

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL PETITION NO. _____ OF 2025

BETWEEN

HSO.....1ST APPLICANT
AMO.....2ND APPLICANT
TA.....3RD APPLICANT
NETWORK FOR ADOLESCENT AND YOUTH OF AFRICA (NAYA)... 4TH APPLICANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT
THE ATTORNEY GENERAL.....2ND RESPONDENT
THE INSPECTOR GENERAL OF POLICE3RD RESPONDENT
THE SENIOR PRINCIPAL MAGISTRATE’S COURT,
MAKADARA LAW COURTS.....4TH RESPONDENT

AND

REPRODUCTIVE HEALTH NETWORK KENYA (RHNK).....INTERESTED PARTY

CERTIFICATE OF URGENCY


We, **MARTIN ONYANGO** and **PRUDENCE MUTISO**, Advocates of the High Court of Kenya who have conduct of this matter on behalf of the Applicants, certify that the Application and Petition herein are urgent and should be heard at the earliest opportunity, **ON THE GROUNDS THAT:**

1. On 19th February 2025, the 1st Applicant, a 17-year-old adolescent, was charged at the Makadara Law Courts under Sections 8(1)(3) and in the alternative, Section 11(1) of the Sexual Offences Act No.3 of 2006 for engaging in a consensual, non-coercive and non-exploitative relationship with a fellow adolescent. He is scheduled to appear for trial before the 4th Respondent on **8th September 2025**.
2. Unless the Application is certified urgent and heard before that date, the 1st Applicant will be subjected to a full criminal trial, exposing him to possible conviction, detention, and

long-term stigma for engaging in a consensual, non-coercive and non-exploitative relationship.

3. The 1st Applicant seeks to suspend his trial before the 4th Respondent scheduled for **8th September 2025**, to allow this Honorable Court to review the appropriateness and constitutionality of the criminal proceedings instituted against him under the Sexual Offences Act No.3 of 2006.
4. The 1st respondent continues to prosecute adolescents under Sections 8, 9, and 11 of the Sexual Offences Act No. 3 of 2006. Without the intervention of this honorable court, the arrests, and prosecutions of adolescents for engaging in consensual, non-coercive, non-exploitative, sexual conduct continue to infringe on their fundamental rights and freedoms.
5. The Application and Petition raise serious constitutional questions regarding the continued criminalization of consensual, non-coercive, non-exploitative, sexual conduct between adolescents, which this Court should urgently determine.
6. Both the Application and Petition will be rendered nugatory if this Application is not certified urgent.

Dated at **NAIROBI** this.....^{5th}.....day of.....**AUGUST**..... 2025



MARTIN ONYANGO & PRUDENCE MUTISO
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NAIROBI.

The Senior Principal Magistrate's Court
Makadara Law Courts

NAIROBI.

REPUBLIC OF KENYA

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NETWORK FOR ADOLESCENT AND YOUTH OF AFRICA
(NAYA)..... 4TH APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS.....1ST RESPONDENT
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MAKADARA LAW COURTS-.....4TH RESPONDENT

AND

REPRODUCTIVE HEALTH NETWORK KENYA (RHNK).....INTERESTED PARTY

NOTICE OF MOTION

(Under Article 165 (6) and (7), 22, 23, 24, 27, 28, 29, 31, 33, 35, 43, 46, 48, 49, 50, 53 and 258 of the Constitution of Kenya; Rule 3 (2), (3), (4) and (5), 19, 23 and 24 of the Protection of Rights and Fundamental Freedoms Practice and Procedure Rules; and all enabling provisions of law)

TAKE NOTICE that this Honorable Court shall be moved on the day of..... 2025 at **9:00 AM** or soon thereafter as counsel for the Applicant may be heard on an application **FOR ORDERS THAT:**

- a) This Application be certified as urgent and heard *ex parte* in the first instance.
- b) The identities of the 1st, 2nd, and 3rd Applicants, who are or were minors at the material times, be protected by the use of their initials (**HSO, AMO, and TA** respectively) throughout the pleadings, court record, proceedings, judgment, and any publications thereof.
- c) Pending the hearing and determination of this Application and Petition an order be issued calling for the complete record of proceedings before the 4th Respondent in **Makadara**

Criminal Case No. 34 of 2025 and **Makadara Criminal Case No. MSCO E239 of 2023** to be brought before this Court for purposes of examining the constitutionality and propriety of the charges and proceedings instituted against the 1st and 2nd Applicants.

- d) Pending the hearing and determination of this Application and Petition, a conservatory order be issued staying all proceedings before the 4th Respondent in **Makadara Criminal Case No. 34 of 2025** against the 1st Applicant.
- e) Pending the hearing and determination of this Application and Petition, a conservatory order be issued directing the 1st Respondent to refrain from charging adolescents under Sections 8, 9, and 11 of the Sexual Offences Act No. 3 of 2006 in circumstances involving consensual, non-coercive, and non-exploitative sexual conduct between adolescents.
- f) This Honorable Court is pleased to grant such further or other relief as it may deem just and appropriate in the interests of justice and for the protection of the Applicants' fundamental rights and freedoms.
- g) That each party bears its own costs for this Application.

WHICH APPLICATION IS BASED ON THE FOLLOWING GROUNDS and on such other grounds and reasons as may be adduced at the hearing hereof:

1. The 1st Applicant, HSO, is a 17-year-old adolescent who is charged before the 4th Respondent in **Makadara Criminal Case No. 34 of 2025** under Section 8(1) as read with Section 8(3) of the Sexual Offences Act No. 3 of 2006. The particulars of the charge are that *“on diverse dates between 8 January 2025 and 17 February 2025 at Riruta Division, Dagoreti Sub County in Nairobi County, HSO intentionally caused his genital organ, namely penis to penetrate into a genital organ, namely vagina of a female child namely CNK aged 15 years. The particulars of the alternative charge are that HSO on diverse dates between 8th January 2025 and 17th February 2025 at Riruta division Dagoretti Sub County in Nairobi County intentionally touched the genital organ namely vagina of a child namely C.N.K aged 15 years with his genital organ namely penis”* He is scheduled for trial on **8th September 2025**.
2. The 1st Applicant **HSO and CNK** are adolescents who at the material time were in a mutually consensual, noncoercive and non-exploitative sexual relationship with each other.
3. The prosecution of the 1st Applicant under Section 8(1) as read with Section 8(4) and Section 11(1) of the Sexual Offences Act No. 3 of 2006 fails to distinguish between coercive, nonconsensual, exploitative sexual conduct and consensual, non-coercive and non-exploitative adolescent relationships unjustifiably interfering with his constitutional

rights to dignity, privacy, equality and non-discrimination, the highest attainable standard of health and the best interests of the child.

4. Subjecting the 1st Applicant to a criminal trial for mutually consensual conduct that is a natural part of development has exposed him to psychological harm, stigma, potential conviction and long-term consequences including placement on the sex offenders register and is in violation of Article 50 of our Constitution and Kenya's obligations under the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child.
5. The 2nd Applicant, AMO, is also an adolescent who was charged on **29th June 2023** in **Makadara Criminal Case No. MSCO/E239 of 2023** under Section 8(1) as read with Section 8(4) of the Sexual Offences Act, with an alternative charge under Section 11(1). The particulars of the charge are “*that on diverse dates between 4 and 15 of June 2023 at Lucky Summer estate, Babadogo Location within Nairobi County, intentionally caused his male genital organ namely penis to penetrate into a female genital organ of T.A a child aged 17 years*”. The particulars of the alternative charge are that “*AMO on diverse dates between 4 and 15 June 2023 at Lucky Summer Estate Babadogo Location within Nairobi County intentionally touched the buttocks breasts and vagina of T.A, a child aged 17 years against her will*”.
6. The 3rd Applicant (TA) is a 19-year-old female resident of Babadogo, Nairobi County, she was engaged in a mutually consensual, non-coercive, non-exploitative sexual relationship with the 2nd Applicant at the age of 17 years. The relationship has since matured into a mutually agreed cohabitation and the birth of two children.
7. The case against the 2nd Applicant was withdrawn on **6th May 2025** under Sections 87(a) of the Criminal Procedure Code and section 40 of the Sexual Offences Act; the proceedings were however anchored on the impugned provisions, which remain in force and continue to subject adolescents to similar harm. The withdrawal does not cure the constitutional defects in the legal framework nor redress the harm already suffered.
8. The 1st Applicant faces an imminent trial on **8th September 2025**, while the 2nd Applicant's case remains a clear example of how the impugned provisions are operationalized. Unless this Honorable Court intervenes, the 1st Applicant will be subjected to a full trial, and the


record of proceedings against the 2nd Applicant will not be reviewed for constitutionality and lawfulness.

9. The arrest, charging and prosecution of the 1st and 2nd Applicants and other adolescents under the impugned sections of the Sexual Offences Act for engaging in consensual, non-exploitative, non-coercive sexual conduct constitute an unjustifiable limitation of and a violation of their rights to privacy, dignity, equality and non-discrimination and health.
10. The arrest, charging and prosecution of the 1st and 2nd Applicants under the impugned sections of the Sexual Offences Act for engaging in mutually consensual, non-exploitative, non-coercive sexual conduct constitute an unjustifiable limitation and a violation of their right to health as it criminalizes their sexuality hindering their access to comprehensive sexual and reproductive health information and services.
11. The trial and potential conviction under the impugned provisions pose serious, long-term consequences, including psychological trauma, stigma, disruption of education, and a permanent criminal record in the register of sexual offenders, all of which are harmful to the welfare, reintegration, and development of the 1st and 2nd Applicants and all adolescents in Kenya.
12. The Application and Petition raise weighty constitutional issues on the blanket criminalization under sections 8, 9 and 11 of the Sexual Offences Act of mutually consensual, non-coercive and non-exploitative sexual conduct among adolescents and the broader systemic failure to provide legal protections for consensual peer relationships among adolescents.
13. The continued application of these impugned provisions is incompatible with the Constitution of Kenya and its obligations under international treaties including the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child all of which call for legal frameworks that are protective of adolescent agency, evolving capacity, and dignity.
14. The Application and Petition disclose public interest and concerns of national importance, warranting immediate and urgent consideration, given the continued and potential harm to adolescents, and should the orders sought herein not be granted the applicants herein and other adolescents shall lack alternative remedies to halt these violations.

15. It is in the public interest, and the best interests of adolescents across the country, that the criminal proceedings against the 1st Applicant are stopped, that the files in respect of the 1st and 2nd Applicants are called for review, that any further charge and prosecution brought under the impugned provisions of the Sexual Offences Act in circumstances involving mutually consensual, non-coercive, and non-exploitative sexual conduct between adolescents are halted and scrutinized for their constitutionality and lawfulness .
16. If the Application is not heard on an urgent basis and the proceedings in respect of the 1st Applicant are stayed pending the hearing and determination of the Application and Petition, both will be rendered nugatory, and the Applicants including other adolescents in Kenya will be subjected to constitutional violations.

AND WHICH Application is supported by the Affidavits of HSO, AMO, TA & VICTOR RASUGU and such other grounds, reasons, and arguments as may be adduced at the hearing hereof.

Dated at Nairobi this.....^{5th}.....day of.....^{AUGUST}.....2025



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MAKADARA LAW COURTS4TH RESPONDENT
AND
REPRODUCTIVE HEALTH NETWORK KENYA (RHNK).....INTERESTED PARTY
PETITION

The humble Petition of **HSO, AMO, TA,** and the **Network for Adolescent and Youth of Africa (NAYA)** of Nairobi County within the Republic of Kenya is as follows: –

THE PARTIES:

1. The 1st Petitioner, HSO, is an adolescent male aged 17 years residing within Dagoretti in Nairobi City County within the Republic of Kenya.
2. The 2nd Petitioner, AMO, is an adolescent male, aged 19 years, residing within Ruaraka in Nairobi County.
3. The 3rd Petitioner, TA, is an adolescent female, residing within Ruaraka in Nairobi County and cohabiting with the 2nd Petitioner as husband and wife.
4. The 4th Petitioner, Network for Adolescent and Youth of Africa (NAYA) is a registered Non-Governmental Organization advocating for the sexual and reproductive health rights of adolescents and young people across Kenya.
5. The Interested Party, Reproductive Health Network Kenya (RHNK) is a registered Non-Governmental Organization consisting of a network of healthcare providers and a leading advocate for comprehensive adolescent and youth sexual and reproductive health and rights.
6. The Petitioners bring this Petition alleging violations of, and the imminent threats of violations of their fundamental rights and freedoms under the Constitution of Kenya, in their interest, in the interest of other adolescents, and in the public interest, pursuant to Articles 22(1), 22(2)(b) and (c), and Articles 258(1) and 258(2)(b) and (c) of the Constitution.
7. The Petitioners address of service for purposes of this Petition shall be c/o MARTIN ONYANGO & PRUDENCE MUTISO, CENTER FOR REPRODUCTIVE RIGHTS, 4TH FLOOR PINETREE OFF KINDARUMA ROAD/OFF NGONG ROAD, P.O BOX 52834-00100 NAIROBI.
8. The 1st Respondent is the Director of Public Prosecutions established under Article 157 of the Constitution and is joined to this Petition for decisions made in the exercise of prosecutorial discretion affecting the Petitioners’ rights.

9. The 2nd Respondent is the Attorney General of Kenya, who is the principal legal adviser to the Government under Article 156 of the Constitution and is joined to this Petition as the principal legal adviser to the Government of Kenya.
10. The 3rd Respondent is the Inspector General of the National Police Service, who exercises independent command over the Kenya Police Service pursuant to Article 245 of the Constitution.
11. The 4th Respondent is the Senior Principal Magistrate at Makadara, a Subordinate Court established under Article 169(1)(a) of the Constitution, which is handling **Makadara Criminal Case No. 34 of 2025** against the 1st Petitioner and **MSCO/E239 of 2023** against 2nd Petitioner.

FACTUAL BACKGROUND OF THE PETITION

12. The 1st Petitioner, HSO, is a 17-year-old adolescent male born on **25th September 2007**. He hails from a vulnerable background, having lived intermittently as a street child across various towns in Kenya.
13. In early 2024, the 1st Petitioner, a minor, was under the care of **Umoja Boys Rescue Center** in **Kwale County**, a registered child protection institution, while enrolled as a Form 1 student at Kwale High School. His placement at the Rescue Center reflects efforts to provide him with a stable and supportive environment aligned with the best interests of the child.
14. During the course of 2024, the 1st Petitioner encountered disruptions to his schooling and care arrangements, leading him to relocate to Mombasa in search of livelihood opportunities. Despite the absence of a consistent care giver, he demonstrated resilience by securing informal employment to meet his basic needs.
15. Using his earnings, the 1st Petitioner traveled to Nairobi, where he lived with his maternal aunt in Zimmerman as he prepared to resume school in Nairobi.
16. On 25th December 2024, while visiting Thika Road Mall (TRM Mall) with friends, the 1st Petitioner met CNK, the alleged complainant in **Makadara Criminal Case No. 34 of 2025**, a 16-year-old adolescent and neighbor from Zimmerman. A friendship developed between the 1st Petitioner and CNK, which grew into a mutual romantic relationship.
17. The 1st Petitioner and CNK, both adolescents, formed a close peer friendship over time, often confiding in one another about difficulties at home. CNK shared with the 1st Petitioner that she faced repeated mistreatment and physical violence at her mother's residence.
18. In January 2025, following threats from her mother to send her away to live with an estranged parent, CNK expressed fear and distress about her future. The 1st Petitioner, who was himself navigating precarious and unstable living conditions, chose to accompany her to Dagoretti in search of a safer and more stable environment. There, he approached his own mother and requested temporary shelter for both himself and CNK. Though space was limited and resources strained, his mother agreed to host them for a short while. life

19. Determined to support CNK and build a life together, the 1st petitioner began taking on any manual work he could find around Dagoretti, ranging from construction labour to offloading market produce in the early mornings. This work was inconsistent and physically demanding, but he remained committed to earning enough to eventually move out and live independently with CNK.
20. After a month or so of such work, the 1st petitioner managed to save Kenya Shillings Two Thousand (KES 2,000) which he used to rent a small single room in Satellite, Nairobi County, where he and the said CNK began living together. Though modest, the space gave them a sense of dignity and privacy, allowing them to begin cohabiting as a young couple with aspirations of building a future together.
21. Their relationship flourished during this period of transition. With limited resources but shared resolve, 1st Petitioner used part of his earnings to help CNK establish a small fruit vending business while she managed the business, he continued to work manual jobs to contribute towards their rent, meals, and basic needs. They supported each other emotionally and financially and began to envision a future in which they could grow their family and overcome the challenges of their circumstances together.
22. On or about early February 2025, while CNK had come home for lunch at the 1st Petitioner's mothers house, police officers raided the home in Dagoretti and arrested both the 1st Petitioner and CNK without a warrant.
23. The 1st Petitioner and CNK were taken to Kasarani Police Station, where they were detained for three days. Although police officers initially sought to release CNK, she refused to leave, insisting on staying with the 1st Petitioner.
24. The 1st Petitioner was subsequently arraigned before the Makadara Law Courts and charged in **Makadara Criminal Case No. 34 of 2025** with Defilement contrary to Section 8(1) as read with Section 8(3) of the Sexual Offences Act and in the alternative with indecent act with a child contrary to Section 11(1) of the same Act. CNK was released without charge at the time of the 1st Petitioner's arraignment. The particulars of the charge are that on *diverse dates between 8 January 2025 and 17 February 2025 at Riruta Division, Dagoreti Sub County in Nairobi County, HSO intentionally caused his genital organ, namely penis to penetrate into a genital organ, namely vagina of a female child namely CNK aged 15 years. The particulars of the alternative charge are that HSO on diverse dates between 8th January 2025 and 17th February 2025 at Riruta division Dagoreti Sub County in Nairobi County intentionally touched the genital organ namely vagina of a child namely C.N.K aged 15 years with his genital organ namely penis*
25. The Court granted the 1st Petitioner bail in the sum of Kenya Shillings Fifty Thousand (KES 50,000), which he was unable to raise, resulting in his detention at Kasarani Police Station alongside adult detainees.
26. On 11th March 2025, the 4th Petitioner, **Network for Adolescent and Youth of Africa (NAYA)**, secured the 1st Petitioner's release by paying the required bail. Its involvement reflects its broader mandate to ensure that adolescents, particularly those from

marginalized and vulnerable backgrounds, are protected from punitive legal actions that arise from systemic gaps in access to sexual and reproductive health information and services.

27. The 2nd Petitioner, AMO, is a 19-year-old adolescent. He resides in Lucky Summer, Nairobi County, where he engages in informal work, including operating a motorcycle transport business (“boda-boda”), to support himself and his family.
28. The 3rd Petitioner is a female adolescent born in June 2006 and a resident of Lucky Summer, Nairobi County. She is currently a young mother of two and considers herself a committed partner to the 2nd Petitioner.
29. In November 2022, AMO met the 3rd Petitioner, TA, who was enrolled as a student at Ngoleni Girls Secondary School through a mutual friend. Following this introduction, he sent her a friend request on Facebook, which she accepted. They continued to communicate regularly through social media and later exchanged phone numbers to deepen their acquaintance.
30. After several weeks of consistent communication and mutual interest, AMO and TA agreed to enter into a romantic relationship. Their bond grew over time, and they occasionally visited each other at their respective homes, as is typical of consensual, non-coercive, and non-exploitative relationships among adolescents.
31. In June 2023, the 3rd Petitioner discovered she was pregnant after taking a pregnancy test. She promptly informed her mother of the results and subsequently chose to move in with the 2nd Petitioner. However, the 3rd Petitioner’s stepfather did not receive this well. In response, he lured the 2nd Petitioner to Ruaraka Police Station by posing as a passenger seeking transport on the 2nd Petitioner’s motorcycle, with the police station as the intended destination.
32. Upon arrival, the 2nd Petitioner was arrested and later arraigned before the Makadara Law Courts in **Criminal Case No. E239 of 2023**. He was charged with Defilement contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act. The particulars of the charge are *that on diverse dates between 4 and 15 of June 2023 at Lucky Summer estate, Babadogo Location within Nairobi County, intentionally caused his male genital organ namely penis to penetrate into a female genital organ of T.A a child aged 17 years. The particulars of the alternative charge are that AMO on diverse date between 4 and 15 June 2023 at Lucky Summer Estate Babadogo Location within Nairobi County intentionally touched the buttocks breasts and vagina of T.A, a child aged 17 years against her will.* The 3rd Petitioner was neither arrested nor charged in connection with the matter, and she was instead listed as a witness in the case.
33. On 11th July 2023, the Court determined that the 2nd Petitioner was a minor, 17 years, and 4 months old at the time, and ordered that he be remanded at the Kamiti Youth Correctional and Training Centre (KYCTC).

34. The Court granted the 2nd Petitioner bail in the sum of Kenya Shillings One Hundred Thousand (KES 100,000) or, in the alternative, a bond of a similar amount. He was able to secure his release by using his cousin's motorcycle.
35. On **6th May 2025**, the charges against the 2nd Petitioner were withdrawn under section 87A of the Criminal Procedure Code and Section 40 of the Sexual Offences Act.
36. The 2nd Petitioner lives with the 3rd Petitioner and their two children as husband and wife in Lucky Summer, Nairobi. There, he continues to engage in menial jobs to provide for his young family and support his aging mother. The 3rd Petitioner takes care of their young family while striving to rebuild her life following the disruption caused by the events surrounding the 2nd Petitioner's arrest and prosecution.
37. The 1st Petitioner, like many adolescents today, did not receive any sexuality education or sexual and reproductive health information through school or community-based platforms. He lacked access to adolescent-friendly health services, and any available public information portrayed sexual and reproductive health services inaccessible without parental consent.
38. The 2nd Petitioner similarly lacked access to confidential sexual and reproductive health information, or counselling services. There were no available channels through which he could seek safe, non-judgmental support about relationships or reproductive health. He was not aware of how to seek care or navigate the implications of his relationship with the 3rd Petitioner.
39. The 3rd Petitioner also lacked access to any sexual and reproductive health information within her school setting. Health services outside school were inaccessible due to cost, the legal requirement for parental accompaniment, and fear of judgment. This structural gap denied her the opportunity for early counselling or pregnancy support. Her experience highlights the compounded impact of limited adolescent agency and the systemic failure to provide safe, confidential support to adolescents in similar situations.
40. The experiences of the 1st, 2nd, and 3rd Petitioners reveal how the existing legal framework leaves adolescents without safe or confidential avenues to access sexual and reproductive health information and services. In each case, the 1st, 2nd, and 3rd Petitioners were forced to navigate personal relationships, pregnancy, and complex emotional realities in the absence of youth-responsive services.
41. Instead of receiving care and guidance, they were met with criminal justice processes that deepened their vulnerability and disrupted their lives. The foregoing omissions have exposed the 1st, 2nd, and 3rd Petitioners to undue criminalization, disrupted their access to education and family life, and caused long-term psychosocial harm, contrary to Kenya's constitutional and international obligations regarding children's rights.
42. The criminal charges against the 1st and 2nd Petitioners were instituted without regard to their status as adolescents who were minors, the consensual, non-coercive and non-exploitative nature of the relationships, or the principle of the evolving capacities of adolescents.

43. The prosecution of the 1st and 2nd Petitioners demonstrates the consequences of the blanket application of Sections 8, 9 and 11 of the Sexual Offences Act that fail to recognize the developmental context of adolescent sexuality. The charges were brought under penal provisions that do not distinguish between non-consensual, coercive, exploitative conduct and consensual, non-coercive, and non-exploitative peer relationships, leaving adolescents vulnerable to prosecution even where the circumstances reflect mutual and non-harmful interactions. This legal gap fails to consider the best interests of the child, the right to sexual and reproductive health, and results in criminal processes that are neither protective nor rehabilitative.
44. The blanket presumption under Section 43 (4) (f) of the Sexual Offences Act that the 1st, 2nd and 3rd Petitioners, as well as other adolescents lack the capacity to consent to sexual conduct and the resulting arrest and prosecution of the 1st and 2nd Petitioners under Sections 8, 9 and 11 of the same Act, fails to recognize the evolving capacities of adolescents contrary to the Constitution and international human rights obligations.
45. The 3rd Petitioner, although not charged, has suffered stigma, emotional distress, and trauma resulting from the prosecution of the 2nd Petitioner. The criminalization of their relationship has had adverse effects on her well-being, family life, and developmental progress as a young mother.
46. Adolescents in Kenya continue to face criminal charges and prosecution for engaging in consensual, non-coercive, non-exploitative relations with their peers. These prosecutions are inconsistent with constitutional and international protections afforded to adolescents, and they undermine the State's obligation to promote rehabilitation, reintegration, protect the right to health including reproductive health services and the best interests of the child in juvenile justice processes.

LEGAL FOUNDATION AND CONSTITUTIONAL BACKGROUND

47. The Preamble to the Constitution of Kenya, 2010, conveys the aspiration of Kenyans for a government based on human rights, equality, freedom, democracy, social justice, and the rule of law.
48. Under Article 2, the Constitution of Kenya is the supreme law of the land and binds all persons and State organs at both levels of government. Any law inconsistent with the Constitution is void to the extent of its inconsistency.
49. Article 2(5) and (6) incorporate the general rules of international law and ratified treaties into Kenyan law, making international and regional human rights standards directly applicable to this Petition.
50. Article 3 of the Constitution imposes a duty on every person and every organ of State to respect, uphold, and defend the Constitution.
51. The national values and principles of governance articulated in Article 10(2) and Article 232(1) of the Constitution, including human dignity, equity, social justice, inclusiveness,

- equality, human rights, non-discrimination, and protection of the marginalized, bind all State officers and State organs in the exercise of their duties.
52. Article 19(1) provides that the Bill of Rights is an integral part of Kenya's democratic State and is the framework for social, economic, and cultural policies.
 53. Article 20(3)(a) and (b) obligate the Court to develop the law to the extent that it does not give effect to a right or fundamental freedom and to adopt interpretations that most favor the enforcement of rights and fundamental freedoms.
 54. Article 21(1) establishes that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights.
 55. Article 24 stipulates that limitations of rights and fundamental freedoms must be by law and must be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom.
 56. Article 25 provides for the fundamental rights and freedoms that cannot be limited, including freedom from torture, cruel, inhuman, and degrading treatment, and the right to a fair trial.
 57. Article 26(1) guarantees every person the right to life.
 58. Article 27 guarantees equality and freedom from discrimination, including on the grounds of age, sex, or health status.
 59. Article 28 guarantees the inherent dignity of every person and the right to have that dignity respected and protected.
 60. Article 29(a) guarantees every person the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause.
 61. Article 31 guarantees the right to privacy, which includes the right to make decisions concerning reproduction free from unwarranted interference.
 62. Article 33 (1) guarantees every person the right to freedom of expression, which includes the freedom to seek, receive or impart information or ideas.
 63. Article 35 guarantees the right to access information, including reproductive health information.
 64. Article 43(1)(a) guarantees every person the right to the highest attainable standard of health, including reproductive healthcare, and Article 43(2) prohibits the denial of emergency medical treatment.
 65. Article 46(1) of the Constitution of Kenya guarantees that consumers have the right (a) to goods and services of reasonable quality; (b) to the information necessary for them to gain full benefit from goods and services; and (c) to the protection of their health, safety, and economic interests.
 66. Article 48 obligates the State to ensure access to justice for all persons.
 67. Article 49(1) provides arrested persons the right to remain silent and not be compelled to make any confession or admission that could be used against them.
 68. Article 50 guarantees every person the right to a fair trial,

69. Article 53(1) guarantees children the right to free and compulsory basic education, basic healthcare services, protection from abuse, neglect, harmful cultural practices, and all forms of violence, and the right not to be detained except as a measure of last resort.
70. Article 53(2) mandates that the best interests of the child be primary consideration in every matter concerning the child.
71. Article 157(11) requires the Director of Public Prosecutions, in exercising prosecutorial powers, to have regard to the public interest, the interests of the administration of justice, and the need to prevent and avoid abuse of the legal process.
72. Article 159 emphasizes that judicial authority is derived from the people and must be exercised in a manner that ensures justice is done to all, justice is not delayed, and that alternative forms of dispute resolution are promoted.
73. Article 165(3)(b) and (d) confer upon the High Court jurisdiction to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed, or threatened, and whether any law is inconsistent with or in contravention of the Constitution.
74. Article 165(6) and (7) grants the High Court supervisory jurisdiction over subordinate courts, including the power to call for the record of proceedings to ensure fairness and legality.
75. Articles 258 and 259 empower every person and association to enforce the Constitution and require it to be interpreted in a manner that promotes its purposes, values, and principles and advances human rights.
76. Schedule 6 of the Constitution of Kenya at section 7 requires *all laws in force immediately before the effective date to continue in force and shall be construed with the alterations, adaptations, qualifications, and exceptions necessary to bring it into conformity with the Constitution.*
77. Section 8 of the Sexual Offences Act No.3 of 2006 criminalizes any act that results in the sexual penetration of a child, defining such conduct as defilement. The law provides varying penalties depending on the age of the child.
78. Section 9 addresses situations where an individual makes an attempt to engage in an act that would amount to sexual penetration of a child.
79. Section 11 makes it a criminal offence for any person to engage in an indecent act with a child, with a conviction attracting a minimum sentence of ten years' imprisonment.
80. Section 43 (1) sets out the circumstances under which a sexual act is deemed both intentional and unlawful. Such an act is unlawful if it is committed under coercive conditions, through deception or fraudulent means, or against a person who lacks the capacity to understand its nature. A person is considered incapable of appreciating the nature of a sexual act if they, among other things, are a child.

OTHER LEGAL FOUNDATIONS OF THE PETITION

81. Sections 2, 8, 9, 10, and 11 of the Health Act No. 21 of 2017
82. Sections 14 and 18 of the HIV Prevention and Control Act, 2006

83. Sections 2, 35(2), 35(3),39,40,42,43, of the Sexual Offences Act No. 3 of 2006
84. Sections 2, 6, 13, 16, 19, and the Fifth Schedule of the Children’s Act No. 29 of 2022
85. Sections 87A, 87B, 362,363,364 of the Criminal Procedure Code, Cap 75 Laws of Kenya
86. Section 25 of the Interpretations and General Provisions Act, Cap 2, Laws of Kenya
87. Articles 2, 3, 5, 8, 9(1), 16(1) and (2), and 18(3) of the African Charter on Human and Peoples’ Rights (ACHPR)
88. Articles 2(1), 4(1), 14(1)(a), (b), (g) and 14(2)(a) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol)
89. Articles 3, 4, 5, 7,9, 10, 11, 14, 16, 17,19,21, 40 of the African Charter on the Rights and Welfare of the Child (ACRWC)
90. Articles 2(2) and 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
91. Articles 2(1), 6(1), 7, 19 (2), and 24(1) of the International Covenant on Civil and Political Rights (ICCPR)
92. Articles 1, 2(b), 3, 10(h), 12(1), and 16(e) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
93. Articles 2(1) and (2), 3(1), 5, 12, 13, 14 16, 24(1), 37, 40 of the Convention on the Rights of the Child (CRC).

VIOLATION AND THREATENED VIOLATION OF THE RIGHTS OF THE 1ST PETITIONER (HSO) AND OTHER ADOLESCENTS

94. The arrest and detention of the 1st Petitioner, HSO, for engaging in a consensual, non-coercive, and non-exploitative relationship with a peer under Sections 8 (1) as read together with Section 8 (3) and 11 (1) of the Sexual Offences Act violates his rights to liberty, security of the person, and freedom from arbitrary arrest and detention.
95. Charging the 1st Petitioner under Sections 8 (1) as read together with Section 8 (3) and 11 (1) of the Sexual Offences Act despite being a minor and the consensual, non-coercive, non-exploitative nature of the relationship violates his rights to a fair trial, equality and freedom from discrimination, the best interests of the child, and protection from cruel, inhuman, and degrading treatment.
96. Detaining the 1st Petitioner at Kasarani Police Station in adult facilities violates his rights to be treated with respect for his inherent dignity, protection from cruel, inhuman, and degrading treatment, and the right to special protection as a child, including separation from adults in custody. The continued prosecution of the 1st Petitioner subjects him to stigma, anxiety, and fear, violating his rights to dignity, psychological well-being, and fair trial, and threatens the enjoyment of these rights by similarly situated adolescents.
97. The omission by the State to provide the 1st Petitioner with access to accurate, age-appropriate sexual and reproductive health information and services and the blanket criminalization of consensual, non-coercive, and non-exploitative relationship violates his right to information and the right to the highest attainable standard of health under Articles

43 of the Constitution. This action and omission violate and continue to threaten the rights of similarly situated adolescents.

VIOLATION AND THREATENED VIOLATION OF THE RIGHTS OF THE 2ND PETITIONER (AMO) AND OTHER ADOLESCENTS

98. The arrest and detention of the 2nd Petitioner, AMO, for engaging in a consensual, non-coercive, and non-exploitative relationship with the 3rd Petitioner under Sections 8 (4) and 11 (1) of the Sexual Offences Act violates his rights to liberty, security of the person, and freedom from arbitrary arrest and detention.
99. Charging the 2nd Petitioner under Sections 8 (4) and 11 (1) despite being a minor and in a consensual, non-exploitative, and non-coercive relationship violates his rights to a fair trial, equality and freedom from discrimination, dignity, and the best interests of the child.
100. The prosecution under Sections 8 (4) and 11 (1) exposed the 2nd Petitioner to reputational harm, stigma, and social exclusion, violating his rights to dignity and privacy.
101. The failure by the State to provide the 2nd Petitioner with access to accurate, age-appropriate sexual and reproductive health information and services and the blanket criminalization of consensual, non-coercive, and non-exploitative relationship violates his right to information and the right to the highest attainable standard of health under Articles 43 (1) of the Constitution. This action and omission violate and continues to threaten the rights of similarly situated adolescents.

VIOLATION AND THREATENED VIOLATION OF THE RIGHTS OF THE 3RD PETITIONER (TA) AND OTHER ADOLESCENTS

102. The investigation and interrogation of the 3rd Petitioner, TA, following her consensual, non-coercive, and non-exploitative relationship with the 2nd Petitioner, and the threat of potential prosecution, violated her rights to privacy, dignity, and the best interests of the child.
103. Subjecting the 3rd Petitioner to invasive questioning without psychosocial support or legal counsel and exposing her to stigma from school authorities and peers violated her rights to be protected from cruel, inhuman, and degrading treatment and to equal protection under the law.
104. The disruption of the 3rd Petitioner's schooling due to the involvement of law enforcement violated her right to education and her right to be treated in a manner consistent with her best interests as a child.
105. The failure by the State to provide the 3rd Petitioner with access to accurate, age-appropriate sexual and reproductive health information and services including pregnancy prevention and the blanket criminalization of consensual, non-coercive, and non-exploitative relationship violates her right to information and the right to the highest attainable standard of health under Articles 43(1)of the Constitution. This action and omission continue to violate and threaten the rights of similarly situated adolescent girls.

VIOLATION AND THREATENED VIOLATION OF THE RIGHTS OF ADOLESCENTS IN KENYA AS ADVOCATED BY THE 4TH PETITIONER (NAYA)

106. The failure by the State to align the Sexual Offences Act with the Constitution by amending Sections 8, 9, and 11 of the Sexual Offences Act No.3 of 2006 to decriminalize consensual, non-coercive, and non-exploitative adolescent sexual conduct among adolescents constitutes an omission that violates and continues to violate the rights to equality, non-discrimination, health, dignity and best interests of adolescents.
107. The continued enforcement of Sections 8, 9 and 11 on adolescents consensual, non-coercive, and non-exploitative adolescent sexual conduct undermines public health efforts and violates adolescents' rights to health, dignity, information, and protection from cruel, inhuman, and degrading treatment.
108. The State's failure to recognize adolescents' evolving capacities under Sections 8, 9, 11 and 43 (4) (f) of the Sexual Offences Act No.3 of 2006 constitutes a structural omission that violates and threatens to violate the rights of adolescents across Kenya.
109. Adolescents, particularly survivors of abuse or those in child-headed households, are further marginalized by these legal and structural barriers and constitutes systemic discrimination that violates Kenya's constitutional and international obligations.

RELIEFS SOUGHT

The Petitioners pray for the following orders:

- A. A declaration that the arrest, prosecution, and detention of the 1st Petitioner under Sections 8, (1) as read together with Section 8(3), and 11 (1) of the Sexual Offences Act No 3 of 2006 and 2nd Petitioner under Sections 8, (1) as read together with Section 8(4), and 11 (1) of the Sexual Offences Act No 3 of 2006 for engaging in consensual, non-coercive, non-exploitative sexual relations violates Articles 25, 27, 28, 29,31, 33,35, 43,46, 48, 49 50, and 53 of the Constitution.
- B. An order of certiorari calling into court and quashing the charge sheets in Makadara Law Courts Criminal Case No. 34 of 2025 against the 1st Petitioner and Criminal Case No. MSCO/E239 of 2023 against the 2nd Petitioner.
- C. A declaration that the blanket criminalization of mutually consensual, non-coercive and non-exploitative sexual relations between adolescents under Sections 8, 9,11 of the Sexual Offences Act and the blanket presumption of adolescents' lack of capacity to consent to sexual relations through application of section 43 (4) (f) of the Sexual Offences Act No 3 of 2006 without recognizing adolescents' evolving capacities are unconstitutional and their continued application violate the rights of adolescents as provided under Articles 25, 27, 28, 29,31, 43(1)(a), 46, 48, 49, 50, and 53(1)(d) & (2) of the Constitution.
- D. An order of mandamus compelling the 1st and 3rd Respondents, to within 90 days of the judgment, issue circulars to all prosecutors and police officers directing them on the

illegality of arresting, prosecuting and harassing adolescents engaging in mutually consensual, non-coercive, non-exploitative sexual relations.

- E. An order of mandamus compelling the 2nd Respondent, to within 90 days of judgment, submit to the National Assembly a Bill to amend Sections 8, 9, and 11 of the Sexual Offences Act to decriminalize consensual, non-coercive, non-exploitative sexual relations between adolescents and to submit periodic progress reports to this Honorable Court every sixty (60) days.
- F. An order for general and aggravated damages to the 1st, 2nd, and 3rd Petitioners for the violations suffered as a result of the arrest, detention, and prosecution for engaging in consensual, non-coercive, and non-exploitative sexual relations.
- G. Any other relief that this Honorable Court deems just and appropriate in the circumstances.

Dated at NAIROBI this ^{5th} day of ^{AUGUST}2025



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