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Zimbabwe: Unfair trial of Roy Bennet, MP

In December 2004 Amnesty International communicated to the government of Zimbabwe the organisation's serious concern about the proceedings which led to the conviction and sentence of Roy Bennet, Member of Parliament (MP) for Chimanimani, following an incident on 18 May 2004. Roy Bennet is alleged to have pushed the Minister for Justice, Parliamentary and Legal Affairs, the Hon. Patrick Chinamasa, to the floor during a heated exchange between the two of them in parliament. Minister Chinamasa is alleged to have verbally abused Roy Bennet who was then challenged by the Anti-Monopolies and Anti-Corruption Programme Minister, the Hon. Didymus Mutasa, who reportedly kicked him. Roy Bennet was expelled from the chamber.

Under Zimbabwe's Privileges, Immunities and Powers of Parliament Act (as amended 1991), parliament is empowered to sit as a court and to award and execute punishments for specific offences which are listed under the Act. Assaulting a Member of Parliament within the precincts of parliament is one such offence. In the case of Roy Bennet, parliament tasked a five-person parliamentary committee, known as the 'Privileges Committee', to review the conduct of Roy Bennet and make a recommendation to parliament in terms of the powers vested in parliament under the Act.

The committee was made up of two MPs from the Zimbabwe African National Union - Patriotic Front (ZANU-PF), two MPs from the opposition party, the Movement for Democratic Change (MDC) and an unelected Chief appointed to parliament by President Mugabe. All members of the 'Privileges Committee' were present in parliament during the incident on 18 May. The Hon. Paul Mangwana, the member who proposed its establishment, chaired the committee. Proceedings before the committee included an opportunity for Roy Bennet to account for his conduct and present evidence. The Hon. Minister Chinamasa and the Hon. Minister Mutasa were also called to give evidence to the committee, although the committee was not tasked with any investigation into their conduct on 18 May. Roy Bennet was permitted to have legal advice during the proceedings, although no cross-examination of witnesses was permitted.

The committee recommended a sentence of 15 months' imprisonment with hard labour, with three months to be suspended, subject to good behaviour. On 28 October parliament voted to accept the committee's recommendation. In both the committee and parliament voting was split along party lines. Under the Privileges, Immunities and Powers of Parliament Act there is no provision or mechanism for appeal against sentences passed by parliament. Roy Bennet was taken into custody on 28 October, and is now detained at Mutoko prison.

Amnesty International has raised the following concerns about the procedures used to convict and sentence Roy Bennet:

The lack of independence and impartiality

Article 18 of the Zimbabwe Constitution, as well as Article 14 of the International Covenant on Civil and Political Rights and Article 7 of the African Charter on Human and Peoples' Rights, to both of which Zimbabwe is party, guarantee everyone the right to a fair hearing by a competent and impartial tribunal established by law. The right to trial by an independent and impartial tribunal is so basic that the UN Human Rights Committee has stated that it "is an absolute right that may suffer no exception (See *Gonzalez del Rio v. Peru* (263/1987). *Report of the Human Rights Committee to the General Assembly*, vol. II, (A/48/40), 1993).

The primary institutional guarantee of a fair trial is that decisions will not be made by political institutions but by competent, independent and impartial tribunals established by law. The independence of tribunals is rooted in the separation of powers in a democratic society. Different organs of the state have exclusive and specific responsibilities. In so far as the Privileges, Immunities and Powers of Parliament Act allows for parliament to act as a court, it is inconsistent and incompatible with the basic tenets of fair trial.

A body sitting as a court or tribunal must be impartial. The principle of impartiality, which applies to each individual case, demands that each of the decision-makers, whether they are professional or lay judges, be unbiased. Actual impartiality and the appearance of impartiality are both fundamental for maintaining respect for the administration of justice.

An impartial tribunal requires that judges and jurors have no interest or stake in a particular case and do not have pre-formed opinions about it. In the procedures used to judge and sentence Roy Bennet, the five-person committee was weighted in favour of ZANU-PF, comprising two members of ZANU-PF and a Chief appointed to parliament by President Mugabe, and two members of Roy Bennet's party, the MDC. The committee recommended a sentence and this recommendation was then voted on in parliament where ZANU-PF holds the majority of seats. The injured party, the Hon. Minister Chinamasa, was amongst those who voted in favour of the recommendation on sentencing. Amnesty International does not believe that either the parliamentary committee as constituted or the proceedings for the adoption of its recommendations were impartial, particularly in view of the deeply polarized nature of Zimbabwean society. The very fact of the aggrieved party voting in the punishment of the accused is contrary to the principles of disinterested administration of justice.

The African Commission on Human and Peoples' Rights found that the creation of a special tribunal consisting of one judge and four members of the armed forces, with exclusive power to decide, judge and sentence in cases of civil disturbance, violated Article 7(1)(d) of the African Charter on Human and Peoples' Rights. The African Commission stated: "[r]egardless of the character of the individual members of such tribunals, its composition alone creates the appearance, if not the actual lack of impartiality" (*The Constitutional Rights Project (in respect of Zamani Lakwot and six others) v. Nigeria*, (87/93), *8th Annual Activity Report of the African Commission on Human and Peoples' Rights, 1994-1995*, ACHPR/RPT/8th/Rev.1 at 14, para. 10.).

Disproportionate nature of the punishment

International standards in respect of sentencing clearly prescribe that any punishment imposed upon conviction following a fair trial must be proportionate to the gravity of the crime and the circumstances of the offender (*Report of the 8th UN Congress on the Prevention of Crime and Treatment of Offenders*, UN Doc. A/Conf.144/28, rev.1 (91.IV.2), Res. 1(a), 5(c), 1990. *Courts may not impose a heavier penalty than the one that applied when the crime was committed. Article 15 (1) ICCPR.*)

In the case of Roy Bennet the procedures used did not conform to the standards for a fair trial. Furthermore legal experts in Zimbabwe have pointed out that the sentence for common assault (which is the offence with which Roy Bennet would most likely have been charged had the matter been brought before a criminal court) would attract a far less severe sentence. In many such cases only a fine is imposed. Even if a more serious assault charge were brought against Roy Bennet it would not have

attracted such a severe penalty.

Right to appeal violated

International law and standards hold that everyone convicted of an offence has the right to have the conviction and sentence reviewed by a higher tribunal, (See: *Article 14(5) of the ICCPR, Paragraph 3 of the African Commission Resolution, and Article 7(a) of the African Charter*). There is no provision under the Privileges, Immunities and Powers of Parliament Act for an appeal process or review by a higher court. Moreover, we understand that the Speaker of Parliament issued an order in terms of the Act barring the courts from hearing an appeal in Roy Bennet's case. In addressing the issue of a government's interference with the jurisdiction of the courts, the African Commission has ruled, in respect of a case in Nigeria, that decrees which removed the jurisdiction of the courts, in respect of challenges to government decrees and actions, violated Articles 7 and 26 of the African Charter which guarantee the right to be heard and the independence of the courts respectively. The African Commission stated that "[a]n attack of this sort on the jurisdiction of the courts is especially invidious, because while it is a violation of human rights in itself, it permits other violations of rights to go un-redressed" (*Civil Liberties Organization v. Nigeria, (129/93), 8th Annual Report of the African Commission, 1994-1995, ACHPR/RPT/8th/Rev.I.*).

Amnesty International views the absence of an appeal procedure in this case as completely contrary to the tenets of a fair trial and a violation of the rights of the accused. The prohibition against the courts hearing an appeal further underlines, in our view, the politically motivated and unjust nature of the conviction and sentencing of Roy Bennet.

Part of a pattern of harassment

Amnesty International's concerns about the case of Roy Bennet are increased by the pattern of harassment of opposition MPs in Zimbabwe which Amnesty International has documented over the past four years. Amnesty International, (Zimbabwe: The Unfair Prosecution of Parliamentarians Fletcher Dulini Ncube, Moses Mzila Ndlovu and sixteen others (*AI Index: AFR 46/005/2002*); *Amnesty International Annual Report 2004 (POL 10/004/2004)*; *Amnesty International Annual Report 2003 (POL 10/003/2003)*; *Amnesty International Annual Report 2002 (POL 10/001/2002)*; *Amnesty International Annual Report 2001 (POL 10/001/2001)*). MPs belonging to the MDC have been subjected to arbitrary arrest, politically motivated detentions and trials, and assault and torture at the hands of state agents. Police and officers of the Central Intelligence Organisation (CIO) in Roy Bennet's constituency of Chimanimani have subjected him to a prolonged campaign of harassment. In 2002 Roy Bennet and two other men were detained by police and CIO officers and Roy Bennet was reportedly threatened and assaulted. He was subsequently released without charge. Roy Bennet has been repeatedly subjected to politically and racially motivated vilification by the government and its supporters.

His family and those who work for him have also been targeted, based on their association with him. (*Amnesty International, press release, "Attacks on Farm Workers and their children must end now", (AFR 46/006/2004)*). Since 2000, workers on his farm in Chimanimani have been subjected to beatings and torture, including rape, both by state security agents and ZANU-PF supporters. At least two farm workers employed by Roy Bennet have died as a result of politically motivated attacks. On 9 April this year Roy Bennet, his family and workers were summarily evicted when state agents took possession of his farm, in defiance of court orders which prohibited acquisition of the farm by the state, and which directed state security forces to vacate the farm and cease interference with its operations and staff.

Amnesty International is calling for Roy Bennet's immediate release on bail pending either a review of his conviction and sentence by an independent and impartial court, or a trial before an independent and impartial court. Amnesty International has urged the government of Zimbabwe to act swiftly to redress this miscarriage of justice.

