

# 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

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31 October 2013

Khembo Mohadi  
Minister of Home Affairs  
11th Floor, Mukwati Building  
Private Bag 7703, Causeway,  
HARARE, ZIMBABWE

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

Dear Minister,

**Re: Ms. Beatrice Mtetwa, lawyer; Council member of the Law Society of Zimbabwe**

Lawyers' Rights Watch Canada (LRWC), provides support internationally to lawyers in danger and promotes the enforcement of international human rights standards protecting the duty and right of lawyers to uphold the rule of law.

LRWC is concerned about the ongoing prosecution of Beatrice Mtetwa who was unlawfully arrested and arbitrarily detained in March 2013. Ms. Beatrice Mtetwa is a human rights lawyer and a member of the Council of the Law Society of Zimbabwe. Ms. Mtetwa was arrested when she rightfully requested that police provide a valid search warrant for the raid of her client's (Thabani Mpfu, an aide to Prime Minister Morgan Tsvangirai) home and an inventory list of items seized. Police and the justice branch retaliated by charging Ms Mtetwa with 'defeating or obstructing the course of justice' under Section 184 (1) (g) of the Criminal Law (Codification and Reform) Act. Ms Mtetwas was released after eight days on \$500 bail.

As outlined in our previous correspondence arrest and prosecution of Ms Mtetwa violates a number of standards accepted internationally and by the African Union. Her arrest was wrongful and her detention arbitrary. The allegations against her reveal no acts or omissions that can reasonably be considered criminal. The charges appear to be politically motivated and ill-founded. As such the prosecution is an abuse of process and itself may constitute an 'obstruction of justice'.

International standards contravened by the prosecution of Ms Mtetwa include:

1. The right of persons facing or threatened with criminal proceedings to be represented by a lawyer empowered to effectively protect rights and achieve justice<sup>1</sup>; and,
2. The right of lawyers to perform their professional functions without intimidation, harassment or improper interference<sup>2</sup>; and,

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<sup>1</sup> 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.

<sup>2</sup> The Basic Principles on the Role of Lawyers, Article 16.

**Re: Drop all charges for human rights lawyer Ms. Beatrice Mtetwa**

3. The prohibition against identifying lawyers with their clients causes.<sup>3</sup>

The obligations of state to protect lawyers from harm in the discharge of their professional duties are set out in the United Nations Basic Principles on the Role of Lawyers. Article 16 provides that:

"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics."

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

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 again 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.

Yours truly,



Amy E. Reier  
LRWC Member

CC:  
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<sup>3</sup> The Basic Principles on the Role of Lawyers, Article 18.

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