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Reforming Microfinance to Suit Developing Economies: The Right Way and the Zimbabwe

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REFORMING MICROFINANCE TO SUIT DEVELOPING ECONOMIES: THE RIGHT WAY AND THE ZIMBABWE

I. INTRODUCTION

There are few countries in Africa that possess as much economic potential as Zimbabwe. Zimbabwe has an impressive trade portfolio including exports of nickel, diamonds, tobacco, and gold; annually, each of these commodities brings hundreds of millions of dollars into the Zimbabwe economy.[1] In 2001, Zimbabwe had a trade surplus of approximately 323 million U.S. dollars.[2] Because of its abundant natural resources, Zimbabwe has been dubbed "Africa's Breadbasket."[3]

In the early 2000's, Zimbabwe's economy took a sharp downward turn. By 2003, Zimbabwe had Africa's fastest shrinking economy and there were several contributing factors.[4] The first was Zimbabwe's involvement in the Second Congo War, which was prohibitively expensive for a country of its size.[5] Zimbabwe President Mugabe, who still holds office, led a controversial land reform program that took farmland owned by white Zimbabweans and placed it in the hands of the Zimbabwean government.[6] The program devastated Zimbabwe's agricultural industry.[7]

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1. *Zimbabwe*, THE OBSERVATORY OF ECONOMIC COMPLEXITY, http://atlas.media.mit.edu/country/zwe/ (last visited Oct. 27, 2013), *archived at* http://perma.cc/K6NX-X94F.

2. Food and Agric. Org. of the United Nations & World Food Programme, *FAO/WFP Crop and Food Supply Assessment Mission to Zimbabwe*, Table 1 (June 18, 2008), *available at* ftp://ftp.fao.org/docrep/fao/010/ai469e/ai469e00.pdf. Reports estimate Zimbabwe now had a 3.6 billion U.S. dollar trade deficit in 2012. *See Zimbabwe's trade deficit stands at US$3,6bn*, ZIMBABWE INDEPENDENT (Jan. 25, 2013), http://www.theindependent.co.zw/2013/01/25/zimbabwes-trade-deficit-stands-at-us36bn/.

3. *Zimbabwe: From Breadbasket to Basket Case*, THE ECONOMIST, June 27, 2002, *available at* http://www.economist.com/node/1201137.

4. Samantha Power, *How to Kill a Country*, THE ATLANTIC (Dec. 1, 2003), http://www.theatlantic.com/magazine/archive/2003/12/how-to-kill-a-country/302845/. *See also* Christopher Orlet, *From Breadbasket to Dustbowl*, THE SPECTATOR (Apr. 13, 2005), http://spectator.org/archives/2005/04/13/from-breadbasket-to-dustbowl.

5. THE WORLD FACT BOOK: ZIMBABWE, CENT. INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html (last visited Oct. 27, 2013). *See also* Justin Pearce, *Mugabe's Costly Congo Venture*, BBC NEWS (July 25, 2000), http://news.bbc.co.uk/2/hi/africa/ 611898.stm (discussing the various costs of Zimbabwe's involvement in the Second Congo War).

6. The Zimbabwe land reform was a response to colonialism and was seen as the indigenous Zimbabweans taking back their land. *See generally* Nick Dancaescu, *Land Reform in Zimbabwe*, 15 FLA. J. INT'L L. 615 (2003). *See also* John McClung Nading, Comment, *Property Under Siege: The Legality of Land Reform in Zimbabwe*, 16 EMORY INT'L L. REV. 737 (2002) (discussing the legality of the land reform program from the perspective of several theories of property). *See also* Caitlin Shay, Comment, *Fast Track to Collapse: How Zimbabwe's Fast-Track Land Reform Program Violates International Human Rights Protections to Property, Due Process, and Compensation*, 27 AM. U.

It has also damaged Zimbabwe's reputation in the international community, resulting in economic sanctions and the loss of major trade partners.[8]

When tax revenues on export income started to freefall, the Zimbabwean government began printing money in order to service its debt, causing one of the most extraordinary cases of hyperinflation ever seen.[9] In July of 2008, inflation in Zimbabwe hit 231,150,888%.[10] By

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INT'L L. REV. 133 (2012) (providing specific policy recommendations so that Zimbabwe's legal system will no longer permit land reform). Zimbabwe's Supreme Court ruled that these land reforms were illegal. [Citation] The Mugabe administration publicly chastised the Supreme Court. [Citation] Intimidation towards the white judges sitting on the court followed and all white judges resigned from the court shortly after. Fast-track land reforms continued shortly afterwards. Ben Freeth, *Racial Discrimination in Zimbabwe: A Systematic Program of Abuse*, SADC TRIBUNAL RIGHTS WATCH (Nov. 11, 2012), http://www.swradioafrica.com/Documents/Racial%20Discrimination%20in%20Zim.pdf. [No reference to white judges in this source] The constitution has since been amended to forbid legal challenges to fast-track land reform programs as well as any suits by white farmers seeking damages as a result of the programs. *Id*. There has been little recourse for the violent program, which resulted in the death of twenty six farm workers. Over a thousand workers were assaulted and eleven were raped as a result of fast-track land reform. HUMAN RIGHTS WATCH, FAST TRACK LAND REFORM IN ZIMBABWE (Mar. 2002) *available at* http://www.hrw.org/reports/2002/zimbabwe/ZimLand0302.pdf. Not surprisingly, this program halted most agricultural production and the industry has yet to recover.

7. Jack Lewis, *South Africa: Don't be Fooled—Zimbabwe's Land Reform is No Success*, ALLAFRICA (July 13, 2013), http://allafrica.com/stories/201307311138.html.

8. The United States responded with several sanctions that made it illegal to provide financial assistance to the Zimbabwean government. U.S. DEP'T OF THE TREASURY, WHAT YOU NEED TO KNOW ABOUT U.S. SANCTIONS, http://www.treasury.gov/resource-center/sanctions/Documents/zimb.pdf (last visited Oct. 27, 2013). The Obama Administration, demonstrating little faith in the Zimbabwe government, has also recently decided to extend the sanctions. *U.S. Says Zimbabwe Vote Flawed, Won't Lift Sanctions*, REUTERS (Aug. 19, 2013), http://www.reuters.com/article/2013/08/19/us-zimbabwe-election-usa-idUSBRE97I0U820130819. The European Union has recently decided to lift all sanctions against Zimbabwe. *Zimbabwe Diamond Sanction Lifted*, INT'L BUS. TIMES (Sept. 20, 2013), http://www.ibtimes.com/zimbabwe-diamond-sanction-lifted-eu-rewarding-mugabe-rigged-election-1408862 (stating that the EU has been widely criticized for doing so). China has maintained strong economic ties to Zimbabwe. The post-sanction trade policy of Zimbabwe has been to look to trading partners in the Eastern hemisphere. Joshua Eisenman, *Zimbabwe: China's African Ally*, THE JAMESTOWN FOUND. (July 5, 2005), http://web.archive.org/web/20070805023113/http://www.jamestown.org/publications_details.php?volume_id=408&issue_id=3390&article_id=2369974.

9. Matthew Boesler, *How 9 Countries Saw Inflation Evolve into Hyperinflation, Business Insider* (Oct. 5, 2013), http://www.businessinsider.com/worst-hyperinflation-episodes-in-history-2013-9?op=1. Prices on goods in Zimbabwe doubled every 25 hours. *Id*.

10. *A History of Zimbabwe Hyperinflation*, ZIMBABWEDOLLARS.NET, http://zimbabwe dollars.net/blogs/zimbabwe-news/8979795-a-history-of-zimbabwe-hyperinflation (last visited Sept. 7, 2014). Inflation had gotten so bad that as Zimbabwe began to issue notes of higher value, they began to have difficulty fitting all the zeros on each note. *Id*. The government attempted to control this inflation by instituting harsh price controls on basic goods. These price controls resulted in widespread shortages of basic goods. Michael Wines, *Zimbabwe Price Controls Cause Chaos*, NY TIMES (July 3, 2007), http://www.nytimes.com/2007/07/03/world/africa/03cnd-wzimbabwe.html. At one point, the government was printing a note at the value of one hundred trillion dollars, the highest denomination ever used as currency. *Hyperinflation in Zimbabwe*, FED. RESERVE BANK OF DALLAS (2011), *available at* http://www.dallasfed.org/assets/documents/institute/annual/2011/annual11b.pdf. Presently,

January 2009, most Zimbabweans had abandoned their country's currency.[11] The Zimbabwean government has now suspended use of the Zimbabwean dollar and uses the U.S. dollar and South African rand as the predominant currencies.[12] As a result of these shocks to the economy, poverty has become rampant in Zimbabwe.[13] The World Bank estimates that 72% of Zimbabweans live in poverty.[14]

In addition to high rates of poverty, several social issues plague Zimbabwe. Racial discrimination and gender inequality are prevalent in nearly every aspect of Zimbabwean life.[15] Zimbabwean women face

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these bills have no value as currency, but are worth approximately five dollars as a collectible. This amount is still approximately fifteen times more than what they were worth when the bills were still in circulation. Patrick McGroarty & Farai Mutsaka, *How to Turn 100 Trillion Dollars Into Five and Feel Good About It*, WALL ST. J. (May 11, 2011), http://online.wsj.com/news/articles/SB1000142405274870373080457631495309179036 0.

11. *In Dollars They Trust*, THE ECONOMIST (Apr. 27, 2013), http://www.economist.com/news/finance-and-economics/21576665-grubby-greenbacks-dear-credit-full-shops-and-empty-factories-dollars-they.

12. *Id.* Zimbabwe's finance minister has stated that the Zimbabwean dollar is unlikely to return in the near future. Colls Ndlovu, *Zimdollar Versus the Multicurrency System*, BULAWAYO24 (Oct. 18 2013), *available at* http://bulawayo24.com/index-id-opinion-sc-columnist-byo-38030.html (arguing that Zimbabwe's lack of national currency has helped keep inflation in check and suggesting that the current multicurrency system should be kept in place permanently).

13. It's worth noting that the 'shocks' all took place under the leadership of President Robert Mugabe. His political career has been marred by accusations of racism, violence, and inept leadership. There are also pleas to have Mr. Mugabe arrested and tried before the International Criminal Court to answer for the actions of his violent regime. Alex Bell, *UN Urged to Refer Mugabe to International Criminal Court*, ALLAFRICA (Aug. 13, 2013), http://allafrica.com/stories/201308140230.html. Most international organizations have suspected Mugabe's regime of rigging elections in order to keep perpetuate his term in office. Robert I. Rotberg, *Starving the Voters is How Mugabe has Rigged the Election*, HARVARD KENNEDY SCHOOL NEWS ARCHIVE, http://www.hks.harvard.edu/news-events/news/news-archive/starving-the-voters-is-how-mugabe-has-rigged-the-election (last accessed Jan. 17, 2014).

14. THE WORLD BANK, ZIMBABWE DATA, *available at* http://data.worldbank. org/country/zimbabwe (last accessed Oct. 27, 2013). Additionally, some economists have estimated that the unemployment level is around 70%, but this figure reflects formal employment and does not account for the informal sector. *Zimbabwe's Unemployment Rate Tops 70%*, BULAWAYO24 (Apr. 22, 2013), *available at* http://bulawayo24.com/index-id-business-sc-economy-byo-29277.html. Zimbabwe's finance minister has denied the accuracy of these reports and claims that unemployment is actually 9%. *Zimbabwe's Unemployment is 9%, Says Biti*, BULAWAYO24 (June 7, 2013), *available at* http://bulawayo24.com/index-id-business-sc-economy-byo-31337.html.

15. Zimbabwe was ranked 116 out of 148 countries in gender equality in the most recent United Nations Development Report. The quality of medical care for women is horrendous; for every 100,000 live births, 570 Zimbabwean women will die from pregnancy complications. This average for Sub-Saharan Africa is only 47 deaths for every 100,000 births. Additionally, women only occupy 17.9% of the seats in Zimbabwe's parliament. UNITED NATIONS DEVELOPMENT PROGRAM, UNITED NATIONS DEV.ELOPMENT REPORT 2013, 158, *available at* http://www.zw.one.un.org/sites/default/files/HDR2013%20Report%20English.pdf. Zimbabwe has strived to improve in this area. The government recently adopted an amendment to their constitution which would mandate gender equality and forbid discrimination on the basis of gender. *Zimbabweans Say Yes to New Constitution Strong on Gender Equality and Women's Rights*, United Nations Entity for Gender Equality and the Empowerment of

limited access to employment and are less likely to escape poverty than Zimbabwean men.[16] Zimbabwe's Ministry of Women Affairs, Gender and Community Development stated that their goal is to "eradicate gender discrimination and inequalities in all spheres of life and development.[17] This is important not only to help improve the quality of life for women, but also to help advance the Zimbabwean economy. Gender equality and economic development are inextricably linked and efforts to further gender equality will significantly benefit Zimbabwe's economy.[18]

Similarly, Zimbabwe could also benefit economically from promoting racial equality.[19] Unlike gender inequality, the current political administration has expressed no desire to remedy the widespread racial discrimination affecting its white citizens.[20] In fact the Mugabe administration has exacerbated discrimination in Zimbabwe. Zimbabwe's Indigenization and Empowerment Act ("Empowerment Act") was passed to help native Zimbabweans reclaim their economic sector from foreign interference. The bill requires white and foreign-owned businesses to have

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Women (Apr. 19, 2013), http://www.unwomen.org/lo/news/stories/2013/4/zimbabweans-say-yes-to-new-constitution-strong-on-gender-equality-and-womens-rights (last accessed Jan. 17, 2014).

16. The National Gender Policy, Republic of Zimbabwe—Ministry of Women's Affairs, Gender and Community Development at 5 (2013), http://www.undp.org/content/dam/zimbabwe/docs/Governance/National%20Gender%20Policy%202013.pdf (last accessed Jan. 17, 2014).

17. The policy does state that "Zimbabwe recognises that economic growth programmes that target women (Womenomics) make good economics. As such, the economic empowerment of women has become a key priority for the Government of Zimbabwe to achieve sustainable economic growth." *Id*. at 11.

18. *See generally* Derek H.C. Chen, *Gender Equality and Economic Development—The Role for Information and Communication Technologies*, THE WORLD BANK, http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-3285 (last visited Jan. 17, 2014) (stating that statistics show developing countries have achieved more significant economic development once they are able to lower education and workforce gaps between men and women). Zimbabwe has also taken the position that advancing gender equality will help provide a boost to its economy. *See supra* note 16.

19. John Aziz, *Less Racism and Sexism Means More Economic Growth*, THE WEEK (Dec. 16, 2013), http://theweek.com/article/index/254170/less-racism-and-sexism-means-more-economic-growth. *Contra* Lucy Mazingi & Richard Kamidza, *Inequality in Zimbabwe*, OPEN SOC'Y INITIATIVE FOR S. AFR., *available at* http://www.osisa.org/sites/default/files/sup_files/chapter_5_-_zimbabwe.pdf (arguing that the discriminatory treatment towards white farmers as part of the fast-track land reforms was economically necessary in order to narrow the white-black income gap).

20. In fact, President Mugabe infamously said that "[w]e must continue to strike fear into the heart of the white man, our real enemy" in a speech before Zimbabwe's parliament. Brian Kagoro, *A Case Analysis of the Zimbabwean Crisis and NEPAD's Peer Review Mechanism*, SOUTH AFRICAN REGIONAL POVERTY NETWORK (Dec. 17, 2012), *available at* http://www.sarpn.org/documents/d0000068/page3.php. Mugabe is also quoted as saying "the only language that the mabhunu ('white man') will understand is the language of the gun. The more you kill, the nearer you get to your objective." Ben Freeth, *Mugabe and the White African*, at 56.

51% ownership held by indigenous Zimbabweans.[21] Because of these strict requirements, the Empowerment Act has chased foreign business from Zimbabwe.[22] The bill has a troubling resemblance to the fast-track land reform programs of the early 2000s.[23] Because of the current administration's attitude toward racial discrimination, it is unlikely any meaningful progress could be made in this area; however, any reform hoping to achieve economic growth must work towards ending racial discrimination.

One solution for alleviating poverty and promoting social equality is the use of microfinance. Microfinance has been successful in reducing poverty in many developing countries.[24] Zimbabwe currently has microfinance institutions which serve the poor, but they are undercapitalized, unregulated, and are more interested in generating profit than creating meaningful economic growth for Zimbabwe.[25] The Zimbabwean government has stated its commitment to improving the microfinance sector in order to help alleviate poverty.[26] The Zimbabwean

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21. *Blackening the Economy*, THE ECONOMIST (Sept. 13 2007), http://www.economist.com/node/9804332. The Empowerment Act defines an indigenous Zimbabwean as "any person who, before the 18th April 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest". Safiyya Patel, *Indigenisation Laws to Affect More Sectors in Zimbabwe*, HOW WE MADE IT IN AFR. (Aug. 10, 2012), *available at* http://www.howwemadeitinafrica.com/indigenisation-law-to-affect-more-sectors-in-zimbabwe/19150/.

22. Gibbs Dube, *Economists Clash Over Inidigenization of Zimbabwe Economy*, VOICE OF AMERICA (Feb. 28, 2013), http://www.voazimbabwe.com/content/zimbabwe-indigenization-and-economic-empowerment-series-part-two/1612941.html

23. *See supra* Part I.

24. BancoSol in Bolivia is a microfinance institution that has achieved remarkable success. BancoSol was founded in 1986 and has now loaned over $344 million dollars and operates as a for-profit entity. *See* Accion | BancoSol, http://www.accion.org/our-impact/bancosol? (last visited Oct. 27, 2013). Capitec Bank in South Africa has achieved similar success in providing banking services to the lower income sector. *See* Gerhard Coetzee, *Innovative Approaches to Delivering Microfinance Services: The Case of Capitec Bank*, http://www.microfinancegateway.org/gm/document-1.9.28168/26197_file_Innovations_in_Micr.pdf (last accessed Oct. 28, 2013).

25. *See infra* Part IV.

26. Microfinance has several definitions, but its purpose and functions can be best summarized as a "type of banking service that is provided to unemployed or low-income individuals or groups who would otherwise have no other means of gaining financial services. Ultimately, the goal of microfinance is to give low income people an opportunity to become self-sufficient by providing a means of saving money, borrowing money and insurance." *Microfinance Definition*, INVESTOPEDIA, http://www.investopedia.com/terms/m/microfinance.asp. Some scholars view the term more broadly and use microfinance to describe the allocation of financial services to the poor, including the basic banking services such as savings, credit, checking, as well as other financial services such as insurance. David Roodman & Uzma Qureshi, *Microfinance as a Business*, CTR. FOR GLOBAL DEV., at 2, Nov. 2006 *available at* http://www.cgdev.org/files/10742_file_Microfinance_as_Business.pdf.

House of Assembly is currently reviewing a bill, the Microfinance Act, which will bring much-needed reform to Zimbabwe's microfinance industry.[27] Although a well-run microfinance industry will not solve all of Zimbabwe's economic problems, it could be the key to helping Zimbabweans escape poverty.

In order to fully understand the potential impact of microfinance reform in Zimbabwe, it is important to understand Zimbabwe's informal sector. The informal sector is a large component of Zimbabwe's economy, and it could benefit tremendously from sound microfinance reform.

II. ZIMBABWE'S INFORMAL SECTOR

Like many developing countries, Zimbabwe's economy is divided into two sectors—the informal and formal sectors.[28] Zimbabwe's informal sector is unique in that it is exceptionally large.[29] Opinions are divided on whether or not the continued existence of the informal sector is good for the overall economy.[30] The informal sector of Zimbabwe's economy

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27. Parliament of Zimbabwe—Votes and Proceedings of the Senate, 4–5 (June 5, 2013), http://www.parlzim.gov.zw/attachments/article/77/5_June_2013_21.pdf (last accessed Feb. 2 2014).

28. INT'L LABOUR ORG., INFORMAL ECONOMY, http://www.ilo.int/global/topics/employment-promotion/informal-economy/lang--en/index.htm (last visited Feb. 17, 2014). The formal sector of an economy consists of businesses operating within the law, whereas the informal sector consists of businesses operating either on the fringe or outside of the law. There are five general characteristics of an informal sector: ease of access and entry; small scale; labor-intensive undertakings; usually family-owned enterprises; and operating in unregulated, competitive markets. A few examples of informal sector businesses include street vendors, gypsy taxis, and some small-scale production shops (such as sandal makers). Veronica Brand, *One Dollar Workplaces: A Study of Informal Sector Activities in Magaba, Harare*, 1 J. SOC. DEV. IN AFRICA 53, 53 (1986), *available at* http://archive.lib.msu.edu/DMC/African%20Journals/pdfs/social%20development/vol1no2/jsda001002007.pdf. Most African countries have large informal sectors. Approximately 55% of Sub-Saharan Africa's GDP and 80% of its labor force can be attributed to the economic activity of its informal sector. Mthuli Ncube, *Recognizing Africa's Informal Sector*, AFRICAN DEV. BANK GRP. (Mar. 27, 2013), http://www.afdb.org/en/blogs/afdb-championing-inclusive-growth-across-africa/post/recognizing-africas-informal-sector-11645/. One difficulty with informal sectors is that they do not pay taxes. *Id*.

29. As of 2012, it is estimated that 84% of Zimbabweans are employed in the informal sector while only 11% have found employment in the formal sector. The proliferation of this sector is largely due to unemployment caused by the economic downturns mentioned in Part I. *Majority Employed in Informal Sector—Zimstat Survey*, THE STANDARD (Nov. 4, 2012), http://www.thestandard.co.zw/2012/11/04/majority-employed-in-informal-sector-zimstat-survey/. *See also* Latham Shinder, *Zimbabwe's Informal Sector*, 121 MONTHLY LAB. REV. 72 (1998), *available at* http://heinonline.org/HOL/LandingPage?handle=hein.journals/month121&div=30&id=&page= (arguing that the struggles of the agricultural industry, once Zimbabwe's largest employer, have significantly contributed to the growth of employment in the informal sector).

30. Businesses in the informal sector operate without licensing and typically do not pay taxes. This is especially troublesome for Zimbabwe's revenue-starved government. The government has strict licensing requirements for all street vendors. This requirement is seldom followed. *See* Latham Shinder, *Zimbabwe's Informal Sector*, 121 MONTHLY LAB. REV. 72 (1998), *available at*

represents the bulk of its small-to-medium-sized enterprises[31] and has helped Zimbabweans find employment as the economy has collapsed.[32]

Zimbabwe's informal sector is vital to the country's economic growth and could play a large role in poverty alleviation. The Minister of Finance and Economic Development, Patrick Chinamasa, recently stated that stimulating economic growth would require Zimbabwe to tap into the value of the informal sector.[33] Microfinance is one method by which businesses in the informal sector could become scalable[34] and eventually integrated into the formal sector.[35] Zimbabwe's economy is lopsided in

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http://heinonline.org/HOL/LandingPage?handle=hein.journals/month121&div=30&id=&page=. *See also Informal Sector to Pay Tax*, THE ZIMBABWEAN, Nov. 12, 2013, *available at* http://www.thezimbabwean.co/news/zimbabwe/69737/informal-sector-to-pay-tax.html (detailing the Zimbabwean government's new plan to enforce payment of taxes in the informal sector). *See also Call to Allow Zimra to Tax Informal* Sector, THE CHRONICLE (Dec. 6, 2013), http://www.chronicle.co.zw/call-to-allow-zimra-to-tax-informal-sector/ (demonstrating that there is public support for taxing the informal sector; however, this support seems to come from the formal sector). However, many consider the informal sector's boost to the overall economy and its ability to keep a large labor force employed to outweigh the downside of diminished tax revenues. *Informal Employment Sustains Zimbabweans*, IRIN NEWS (Apr. 11, 2013), http://www.irinnews.org/report/97825/informal-employment-sustains-zimbabweans. *See also* Martin Stobart, *Informal Sector Drives Zimbabwe's Economy*, THE CHRONICLE (Oct. 5, 2013),http://www.chronicle.co.zw/informal-sector-drives-zimbabwes-economy/ (claiming that the informal sector is now the true "breadwinner of the economy"). Additionally, there are some points where it is clear that the strength of the informal sector has benefits for the whole Zimbabwean economy. For instance, many raw materials are purchased for small-scale production and those who make their living in the informal sector often make some part of their earnings in the formal sector. *Informal Sector: The Major Challenge*, ZIMBABWE SITUATION (Sept. 26, 2013), *available at* http://www.zimbabwesituation.com/news/zimsit_informal-sector-the-major-challenge/.

31. Arison Tamfu, *Zimbabwe's Troubled Informal Sector*, MSME NEWS NETWORK (May 2014) *available at* http://www.msmenewsnetwork.com/index.php/homepage/sme-features/sme-news/item/2555-zimbabwe%E2%80%99s-troubled-informal-sector.

32. *See* Shinder, *supra* note 29.

33. *Informal Sector Key to Growth*, THE HERALD (Jan. 16, 2014), http://www.herald.co.zw/informal-sector-key-to-growth/.

34. Scalability is described as "[a] characteristic of a system, model or function that describes its capability to cope and perform under an increased or expanding workload. A system that scales well will be able to maintain or even increase its level of performance or efficiency when tested by larger operational demands." *Scalability Definition*, INVESTOPEDIA, http://www.investopedia.com/terms/s/scalability.asp (last visited Feb. 17, 2014).

35. Microfinance has played a vital role in helping informal sector businesses. *See* Flore Gubert & François Roubaud, *The Impact of Microfinance Loans on Small Informal Enterprises in Madagascar*, INT'L INST. OF SOC. STUDIES (May 2011), *available at* http://www.iss.nl/ fileadmin/ASSETS/iss/Documents/Research_and_projects/Unlocking_potential_Microfinance.pdf (showing that MFIs in Madagascar have played a crucial role in allowing informal enterprises to accumulate assets); Jean-Pierre Muimana Kalala & Alpha Ouedraogo, *Savings Products and Services in the Informal Sector and Microfinance Institutions in West Africa: The Case of Mali and Benin*, MICROSAVE (Sept. 2001), *available at* http://zunia.org/sites/default/files/media/node-files/36/148639_3662_03662.pdf (suggesting that Mali and Benin both have robust informal sectors and would likely benefit tremendously from a microfinance industry capable of servicing the informal sector).

that the majority of the country's economy is in the informal sector. This means that, unlike other developing countries, microfinance has the potential to provide capital to most of the businesses in Zimbabwe.

While microfinance institutions are prevalent in Zimbabwe,[36] other developing countries,[37] and even some industrialized countries,[38] they have not all enjoyed the same level of success. For the purposes of evaluating Zimbabwe's attempts at reforming its microfinance industry, it is important to first examine the model of a successful microfinance sector.

III. MICROFINANCE

A microfinance institution ("MFI") provides financial and banking services to the poor.[39] In regards to lending, MFIs are very different from banks. Because their customers are poor, MFIs typically do not require

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36. *See infra* Part IV.

37. For an overview of microfinance's role in developing economies worldwide, s*ee* Roberto Moro Visconti, *A Survey on Microfinance for Developing Countries: A Social Responsible Investment Opportunity*, UNIVERSITÀ CATTOLICA DEL SACRO CUORE DEP'T OF BUS.ADMIN. (Apr. 10, 2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1284472.

38. MFIs do exist in the United States, the most prominent MFI would be Grameen America. Grameen America was created by Muhammud Yunus and despite being operated in a country with a very sophisticated and complex economy, it retains many aspects of the original Grameen Bank in Bangalore. *About Us*, GRAMEEN AMERICA, http://grameenamerica.org/about-us (last visited Feb. 17, 2014). The issue of access to banking has been raised after the United States Post Office inspector general released a report on poor populations which are underserved by banks. The report also suggested that Postal Offices begin offering basic banking services, including loans, to poor communities. Mersha Baradaran, *The Post Office Banks on the Poor*, NY TIMES (Feb. 7 2014), http://www.nytimes.com/2014/02/08/opinion/the-post-office-banks-on-the-poor.html?_r=0.

39. Despite having a philanthropic purpose, some MFIs have achieved remarkable financial success. Robert Annibale, *Microfinance: Building Domestic Markets in Developing Countries*, http://www.thegiin.org/binary-data/RESOURCE/download_file/000/000/51-1.pdf (last accessed Oct. 27, 2013) (discussing the potential revenue MFIs can generate while making contributions to poverty alleviation). Bolivia's BancoSol is another remarkable example of the potential profit a MFI can generate. *See* Pamela Das, *Avoiding A Subprime-Like Crises in Microfinance: Lessons from the Mexican and Bolivian Experience*, 15 L. & BUS. REV. AM. 819, 836 (2009) (detailing BancoSol's success; BancoSol has surpassed the profitability of traditional banks in Bolivia).

collateral[40] and typically issue loans for entrepreneurial purposes.[41] Loans are given at market rates and lending risk is partially alleviated by issuing loans to groups of people.[42] These loans are designed to provide capital to small-to-medium-sized enterprises.

The most widely-praised model of microfinance is Grameen Bank in Bangladesh. Muhammad Yunus, an economics professor, founded Grameen Bank in 1976.[43] Grameen Bank's first loan was only twenty-seven U.S. dollars,[44] but by 1997 Grameen Bank had a portfolio of over $260 million U.S. dollars and 2.3 million borrowers.[45] During that time, Grameen Bank's repayment rate was 98%.[46] Grameen Bank offered traditional banking services as well as some peripheral programs to benefit the Bangladesh community.[47]

Grameen Bank significantly improved the lives of its borrowers. Income increased for 97.93% of borrowers.[48] Grameen Bank's efforts have been widely recognized by the international community. The 2006 Nobel Peace Prize was awarded to Muhammad Yunus and Grameen Bank

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40. A collateral requirement for MFIs is impractical. Most people in poverty simply do not have any collateral to put up for a loan. Even if they do, it is very difficult to determine if they possess clear title to property. HERNANDO DE SOTO, THE OTHER PATH: THE INVISIBLE REVOLUTION IN THE THIRD WORLD 162 (1989).

41. *Micro-miracle: Grameen Bank's Genius is the Principles it Puts into Action*, HOUSTON CHRONICLE (Oct. 25, 2006), http://www.chron.com/opinion/editorials/article/Micro-miracle-Grameen-Bank-s-genius-is-the-1890919.php.

42. Most, but not all, MFIs require all group participants to be jointly liable for each other's loans. *Impact Evaluation for Microfinance: Review of Methodological Issues*, WORLD BANK (2007), *available at* http://karlan.yale.edu/p/Doing_ie_series_07.pdf.

43. *A Short History of Grameen Bank*, GRAMEEN BANK, http://www.grameen-info.org/index.php?option=com_content&task=view&id=19&Itemid=164 (last visited Oct. 27, 2013).

44. *Muhammad Yunus: Helping the less privileged unleash their entrepreneurial skills*, INSEAD KNOWLEDGE (Apr. 26, 2008), *available at* http://knowledge.insead.edu/csr/social-entrepreneurship/muhammad-yunus-helping-the-less-privileged-unleash-their-entrepreneurial-skills-1930.

45. This success is especially remarkable because it occurred during the course of several natural disasters which devastated many of the poor communities that Grameen Bank served. Mark Schreiner, *A Cost-Effectiveness Analysis of the Grameen Bank of Bangladesh*, WASHINGTON UNIV. IN ST. LOUIS CTR. FOR SOC. DEV. (2003), *available at* http://www.microfinance.com/English/Papers/Grameen_CEA.pdf.

46. *Id*.

47. *Id*.

Shahidur R. Khandker et al, *Grameen Bank: Performance and Sustainability*, WORLD BANK DISCUSSION PAPERS, at 83 (1995) *available at* http://www.microfinancegateway.org/sites/default/files/mfg-en-case-study-grameen-bank-performance-and-sustainability-oct-1995_0.pdf. These peripheral programs included social intermediation, where groups met and attended lectures on various moral issues. Grameen Bank typically used social intermediation to speak against child marriage, dowry, and to promote drinking clean water, self-education, and growing a garden. *Id*. at 133.

48. *Impact of Microfinance in Bangladesh*, GRAMEEN BANK http://www.grameen.com/dialogue/dialogue46/specialfeature.html (last visited Oct. 27, 2013).

"for their efforts to create economic and social development from below."[49] The microfinance movement has continued to advance[50] and capture attention from all over the world.[51]

As microfinance has spread, there have been several instances where MFIs have been damaging to the communities they were designed to serve. India's microfinance system is one such example.[52] Unlike Grameen Bank, most Indian MFIs have regarded profit as their primary goal; they charge high interest rates, have dubious collection practices, and issue loans that are unreasonably large.[53] India's MFIs have a repayment rate of approximately 20%.[54] It is safe to say that India's microfinance sector has failed to match the success of Grameen Bank.

Similarly to India, Nigeria also failed to adopt a microfinance model that would provide growth and alleviate poverty.[55] Nigeria suffered a

49. *The Nobel Peace Prize 2006*, http://www.nobelprize.org/nobel_prizes/peace/laureates/2006/ (last visited Oct. 27, 2013). Grameen Bank has also been recognized for helping empower women in developing countries. Elissa McCarter, *Women and Microfinance: Why We Should Do More*, 6 U. MD. L.J. RACE, RELIGION, GEND. & CLASS 353 (2006) (stating the effectiveness of microfinance in helping advance women in developing societies as well as the benefits to MFIs that serve women).

50. International capital markets are starting to establish microfinance funds that have generated remarkable returns for their investors. *See* Rob Copeland, *For Global Investors, 'Microfinance' Funds Pay Off*, WALL ST. J. (Aug. 13, 2009), http://online.wsj.com/news/articles/SB125002519860023799. Access to these funds is not limited to institutional investors. Websites such as Kiva.com allow users to browse various microfinance projects from around the world and invest in them. *See* Sarah B. Lawsky, *Money for Nothing: Charitable Deductions for Microfinance Lenders*, 61 SMU L. REV. 1525 (2008) (detailing the success of Kiva.com, a social-networking site that allows users to make microloans to developing countries).

51. Following Grameen Bank and Yunus' success, the United Nations deemed 2005 "The Year of Microfinance." Citation. Since then, it has caught the attention of financiers such as George Soros and many global commercial banks (such as Citigroup and Deutsche Bank AG) are beginning to establish and invest in microfinance funds. Aneel Karnani, *Microfinance Misses It's Mark*, STANFORD SOC. INNOVATION REV. (2007), *available at* http://www.ssireview.org/articles/entry/micro finance_ misses_its_mark Microfinance-works-even-without-a-Hollywood-ending. However, some firmly believe that microfinance has received too much attention and that microfinance is mistakenly considered to be a "silver bullet" for poverty. *See* Dean Karlan & Jacob Appel, *Microfinance Works, Even Without a Hollywood Ending*, THE CHRISTIAN SCI. MONITOR (May 17, 2011), *available at* http://www.csmonitor.com/Business/new-economy/2011/0517/.

52. *See generally* David E. Solan, *How Consumer Bankruptcy Reforms Can Help Save Microfinance in India*, 13 OR. REV. INT'L L. 317 (2011).

53. David E. Solan, *How Consumer Bankruptcy Reforms Can Help Save Microfinance in India*, 13 OR. REV. INT'L L. 317, at 320 (2011). Microfinance has become so unpopular in India that many politicians are running on anti-microfinance platforms. There are many proposals to dismantle microfinance institutions and these proposals have significant political support. These proposals seek to remove all MFIs from India, rather than provide meaningful reform and bring them more in line with the Grameen Bank model. *Id*.

54. David Roodman & Vijay Mahajan, *India Rocked by Microfinance Crisis*, NPR (Dec. 12 2009), http://www.npr.org/2010/12/09/131935206/India-Rocked-By-Microfinance-Crisis.

55. Florence Udoh, *Why Microfinance Banks Failed in their Role as Grassroots Economics Developers*, ALLAFRICA (Aug. 26, 2012), http://microfinanceafrica.net/news/nigeria-why-microfinance-

microfinance crisis similar to India throughout the early 2000s. Nigeria's MFIs were poorly managed; managers typically paid themselves too much, and deposits were frequently embezzled.[56] Additionally, Nigerian MFIs have charged interest rates on loans that range between 30 and 100 percent.[57] For these reasons, the people of Nigeria have little confidence in MFIs.[58] Zimbabwe's microfinance sector shares many of the characteristics of the failed microfinance sectors of Nigeria and India.

IV. ZIMBABWE'S MICROFINANCE SECTOR

Currently, Zimbabwe has a very small microfinance sector. Zimbabwe had over 1600 MFIs in 2003, but that number fell to less than 200 in 2004[59] and has remained at that level since.[60] For a country with a population of over thirteen million[61] and poverty rate of 72%,[62] 200 MFIs is insufficient. Additionally, 70% of working Zimbabweans are employed by small-to-medium-sized enterprises.[63] These businesses stand to significantly benefit from microfinance.

Zimbabwe's existing MFIs seem to practice microfinance similarly to the Indian MFIs. For instance, the MFIs in Zimbabwe charge high interest

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banks-failed-in-their-role-as-economic-developers/.

56. Florence Udoh, *Why Microfinance Banks Failed in their Role as Grassroots Economics Developers*, ALLAFRICA (Aug. 26, 2012), http://microfinanceafrica.net/news/nigeria-why-microfinance-banks-failed-in-their-role-as-economic-developers/.

57. Acha Ikechukwu, *Microfinance Banking in Nigeria: Problems and Prospects*, INT'L J. OF FIN. & ACCOUNTING (2012), *available at* http://article.sapub.org/pdf/10.5923.j.ijfa.20120105.04.pdf.

58. *See id*. However, the Nigerian government strongly believes that a functioning microfinance sector is essential to economic growth. Despite the failure of over 200 MFIs, the Central Bank of Nigeria has continued to revise regulations for the Microfinance industry. *Id* at 108-09. *See generally Revised Regulatory and Supervisory Guidelines for Microfinance Banks (MFBs) in Nigeria*, CENTRAL BANK OF NIGERIA (Dec. 18, 2012), *available at* http://www.cenbank.org/Out/2013/CCD/Amended%20Regulatory%20and%20Supervisory%20Guidelines%20for%20MFB.pdf.

59. ZAMFI—MICROFINANCE IN ZIMBABWE, http://zamfi.org/mfizim.html (last visited Oct. 27, 2013).

60. This is largely because of the financial downturns outlined in Part I as well as the fact that most Zimbabweans (specifically those in rural areas) do not have access to formal banking. *See* Chris Muronzi, *Zimbabwe not Overbanked*, ZIM. INDEP. (Oct. 25, 2013), *available at* http://www.theindependent.co.zw/2013/10/25/zimbabwe-overbanked/.

61. *World Fact Book: Zimbabwe*, CENTRAL INTELLIGENCE AGENCY, https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html (last visited Oct. 27, 2013).

62. *Zimbabwe Data*, THE WORLD BANK, http://data.worldbank.org/country/zimbabwe (last accessed on Oct. 27, 2013).

63. Kudzai Chimhangwa, *Microfinance Act a Step Towards Easy Access to Loans for SMEs*, THE STANDARD (Oct. 6, 2013), *available at* http://allafrica.com/stories/201310060140.html.

rates.[64] The Zimbabwe government has also received complaints regarding aggressive collection practices in the microfinance sector.[65] Most Zimbabweans are easy targets for these predatory practices, because most Zimbabweans are not financially literate.[66] The similarities between the Indian and Zimbabwean MFIs are troubling.

Aside from the overall attitudes and goals of their proprietors, MFIs face several operational challenges. MFIs in Zimbabwe are undercapitalized and face difficulties in finding money to loan to potential borrowers.[67] Additionally, few Zimbabweans have the experience necessary to properly manage an MFI.[68] The lack of familiarity with management information systems has made it difficult for Zimbabwean MFIs to properly track loans and create financial reports.[69] Fortunately, unlike the Indian government, Zimbabwe has demonstrated its commitment towards reforming the microfinance sector.

V. THE MICROFINANCE ACT

Zimbabwe's new Microfinance Act ("the Act")[70] is a response to the aforementioned problems. If the Act is going to be successful in bringing the practices of Zimbabwe MFIs in line with the Grameen Bank model, it should (A) expand access to the microfinance sector, (B) stop unethical business practices, (C) promote financial literacy and provide social

64. Farai Mabeza, *Microfinance Not Meeting Goals: Analysts*, THE ZIMBABWEAN (July 24, 2013), http://www.thezimbabwean.co/news/zimbabwe/67122/microfinance-not-meeting-goals-analysts.html.

65. *Responsible Lending Critical in Microfinance Institutions*, FIN. GAZETTE (June 22, 2012), http://www.financialgazette.co.zw/responsible-lending-critical-in-microfinance-institutions/.

66. Kudzai Chimhangwa, *Zimbabwe Govt. Regulates Microfinance Business*, THE STANDARD (Sept. 8, 2013), *available at* http://allafrica.com/stories/201309090398.html.

67. Lack of funding is believed to be "the major factor hindering the growth and development of MFIs in Zimbabwe." Tendekayivanhu Mutambanadzo, Thomas Bhiri, & Smiller Makunike, *An Analysis Challenges Faced by Zimbabwean Micro Finance Institutions in Providing Financial Services to the Poor and Informal Sector in the Dollarised Regime*, GLOBAL J. OF COMMERCE & MGMT. PERSPECTIVE, at 154 (2013), *available at* http://ir.nust.ac.zw:8080/jspui/bitstream/123456789/343/1/AN%20ANALYSIS%20CHALLENGES%20FACED%20BY%20ZIMBABWEAN%20MICRO%20FINANCE.pdf [hereinafter Challenges Faced by Zimbabwean MFIs].

68. *See id.*

69. A survey of Zimbabwean MFIS showed that approximately 56.2% use Excel spreadsheets to track loans, 18.2% use paper-based systems, and 25.6% use actual banking software. The survey pointed to the lack of available software that can properly manage MFIs as a principal cause for the use of such outdated information systems. *Id.* at 157.

70. The Act is currently before the Zimbabwe parliament. It was gazette on Aug, 30, 2013, and it is expected to pass in the near future. *Bill Watch 43/2013*, ZIM. SITUATION, http://www.zimbabwesituation.com/news/bill-watch-432013/ (last visited Sept. 9, 2014).

intermediation, and (D) help alleviate issues with funding and management which currently trouble MFIs. If the Act were able to achieve all of the above goals, it would put Zimbabwean MFIs closer to the Grameen Bank model.

A. Expanding Access to the Microfinance Sector

The Act aims to expand the microfinance sector in several ways. First, under the Act, MFIs will now be allowed to accept deposits.[71] Currently, MFIs are not allowed to accept deposits; this makes it difficult for MFIs to lend money at a reasonable interest rate. Allowing MFIs to build up a portfolio of deposits will help provide them with a greater pool of money they can lend.

Another possible benefit of allowing MFIs to accept deposits will be a reduction in the use of collateral. Currently, most MFIs in Zimbabwe require collateral because their small capital reserves cannot account for the risk that comes with providing collateral-free loans.[72] These collateral requirements are highly impractical[73] and do not work well with the ideal goal of an MFI, which is to provide banking services to the poor.

The Act will also relax some licensing requirements for MFIs.[74] Under the Act, MFIs can apply for perpetual licenses. This will alleviate MFIs from the burden of the license renewal process.[75] This should ease the regulatory difficulties of starting an MFI in Zimbabwe and hopefully result in an increase in the number of MFIs in Zimbabwe.[76] Overall, the Act seems to allow MFIs to act more like banks. This will not only benefit the poor by allowing them access to banking services, but will also benefit MFIs because they will have easier access to capital.

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71. Kudzai Chimhangwa, *Zimbabwe Regulates Microfinance Business*, THE STANDARD (Sept. 8, 2013), http://www.thestandard.co.zw/2013/09/08/zimbabwe-regulates-microfinance-business/.

72. ZAMFI—NATIONAL MICROFINANCE POLICY 5, http://zamfi.org/downloads/National%20Microfinance%20Policy.pdf (last visited Sept. 19, 2014).

73. Only about 18% of Zimbabwean small to medium enterprises possess enough collateral to be eligible for a typical microfinance loan. Blessing Bonga, *Zimbabwe: Microfinance Bill to Benefit SMEs*, THE HERALD (July 18, 2013), http://allafrica.com/stories/201307180290.html. *See also* ZAMFI—MICROFINANCE IN ZIMBABWE, http://zamfi.org/mfizim.html (last visited Oct. 28, 2013).

74. Clive Msipha, *Microfinance Bill is Customer Friendly*, ZIM. INDEP. (May 24, 2013), http://www.theindependent.co.zw/2013/05/24/microfinance-bill-is-customer-friendly/.

75. *See id*.

76. Additionally, the Zimbabwe Reserve Bank is hoping that the Microfinance Act is amended so that all regulations of the microfinance sector can be found under a single bill. This amendment would provide clarity and help make abiding by regulations less onerous. Taurai Mangudhla, *RBZ Demands Microfinance Bill Be Amended*, ZIM. INDEP. 13 (May 17, 2013), *available at* http://www.theindependent.co.zw/2013/05/17/rbz-demands-microfinance-bill-should-be-amended/.

B. Curbing Unethical Business Practices

The Act also contains reforms meant to address aggressive collections and other unethical business practices.[77] Licensed MFIs will be required to adhere to rules regarding their collection practices and can now lose their licenses if they fail to adhere to these rules.[78] The Act will also address disposition of collateral.[79] Presently, MFIs are being accused of circumventing legal requirements related to disposition of collateral.[80] The Act will require MFIs to obtain a court order before any part of a borrower's collateral is repossessed or disposed.[81]

C. Promoting Financial Literacy and Providing Social Intermediation

Social intermediation was one of the most essential components of the Grameen Bank model.[82] This concept is "defined as a process in which investments are made in the development of both human resources and institutional capital, with the aim of increasing the self-reliance of marginalized groups, preparing them to engage in formal financial intermediation."[83] Social intermediation is most effective when an MFI has strong relationships with its clients, a disciplined group formation process, and a savings program.[84] Social intermediation may help

77. *See* Msipha, *supra* note 74.

78. *See generally* Victora Mtomba, *Gono Tightens Screws on MFIs*, NEWSDAY (May 15, 2013), https://www.newsday.co.zw/2013/05/15/gono-tightens-screws-on-mfis/.

79.*Microfinance Institutions Warned*, SUNDAY NEWS (Feb. 4, 2012), http://www.sundaynews.co.zw/index.php?option=com_content&view=article&id=26395. *Gono Tightens Screws on MFIs*, NEWSDAY (May 15, 2013). https://www.newsday.co.zw/2013/05/15/gono-tightens-screws-on-mfis/.

80. *Gono Tightens Screws of MFIs*, NEWSDAY (May 15, 2013), https://www.newsday.co.zw/2013/05/15/gono-tightens-screws-on-mfis/.

81. *Id*.

82. Social intermediation for women has served to help remedy the education gap by providing them with guidance on how to run their businesses. P. Uday Shankar, *Social Intermediation in Microfinance—Reminiscences of a Microfinance Practitioner*, DEVELOPMENTCROSSING.COM (June 19, 2009), http://www.developmentcrossing.com/profiles/blogs/social-intermediation-in (last visited Jan. 17, 2014). Social intermediation has also served to generate "social capital." The goal of social intermediation is to promote cooperation among people and businesses so that a common goal can be achieved. S. Szabo, Social Intermediation Field Study Field Research Guide: Exploring the Relationship Between Social Capital and Microfinance, THE WORLD BANK (Sept. 9, 1999), *available at* http://siteresources.worldbank.org/INTSOCIALCAPITAL/Resources/400219-1150464137254/field guide.pdf.

83. Elaine Edgecomb & Laura Barton, *Social Intermediation and Microfinance Programs: A Literature Review*, THE SEEP NETWORK, vii (1998), *available at* http://pdf.usaid.gov/pdf_docs/PNACD060.pdf.

84. *Id*. at 14–19.

Zimbabwean MFIs fight both gender inequality and racial discrimination where it conflicts with sound business practices.

Developing strong relationships with clients may be difficult for Zimbabwean MFIs. One reason for this is that the past behavior of MFIs has given them a poor reputation in Zimbabwe.[85] It is possible that as MFIs expand the services they offer and discontinue charging egregious interest rates, borrowers are more likely to develop relationships with their lenders.

Group lending is one the most innovative aspects of microfinance. When groups of borrowers are jointly liable for each other's loans, the group tends to exclude risky borrowers.[86] This helps MFIs lower risk and shifts part of the responsibility for loan underwriting on to the group of borrowers.[87] It plays a vital role in social intermediation as well.[88] Having group meetings allows fellow entrepreneurs to discuss best practices and allows the sharing of skills where some group members are uneducated or illiterate.[89] Additionally, these meetings typically allow MFIs to promote social values.[90] These group meetings are the chief means by which microfinance helps promote social progress. If MFIs take the position that gender and racial inequality are bad for business,[91] promoting these ideals at group meetings will help encourage social progress and change attitudes regarding gender and race discrimination.[92]

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85. *See supra* Part III; *see also MFIs Behaving Like Goblins*, NEWSDAY, Dec. 12, 2012, *available at* https://www.newsday.co.zw/2012/12/12/mfis-behaving-like-goblins-2/.

86. *Microfinance in Evolution: An Industry between Crisis and Advancement*, DEUTSCHE BANK RESEARCH at 144 (Sept. 13, 2012), *available at* http://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000294314.pdf?kid=dbr.inter_ghpen.headline. *See also* Odongo Kodongo & Lilian G. Kendi, *Individual Lending versus Group Lending: An Evaluation with Kenya's Microfinance Data*, REV. OF DEV'T FIN. at 99 (2013), *available at* http://ac.els-cdn.com/S1879933713000158/1-s2.0-S1879933713000158-main.pdf?_tid=4b306be8-9808-11e3-b1a2-00000aacb360&acdnat=1392664894_5a91707b7b742bc0bea6389519eb5459.

87. *Nuts and Bolts of Microfinance: Risk Management Examples and Tools*, CMTY. DEV'T FIN. INST'S FUND, *available at* http://www.cdfifund.gov/what_we_do/resources/Nuts%20and%20Bolts%20of%20Microfinance%20Risk%20Mgt%20Examples%20and%20Tools.pdf (last accessed Feb. 17, 2014).

88. *See* Edgecomb & *Barton*, *supra* note 83, at 6–7.

89. *Id.* at 16.

90. *Guidelines for Establishing and Operating Grameen-Style Microcredit Programs*, http://grameenamerica.org/sites/default/files/Grameen%20Replication%20Guidelines.pdf, at 21–22.

91. *See supra* Part I.

92. Patrick Develtre & An Huybrechts, *Evidence on the Social and Economic Impact of Grameen Bank and BRAC on the Poor in Bangladesh*, BELG. HIGHER INST.OF LABOUR STUDIES (2002), *available at* https://hiva.kuleuven.be/resources/pdf/anderepublicaties/P2.pdf (describing the empowering effect Grameen Bank had on marginalized populations in Bangladesh).

Although the Act contains no provisions addressing group lending, it may be better if the regulatory bodies only encourage this practice informally. Reform legislation does not need to address this issue. Group lending does benefit MFIs by reducing the likelihood of default;[93] however, not all MFIs choose to employ this practice, and those who do not would be prejudiced if an absolute group-lending requirement was a part of microfinance reform.

D. Address Management and Funding Issues

Lack of funding, which is considered to be one of the greatest obstacles Zimbabwean MFIs face today,[94] will likely be addressed by the Act. As mentioned, the new bill will allow MFIs to accept deposits.[95] At this point, it is uncertain how much funding deposits will provide. Traditional sources of funding will still play a major role in supporting MFI lending activity.[96] Traditional sources include donor funds, grants, personal funds, loans from commercial banks, and foreign financing.[97] Currently, there is not a provision in the Act that would provide additional funding to MFIs from these sources.

Although the Act does allow MFIs to accept deposits, establishing a strong savings program among MFIs will be very difficult given Zimbabwe's past. During Zimbabwe's hyperinflationary period, banks were unable to pay interest above the inflation rate and were unable to profitably loan money because of how quickly the Zimbabwean dollar was losing value.[98] As a result, the banking system in Zimbabwe is underutilized.[99] In fact, most Zimbabweans will only leave their money in

93. *See* Naveen Kumar, *Dynamic Incentives in Microfinance Group Lending: An Empirical Study of Progressive Lending Mechanism*, NAT'L INST. FOR BANK MGMT IN INDIA, http://sgo.sagepub.com/content/2/2/2158244012444280.full (last accessed Oct. 28, 2013).

94. *See* Tendekayivanhu Mutambanadzo, Thomas Bhiri & Smiller Makunike, *An Analysis Challenges Faces by Zimbabwean Micro Finance Institutions in Providing Financial Services to the Poor and Informal Sector in the Dollarised Regime*, GLOBAL J. OF COMMERCE & MANAGEMENT PERSPECTIVE, 2013, *available at* http://ir.nust.ac.zw:8080/jspui/bitstream/123456789/343/1/AN%20ANALYSIS%20CHALLENGES%20FACED%20BY%20ZIMBABWEAN%20MICRO%20FINANCE.pdf.

95. *Balance Microfinance Regulation vital for Development*, THE FINANCIAL GAZETTE (Nov. 28, 2013), *available at* http://www.financialgazette.co.zw/balanced-microfinance-regulation-vital-for-development/.

96. *Id.*

97. *Supra* note 95, at 156. *See infra* Part VII.

98. HARARE, *In Dollars They Trust*, THE ECONOMIST (Apr. 27, 2013), http://www.economist.com/news/finance-and-economics/21576665-grubby-greenbacks-dear-credit-full-shops-and-empty-factories-dollars-they.

99. *Id.*

a bank for a maximum of 90 days.[100] It is not certain as to whether savings programs will be voluntarily utilized.

The issues regarding MFI management may be difficult to solve through legislation. Considering the high rate of financial illiteracy in Zimbabwe, it is difficult to find suitable candidates to manage MFIs.[101] Additionally, the lack of adequate information systems has stifled effective management.[102] The Act has no provisions that purport to remedy any of these management issues.

VI. DEFICIENCIES OF THE MICROFINANCE ACT

The main purpose of the Act seems to be to allow MFIs to operate more like banks. This purpose should allow MFIs to provide a broader range of services to Zimbabwe's poor population; however, the Act is lacking in several crucial areas. The Act, as it is currently written, contains no provision for helping encourage social intermediation and no regulation on interest rates. Further, the Act will only indirectly affect the collateral requirement, which limits access to microfinance loans for Zimbabweans with limited financial resources.

A. Failing to Encourage Social Intermediation

The importance of a social intermediation component cannot be understated. It is a crucial element of microfinance; it helps enable a sector of the population previously thought to be helpless.[103] Zimbabwean officials have publicly stated that MFIs should provide social intermediation,[104] but there has been no movement to amend the Microfinance Act to include a provision calling for social intermediation. Social intermediation helps create social capital by educating borrowers.[105] Although it may be difficult to legislate and enforce social intermediation requirements, the Zimbabwean government could create companion programs, which would be offered to borrowers, to fill this void left by Zimbabwe's MFIs.

100. *Id*.
101. *See supra* Part III.
102. *See* Mutambanadzo, *supra* note 90.
103. *See* Edgecomb & *Barton*, *supra* note 83.
104. *Engage the Youth, Microfinance Firms Urged*, THE HERALD (Oct. 3, 2013), http://allafrica.com/stories/201310030852.html.
105. *See* Edgecomb & Barton, *supra* note 83, at 27.

B. Absence of Interest Rate Regulation

One curious omission from the Act is any sort of regulation addressing the high interest rates MFIs have been charging. These interest rates have gone as high as 40% in a single month or 480% per annum.[106] The Zimbabwe Association of Microfinance Institutions has resisted the implementation of interest rate caps, claiming they are "retrogressive to the development of a sustainable microfinance sector."[107] Reducing the MFI's profits would do nothing to incentivize entry into the microfinance sector,[108] but the current interest rates run counter to the goal of microfinance. These concerns could be addressed by allowing MFIs to better control risk rather than refusing to regulate interest rates. New interest rate regulations, which lay out viable enforcement mechanisms, should be part of the Act.

C. Collateral Requirement

Most MFIs in Zimbabwe use a collateral requirement, which severely limits access to microfinance loans.[109] Although allowing MFIs to accept deposits may reduce their dependence on collateral,[110] the strain that collateral requirements impose on potential borrowers is too great to depend on just a possibility that collateral requirements will be relaxed. Risk-reduction programs, such as an insurance fund, should be created for MFIs as part of the Act, and their use should be conditioned on either reducing or removing the collateral requirement.

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106. Jennifer Young, *MICROCAPITAL BRIEF: Government Hopes Zimbabwe Microfinance Wholesale Facility Can Lower Microfinance Institution Interest Rates That Reportedly Hit 40% Monthly*, MICROCAPITAL.ORG (Dec. 21 2012), http://www.microcapital.org/microcapital-brief-government-hopes-zimbabwe-microfinance-wholesale-facility-can-lower-microfinance-institution-interest-rates-that-reportedly-hit-40-monthly/. *See also MFIs Behaving Like Goblins*, NEWSDAY (Dec. 12, 2012), https://www.newsday.co.zw/2012/12/12/mfis-behaving-like-goblins-2/ (stating the opinion of a Zimbabwe banking official that these high interest rates are an affront to the purpose of microfinance).

107. ZAMFI—NATIONAL MICROFINANCE POLICY, http://zamfi.org/downloads/National%20Microfinance%20Policy.pdf (last visited Oct. 28, 2013). *See contra* Odongo Kodongo, *Individual Lending versus Group Lending: An Evaluation with Kenya's Microfinance Data*, REV. OF DEVELOPMENTAL FIN. (Vol. 3, Iss. 2), *available at* http://www.sciencedirect.com/science/article/pii/S1879933713000158 (presenting statistical data suggesting that high interest rates have an inverse relationship with repayment rates).

108. This is an important consideration, because of the small number of MFIs in Zimbabwe. *See supra* Part III.

109. ZAMFI—NATIONAL MICROFINANCE POLICY, http://zamfi.org/downloads/National%20Microfinance%20Policy.pdf (last visited Oct. 28, 2013).

110. *See supra* Part V.A.

D. Other Deficiencies

Finally, the act needs to incorporate more innovative ways to create funding and facilitate effective MFI management. Grant programs have helped fund MFIs in the past and their expansion would tremendously benefit MFIs.[111] One potential vehicle for facilitating effective MFI management would be to create a trade association for MFIs. A trade association would encourage the free flow of management ideas and best practices among MFIs. State-sponsored seminars and classes could also improve MFI management.

VII. RECOMMENDATIONS AND CONCLUDING THOUGHTS

Overall, Zimbabwe stands to benefit tremendously from a well-run microfinance sector.[112] A functioning microfinance sector can significantly expand the domestic market as well as help reduce poverty in Zimbabwe.[113] However, there are many other economic hurdles that Zimbabwe must clear in order to recover from the economic crises that it faced in the early 2000s.

Although the domestic market can be strengthened by a strong microfinance sector, its benefits are considerably limited when the flow of investment and capital into Zimbabwe is constrained.[114] In order to maximize the benefits of the Microfinance Act and to assist Zimbabwe in its economic recovery, the Empowerment Act should be repealed and all

111. *See* Mutambanadzo, *supra* note 94, at 156.

112. Afrasia Kingdom, *Microfinance Vital*, THE FIN. GAZETTE (Sept. 26, 2013), http://www.financialgazette.co.zw/microfinance-vital/ (stating the importance of microfinance to the Zimbabwean economy as a mechanism for transferring capital from the formal to the informal sector).

113. *Id.*

114. *See generally* Eric Bloch, *Unabated Sabatoge of Investor Confidence*, ZIM. INDEP. (Apr. 12, 2013), http://www.theindependent.co.zw/2013/04/12/unabated-sabotage-of-investor-confidence-2/ (stating that despite the very attractive investment opportunities in Zimbabwe, indigenization policies such as the Empowerment Act are undercutting investor confidence in Zimbabwe), *contra Zimbabwe's FDI Grows*, http://www.zimtreasury.gov.zw/165-zimbabwe-s-fdi-grows (last visited Oct. 27, 2013) (stating that the FDI has increased to 400 million dollars, despite the indigenization policies). The Empowerment Act does not seem particularly popular, even amongst the native Zimbabweans, whom it is purported to assist. *See* Vince Musewe, *Indigenisation Will Not Feed Us!*, THE ZIMBABWEAN (Sept. 24, 2013), http://www.thezimbabwean.co/news/analysis/68561/indigenisation-will-not-feed-us.html (arguing that Zimbabwean government needs to refocus on more pressing issues than indigenization, and that the Empowerment Act provides no immediate benefits to native Zimbabweans). *Contra World's Moved on Chinamasa*, THE INDEP. (Jan. 17, 2014), http://www.theindependent.co.zw/2014/01/17/worlds-moved-chinamasa/ (stating that Zimbabwe's government refuses to acknowledge the failure of indigenization, and that the growth of both the informal sector and the shrinking tax base are consequences of the Empowerment Act).

future indigenization efforts should be reviewed for potential economic consequences before they are enacted.[115] In addition to avoiding a repeat of the economic crisis caused by land reform in the early 2000s, a repeal of indigenization policies may help persuade other nations (such as the United States) to discontinue sanctions against Zimbabwe.[116]

Despite the recent crises, the Zimbabwe economy still shows incredible promise. Zimbabwe was once the fastest growing economy in Africa, and the damage done by the crises, which halted Zimbabwe's growth can be undone. A strong microfinance sector will help Zimbabwe's economic recovery and pull many Zimbabweans out of poverty; however, the Microfinance Act falls short of capturing the entirety of the Grameen Bank model. The success or failure of Zimbabwe will speak volumes about the value of microfinance as a tool for alleviating poverty in developing countries.

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115. As a practical matter, it is unlikely the Mugabe administration will reverse course on indigenization laws, based on his past record and treatment of foreigners and white Africans. With that in mind, it will be extremely difficult for the Zimbabwean economy to grow under the Mugabe administration, regardless of the effectiveness of the Microfinance Act.

116. *See supra* Part I.

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