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The Honorable Patrick Chinamasa
Minister of Justice and Legal Affairs
The Republic of Zimbabwe
Via facsimile: 011-263-477-29 99

Dear Minister:

I write on behalf of the Association of the Bar of the City of New York (the "Association") concerning the arrest and detention of the human rights lawyer Beatrice Mtetwa. The Association urges that the charges against Ms. Mtetwa be withdrawn and that there be no further harassment of her. If circumstances are as reported, the actions that have been taken against Ms. Mtetwa harm the integrity of the Zimbabwean legal system and threaten the right to legal representation, a cornerstone principle of the Zimbabwean Constitution and of African Union and international legal pronouncements.

The Association is an independent, non-governmental organization of 23,000 lawyers, judges, law professors and government officials from the United States and 50 other countries. Its Committee on African Affairs follows political and legal issues, particularly those affecting African lawyers and judicial systems. The Association also has a long history of dedication to human rights, most notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world. We have a strong and long-standing interest in ensuring the safety of lawyers and meaningful access to legal counsel. We believe that unfettered access to legal representation is a foundational principle of a fair and just society and that, in order to provide effective representation, lawyers must be free from government intimidation, harassment and persecution.

For those reasons, we join African and international lawyers' associations and human rights organizations in their concern for the recent arrest of Beatrice Mtetwa and her subsequent detention.¹ According to news reports, Ms. Mtetwa was arrested on March 15, 2013 after she

¹ See, e.g., Centre for Applied Legal Studies, et al., *Joint Media Statement: Human Rights Organisations Condemn Arrest and Detention of Zimbabwe Human Rights Lawyer Beatrice Mtetwa* (Mar. 19, 2013), <http://999.fidh.org/JOINT-MEDIA-STATEMENT-HUMAN-RIGHTS-13046>; International Bar Association, *IBA calls for the immediate release of Zimbabwean human rights lawyer Beatrice Mtetwa* (Mar. 18, 2013), <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=23ED900B-2F05-44AB-8EAB-66423B89D2B1>; International Commission of Jurists, et al., *African Legal Bodies Condemn Continued Detention of Human Rights Lawyer*

asked police officials who had entered the home of one of her clients to provide a warrant justifying their entry.² She was arrested and imprisoned for eight days, apparently despite a ruling by the Zimbabwean High Court that ordered the police to release her.³ Although Ms. Mtetwa has been released on bail, she now faces more than twenty criminal charges, including the obstruction of justice, indecent conduct, and abusing the police.⁴ This is not the first time that Ms. Mtetwa has been harassed by the police: in May 2007, she and colleagues were assaulted during a public demonstration, and in October 2003, she was detained on apparently spurious charges of drunk driving and reportedly beaten and choked.⁵ Given these circumstances, the recent arrest, detention and criminal charges appear to be intended to intimidate Ms. Mtetwa and to dissuade her and other attorneys from advocating for clients who are viewed with disfavor by certain police or government officials.

International law makes clear that, in order to protect the right to representation, governments must ensure that lawyers do not face police persecution and intimidation. The African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa require that “[s]tates shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [and] 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.”⁶ These same requirements are echoed in the United Nations Basic Principles on the Role of Lawyers.⁷ Moreover, the arbitrary detention of a lawyer (like anyone else) violates basic legal principles set forth in the International Covenant on Civil and Political Rights.⁸

Beatrice Mtetwa (Mar. 22, 2013), <http://www.southernafricalitigationcentre.org/2013/03/22/african-legal-bodies-condemn-continued-detention-of-human-rights-lawyer-beatrice-mtetwa/>; Law Society of South Africa, *Law Society condemns arrest of Zimbabwean lawyer Beatrice Mtetwa* (Mar. 18, 2013), <http://www.legalbrief.co.za/article.php?story=20130318121934488>; Law Society of Namibia, *Arrest of Beatrice Mtetwa* (Mar. 27, 2013), <http://allafrica.com/stories/201303280295.html>.

² Lydia Polgreen, *Zimbabwe Rights Lawyer Denied Bail*, N.Y. TIMES (Mar. 20, 2013), <http://www.nytimes.com/2013/03/21/world/africa/zimbabwe-rights-lawyer-beatrice-mtetwa-denied-bail.html>; *Beatrice Mtetwa case: Zimbabwe court grants lawyer bail*, BBC NEWS AFRICA (Mar. 25, 2013), <http://www.bbc.co.uk/news/world-africa-21923759>.

³ The Association also notes with concern reports that Justice Charles Hungwe of the Zimbabwean High Court, who appears to have ordered Ms. Mtetwa’s release shortly after her arrest, now faces disciplinary charges for his conduct in a case that he decided ten years ago. See, e.g., *Mugabe to weigh case against Zim judge*, NEWS24 (Apr. 10, 2013), <http://www.news24.com/Africa/Zimbabwe/Mugabe-to-weigh-case-against-Zim-judge-20130410>; Lydia Polgreen, *Zimbabwe Police Defy Order to Free Lawyer*, N.Y. TIMES (Mar. 18, 2013), http://www.nytimes.com/2013/03/19/world/africa/zimbabwe-human-rights-lawyer.html?_r=0. The timing of these charges suggests that they may be intended to punish Justice Hungwe for his ruling in the Mtetwa case.

⁴ *Zim rights lawyer Mtetwa faces new charges*, MAIL & GUARDIAN (Apr. 9, 2013), <http://mg.co.za/article/2013-04-09-zim-lawyer-beatrice-mtetwa-faces-new-charges>; *Mtetwa slapped with 20 new charges*, NEW ZIMBABWE (Apr. 9, 2013), <http://www.newzimbabwe.com/news-10779-Mtetwa+slapped+with+20+new+charges/news.aspx>.

⁵ Lydia Polgreen, *Judge’s Order Frees Lawyer*, N.Y. TIMES (Mar. 26, 2013), http://www.nytimes.com/2013/03/26/world/africa/zimbabwe-human-rights-lawyer-beatrice-mtetwa-released-from-jail.html?ref=zimbabwe&_r=0; *Zimbabwe police assault lawyers*, BBC NEWS (May 8, 2007), <http://news.bbc.co.uk/2/hi/africa/6635151.stm>.

⁶ African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Art. I(b)(1)&(3).

⁷ United Nations Basic Principles on the Role of Lawyers, Art. 16.

⁸ International Covenant on Civil and Political Rights, Arts. 7, 9.

The right to legal representation is a fundamental principle of Zimbabwean law. The current Constitution provides for the right of legal representation by the counsel of one's choice.⁹ So too does the pending Constitution that was recently approved by the majority of Zimbabweans.¹⁰ Indeed, the pending Constitution, which lists the rule of law as one of its "Founding values and principles,"¹¹ bears testament to the importance of the right to counsel not only by protecting the lawyer-client relationship but also by affirmatively requiring the Government to "take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for people who need it and are unable to afford legal practitioners of their choice."¹²

Lawyers cannot provide the mandated legal representation when they face arrest, imprisonment and criminal charges for doing so. The Association urges the Government of Zimbabwe to withdraw the charges against Ms. Mtetwa, end all harassment against her and take all necessary steps to uphold the right to representation. By so doing, you will guarantee Zimbabwe's compliance with its Constitution and with the international human rights instruments that it has ratified. Thank you for your attention to this urgent matter.

Respectfully yours,



Carey R. Dunne
President

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⁹ Constitution of Zimbabwe, Art. 18(3)(d).

¹⁰ See Final Draft Constitution of Zimbabwe (Jan. 2013), Ch. 4, Arts. 69(4), 70(d)&(e).

¹¹ Final Draft Constitution of Zimbabwe (Jan. 2013), Ch. 1, Art. 3.

¹² *Id.* at Ch. 2, Art. 31.

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