The arrest and detention of Zimbabwean attorney Beatrice Mtetwa breached the rule of law, a Commonwealth Lawyers Association (CLA) mission has found. The CLA’s final report on the trial observation mission undertaken to monitor the trial of the Zimbabwean human rights lawyer was released today. The mission was conducted between March and November 2013 by a trial observer team comprising staff at the Socio-Economic Rights Institute of SA (SERI).

Ms Mtetwa was arrested in Harare on 17 March 2013 for “obstructing the course of justice” while assisting her client, a senior legal adviser to Morgan Tsvangirai, the former Prime Minister of Zimbabwe. On 26 November 2013, she was acquitted and discharged at the end of the state’s case, the presiding Magistrate finding that she had no case to answer.

While finding that Ms Mtetwa’s trial was substantially fair, the CLA report expressed grave concern that Ms Mtetwa’s arrest, detention and trial were allowed to happen in the first place. It was, says the report, evident that nothing Ms Mtetwa was alleged to have done was capable of “obstructing justice”. Instead, her arrest and subsequent detention were clearly an attempt to harass and intimidate her; to punish her for asserting her client’s rights. Her lawyering “was perceived as an inconvenience, so she was arrested”, the CLA report finds. That Ms Mtetwa’s arrest was not immediately corrected by more senior police officers is unfortunate, the report says. Of even graver concern, according to the report, is that the police ignored a High Court order, directing Ms Mtetwa’s immediate release, which was issued soon after she was arrested. The report recommends that police officers in charge of Ms Mtetwa’s detention should face disciplinary action or criminal investigation.

The report also finds that the subsequent dismissal of Ms Mtetwa’s bail application by a Harare Magistrate on 19 March was also “plainly unsupportable”. Although the High Court upheld her bail appeal, Ms Mtetwa still had to spend a week in prison.

The CLA’s report states that: “the rule of law cannot be sustained in a society governed by a security apparatus that does not unequivocally accept the overriding authority of a court order. Nor can the rule of law survive for long if lawyers are detained for asserting their clients’ rights. We urge the Government of Zimbabwe to ensure that orders and officers of the courts are afforded the appropriate respect in future.”

The CLA trial observers were SERI Executive Director Stuart Wilson, Director of Litigation, Teboho Mosikili, Candidate Attorneys Lindokuhle Mdabe and Princess Magopane and SERI Litigation Fellow Zwelakhe Makgalemele.

- Read the final report by the CLA (24 February 2014) here.