

Preventive Policing and Personal Liberty in Zambia: A Constitutional and Statutory Analysis of Preventive Arrest

Clement Ngoma

PhD Candidate—Department of Public Law, University of Cape Town, Cape Town, South Africa

Email address: NGMCLE004@myuct.ac.za

Abstract—Preventing crime is an express constitutional function of the Zambia Police Service, but preventive policing becomes legally difficult when police intervene before an offence has been committed. This article examines the legal framework governing preventive police patrols and anticipatory police powers in Zambia. Through doctrinal analysis, it distinguishes three questions: whether preventive patrol itself confers coercive authority, what legal threshold governs anticipatory interference with liberty and when preventive arrest may be used. The Constitution's Article 193 provides a mandate for preventative policing, but it does not give it any coercive authority on its own. Article 13(1)(e) subjects anticipatory deprivation of liberty to reasonable suspicion, while section 63 of the Criminal Procedure Code permits preventive arrest where an officer knows of a design to commit a cognisable offence and the offence cannot otherwise be prevented. The article argues that these provisions support a graduated model of preventive policing in which stronger coercion requires stronger legal justification. The principal weakness is not absence of preventive authority, but insufficient specification of the transition from observation to coercion. Based on a recognised anticipated offence, individualised grounds, necessity, recorded reasons, and review, it suggests a targeted decision-making framework.

Keywords—Preventive policing; preventive patrol; anticipatory arrest; police powers; reasonable suspicion; crime prevention; Zambia.

I. INTRODUCTION AND SCOPE

Crime prevention presents a familiar constitutional difficulty around the world. Police officers cannot always be expected to wait until threatened harm occurs before they intervene. However, allowing the police to restrict liberty merely because an officer believes that a person might offend risks replacing legal standards with prediction and discretion. Therefore, the legal question is not whether the police should prevent crime, but how far police authority may extend before criminal conduct occurs.

This article concerns adult preventive policing in Zambia, with an emphasis on patrol and warrantless preventive arrest. It does not examine post-offence investigation, prosecution, crowd-control powers, counter-terrorism legislation, child justice or the empirical effectiveness of the Zambia Police Service. "Proactive patrolling" describes police deployment designed to identify, monitor, or deter developing threats. "Preventive police powers" refer to the statutory ability to act before a prospective crime is committed. Keeping these concepts separate is central to the argument in this article.

Article 193(2) of the Zambian Constitution requires the Zambia Police Service to protect life and property, preserve peace, maintain law and order, ensure public security, detect and prevent crime, uphold the Bill of Rights and foster good relationships with members of society (Constitution of Zambia, 1991). Section 14 of the Zambia Police Act also places prevention and intelligence functions on police officers (Zambia Police Act, 1965). Sections 61–64 of the Criminal Procedure Code deal specifically with preventive police action, including arrest where an officer knows of a design to commit

a cognisable offence and it appears that the offence cannot otherwise be prevented (Criminal Procedure Code Act, 1933).

Article 13(1)(e) supplies the constitutional difficulty and limit of personal liberty. It permits deprivation of liberty upon reasonable suspicion that a person has committed or is about to commit a criminal offence. Anticipatory intervention is therefore permitted by the Zambian Constitution, provided that it meets a legal threshold. This article asks: to what extent does Zambia's legal framework authorise anticipatory police intervention while protecting individuals against arbitrary or unnecessary exercises of police power?

The article argues that the Constitution and Criminal Procedure Code support a graduated model of preventive policing. Article 193 of the Constitution establishes the institutional mandate to prevent crime but does not independently confer coercive authority. While section 63 of the Criminal Procedure Code provides more requirements for anticipated cognisable offences and the need for arrest, Article 13 mandates reasonable suspicion for proactive deprivation of liberty. The main weakness in the current system is not that police lack the power to prevent crime. Instead, the real problem is that the rules do not clearly explain exactly when and how officers can shift from simply being present and watching an area to using force and restricting someone's freedom.

II. METHOD AND SOURCES

The research method used for this study is doctrinal. This means it relies on interpreting laws and the constitution, analyzing specific Zambian court cases about arrest and detention, and testing a new decision-making model against current police powers. The main sources used are the Constitution of Zambia, the Zambia Police Act, and the Criminal Procedure Code. To help explain how these laws

should be applied, the study also uses international standards such as the African Charter on Human and Peoples' Rights, the Luanda Guidelines, and the International Covenant on Civil and Political Rights. The doctrinal approach is appropriate because the study specifically investigates what powers the police have, the rules that control those powers, and how unclear laws should be interpreted (Hutchinson & Duncan, 2012; McConville & Chui, 2017).

The Zambian court cases discussed below were chosen specifically because they deal with arrests made without a warrant, the reasons given for arrests and unlawful detention. These cases do not create a complete set of legal rules for section 63 of the Criminal Procedure Code, and this article does not claim that they do. Instead, they are used as helpful comparisons to explain the legal reasoning behind these topics. Similarly, sociology and crime research are only used to provide background context. Since this doctrinal study does not directly answer the question of whether more police patrols would genuinely lower crime in Zambia, independent empirical research would be necessary to do so.

III. PREVENTIVE PATROL, DEPLOYMENT AND COERCION

Preventive policing is a much broader concept than just preventive patrol. It covers any police strategy designed to stop or reduce crime before it happens, rather than just investigating crimes after they occur (National Academies of Sciences, Engineering, and Medicine [NASEM], 2018). This larger approach uses a single, specific method: preventive patrol. On the other hand, preventive police powers are much narrower, as they refer strictly to the legal authority given to officers to step in and restrict an individual's freedom to prevent a crime.

This difference matters because police presence, casual conversations, physical restraint and actual arrests all involve very different levels of government interference in a person's life. A police officer has every right to stand in a public area without needing a legal reason to arrest everyone who walks by. Therefore, preventative policing can be seen as a continuum that begins with mere presence and observation, progresses to consensual dialogues, and culminates in arrest and forced intervention. This breakdown is not a new legal category, but rather a practical way to show exactly when a general duty to prevent crime is no longer a good enough excuse and a specific legal power must be used to justify force. Therefore, it is important for police to refrain from arbitrary arrests in the communities they are tasked with patrolling.

Criminological research highlights the need for this distinction, even though it does not resolve the legal question. The famous Kansas City Preventive Patrol Experiment challenged the long-held assumption that routine, random police patrols reduce crime (Kelling et al., 1974). Subsequent studies found much stronger evidence of success when police focused on specific micro-locations, a strategy known as hot-spots policing (Sherman & Weisburd, 1995; Braga et al., 2019). A broad, recent systematic review and meta-analysis noted only small crime-prevention benefits from increasing general patrols across large areas, showing that the actual impact depends entirely on the specific strategy and the amount of patrol time (Weisburd et al., 2024). Ultimately, these scientific studies

point to a single, narrow conclusion: while crime data can help police decide where to send officers, simply being assigned to patrol an area does not give an officer a legal reason to stop or search a person.

IV. CONSTITUTIONAL AND STATUTORY LIMITS ON ANTICIPATORY INTERVENTION

Article 193(2) makes crime prevention a constitutional function of the Zambia Police Service. However, it should be read as a defining institutional responsibility rather than as a free-standing power to arrest, detain or search. A contrary reading would allow the general prevention mandate to displace the more specific legal conditions governing coercive powers. It would also sit uneasily with Article 193(2)(e), which requires the Police Service to uphold the Bill of Rights.

Article 13 provides the constitutional threshold for anticipatory deprivation of liberty. Article 13(1)(e) recognises that liberty may be restricted upon reasonable suspicion that a person has committed or is about to commit a criminal offence (Constitution of Zambia, 1991). The provision therefore rejects both extremes: preventive arrest is not inherently unconstitutional, but anticipation alone is insufficient. "Reasonable suspicion" requires an objectively defensible basis that connects the person to anticipated criminal conduct. Presence in a high-crime location, appearance, reputation or an officer's intuition cannot by themselves perform that work.

Article 13 also requires that an arrested or detained person must be informed, as soon as reasonably practicable and in a language they understand, of the reasons for their arrest or detention. A person who is not released must be brought before a court without undue delay and unlawful arrest or detention may attract compensation. These safeguards apply to preventive arrest the same way they apply to other deprivations of liberty.

The Criminal Procedure Code incorporates a more precise preventive strategy. Section 61 permits police officers to interrupt certain actions to prevent cognisable offences, and section 62 addresses the communication of information concerning a design to commit such an offence. Section 63 authorises warrantless arrest where an officer knows of a design to commit a cognisable offence and it appears that the offence cannot otherwise be prevented (Criminal Procedure Code Act, 1933).

Two expressions require careful treatment. First, "knows of a design" should not be reduced to a general belief that a person appears suspicious. The text points to information about contemplated criminal conduct. The officer should at least be able to identify the factual basis connecting the individual to its contemplated commission and the anticipated cognisable offence when reading with Article 13. This is an interpretive argument from the statutory and constitutional text; it is not presented as a settled judicial definition of "design."

Secondly, "cannot otherwise be prevented" makes necessity part of the statutory basis for arrest. It does not expressly establish a comprehensive proportionality or least-restrictive-means test. The narrower proposition is stronger: where a reasonably available lawful measure would adequately prevent the anticipated offence without arrest, the statutory basis for

invoking section 63 requires explanation. It may be obvious that immediate arrest is necessary when serious harm is imminent; other circumstances may allow warning, separation, observation, or other lawful intervention. The relevant question is practical necessity, not whether every theoretical alternative has first been exhausted.

When read together, these provisions perform distinct functions. Article 193 explains why the Police Service may act preventively. Article 13 regulates anticipatory interference with liberty. Section 63 identifies conditions for a particular warrantless preventive arrest. Their combined structure supports the article's graduated model: the preventive mandate justifies deployment and observation; coercion requires a specific power; anticipatory deprivation of liberty requires reasonable suspicion; and section 63 arrest additionally requires a relevant design and necessity.

V. JUDICIAL CONTROL AND HUMAN-RIGHTS STANDARDS

There is limited reported Zambian authority that directly interprets section 63 that provides for the preventive-patrol setting. General arrest cases nevertheless identify principles relevant by analogy. The Supreme Court in *Attorney-General v Mumba* (1984) ruled on the issue of arrest without warrant and the duty to notify the arrested person of the actual grounds of his or her arrest, with practical exceptions. The case did not decide the meaning of section 63. Its narrower relevance is that the procedural duty to justify arrest does not disappear because an arrest is preventive rather than investigative.

The cases of *Mwangala v Attorney-General* (1974) and *Attorney-General v Mofya* (1995) likewise concern the legality and consequences of deprivation of liberty rather than a specialised doctrine of preventive patrol. They are useful only for the general proposition that coercive police action remains subject to legal justification and review. Therefore, an arrest made under section 63 should be capable of subsequent explanation by reference to the anticipated offence, the information linking the person to the design and the reason as to why arrest was considered necessary in that situation.

Regional and international standards reinforce that reading. According to the Organisation of African Unity [OAU], 1981, Article 6 of the African Charter protects liberty and prohibits arbitrary arrest and detention. The Luanda Guidelines elaborate safeguards governing arrest and police custody in Africa (African Commission on Human and Peoples' Rights [ACHPR], 2014). Article 9 of the ICCPR similarly prohibits arbitrary deprivation of liberty, while General Comment No. 35 explains that arbitrariness extends beyond formal unlawfulness and includes considerations of reasonableness, necessity and proportionality (Human Rights Committee, 2014). These materials do not replace Zambia's domestic law; they support an interpretation that gives substantive content to Article 13 and section 63 rather than treating preventive purpose as sufficient justification.

VI. A FOCUSED FRAMEWORK FOR RIGHTS-COMPLIANT PREVENTIVE PATROL

The primary legal gap in this area is that the rules do not clearly explain the transition from police observation to force.

The police are fully authorised to prevent crimes by current laws, but they offer very little practical guidance on what specific information counts as a "design" or plan to commit a crime, or how an officer should prove that an arrest was truly necessary. The best way to fix this issue is to clarify the scope of existing police powers rather than creating a broader, more invasive power to make preventive arrests.

A first distinction should be maintained between place-based deployment and person-based coercion. Crime data or community complaints might give police a good reason to put more patrols in a particular neighborhood. However, just because a neighborhood is a "high-crime area" does not mean that the police have a legal reason to suspect everyone who walks through it. The moment an officer stops someone and restricts their freedom, that officer must be able to point to a specific, legal reason for doing so.

For arrest under section 63, a focused inquiry can organise existing requirements. The officer should be able to answer four questions: (1) What cognisable offence is anticipated? (2) What information establishes a design to commit that offence and connects this person to it? (3) Does that information give the person reasonable suspicion that they are about to offend? (4) Why could the anticipated offence not reasonably be prevented without arrest? These questions are proposed as a decision-making framework; they are not additional statutory elements asserted to have been enacted by Parliament.

Police officers should write down their reasons for an arrest immediately whenever possible. Creating a record right away makes it much easier for supervisors and courts to review the arrest later. The expected crime the person is suspected of, the facts that led to the officer's arrest, the reason for the arrest, the reasons for the arrest, and the exact reasons for the arrest should all be clearly stated in this written record. This suggestion is not a claim that current legislation explicitly prescribes this exact form of record; rather, it is meant to fix the accountability gap mentioned earlier. According to Article 193(2)(f), the Police Service must foster good relations with society, and this record will help determine whether the arrest made by law enforcement officers is legal.

According to evidence from procedural-justice studies, the legitimacy and cooperation of police can be influenced by explanation and fair treatment (Sunshine & Tyler, 2003; Mazerolle et al., 2013; Tyler, 2006). This idea has a limited but highly practical use here. Preventive police patrols often cause officers to stop and interact with people before any actual crime has been proven. Because of this, giving clear reasons for a stop and keeping the situation calm helps protect individual human rights. At the same time, this careful approach fulfills the constitutional goal of building positive, cooperative relationships between the police and the community.

VII. CONCLUSION

Zambian law clearly allows the police to step in and prevent crimes before they happen. Under Article 193 of the Constitution, preventing crime is an official police duty. Additionally, Article 13(1)(e) allows police to temporarily take away a person's freedom if there is a reasonable suspicion they are about to commit a crime, while sections 61 to 64 of the

Criminal Procedure Code grant specific powers to stop these crimes. The legal problem arises when police try to shift from this broad duty of keeping the peace to using physical force or coercion against one specific individual.

This article argues that these legal rules must be applied carefully and step-by-step. Article 193 gives police a general duty to prevent crime, but it does not give them an automatic right to force or lock someone up on its own. Any attempt to take away a person's freedom before a crime happens must strictly meet the human rights protections outlined in Article 13. Furthermore, a preventive arrest under section 63 can only happen if police have solid information that a specific, recognised crime is being planned and there is absolutely no other way to stop it. This strict language means that locking someone up must be a true necessity, even if the law does not fully spell out all the rules for balancing police actions with personal freedom.

The urgent reform needed right now is to clarify existing rules rather than give police more power. Police guidelines must clearly explain the difference between patrolling an area and forcing a specific person to stop. These rules should require clear, individual reasons before an officer steps in to prevent a suspected crime. Guidelines must also explain how to prove an arrest is absolutely necessary under section 63 and they should enforce immediate written records so supervisors can review every preventive arrest. These changes will keep the existing laws exactly as they are while making police actions much more transparent and open to review.

While preventive patrolling can help stop crime, it does not give officers a blank check of authority and it should not be treated as a total fix for crime. The main rule to follow is simple: the more forceful and restrictive a police action becomes, the stronger the legal justification for it must be. This balanced approach puts into action both parts of the constitutional command in Article 193, which requires the police to simultaneously prevent crime and protect individual human rights.

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