

NGO Observer Status No. [334]

Statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa

**85th Ordinary Public Session of the African Commission on Human and Peoples' Rights
21 October 2025 - 30 October 2025**

Item 5: Activity Reports of the Members of the Commission & Special Mechanisms

Honourable Chairperson and Commissioners,

All protocols observed.

The Dullah Omar Institute for Constitutional Law, Governance and Human Rights (Dullah Omar Institute) welcomes the opportunity to make a statement in response to the activity report of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa and commends the African Commission's on-going efforts to promote the decriminalisation of poverty and status.

The Dullah Omar Institute makes the following key recommendations to the African Commission and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa to encourage State Parties to:

1. Reform colonial-era laws embedded in Penal Codes;
2. Align existing national laws with international human rights standards;
3. Promote the meaningful participation of impacted groups in policy-making processes;
4. Improve police accountability, by reforming police training and operations with an emphasis on democratic policing, human rights and community engagement;
5. Reduce the over-reliance on the criminal justice system by promoting the use of alternative non-custodial measures;
6. Reiterate that unusual circumstances should not result in practices that are not provided for in law.

In August 2025, the Dullah Omar Institute released a series of in-depth reports examining the impact of criminal, security, and exceptional laws across francophone and lusophone African countries.¹ The reports reveal that, despite decades of independence, many African nations still retain colonial-era legal provisions within their Penal Codes. Furthermore, newer laws though often framed in neutral legal language are being

¹ J Mangwanda et al., *Comparative Study and Findings on the Impact of Criminal, Security and Other Exceptional Laws and Policies in Select Francophone and Lusophone Countries: Burundi, Cote d'Ivoire and Mozambique* (Dullah Omar Institute, 2025), <https://dullahomarinstitute.org.za/acjr/news/new-research-report-comparative-study-and-findings-on-the-impact-of-criminal-security-and-other-exceptional-laws-and-policies-in-select-francophone-and-lusophone-countries-burundi-cote-divoire-and-mozambique>

interpreted and enforced in ways that violate international human rights standards. Many such laws are vague, overly broad, and allow for arbitrary enforcement, resulting in serious infringements on fundamental rights such as freedom of assembly, expression, and movement, as guaranteed under United Nations treaties and the African Charter on Human and Peoples' Rights. In practice, these laws disproportionately affect vulnerable and marginalised populations including women, children, youth, the poor, political dissidents, civil society activists, human rights defenders and informal workers who face regular harassment, arbitrary arrest, and detention. Under the pretext of maintaining public order or ensuring national security, governments use archaic and more recent laws selectively to suppress dissent and maintain political control. This erodes the rule of law and deepens societal inequalities.

The reports highlight that legal provisions criminalising activities deemed to threaten public order are often vague, giving law enforcement and judicial officials wide discretion. In countries like Burundi and Côte d'Ivoire, defamation laws are frequently deployed to target critics of the government, raising alarm over restrictions on political participation and expression. Laws on public indecency, prostitution and begging are also enforced arbitrarily in several African countries. Moreover, adultery laws in Burundi and Côte d'Ivoire are applied harshly against women, reflecting entrenched patriarchal norms masked as moral or familial protection. Notably, some colonial-era laws persist even though they have been repealed by former colonial powers. For example, Burundi's Penal Code criminalises duelling, a practice which has long been repealed in Belgium. Similarly, laws on sorcery, charlatanism, and superstitious practices remain in force in Burundi and Côte d'Ivoire while they have been repealed in France and Belgium.

Security-related laws in Burundi, Côte d'Ivoire, and Mozambique include provisions on defamation, the freedom of assembly, the right to protest, media regulation, cybercrime, and anti-terrorism. While these laws are framed as tools to protect public safety, their broad language often leads to misuse, especially against civil society actors and human rights defenders.

In many cases, exceptional measures and laws bypass normal legal processes, taking the form of informal executive orders or local decrees with little oversight. These actions typically lack transparency, result in arbitrary enforcement, and are inconsistently applied, raising serious concerns about legality and accountability. These exceptional laws include those relating to children incarcerated with mothers, concubinage, limitations on the circulation of women, prohibitions on street trading and informal transportation and the non-payment of small debts. They are frequently implemented in response to political pressure, moralistic concerns, or public anxiety, resulting in rights violations and arbitrary enforcement.

The existence and application of criminal, security and exceptional laws have resulted in a significant increase in the prison population, which are already in dire conditions due to overcrowding, weak infrastructure, and ineffective management. Ultimately, these laws are broadly defined, disproportionately targeting marginalised groups, and thus criminalising poverty, status, and activism.

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