MICROFINANCING: AN ISLAMIC LAW PERSPECTIVE

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ABSTRACT

The widespread of Conventional and Islamic based microfinancing and their vital roles in poverty alleviation is undeniable. However, the heart of the matter is that, the Conventional microfinancing has some characteristics that are not in line with the Sharri ah principles as it charges interest and focuses mainly on women. Generally, the study starts with a brief introduction of Conventional and Islamic microfinancing together with their concepts, developments, objectives and characteristics. It also discusses the differences between microcredit and microfinancing. Moreover, the study examines the differences between the Islamic microfinancing and Conventional one. For the practices, the study focuses on Grameen Bank of Bangladesh and Amanah Ikhtiar Malaysia (AIM) of Conventional microfinancing. Whereas, for Islamic microfinancing the focus is on Islami Bank Bangladesh Limited (IBBL), SME Bank of Malaysia and EONCAP Islamic Bank Berhad of Malaysia. Furthermore, the study shows that, the applicable contracts of Islamic microfinancing may be divided The first one is charitable based-microfinancing system that into two systems. includes gard hasan contract. The second is profitable based-microfinancing system that includes salam, mudārabah, mushārakah, and bay' mu'ajjal contracts. At the same time, the study indicates that there are various existing Sharri ah compliant contracts that can be useful for Islamic microfinancing institutions (IsMFIs) such as, ijārah, musāgāt and muzāra'ah contracts. Hence, the study also shows that Islamic microfinancing does not charge interest and or focus on mainly the family head as recipient of the loan. It shows that, the zakāh and waqf funds can be used for income generation for IsMFIs and for mitigation of the risk. It shows that the kafālah groupbased concept can be used as an alternative to collateral, while the service charge can be used as a substitute to interest provided that charge should be of the exact amount of administrative cost. Nonetheless, due to limited resources and time limitation, the study excludes the discussion on the application of Islamic microfinancing in Yemen, Indonesia and other Muslim countries. This study applies qualitative research method and it is theoretical in nature.

ملخص البحث

لا يخفي على أحد اليوم سرعة انتشار التمويل الأصغر في العالم بنوعيه الإسلامي والتقليدي مع ما يعرفان من تطورات، ودرهما الحيوي في تخفيف حدة الفقر. لكن المشكلة هي أن التمويل الأصغر التقليدي له بعض الخصائص التي لا تتوافق مع مبادئ الشريعة الإسلامية كأخذ الفوائد على القروض المقدَّمة للفقراء، والتركيز غالبا على النساء عند تقديم القروض. عموما، تبدأ هذه الدراسة بمقدمة موجزة حول مفهوم التمويل الأصغر التقليدي والإسلامي وتطوراتهما وأهدافهما، وخصائهما. وتناقش أيضا الفرق بين القروض الصغرى والتمويل الأصغر . بالإضافة إلى ذلك، توضح الدراسة الفرق بين التمويل الأصغر الإسلامي والتقليدي. فمن حيث تطبيق التمويل الأصغر التقليدي، تركز الدراسة على تطبيقاته في كل من بنك غرامي بنغلاديش وأمانة اختيار ماليزيا . وأمَّا بالنسبة للتمويل الأصغر الإسلامي، فتركّز الدراسة على بنك إسلامي بنغلاديس ليميتي، و إس إيم إي بنك لماليزيا وإييون كاب إسلامي بنك برهاد. وللمزيد من الإيضاح، تبين الدراسة بأن العقود المنطبقة على نظام التمويل الأصغر الإسلامي يمكن تقسيمه إلى قسمين. الأول: التمويل الأصغر الخيري الذي يشمل عقد القرض الحسن. والثاني: هو التمويل الأصغر الربحي الذي يشتمل على عقد السلم والمضاربة والمشاركة وبيع المؤجل . و تشير الدراسة إلى أن هناك أنواع أخرى من العقود الشرعية مفيدة لمؤسسات التمويل الأصغر الإسلامي مثل عقد الإجارة والمساقاة والمزارعة. وتوضح أيضا بأن التمويل الأصغر الإسلامي لا يفرض أيّة فائدة على عملية القرض. ويركز على رب الأسرة كمقترض. إضافة إلى ذلك، تبين بأن أموال الزَّكاة والوقف يمكن استثمارها لدعم مؤسسات التمويل الأصغر الإسلامي وكذلك بالنسبة لتخفيف الخطر. وأيضا تشير بأن مفهوم المجموعة المقترضة التي تقترض على أساس الضمانة فيما بين أفرادها يمكن تبادلها بمجموعة مبنية على أساس الكفالة بدلا من الضمان والرهن . بينما سعر الخدمات يمكن استعماله كبديل للفائدة بشرط أن لا يزيد عن محض سعر الخدمات الإدارية . فنظرا لقلة المصادر وضيق الوقت لم تناقش الدراسة تطبيق التمويل الأصغر الإسلامي في كل من اليمن وإندونيسيا وباقي الدول الإسلامية . وجدير بالذكر أن هذه الدراسة بحث أكاديمي ومنهجه نظري على أساس استطلاع مراجع المكتبة.

APPROVAL PAGE

I certify that I have supervised and read this study and that to acceptable standards of scholarly presentation and is figurality, as a thesis for the degree of Master of Comparative	fully adequate, in scope and
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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except

where otherwise stated.	I also declare that it has n	ot been previously or concurrently
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Ibrahim Vamba Fofana		
Signature		Date

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MICROFINANCING: AN ISLAMIC LAW PERSPECTIVE

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This research is foremost dedicated to Allāh and my caring parents, Mr. Vamba
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LIST OF ABBREVIATIONS

ADB Asia Development Bank

AIM Amanah Ikhtiar Malaysia

'A.S alaihi al-salām, blessings of Allah be upon him

BBA bay' bithaman al-ājil, deferred payment sale

CUs The Credit Unions

CGAP The Consultative Group to Assist the Poor

etc. And so forth

FINCA Foundation for International Community Assistance

IBBL Islami Bank Bangladesh Limited

IDB The Islamic Development Bank

i.e. that is

IFC International Finance Corporation

IsMFI Islamic Microfinancing Institution

ME Micro-entrepreneur

MFIs Microfinancing Institutions

NGOs Nongovernmental Organizations

n.d.. no date

n.p. no place of publication

RDS The Rural Development Scheme

RM Ringgit Malaysia

S. 'A.W salā Allāh alaihi wa salam, may peace and blessings of Allāh

be upon him.

SHGs The Self-help groups

USD United States Dollar

CHAPTER ONE

INTRODUCTION

1.1 PREFACE

It is undeniable that poverty is a great problem faced by a lot of people in the world today both at individual and nations level. According to the survey of 2007, over 1.2 billion people around the globe live on less than one dollar per day. 640 million children live without adequate shelter, 400 million have no access to safe water, 270 million have no access to health services. 10.6 million died in 2003 before they reached the age of five.²

Many suggestions have been given on ways to alleviate this terrible state of poverty faced by billions of the world's population. For instance, the World Bank suggested that poverty can be reduced by promoting economic growth and through empowerment. Another argued that poverty alleviation can be improved through direct aid by government and private charities.³ Another suggestion that has emerged as an integral tool to reduce poverty is through microfinancing that refers to the provision of financial services to poor and low-income households without access to formal financial institutions.⁴

Latifee H. I., The future of microfinance: Visioning the who, what, when, where, why, and how of microfinance expansion over the next 10 years, (n.p, 2, http://www.microcreditsummit.org/papers/Plenaries/Latifee.pdf (accessed 15 June, 2008).

Anub Shah, February 15, 2007,"Causes poverty," n.p, http://www.globalissues.org/TardeRelated/Poverty.asp (accessed June 23, 2008).

wikipedia.org, "Poverty" (accessed 18 June, 2008).

John D Conroy, The challenges of microfinancing in Southeast Asia, at 2, < www.fdc.org.au/Files/Microfinance/Challenges%20of%20MF.pdf > (accessed 16 July, 2008).

Recently, the typology of institutions that offer microfinancing services became wider, including non-governmental organizations (NGOs). There are about 7000 microfinancing institutions or more providing financial support to millions of people across the world, mostly targeting women as recipients.⁵ The "Microcredit Summit 1997" envisaged that 100 million poor families would have access to microfinance services by 2005.⁶ For this last decade, microfinancing has emerged as an important instrument for poverty alleviation in the developing countries as well as developed economies. Furthermore, it has become one of the world core and fundamental strategies for poverty reduction.

However, from an Islamic law perspective, the Conventional microfinancing has some mechanisms and regulations that are inconsistent with the *Sharī'ah* principles specifically on charging of interest which is not *Sharī'ah* compliant and is considered as a major sin as evidenced by the following verse of *al-Qur'ān*:

"O you who believe, fear Allah and give up what remains due to you of interest if you are indeed believers. And if you do not, then be warned of war (against you) by Allah and His Messenger, while if you repent you shall have your capital. Do not do wrong and you shall not be wronged"

Another problem regarding Conventional microfinancing is its scheme that focuses mainly on women. This seems to be against the Islamic law principles because

⁵ Gianfranco A. Vento, *New challenges in microfinance: The importance of regulation*, at 5, <<u>http://www.avanzar.org.ar/documentos.htm</u>> (accessed 23 June, 2008).

Habib Ahmed, Frontiers of Islamic banking: A synthesis of social role and microfinance", at 2, < info.worldbank.org/etools/library/latestversion_p.asp?objectID=240136&lprogram= -> (accessed 21 June 2008).

⁷ Qur'ān, *al-Baqarah*, 2: 278-279.

tension within the family might happen if the preference is only given to the women and not men who are the heads of the families.

In the light of the above, this study attempts to find a solution to these problems by exploring potential Islamic substitutes to the charging of interest and gender bias. Generally, it sheds light on the concept of Conventional microfinancing. It also covers the differences between microfinancing and microcredit. The study then seeks to study *Sharī'ah* based microfinancing, including the differences between the Islamic microfinancing and its Conventional counterpart. Before concluding the study with some suggestions and recommendations, the study analyses some related issues on Islamic microfinancing. Although, the word "microfinancing" may be different from the word "microcredit" in nature, both words have been used in this study as synonyms words in terms of context and practice in some places.

1.2 OBJECTIVE OF THE STUDY

The research attempts to achieve the following objectives:

- a. to study the general concept of microfinancing from Conventional and Islamic law perspectives;
- b. to analyze the applications and practices of Islamic microfinancing whether they are *Sharī* ah compliant or not;
- c. to look into the issues relating to Islamic microfinancing.

1.3 STATEMENT OF THE PROBLEM

Studies have shown the success of Conventional microfinancing in alleviating poverty in many developing countries. The issue is whether the principles used in Conventional microfinancing are inline with the principles of *Sharī'ah* as it involves

the charging of the interest $(rib\bar{a})$ and discrimination against men as women are given priority over men.

1.4 HYPOTHESIS

The success of Conventional microfinancing in poverty alleviation is undeniable, but some principles used are not *Sharī* ah compliant. As a result, some efforts have been made by some Islamic microfinancing institutions by providing alternatives to the Conventional microfinancing. Even though the alternatives are good but they seem to be not fully inline with the *Sharī* ah principles.

1.5 LITERATURE REVIEW

There are various books and articles written on microfinancing from Conventional and Islamic point of views.

For Conventional microfinancing, Latifee H. I., has written a good book entitles, "The Future of Microfinance: Visioning the Who, What, When, Where, Why, and How of Microfinance Expansion Over the Next 10 Years." He broadly classifies microfinancing into two main parts: the microfinancing outreach to date and the other is microfinancing experience over the next ten years. All in all, the book is enriched with concise information about microfinancing. Despite the fact that this work of Latifee has encompassed some important aspects of the microfinancing like its historical development and its expansion in the future, it is merely from the Conventional system perspective without any reference to Islamic law stands. Also in this track of drawback of Latifee book, he does not grant any load or mention the definition of the term "microfinancing."

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⁸ Latifee, (accessed 15 June, 2008).

Another individual effort to this field is an article written in a book by Sanjay Sinta, entitles, "Trend & Future Direction of Microfinance in Asia." He in his work highlights the trends of microfinance in Asia, its products and delivery mechanisms which includes the Grameen Bank mode of operation. This article however underlines some points relating to the practice of Conventional microfinancing but not in details. Also, the article does not mention any point of the Islamic microfinancing which is considered as a heart of this study.

Moreover, there is another relevant article on microfinancing written by Gianfranco A. Vento with the title, "New challenges in Microfinance: The Importance of Regulation." The author discusses many points, such as, the evolution of microfinancing industry for the last few years and its importance towards poverty He also, addresses the distinctive features of those who provide alleviation. microfinancing services. Although this work may be different from this study, but there is some-how a similarity between them regarding the practice of microfinancing from Conventional perspective.

In addition, John D Conroy has written an article entitles, "The Challenges of Microfinancing in Southeast Asia."11 This article can be considered as one of the best kinds of the individual contributions. The author underlines some of the relevant points towards this field such as definition of microfinancing and its Conventional based models of financing. On the contrary, there are many areas which he does not discuss such as the concept of microfinancing, its practices, development from the Islamic perspective and so on.

⁹ Sanjay Sinta, "Trend & Future Direction of Microfinance in Asia" in *Creating opportunities for the* poor through innovation, edited by: Agus Pakpahan, Erna M. Lokollo and Krisna Wijaya (Jakarta: PT. Bank BRI, Gd BRI I, JI. Jend. Sudirman Kav. 46, Jakarta, 2004), 132-133. This book is enriched with information which gathers numerous of articles written by different authors.

¹⁰ Gianfranco, (accessed 23 June, 2008).

¹¹ John Conrov, (accessed 16 July, 2008).

Besides the abovementioned book and articles that discussed microfinancing from Conventional perspective, there are books and articles that deal with microfinancing from Islamic law perspective. The books include "Islamic Microfinance: Theory, Policy and Practice" by Ajaz Ahmed Khan. 12 The author explains about some Islamic financing principles and lending methodologies that have to be followed in implementing Islamic microfinancing programme.

Moreover, he identifies the importance and objective of microfinancing programme including the ways and how the poor should be able to generate independent incomes and methods on how to help improve the economic growth of the society. Although, this book is useful for the target of this study, there is a difference in terms of the overview of microfinancing and also some of the discussing issues in the study are not included in the aforementioned book, such as targeting women as recipients, service charge, *waqf* as Islamic microfinancing and so on.

Another author who wrote on Islamic microfinancing is Bagus Aryo, "Syariah Principles and Microfinance: Case Study of BMT Al Karim." His writing explains some of the Sharī'ah products in microfinancing, but there are still a number of points that he does not cover, such as, the issues of using zakāh funds, waqf properties as sources of funding for the Islamic microfinancing etc.

Furthermore, Chiara Segraod has written an article entitles: "Case Study Islamic Microfinance and Socially Responsible Investments." He addresses the role of microfinance in the Muslim world and the basic principles of microfinance. He

Khan Ajaz Ahmed, "Islamic microfinance: Theory, policy & practice", < www.scribd.com/doc/3176454/islamic-microfinance-theory-policy-practice - 272k - > (accessed 1 July, 2000)

¹³ Bagus Aryo, "Syariah principles and microfinance: Case study of BMT Al Karim" in *Creating opportunities for the poor through innovation*, edited by: Agus Pakpahan, Erna M. Lokollo and Krisna Wijaya (2004), 132-133.

¹⁴ Chiara Segraod, Case study Islamic microfinance and socially responsible investments, (MEDA PROJECT, Microfinance at the University, University of Torino) < www.gdrc.org/icm/islamic-microfinance.pdf > (accessed 27 July, 2008).

also explains the Islamic microfinance and its future perspective. However, with all these tremendous efforts by the author, he does not mention some of the points which may give clear picture to the reader like the issues, definition and development of Islamic microfinancing.

Another article relating to Islamic microfinancing is an article written by Habib Ahmed entitles, "Financing Microenterprises: An Analytical Study of Islamic Microfinance Institutions." The writer focuses on the impact of establishing Islamic Microfinance Institutions and their tremendous contribution in supporting the poor. Briefly, on the Conventional side, Habib takes Grameen Bank as an example in terms of practice. Furthermore, he proceeds to compare between Islamic Microfinance Institutions and Conventional Microfinance Institutions.

Although, this article may be closely aligned with the study especially regarding some Islamic alternatives for interest based charge, but there are some differences in terms of the structure, the practice and the Islamic legal implication. For the structure and the practice the author focuses only on Bangladesh and he does not refer to the practices in various Muslim countries. The author also, fails to mention the legal implication of those alternatives. Not only that, he does not address some of the points which may be part of the issues facing the Islamic microfinancing like service charge, sustainability of Islamic microfinancing and so on.

1.6 SCOPE AND LIMITATION OF THE STUDY

The scope of this study covers the overviews of microfinancing, its application from Conventional and Islamic law perspectives. For the practices, the study focuses on

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¹⁵ Habib Ahmed entitles "Financing microenterprises: An analytical study of Islamic microfinance institutions" <<u>www.microfinancegateway.org/redirect.php?mode=link&id=41189</u> > (accessed 13 June, 2008).

SME Bank of Malaysia, Grameen Bank of Bangladesh, Amanah Ikhtiar Malaysia (AIM), Islami Bank Bangladesh Limited (IBBL) and EON CAP Islamic Bank Berhad of Malaysia.

1.7 METHODOLOGY

This research is qualitative and theoretical in nature. It is a library based study. The materials are obtained and analyzed from various sources like the Islamic sources such as, *Qur'ān*, *Ḥadīth and Ijmā'* (consensus). Important books, articles, conferences proceedings, encyclopedia and any other relevant sources in the area of Conventional and Islamic microfinancing are also consulted. For the application of microfinancing in Malaysia, interview with relevant officers from EONCAP Islamic Bank Berhad of Malaysia and Amanah Ikhtiar Malaysia are carried out.

1.8 CHAPTERIZATIONS

This study deals with microfinancing from Conventional and Islamic law perspectives. It is divided into six chapters. Chapter one covers the general introduction of the study. It includes the preface, objective of study, statement of problem, hypothesis, literature review, scope and limitation of the study. It also looks into the methodology of the study.

Chapter two starts with the concept of Conventional microfinancing, its development, objectives, characteristics, and practices by Grameen Bank of Bangladesh and Amanah Ikhtiar Malaysia (AIM) with references to their operations. It also examines the differences between microcredit and microfinancing.

Chapter three proceeds with the discussion on the principles of microfinancing from Islamic legal perspective. It highlights the concept and development of Islamic

microfinancing that includes objectives and characteristics. It also explains the differences between the Islamic and Conventional microfinancing.

Chapter four looks into the applicable contracts for Islamic microfinancing such as *qarḍ ḥasan* (benevolent loan), *salam* (forward sale), *muḍārabah* (profit sharing), *mushārakah* (partnership), and *bay' al-mu'ajjal* (deferred payment sale) contracts. In each of the contract the study discusses the concept, the legality and the application of the respective contract as mode of Islamic microfinancing. Not only that, this chapter also dicusses the practices of microfinancing by Islami Bank Bangladesh Limited (IBBL), SME Bank of Malaysia and EONCAP Islamic Bank Berhad of Malaysia. It explains in brief the practices of the aforementioned organizations with special reference to their operations.

Chapter five analyzes the related issues involving Islamic microfinancing, such as using *zakāh*'s funds and *waqaf*'s properties as tools for Islamic microfinancing. It also examines the issue of using of *kafālah* group-based as a substitute to collateral and service charge as an alternative for interest fee.

Chapter six concludes the study. It also provides some suggestions and recommendations.

CHAPTER TWO

AN OVERVIEW OF THE CONCEPT OF CONVENTIONAL MICROFINANCING

2.1 INTRODUCTION

Poverty alleviation has become one of the major agenda of most governmental authorities worldwide. According to recent World Bank survey, there are approximately 1.1 billion out of 6 billion in the globe who live under extreme poverty line. In a year, over 8 million people die because of poverty. Searching for the panacea to this menace, a number of suggestions have been made. Among the many options through which poverty can be alleviated is microfinancing, this has been touted by development scholars as being very effective.

Indeed, microfinancing has become one of the fundamental and powerful tools for poverty alleviation across the globe. Currently, the usefulness and importance of microfinancing has been acknowledged by a vast majority of international organizations in fighting poverty. In the light of foregoing, this chapter therefore discusses the general concept of microfinancing, which includes its meaning, evolution, modus operandi, aims and practices by some institutions like Grameen Bank of Bangladesh and Amanah Ikhtiar Malaysia.

Jennifer Leong, "Number of people living in poverty", http://hypertexbook.com/facts/2005/JenniferLeong.sntm (accessed 11 November, 2008).

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2.2 CONCEPT OF CONVENTIONAL MICROFINANCING

The term microfinancing has a considerable diversity behind its meaning and conceptualization is often based on the perspectives from which it is viewed and practiced. However, some of the following definitions or meanings of microfinancing are pertinent.

The word "microfinancing" refers to an act of providing very poor families with very small loans to help them engage in productive activities or grow their tiny businesses.² It can also be identified as the provision of small scale financial services to low income people excluded from the formal financial system.³ In a similar vein, the Asia Development Bank (ADB) Microfinance Development Strategy for the Asia-Pacific region (ADB 2000a, 1) defines microfinancing as the provision of a broad range of financial services such as deposits, loans, payment services, money transfers, and insurance to poor and low-income households and their microenterprises.⁴

It can be inferred from the above definitions that the financial services in microfinancing are not restricted only to loans or credits; but, they can be expanded to other services like savings, insurance, and money (deposit) services.⁵

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² ACIC, "ACIC microcrdit: Events", < http://www.acic-caci.org/microcredit/faq.html (accessed 1 November, 2008).

³ Marco Elia, in his power point presentation "Microcredit and microfinance", held at University of Turin, Italy, Belgrade, 28th November 2007. www.ien.bg.ac.yu/BBA/Dogadjaji/nov07/microfinance.ppt ->, (accessed 1 December, 2008).

⁴ John Conroy, *The challenges of...*, (accessed 16 July, 2008).

Nethelands Platform for Microfiance, "Microfiance current trends and challenges", http://www.microfinance.nl/en-GB/Content.aspx?type=content&id=46 (accessed 1 December, 2008); see also, Judith Brandsma and Rafika Chaouali, "Making microfinance work in the Middle East and North Africa", (Private and Finacial Sector Development Group Human, Development Group, Middle East and North Africa Region, World Bank). http://microfinance.developmentgateway.org/Content-item-view.10976+M5f3a5891446.0.html > (accessed 1 December, 2008).

2.3 DEVELOPMENT OF CONVENTIONAL MICROFINANCING

The birth of microfinancing was initiated when the percentage of poverty increased during the 16th century. It started in Europe in an informal and small scale form, including informal savings clubs. In Ireland, loan funds emerged in the 1720s, using the following products: peer monitoring to enforce the repayment, weekly installments, interest-free loans and from donated resources.⁶

In 1778, the first thrift society was established in Hamburg and in 1801, the first communal savings fund (*sparkassed*) was found. Then the savings funds (saving banks) were expanded to agricultural lending. Nonetheless, the emerged of loan funds in Ireland result into the creation of two events. The first event was the establishment of a special law in 1823, which turned the charities into financial intermediaries by allowing them to charge interest on loans and to collect interest-bearing deposits. The second was the establishment of a Loan Fund Board in 1836 for their regulation and supervision.⁷

In about 1840, the self-reliant and sustainable institution emerged in order to raise funds for the poor through deposit collection and providing small loans financial services system. However, the development of these funds known as Irish Loan Funds at that time passed through three stages namely, a century of gradual growth as informal institution, then a few decades of rapid expansion as formal institution in a conducive regulatory environment and a century of decline due to financial repression.⁸

Furthermore, microfinancing was reformed by Raffeisen and Scholze-Delizsch after 1846-1847 (the hunger year). This was based on two systems, namely, rural

8 Ibid.

⁶ Hans Dieter Seibel, "History matters in microfinance", at 2-3 <opus.zbwkiel.de/volltexte/2004/2002/pdf/2003-5_History_matters.pdf> (accessed 1 December, 2008).

⁷ Ibid.