

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 738 0338 – Fax: +1 604 736 1175
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

Wednesday, June 12, 2013

Mr. Johannes Tomana,
Attorney-General,
Office of the Attorney,
PO Box 7714, Causeway,
HARARE, ZIMBABWE

Dear Sir;

Re: Wrongful arrest and prosecution of lawyer Beatrice Mtetwa

Lawyers Rights Watch Canada is a committee of jurists

On 17 March 2013, Beatrice Mtetwa, a highly respected human rights lawyer, was arrested while performing her professional duties. She rightfully requested that police provide a valid search warrant and inventory list a raid of the home of her client, Thabani Mpofu, an aide to Prime Minister Morgan Tsvangirai. She was detained arbitrarily and charged with defeating and / or obstructing the course of justice under the *Criminal Law (Codification and Reform)*. The prosecution is based on the above noted request and the more recent allegation that Ms Mtetwa called police Mugabe's dogs.

LRWC notes the arbitrariness of Ms Mtetwa's treatment. Hours after her arrest, the High Court ordered her release. When police refused to release her, an application for bail was brought to, and rejected by, the Magistrates Court. On appeal, the High Court reversed this ruling and granted bail on March 25th, stating "[Ms Mtetwa] should not have been denied bail. She is a practitioner of many years experience." She was detained for eight nights in prison with extremely poor conditions. The State opposed her bail.

The allegation against her reveal no acts or omissions that reasonably be considered criminal. We conclude that the prosecution of Ms Mtetwa is both ill-founded and improper and may itself constitute an abuse of process and an 'obstruction of justice'.

The arrest and prosecution of Ma Mtetwa violate a number of standards accepted internationally and by the African Union, namely:

1. the right of persons facing or threatened with criminal proceedings to be represented by a lawyer empowered to effectively protect rights and achieve justice¹; and,
2. the right of lawyers to perform their professional functions without intimidation, harassment or improper interference²; and,
3. the prohibition against identifying lawyers with their clients causes.³

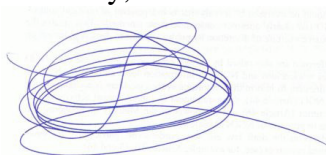
The principle of an independent bar free from threats, direct or indirect, is upheld in the *UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, adopted by consensus by the UN General Assembly on December 9, 1998. This instrument is intended to ensure the international recognition that lawyers and other human rights defenders have a positive duty to promote universal respect for and observance of human rights and fundamental freedoms without threat. In particular, this instrument, affirms that

It is essential that lawyers not be subject to prosecution and loss of liberty for representing unpopular clients or causes. Without lawyers who are free from fear of adverse consequences for representing people before the courts, the courts cannot count on hearing full argument on the facts and law of particular cases. A vigilant protection and open public discussion of the traditions and importance of the independence of the courts and the bar is critical to the protection of from government administrations that might usurp and overstep their appropriate authority to the detriment of the state and the public.

We call on the Attorney General to reconsider the propriety of the above noted criminal proceedings against a leading attorney Beatrice Mtetwa, for words spoken and acts done in the representation of a client.

LRWC will follow this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Gail Davidson', with a stylized, scribbled flourish.

Gail Davidson, Executive Director, LRWC

¹ The Basic Principles on the Role of Lawyers U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990); Article 5, 6, 7, 8. The International Covenant on Civil and Political Rights, Article 14; The Declaration of Human Rights Defenders, Article 9.

² The Basic Principles on the Role of Lawyers, Article 16.

³ The Basic Principles on the Role of Lawyers, Article 18.

Copied to:

Mr. Robert G. Mugabe, President of Zimbabwe
Office of the President,
Private Bag 7700, Causeway,
HARARE, ZIMBABWE
Fax: +263 4 708 211 /
+ 263.4.70.38.58;

Mr. Patrick Chinamasa,
Minister of Justice, Legal and
Parliamentary Affairs,
P.Bag 7751, Causeway,
HARARE, ZIMBABWE

Special Rapporteur of the Human Council on the independence of judges and lawyers
c/o Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland
Fax: +41 22 917 9006
E-mail: SRindependenceJL@ohchr.org