

## **JOINT CSO STATEMENT: PROTECTING KENYAN ADOLESCENTS FROM UNJUST CRIMINALIZATION FOR ENGAGING IN CONSENSUAL, NON-EXPLOITATIVE, NON-COERCIVE PEER RELATIONSHIPS**

The landmark decision by the High Court of Kenya on 20<sup>th</sup> May 2026 marked a transformative milestone for justice, jurisprudential development and human rights. We, the undersigned Civil Society Organizations (CSOs), celebrate the decision in *Petition E490/2025 HSO & 3 Others (NAYA) v. ODPP & 4 Others*. This court decision has affirmed that adolescence is a developmental stage to be nurtured, not a crime to be punished.

### **The Unjust Criminalization of Adolescence**

For years, the Sexual Offences Act (SOA), intended to protect children, including adolescents, from exploitation and coercion, has been misapplied to criminalize the very adolescents it was meant to protect. In practice, the enforcement of the SOA against adolescents engaged in consensual, non-coercive and non-exploitative peer relationships has taken a punitive rather than progressive approach, failing to uphold the best interests of adolescents or respond to the lived realities and barriers they face in accessing the highest attainable standard of reproductive health information and services.

As a result, Kenyan adolescents have faced arrest, detention in adult facilities, and the life-long stigma of a criminal record for normal developmental behavior. This approach has treated young adolescents as criminals rather than rights-holders, ignoring their evolving capacities and developmental maturity.

### **The Intersection of Criminalization and Social Inequality**

The stories of the petitioners in this case highlight how criminalization disproportionately targets the most vulnerable and its attendant social impact. HSO and CNK, both from vulnerable backgrounds without consistent caregiver support, were arrested simply for being in a consensual relationship. AMO and TA saw their lives disrupted for years, with AMO facing criminal charges for a consensual relationship that resulted in a family.

These cases reveal systemic and structural failures in which adolescents from low-income households, often without legal representation or family support, are funneled into a criminal justice system ill-equipped to meet their needs. Rather than receiving guidance, care, or access to sexual and reproductive health services, that aligns with advancing the best interest principle, they are confronted with police surveillance and punitive court proceedings.

### **Law and Policy Concerns: The Need for SOA Amendment**

The current legal framework has created a “law turned against children, especially adolescents”. By treating all adolescent sexual conduct as criminal, the SOA has:

- **Violated Constitutional Rights:** Specifically, the rights to equality and freedom from discrimination, dignity, privacy, health, education and the best interest of the child.
- **Harmed Public Health:** Criminalization forces adolescents to avoid health facilities for fear of prosecution, leading to higher rates of unintended pregnancies, HIV infections, STIs and unsafe abortions.
- **Disregarded International and Regional Standards:** Kenya's obligations under the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) require recognition of a child's evolving capacity, which the SOA fails to recognize.

### **Summary of the Judgment**

In its decision, the Court affirmed that the Sexual Offences Act must be interpreted and applied in a manner consistent with the Constitution and directed investigative, prosecutorial and enforcement agencies to distinguish consensual adolescent peer relationships from exploitative or abusive conduct.

It further ordered state agencies responsible for health, education and child protection to ensure adolescents can access sexual and reproductive health information and services without fear of criminalization. The Court also halted the criminal proceedings against the affected adolescent petitioners. By doing so, the Court has:

1. Brought an end to the systemic and unjust arrest and prosecution of adolescents for engaging in consensual, non-coercive, non-exploitative sexual relations.
2. Reinforce the state's responsibility to protect and advance the rights of children, including adolescents, in their best interest and not subject them to trauma through punitive legal processes.
3. Reiterated the importance of comprehensive sexuality education for young people to enable them to make informed decisions.
4. Set a historic precedent that aligns Kenya with international and regional human rights standards.

### **Our Collective Call to Action**

While we celebrate this victory, the work of legal and policy reform continues. We call upon the Government of Kenya, the Legislature, state agencies and all stakeholders to:

- **Legislature:** Take immediate legislative action to amend sections 8, 9, 11 and Section 43(4)(f) of the Sexual Offences Act and permanently distinguish between exploitative sexual violence and consensual peer relationships in line with today's judgment.

- **Criminal Justice and Law Enforcement:** The National Police Service and the Office of the Director of Public Prosecutions (ODPP) immediately cease the surveillance, arrest and detention of adolescents for consensual conduct. They should review and align investigative and arrest protocols relating to sexual offenses involving minors to ensure compliance with this judgment and the constitutional rights of children.
- **Health, education and child protection state agencies:** Develop coordinated policy and implementation measures to ensure adolescents have access to confidential, youth-friendly sexual and reproductive health (SRH) information and services, and age-appropriate, comprehensive sexuality education without the threat of legal repercussions.
- **Provide Reparative Support:** We call for the expungement of criminal records for those previously convicted under these unconstitutional applications of the law and the provision of psychosocial support for affected minors.

***We stand in solidarity with the petitioners and with all adolescents in Kenya. Today marks a shift from punishment to protection and from stigma to dignity.***

Signed,

