

# **Informal Traders and Collective Bargaining: The Case of Neno Town (Malawi)<sup>1</sup>.**

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## **1.0. Introduction**

In 2008, Malawi Union For Informal Sector (MUFIS) effectively intervened in resolving a dispute between the District Assembly and informal traders in Neno district. The outcome of this intervention was the immediate withdrawal of the orders which had been issued by the District Assembly without prior consultations with the targeted informal traders. This was accomplished in the absence of a legally enforceable contract between the two parties (Collective Bargaining Agreement) pertaining to conditions within the market premises and dispute resolution procedures. This paper discusses the collective bargaining action between the informal traders and the District Assembly in Neno. Further to this, also discussed in this paper are the remarkable achievements, key challenges (development failures) and notable lessons drawn from the collective bargaining action that was held between the two disputing parties in 2008.

## **2.0. Context**

Neno district was established in 2002 under the Local government (District Councils) Act of 1998. It was previously part of Mwanza district which is now a neighbouring district of Neno. Located in the Southern Region of Malawi and 145 km to the North-West of Malawi's commercial city of Blantyre, Neno district shares its boundaries with Mwanza district and Mozambique to the West. Neno district occupies 1.6 percent of Malawi's total land area of 118-484 square kilometers, of which approximately 20 percent is covered by water (Malawi Government, 2007).

**Table 1: Population of Neno district and Malawi**

	<b>Males</b>	<b>Females</b>	<b>TOTAL</b>
<b>Neno district</b>	51,974	55,343	<b>107,317</b>
<b>Malawi</b>	6,358,933	6,718,227	<b>13,077,160</b>

Source: National Statistics Office (2010)

It is estimated that about 56 percent of people in Neno district live below the poverty line (ibid). Where-as at national level, it is 43 percent of the people in rural areas (districts such as Neno) who live below the poverty line (National Statistics Office, 2009).

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<sup>1</sup> Acknowledgement: **Kawerama Sonjo and William Haji who served as research assistants with diligence; Malawi Union For Informal Sector (MUFIS); Informal traders and Market Committee at Neno; Neno District Assembly; and Malawi Congress of Trade Unions (MCTU)** for the valuable information they contributed to this study. Special thanks should also go to **StreetNet International; and Debbie Budlender & Jeremy Grest** for the financial and technical support respectively.

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Unfortunately, Malawi does not have functioning labour market information systems in place and no comprehensive labour market surveys have been undertaken over the past three decades (Ministry of Labour et al, 2011). Hence it is not possible to provide a reliable and accurate picture of the labour market in Neno and at national level at large. Nevertheless, it is estimated that over 85 percent of the economically active people in Neno are engaged in subsistence farming, where-as commercial activities in Neno district are dominated by informal small-scale retail trading (Malawi Government, 2007). At Neno town, informal retail trading comprises of foodstuffs, clothing, footwear, kitchen utensils, hardware and electrical products.

Registered as a trade union on 29<sup>th</sup> June 2004, Malawi Union For Informal Sector (MUFIS) organizes street traders, market vendors and hawkers country wide. In Neno town, out of potential membership of 500 informal traders, MUFIS currently has 65 members of its Neno branch which is independent from any other entity.

Besides, in the flea market located in Neno town, there is another structure for the informal traders called the Market Committee which is independent from MUFIS. Prior to the enactment of the Local Government Bill in 1998, the Market Committees were instituted in markets across Malawi by the respective local government authorities to facilitate administration of the markets. In main markets located in the district towns like Neno and cities, Market Committees and MUFIS branches co-exist.

Though the Market Committees are larger than the MUFIS branches in-terms of membership, there is no vital network, direct linkages or partnerships among the Market Committees across the country. The Market Committees do not have a national structure that encompasses all the Market Committees in Malawi. In other words, as designed by the local government authorities which introduced the Market Committees, their activities (Market Committees) are confined to their respective market premises. Besides, the Market Committees are not legal entities as they do not have constitutions to govern their operations and registration certificates issued by any authorities constitutionally mandated to register organizations in Malawi.

In contrast, the scope and domain of MUFIS which has a registration certificate and constitution is broader and wider than that of the Market Committees. For instance, MUFIS secretariat serves as the umbrella body of all MUFIS branches scattered across the country. Further to this, representatives of MUFIS branches are sometimes invited to attend workshops/meetings organized by MUFIS secretariat where they are able to interact and share experiences with colleagues representing other MUFIS branches elsewhere. Besides, MUFIS serves as a focal point for the network between informal traders in Malawi and abroad. For instance, it is through MUFIS that some informal traders in Malawi are invited to attend various meetings/trainings workshops abroad. These are vital international platforms where experiences and challenges of informal traders from different countries are shared and learned (Interview, Mwanda Chiwambala, 5<sup>th</sup> May 2012). It can therefore be concluded that in terms of capacity to influence policy changes that would address interests of informal traders at both local and national level, structurally and operationally MUFIS fares far much better than the Market Committees.

At national level, as an affiliate of Malawi Congress of Trade Unions (MCTU), MUFIS is misconstrued as an agent of the opposition political parties by the ruling party, some government officials and informal traders who sympathise with the ruling party. As such,

MUFIS is deliberately avoided in meetings organized by the ruling party and the government to engage with the informal traders who operate in the markets located in the major cities<sup>3</sup>.

For instance, after the national wide demonstrations against poor social, economic and political governance held on 20<sup>th</sup> July 2011 which were dominated by youth and informal traders, through the Market Committees the ruling party organized meetings between the State President and informal traders from the markets of the major cities. These meetings which took place at state houses in three major cities were aimed at dissuading the informal traders to disassociate themselves from the subsequent civil society organizations (CSO) and trade union (MCTU) led demonstrations against the government. At these meetings, unconditional loans and beer parties were dangled on the informal traders by the ruling party and the government. Though the leadership and members of Market Committees attended these meetings, MUFIS was not officially invited or informed. This development eventually created a rift among the informal traders between those in favour of and not in favour of the demonstrations on one hand; and between supporters of the ruling party and supporters of the opposition parties on the other hand.

When MUFIS branch was established in Neno in 2006, it largely drew its membership from the Market Committee. Essentially, any informal trader operating a business within the market is a member of the Market Committee. Unlike the Market Committee, MUFIS Neno branch also has membership outside the flea market. However, most of MUFIS branch members at Neno also belong to the Market Committee. For instance the Secretary of MUFIS Neno branch also serves as the Chairperson of the Market Committee. Both the MUFIS branch and Market Committee are led by the top leadership that comprise of: Chairperson; Vice Chairperson; Secretary; Vice Secretary; Treasurer; and five executive members (Interview, Moses Banda<sup>4</sup>, 7<sup>th</sup> May 2012; and Interview, Mike Mlongoti<sup>5</sup>, 7<sup>th</sup> May 2012). The Market Committee at Neno coordinates with the District Assembly on issues affecting informal traders such as allocation and demarcation of places; sanitation; revenue collection; settlement of disputes among informal traders. The Market Committee at Neno is also responsible for the general welfare of the market traders in the market e.g. during sickness, death, and bereavement.

According to the Local Government (District Councils) Act of 1998, Neno District Assembly should have its own by-laws for governing the affairs of the District Assembly such as issues pertaining to development projects like evictions and compensations. However, Neno District Assembly has never formulated and implemented its own by-laws due to the absence of the councilors following the postponements of the local government elections since 2005.

Falling under the Ministry of Local Government and Rural Development, Neno District Assembly is headed by a chairperson selected from among the eleven councilors. As representatives of the eleven wards in Neno district, the eleven councilors are supposed to be elected by the people (eligible voters) during the local government elections, which constitutionally are supposed to be conducted after every five years. Appointed by the Minister of Local Government and Rural Development, the District Commissioner is the chief executive officer of the District Assembly secretariat.

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<sup>3</sup> Blantyre, Lilongwe, Mzuzu.

<sup>4</sup> Chairperson of MUFIS branch (Neno)

<sup>5</sup> Chairperson of Market Committee and also Secretary of MUFIS branch (Neno)

Among others, a fully constituted Neno District Assembly has the mandate to undertake the following functions:

- Making policies and decisions on local government;
- Consolidating and promoting local democratic institutions and participation;
- Promoting infrastructural and economic development through the formulation, approval and execution of a District Development Plan (DDP);
- Passing by-laws for good governance.

In all districts in Malawi including Neno, there are three key structures of governance that can directly influence the drafting, passing, amendment and implementation of by-laws and above all the development process within a respective local government authority. These are:

**i. District Executive Committee (DEC)**

Comprising of 40 members who work as heads of government departments and Non-Governmental Organizations (NGOs) in Neno district, the District Executive Committee (DEC) serves as a technical advisory body to the District Assembly.

**ii. Area Development Committees (ADCs)**

Operating in each of the four Traditional Authorities (TAs), the responsibilities of the four Area Development Committees (ADCs) in Neno district are: to determine the developmental interventions; mobilizing community resources; and monitoring and managing the implementation of development activities in their respective areas.

**iii. Area Executive Committees (AECs)**

The Area Executive Committees (AECs) are essentially technical arms at the area level that advise the ADCs on aspects of local development. They comprise the extension workers of government agencies and Non-Governmental Organizations (NGOs) that work in each of the four Traditional Authorities (TAs).

Though MUFIS is a registered and well established membership-based body that has structures countrywide including Neno district, it is not represented in the DEC, ADCs and AECs. The absence of MUFIS' participation in these structures therefore entails that there is a high possibility that the issues concerning the informal traders who dominate the commercial activities in the district may not be properly considered and duly addressed by the District Assembly.

The Local Government (District Councils) Act of 1998 further empowers the Neno District Assembly to maintain and manage markets, market buildings and premises that are located within its jurisdiction. The negotiations that were conducted in 2008 involved the informal traders and the District Assembly. These negotiations were triggered by a dispute over the construction of a flea market structure in Neno town. The construction project was part of the implementation of a three year-Urban Structure Development Programme by the Government of Malawi through the Neno District Assembly.

In the absence of the by-laws for the District Assembly and a collective bargaining agreement between the two disputing parties, the negotiations were not legally binding. The negotiations centered on the following key issues:

- An order (by the District Assembly) for the informal traders to be evicted from the land on which a new market would be constructed;
- Valuation of the structures owned by the informal traders which were earmarked for demolition;
- Compensation for the demolished structures owned by affected informal traders.

Apart from the Neno District Assembly, another channel through which the Government of Malawi played a role in the negotiations was the Ministry of Lands, Housing & Urban Development. The ministry conducted the valuation of the structures which formed the basis of the compensation that the District Assembly later granted the affected informal traders. Essentially, the Ministry of Lands, Housing & Urban Development is responsible for providing policy direction, national standards and coordination of all matters concerning lands, housing and urban development.

It was in December 2000 when the first and last local government polls to elect councilors<sup>6</sup> were held in Malawi. The tenure of office of these councilors expired in April 2005. The eleven councilors who served Neno from 2002 (the year Neno was established) to 2005, had been elected under Mwanza district during the 2000 Local Government Elections. This then entails that 8 years have elapsed without an elected local government authority in all the districts in Malawi including Neno.

There are both political and economic reasons which explain why the local government elections have been postponed by the Government of Malawi since 2005. Firstly, since over 60 percent of the councilors who were elected during the 2000 local government elections came from the opposition parties, the councilors did not work to the interest of the ruling party. As such, the ruling party regarded the opposition-dominated local government authorities as a threat to its development agenda. Secondly, the local government elections have been perceived by the ruling party as a drain of resources from the government coffers. However, currently there is a bill in parliament that proposes that the next local government elections should be held in May 2014 alongside the presidential and parliamentary general elections.

At local government level, councilors are the only actors with the mandate to pass and amend the by-laws<sup>7</sup>. Local government elections therefore provide the ground for the people at local level to exercise their freedom to choose and elect their representatives. The local government elections also provide the basis for the citizenry's active participation in activities that influence the trajectory of development at the local level. The continuous absence of councilors in all district assemblies in Malawi therefore entails that Chapter XIV Section 146 of the Constitution of the Republic of Malawi which provides for the existence of elected local government authorities, is being grossly violated.

### **3.0. Background**

According to the District Development Plan (DDP) for Neno published in 2006, from 2007 to 2010, the Government of Malawi through the District Assembly was scheduled to implement

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<sup>6</sup> Refer to the Appendix: Chapter XIV Chapter 147 (1) of the Constitution of Malawi

<sup>7</sup> Refer to Appendix: Chapter XIV Chapter 147 (3) of the Constitution of Malawi

a programme called the Urban Structures Development Programme. This was in line with a thematic area of Infrastructural Development under the Malawi Growth and Development Strategy (MGDS I) which was the overarching development framework for Malawi from 2006 to 2011.

Among the structures to be constructed in Neno town under this programme were: a police station; a secondary school; a football stadium; a bus station and a flea market. The total cost of the programme was estimated at MK 1, 780 million<sup>8</sup> (ibid, 2006). The flea market was planned to be constructed on the land which until 2008, was serving as a market place where the informal traders were conducting their business activities. In October 2008, the Government of Malawi through the District Assembly issued an order for the immediate eviction of all informal traders to pave way for the commencement of the construction work.

The bone of contention between the informal traders and the District Assembly lay particularly on the short notice (seven days) for eviction and the government's stance that it would only be a few well established formal retailers affected by the construction of the flea market who would be duly compensated by the District Assembly.

#### **4.0. Collective bargaining action and achievements**

In October 2008, the District Assembly issued an order with a seven-day notice period that all informal traders should immediately move from the land on which they had been operating their businesses to pave way for the construction of a new market on the same tract of land. Alternative land was not allocated to the affected informal traders to temporarily occupy as they waited for the completion of the construction project. Besides, it was only the well established formal traders who had been scheduled for compensation. About 56 structures were earmarked for demolition without compensation thereby affecting about 400 informal traders.

Initially, the informal traders through the Market Committee and the MUFIS executive (Neno branch) engaged with the District Assembly and proposed an extension of the notice period, compensation and temporary alternative land. This action was particularly influenced by the sensitization on informal traders' rights and collective bargaining which was conducted by the MUFIS secretariat in 2006 during its membership recruitment campaign in Neno.

While waiting for the official response from the District Assembly on their proposals, the Market Committee and MUFIS executive (Neno branch) resolved to seek the intervention of MUFIS secretariat. Before the expiry of the seven-day notice, MUFIS' top leadership immediately arranged to meet with the officials from District Assembly to get the feedback on the concerns that were presented to the District Assembly by the informal traders through the Market Committee and MUFIS executive (Neno branch) and to consultatively map a way forward.

Chaired by the District Assembly's Director of Planning on the behalf of the District Commissioner, a one day meeting was held at the District Assembly hall. There were five delegates from the informal traders<sup>9</sup>(Moses Banda, Mike Mlongoti, Supply Kanjala, Henry Zembere and L. Verster) and two from MUFIS secretariat (Comrade Chiwambala and Comrade Chimombo). The District Assembly was represented by two officers including the

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<sup>8</sup> Exchange rate: MK 252= 1 USD

<sup>9</sup> Both MUFIS executive committee and market executive committee were represented by the five

Director of Planning. Though not signed by the parties involved, the meeting ultimately agreed to the following:

- Extension of the seven day notice to 30 days with immediate effect;
- Commissioning of a study to value the property and structures owned by the affected informal traders;
- Due compensation for all the informal traders affected by the construction of the flea market;
- Provision of another area with adequate sanitation facilities for the informal traders to temporarily occupy awaiting the allocation of spaces in the new flea market.

Only one meeting was held as part of the negotiation process between the District Assembly and the informal traders. The next day after the meeting, the Chairperson of the MUFIS (Neno Branch) together with the Chairperson of the Market Committee (then and still the Secretary of MUFIS branch) who participated in the negotiations with the District Assembly held a meeting with all the affected informal traders to communicate to them the outcome of the meeting.

As agreed during the negotiations, the valuation process was successfully conducted by the Ministry of Ministry of Lands, Housing & Urban Development. After the expiry of a 30 day notice, the ground was cleared and construction of the new market immediately commenced.

However, it took a period of four years for the affected informal traders to receive compensation from the District Assembly. While 56 structures portioned into compartments were demolished, in the new market there are only 24 kiosks available for the 400 affected informal traders and others to occupy. Since the new market has not filled the whole area from which the informal traders were evicted to pave way for its construction project, some informal traders have re-occupied part of this area and built make shift structures<sup>10</sup>.

Following the outcome of the negotiation process which had signified the relevance of belonging to a trade union, the membership of MUFIS at Neno town increased from 60 to 260 members within a short period of time (Interview, Mwanda Chiwambala, 5<sup>th</sup> May 2012). Furthermore, as a result of the negotiations particularly the intervention of MUFIS secretariat, the relations between the District Assembly and the informal traders which were previously sour significantly improved. Since then, the District Assembly and the informal traders particularly through the Market Committee have engaged in dialogue on several issues pertaining to the welfare of the informal traders at Neno town (Interview, Moses Banda, 7<sup>th</sup> May 2012 and Interview, Mac Pherson Makhwawa, 9<sup>th</sup> May 2012).

## **5.0. Development failure: key challenges**

In the absence of the elected local government authorities since 2005, the implementation of the construction project and the negotiations were not guided by the by-laws nor bound by specific regulations/agreements. In other words, the actors who should be at the helm of governing the District Assembly i.e. councilors were not part of the negotiations and the implementation of Neno's development plan.

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<sup>10</sup> See the pictures already submitted

## **1. Absence of MUFIS in decision making processes**

The informal traders dominate commercial activities in Neno and also significantly contribute to the District Assembly's revenue through payment of market fees and rentals. For instance, in 2011, Neno District Assembly collected about MK 9 million<sup>11</sup> as annual revenue, of which 90 percent was contributed by the informal sector (Interview, Mac Pherson Mwakhwawa, 9<sup>th</sup> May 2012). Nevertheless, the informal traders do not actively participate in the decision making processes pertaining to development activities in the district like construction of the new market.

As already discussed, conspicuously missing from the technical advisory structures of the District Assembly like DEC, AECs and ADCs are representatives from informal traders' constituency. If MUFIS were well represented in these structures, informal traders in Neno would have been part and parcel of the planning and implementation process of the construction project of the flea market. Their interests and concerns pertaining to this project would have been addressed more effectively and satisfactorily through the utilization of these structures than what actually happened.

## **2. Valuation: Lack of transparency and fairness**

MUFIS, the Market Committee, and the affected informal traders were not consulted, informed in advance or involved in the inspections during the valuation of the property/structures which formed the basis of the compensation. The inspections were conducted at odd hours during a weekend when most of the informal traders had closed their businesses. The affected informal traders were only communicated the outcome of the valuation after the whole process had been finalised. There was no room for any negotiations on the recommendations of the valuation process. Ultimately, the informal traders were disgruntled with the manner and outcome of the valuation process which they accepted under duress.

Further, what the informal traders received as compensation was insufficient. For example Supply Kanjala who had spent over MK 1 million<sup>12</sup> to construct his structure ultimately received less than 20 percent of the total expenditure as compensation (Interview, Supply Kanjala, 8<sup>th</sup> May 2012).

In addition, it took four years for the informal traders to get their compensation. By that time, the prices of the construction materials had drastically increased. According to the Ministry of Lands, Housing and Urban Development, the values of the properties were certified to be valid for only six months from the date of inspection. Nevertheless, after four years the District Assembly used the same outdated figures. It can therefore be concluded that the valuation and compensation processes were marred by irregularities, and lack of transparency and fairness.

## **3. Shortage of space**

The newly constructed market replaced the partitioned 56 structures which the informal traders had been occupying in the old market with 24 kiosks. The space in the new market is inadequate to accommodate 400 informal traders who were affected by the construction project.

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<sup>11</sup> exchange rate: MK 252=1 USD

The architectural plan designed for the new market ought to have been discussed and approved by the District Assembly's structures of governance. The informal traders were not directly represented during such a decision-making process. Concerns pertaining to shortage of space in the new market should have been identified from the architectural plan before the commencement of the construction work on the ground. Hence such concerns would have been raised by the representatives of the informal traders through the structures of governance prior to the approval of the plan by the District Assembly. Through the same structures of governance, the necessary changes would have been suggested and possibly accommodated in the finally approved architectural plan for the new market.

#### **4. Political interference and corruption**

Most of the kiosks in the new flea market were not allocated to the informal traders who were directly affected by the construction of the flea market. Instead, most of those who acquired the space in the new market were either local politicians of the ruling party, government officials, a few affected informal traders and others who had connections with ruling party politicians or had allegedly bribed the District Assembly officials. Shortage of space as discussed above coupled with misallocation of spaces due to political interference and corruption, ultimately forced most of the affected informal traders out of business.

#### **5. Collapse of businesses, reduction and loss of income**

As a result of the insufficient compensation, settlement of which was delayed for four years, shortage and misallocation of space in the new market, about 51 businesses owned by the informal traders completely collapsed due to loss and reduction of income (Interview, Moses Banda, 7<sup>th</sup> May 2012). Worse still, the informal traders were not specifically compensated for the collapse of business that was caused by the insufficient and delayed compensation, shortage and misallocation of space in the new market. For instance, Miss Esnat who invested about MK 175, 000<sup>13</sup> to build her shop, had to completely shut down her business. After four years, she received as compensation only 4 percent of the money she had invested (Interview, Moses Banda, 7<sup>th</sup> May 2012 and Interview, Mike Mlongoti, 7<sup>th</sup> May 2012). Such concerns would also have been taken up by the technical advisory bodies of the District Assembly (DEC, AECs and ADCs) for redress if the informal traders in Neno and MUFIS were directly represented at these levels.

#### **6. Poor health and safety**

After five years, the construction of the flea market has not been completed. However, the time-frame for both the construction project and the country's overarching development blue print (MGDS I) from which the construction project was hatched, expired in 2010 and 2011 respectively. Besides, out of the five toilet buildings that were constructed, only two are functional as three have collapsed<sup>14</sup>. Besides, the District Assembly requires the informal traders and buyers to pay in order to use the remaining two public toilets which are essentially supposed to be open for public convenience free of charge. Worse still, there is no running water within the premises of the new market

As already discussed, the space available in the new market is inadequate to accommodate all the affected informal traders and new entrants in the informal trading; There is poor security particularly after business hours since the market is not fenced; The provision of sanitation

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<sup>13</sup> Exchange rate: MK 252= 1USD

<sup>14</sup> See the pictures submitted

facilities is both inhibitive and inadequate; and there is no water supply. In a nut shell, the state of the new market is a health and safety hazard to the market users.

### **7. Weakened solidarity**

The existence of two parallel structures representing the informal traders in the market i.e. a MUFIS Neno branch and a Market Committee renders the informal traders vulnerable to manipulation by external forces such as party politicians and government officials. Apart from duplicating efforts, ultimately this also weakens the solidarity among the informal traders as at times they cannot speak with one voice on matters concerning them. For instance, the District Assembly prefers to directly communicate with the informal traders through the Market Committee to the MUFIS branch. This is because unlike the MUFIS Neno branch, the Market Committee is a structure that was instituted by the District Assembly.

### **6.0. Interplay of development failure and other social-economic factors**

On one hand, the cumulative impact of the collapse of businesses; reduction and loss of income as a result of the insufficient and delayed compensation; shortage and misallocation of space in the new market, was aggravated by limited credit opportunities for the informal traders. For instance, interest rates in Malawi have continued to be double digit thereby making lending rates relatively high. Besides, collateral requirements are high with an average value of collateral exceeding the value of the loan by 43 percent for commercial banks and 105 percent for financial lending institutions (United Nations, 2010). In addition, Micro and Small-scale Enterprises (MSEs) are still perceived as high-risk entities by the commercial banks (Chinguwo, 2011). This then made credit or loans unaffordable by informal traders whose capital and returns had negatively been affected by the construction of the flea market at Neno.

On the other hand, the cumulative impact of the collapse of businesses; reduction and loss of income as a result of the insufficient and delayed compensation; shortage and misallocation of space in the new market, was aggravated by the lack of a social protection facility to cushion the affected informal traders from falling into the trap of poverty. The social protection could have possibly been a targeted facility in the form of external stimulus packages granted or loaned to the most critically affected informal traders. This targeted facility would have enabled them to inject into their respective businesses in the wake of a huge reduction or loss of income following the construction of the flea market.

All in all, the issues discussed above would have been raised by the representatives of the informal traders (MUFIS) through the structures of governance prior to the approval of the development plan by the District Assembly if they had had the opportunity of direct representation in these structures. Through the same structures of governance, the necessary interventions would have been suggested and possibly accommodated in the district's development plan to counter the negative socio-economic impacts inflicted on the informal traders by the construction project. Alternatively, the issues mentioned above would have been raised by the informal traders during the negotiations with the District Assembly. That is after thoroughly preparing for the negotiations which they did not manage to do due to lack of ample time among other factors.

## 7.0. Lessons<sup>15</sup>

The study established that informal trading dominates the commercial activities in Neno district. Besides it was also found out during the study that the informal sector significantly contributes to the District Assembly's revenue in form of market fees, rentals and other means. This entails that the informal sector is an integral and vital constituency of the social and economic profile of Neno district.

As enshrined in Chapter XIV Section 146 (2) of the Constitution of Malawi<sup>16</sup>, the Neno District Assembly's mandate is to represent, efficiently serve all people of Neno and particularly promote business enterprises<sup>17</sup>. On one hand, the concerns of the informal traders on the construction of the flea market would not have been neglected if they had been formally presented to the District Assembly in reaction against the seven day notice of the eviction order. On the other hand, the District Assembly was committed towards addressing the concerns of the informal traders. This explains why the demands that the informal traders presented to the District Assembly during the negotiations were favourably considered.

However, what was needed to complement the collective bargaining action was the active participation of the informal traders through MUFIS in the District Assembly's structures of governance and holding of follow up meetings with the District Assembly. After the negotiations that were successfully conducted, it is through the District Assembly's structures of governance that the informal traders would have been channeling their concerns for immediate redress. Besides, the follow up meetings on the collective bargaining action should have been held to monitor the implementation of the resolutions agreed in the preceding meeting (s). Where necessary, further interventions would have been suggested and implemented through these structures to ensure that no informal trader affected by the construction project was eventually made worse off than before.

In the absence of the Collective Bargaining Agreements (CBAs), firstly the informal traders should avoid alienating themselves from the active participation and representation in the structures of governance available in their respective district, town and city assemblies. More importantly, in readiness for the next local government elections, informal traders should collectively identify and technically support individual (s) with a trade union background or some experience in informal trading to contest and occupy the elected position (s) in their respective district, town and city assemblies. This can be one way to ensure that the issues of the informal traders are well presented, attended to and duly considered by the local government authorities.

Secondly, realizing that negotiation is a process that can take a considerable period of time to bear the desired results, the informal traders should avoid restricting the negotiations with the authorities to only one meeting as happened in Neno. Though a meeting which was held in October 2008 was a success on the part of the affected informal traders, it was not sufficient with regards to the complexity of the collective bargaining as discussed in the previous sections.

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<sup>15</sup> This is my own final analysis as a researcher drawn from the ideas and views expressed in the interviews conducted and documents consulted.

<sup>16</sup> Refer to the actual text in the appendix

<sup>17</sup> Refer to the Neno District Assembly's mission statement in the appendix

Thirdly, collective bargaining being a complex process, it requires sufficient engagement of well trained and experienced negotiators on the part of the informal traders to effectively engage with well qualified, adequately experienced and high ranking government officials. Hence the task of effectively obtaining improved conditions within the market places, would depend to a considerable extent on relevant skills of collective bargaining. For instance, it was pointed out during the interviews with the informal traders that it was largely because of lack of adequate negotiation skills and ill-preparedness that they had to seek intervention of MUFIS secretariat on an issue that would have been handled by the informal traders themselves. Hence there is need to technically and financially support the informal traders in order for them to acquire the relevant skills in the area of collective bargaining.

Next, what should also be avoided for the purpose of effectively advancing the interests of the informal traders through engagement with the relevant authorities, is the existence of dual structures. The fragmentation among the informal traders between MUFIS and the Market Committees defies a fundamental recognition among workers' rights activists globally that workers become stronger when they unite and bargain and lobby with employers and government respectively in solidarity, and when they have a common voice to represent their interests. The informal traders should therefore be strongly encouraged to get rid of the duality which leads to duplication of efforts and manipulation of the informal traders by external factors.

Fourthly, documentation, record keeping and communication between the informal traders in Neno and MUFIS secretariat is poor. For instance, both MUFIS secretariat and the informal traders in Neno do not keep any records pertaining to the collective bargaining action that took place. Hence it was extremely difficult to establish from MUFIS secretariat and informal traders in Neno regarding the actual dates of the events, exact numbers of the structures and informal traders affected, exact number of the people who were involved in the negotiations, documented agenda and reports of the meetings previously held between the informal traders and District Assembly and other relevant details.

Further to this, after the negotiations in October 2008, informal traders in Neno (including MUFIS members) have never interacted with any official from MUFIS secretariat till May 2012 when this study was conducted. Throughout this period the Neno membership had felt alienated by their own trade union-MUFIS (Interview, Moses Banda, 7<sup>th</sup> May 2012; Interview, Mike Mlongoti, 7<sup>th</sup> May 2012; Interview, Supply Kanjala, 8<sup>th</sup> May 2012; and Interview, Leonard Mphiza, 8<sup>th</sup> May 2012). To a certain extent, the communication breakdown would explain why during this period the membership for MUFIS Neno branch drastically declined from 260 to 65. It is therefore pertinent that MUFIS and informal traders should significantly improve on documentation, record keeping and flow of communication. If possible Street Net International should make considerable effort to support MUFIS and informal traders in this regard.

In the final analysis, following the outcome of the collective bargaining action between the informal traders and the District Assembly, the general public is now emphatically warned that it is illegal for individuals to build structures on the land that belongs to the District Assembly without its approval. It is also clearly communicated to the residents in Neno that the District Assembly will never be liable to compensate for the demolition of any structure illegally constructed on the land belonging to it. Nevertheless, owing to the shortage of space in the new market, without the approval of the District Assembly, some informal traders have defied the notices and proceeded to build their own structures within the premises of the new market. In future, this may eventually become another bone of contention between the

District Assembly and the informal traders prior to the construction of other market structures like more kiosks and toilets.

## **8.0. Conclusion**

Development is a broader term than economic and infrastructural transformation of a particular society. Human rights and community rights constitute an integral part of development. Any intervention of development must therefore lead to a better life for all people. Besides, any aspect of development must adequately deal with issues of equity, fairness, inclusiveness and transparency with regards to the distribution of resources at local, national, regional and global levels.

An intervention that is devoid of elements of equity, fairness, inclusiveness, transparency, and social protection measures defies the very logic of development. Such an intervention can be referred to as a 'Development failure.' For instance, budget items contained in the District Development Plan (DDP) for Neno do not provide for social protection targeted at people whose livelihoods would be immensely inconvenienced by interventions stipulated in the DDP e.g. construction of the new market.

Analysing the socio-economic impacts on the affected informal traders in light of equity, fairness, inclusiveness, transparency and social protection, the construction project of a new market in Neno is a typical example of a 'development failure.' However, the situation would have been different if the primary victims, i.e. the informal traders were adequately represented in the District Assembly's structures of governance, through which their concerns and interests would have been channelled and somehow addressed. To a certain extent, the active participation of the informal traders in the structures of governance would have improved the implementation and enforceability of the resolutions reached during the negotiations held between the informal traders and District Assembly in 2008.

## **9.0. Appendices**

### **9.1. Documents**

Chinguwo, P. 2011. “Workers in the Informal Economy in Malawi”. A Discussion Paper Prepared for the Southern African Trade Union Coordinating Council (SATUCC) Seminar on Informal Economy in Malawi, held in August 2011.

Constitution of the Republic of Malawi of 1995. Malawi Government Print.

Local Government (District Councils) Act of 1998. Malawi Government Print.

Malawi Government. 2006. Malawi Growth Development Strategy 2006-2011 (MGDS I)

\_\_\_ 2007. Socio-Economic Profile for Neno District.

\_\_\_ 2006. District Development Plan (DDP) 2007-2010 for Neno District

Ministry of Labour et al. 2011. Malawi Descent Work Country Programme (2009-2016).

National Statistics Office. 2009. National Welfare Monitoring Survey.

Neno District Assembly. 2007-2008. Letters, public notices, lists of compensation beneficiaries.

United Nations. 2010. Country Assessment Report-Malawi.

### **9.2. List of interviews**

1. Mwanda Chiwambala<sup>18</sup>, General Secretary of MUFIS (former national organizer). Interviewed on 5<sup>th</sup> May 2012 in Blantyre.
2. Ken Williams Mhango, President of MUFIS. Interviewed on 5<sup>th</sup> May 2012 in Blantyre.
3. Moses Banda<sup>19</sup>, Chairperson of MUFIS branch-Neno. Interviewed on 7<sup>th</sup> May 2012 at Neno.
4. Mike Mlongoti<sup>20</sup>, MUFIS member-Neno branch. Interviewed on 7<sup>th</sup> May 2012 at Neno.
5. Supply John Kanjala<sup>21</sup>, MUFIS member-Neno branch. Interviewed on 8<sup>th</sup> May 2012 at Neno.

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<sup>18</sup> He participated in the negotiations

<sup>19</sup> He participated in the negotiations

<sup>20</sup> He also serves as a Secretary of the other Committee of the market which is independent of MUFIS Neno branch.

He participated in the negotiations.

<sup>21</sup> He participated in the negotiations

6. Leonard Mphiza, MUFIS member-Neno branch. Interviewed on 8<sup>th</sup> May 2012 at Neno.
7. Mac Pherson Makhwawa<sup>22</sup>, Director of Planning-Neno District Assembly. Interviewed on 9<sup>th</sup> May 2012 at Neno.
8. B.D. Puluma<sup>23</sup>, former officer at Neno District Assembly. Interviewed 11<sup>th</sup> May 2012 at Neno.

### **9.3. Mission statement of Neno District Assembly**

To promote and regulate efficient delivery of socio-economic development activities through law enforcement, good governance, capacity building and resource mobilization, **utilizing the existing opportunities in partnership with all stakeholders for the benefit of communities** to ensure self sustenance.

### **9.4. List of Non Governmental Organisations in Neno District**

According to the District Assembly, there are only 12 non governmental organizations that have a significant presence in Neno district. These are the non governmental organizations that actively participate in the District Assembly's structures of governance: District Executive Committee (DEC), Area Development Committee (ADCs), Area Executive Committees (AECs). MUFIS is not on the list as shown below.

1. Support to Neno Smallholder Macademia Association (SUNESMA)
2. Zipatso Association of Malawi
3. World Vision International
4. National Initiative for Civic Education
5. FINCA Malawi
6. Action Against Hunger
7. Adventist Relief Agency (ADRA) Malawi
8. Catholic Development Committee of Malawi (CADECOM)
9. Village Hands Limited
10. Action Aid Malawi
11. Malawi Enterprise Development and Training Agency (EDETA)

### **9.5. Chapter XIV of the Constitution of Malawi: Local Government**

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<sup>22</sup> He participated in the negotiations

<sup>23</sup> He participated in the negotiations.

### **Section 146 (1)**

There shall be local government authorities which shall have such powers as are vested in them by this Constitution and an Act of Parliament.

### **Section 146 (2)**

Local government authorities shall be responsible for the **representation of the people** over whom they have jurisdiction, for their welfare and shall have responsibility for:

- a) The promotion of infrastructural and economic development, through the formulation and execution of local development plans and **encouragement business enterprise**
- b) The presentation to central government authorities of local development plans and the promotion of the awareness of local issues to national government;
- c) The consolidation and promotion of local democratic institutions and democratic participation.

### **Section 147 (1)**

Local government authorities shall consist of local councilors who shall be **elected by free, secret and equal suffrage by the registered voters** in the area over which that local government authority is to have jurisdiction and the elections shall be organized, conducted and supervised by the Electoral Commission.

### **Section 147 (3)**

There shall be, in respect of each local government authority, such administrative personnel, subordinate to local councilors, as shall be required to execute and administer **the lawful resolutions and policies of those councilors**.

## **9.6. Local government Act of 1998**

### **Second schedule: Additional functions of the Assembly**

#### **Section 9 (a)**

...an Assembly shall have the power to **regulate the design, construction, alignment, elevation or siting of any new building** or the alteration, refurbishment or improvement of any existing building, including the provision of access for disabled persons.

#### **Section 11 (1)**

An Assembly may establish, maintain and manage markets and market buildings and premises within its area and shall levy upon traders within a market such fees or charges as the Assembly may decide.

