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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: UA G/SO 218/2 G/SO 214 (107-9) G/SO 214 (3-3-16)
ZWE 2/2013

21 March 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 15/18, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the arrest and continued detention of Ms. **Beatrice Mtetwa**.

Ms. Mtetwa is a prominent lawyer in Zimbabwe and a board member of Zimbabwe Lawyers for Human Rights. Ms. Mtetwa was the subject of two previous appeals sent to your Excellency's Government. On 18 June 2004, an allegation letter (case no. ZWE 16/2004) was sent regarding allegations that after reporting an attack against her by the police, Ms. Mtetwa was accused without justification by police officers of driving while intoxicated and subject to cruel, inhuman and degrading treatment when taken to the police station. On 28 March 2007, a joint urgent appeal (case no. ZWE 6/2007) was sent to your Excellency's Government concerning alleged threats and intimidation by armed police officers against Ms. Mtetwa on several occasions when she tried to serve court orders and attempted to visit the then jailed opposition leader Morgan Tsvangirai. We regret that to date, no response has been received from your Excellency's Government to either communication.

According to the information received:

On 17 March 2013, Ms. Mtetwa assisted a client whose home was being raided by police. She requested to officials to see a valid search warrant and inventory list for items which had been removed from her client's home and was reportedly arrested by police after making such a request. When she refused to abide, she was reportedly handcuffed and the police confiscated her cell phone, which contained sensitive and confidential communications with her clients, without having a warrant to do so. Sources indicate that Ms. Mtetwa was held in an

unmarked police vehicle while the police proceeded to search her client's home and in turn another office.

It is reported that Ms. Mtetwa was detained for several hours at Harare Central police station before a statement was recorded, following which she was charged with defeating and/or obstructing the course of justice under the Criminal Law (Codification and Reform) Act – section 184(1)(g). Despite alleged earlier promises to release her into the custody of her lawyers, she was put in a cell at Rhodesville police station at around 17:30.

In response to her continued detention, Ms. Mtetwa's legal team reportedly filed an Urgent Chamber Application in the High Court, and the presiding judge ordered her immediate release on Sunday 17 March. It is reported that her lawyers served the order at Rhodesville police station at around 02:30 in the morning of 18 March 2013. Sources indicate, however, that the police refused to comply with the Order. The officer in charge, the investigating officer and the superintendent who ordered the arrest were all reportedly made aware of the Order, without any action being taken to release Ms. Mtetwa.

It has been reported that the application for bail made on behalf of Ms. Mtetwa was denied on 20 March 2013. It is unclear why a bail application was necessary given the fact that a High Court order had already been issued ordering her immediate release. Following the denial of her bail by a Harare Provincial Magistrate, Ms. Mtetwa has been remanded into custody until 3 April allegedly on the grounds that she might interfere with ongoing investigations. Moreover, it has been reported that Ms. Mtetwa was denied access to her relatives while in detention. It is further reported that the decision by the Harare Provincial Magistrate to deny Ms. Mtetwa bail has been appealed to the High Court and that a hearing is scheduled at the High Court on 22 March 2013.

Concern is expressed at the continued detention of Ms. Beatrice Mtetwa and that her detention appears to be linked to discharging her duties to provide legal assistance to clients. Particular concern is expressed at the fact that she continues to be detained despite the order of the High Court judge to release her.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned person is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

In this context, we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, and in particular

- Principle 16, which states: “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 recognized professional duties, standards and ethics”; and

- Principle 17, which states: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”; and principle 18, which states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”.

In connection to the allegations received indicating that the situation of Ms. Beatrice Mtetwa is directly related to her human rights work, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular to article 12 paras. 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Ms. Beatrice Mtetwa in compliance with the above international instruments.

As, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victim?
3. Please provide the full details of any prosecutions which have been undertaken.
4. Please provide information concerning the legal grounds for the arrest and detention of Ms. Mtetwa and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
5. Please indicate what measures have been taken to ensure that the right to provide legal assistance is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Beatrice Mtetwa are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers