMIN Secretariat publish these recommendations to all its members so that their counterparts can access a summary of the conference proceedings. Participants further requested AFMIN to include the status of microfinance client protection among AFMIN members on its agenda during the annual conference to be held in Madagascar in November 2005.

Conference Proceedings and Discussion:

Welcome Address

Roland Pearson, Jr.
MEA Board Representative

Opening Comments

Célestin GATERA
AFMIN Programs Director

Microfinance, as a system through which access to financial services is provided for people who normally are excluded from access to the traditional financial system, is expanding and reaching an impressive number of low-income people in developing countries around the world today. Before the advent of microfinance as it is known today, more than 25 years ago clients came from a segment of the population whose characteristics could be summarized thus: people who lived under precarious conditions that changed seasonally, and who had inappropriate equipment; people with no capabilities, no education or training; without knowledge or self confidence; people whose organizations were fragile, weak and poorly-connected; people who lacked access to capacity-building organizations; those who were neglected and abused; those who were unsafe and lacked peace in their countries; those who were discriminated against and stigmatized; those who suffered from gender inequality

In light of the varied dimensions of poverty, practitioners introduced microfinance activities with an aggressive determination to eradicate poverty. Other stakeholders such as international development agencies, international organizations, governments and donors welcomed this initiative and invested a great deal to ensure that this sector would not cease to grow.

The Microcredit Summit has reported that, as of 31 December 2002, more than 67.6 million clients have received microfinance services. Out of this number, it is noted that 41.6 million clients were among the poorest of the poor when they received their first loan, and 79% were women. These results refute three, previously held myths: that MFIs cannot reach the poorest of the poor because it is too costly to identify and motivate them; that MFIs would not attain financial self-sufficiency if they target the poorest of the poor; and that MFIs that target the poorest of the poor and achieve financial self-sufficiency do so only by increasing the debt burden on the poor. The report concludes that, to achieve the millennium goals of "Reaching 100 million families by 2005", the Campaign will require a growth rate of 38% per annum.

The evidence everywhere is unanimous that microfinance has become an essential and effective tool in the fight against poverty. It has been demonstrated that, thanks to the provision of microcredit and microsavings, as well as other non-financial services, low-income people have been able to restore their hope and dignity, hope of building their own income generating activities and through that, improving their living conditions because of the confidence given to them.

Despite the results cited above, population statistics show that in the year 2000 more than half the world's population that is 2.8 billion people lived on less than \$2 a day. The same statistics show that a quarter of our planet's population is destitute, living on less than \$1 a day. We are told that these numbers will double if this trend continues for the next 30 years.

Besides these alarming statistics, there are gross inequalities between the "haves" and the "have-nots". Fifty million of the world's richest people or 1% of the world's population - have more wealth than the total income of the three billion low-income people or 57% of the world's population.

Even if microfinance appears to be an effective tool for the gradual eradication of these inequalities,

there are many challenges to overcome, some of which are highlighted below.

- Most MFIs are still young and lack the experience necessary to provide services to an increasing number of people and they prefer to operate in urban rather than the rural areas. Some MFIs do not apply best practices, treating their clients like beggars and insisting on offering products that do not respond to their needs and aspirations. Very few MFIs are open to criticism or listen to complaints from their clients. Not a single MFI will inform its clients of its effective interest rate on credit, which is often close to 130%.
- It has been observed that regulators often impose laws and prudential norms that are difficult to follow the moment MFIs begin to grow and to collect savings. One of the main reasons for this attitude is that central bank staff do not always understand the methods, systems and procedures of microfinance. In some countries, the law regulating microfinance imposes supervision requirements impossible for MFI to comply accordingly. In addition, certain MFI clients are ill-treated by local authorities through excessive taxation.

We thank all the organizations that are present at this conference, those who are concerned about protecting consumers and have initiated this movement in their respective countries. Protection of microfinance clients means educating them about their rights and their obligations: the right to access financial services and other accompanying services; the obligation to respect the ethics and norms of the microfinance industry as well as its dynamics.

As an association of 20 national networks, AFMIN is more committed than ever before to reaffirm its mantra "Building Systems and Resources for the Poor in Africa". We hope that participants at this conference will widen their experiences through the different presentations, and will develop coherent programs and plans that take account of the concerns of clients in their respective countries, rather than keep them in a perpetual state of poverty.

AFMIN will not spare any effort to support plans that protect clients, having as a basic principle the promotion of best practices that protect clients from bad practices. AFMIN will continue to promote high quality approaches to service provision, as well as the dissemination of transparent and accurate information. AFMIN will encourage realistic product pricing and will ensure that MFI clients are well-respected. Finally, it will ensure that client respect and confidentiality are maintained.

Keynote Address

"Overview of the South African Government's Role in Consumer Protection"

Astrid Ludin

Deputy Director General, Department of Trade and Industry (DTI)
Consumer and Corporate Regulations Division, South Africa

Prior to 1994, as the country faced increasing international isolation, South Africa's economic policy focused on import substitution and supply-side measures to boost economic growth. Consequently, in 1994, the new democratic government inherited a business sector characterized by inefficiency, a lack of competitiveness, anti-competitive conduct and inadequate consumer protection. Further, systematic under-investment in education for black South Africans during the apartheid years also left a legacy of low literacy and skill levels amongst the majority of the population. The new democratic government therefore faced and still faces the challenge of promoting growth and employment whilst advancing equity.

The Case for Change:

The case for change within the regulatory framework for consumer protection in South Africa can be made by referring to the following:

1. **Industrial Strategy:** South Africa's industrial strategy is premised on the view that confident consumers are important drivers of industrial competitiveness.
2. **Existing Consumer Regulation:** The current body of consumer law is outdated, fragmented and inappropriate for a democratic and developing society.
3. **International Benchmarks:** South Africa currently lags behind international jurisdictions (e.g. EU, Sub-Saharan Africa, Asia-Pacific) that have shifted towards giving consumers rights upfront.
4. **International Trade and Globalization:** Environmental concerns as well as increased international trade. e-commerce and novel trading systems driven by globalization and technological advancement are all presenting new regulatory challenges.

The government has a role to play in advancing consumer protection in South Africa by

1. Establishing consumer rights and responsibilities to promote a fair, competitive and equitable environment while preventing "excessive" compliance costs.
2. Ensuring effective enforcement and access to redress especially for consumers located in rural and deep rural areas.
3. "Creating strategic regional and International partnerships to promote consumer protection in cross border trade.
4. Encouraging responsive businesses by providing incentives, setting standards, benchmarking and disseminating information on best practices.

Consumer Protection and the Microfinance Industry

The relationship between a microfinance institution and its clients represents a business-to-consumer (or service provider-to-consumer In the case of NGO's) relationship. Microfinance institutions by their nature serve the most socially and economically vulnerable South Africans. Information asymmetries and unequal power relationships are exacerbated in situations where consumers have low literacy and skill levels. It can therefore be argued that microfinance institutions have as much, if not more) of a responsibility to incorporate the needs of their clients into their business models - such as providing products and services that are competitively priced and best suited to the client's needs; better customer service and complaints handling solutions.

National Credit Bill 2005

The National Credit Bill, 2005, introduces specific consumer protection measures for the credit industry in South Africa. The bill establishes a set of consumer rights - including the right to confidential treatment, accurate information, reasons for the refusal of credit, information in an understandable language and a choice in the manner in which documents are received. It also prohibits unfair discrimination in the extension of credit. The bill also introduces comprehensive consumer protection measures - e.g. standards for contracts and pre-contractual disclosure and measures to reduce reckless lending; prohibits false, misleading and deceptive advertising; provides for the registration of credit bureau and the regulation of consumer credit information; provides relief for overindebted consumers and a new scheme for the voluntary surrender and the repossession of goods.

In addition, the National Credit Bill, 2005, recognizes the need to balance consumer protection measures with access to finance. by introducing a category of credit agreements called "developmental credit". Development credit includes loans granted by credit unions and co-operatives; educational loans; loans for SMME development; loans for low-income housing and loans extended for any other purpose as prescribed by the Minister. Developmental credit is treated in a way that should make it less costly to extend such credit without compromising consumer protection. Registered credit providers will have to obtain supplementary registration as developmental credit grantors in order to issue such loans.

The **Consumer Protection Bill** is currently being drafted and the National Credit Bill, 2005, is currently being certified by the State Law Advisers and should be introduced into the National Council of Provinces (NCOP) within by sometime in April 2005 where after it will be introduced into the National Assembly. (To track the schedules of the Select Committee on Economic Affairs (NCOP) and the Portfolio Committee on Trade and Industry (National Assembly), visit the parliamentary website at www.Dariiamenlaov.za)

Presentation of Papers

“Why do African Consumers of Financial Services Need Protection?”

Tamsanqa Bolani

Executive Director

National Consumer Forum, (NCF) Representing Consumers International

The National Consumer Forum, (NCF) the national body for all consumer organizations, is run as a small social enterprise. One of the key activities of the forum is to publish a national newspaper on consumer issues. This newspaper is funded by advertisements. There has been good feedback on the paper through radio interviews of clients. There will also be a news piece in the main Sunday newspaper on the Forum in relation to National Consumer Protection week.

Key issues addressed by the forum include:

1. **Interest rates:** High interest rates charged by microlenders that leave microentrepreneurs stuck, unable to grow or create jobs.
2. **Contracts:** Often the language used in contracts is not understood by borrowers who later find themselves over-indebted.
3. **Payroll deductions:** Use of payroll deductions can leave consumers without any income at the end of the month, trapped in the debt circle. NCF wants to stamp out this practice and thus, supports the National Consumer Bill.
4. **Regulation of credit bureaus:** Five million people have a negative listing with the credit bureau. NCF has campaigned for delisting people and for the adoption of a code of conduct by credit bureaus.
5. **Protection/confidentiality of personal information:** NCF advocates for the protection of client's personal information.
6. **Consumer information:** NCF provides information to consumers to enable them to make educated decisions. This includes information on the value of the loan and any additional charges. NCF also advocates for a cooling off period for clients so that they can decide if they really need credit.
7. **Court redress:** Court redress is often an inappropriate place to administer judgment. There is a need to revisit the role of provincial consumer courts to deal with this.
8. **Consumer education:** Information is key to understanding the laws and for enabling consumers to exercise their rights. According to the Director of Consumer Affairs, "a well informed customer is the number one best weapon."

Discussion :

Question: What about the high cost of consumer protection? Is there a lack of solidarity among consumers?

There is a need to entrust a savings behavior among consumers, more than education. People are eager to spend and the industry needs to help refocus on ways to save for emergencies such as skokfels or burial societies. Credit should be limited to 1/3 (33%) of a person's gross income. However, this is difficult for lenders to enforce. People making less than R2000 are in most need of access to finance. There is a great need to teach people how to save in order to avert the need to borrow when in need. Most people are trapped in a virtual cycle of borrowing from one lender to pay the others.

Question: Isn't there a limit for consumer debt existing in SA, about 60%?

Peter Setou responded that there is no specific legislation dealing with this. The government did come up with certain rules to help civil servants in the private sector introduce similar rules. Unions need to

be involved and this makes it quite complicated.

Question: In Malawi the deduction of salary should not exceed 50% of take home pay, but the benchmark differs from one employer to another. Some take the 50% from gross pay. However, what about other financial obligations not deducted by the employer are not accounted for?

Peter Setou noted that the credit industry isn't the only culprit in South Africa for contributing to consumer over indebtedness. Insurance providers also play a role, especially in the case of civil servants who have more than 6 policies. Consumer education is very important. It needs to be broad based in order to increase awareness.

Question: Is the cap not pushing for unregulated lending practices?

Moses Moletsi commented that the legislation is aimed at ensuring that people aren't over-indebted, although there is a cap, the reset of what remains in someone's salary cannot be controlled. The issue of affordability remains the responsibility of the consumer. They need to be educated. Rules on caps just won't work.

According to Henry Okiria of Uganda, consumption patterns have changed and demand for credit makes it hard to control. Ken from Malawi gave an example of informal credit consumption patterns in Malawi such as arrangements made between friends and food vendor for credit which consumers pay each month. This keeps the consumers perpetually indebted.

Moses Moletsi of the DTI agreed saying that the formal side of the market will end up taking the lion's share of the payroll deductions and will lead to more informal credit arrangements.

Question: The MFRC is a serious regulator that administers performance standards and provides education. What is the number one role of networks in South Africa? Who does what? The law says that the lender should provide reasons for denying credit. Could this be causing a confusion chain? What are the roles of each player?

Consumer education needs to be broad based.

Answer:

Peter van Dijk commented that in managing money and real estate savings, the real concern is the customer. While there is a strong need to develop a good consumer regulation, there is no need to control everything in lending, which could drive consumers into further bankruptcy. However, prudent and thrifty consumers are more effective borrowers. It is a complex process to facilitate, but important nonetheless.

Xolela May responded that education needs to include information about insurance products as well as court proceedings. The onus rests with consumers and reactive education is less advantageous to proactive education. The consumer needs to be the solution to the problem. Consumers need to understand clearly before they enter a contract. The reality, unfortunately however, is that consumer often only respond when they have a problem already. Thus, consumer education needs to focus on changing the culture so that people can be more open about their income and financial obligations in order to avoid future problems.

"Consumer Rights in the Context of Human Rights"

Paul Krankshaw

National Consumer Forum (NCF)

Established in 1994 as a body dedicated to the protection and promotion of consumer rights and interests in South Africa, the National Consumer Forum (NCF) aims to monitor and raise vital consumer issues, focus on the consumption of goods and services, their motives and consequences, and the consumers' potential to positively influence them, inform, generate opinion and coordinate campaigns, and work to increase consumers' influence on the market place. The NCF believes in the right of all consumers to a wholesome environment, a fundamental quality of life, good quality in the goods and services provided by the private and public sectors alike.

An affiliate member of Consumers International, a federation of over 260 consumer organizations in more than 120 countries, the NCF works to assert and defend the rights of consumers as stated in the United Nations Guidelines on Consumer Protection of 1985 (and as amended in 1999) and to ensure that Consumer rights find expression in consumer policy.

The historic phase of consumer protection in South Africa has been how to empower the consumer movement. NGOs find themselves lacking resources as the government consolidates what they used to previously provide. There is a no strong general initiative to involve the government. There is not a great deal of coordination on consumer rights and therefore the impact cannot be gauged. Existing organizations usually have no capacity to deal with measuring impact. Newspapers can play an important role in breaking ground and in addressing consumer issues effectively.

Discussion:

Moses: NGOs need to play a visible role by focusing on advocacy, not just mediation. They need to emphasize all aspects of consumer protection and particularly advocacy with the government. Consumer education is the key to creating a balance between the government's intentions and what consumers need. Organizations like Black Sash and NCF need to be in the Parliament lobbying for consumers

Thami Bolani: DTI has given extensive support, both financial and non-financial for enterprises. Such support is not available for consumer protection since 1994. consumer intervention is weak due to the lack of financial resources.

Question: Peter Van Dijk posed a challenging question, "Is access to affordable credit a human right?"

Answer: Thami Bolani responded that yes, it is, but we need to be responsible in offering credit.

"Do microlenders have the right to charge exorbitant rates to sustain themselves?" - Van Dijk continued.

Xolela replied that lenders need not lend recklessly.

"South African Consumer Advocacy Model: Improving Microfinance Client Protection - Black Sash Consumer Casework and Advocacy Model"

Mr Xolela May

Black Sash Trust/ Knysna Office Republic of South Africa

HISTORY AND BACKGROUND

Black Sash is a 50 year old organization whose name derived from when its supporters used to wear black sashes across their chests which symbolised the death of the constitution. In the past when there was a discriminatory apartheid government, the organisation used to focus on issues such as civil and political rights involving racial segregation, denial of voting rights, and detention without trial to name.

In 1984 the Black Sash Trust was formed in order to receive funds from overseas donors who wished to support the work that the Black Sash was doing with communities faced with forced removals. In 1995, a year after South Africa's first democratic elections, Black Sash membership went through a process of change in recognition of the new political situation. This process led to the membership organisation closing down and a transition from a volunteer-managed to a professionally managed organisation. The Black Sash Trust retained its mandate to carry on the work of the "mother" organisation, directing and raising funds for the advice offices, which continue to operate in Cape Town, Knysna, Johannesburg, Port Elizabeth, Grahamstown, Pietermaritzburg and Durban. In February 2003 the organization took steps to undertake to deepen its relationship with other paralegals through training programmes and other forms of support.

Much has changed since the collapse of apartheid and the installation of a democratically elected government, however, one great injustice remains that of poverty. Until poverty is eradicated, many South Africans will continue to live in poor and inhumane conditions, deprived of their socio-economic rights and dignity and unable to fulfil their potential. Poverty also threatens the economy and respect for the rule of law and threatens the fabric of South Africa's young democracy. Economic injustice and a lack of economic participation give rise to great numbers of "marginal" persons unable to realise their potential, or unable to move up from their positions in society and play a meaningful role.

Over the past few years, advice offices have worked with many clients and have their fingers on the pulse of many sectors of the poor. These offices have alerted consumer advocates to the pressing problems of the poor. These issues so often relate to economic and social justice, including access to grants and the other forms of government assistance such as the unemployment insurance form (UIF), which are denied to the poor and illiterate as a result of incompetence. Grants and other forms of social security are, for many poor households, the only form of income. It is therefore vital to ensure the efficient flow of these grants and funds to provide basic levels of subsistence for The Black Sash. The request for social justice is imperative not only for the poor people of South Africa but also for the good of all citizens.

Vision and Goals

Black Sash maintains a vision for South Africa where human rights are recognised in law and respected in practice, where the government is accountable to all its' s people and attends to their basic needs, and where constitutional principles are upheld by all. Furthermore, the organization believes that, through individual and collective non-violent action, people have the power to change their own situation and society.

The aim of Black Sash is to enable all (with the emphasis on women) to recognise and exercise their human rights particularly, their social and economic rights and to create a society which has effective laws and delivery systems, including comprehensive social protection for the most vulnerable.

Black Sash commits to upholding the following core values:

- Justice and the protection, recognition and implementation of human rights.
- Rigour, accuracy and meticulousness in our work
- Integrity
- Independence and courage
- Respect for human dignity
- Non violence
- Voluntarism and vigorous civil society

The Black Sash is well placed to assist people gain access to their security benefits as they have a long history of working as a human rights organisation and have the structures to take problems presented at grass root level (at the advice offices) to the legislative level.

Black Sash Consumer Advocacy Model

Black Sash maintains seven advice offices around the country. Each of which is able to handle problems experienced by ordinary citizens. The location of offices throughout the country offers an important opportunity to assimilate a diverse range of problems, find the common thread among these problems, compare this to the law, find out how it should be interpreted, and then make plans for taking it up in advocacy work. One particular case problem can be used as a basis to challenge laws and policies in the country. A solution for one person can then become a solution for many people.

The casework methods which Black Sash employs in its daily practice is one on one, which simply means that staff consult with one client and carefully listen to her/his problem, after such consultation, staff allow the other party to present his/her side of the story. Next, staff will see if they can be resolve the matter or act as a Mediator in the problem, which means affording the parties to reach an amicable agreement by themselves fairly and squarely. Through this one on one approach Black Sash is able to hear the problems while they are still fresh and directly from the "horse's mouth." This also affords our clients an opportunity to be more pro-active in the matters that affect their lives.

Why Consumer Rights?

Consumer complaints have recently increased in number in the advice offices. Most consumers are ignorant about their rights. As a result of their ignorance they are abused by unscrupulous micro credit institutions. South Africa's fragmented laws on credit granting have resulted in citizens embracing the new National Credit Bill. Black Sash, however, also calls for a comprehensive debt law review as the one follows the other and cannot be separated.

The kinds of consumer problems encountered involve money lending and the taking of credit. Black Sash advises clients to go to reputable companies to take out loans. However, in South Africa, reputable comes at a big price for those who are poor. Registered companies can charge whatever interest rates they want. They can charge the earth because the competition that was promised to bring down interest rates is non existent because, as a consumer, one cannot easily as compare the cost of credit before taking out a loan.

Many people are so desperate for the credit that they sign contracts without having looked at them. These are not illiterate people but also ordinary citizens who find the small print of contracts too difficult to understand. Financial illiteracy in South Africa is a BIG problem and gets many people into trouble that will take years to get out of.

Taking out credit is not just about getting money. It is about understanding complex legal concepts like prescription, default, acknowledgement of debt, consent to judgement etc. It engages one in a world that few understand. If a client defaults, they also have to engage in a whole other legal world which most people are intimidated by and avoid at all costs or one can just put their head in the sand and hope it will go away. It does not go away.

If 58% of all loans are taken out for consumptive purposes (Black Sash sees consumptive purposes as loans for food, electricity, rent, clothing and unexpected life events) and only 4% of all loans for productive enterprise then we have a problem¹. A client's shopping basket becomes VERY expensive and in Black Sash's experience, loans become a form of income substitution where every month one has to take out a new loan to cover your expenses. Thirty day cash loan charges range from 225% to 360% per annum²

Black Sash Casework Analysis and Findings

Based on analyzed findings from Black Sash casework and campaign perspectives, the following questions come out:

1. Can a healthy credit market of taking out loans and repaying them at a reasonable rate be anticipated from this model?
2. How given the above challenges and reality do people in Southern Africa better their own lives through access to credit?
3. Is access to credit in its present form appropriate to our African context where we talk of two economies, one sophisticated financial governed by big money and big companies with huge profit incentives and the other a simple basic economy? , how do the two meet or can they meet in a form that is equitable and not discriminatory?

In conclusion, Black Sash is proud of its advocacy and casework model but members are humbled by the fact that they know that there still have a lot to learn. The take on the way forward lies in the principle of an ancient Chinese proverb: "A journey of a thousand miles begins with a single step".

¹MFRC statistician. February 2005

²Costs, volumes and allocation of Credit. March 2003. Dr Penelope Hawkins. Feasibility

"Consumer Protection for Microfinance in Zimbabwe"

Godfrey Chitambo

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1. INTRODUCTION

1.1 About Zimbabwe

Zimbabwe has a combined population of about 11 634 663 (2002 census). It is anticipated that unemployment is around 70% and that almost 60% of the population is living below the poverty datum line. According to the Consumer Council of Zimbabwe, a family of 6 needs in the region of Z\$ 1, 7 million (USD 274) just to get by.

Inflation nosedived from a peak of 622.8% in January 2004 to a low of 132.7% in December the same year. Prices have stabilized to a large extent and although there are some shortages here and there, in relative terms there is an acceptable availability of commodities as compared to the 2002 2003 era.

That being said and done, poverty levels in Zimbabwe are still at alarming levels. A 1998 Government Poverty Assessment Study indicated that 72% of all households in Zimbabwe are affected by poverty. As mentioned, the average family needs an amount in the region of USD274 a month to get by. This leaves a very big gap between what the general population is getting as salaries and what they need for them to survive. With the high level of unemployment the country is getting more and more informalised. Many factories have closed down. The increase in the informal sector has put an immense pressure on the microfinance industry in Zimbabwe to cater for the informal sector. According to a 2000 USAID study there was a financing gap of Z\$3.7 billion between supply and demand. Extrapolated this figure could be anywhere higher as the situation becomes more and more acute.

1.2 The Microfinance Scenario

At the current moment MF players in Zimbabwe comprise developmental players (those lending to micro enterprises only), savings and credit unions governed the Cooperatives Act and the numerous moneylenders who have a mixture of developmental and consumer lending in their portfolios. The developmental lenders and the consumer lenders are governed by 2 instruments, the Money Lending and Rates of Interest Act (Chapter 14:14) and the Prescribed Rates of Interest Act (Chapter 8:10, both Parliament statutes.

As at December 2003 there were 1660 players registered by the Ministry of Finance. This figure excluded the savings and credit unions which are registered under the Ministry of Cooperatives. The large numbers of players were as a result of fairly relaxed barriers to entry. Entrants, among other things, had to pay an application fee of Z\$25 000 (USD 4.03) and have a capital of Z\$250 000.00 (USD40.32). A number of players also used their retrenchment packages to enter into the sector as entrepreneurs employing themselves in the wake of non existent traditional employment. The licencing requirements were such that anyone who really wanted to enter the sector could do so with ease.

When the Central Bank came onto the scene as regulators of the sector, around 700 players collected application forms to register under the new laws. Only about 200 have since returned/submitted application forms which are at various levels of finalization with the relevant unit. Less than a third of all the applications have been registered as of now. The major reason is that most of the entities were on the smaller side, a fact which the Central Bank did not realize when it started the exercise. Microfinance and money lending activities are concentrated in the 4 major cities with Harare having a 53%, Bulawayo (second largest city) 19 and the other 2 cities of Gweru and Masvingo being at 9 and 8% respectively. This is in tandem with the population statistics where Harare and its environs account for 16.3% and Bulawayo 6%. It was also realized

that the complaints were more or less in these proportions.

2. CONSUMER PROTECTION

2.1 Overview of Consumer Protection Laws in Zimbabwe

The protection of consumers from whims and vagaries of trade malpractices is not a recent phenomenon in Zimbabwe but dates back to the colonial era, during which time positive steps were taken to institute the formation of vigilance committees in Harare and Bulawayo aimed at meeting protective needs of white minority consumers at the disadvantage of the black majority who lived in the rural settlements, and to produce better understanding between the producers and the consumers.

Growing concern into consumer protection came with liberation movements that became African Governments. These created an environment for consumer movements to open debate into consumerism and lobbied for protective legislation and regulatory requirements intended to protect consumers in both commerce and financial services. Zimbabwe is one among countries in Africa that has developed or enacted policies or measures to protect consumers.

This paper will give an overview of some of the laws that generally protect consumers in Zimbabwe and then zero into the historical development of consumer protection laws that specifically looked at financial services such as micro-finance institutions.

2.2 Consumer Protection Laws

Zimbabwe uses the Roman Dutch Law, under which the following factors compound the consumer's cause notably:

- ❖ No class action can be entertained where a group of people has been wronged by a defective product.
- ❖ If an individual has suffered an injury, or simply sold a defective product, one has to proceed against the manufacturer by way of the Aquillian Act, which means the buyer has to prove fault or negligence on the part of the manufacturer. So the only way to do this is through the medium of the courts, which is a very expensive process and cumbersome.
- ❖ If a group of consumers are dissatisfied with the quality of a product, they cannot group together and collectively bring action against the manufacturer.
- ❖ The legislation which had to protect the consumers had done so on an ad hoc basis, using very limited terms of reference and these include:
 - Price Control Regulations
 - Food and Food Standards Act
 - Drug and Allied Substance Act
 - Trade Measures Act
 - Council / Municipal Bye Laws
- ❖ Under common law rights, we have the warranty for merchandisable quality, which implies that goods bought should fit purpose intended. Also there is a warranty for hidden defects, which means that goods should have no defects hidden, which would not be discovered through a reasonable inspection.
- ❖ Price controls were also put in place as a regulatory mechanism to ensure that no one in the business community shall be found grossly flouting controlled prices, as overcharging was becoming rampant and consumers had yielded to despair.
- ❖ It is in the light of the foregoing that consumer protective laws inadequately addressed the concerns of the consumer who is confronted by issues of product safety, inflationary rates and economic efficiency, promotion of social justice and economic development.

2.3 Specific Consumer Protective Laws

The government through the Ministry of Justice, Legal and Parliamentary Affairs, with recommendation from the Consumer Council of Zimbabwe, set up priorities in areas of legal

framework for the protection of consumers in accordance with the prevailing economic and social circumstances.

Various legal systems specific to commerce were enacted and adopted and include:

- a) The Consumer Contract Act (1996) Chapter 8:03
- b) The Contractual Penalties Act (1996) Chapter 8:04
- c) The Hire Purchase Act (1996) Chapter 14:09 just to mention a few.

The Consumer Contract Act (1996) Chapter 8:03

The Consumer Council of Zimbabwe was assisted by the Law Development Commission, which had started to look into the issue of disclaimer clauses.

Our common law legislation had failed to adequately protect consumers from naked daily harassment by some businessmen through the insertion of disclaimer or exemption clauses. The use of disclaimer clauses had become one of the greatest loopholes in consumer protection programmes. Contracts such as "repairs accepted at owners risk", "clothes cleaned at owner's risk", "company not liable for loss or damage", pervaded the industry, but with the Consumer Contract Act (1996) Chapter 8:03 in place the greatest challenge as a consumer body is to see their removal from the company walls and retail shops.

3. CONSUMER PROTECTION LAWS SPECIFIC TO THE FINANCIAL SERVICES SECTOR

3.1 MONEYLENDING AND RATES OF INTEREST ACT (1996) CHAPTER 14:14

The act provides for the following definitions:

- "borrower" (consumer), any person receiving a loan of money and any person whom, whether by delegation or otherwise, the obligation of any borrower in respect of any loan of money has passed
- "money lender", as any person who carries a business of money lending or who advertises or announces himself or holds himself out in a way as carrying on such business
- "interest" is also defined as any valuable consideration given or promised for a loan of money, whether such consideration is in cash, in goods, in kind or in any other form whatsoever, and includes any charges of discount commission, expenses, injuries, fines, bonus and renewal and any other charges whatsoever not being taxable conveyance charges or revenue charges;

The act carries provisions that protect the consumer of such financial services as highlighted in the following sections:

- Section 6 of the Act makes it an offence for any financial institution to do touting for consumers to borrow money through advertising in newspapers or other print media. Any micro finance house found guilty of soliciting for clients shall be fined \$200 000.00 or face imprisonment of six (6) months or both fine and imprisonment.
- Section 8 of the Act protects consumers by stipulating the maximum rates of interest that should not exceed those stipulated in the Rate of Interest Act (1996) Chapter 8:10 Any money lender who shall be found guilty of an offence shall be fined \$400 000.00 or face imprisonment for a period not exceeding one (1) year. Such penalties are enforced by the Minister of Finance who is responsible for the administering of the Act.
- Section 9 looks at no recovery of interest as this tends to prejudice consumers if lenders are allowed to seek judgment for or recovery from the borrower an amount which exceeds a capital amount, which added to any sum already paid in respect of the capital debt, equals the sum actually advanced to and received by the borrower.
- Section 12 protects both the consumer and the money lender, as it states requirements in connection with instruments of debt which are, that is executed for money lent; and the amount actually paid by the borrower and the rate of interest which is to be charged in

respect of the loan. Pay instrument of debt, the act means, a negotiable instrument, bond written contract or other document in respect of any loan of money, but does not include any bona fide covering bond in so far as it purports to convey security for future advances. The act states that any person, who letters any such instrument of debt knowing that it contains false statement as aforesaid, should be guilty of an offence liable to punishment as for forgery or for littering o forged instrument knowing it to be forged as the case may be.

- Section 16 this section of the Act provides for consumers the right to be heard as it calls for the moneylender (plaintiff) to be called as witness at borrowers (defendant) request. Here a moneylender may not continue to seek judgment in favor when borrower has under oath claimed payment of the interest to the loan in excess of the maximum rate allowed by this Act. Thus no judgment shall be granted in such proceedings until the plaintiff has been examined by the court.

3.2 BANKING ACT CHAPTER 24:20

The Act provides for the registration of all banking institutions in consultation with the Registrar of Banking Institutions in consultation with the Reserve Bank of Zimbabwe.

The Act contains sections which directly protect the consumers as depositors of funds in financial institutions and the following sections have been cited.

- **Section 24:** makes it an offence for any banking institution to act against its memorandum of association rules of conduct of its business unless the registrar has given his written consent. The provision protects consumers against banks who end up doing illicit deals based on speculation, such as those done by other banks, where they ended up buying bricks and cars and investing in property.
- **Section 36:** Accounts and annual financial statements; The Act requires that every banking institution keep proper accounts and other records relating there to, and at the end of each financial year, prepare a financial statement reflecting the institution's operations and financial condition. Consumers have a right to information and these financial statements are published in the print media for depositors to judge the soundness of the banking institutions. However, not many of the consumers are able to understand economic terms that are used and the meaning of the figures that accompany financial statements. This limitation may be taken care of through consumer education programmes that focus on economic issues in relation to the financial services.
- **Section 40:43 & 45:** Audit Committees: It is common knowledge that anything that goes wrong and not in line with the requirements contained in section 36 should be easily detected by the Audit Committees as provided for in section 40 of this Act. These Audit Committees operate independently and should detect irregularities and report them to the Reserve Bank of Zimbabwe without delay in order to protect the interests of consumers (depositors) and avoid situations whereby banks are put under curatorship.
- **Section 53, 54.55:** calls for placing of banking institutions under curatorship, whereof the provision may sound noble on paper, the reality on the ground is that depositors (consumers) are not protected as they find themselves without cash, as funds are frozen. In November/December Bank X was placed under curatorship, and depositor's funds were locked up, leaving consumers stranded without cash for the festive season. Hence, some sections of the pieces of legislation do protect consumers, but there are however gray areas, that needed to be sorted out and recommendations passed for the amendments, as obviously there is no absolute reason why depositors are denied their money even if the bank is under curatorship.

3.3 BANK USE PROMOTION AND SUPPRESSION OF MONEY LAUNDERING No 2/2004

The Act provides for the establishment of a unit within the RBZ that shall be referred to as the Bank Use Promotion and Suppression of Money Laundering unit.

- **Section 4:** Looks at the functions of the Unit, which among other things is to promote the use by the consumer of financial institutions for the purpose of mediating, facilitating or aviating cash transactions.
- **Section 6:** Provides for inspectors from the Unit to make surprise visits to investigate any designate institution, trader or parastatal on issues of corruption and mismanagement of depositor's funds. The courts are given powers to ask person in charge or control of the premises to give information as requested by the inspectors.
- **Section 14:** Unlawful trading in cash: The Act makes it an offence for a person other than a financial institution or moneylender shall exchange any negotiable instrument for cash at a premium. Such provisions of the Act protect consumers from Black-marketing of cash.
- **Section 15:** Maximum cash to be kept by moneylenders: It is any offence for any money lender to keep at any time for purposes of his or her business cash in excess of ten million dollars, unless he or she has good cause for doing so. Consumers are protected from these financial institutions that will hoard cash for speculative purposes or even sell cash in times of shortages, such as those experienced in 2003.

3.4 TROUBLED FINANCIAL INSTITUTION (RESOLUTION ACT) No 31 / 2004 CHAPTER 24:28

- **Section 10:** the section looks at safeguarding the interest of depositors, creditors and the members of the troubled financial institution by restoring the troubled financial institution to a sound financial condition or if cannot be so restored, to safeguard the interests of depositors, creditors and members through
 - a) restructure the trouble financial institution
 - b) amalgating the trouble financial institution
 - c) transferring any part of the (TFI)
 - d) winding up the trouble financial institution in terms of the section 57 of the Banking Act.
- **Section 13:** viable disposition of property by trouble financial institutions and specified persons. Small provisions protect consumers, as it is an offence for a financial institution in sound financial positions and under threat from being declared insolvency to dispose any or party of its properties. The act gives powers to the courts to withdraw or call such transactions null and void, for example, if Bank X was to sell its vehicles in order to redeem its financial position and later put under curator ship, those vehicles bought by depositor's funds will be brought back to Bank X through a court order.
- **Section 21:** Provides for the attachment of assets of specified persons in satisfaction of their liabilities to trouble financial institutions, with the view of protecting depositors of their funds which might have been used in the purchase of such assets. We have fugitives of such troubled financial institutions already living in exile and have been specified.
- **Section 7:** Provides for special provisions for the repayment of depositors of troubled financial institutions. This section is a gray area for consumers as it does not protect them but cause much despair as depositors are given options to be paid their money in cash over a period of up to 24 months or take up shares in troubled financial institutions. Such provisions are not sound enough or justifiable as they violet consumer rights in troubled financial institutions.

From the foregoing overview it is clear that consumer protection legislation has been put in place through the enactment of Parliament as a reaction to the prevailing economic situation in the country. Although much of the legislation put in place carries sections that protect consumers there are gray areas that obviously this workshop will identify identified and would want to open discussion and give recommendations which will be forwarded to the Law Development Commission for consideration before amendments are made.

4. THE MEETING / BOILING POINT

Amidst such well meaning pieces of legislation, what happened and what were the causes

High unemployment, high need to borrow for micro enterprises, high need to borrow for consumption purposes and an unprecedented high level of players coupled with a Ministry of Finance which was still letting the sector find its feet gave rise to a number of challenges. Coupled to this was also another dimension to the equation: there were 2 levels of players in the field. The first were the traditional MFIs which were donor driven, opted to make very little profit at the expense of increasing outreach and were definitely poverty alleviation driven. Juxtaposed to this were the new players who were treating the sector as a profitable sector where their investments were supposed to produce a return. This was purely a business venture in an otherwise perceived profitable sector and if poverty alleviation was the fashionable word under which to go in by, then this became the norm.

4.1 Crossroads

What transpired? A lot of things happened. To call them unfair would be to take sides but suffice it to say that the consumer definitely was caught in between. In the thick of things was a young umbrella body which was not yet prepared for such an onslaught of problems from a number of angles:

- Inexperienced to deal with the problem
- Too thin on staff
- Did not have any regulatory power of any kind
- Only represented a small number of players: membership was and is still voluntary
- not sure who to turn to among the following to solve the problem
 - Consumer Council of Zimbabwe
 - Consumers International
 - Zimbabwe Republic Police
 - Ministry of Finance

5. Steps taken by the MFIs and or MFAs

In Zimbabwe the wake up call was rung on 2 fronts: by the clients themselves and the Consumer Council of Zimbabwe. From the consumer point of view, there were number of challenges: some did not know of the existence of ZAMFI and yet some thought ZAMFI was another MFI. For those who knew about ZAMFI they were not sure what its roles were. To compound the issue ZAMFI itself it was not sure how to tackle the problem but there was an item of agreement by all concerned that consumer protection is an important issue in the regulation of moneylenders and MFIs because their clients usually have very limited choice or bargaining power. Some MFIs employ crude lending tactics to increase the likelihood of loan repayment... (Moyo Theresa, Dr and Kalungulungu P, 2004).

Most of the players who were being accused of malpractice showed to a large extent, an element of maturity and a desire to retribute where necessary. Most of them at least:

- responded to the allegations
- agreed to come to adjudication meetings
- reasonably reduced interest and other unexplained charges
- any other reasonable requests e.g. accommodating complaints from out of town, assisting police, answering Ministry of Finance queries, giving instructions to some overzealous branches etc.

5.1 Revamped Criteria for membership

The Association re-visited its criteria for membership in an attempt to allow only those who were into pure microfinance to remain or become members. It had been noticed that the problem was prevalent in the other section of the players who were predominantly into consumer lending. The following are some of the clauses which were an attempt to exclude the perceived misbehaving institutions:

- Have a portfolio that comprises completely of developmental lending (i.e. 100%) and have proof of the same.
- Operate a solvent and sustainable entity from an **identifiable and fixed address**.
- Submits clearly documented policies and procedures for governance, management and **lending**
- Displays a clear commitment to attaining/working towards BEST PRACTICES
- Abides by resolutions of the ZAMFI AGM at all times.

5.2 Code of Ethics and Membership Certificate

The Association quickly revamped its Code of Ethics which at that time was shallow and peripheral in dealing with client complaints. In particular the following clauses were incorporated to specifically deal with the challenges at that time:

- Comply with all applicable statutes at all times
- Exercise **integrity, honesty, diligence and due care** in carrying out their duties and responsibilities.
- Conduct themselves with **courtesy and due consideration** towards all with whom they come in contact with for the prosecution of business.
- Be **accountable for all clients' funds** received in the course of business.
- Be cognizant of their **responsibilities towards the wider community** and in particular the microfinance industry as competent organizations. They shall follow the guidance of this code of conduct and in circumstances not specifically provided for by the current code, they shall seek the guidance of the association and **ensure they conduct themselves in a manner consistent with promoting the good reputation of the association and the industry.**
- **Not knowingly be party to any illegal or unethical practices or behaviors**
- **Safeguard the interests** of employees, colleagues and clients at all times.
- Conduct themselves in a manner **consistent with the highest degree of professionalism** and respect for fellow members of the association.

Certification

ZAMFI held a certification day on 8th August 2003 where all members were issued with certificates. It is a constitutional requirement for members to display their ZAMFI certificates. All MFI branches were required to have each a certificate. The Association followed up to ensure that each branch had a certificate. This was not an overnight event but took time. The follow up was also meant to increase the visibility of the Association by branches who knew very little about ZAMFI. Brochures, magazines were also distributed to try and educate borrowers of our intermediary role when the need arose.

At the certification day all members signed, together with the Executive Director and the Board Chairman the Code of Ethics in a sign of agreeing to be bound by the Code.

5.3 Penalties

"Failure to adhere to any of the above may result in the withdrawal of membership as determined by the board on the recommendation of the association's secretariat as provided for by sections 9.1.(d) and (f) of the ZAMFI constitution."

5.4 Constitutionality And Interpretation Of The Code

"This Code of Ethics will and should be read in tandem/conjunction with section 8.1 (a) of the ZAMFI constitution. The ZAMFI Board is mandated as provided for in section 10.6 b) for the development and promulgation of bye-laws."

5.5 Constitution

The Code of Ethics and the membership criteria changes were an attempt to ensure that only those who were not fouling the air would be admitted as members. The Code of Ethics was

incorporated into the ZAMFI Constitution and clear penalties were developed as well as processes for their implementation. The ZAMFI AGM of 2003 ratified Secretariat recommendations that anyone who was predominantly into consumer lending should relinquish their membership: this saw a number of members being asked to resign their membership or realign their operations to acceptable levels.

5.6 Publicity Campaigns

With the generosity of the Consumer Council of Zimbabwe who had brought the complaints to our doorstep, ZAMFI went on publicity campaigns together with the CCZ. The process was not easy. At its inception ZAMFI was dragged crying and howling to the media to explain what exactly was happening. It was as if ZAMFI was being persecuted on behalf of its members. The situation quickly turned for the better when the Association totally bought into the programme. The CCZ had some slots on the major radio stations and it was to those which they invited the Association to public question and answer programmes. Some of them were in vernacular languages and they had a small time for phone ins for those who could. The Executive Director had the opportunity to take the following to the radios at the generosity of the CCZ:

- The Programmes Coordinator
- The Board Chairman
- The Board Vice Chairman
- The Planning and Operations Committee Chairman

Salient elements of the radio and TV programmes

- ❖ General publicity to the public about the vision and role of microfinance in any economy giving examples of successful integration of microfinance into some economies
- ❖ Specific discussions of the role of ZAMFI, state, borrowers and the MFIs themselves
- ❖ Specific discussions about the perceived malpractices that were being reported as being perpetrated
- ❖ Possible areas of assistance in reporting the alleged malpractices i.e. CCZ, Ministry of Finance, Police Discussion on the 2 instruments that governed existence of the players i.e. chapters 8:10 and 14:14
- ❖ Dwelt to a large extent on the interest and how to take and realize securities (this seemed the major problem)
- ❖ Advised the public to borrow from bona fide players and we displayed the Certificate on the T.V for all and sundry to be guided in dealing with players

After successfully riding on the back of the CCZ programmes, the media appreciated that the matter at hand deserved more publicity so ZAMFI was invited to other radio programmes where the sessions were longer and members of the public could phone more. Some of the series included the This Morning series (about 15 minutes) and a 1 hour programme on Face the Nation where the Executive Director was invited. The electronic media also took up the challenge.

5.7 Collaboration with CCZ

Apart from the publicity issues, ZAMFI was invited by the former to sit in adjudication sessions where complaints would be solved. This proved very popular to the extent that the ZAMFI Programmes Coordinator literally was on stand by for any CCZ complaint adjudication session. This brought ZAMFI more into the nitty gritty of the extent of the problem and appreciated more what was going on. In the meantime, the public started phoning and writing and some were calling at the offices. The complaints were widespread and since the Secretariat had other issues on its agenda and this problem was only part of the agenda, it could not deal with it full-time. Some of the players were too small, did not have telephone numbers and most did not respond to letters from either ourselves or from the CCZ.

5.8 Members Directory

In an attempt to reach the public faster ZAMFI sped up the process of a members' directory where it was envisaged that when people phoned requesting who to borrow from, the Secretariat would

just email, post or fax a list of members and their products, maxima in terms of loans and conditions of business. This would also promote our members. In early 2004 the Association published a list of members in the major newspapers in the country in an attempt to educate the public about who to deal with.

5.9 Representation to the Ministry of Finance

Since the Ministry of Finance was the regulatory authority at that time, ZAMFI sought to take the matter to the Ministry. It simply renewed and requested the implementation of some of its recommendations presented to the Ministry as early as 2002 about how to limit the entrance by increasing capital requirements of entrants, among other things. One suggestion was also that before renewal of licences, the Ministry should check with the CCZ so that any players with a number of aggravating issues would then either be asked to account or be refused a license.

6. ISSUES ADDRESSED BY CONSUMER ADVOCATES

6.1 Interest related issues

In Zimbabwe this was the most pressing issue. Interest rate for MFIs had been pegged at a maximum of 35% per annum. This had last been reviewed in 1996 and the situations prevailing at that time and the current were totally different. At the promulgation of the interest rate inflation had been around 26% but at the current environment inflation had shot to about 400%. It was therefore not feasible for the players to continue charging at the old rates, not mentioning issues of capital erosion and threat of total closure due to losses. This was further aggravated by the donor fatigue and donor flight which the country experienced at about the same time.

Be that as it may have been: the need for survival by players was evident and one role of ZAMFI was to foster the growth and sustainability of members and the whole sector. But there was a gross misalignment between the need to survive and pure greed: the sector had reached a level where it was just fleecing the borrowers and the major way was through interest rates. Lenders could charge what the market could carry and this was the major complaint which the CCZ asked us to adjudicate in. A number of cases were adjudicated and the major reason was through the use of middlemen. It became apparent that players were not using proper credit analysis techniques but were just lending and using debt collectors to chase up defaulters. The debt collectors added their own hefty margin and their collection methods to say the least were chimerical, hideous and inhuman. Due to the perceived ease in which borrowing was being done, members of the public over borrowed since, in the absence of a credit bureau, they could borrow from any institution without the next one being aware: some had even the audacity to borrow from the same institution but at different branches.

The ZAMFI in-house magazine, the Microfinance Monitor started dedicating a section, the Weird Corner in which it published some of the issues which would have come before the arbitration sessions. In one incident a demand for Z\$870 000,00 was made for a loan of Z\$65 000,00. Eventually both the principal lender and the debt collector agreed to reduce the final amount to Z\$87 000,00. This led the sector to conclude that " There is need for sanity to prevail. " the system allows greedy and unscrupulous loan sharks to ". unjustly enrich themselves while tarnishing the image of the industry"

Dealing with the interest rates issue was not very difficult. Due to the archaic ness of the interest rate, it can be safe to indicate that this was a problem asking to be solved. There was so much innovation at interest rate setting that not a single MFI was adhering to the 35% per annum in its strictest sense.

6.2 Realization of securities

This was one major area of concern. Most of the cases were reported to the police who made some headway in recovering some of the furniture and household goods which would have been grabbed as compensation for non payment.

7. WHAT NEXT

It has been noticed in this presentation that indeed there are a number of enforceable legislation and despite the noble efforts by all stakeholders, up to and including the Central Bank of Zimbabwe; the situation is still far from being harmonized in favour of the client. The situation must be changed so that the client can negotiate and seek redress on a footing as nearly equal to the lender as possible. If anything the current lull only gives the situation some breathing space. It is in this breathing space which the country needs to come up with a coordinated approach and this current workshop is providing exactly that. The years 2002 and 2003 did a lot to put the need for consumer protection into perspective. Deliberate actions need to be taken as a way forward from all stakeholder point of view.

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Uganda Country Paper

Strategy for Microfinance Consumer Education and Protection - Uganda

Henry Okiria, Executive Director, Association of Microfinance Institutions in Uganda (AMFIU)
Prepared by FSDU and AMFIU

AMFIU's Strategic Communication policy is one where communication has a vision, is based on clearly defined strategy and is designed to achieve specific goals established in advance. This type of communication has to be results-oriented, based on research, client centered, Participatory, benefit oriented and service-linked. In addition, it should be multi-channeled, high quality, advocacy related, expanded to scale, sustainable and cost effective.

Background on consumer education in Uganda

Most Ugandan MFIs try to operate as businesses; try to attain financial sustainability and positive social impact. Sometimes, interest takes priority over the social aspect. The relationship with clients is not always smooth but can be better.

Problems that can be improved through more effective communication on the part of the MFI and the client:

- When MFIs and customers do not trust each other, this can sometimes cause them to mislead one another
- Interest and fee structures are too complicated
- Clients sometimes provide false information to qualify for loans
- Clients falling into "debt traps"
- Some clients would be better off saving instead of borrowing
- Issues that place both the clients and MFIs at risk

Why Consumer Education?

Consumer education needs to provide key information to micro finance consumers (current & potential) so that they use financial services effectively. The process of developing a solid consumer education plan begins with a literature review and continues with field research and a strategy design workshop.

A literature review should look at the following facts:

- Competition in the MFI sector is influencing a client friendly approach
- Some MFIs are aggressively marketing credit products
- Many customers expressing a strong desire for training in financial issues i.e marketing, debt management
- 68% of consumers not fully aware of interests and fees before taking loan
- 40% admitted not disclosing all information including debt information to MFI providers

When developing a field study, one should consider the following:

- 3/4 of the respondents did not "shop around" before choosing an MFI
- Consumers think access to secure savings more important than access to credit (58%vs 38% respectively)

Priority Issues for Consumer Education

In Uganda, the two key issues to be addressed are that consumers not fully aware of their rights and responsibilities when they enter into loan contracts and that consumers have inadequate knowledge about the types of financial institutions and financial products available to them

The goal of an effective consumer education strategy is to give consumers necessary knowledge about their rights, obligations and choices, so that they negotiate with financial institutions for appropriate products for their needs in an atmosphere of trust.

Objective 1:

- Increase the proportion of microfinance customers who state they know their rights and obligations before disbursement of a loan from 32% to 50% within 6 months in Masaka and Mbale

Objective 2:

- Increase the proportion of consumers, both current and potential, living in the districts of Mbale and Masaka who understand products of available MFIs.

Key Promise 1:

- If you have adequate information about your rights and responsibilities, you will feel more secure and more likely to choose a product that's suitable for you

Key Promise 2:

- If you clearly understand the products offered by financial institutions, you will be more likely to make the best choices appropriate for your needs

Once these promises have been made, the desired action response on the part of the client should be a statement such as, "I will make sure I fully understand my rights and obligations before signing my contracts." And "I will seek information so as to understand the products offered by MFIs to enable me make the best financial choices."

Ways to Market a Consumer Education Strategy

Uganda has used a variety of media, material and channels to market its consumer education strategy, including through radio spots and programs, posters, flyers and leaflets and through community education by financial extension workers (use of flip charts).

Print materials were developed through a consultative meeting held in Masaka and Mbale. It helped to develop the concepts for the strategy, the design and layout for the material. It was then reviewed by technical people to ensure accuracy and effectiveness. Next, the material was pre-tested, revisions were made based on the pre-test results, the material was translated, reviewed and produced.

Next, the developers identified appropriate radio stations in order to book air time. The group developed program outlines and selected guest speakers to talk about consumer education. Finally, once the broadcasts were made, an important part of the education strategy was to monitor the broadcasts to identify feedback useful in developing the strategy further.

South Africa Country Paper

Consumer Protection in South Africa with specific reference to the micro lending industry and the Microfinance Regulatory Council (MFRC)'s Education and Communication Initiatives

Peter Setou
MFRC

The promotion of consumer rights goes back several decades. First coined by John F. Kennedy in 1962 through the declaration of basic consumer rights on 15 March 1962, Consumer International first observed consumer rights day March 15 1983. The United Nations General Assembly adopted the guidelines for consumer protection in 1985, embracing eight basic consumer rights and provided a framework for strengthening international consumer protection. Over the years we have seen many countries taking consumer issues seriously. South Africa, like many countries, is celebrating International Consumer Rights Day (March 15) with March dubbed "the consumer month".

Consumer Protection in South Africa

The South African constitution introduced a Bill of Rights which were binding on the state, individuals & juristic persons. This Bill of Rights was important because it cemented consumer rights; e.g. right to access of information (s32), access to Courts or, where appropriate, independent and impartial tribunal or forum.

Consumer protection in South Africa was further classified as a functional area of concurrent competence between the Provincial & National sphere of government (schedule 4 part A of the Constitution). Most, if not all, provinces have since developed consumer protection laws and policies (Consumer Affairs Act(s) dealing with the investigation, prohibition and control of unfair business practices. These Acts establish offices for the investigation of Unfair Business Practices, the Consumer Protector & Provincial Consumer Courts.

At national level there is the Unfair Business Practices Act, 1988 which provides for the prohibition and control of unfair business practices and for the establishment of the Business Practices Committee which investigates matters referred to it including proactive investigations. After considering a matter it refers such to the Minister of Trade and Industry with recommendations. After consideration of the report, the Minister may, by notice in the Gazette, declare the said practice unlawful and make appropriate ruling. Finally, any person affected by the Minister's ruling may appeal to the Special Court. These interventions would apply to general consumer issues.

In addition to these procedures, various sector regulators include the South African Reserve Bank (SARB) which is responsible for regulating the Banks (prudential supervision), the Financial Services Board (FSB) which is responsible for the non- banking Financial Services sector/Institutions e.g., Insurance, Retirement funds, Financial Advisors and Intermediaries, Collective Investment Schemes, Insider Trading etc, and the Micro Finance Regulatory Council (MFRC), which is responsible for the Micro lending sector (non-prudential).

The Micro Finance Regulatory Council (MFRC)

MFRC's mandate is to, *"To promote sustainable growth of micro lending industry, to serve unserved credit needs while ensuring that consumer rights are protected"*

MFRC's Regulatory Progress

MFRC currently has 1 905 registered lenders, including 9 banks, representing 8 477 branches and a gross loan book of R17bn. They receive 79 468 calls at call centre. So far, they have made R3.7m in

refunds to borrowers.

The MFRC has established service level agreements with leading lenders, containing standards for complaints resolution. Of the 412 investigations conducted by MFRC into client complaints, there were 77 disciplinary hearings and 24 admission of guilt; 5 lenders deregistered.

Currently, there are 994 lenders participating in National Loans Register containing 5 million loan records; 16.5 million enquiries on NLR

MFRC's Education and Communication Initiatives

The mandate of the MFRC education and communication division is to communicate the existence of the MFRC, its role and functions to the public, to educate and communicate the public about the protection measures offered by the Usury Act Exemption Notice and the MFRC, and to educate the lending institutions about the council's role and objectives.

MFRC has a specific education and communication division which has the function to communicate and educate the borrowers through direct communication efforts such as use of various media outlets, the call center, OBs, and workshops. Indirect communication efforts include relationship and capacity building workshops with NGO's, trade unions, employers, consumer directorates and community leaders.

The typical borrower that MFRC deals with is employed, earns between R1000 6000 per month, a Living Standards Measurement (LSM) of 4-6 and people who did not previously did not have access to credit.

From 2002 to 2005, the MFRC has engaged in a comprehensive Education and Communication Campaign. Activities focused on the borrowers included development of educational material and conducting 531 consumer education and capacity building workshops with 45 775 participants to date. In addition, the MFRC held World Consumer Rights Day Celebration in nine provinces throughout the country. Media Relations focused on radio and television coverage, press releases, magazines and public service announcements.

Media Activities Since 2002

Consumer Awareness Advertisements	255
Newspaper Reports	1,710
Press Releases	117
TV interviews	45
Radio interviews	409
Outside Broadcasts	10
Advertising Value Equivalent	R 7 522 918.89

Capacity Building Campaign activities during this period included work with trade unions, NGOs, employers and various government departments. Exhibitions to increase consumer awareness took place at the Rand Easter Show and at the Parliament in Cape Town. Radio and television campaigns focused on presenting public service announcements on community radio stations, Carte Blanche (an interactive website), e-TV (South Africa's privately owned free-to-air television channel) and the South Africa Broadcasting Corporation (SABC)

Lender focused activities of the Education and Communication Campaigns in 2002 2005 included distribution of newsletters and circulars and lender workshops. In 2002/2003/2004 the MFRC conducted workshops in Durban, Port Elizabeth, Cape Town, Pretoria and Johannesburg. More than

1,600 micro lenders and pawnbrokers attended these workshops. In addition, the MFRC developed a Micro Finance Skills Project, encouraged the involvement of Previously Disadvantaged Individuals (PDI) lenders, and held a lender competition which challenged micro lenders to showcase their involvement in consumer education, housing lending and micro enterprise lending, responsible lending etc.

Another important initiative of MFRC has been a Debt Relief Program which aims to assist over-indebted consumers. Consumers with over 60% of their gross income as debt are eligible for the program. Services provided through the program include advisory and legal support. The project started at the beginning of 2003 and has been piloted in five sites in two provinces, working with seven service providers. To date, 671 cases have received assistance since the project commencement and 50% of the cases have been resolved. The MFRC is now evaluating the results of the pilot tests and is preparing for a full roll out of the activities.

Challenges

The biggest challenges faced by the MFRC are excessive credit extension to some consumers, resulting in unsustainable debt burdens, reckless credit extension by some credit providers (not limited to micro lenders), and consumer abuses due to a need on the part of credit provider to put themselves first in line for repayment. There is often, "no way out" for consumers, resulting in deviant consumer behaviour and spawning other abuses (e.g. administration orders).

Inadequate protection for consumers, especially low-income consumers is compounded by the fact that there is no effective regulation of marketing and disclosure. "Hidden costs" include credit insurance, club fees, transaction fees etc across the board; no pre-contractual disclosure and contracts with lots of fine print. There is no protection from excessive interest rates for low-income consumers and there are client perceptions of discrimination by lenders, reinforced by inadequate disclosure of reasons for refusal of credit. There is not any protection for consumers from inaccurate credit bureau information. Finally, there is differential treatment of transactions due to inconsistent credit regulation.

Into the future

The DTI recently finalised a new policy & draft bill to address the identified challenges. The Bill will be introduced in Parliament in due course.

Objectives of Policy and Bill are to:

- Promote competition and transparency by treating all credit transactions equivalently while recognizing different market segments
- Provide all consumers (and some businesses) with equal rights and outline rules of conduct
- Provide measures for over-indebted consumers
- Provide for a central register of consumers' debt obligations
- Create a scheme for the regulation of credit providers, debt counselors and credit bureaus

Conclusion

The credit market is not a risk-free arena, there is a considerable imbalance of power between consumers and credit providers, consumer education levels are frequently low, consumers are poorly informed about their rights and unable to enforce such rights through either negotiation or legal action. The MFRC's experience and in the regulating the industry and protection of consumers is an invaluable contribution to the development, formalisation and regulation of the credit industry & will inform future interventions. The new legislation is expected to result in a major improvement in consumer protection. It will address some of the obstacles that have prevented an efficient market

from developing, and have slowed down progress in critically important areas. MFRC believes that the new framework lays the basis for a regulated credit market that will contribute positively to unlocking the economic potential of the nation, whilst minimising social and economic costs and addressing the structural legacy that still results in discrimination against a large section of the population. It is therefore imperative that the new credit policy should balance protection measures with the regulatory burden it imposes on credit providers.

Discussion:

Right now there is not a strong consumer protection process in Uganda, which is why there is such a big push to develop more protection. Consumers can only seek redress in a court of law at present.

Question and Comment: How can consumer protection extend to cross border issues South Africa. Is there room for standardization of consumer protection, particularly with respect to the migration of consumers. Insufficient regulation in one country will affect other countries as well. No amount of consumer rights and awareness will be beneficial if no regulation exists and that are enforced.

Question: What problems exist at the borders in terms of regulation?

Moses responded that if a business moves to Lesotho, for example, what it does there also has an impact in the South Africa context. It would be important for relevant parties to come together to share practices to improve these conditions in neighbouring countries.

Rosemary from Zimbabwe brought up a COMESA workshop on trade that raised this cross-border issue. The governments attending agreed to include consumer protection in the trade issues. ECOWAS participated in the discussion as well. While this is positive, it is still not involving consumer advocates and they need to be involved.

Celestin of AFMIN mentioned that AFMIN held a workshop reviewing financial systems of eight countries in Africa aimed at decentralizing the financial system. AFMIN brought microfinance practitioners together and reviewed regulation and signed a memo of understanding for consideration by the governments of participants.

Patrick McAllister noted that interaction of this nature should be promoted as it encourages learning and bilateral interaction to promote informative interventions. Politicians also are actively engaged in these activities making it easier when policies have to be passed.

Question: What is the specific role of provincial governments in consumer protection?

Peter Setou of the MFRC responded that the MFRC has a strong relationship with local provincial governments and play an important role in dealing with consumer complaints and refer those beyond their scope to the MFRC. They have also created forums to talk about the issue. Some provinces have local office while other use NGOs to provide services to consumers.

Question: How was the code of ethics received by the members ZAMFI in Zimbabwe?

Godfrey Chitambo of ZAMFI said that the members of his network welcomed the code of ethics, which was accepted by the CEO, the Chairman and the Secretariat. They all were supportive and cooperative even in dealing with the disciplinary action. Only non-members had a problem with the code.

In the beginning, ZAMFI and the Consumer Council of Zimbabwe were not working synergistically for consumer protection. ZAMFI had other issues to deal with such as sustainability. Clients were not the main concern. The need to protect clients came later and ZAMFI started working on a proactive relationship with CCZ and also to promote transparency. Working together, they realized that they

could enhance the consumer education programs of both organizations.

In Malawi there is the legal framework to establish a council in charge of consumer protection and a Consumer Council exists. However, they need to promoted collaboration among these institutions.

In preparation for the break-out session, Patrick McAllister noted that in all three cases that the focus was on collaboration formalized collaboration in the case of South Africa, and non-formal in the cases of Zimbabwe and Uganda. It is important to keep in mind the pros and cons of these collaborative activities, keeping in mind how the role of government impacts all of this.

Breakout Sessions

Improving Microfinance Client Protection
'Advocate's Café, Regulators Room, MFI Club,

Participants in each group were asked to do the following:

1. Choose a facilitator and a reporter
2. Share experiences of consumer protection issues with microfinance
3. Consider the following questions and write the responses on a flipchart to present in plenary:
 - 1) Who has the primary responsibility for protection of microfinance clients and why? For example:
 - The Microfinance Institution
 - Consumer Advocates
 - Government
 - The Clients themselves
 - 2) Should the government delegate authority for consumer protection to consumer advocacy organizations, the microfinance industry or a third party? Why or why not.
 - 3) What is your ideal model of consumer protection for microfinance clients? Include in your description the roles and relationships among microfinance institutions, consumer advocates and the government.

Breakout Session Reports:

All three groups agreed on a collaborative approach which was inspired by the visit to the MFRC and the country presentations.

The Advocates Group believed that the primary responsibility for consumer protection is four fold and all parties are responsible: the MFIs, consumer advocates, the government, and the clients. The group also believed that the government should delegate some powers of consumer protection to consumer advocates and the microlenders (as in the example of South Africa).

The Government Group agreed that all four previously mentioned parties are equally responsible for consumer protection as well. They felt that the designated entity should be independent, be constituted of experts, have adequate capacity and resources.

The MFI Group indicated that consumer protection should be a mandate of the government/state and that they should have the power to authorize a third party to enact and enforce the law. The entity should follow the "three Cs": Cooperation, Collaboration, and Coordination

"The Role of Government in Consumer Protection South Africa"

Structure of the Consumer Protection Environment

Department of Trade and Industry

Moses Moletsisi

There are three important players for consumer protection in South Africa, the government who is providing guiding principles for market conduct such as through policy formulation and law making and who is putting in place mechanisms for redress. Business represents alternative dispute resolution mechanisms, maintains industry Codes of Conduct and carries out programmes for corporate citizenship & social responsibility. Finally, consumer organizations are responsible for advocacy and research, providing consumer services such as product testing and providing representation before consumer redress institutions

All need to work together in the interest of consumers.

Function Government: Consumer Policy and Law

The government's role in setting consumer policy and law is one that sets guiding principles for market conduct upfront. It provides clear definition of roles for all players to function effectively and collaboratively. The law itself assists government to commit sufficient resources, provides a coherent system through which consumers can access redress, and provides a framework through which consumer organisations can be supported.

So far the government has introduced a 5 Pillar Strategy:

1. Making markets work for consumers: Need for consideration of consumer welfare in sector regulation;
2. Establishing Consumer Rights: Regulating certain conduct;
3. Improving access to redress: Strengthen the capacity of consumer institutions;
4. Build the consumer voice: Develop and promote consumer advocacy & activism
5. Promote service excellence & accountability in the public and private sector

Establishing consumer rights

Consumer rights practices to be regulated. Otherwise, there is the danger of misleading advertising and selling practices; bait advertising, referral selling, pyramid selling, third line forcing, inertia selling etc. There is also the problem of unfair terms in consumer contracts, which include the exclusion of liability, binding the consumer when the company is at fault, restriction of consumer rights & remedies, unilateral variation of terms etc. In addition, there is the possibility of abuse of private and personal information. Another important concern is product safety and liability. There needs to be explicit recognition of a right to product safety in law, with an overarching role of SABS and protection of consumers which places liability on manufacturers & other parties where appropriate.

Establishing consumer rights

In establishing consumer rights, it is important to consider competitive issues and minimum mandatory requirements such as product quality. Consumers need to be given assurance that what is provided is fair and of an acceptable standard. With regards to guarantees, warranties and aftercare, consumers need to know where they are offered and they must be honored. For disclosure and labeling, there must be proper product labeling and a description of products & services that includes price transparency, the country of origin, and the terms and conditions pertaining to the transaction.

Improving access to redress: Proposed regulatory framework

Under the proposed regulatory framework, there is a new national regulator and tribunal, which is to be the champion for consumer protection through proactive identification and prosecution of consumer abuses and contraventions. They will deal primarily with national businesses, systemic problems and cross border issues, have a cross-cutting responsibility for education, and will provide a single entry point for consumers (referrals and monitoring). The provincial consumer affairs & courts will deal primarily with individual complaints against local/provincial businesses. Sector regulators will put in place mechanisms to deal with consumer complaints and education in sectors.

Alternative Dispute Resolution mechanisms will include business complaints handling systems, sector ombudsman, industry voluntary mechanisms such as voluntary codes, and small claims' courts.

Developing the consumer voice

The vision for the consumer movement includes support services to NGOs through product testing, product alerts, information dissemination etc... Additional support to Advocacy NGOs includes research, market monitoring, policy inputs, and representation [class action]. Government and business support will focus on funding & capacity-building programmes and specific powers in law e.g. right of representation before Tribunals. It will also allow for proper recognition of consumer protection actions.

Promoting service excellence

In order to promote service excellence with regards to consumer, each sector must be committed to the same goal. In the private sector, voluntary measures for consumer protection include corporate citizenship, customer responsiveness, and effective complaints handling systems. The government, in turn, will support standards (largely voluntary), provide current incentives, follow international and local best practices (guidelines, practice notes) and provide recognition through business awards. From the public sector, they will have an equivalent application of consumer law in the public sector with regard to service standards. Finally, they will foster "atho Pele" principles in local government.

With each sector doing their part, together they can create an environment of consumer protection throughout the spectrum of clients being served in South Africa.

Uganda Government in Consumer Protection

Byabagambi Katuku Herbert
Bank of Uganda

KEY POINTS:

- Microfinance as a developmental tool in Uganda
- Main actors in microfinance in Uganda
- Framework and levels of control within Financial system
- Factors and aspects influencing the growth of Microenterprise in Uganda
- The Role of Microfinance Outreach Plan in Uganda

Evolution of Microfinance in Uganda and the Government Intervention in the Process:

Microfinance is a developmental tool in any developing country. The role of government intervention in the process of microfinance development is based on dynamics and trends that have taken place since 1986. These trends and dynamics include: relief services after the war, the rehabilitation period, and developmental activities in Uganda. It is important to consider the main actors in the microfinance industry in Uganda. These include government intervention through programs like: the Poverty Eradication Action Plan (PEAP), the Medium Term Competitive Strategy (MTCS), and the Plan for Modernization for Agriculture (PMA) and many others. Another key actor is the donor community, which include: the EU, USAID, DANIDA, and IFAD. These have formed sub-groups on agriculture and private sector developments. Finally, Apex Associations have played a key role in the development of the sector, including AMFIU (Association of Microfinance Institutions in Uganda), the Uganda Cooperative Alliance (UCA), service providers and microfinance Institutions

Currently in Uganda there is a framework and levels of control within the financial system based on four tiers.

- **Tier One:** Traditional banks, ie. Stanbic and Standard Chartered bank
- **Tier Two:** Involves Credit institutions like insurance companies and East African development bank
- **Tier Three:** Involves MDI (Money Deposit Taking institutions) ex, FAULU, FINCA, PRIDE, UWT (Uganda Women Trust) and UMU (Uganda Microfinance Union).

From all these MDI's, only FINCA has qualified.

- **Tier Four:** Covers all MFI's SACCOs, ROSCAs and CBO's (Community Based Organizations). There are neither controlled nor supervised by the Central Bank, but they fall under AMFIU which recently designed a Performance Monitoring Tool (PMT), as a reporting format endorsed by all microfinance stakeholders in Uganda.

As a result of the tier framework, there is a trend of scaling down by traditional banks and scaling up by Enterprising MFIs.

Factors and aspects influencing the growth of microenterprises in Uganda

There are a number of key factors and aspects that can have an impact on the growth of microfinance in Uganda including an enabling environment with supporting policies. The structural framework that has given a free flow of information is based on the existence of a Microfinance Forum for all stakeholders, chaired by ministry of Finance, Planning and Economic Development. This forum is made up of APEX bodies which include AMFIU for networking MFIs in the country, the Uganda Cooperative Alliance (UCA) for Saving and Credit Associations, sub-committees which include capacity building, finance, lobby, consumer affairs, the District Microfinance Forum / Committee, for

stakeholders, information and policy making at district level, and promotion Centers meant for technical support for MFI's at district level. The sub-county is the lowest administrative unit, meant for developmental plans, where government programs are initially implemented.

The establishment of Microfinance Outreach Plan (MOP) in 2003 as a framework to deliver financial services to all Ugandans more especially the undeserved, has developed eight components:

- Capacity building
- Matching grants
- Monitoring and evaluation
- Database
- District microfinance forum/ committees
- Recruitment and deployment of Financial Extension Workers (FEWs)
- Recovery of loan funds from the government programs to private sector
- Business culture.

These components are meant to facilitate the process of delivering credit, savings, insurance, and money transfers. Among the eight components, the recruitment, deployment and management of the financial extension workers is a new concept, which is being piloted. So far 48 FEWS have been recruited, trained and deployed to seven districts. The FEW is the financial support person whose areas of jurisdiction is at the sub-county level. The FEW is neither the civil servant nor permanent staff but an interventionist. The financial consultant acts as a focal point for the industry's stakeholders at the local level, by providing information on training needs, potential clients and available MFIs at sub-county. The main roles of the FEW are to collect, compile and disseminate information. In addition, they are responsible for the mobilization and sensitization of the community about consumer education and business culture, the networking of the programs at sub-county, and advocating for the community's needs. They also act as a Public Relation Officer for MOP. In order to emphasize consumer education and protection, both AMFIU and FSDU have used the FEWs in Masaka and Mbale districts where the pilot exercise on consumer education is being piloted.

Finally, MOP as a government program has put its initiative to improve consumer education program in for front and microfinance industry in general, by collaborating with all actors.

Panel Discussion: South Africa, Malawi, Uganda

Question: Is client protection done through AMFIU? Do you regard this as self-regulation?

AMFUI is an umbrella organization of four MFIs, but also has a Memo of Understanding with the Microfinance Outreach Program. AMFUI also chairs the subcommittee on microfinance activities. As a result, a bill is being prepared to give AMFIU a regulatory role. AMFUI is an important part of microfinance in Uganda as a body mandated by the government to deal with consumer issues.

Question: For the three tiers for deposit taking institutions within the financial system in Uganda, what are the different capital requirements for each category?

To qualify a bank must have the following amount in deposits with the Central Bank:

- Tier 1: 2 billion Ugandan Schillings
- Tier 2: 1 billion Ugandan Schillings
- Tier 3: 700 million Ugandan Schillings

These banks must have been in operation between 5-6 years, being able to produce operation manuals and other relevant documents.

Question: What qualified FINCA Uganda to be the only MFI in tier three?

The MDI Act has a number so qualifications. FINCA received the license and other are still being considered.

Question: Does AMFIU experience any kind of conflict with representing MFIs and consumers.

Katuku responded that AMFUI has appointed a person dedicated to consumer affairs (an ombudsman). This kind of departmentalization makes it possible to deliver to both clients and MFIs.

Question: How has the loan process changed in Uganda over time?

When microfinance started, character loans were given with group guarantees. Savings were made to serve as a guarantee when loans were not repaid. A graduation process was effected which allowed clients to qualify for individual loans later. Something of value could be put down as collateral for the loan. The role of loan officers was to train and appraise clients to qualify for loans and advise when it was not to their advantage to take out a loan.

Question: How will the new National Credit Bill in South Africa affect microfinance institutions?

Moses from the DTI replied that the MFRC will cease to exist and will become part of the new regulation system. Provincial issues will be dealt with in local offices as provided by the Bill. The national office will cover national issues.

Also under the new system, the government has a unit that will conduct research and consultation on a regular basis. Forums will be provided for particular stakeholders to interact with the government through an advisory council or relevant channels.

Question: What will be the new role for AMFIU under the proposed law in Uganda?

Katuku responded that the PMT is new. To allow MFIs to develop standards. AMFIU will be responsible for the accounting systems, an appraisal of new MFIs and for working with district microfinance forums and committees. They will create a court which will be responsible for disciplinary actions and will

have the power to deregister lenders that don't comply.

Question: What happened in Zimbabwe between institutions prudentially regulated and those with limited financial services?

In Zimbabwe, the Department of Finance was responsible for microfinance regulation. The renewal of licenses was automatic because the government did not understand the market and did not have time to deal with such issues.

"Developing a Pro-Client Initiative: Lessons from SEEP and the MFN"

Patrick McAllister

Facilitator, Pro-Client Working Group, SEEP Network

Kelly Hattel

Director, MicroFinance Network

What We Have Heard So Far?

So far in the conference, participants have addressed Consumer Protection Issues, Consumer Advocacy Strategies, Country Strategies and the Role of Government.

What is the Role of the Industry in Consumer Protection?

"Trust is one of the industry's most important assets and, without appropriate safeguards and agreed standards of acceptable behaviour, the confidence that the industry has built up over many years will be fatally undermined."

Traditional Roles

The traditional role of the industry has been to propose alternatives to government regulation. These alternatives have tended to be less costly and encourage innovation. They are often more flexible and offer better services at lower cost.

On the other hand, the traditional role of the government has been an adversarial approach which focuses on protecting consumers AGAINST business. It has often been crisis driven, has added regulatory layer to business, has increased costs and has been normally inflexible.

Emerging Roles

Emerging roles for the industry have focused on pro-active, industry based solutions to increase transparency, educate customers, and provide customer Service Orientation. They have allowed for third party solutions which provide complaint resolution and verification.

On the part of the government, an emerging role is one of a collaborative approach, working WITH business to protect consumers. It is part of sector-wide approach which allows for self regulation or blended regulation where possible. It is low cost and allows for greater flexibility

Benefits of Industry Based Consumer Protection:

- More consumer confidence
- Higher level of professionalism
- Clear differentiation between scrupulous & unscrupulous service providers
- Lower cost than traditional regulation

Based on a survey conducted by the SEEP Network, most often the motivation behind Pro-Client initiatives are competition, market penetration and a desire to demonstrate capacity to self-regulate. Motivating Factors common to MFIs, associations & government regulators include client complaints, regulatory requirements and client attrition.

One Network Path to Developing a Pro-Consumer Pledge MicroFinance Network:

The MicroFinance Network is a global association of leading microfinance institutions (MFIs), including institutions such as BancoSol (Bolivia), K-Rep (Kenya), and Mibanco (Peru) who have transformed from NGO to commercial bank. It also includes banks such as ASA (Bangladesh), an

extremely efficient NGO focused on maximizing outreach and BRI (Indonesia), the largest public lender and savings mobilizer in world.

MicroFinance Network Members

Regulated Financial Institutions

Banco ADEMI, Dominican Rep.	Equity Building Society, Kenya
BancoSol, Bolivia	FINAMERICA, Colombia
Bandesarrollo, Chile	FINCA, Kyrgyzstan
BRI Unit Desa, Indonesia	Kafo Jiginew, Mali
Caja los Andes, Bolivia	K-REP Bank, Kenya
CERUDEB, Uganda	Mibanco, Peru
Citi Savings and Loans, Ghana	Prizma, Bosnia & Herzegovina
Citigroup, USA PRODEM FFP, Bolivia	SHARE, India
Cooperativa Emprender, Colombia	SogeSol, Haiti
Compartamos, Mexico	XacBank, Mongolia

Non-Governmental Organizations

ABA, Egypt	Fundusz Mikro, Poland
AlAmana, Morocco	PADME, Benin*
ASA, Bangladesh	PRIDE, Tanzania
BRAC, Bangladesh	TSPI, Philippines
Constanta, Georgia	UMU, Uganda*

Non-Practitioner Members:

ACCION International, USA	Calmeadow, Canada
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*in process of transforming into a regulated financial institution

The members of the MicroFinance Network are committed to improving the lives of low-income people through the provision of credit, savings and other financial services. They each serve their clients using many different methodologies, yet they believe in employing commercial principles to achieve sustainable and profitable financial institutions. These types of institutions can reach a large number of clients who would otherwise not have access to affordable financial services.

Why a Pro-Consumer Pledge?

At the level of individual member institutions, taking a pro-active stance lets MFIs be involved establishing the dialogue setting the terms. It ensures that competitive pressures do not compromise quality of service. It helps differentiate good practice from bad practice. Finally, it is simply good business consumers will prefer committed pro-consumer providers.

At the network level, there is an Increase transparency among Network members on pro-consumer policies. The MFN also believes strongly in supporting industry efforts to raise awareness particularly among leading MFIs.

What is the Pro-Consumer Pledge?

The MicroFinance Network consumer pledge concisely sets out elements of pro-consumer microfinance (beyond just good customer service). It defines principles to ensure that financial services benefit customers and ensures needs of MFI are also met.

Steps Taken to Develop the Pledge

First, the Network Director selected a facilitator for the working group. A person familiar with the members of the MicroFinance Network and the issue of consumer protection in microfinance and who would help guide the process and ultimately draft the pledge. Next, the Director and the facilitator developed a work plan for the group that was both realistic and committed to drafting a pledge. The Director then prepared background material for the members on objectives of working group and context of issue. Because this was a smaller subset of the entire membership, the Director selected members to participate in group, including those who had expressed interest in the issue and those who could add regional diversity or particular perspectives to the development of the pledge. Next, individual interviews were scheduled to discuss pro-consumer policies at each MFI. After the interviews, relevant codes or pro-consumer policies were circulated among members. Based on the feedback from the interviews and additional material, the facilitator drafted pledge for member review.

The draft pledge was then circulated among group and, after sufficient feedback, the revised pledge was presented to the membership for review. At the annual MFN conference, a working group session was held to develop an action plan upon pledge approval. Finally, the members voted on final pledge at annual meeting and the pledge was adopted by all members present (November 10, 2004).

Key Players in Developing the Pledge

One of the most important aspects of developing the pledge was to identify a champion among member institution. In the case of the MFN, the member was ACCION who took lead in raising the issue among the MFN members. The Network Director also played an important role as a key communication link to members. Finally, it was also necessary to have the Steering Committee support the objectives of approach, approve necessary funds and allow time to develop and adopt pledge.

Key Elements - MicroFinance Network Pro-Consumer Pledge

- To raise awareness of consumer protection issues among members.
- To increase transparency among network members on consumer protection issues.
- To facilitate dialogue among members rather than face a regulatory response.
- To adopt a Pro-Consumer Pledge & implement within MFI operations.



Microfinance Network: Pro-Consumer Pledge

November 10, 2004

Preamble

Microfinance is a fundamentally pro-consumer activity. Microfinance institutions seek to create social benefits by providing financial services to low income and previously excluded segments of the population in the countries in which they operate. As the microfinance industry becomes more complex and more closely integrated into mainstream financial systems, it is increasingly important to define pro-consumer practices, in order to ensure that services are provided in a manner that benefits customers. Financial services, like many powerful tools, can provide tremendous benefit when applied wisely, but if applied in an unscrupulous manner, they can cause serious damage to customers and their families.

The Microfinance Network, a global network of leading microfinance institutions, has come together to adopt this pro-consumer pledge. The pledge concisely sets out the principles of pro-consumer microfinance. It defines principles to ensure that financial services benefit customers while also ensuring that the legitimate needs of microfinance institutions are met, in order that microfinance institutions can continue providing services over time.

By adopting this pledge, the members of the Microfinance Network agree to do the following:

- To apply these principles in their own organizations.
- To promote the widespread application of these principles among microfinance institutions in their countries.
- To engage with regulatory authorities in their countries where needed to promote effective yet non-burdensome policies or rules.
- To raise awareness in the global microfinance industry about the importance of pro-consumer principles.

Principles

1. *Quality of Service.* MFN members will treat every customer with dignity and respect. Members will provide services in as convenient and timely matter as possible.
2. *Transparent Pricing.* MFN members will give clients complete and understandable information about the true costs they are paying for loans and transaction services and how much they are receiving for savings.
3. *Fair Pricing.* MFN members will price their services at fair rates. Their rates will not provide excessive profits, but will be sufficient to ensure that the business can survive and grow to reach more people.
4. *Avoiding Overindebtedness.* In order to avoid customer overindebtedness, MFN members will not lend any customer more than the customer can afford to repay.

5. *Appropriate Debt Collection Practices.* While debt collection practices must include energetic pursuit of defaulters, MFN members will treat customers with dignity and will not deprive customers of their basic survival capacity as a result of loan repayment.
6. *Privacy of Customer Information.* MFN members will protect the private information of customers from reaching others who are not legally authorized to see it.
7. *Ethical Behavior of Staff.* MFN members will hold their employees to a high standard with respect to conflicts of interest and unethical behavior, especially behavior that harms customers (such as taking kickbacks). Employees who breach these standards will be sanctioned.
8. *Feedback Mechanisms.* MFN members will provide formal channels of communication with customers through which customers can give feedback on service quality. These channels will include mechanisms for responding to specific customers regarding their personal complaints.
9. *Integrating Pro-Consumer Policies into Operations.* MFN members will make pro-consumer orientation a hallmark of the way they conduct business, though efforts such as staff training and incentives, financial education for customers, customer satisfaction programs and the like.

Regulation and Enforcement

The Network acknowledges that although in an ideal world, all microfinance institutions would adhere to these principles voluntarily, reality often differs. Microfinance institutions should not be put at a competitive disadvantage by adhering to these principles when less conscientious organizations ignore them. In such cases, collective action, either by the industry or by regulatory authorities, may be required to enforce application of these principles.

MFN Pro-Consumer Agenda

With the adoption of the pledge, the members will continue to participate in the working group to work on implementation strategy and support for members. The members will promote the pledge through websites, wall postings, tie-ins with UN Year of Microcredit and other in-country publicity. The members will seek to impact the culture, policies and procedures of member MFIs, perhaps helping to develop best practice guidelines for consumer protection. Finally, one suggestion was to consider the creation of a "pro-consumer stamp of approval" (ISO) among MFN members at some point in the future.

Challenges and Questions for Implementation

One of the main challenges to address in the implementation phase is to not put MFIs at a competitive disadvantage by asking for full disclosure of charges (interest rates, etc..). If only one MFI discloses this information, the client may perceive the product to be more expensive than the same product offered by another MFI, even if it is not.

Another issue to consider is how to enforce the pledge. Right now, members have agreed to self-monitor the application of the pledge. At some point, the network may need to play a stronger role in encouraging and monitoring compliance.

What is "fair pricing" and who decides? The definition of fair pricing will be different in each country. Again, as the pledge is being self-monitored, the members themselves decide if it is fairly priced.

Other questions to consider:

- Is my MFI really willing to disclose ALL fees and costs to the client?
- Who establishes guidelines for debt load?
- Which are critical issues of ethics that clearly are unacceptable?

Final Considerations on Developing a Network-level Pledge

When deciding to develop a network level pledge, it is essential to communicate importance of the issue on two levels - for the Network and for the members themselves. It is also important to choose a facilitator whom members know and respect - they were more willing to participate in the working group and provide their input on the draft pledge. It is also necessary to set a realistic time-frame and realistic goals for pledge requirements.

"The customer is the immediate jewel of our souls him we flatter, him we feast, compliment, vote for, and will not contradict."

- Ralph Waldo Emerson

Country Action Plan Reports

Participants were asked to group themselves by country to consider all of the issues discussed concerning consumer protection issues. They were asked to lay the next steps that could be taken in each respective country, thinking about the roles of the various stakeholders and what mechanisms would be useful to promote consumer protection in each country.

Zimbabwe:

The players involved in moving consumer protection forward in Zimbabwe include clients, MFIs and MFAs (ZAMFI), Regulator (RBZ), CCZ.

Each group has a particular role to play. Clients currently report to the reserve bank with complaints directed to the CCZ. ZAMFI refers complaints to CCZ as dealing with complaints is not a part of ZAMFI's core business. ZAMFI needs to integrate complaints into ZAMFI systems to be able to do follow-up. They would need to review and report at the monthly meeting and consolidate information on complaints received and that would be used to inform policies. A complaints system is to be tied in with the code of ethics. They need to make this more effective. Lawyers are now appointed to the board to deal with these issues. CCZ will continue to conduct consumer education. However, they will now focus on microfinance issues relation to clients as well. The Annual Trade Fair (ZTTF) can be used to raise awareness on consumer issues. On Consumer Rights Day they can advertise in the media on consumer rights.

Regulators (RBZ), should liaise with ZAMFI on complaints records on the nature and procedures involved and of culprit MFIs. Information will be disseminated to members to try to address these issues. ZAMFI is in the process to convince RBZ to form policy on microfinance that will include consumer protection.

MFIs currently have no complaints procedures. These have to be put up and must be transparent. Member MFIs must have suggestion boxes and ZAMFI will keep the keys and retrieve these monthly and share the information with other MFIs.

South Africa:

The next steps ahead in South Africa include the Draft National Consumer Bill. The participants envisage a sustainable industry with balanced interests of all stakeholders. The monitoring and evaluation of standards to promote the professionalization within the institution will be important. Progress has been made but there is still room for improvement and for learning from other countries. Interaction of this nature is very valuable. The regulatory impact assessment should be a uniform tool to monitor the microfinance industry in the continent and to help each country learn and practice best practices to advance consumer protection.

Malawi:

Malawi is still in its infancy stage regarding consumer protection. Only a policy framework exists with no implementation so far. The government should take initiatives to focus on consumer protection. The way forward is to:

1. Call a national conference to bring together stakeholders to be involved in the process and to bring about coordination.
2. While there are laws in place, not much has been done regarding the provision for the consumer council which is still in place. Something can be done to kick-start the process.
3. There is a need to understand what legal framework will work in terms of regulating microfinance before deciding on consumer protection regulation for microfinance as well.
4. The government needs to encourage the establishment of consumer advocacy organizations.
5. The donor community needs to be engaged and support these efforts.

6. The MFA should upscale their advocacy initiatives.
7. As the Network is still young and trying to find its feet, currently being run by a team of practitioners, it should find a permanent Director
8. Once it has the capacity, the Network should improve adherence to and find ways to enforce the Code of Conduct among its members. The Network has a narrow membership (13) other players have not come forward. Microfinance practitioners are currently registered in a different regulatory framework which results in this kind of fragmentation.

The government needs to take the initiative for consumer education in Malawi. The lack of a Consumer Council makes this intervention difficult. The Consumer Association of Malawi focuses on retail client issues. They need to try to focus more on microfinance consumer issues. In celebrating the International Year of Microcredit, the Network can conduct meetings to raise the awareness of consumer protection issues.

Uganda:

There are structures in place. Stakeholders are organized. The government needs to come up with appropriate legislation that looks after consumer rights. Tier 4 needs to be regulated so that consumers are protected.

- Government intervention can come through: PEAP, PMA, MTC and MOP. The MOP is to coordinate all microfinance industry activities. A committee needs to be formed to collect consumer issue intelligence that will inform their policies.
- The Uganda Consumer Association should be encouraged to intensify consumer awareness campaigns and advocacy for consumer protection.

Conclusions

Many thanks to SEEP, AFMIN, MEA for a successful collaboration in putting the conference together. Thanks to Ford Foundation for financial support that made the conference possible. Thanks also to the delegates for sharing their experiences and to the invited presenters from Black Sash, the National Consumer Forum in South Africa and the Department of Trade and Industry. Much appreciation also goes to the institutions that opened their door to make field visits possible: MFRC, TEBA and Blue Dot Housing. A special thanks to the staff at MEA, Takalani, Cecelia, Busi, Dineo and Norine for their efforts in putting together the conference.

As for the larger next steps, AFMIN will next put together an agenda on the progress of the members on the issues discussed at the conference.

**Improving Microfinance Client Protection
Johannesburg, South Africa
9-11 March 2004
AGENDA**

Tuesday 8 th	Wednesday 9 th	Thursday 10 th	Friday 11 th
	<p>08:30 - 9:30 Opening ceremonies</p> <p>Welcome address MEA Chairman : (5 minutes)</p> <p>-Mrs/ Mr:</p> <p>- Justin GATEBA AFM/N Programs Director address (5 Minutes)</p> <p>-Keynotes address by Representative of South African Authority</p> <p>Souvenir Photo</p>	<p>9:00-10:15</p> <p>Presentation of papers:</p> <p>Why do African Consumers of Financial Services Need Protection? - Mr. Tamsanqa Bolani The Executive Director National Consumer Forum (NCF), Representing Consumers International</p> <p>South African Consumer Advocacy Model Mr. Xolela May, Black Sash Trust/ Knysna Office Republic of South Africa</p>	<p>9:00-10:30 Session 1 : The Role of Government in Consumer Protection</p> <p>Panel : South Africa, Tanzania, Uganda</p>
	9:30-10 (Tea/coffee break)	10:15-10:45 Tea/coffee break	10:30-11:00 Tea-coffee break
	<p><u>10:00-13:00</u> Field Visits:</p> <ul style="list-style-type: none"> - TEWA Bank - BEE Foundation - Blue Dot Housing 	<p>10:45-12:30 Presentation of papers</p> <ul style="list-style-type: none"> -Zimbabwe -South Africa -Uganda 	<p>11:00-12:30 Session 2 : Developing a Pro - Client Initiative</p> <p>Panel :</p> <ul style="list-style-type: none"> - Kelly Hattel, The Microfinance Network, - Patrick McAllister, SEEP

18:00 Registration and welcome reception	13:00-14:00 Lunch	12-30-13:30 Lunch	12:30-13:30 Lunch
	<u>14:00-16:30</u> Visit to MFRC	13:30-2:30 Questions and answers	13:30-3:00 Breakout session : - Working together, each country's delegation identifies roles and develops a plan to improve consumer protection.
		2:30-4:00 Breakout sessions: - Advocates Cafe - MFI Club - Regulators Room	3:00-4:00 Breakout session reports : Presentation of plans
		4:00-4:45 Breakout Session Reports	4:00-4:45 Comments on plans/ Next steps
		4:45-5:00 WRAP-UP	4:45-5:00 WRAP- UP
		8:00 DI NNER Keynote Speaker: TBA	5: 00: Closing

Sharing Experiences between Microfinance Service Providers, Consumer Advocates and Governments in Southern and Eastern Africa

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