



Africa Criminal Justice Reform  
 Organisation pour la Réforme de la Justice Pénale en Afrique  
 Organização para a Reforma da Justiça Criminal em África

# Arrest without a warrant in Zambia

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## Law reform to prevent arbitrary arrest

### Introduction

This fact sheet deals with arrest without a warrant in Zambia.<sup>1</sup> It highlights the legal framework governing arrest without a warrant, the shortcomings in the legislation as well as some challenges with implementation. The scope concerns ordinary day-to-day law enforcement and thus excludes states of war, states of emergency or other highly unusual situations. Police officials perform the overwhelming majority of arrests although other state officials may also have the power to arrest without a warrant, e.g. prison officials. The focus here is on police officials.

Arrest is understood to mean the following, as per *Holgate Mohammed v Duke*:

‘First, it should be noted that arrest is a continuing act; it starts with the arrester taking a person into his custody (sc. by action or words restraining him from moving anywhere beyond the arrester’s control), and it continues until the person so restrained is either released from custody or, having been brought before a magistrate, is remanded in custody by the magistrate’s judicial act.’<sup>2</sup>

Police officials are entrusted with the power to arrest a person without having obtained a warrant of arrest from a judicial officer. It is necessary for the police to have this far-reaching power as the requirements of their work (e.g. to stop a person from committing a crime) necessitates it. However, the deprivation of liberty is a serious intervention in a person’s life

and the authority to arrest without a warrant must therefore be used in a lawful manner and not to intimidate, scare or punish people.

Below a brief overview is given of guidance in international and regional law on arrest without a warrant. This is followed by an overview of the Zambian legal framework on arrest without a warrant. This is followed by a description of implementation challenges and jurisprudence on the matter.

### International law

The Universal Declaration of Human Rights (UDHR) guarantees the right to be free from arbitrary arrest, detention or exile.<sup>3</sup> The International Covenant on Civil and Political Rights (ICCPR), in Article 9(1), reads:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

The ICCPR acknowledges that the deprivation of liberty may be necessary in certain circumstances, but that it must not be arbitrary and must be done with respect for the rule of law.<sup>4</sup> It is noted in General Comment 35 that the two prohibitions in Article 9(1) overlap in that arrests or detentions may be in violation of the applicable law but not arbitrary, or legally

permitted but arbitrary, or both arbitrary and unlawful. Moreover, arrest or detention lacking any legal basis is also arbitrary.<sup>5</sup>

The Merriam-Webster Dictionary defines arbitrary as: depending on individual discretion (as of a judge) and not fixed by law; autocratic, despotic; based on or determined by individual preference or convenience rather than by necessity or the intrinsic nature of something; existing or coming about seemingly at random or by chance or as a capricious and unreasonable act of will.<sup>6</sup>

The UN Working Group on Arbitrary Detention regards deprivation of liberty as arbitrary in the following instances:

- When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (Category I);
- When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR (Category II);
- When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);
- When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);
- When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (Category V).<sup>7</sup>

To summarise, arrest and detention are arbitrary if:

- the grounds for the arrest are illegal
- the victim was not informed of the reasons for the arrest
- the procedural rights of the victim were not respected
- the victim was not brought before a judge within a reasonable amount of time.<sup>8</sup>

## Regional law

The African Commission on Human and Peoples' Rights (ACHPR) adopted the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) in 2014. The Guidelines have a narrower definition of arrest than the one cited above, referring to it as "the act of apprehending a person".<sup>9</sup> The Luanda Guidelines also encourages the diversion of cases away from the criminal justice system, the use of alternatives to arrest and the use of arrest as "an exceptional measure of last resort".<sup>10</sup> Furthermore, the grounds for arrest must be established in law, as is the case with the ICCPR.<sup>11</sup>

Moreover, the Luanda Guidelines set this requirement so that "such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual."<sup>12</sup> It is furthermore noted that arrest must not be executed on the basis of discrimination of any kind, such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, disability or any other status.<sup>13</sup> It should be noted that the Guidelines do not specifically name gender orientation as a basis for discrimination, but it can be read into "or any other status".

The Luanda Guidelines limit the powers of arrest to police or by other competent officials or authorities authorised by the state for this purpose.<sup>14</sup> In some jurisdictions it is only a judicial officer (judge or magistrate) that can issue a warrant of arrest, but in others (e.g. Mozambique until recently), this power was extended to a wide range of officials, such as prosecutors and even administrative heads in rural areas.<sup>15</sup> Furthermore, an arrest shall only be carried out if authorised by a warrant of arrest or when there are reasonable grounds to suspect that a person has committed an offence or is about to commit an arrestable offence.<sup>16</sup>

## Zambian legal framework on arrest

The main law enforcement body established in terms of the Zambian Constitution is the Zambia Police Service.<sup>17</sup> The Constitution of Zambia, the Criminal Procedure Code and the

Zambian Police Act are the main statutes regulating criminal processes and the work of the police.<sup>18</sup>

The Constitution provides for the protection of the fundamental rights and freedom of all persons, including the right to protection of the law<sup>19</sup> and personal liberty.<sup>20</sup> In terms of the right to personal liberty, the Constitution offers protection against arbitrary or unlawful arrest. Although there is a set number of exceptions as authorised by law (such as in cases where persons are suspected to be of unsound mind, addicted to drugs or alcohol or a vagrant),<sup>21</sup> these exceptions do not necessarily have to be dealt with by way of arrest by the police but can be dealt with by health officials. The Constitution does, however, state that the police may arrest an individual 'upon reasonable suspicion of having committed, or being about to commit, a criminal offence under the law in force in Zambia.'<sup>22</sup>

Arrested persons have the right to secure protection of law, which includes the right to be informed as soon as is reasonably practicable of the nature of the offence charged, the right to counsel of one's choice or legal aid where one cannot afford a lawyer, the right to a fair hearing within a reasonable time by an independent court of law and to be presumed innocent until proven guilty.<sup>23</sup>

In making an arrest, the police officer must 'actually touch or confine the body of the person to be arrested,' unless the arrested person 'submits to custody by word or action.'<sup>24</sup> The Criminal Procedure Code Act entitles any police officer, to arrest without a warrant, any person whom he suspects, upon reasonable grounds, of having committed a cognizable offence.<sup>25</sup>

A "cognizable offence" is defined as an offence under any written law for which a police officer may arrest without a warrant.<sup>26</sup> The offences are listed in the First Schedule attached to the Criminal Procedure Code Act and typically include offences such as common assaults, rape, theft and murder.<sup>27</sup> The Criminal Procedure Code Act deals with the procedures of arrest without a warrant<sup>28</sup> and sections 26 and 27 are specific to the arrest by the police for cognizable offences.

The Criminal Procedure Code Act notes that 'any police officer may, without an order from a magistrate and without a warrant, arrest-

- any person whom he/she suspects, upon reasonable grounds, of having committed a cognizable offence;
- any person who commits a breach of peace in his/her presence;

- any person who obstructs a police officer while in the execution of his/her duty, or who has escaped or attempts to escape from lawful custody;
- any person in whose possession anything is found which may reasonably be suspected to be stolen property, or who may reasonably be suspected of having committed an offence with reference to such thing;
- any person whom he/she suspects, upon reasonable grounds, of being a deserter from the Defence Force;
- any person whom he/she finds in any highway, yard or other place during the night, and whom he/she suspects, upon reasonable grounds of having committed or being about to commit a felony;
- any person whom he/she suspects, upon reasonable grounds, of having been concerned in any act committed at any place out of Zambia which, if committed in Zambia, would have been punishable as an offence;
- any person having in possession, without lawful excuse, any implement of housebreaking;
- any released convict who fails to comply with his/her conditions of release from prison;
- any person for whom the police officer has reasonable cause to believe a warrant of arrest has been issued.<sup>29</sup>

The Criminal Procedure Code Act also provides that 'any officer in charge of a police station may arrest or cause to be arrested:

- any person found to conceal his or her presence, under circumstances which afford reason to believe that he/she is taking such precautions with a view to committing a cognizable offence;
- any person, who has no ostensible means of subsistence, or who cannot give a satisfactory account of him or herself;
- any person who is, by repute, a habitual robber, housebreaker or thief, or a habitual receiver of stolen property, knowing it to be stolen, or who, by repute, habitually commits extortion, or, in order to commit extortion, habitually puts or attempts to put persons in fear of injury.'<sup>30</sup>

The provisions contained in section 27 of the Criminal Procedure Code Act seem to give the police arbitrary power of arrest solely on the basis of a person's economic status and mere reputation.<sup>31</sup>

The Zambian Police Act has very little authoritative provisions on arrest without a warrant and only makes reference to such arrests in the following two instances: (a) instances where

persons oppose or disobey a lawful order given by a police officer<sup>32</sup> and (b) an arrest of a police officer by another police officer who is accused of a criminal or disciplinary offence.<sup>33</sup>

The Zambia Police Standing Orders do not give much guidance to the police in executing arrests. However, it does give Officers-in-Charge of stations the responsibility to report ‘arrests without a warrant effected within the area for which they are responsible to the nearest court of competent jurisdiction’.<sup>34</sup> This should be done whether or not the arrested persons are subsequently granted bail.<sup>35</sup> Ultimately, it is important for the police to acknowledge a number of rights that suspects have, such as the right to be presumed innocent until proven guilty and the right to be promptly charged or released.<sup>36</sup>

It appears that the Constitution of Zambia, the Criminal Procedure Code and the Zambian Police Act which are the main statutes regulating criminal processes and the work of the police provide limited guidelines on arrest without a warrant and need to be reviewed and amended. The following section deals with implementation challenges and a growing body of case law on arrest without a warrant.

## Implementation and case law

There are a number of challenges relating to the provisions on arrest without a warrant by a police official in Zambia. The first relates to the insufficient legislative provisions and guidelines on arrest without a warrant. Although the Criminal Procedure Code Act specifies the circumstances under which an arrest without a warrant can be exercised by an official, such grounds are not articulated in the Zambian Police Act, which is supposed to be the primary statute governing the work of the police.

The Zambian Police Act refers to arrest without a warrant only in instances where persons oppose or disobey a lawful order given by a police officer<sup>37</sup> and in executing an arrest of a police officer who committed an offence.<sup>38</sup> This could be due to the fact that the Zambian Police Act is archaic and has not been amended since 1999. Furthermore, the police standing orders do not also provide such guidance to police.

The statutory provisions guiding arrests without a warrant in the Criminal Procedure Code Act provide limited guidance to police officials in exercising their discretionary powers to arrest where ‘reasonable grounds’ exists or where there is a ‘reasonable

suspicion’ that someone is about to commit a cognizable offence.<sup>39</sup> The Criminal Procedure Code Act does not sufficiently substantiate or define ‘reasonable grounds’ under which such arrests can be executed. In addition, there are no substantive procedural guidelines for police to conduct an arrest, such as provisions relating to police clearly identifying themselves when conducting arrests or provisions obliging police officials to notify arrested persons of their rights.<sup>40</sup>

As a consequence of insufficient legislative provisions and guidelines on arrest without a warrant, there may be a risk of unlawful and arbitrary arrests due to the abuse of police powers. For instance, it provides an opportunity for the police to exercise their discretion in a discriminatory manner. In the enforcement of especially petty offence laws, arrest and detention are frequently used to remove ‘unwanted’ or perceived to be problematic people from the streets.

In Zambia, where sex work is not criminalised, police authorities often use cognizable vagrancy provisions in the Penal Code such as “idle and disorderly” or “common nuisance”, “touting” and “rogue and vagabond” to arrest and detain sex workers.<sup>41</sup> Police authorities use these vagrancy laws which are vague, overly-broad and which are subjectively applied to arrest sex workers because of the difficulty to investigate and provide evidence of the activities related to sex work (which is not criminalised).<sup>42</sup> Instead, sex workers are targets of police enforcement, abuse, harassment and extortion because they are considered ‘undesirable persons’ even though it is not a crime to be a sex worker.<sup>43</sup>

Limited guidelines on arrest without a warrant also provide police officials the opportunity to arrest individuals before undertaking thorough investigations. Under such circumstances, proper due process is not followed by police officials, because of the amount of unfettered discretion that they have. This may result in the arbitrary arrest and detention of persons.

*Mbandangoma v Attorney-General*<sup>44</sup> highlights the arbitrary application of police powers to arrest persons before completing or undertaking thorough investigation. Mbandangoma was arrested on a charge of suspicion of theft by a public servant and released shortly afterwards on police bond prior to the finalization of the investigation into his case because

the police officer was not satisfied that he was the owner of the suspected stolen goods.<sup>45</sup> Mbandangoma was then required to report to the police on four subsequent occasions after which he was informed that further proceedings were being discontinued.<sup>46</sup> The court held that in order to justify the arrest of the plaintiff, the defendant ‘must show that at the time of the arrest, the arresting officer had reasonable suspicion that the plaintiff had committed the offence with which he was charged.’<sup>47</sup> The court held that the arrest of the plaintiff did not meet these requirements and was therefore unlawful because Mbandangoma’s attendance to the police station had been arranged to coincide with occasions when the police wished to see him for investigative purposes.<sup>48</sup> The court held that ‘the police can only arrest persons for offences and have no power to arrest anyone in order to make inquiries about him.’<sup>49</sup> The court further held that ‘it is improper for the police to detain persons pending further investigations without bringing them before a court as soon as it is practicable, but it is equally improper to require persons released on bond to present themselves at the police station for the same purpose.’<sup>50</sup> This court order therefore prohibits the culture of ‘arrest now and investigate later’ and it is incumbent on the Zambian Police Service to introduce new methodologies and to be equipped with forensic tools such as scanners, DNA testing and CCTVs to facilitate easy access of information in order to improve policing.

In *Attorney General and Others v Phiri*<sup>51</sup> the arbitrary and negative application of police discretion was demonstrated when a suspect was arrested without a warrant and the police officer failed to inform him regarding reasons for the arrest. In this particular case, the police was informed by a member of a neighbourhood watch regarding the theft of solar panels and based on the information provided, were led to the location where the respondent was.<sup>52</sup> Phiri was arrested based on suspicion of his involvement in the theft of the solar panels and was only informed a day later regarding the reason for his arrest.<sup>53</sup> It is important to bear in mind that when executing an arrest without a warrant, a police officer must really believe or suspect that the person has committed or is about to commit an offence and this belief or suspicion must be based on certain facts from which an inference or conclusion can be drawn by any reasonable person in view of the same facts.<sup>54</sup> In this case, the police thought that they had sufficient reason to believe that the respondent had committed the said offence based on the information provided by the member of the neighbourhood watch, but did not undertake a thorough investigation before

arresting the suspect, and thus the court ruled against the police.

Furthermore, it is important for police officers to inform suspects of the reasons for their arrest and bring them before a judge within a reasonable amount of time.<sup>55</sup> The Criminal Procedure Code allows the police to take persons arrested without a warrant into custody, but must bring them before an appropriate and competent court within twenty-four hours.<sup>56</sup> The *Phiri* case shows how the police failed to promptly inform the suspect of the grounds for his detention as he was only informed twenty-four hours later about the reason for his arrest.<sup>57</sup> The Supreme Court’s decision in favour of Phiri relied on a number of previous judgments both directly and indirectly related to the issue of police discretion to arrest in Zambia.

For instance, the court also relied on the case of *Attorney General vs Sam Amos Mumba*.<sup>58</sup> The respondent in this case was arrested without a warrant by the police. He was not told of the grounds of his arrest until some six hours later. In claims for false imprisonment, he was awarded damages due to the unlawful arrest. The court noted that when a police officer makes an arrest without a warrant, it is incumbent upon the officer to inform the arrested person of the grounds for arrest, unless the arrested person makes it difficult or practically impossible to do so.<sup>59</sup> Furthermore, failure to inform the arrested person of the reasons for his or her arrest as soon as is reasonably possible will constitute false imprisonment.<sup>60</sup>

Discretionary provisions on arrest without a warrant can result in the misuse of police arrest powers and can result in claims of arbitrary and unlawful arrest. As a consequence of unlawful arrest, there is also the possibility of violations of other human rights including human dignity and the right not to be subjected to torture and other degrading and inhumane treatment. In the *Attorney-General v Felix Chris Kaleya*<sup>61</sup> case, which is similar to the Phiri case, the suspect’s human dignity was undermined as he was assaulted and battered by police officers. In the courts’ ruling of the Phiri case, it relied on what it had mentioned in the *Kaleya* case by stipulating that ‘the beating up of suspects neither advances the cause of justice nor reflect to the credit of the police force’. The Court further made reference to the Zambian Constitution which forbids torture, inhumane or degrading punishment.<sup>62</sup> It is therefore important that legislation, provisions and guidelines on police arrest powers and functions ensure, protect and respect the rights to liberty of all citizens.

From this, one can conclude that it is important that when arresting without a warrant, the arresting officer ‘would have to satisfy the court that he or she had considered and not merely paid lip service to, the rights of the suspect to human dignity and to freedom and had not relegated them to ‘a worthless level of subservience’.<sup>63</sup>

## Conclusion

The above covered international and regional norms on arrest and detention in order to prevent arbitrary detention emphasising that an arrest will be arbitrary if:

- the grounds for the arrest are illegal
- the victim was not informed of the reasons for the arrest
- the procedural rights of the victim were not respected
- the victim was not brought before a judge within a reasonable amount of time.<sup>64</sup>

There is no obligation to arrest and the objective is to ensure the suspect’s appearance at court, which may be achieved by other means, such as a warning to appear in court. However, in the Zambian context, the case law cited above reveal that victims are often not promptly informed of the reasons for their arrest (as was the case in *Phiri* and *Amos*). The procedural rights of the victim are often not respected and victims are often not brought before a judge within a reasonable time. The tendency to arrest now and investigate later (as in the *Mbandangoma v Attorney-General* case) opens the door for the violation of accused persons’ procedural rights and other pertinent constitutional and human rights guarantees. As mentioned above, the Zambian Police Act is archaic and has not been

amended in recent years, and the Police Standing Orders do not provide much guidance to the police when executing their arrest powers.

It is therefore recommended that the Zambian Criminal Procedure Code Act and the Police Act are reviewed and that the provisions on arrest without a warrant are amended to comply with international best practice on arrest in accordance to the obligations of the African Charter which seek to protect the right of life, dignity, equality and security of all people.<sup>65</sup> The Luanda Guidelines can play a role in assisting states to implement these obligations in the context of arrest.

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<sup>1</sup> ACJR is grateful to Dr O’Brien Kaaba from the University of Zambia School of Law for his comments on a draft version of this fact sheet.

<sup>2</sup> *Holgate-Mohammed v Duke* [1984] AC 437, [1984] 1 All ER 1054, [1984] 2 WLR 660. See also CCPR/C/GC/35 para 13.

<sup>3</sup> Article 9, Universal Declaration on Human Rights (UDHR).

<sup>4</sup> Article 9, Universal Declaration on Human Rights (UDHR).

<sup>5</sup> CCPR/C/GC/35 para 11. 414/1990, *Mika Miha v. Equatorial Guinea*, para. 6.5.

<sup>6</sup> <https://www.merriam-webster.com/word-of-the-day/arbitrary-2017-08-02>.

<sup>7</sup> Fact Sheet No. 26, The Working Group on Arbitrary Detention, <https://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>

<sup>8</sup> Trial International: <https://trialinternational.org/topics-post/arbitrary-detention/#section-2>

<sup>9</sup> Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) 1(a).

<sup>10</sup> Luanda Guidelines 1(c).

<sup>11</sup> Article. 9(1).

<sup>12</sup> Luanda Guidelines 2(a).

<sup>13</sup> Luanda Guidelines 2(b).

<sup>14</sup> Luanda Guidelines 3(a).

<sup>15</sup> Lorizzo, T and Petrovic, V. (2019) *Powers of Arrest Curtailed by Constitutional Council of Mozambique – The impact of the decision 4/CC/2013*, Bellville: Dullah Omar Institute and Reformar, p.4.

<sup>16</sup> Luanda Guideline 3(a).

<sup>17</sup> Article 193(1) (a) Constitution of Zambia; Kaaba, O. (2016) *Constitutionality of Criminal Procedure and Prison Laws in Africa*. Bellville: CSPRI, p.6.

<sup>18</sup> Constitution of Zambia; The Criminal Procedure Code, adopted in 1934; the Zambia Police Act, 1966.

<sup>19</sup> Article 11 (a), Constitution of Zambia

<sup>20</sup> Article 13 Constitution of Zambia.

<sup>21</sup> Article 13(1)(h), Constitution of Zambia.

<sup>22</sup> Article 13 (1) (e), Constitution of Zambia.

<sup>23</sup> Article 18, Constitution of Zambia.

<sup>24</sup> Section 18 (1) Criminal Procedure Code Act.

<sup>25</sup> Section 26, Criminal Procedure Code Act; Kaaba, O. (2016), p.9.

<sup>26</sup> Zambia Criminal Procedure Code Act, Definition Section.

<sup>27</sup> First Schedule, Zambia Criminal Procedure Code Act.

<sup>28</sup> Sections 26 – 36 deals with the following thematic areas: 26. Arrest by police officer without warrant 27. Arrest of vagabonds, habitual robbers, etc. 28. Procedure when police officer deposes subordinate to arrest without warrant 29. Refusal to give name and residence 30. Disposal of persons arrested by police officer 31. Arrest by private persons 32. Disposal of persons arrested by private person 33. Detention of persons arrested without warrant 34. Police to report apprehensions 35. Offence committed in magistrate's presence 36. Arrest by magistrate.

<sup>29</sup> Section 26, Zambia Criminal Procedure Code Act.

<sup>30</sup> Section 27, Zambia Criminal Procedure Code Act.

<sup>31</sup> Kaaba, O. (2016), p.9.

<sup>32</sup> Section 21 (3) Zambia Police Act. "Any person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section may be arrested without a warrant unless he gives his name and address or otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him."

<sup>33</sup> Section 39 (1), Zambia Police Act.

<sup>34</sup> Article 123 (1), Zambia Police Standing Orders 2009.

<sup>35</sup> Article 123 (1), Zambia Police Standing Orders 2009.

<sup>36</sup> Kaaba, O. (2016), p.14.

<sup>37</sup> Section 21 (3), Zambia Police Act. "Any person who opposes or disobeys any lawful order given by a police officer in the performance of his duty under this section may be arrested without a warrant unless he gives his name and address or otherwise satisfies the police officer that he will duly answer any summons or other proceedings which may be taken against him."

<sup>38</sup> Section 39 (1,) Zambia Police Act.

<sup>39</sup> Section 26 (a), Zambia Criminal Procedure Code Act.

<sup>40</sup> Article (3) (b) and (5), Luanda Guidelines.

<sup>41</sup> South African Litigation Centre. The legal framework in Zambia: A Preliminary Assessment of Sex Workers' Experiences of Police Abuse in Lusaka, Zambia, Johannesburg South Africa, p.13. Available at: <https://www.southernafrialitigationcentre.org/wp-content/uploads/2017/08/Legal-framework-in-Zambia.pdf>

<sup>42</sup> South African Litigation Centre. The legal framework in Zambia: A Preliminary Assessment of Sex Workers' Experiences of Police Abuse in Lusaka, Zambia, Johannesburg South Africa, p.13. Available at:

<https://www.southernafrialitigationcentre.org/wp-content/uploads/2017/08/Legal-framework-in-Zambia.pdf>

<sup>43</sup> South African Litigation Centre. The legal framework in Zambia: A Preliminary Assessment of Sex Workers' Experiences of Police Abuse in Lusaka, Zambia, Johannesburg South Africa, p13. Available at:

<https://www.southernafrialitigationcentre.org/wp-content/uploads/2017/08/Legal-framework-in-Zambia.pdf>

<sup>44</sup> *Mbandangoma v Attorney-General (1976/HP/768)* [1979] ZMHC 8 (22 February 1979) Available at:

<https://zambialii.org/system/files/judgment/high-court/1979/8/8.pdf>

<sup>45</sup> *Mbandangoma v Attorney-General*, p.2.

<sup>46</sup> *Mbandangoma v Attorney-General*, p.2.

<sup>47</sup> *Mbandangoma v Attorney-General*, p.4.

<sup>48</sup> *Mbandangoma v Attorney-General*, p.1.

<sup>49</sup> *Mbandangoma v Attorney-General*, p.1.

<sup>50</sup> *Mbandangoma v Attorney-General*, p.1.

<sup>51</sup> *Attorney General and Others v Phiri (Appeal No. 161/2014)* [2017] ZMSC 63 (29 June 2017).

<sup>52</sup> *Attorney General and Others v Phiri*, p.974.

<sup>53</sup> *Attorney General and Others v Phiri*, p.971.

<sup>54</sup> Article 3(a), Luanda Guidelines.

<sup>55</sup> Trial International: <https://trialinternational.org/topics-post/arbitrary-detention/#section-2>

<sup>56</sup> Section 33, Criminal Procedure Code Act.

<sup>57</sup> *Attorney General and Others v Phiri*, p.988.

<sup>58</sup> *Attorney-General v Mumba (S.C.Z. Judgment No. 6 of 1984)* [1984] ZMSC 4 (14 June 1984).

<sup>59</sup> *Attorney-General v Mumba (S.C.Z. Judgment No. 6 of 1984)* [1984] ZMSC 4 (14 June 1984), p.1.

<sup>60</sup> Trial International: <https://trialinternational.org/topics-post/arbitrary-detention/#section-2>

<sup>61</sup> *The Attorney-General v Felix Chris Kaleya* (1982) Z.R.1. (S.C.).

<sup>62</sup> Article 15, Constitution of Zambia.

<sup>63</sup> Plasket, C. (1998) 'Controlling the Discretion to Arrest without warrant through the Constitution' *SA Journal for Criminal Justice* 1(2), p.186.

<sup>64</sup> Trial International: <https://trialinternational.org/topics-post/arbitrary-detention/#section-2>

<sup>65</sup> Articles 2, 3, 5, 6, and 7, African Charter on Human and Peoples' Rights.