

Challenging the Criminalization of Adolescence in Kenya

Petition E490/2025 HSO & 3
OTHERS (NAYA) V. ODPP &
4 OTHERS

Sections 8, 9, and 11 of the SOA and Section 43(4)(f), make no distinction between exploitative abuse and mutually consensual, non-coercive peer relationships between adolescents of similar ages.



*Silhouette of three adolescents standing side by side, each holding their child as they gaze outward into the corridors of the court.
Photo: Center for Reproductive Rights*

CASE BACKGROUND

Kenya's Sexual Offences Act (SOA) was enacted to protect children from sexual abuse, exploitation, and coercion. In practice, it has been misapplied to criminalize the very adolescents it was designed to protect. In Kenya, adolescents continue to be arrested, detained, prosecuted, and labelled as criminals for engaging in consensual, non-coercive, and non-exploitative sexual relations with their peers. Sections 8, 9, and 11 of the SOA and Section 43(4)(f), make no distinction between exploitative abuse and mutually consensual, non-coercive peer relationships between adolescents of similar ages.

As a result, adolescents have been prosecuted, despite the absence of coercion, exploitation, or harm. These prosecutions have been undertaken without regard to the best interests of the child, fair trial guarantees or the developmental and psychosocial realities of adolescence.

In August 2025, the Center for Reproductive Rights and its partner, the Reproductive Health Network Kenya (RHNK), filed a constitutional petition before the High Court of Kenya on behalf of three affected adolescents and the Network for Adolescent and Youth of Africa (NAYA), a youth-led organization.

The case challenges the constitutionality of the SOA provisions that expose adolescents to arrest, detention, stigmatization and imprisonment for consensual peer relationships. It also exposes the systemic failures that deny adolescents access to safe, confidential sexual and reproductive health (SRH) information and services, leaving them without support and pushing them into the criminal justice system.

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THE PETITIONERS: THREE LIVES DISRUPTED BY CRIMINAL PROSECUTION

HSO, 1st Petitioner – Makadara Criminal Case No. 34 of 2025

HSO, aged 17, entered into a consensual peer relationship with CNK, a 16-year-old girl. Both come from vulnerable backgrounds and lacked consistent caregiver support. Seeking safety and stability, they rented a room together and began building a life as a couple.

In February 2025, police raided their home, arrested them both, and detained them at Kasarani Police Station for three days. At the time of their arrest, CNK was found to be pregnant. HSO was charged with defilement and unable to raise the KES 50,000 bail, was held in police custody until NAYA intervened to secure his release.

AMO and TA, 2nd and 3rd Petitioners – Makadara Criminal Case No. E239 of 2023

In 2022, AMO and TA, who were both adolescents, began a consensual, non-exploitative, non-coercive relationship, which later resulted in pregnancy. When TA informed her family about the pregnancy, they orchestrated AMO's arrest. AMO, aged 17 at the time, was charged with defilement. TA was not charged, she was listed as a witness against her own partner.

AMO was detained, released on bond, and spent years under the shadow of criminal prosecution before the charges were withdrawn in May 2025, only after it was confirmed he had been a minor at the time of arrest. The couple now lives together and are raising their two young children.

These are not isolated cases. Thousands of adolescents across Kenya face the same fate. Arrested for normal peer relationships, with no legal representation and pushed through a criminal justice system that was never designed for them.



The Center's legal team going through case documents during the hearing of petition 490 of 2025 at the High Court of Kenya. Photo: Center for Reproductive Rights

THE LEGAL FRAMEWORK: A LAW TURNED AGAINST CHILDREN

Kenya's SOA criminalizes all sexual conduct involving a person under the age of 18. Crucially, the SOA makes no distinction between exploitative abuse and mutually consensual, non-coercive, non-exploitative sexual conduct between minors. As a result, adolescents engaged in ordinary, age-appropriate relationships are charged as criminal offenders.

Although the SOA allows a court to sentence minors under the Children Act or Borstal Institutions Act (which emphasizes counselling and rehabilitation instead of imprisonment), in practice, many minors continue to be held in adult detention facilities and sentenced to imprisonment. Since the SOA treats all sexual conduct involving minors as criminal, it has become a tool for punishing normal adolescent relationships rather than protecting children from abuse as originally intended.

Adolescents, especially those from low-income backgrounds, are being arrested, detained, and prosecuted for mutually consensual, non-coercive, and non-exploitative relationships, often without access to legal representation, counselling, or youth-friendly health services. Instead of support or guidance, they are exposed to stigma, school disruption, loss of family stability, a permanent criminal record and long-term psychological harm as a result of criminal justice processes.

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GROUNDS OF THE PETITION

The petition challenges Sections 8, 9, 11 and Section 43(4)(f) of the SOA on five constitutional grounds:

- 1. Violation of Dignity - Article 28, Constitution of Kenya**
Criminalizing adolescents for consensual, non-coercive, non-exploitative peer relationships treats normal developmental behavior as criminal conduct, subjecting adolescents to degrading and humiliating legal processes that cause lasting psychological harm.
- 2. Violation of the Best Interests of the Child - Article 53(2), Constitution of Kenya**
Every decision concerning a child must prioritize their best interests. Arresting, detaining and prosecuting adolescents, placing them in adult police cells, removing them from school and subjecting them to criminal trials violates their constitutional right.
- 3. Violation of the Right to Health - Article 43(1)(a), Constitution of Kenya**
Criminalization forces adolescents to hide their relationships and avoid health facilities for fear of prosecution. The result is reduced access to contraception and SRH services, rising rates of unintended pregnancy, STIs, and unsafe abortion, the precise outcomes the law should prevent.
- 4. Violation of the Right to Privacy - Article 31, Constitution of Kenya**
Police surveillance, arrests and criminal proceedings intrude directly on the private sphere of adolescent peer relationships.
- 5. Failure to Recognize Evolving Capacity - CRC & ACRWC**
The Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, both ratified by Kenya, require states to recognize adolescents' evolving capacities and developmental maturity. The SOA, as currently applied, disregards these obligations entirely.



The Center's legal team pictured with the other parties in the case after a court session at the High Court of Kenya. Photo: Center for Reproductive Rights

WHY THIS CASE MATTERS

- 1. It exposes the criminalization of normal adolescent relationships in Kenya**
Thousands of adolescents across Kenya are being arrested, detained, and prosecuted for engaging in consensual sexual conduct with their peers. Instead of receiving guidance, counselling or health information, they face police surveillance, court appearances and detention, a response that treats adolescence as criminal rather than developmental.
- 2. It reveals systemic failures in Kenya's justice system**
The arrest, detention, and prosecution of the 1st and 2nd Petitioners, both adolescents, demonstrate how the Sexual Offences Act is being used against adolescents it was intended to protect. They were detained with adults, confronted with criminal charges, and forced into a justice system without child-sensitive safeguards. This exposes a serious procedural gap that violates due process, dignity, and the best interests of the child.
- 3. It challenges the proportionality of existing laws in protecting adolescents**
The SOA treats mutually consensual adolescent relationships the same as rape, coercion, or exploitation. This criminalization contradicts basic principles of fairness and proportionality and risks entrenching a harmful and unrealistic legal standard that punishes normal adolescent behavior rather than protecting minors from abuse.

4. It exposes the harm caused by denying adolescents access to SRH information and services

Because any expression of adolescent sexuality is treated as criminal, adolescents avoid visiting health facilities and lack access to confidential youth-friendly health information. The result is increased vulnerability to unintended pregnancy, STIs, stigma, and psychological harm, issues the law should prevent, not worsen.

5. It is a constitutional test of Kenya's commitment to children's rights and reproductive justice

The case asks the Court to affirm that criminal law cannot override constitutional protections for adolescents, including dignity, privacy, health, equality, and the best interests of the child. It also tests Kenya's obligations under international instruments such as the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, both of which require states to protect children from harmful punishment and uphold their evolving capacities.

6. It ends the unjust criminalization of adolescents and replaces punishment with protection, support, and dignity.

Success in this case will set a transformative precedent, affirming that adolescents should not be treated as criminals for normal expressions of their peer relationships. Instead, they must be supported through access to age-appropriate comprehensive sexuality education, confidential and adolescent-friendly health services, and systems that uphold rather than destroy their futures.

WHAT A POSITIVE RULING WOULD MEAN

A decision in favor of the petitioners would mark a powerful step toward a justice system that is consistent with the Constitution and responsive to the lived realities of adolescents. It would:

- End the criminalization of adolescents for consensual, non-coercive, non-exploitative peer relationships.
- Prevent further arrests, detentions and prosecutions of adolescents for normal developmental behavior.
- Compel rights-respecting reforms in law enforcement and legislation.
- Affirm that Kenyan adolescents are rights-holders not criminals and that the role of the State is to nurture, protect, and empower them.
- Set a historic precedent that aligns Kenya with regional and international human rights standards and secures a more humane and constitutional future for all adolescents.