

Generalized System of Preferences (GSP)
Subcommittee
of the
Trade Policy Staff Committee

1992 GSP Annual Review

Worker Rights Review Summary

Case: 008-CP-92

MALAWI

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II. PRINCIPAL ISSUES

The Subcommittee's review of Malawi concentrated mainly on issues in two areas: the right of association, and the right to organize and bargain collectively.

Right of Association

The Subcommittee's review focused primarily on issues related to the right of association in Malawi. Four major issues were considered: (1) the independence of the Trade Union Congress of Malawi (TUCM) from the Government of Malawi; (2) the GOM's decision to close the Southern Africa Trade Union Coordinating Council (SATUCC) headquarters in Malawi; (3) the harassment and persecution of labor leaders, in particular, the arrest and incarceration of Chakufwa Chihana, secretary-general of the SATUCC; and, (4) the degree to which the right to strike is allowed.

With respect to the independence of the TUCM, the Subcommittee noted the statement in the 1992 State Department Human Rights Report on Malawi, that "Unions are required by law to affiliate with the Trade Union Congress of Malawi (TUCM). The TUCM ... is a private organization ostensibly independent of the Malawi Congress Party, but in practice its activities are highly circumscribed by the government." It was the view of the Subcommittee that this raises two distinct right of association issues. First, the legal requirement that all unions affiliate with the TUCM is in itself a violation of ILO norms on the right of association. Second, the fact that the TUCM is not independent from control of the ruling party in Malawi is a further restriction on workers to form fully independent trade unions. As the right of association is a fundamental human right, the Subcommittee considered these issues to be of a particularly serious nature. The Subcommittee did note that, on the basis of information provided by the government of Malawi and other sources, that some of the unions that belong to the TUCM did appear to represent the interests of their members in a number of respects.

Second, the Subcommittee noted that the offices of the SATUCC, a regional labor organization, had been closed by the government of Malawi in April 1992, in connection with the arrest of Chakufwa Chihana, and had not been reopened. Regardless of the status of the particular issues surrounding the Chihana case, the Subcommittee considered the closing of the SATUCC office itself an indication of the government's intolerance of independent trade organizations (even if they be regional in nature) in Malawi.

With respect to the treatment of labor leaders, the Subcommittee monitored with particular interest the case of Chakufwa Chihana. The Subcommittee noted that as Secretary General of the SATUCC, Chihana is legitimately considered a labor leader in Malawi, regardless of either the nature of the charges brought against him, or whatever other political activities he might engage in. As such, the Subcommittee concluded that the nature of actions against Chihana were justifiably considered restrictions on the right of association, not least because of the impact they would have on others considering involvement in independent labor organizations in Malawi. The Subcommittee did view positively the fact that even though convicted for sedition, Chihana's

sentence was reduced upon appeal, and Chihana released from prison in June, prior to the national referendum. The Subcommittee will continue to monitor the treatment of labor leaders in Malawi, particularly ones working for labor institutions independent of the government, such as Chihana.

Finally, the Subcommittee examined the right to strike in Malawi. It began by noting the statement in the 1992 HRR that "while technically legal, strikes are not tolerated in Malawi." The Subcommittee did take note of information provided by the government of Malawi on the incidence of strikes in the past two decades in Malawi, and the gains attained as a result. However, it viewed with concern reports of a May 1992 incident in Blantyre, which began as a spontaneous work stoppage by a variety of workers, and ended with at least 22 people dead. The Subcommittee did note that as a result of widening disturbances, wage concessions were eventually made to protesting workers. However, it considered the violent method of dealing with the original disturbance with grave concern.

Right to Organize and Bargain Collectively

The Subcommittee also took note of petitioners' allegations against Malawi in the area of the right to organize and bargain collectively. It began by recalling the statement from the 1992 HRR quoted by the petitioners: "workers have the legal right to bargain collectively, but the law does little to restrict antiunion discrimination by employers." The lack of legal protection against antiunion discrimination was considered a serious hindrance to the right to organize and bargain collectively.

Yet, the Subcommittee did recall that the 1992 HRR also stated that, "when employers and employees cannot reach agreement on a labor issue, a labor officer from the Ministry of Labor meets with the two sides in an attempt to reach a consensus. This is usually successful." In addition, the Subcommittee took note of the section of the 1992 HRR which states that:

Management-labor councils (called "work committees"), which arose in direct response to the May disturbances, mediate labor issues in the workplace. Standing management-labor councils exist for large industries and businesses. The composition of the councils is generally half labor and half management, but there are no set procedures on how labor representatives are chosen or what relationship the committees have with existing unions. Grievances of all kinds (including wage issues) may be handled by these committees as long as they relate to work at that particular place of employment. When wage negotiations concern an entire industry nationwide, the Government involves itself in the discussions, and all parties work until a consensus is reached. However, the Government does not intervene overtly in the collective bargaining process.

The Subcommittee considered this information important in assessing the true extent to which a process approximating true collective bargaining (i.e., consistent with ILO norms) exists in Malawi. It viewed the creation of work committees as an effort to respond constructively to

labor grievances. In order to assess the actual impact of these committees on the right to bargain collectively, the Subcommittee considered it necessary to obtain more information on their actual operation, including what, if any relationship they might have to established unions.

III. POSITIVE ACTIONS NOTED

The GSP Subcommittee noted the following actions of the Government of Malawi, which could have a constructive affect on the country's worker rights situation:

- o The June release of Chakufwa Chihana from prison.
- o The creation of work committees to mediate labor management issues in key Malawian enterprises.

In addition, the Subcommittee viewed positively the public referendum held in June in Malawi, on the grounds that movement to a multiparty system in Malawi could increase the independence of labor organizations from the government, and thus improve the right of association in the country.

IV. RECOMMENDATION

The GSP Subcommittee considered the limitations on the right of association, particularly with respect to the independence of labor unions, the core worker rights issue in Malawi. While noting progress in the liberalization of Malawi's political system in the past year (i.e., the June referendum), the Subcommittee could not conclude that positive action had occurred specifically in this area. In addition, it noted that SATUCC offices remained closed. However, in light of the positive actions noted above, and in order to collect more information particularly on the functioning of the recently established work committees, the Subcommittee recommended that the worker rights review of Malawi be extended for six months, until December 15, 1993, in order to determine if any additional positive actions were being taken.

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