



MAINTAINING ORDER IN THE MICROFINANCE SECTOR IN GHANA

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ABSTRACT

This study examines the processes of maintaining order in the microfinance sector, particularly, the processes of resolving disputes, the types and causes of disputes that arise between microfinance institutions, their clients and workers. The study used empirical evidence derived from microfinance institutions, their clients as well as employees and commission agents within the Greater Accra Region of Ghana to aid in the examination of how order is maintained as well as the processes of resolving disputes in the microfinance sector. The study suggests that the adoption of an informal alternative dispute resolution mechanism yields better and cheaper results than litigation or legal means. The study further suggests that, parties to a microfinance transaction are reluctant to resort to litigation and would rather borrow at high interest rates to pay off loans than litigate. The findings show that MFIs maintained order by keeping good working relationships with their clients and staff as well as conducting credit or background checks on both clients and staff before dealing with them. Record keeping was also found to be crucial in the maintenance of order in the microfinance sector.

Keywords: Microfinance, Informal markets, Dispute resolution, Alternative dispute resolution mechanism, Financial markets.

Abbreviations

ADR: Alternative Dispute Resolution

MFI: Microfinance Institutions

RCB: Rural Community Banks

GDP: Gross Domestic Product

1. INTRODUCTION

1.1. Microfinance Institutions in Ghana

Microfinance has over the years been used to refer to that part of the financial sector that concentrates on the delivery of financial services to the poor and low income earners. "Microfinance is not a new concept in Ghana. It has always been a common practice for people to

save and/or take small loans from individuals and groups within the context of self-help in order to engage in small retail businesses or farming ventures” (Bank of Ghana, 2007). Microfinance institutions (MFIs) is therefore often used to describe institutions operating within the middle to lower end of microfinance by providing low-income households access to a range of financial services.

Over the years, the microfinance sector has thrived and evolved into its current state. This could be attributed to various financial sector policies and programmes such as the provision of subsidized credits, establishment of rural and community banks (RCBs), the liberalization of the financial sector and the promulgation of a regulatory regime that allowed the establishment of different types of non-bank financial institutions, including savings and loans companies, finance houses and credit unions, etc. (Bank of Ghana, 2007).

Previously, microfinance in Ghana was unregulated and thus operated beyond the functional scope of the regulatory regime. However, in the year 2011, the Central Bank of Ghana issued a regulatory notice which provided for a regulatory framework for microfinance activities in Ghana (Bank of Ghana, 2011). Even though the regulatory notice required the Bank of Ghana to exercise certain prudential oversight responsibilities, it made no specific provision for the resolution of disputes.

Microfinance has been a topic of much interest recently, particularly the doubts about whether microfinance institutions can help poor clients and still remain financially sustainable. Existing literature suggests however, that microfinance institutions are financially resilient to downturns in the domestic marketplace. Not only does this suggest that microfinance institutions may be good investments for reducing portfolio volatility, but they may also be able to weather financial storms to effectively serve poor clients in unstable areas of the world (John, 2008). Most poor people manage to mobilize resources to develop their enterprises and their dwellings slowly over time. Financial services could enable the poor to leverage their initiative, accelerating the process of building incomes, assets and economic security. However, formal financial institutions seldom lend down-market to serve the needs of low-income families and women-headed households. Perceptions of high risk, high cost and low returns on investments in small-scale enterprises usually discourage banks from investing. Most banks are also unable to assess the viability of small enterprises. This is often due to a lack of reliable information on small enterprises and the probability that small new ventures might fail. They are therefore and very often denied access to credit for any purpose, making the discussion of the level of interest rate and other terms of finance irrelevant. Therefore the fundamental problem is not so much of unaffordable terms of loan as the lack of access to credit itself (The World Bank Group, 1994; Kim, 1995; Aryeetey, 1998a; Jones *et al.*, 2000) Further, due to the relative high costs of pursuing credit from formal financial institutions, together with frustrations, including delays and prevailing bureaucratic procedures, informal borrowers and savers are usually unwilling to approach these banks. They therefore frequently turn to informal financial support for their financial needs (Aryeetey, 1998a; Alabi *et al.*, 2007).

The main object for the establishment of microfinance institutions is thus the provision of financial support to a portion of the population who in one way or the other do not have access to the traditional commercial banking systems. It is usually understood to entail the provision of financial services to micro-entrepreneurs and small businesses, which lack access to banking and related services due to the high transaction costs associated with serving such clients. The efficient functioning of these institutions is very important for guaranteeing the financial access to this discriminated layer of the population. Whilst formal banks do not provide financial services, such as loans, to clients with little or no cash income, microfinance institutions developed purposely to provide such services (Aryeetey, 1998a; Alabi *et al.*, 2007). Morduch and Haley (2002) and Japonica Intersectoral (2003), thus argued that, micro-financial institutions are an effective and powerful tool for poverty reduction among people who are economically active but financially constrained and vulnerable in various countries by providing serves such as loans, deposits and insurance to poor households and their micro-enterprises.

Microfinance institutions have shown high resilience financially in the face of stressful or slow economic conditions. According to Krauss and Walter (2006) and Jansson (2001), existing research shows that microfinance as opposed to commercial banks have been able to weather economic storms with little or no negative effects. In fact, they observed that financial indicators of a large number of microfinance institutions have actually showed little or no correlation with Gross Domestic Product (GDP) changes.

The maintenance of order through an effective, reliable, speedy and cheap resolution of financial disputes is very fundamental to the success of every financial market. In spite of the importance of the microfinance market in Ghana, there is to date very little data on how disputes arising out of their transactions are resolved. In fact there appears to be no rudimentary data on how order is maintained in the microfinance sector in general and amongst MFIs in particular, in Ghana.

1.2. Resolving Disputes

In the absence of any specific rules or procedure on the resolution of conflicts arising out of microfinance activities players in the microfinance industry are left to use any means available to the parties to maintain order in the industry. As an informal activity, the delivery of microfinance services, together with the resolution of conflicts arising from such activities are more often than not regulated by rules and measures falling outside the sphere of any legal regime. Legal rules therefore appear to have no role in the delivery of microfinance. It is thus suggested that, micro financial transactions often do not involve legal documentation and are usually unwritten. Microfinance arrangements are therefore based on mutual trust and social exchange. Consequently, the players in the industry often use informal means in their transactions. In spite of the absence of legal documentation, the parties to such informal transactions usually behave honestly, as dishonesty does not usually go unpunished in future dealings between the parties (Velez-Ibanez, 1983; Aryeetey *et al.*, 1997; Ingster, 2003).

Even though the legal system, does not exclude the resolution of disputes arising from informal transactions through legal or judicial means or alternative dispute resolution mechanisms, microfinance arrangements are more often than not resolved through other informal means. It has been suggested that even in most developed countries, disputing parties are often reluctant to resort to law and often use non-legal means. Inefficiencies and delays associated with the legal system has been some of the reasons attributed to the non-use of legal means to resolve such conflicts (Ellickson, 1991; Clark, 2002; The World Bank, 2005). (Seibel, 2001), also noted that, in spite of an absence of an efficient formal enforcement mechanism, the efficiency with which some informal transactions take place is far beyond the possibilities of even the most advanced modern bank. It is worth noting that section 11 of the (Contracts Act of Ghana, 1960), makes all transactions written or unwritten legally acceptable and thus enforceable. Thus, informal transactions, including microfinance transactions, are all enforceable under existing regulatory regime, so long as the terms and conditions agreed upon by the parties are certain and can be identified.

It has also been suggested that informal financial agents often achieve comparatively high repayments of loans. This high repayment rates has been attributed to various prevailing norms amongst practitioners and their clients, personal ethics and self-help measures. Existing literature suggests that the willingness to pay back loans by borrowers cannot be attributed to any existing laws or legal enforcement mechanism as most of these transactions occur beyond the functional scope of any regulatory regime (Ellickson, 1991; Aryeetey and Udry, 1995; Clark, 2002). Similar circumstances appear to exist in developed countries, where legal rules do not always influence commercial transactions (Macaulay, 1963; Laurence, 1980).

Generally, the process of settling disputes involves several processes, with the most common forms being litigation through the court process and alternative dispute resolution mechanisms (ADR) such as negotiation, mediation, adjudication or arbitration. Other means of settling disputes also includes conciliation and facilitation (The Courts Act, 1993; High Court (Civil Procedure) Rules of Ghana, 2004; Alternative Dispute Resolution Act of Ghana, 2010). Whilst adjudication or arbitration, conciliation and mediation involve a third-party decision maker, negotiation occurs without such a third-party (Gulliver, 1973; Alternative Dispute Resolution Act of Ghana, 2010).

According to Spigelman (2001), ADR exist as a separate and interlinked system of dispute resolution. There are certain conditions that inform disputants to patronize the use of ADR instead of the courts to resolve their differences. To avoid undue delays and cost associated with litigation, most people would prefer using ADR as a means to resolve their issues. The cost involved in hiring a legal practitioner and the kind of delays that the process goes through when seeking judicial dispute resolution may discourage the parties involved therefore, their choice of ADR (Goldberg *et al.*, 1999). According to Resnik (1995) and Goldberg *et al.* (1999), the use of ADR improves and increases the satisfaction level of the disputants with the outcome of the judgment, and also reduces recidivism (Resnik, 1995). He further explained that, the parties involved are encouraged and empowered by this mechanism to reach their own agreements thereby becoming satisfied with whatever outcome. Sabatino (1998) indicated that ADR is user friendly. He used the term,

“litigation lite” to explain that the use of ADR avoids high cost such as time, money and stress of the orthodox method of litigation. These, he explained may inform the decisions of the disputing parties to opt for ADR as a mechanism for resolving issues.

The above notwithstanding, it appears the reliance on ADR as a means of resolving dispute has some challenges. These challenges include the exclusion of legal values embodied in authoritative texts such as a constitution and statutes. It has been suggested that the exclusion of the legal system and the courts in the course of resolving disputes through ADR denies the parties the benefit derived from such legal values and access to courts constitutional powers that enables them to explicate, interpret and give force to such values [Fiss \(1984\)](#). Accordingly, parties to an ADR mechanism are unable to benefit from legal principles and do not often enjoy the powers of the courts which are backed by the force of the state.

Further, ADR is said to encourage individualization and privatization of justice. Individual demands are thus often satisfied so as to forestall their aggregation at the cost of justice. Whilst ADR gives room for a high concentration on individual interests, it seems to give little or no consideration to the preservation of justice and adherence to legal rules, which are often relegated to the background [\(Fisher and Ury, 1981; Abel, 1982\)](#). ADR is limited in its usage as certain matters regarding issues of national interest, environment, enforcement and interpretation of constitutional provisions, divorce or legal separation as well as felonies, amongst others, cannot be the subject of ADR [\(Alternative Dispute Resolution Act of Ghana, 2010\)](#). The above notwithstanding, ADR mechanisms have been found to be cheap, fast, efficient and provide a peaceful and friendly environment for resolving disputes [\(Resnik, 1995; Sabatino, 1998; Goldberg et al., 1999\)](#).

[Danet \(1980\)](#), on the other hand, described the process of dispute settlement as that occurring in the form of physical violence, appeals to the supernatural, magical procedures, avoidance, ostracism, shaming, reconciliation rituals, verbal contests, settlement-directed and fact oriented. These dispute settlement processes could be initiated either personally by an individual or the community. Personal enforcement is often initiated where an act of cheating or breaching contractual terms triggers retaliation by the victim. Such retaliations are effective if they are quick and occur in a frequent and long-term relationship. Community enforcement on the other hand occurs where informal agents change partners over time and dishonest behaviour against one causes sanctions to be imposed by the members of the community. However, in small communities where the behaviour of community members can be observed by one another, mechanisms of community enforcement operate in the same way as personal enforcement [\(Ellickson, 1991; Kandori, 1992\)](#).

Due to the nature of microfinance as an informal and developing activity, it appears the absence of any clear rules on how disputes arising from microfinance transactions are to be settled coupled with an absence of any rudimentary data on how order is maintained amongst MFIs or how they resolve disputes with their staff and clients, has created a gap in literature as well as retarded

the growth of microfinance, particularly in Ghana. This study thus uses empirical data to examine how order is maintained by MFIs as well as how they resolve disputes in Ghana.

2. METHODOLOGY

This study was conducted between September 2012 and January 2013, in Accra in the Greater Accra Region of Ghana. This area was selected because Accra is the capital city of Ghana and seats the headquarters of a large number of microfinance institutions with branches and operations throughout Ghana. A self-administered questionnaire was given to a portion of the selected population consisting of 8 microfinance institutions (MFIs) and 49 employees and commission agents of MFIs. Data was also collected from 48 clients of MFIs using unstructured interviews. This is because this section of the respondents was mostly semi-illiterates or illiterates and was often very busy carrying out their business transactions. Unstructured interviews allowed this portion of the respondents to freely give detailed information which they would otherwise be reluctant to provide. It also gave room to probe for further and detailed information leading to the collection of new and in-depth information on how order is maintained in the microfinance sector as well as how they settle disputes (Morse, 1991; Creswell, 2003). The population was purposively selected because they are the main parties in the delivery of microfinance services.

The use of purposive sampling enabled an adequate capturing of heterogeneity in the population as it facilitated access to a population that are not only typical, but also representative of variations in the population. Consent was obtained through an oral agreement. The design was chosen on the basis that it is appropriate when attempting to present facts or current conditions concerning the nature of a group of persons or objects and may include the procedure of induction, analysis, classification or enumeration (Fraenkel and Wallen, 2003). Descriptive statistics were used to analyse the field data collected. Data entry and analysis in this study were carried out through Microsoft Office Excel 2007.

3. RESULTS

3.1. Demographic Characteristic of Respondents

There were 105 respondents out of which 48 (45.7%) represented clients of microfinance institutions (MFIs). About 8 (7.6%) were made up of MFIs represented by their owners or directors, 49 (46.6%) were either employees or commission agents of MFIs. The MFI clients were individuals who had either been advanced a loan by an MFI or deposited his or her savings with an MFI. Almost all the respondents constituting the MFI clients operated small retail enterprises in markets. A few of these respondents were farmers, local fabric manufacturers, small commercial vehicle operators as well as food vendors. All the MFIs studied had their headquarters in Accra but with branch offices in most of the regions of Ghana. Almost all of these MFIs had as their objects the provision of micro lending and, or savings.

4. FINDINGS & DISCUSSION

4.1. Types & Causes of Disputes

The data collected on the characteristics and types of officials working for MFIs was analysed according to the recruitment criteria employed by the various MFIs. Whilst some MFIs employed the services of commission agents, others relied entirely on employees who earned a fixed monthly salary. Commission agents on the other hand were paid an amount calculated as a percentage of monies collected from the clients of MFIs and declared per month by the agent. MFIs which had employed monthly salaried workers were high and represented 62.5%, whilst those who had employed commission agents or staff represented 37.5%. Majority of the MFIs agreed with almost all the clients interviewed that, MFI clients found it difficult travelling to the offices of the MFIs to settle their debts or make deposits. The MFIs were accordingly forced to follow up and collect deposits or repayments from their clients. This is represented in the table below.

Table-1. Distribution of the mode of collecting deposits or re-payments from clients by MFIs

Methods employed by MFIs to collect deposits and repayments	Frequency	Percentages
Clients travelling to make repayments or deposits at MFIs offices	3	37.5
Collection of monies by MFIs' employees or commission agents	5	62.5

As shown in Table 1, clients who travelled to the offices of MFIs to pay their loans or deposit their savings represented 37.5% whilst those whose monies were collected by MFIs themselves represented 62.5%.

It appears the nature of the employment relationship between the MFIs and persons employed to collect payments or recover outstanding debts as well as the mode of collecting these payments were often the main cause of disputes that arose between the workers themselves, the workers and the MFIs as well as the workers and the clients. For instance, commission agents were found to operate in accordance with a practice that gave them greater control over the clients and the monies collected from clients. It was observed that most of the MFIs made huge losses when they recruited commission agents and have thus within the last 3 years done away with commission agents and maintained employees. Most of the MFIs interviewed indicated that employees were more loyal than commission agents. According to them whilst most of their commission agents often failed to return collected payments from their clients on grounds that the client could not be found or had gone bankrupt, others also simply bolted with collected payments. One of the MFIs indicated that they had within a period of 6 months lost over 10% of their capital to commission agents who simply bolted with collected re-payments and clients deposits. Unfortunately, they explained that, since they had no direct relationship with the clients or did not know their exact locations or homes, as most of the transactions and identification of clients were carried out by the commission agents, the MFIs could not recover any of those monies.

Interestingly, whilst MFIs preferred working with employees instead of commission agents, about 72% of the MFI clients that were interviewed preferred saving with or applying for a loan through a commission agent. They observed that most of the commission agents were patient with

them as they took time to explain the processes they had to go through to either save with or obtain a loan from an MFI. They further explained that a commission agent would wait, if they were busy serving their customers, to take them through the relevant processes or even fill-in a savings or loan application form for them, whilst those who worked as employees had no patience at all. An MFI client respondent indicated that an MFI employee would leave an application form with them, even when he or she knew the MFI clients were illiterates and thus could not read or fill the forms by themselves. According to the majority of the MFI clients that were interviewed, some commission agents would even come to their homes to collect their deposits or give them loans when they could not go to their business or market place. One of the respondent MFI client who sold vegetables indicated that a lady employee of one of the MFIs would not even touch her hand when collecting her deposit or giving her forms to fill. In her words she stated that:

“The lady employee of my MFI would throw the application form onto my vegetables displayed on the table for sale, making the papers wet. When I asked why she couldn’t wait for me to clean my hands and take it from her, she responded that she has no time and she doesn’t want to dirty her hands with my tomatoes and onions”.

Tables 2 and 3 show the frequency and percentage level of the distribution of the types of persons working for MFIs and the mode used in collecting payments from clients.

Table-2. Distribution of the types of persons working for MFIs

Type of Employees Hired	Frequency	Percentages
Employees and Commission Staff	2	25
Commission Staff only	1	12.5
Employees Only	5	62.5

Table-3. Distribution of the mode of collecting deposits or re-payments from clients by MFIs

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4.2. How they Maintained Order

It was observed that most of the MFIs used varying methods to maintain order and reduce the rate of disputes that often arose in the course of doing business. For instance, about 50% of the MFIs studied indicated that they automatically gave their clients grace periods upon the expiration of the loan term to pay up, whilst 38% required that such unpaid client justified the need for any grace period. 12%, however, seldom gave any such grace period and would quickly enforce the terms of the loan should a debtor fail to pay in accordance with the agreed terms.

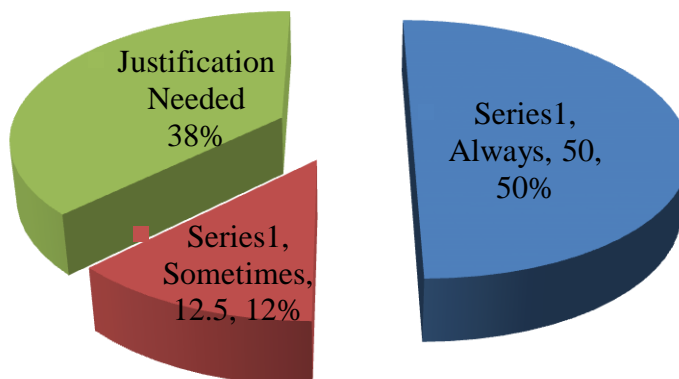


Figure-1. Distribution of MFIs respondents reasons and grace periods given upon default of loan repayment

Figure 1 above provides a graphical description of reasons and grace periods given to MFIs' clients upon default of loan repayments. According to some of the MFIs reasons such as unforeseen circumstances, including destruction of stock in trade during fire outbreaks, rains, storms, theft, calamities as well as civil strikes could justify the need to grant a client grace period. Such grace periods depending on the circumstances could range between 4 weeks to 24 weeks.

Majority of the MFIs clients who were interviewed indicated that more often than not their ability to repay loans advanced to them by MFIs is impeded by high interest rates on such loans. According to them they are unable to apply for or obtain high loan values due to their inability to prove their credit worthiness or provide collaterals as security for credit facilities. They explained that, such small loan values with high interest rates, rather gives them negative returns, thus their inability to service such loans. They further mentioned that high inflation together with harsh economic conditions also reduce their customer base. They are therefore unable to make enough sales to repay such micro loans. In addition to the above, they complained that insurance companies are often unwilling to insure their businesses or stock in trade due to their small economic values, resulting in huge losses in the event of any unforeseen circumstances or risks such as fire, theft and floods. The study further showed that interest rates charged by MFIs ranged between 36% and 72% and are charged on loans ranging between USD20.00 and USD2000.00, depending on the credit worthiness of the MFI client, the loan duration and the purpose of the facility.

In addition to granting clients grace periods, most of the MFIs respondents indicated that they have in place certain measures to help them maintain order and reduce disputes, which also help reduce the cost of doing and remaining in business. Some of these measures included the maintenance of dialogue and good working relationships with their clients. It was also observed that good record keeping, client background checks (credit worthiness), demand for clear and good explanation upon a default of loan repayments, demand for collaterals as well as the use of highly trained staff helped in maintaining order in the microfinance sector. It appeared that majority of the

MFI's adopted the maintenance of good communication channels with their clients as a means of maintaining order and reducing disputes. For instance, MFI's that used the maintenance of dialogue, good working relationships and the demand for clear explanations to reduce disputes recorded the highest percentage, whilst the demand for collaterals, background checks and use of highly trained officers to reduce disputes and maintain order was the least mechanism used.

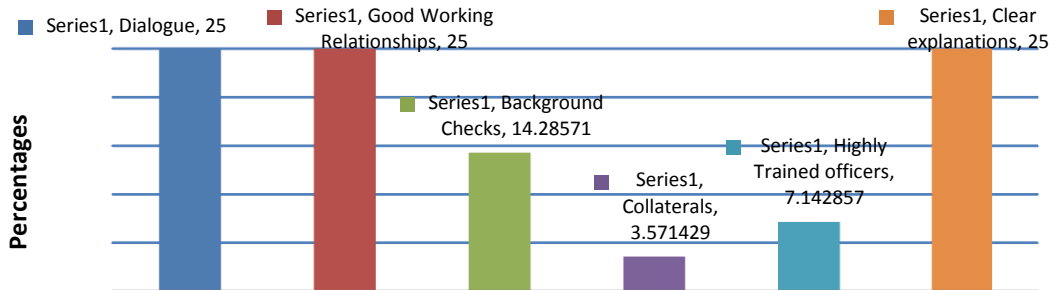


Figure-2. Distribution of respondents' description measures employed to ensure reduction in disputes and maintain order

Figure 2 above also provides a description of measures employed by MFI's to ensure the maintenance of order and reduction of disputes in the course of doing business.

In spite of the belief of the majority of the total respondents that record keeping is crucial to the success of their micro financial transactions, few of the MFI's agreed that, they kept both hard and soft copies of their records. In fact very few indicated they kept soft copies at all. Majority of the respondents who were MFI's observed that most of their transactions were recorded in the clients pass books and copied into an exercise book. Only about 11% of the MFI's studied kept records of their transactions in both hard and soft copy. The same percentage was also found to use a filing system to keep records of their transactions, whilst about 33% used pass books only as a means of keeping record of all transactions. About 45% of the MFI's had safe rooms where they kept their records. Majority of the MFI's kept their records in unlocked cabinets, shelves and drawers, whilst others left them on tables in open offices. Figure 3 below shows a representation of the various means by which MFI's kept records of their transactions.

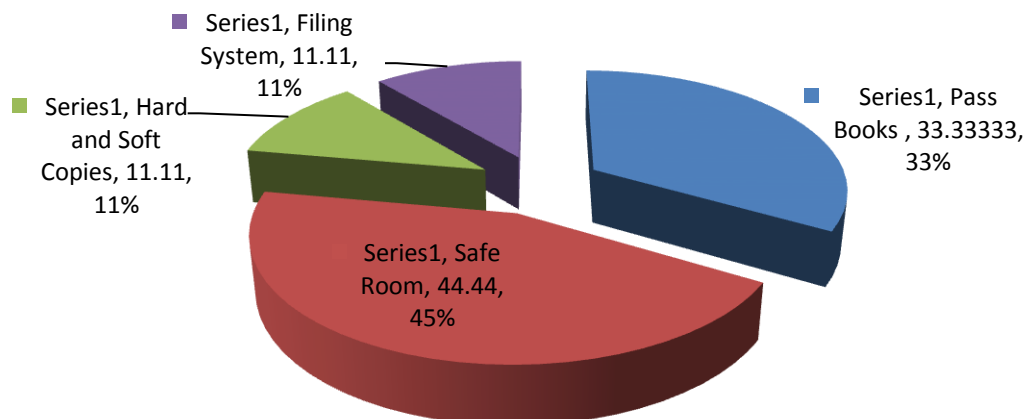


Figure-3. Distribution of MFIs respondents representation of the means of keeping records

It appears the manner in which records were kept contributed a great deal to a quick, cheaper and efficient means of resolving disputes, particularly where the dispute concerned loan repayment so or client savings. The study revealed that, second to problems arising from the use of commission agents, were issues arising out of improper and unsafe record keeping. These, they indicated resulted in avoidable errors or missing records of transactions between MFIs and their clients. Majority of the MFIs agreed that most of the complaints received from their clients included inaccurate statements on deposits or loan repayments. Sometimes, the value of loans advanced to clients formed the basis of disputes. They believed that these issues could be attributed to poor record keeping as well as unsafe means of storing client data and transaction records. A few of the MFIs studied indicated that they have had few instances where some employees and commission agents destroyed client data and transaction records and bolted with clients savings and repayments. Others observed that some of their employees inadvertently or mistakenly mixed up client data and transaction records, leading to loss of capital and income as they could not trace the clients or their loan statement and they had to write off such debts.

4.3. How they Settle Disputes

The study suggested that most MFIs as well as their clients rarely used legal means or litigation to resolve disputes arising out of their transactions. This seems to support [The World Bank \(2005\)](#), [Clark \(2002\)](#) and [Ellickson \(1991\)](#) assertion that disputing parties are often reluctant to resort to law and often use non-legal means of resolving disputes. The study suggested that majority of the total respondents adopted informal alternative means of resolving disputes such as persuasion, negotiation, dialogue, seizure of collaterals and stock- in-trade as well as closure of shops. A few of the respondents also sought the assistance of the police or self-help measures, such as the threat of harm to the client or destruction of the client's business. Whilst persuasion, negotiation and seizure of collaterals and stock- in-trade seemed to be the most widely used method in resolving disputes between the MFIs studied and their clients, the resort to self-help measures and assistance of police appeared to be the most widely used means of settling disputes between the

respondent MFIs and their employees or commission agents. According to majority of the respondent MFIs, the threat of closing their clients' shops or businesses often worked better when negotiations or persuasion failed. Most of the respondent clients agreed with the assertion of the respondent MFIs when they indicated that they would rather borrow from another MFI to pay off their debt than have their businesses closed or stock-in-trade seized.

The study observed that very few of the total respondents would resort to litigation either in the first instance or as the last resort to resolve any dispute. Majority of the total respondents were of the view that the adoption of an informal alternative means of resolving their differences was much cheaper and efficient. They explained that litigation was time consuming, costly, cumbersome and inefficient. They further indicated that litigation involves complex proceedings and unnecessary delays. Whilst some of the respondents mentioned they did not appreciate the legal processes, others thought the process of litigating was quite intimidating. The respondent MFI clients indicated that, as small business owners and petty traders they did not have the time or money to spend on costly litigations which took forever to deal with their petty issues. Almost all the respondents were of the view that the resort to an informal alternative means of resolving their differences enabled them to deal with all issues arising from their disputes in a peaceful and friendly environment. They mentioned that they could easily express themselves in an informal manner and in a language they could easily appreciate.

It appears time, cost and efficiency greatly influenced respondents in their choice of dispute resolution mechanism. Whilst about 50% agreed that their choice of resolution mechanism was influenced by time, efficiency and cost, 30% indicated they considered knowledge of the proceedings, peaceful and friendly environment as the most deciding factors. About 5% of the total respondents appear to have no appreciation of the litigation process. Whilst 15% of the respondents agreed that the process of litigation is intimidating, the majority of respondents which represented 80% of the total respondents were of the view that litigation is time consuming, complex, costly and involves undue delays. Figures 4 and 5 provide respondents perception on factors that influenced or limited their choice of dispute resolution mechanism.

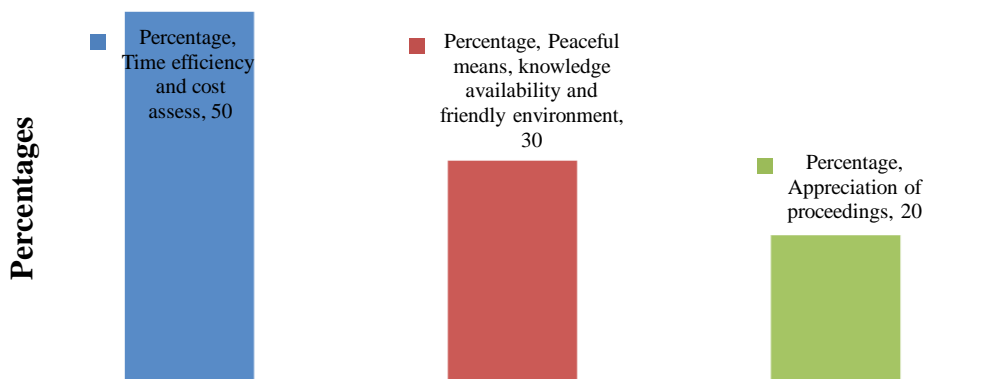


Figure-4. Distribution of respondents perception of factors that influenced their choice of dispute resolution mechanism

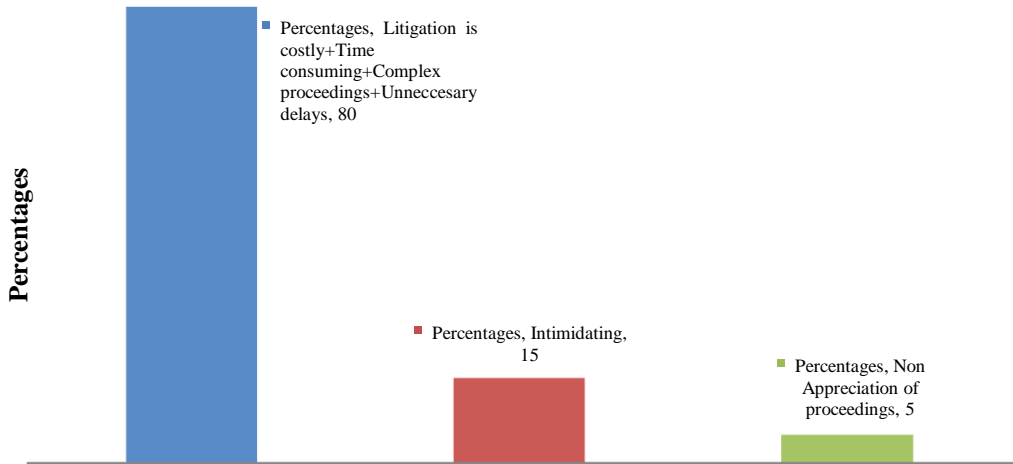


Figure-5. Distribution of respondents perception of factors that limited their choice of litigation as a means of settling disputes

In spite of the majority of the total respondents’ choice for an informal alternative means of resolving disputes arising out of their microfinance transactions, they observed that the use of other means other than litigation is inherent with various challenges. They explained that they found it difficult to enforce settlements reached through a non-legal means as such settlements have no State backing. They further complained that some parties refuse to continue with any negotiation after agreeing to do so. According to a small proportion of the respondents, such non-legal means of resolving disputes sometimes turn out to be more time consuming and ineffective as parties drag their feet causing unnecessary delays in reaching an amicable settlement.

The above notwithstanding, the use of non-litigation or non-legal means of resolving dispute appears to be more popular amongst MFIs, their clients as well as employees and commission agents of MFIs. For instance, 70% of the total respondents confirmed they would resort to an alternative means of resolving dispute, in spite of its challenges. 20% indicated they would resort to litigation, whilst 10% insisted extra judicial means of resolving dispute was more effective and quicker, as it yielded instant positive results. Figure 6 below provides a distribution of respondents’ choice of a dispute resolution mechanism.

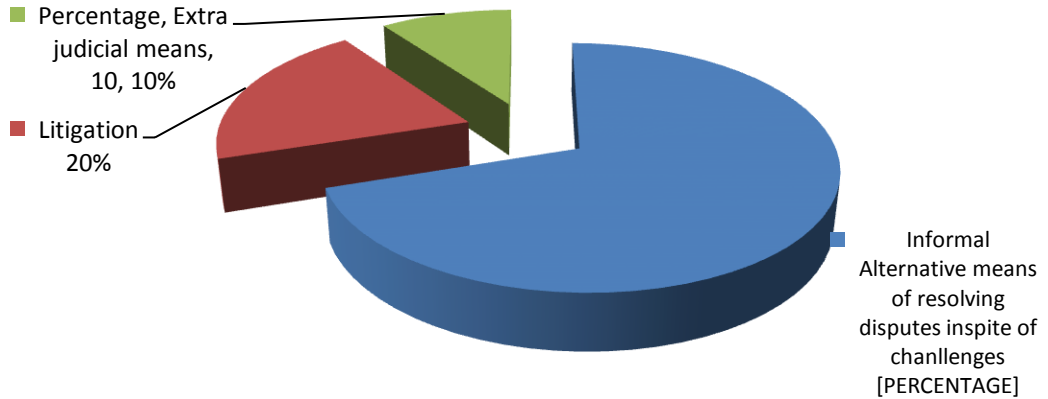


Figure-6. Percentage distribution of respondents means of resolving disputes

5. CONCLUSION

MFIs were found to operate at both the upper and lower end of microfinance. They served the poor as well as low and middle income earners. As a pro poor segment of the financial market, microfinance served the majority of the Ghanaian population that could not be reached by formal financial institutions. Until recently, microfinance as part of the financial segment of the Ghanaian economy was unregulated. MFIs therefore operated in accordance with self-regulations. Accordingly most MFIs, their employees and agents as well as clients operated in a system that allowed the parties to develop various and informal alternative means of maintaining order and sanity in their transactions, without necessarily resorting to legal rules or litigation to resolve differences that arose. Some of these informal alternative means of resolving disputes were observed to include negotiation, dialogue, seizure of collaterals or stock in trade, closure of shops, extra-legal measures, as well as seeking the assistance of the police. Order was also maintained by keeping the channel of communication between MFIs, their clients and staff open. Most MFIs also maintained good working relationships with their clients and staff as well as conducted credit or background checks on both clients and staff before dealing with them. Record keeping was also found to be crucial in the maintenance of order in the microfinance sector.

Most of the total respondents were averse to resorting to litigation or legal rules in resolving disputes as they found it to be costly, time wasting and inefficient. Even though informal alternative means of resolving disputes were observed to be inexpensive, cheaper and faster in certain circumstances, it also had its own challenges. Such challenges included the inability of parties to enforce the terms of any settlement arising out of the informal alternative resolution process. Whilst the minority of the total respondents adopted legal procedures or litigation to resolve disputes, because it gave them better results, the delays and cost notwithstanding, a few of them relied on extra-legal measures. According to the few, such extra-legal measures yielded instant results at a much cheaper cost.

6. RECOMMENDATION

Due to the informal and developing nature of microfinance as a phenomenon and MFIs, as well as the delicate nature of issues arising from micro transactions, it is suggested that a specialised small claims court be established to deal with matters arising from microfinance transactions. Further, the procedures to be adopted in these small claims court should be informal to allow disputing parties, whether literate or not, to submit a claim and defend it without having to resort to cumbersome legal procedures or the assistance of legal practitioners.

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