

health, and the right to sexuality education. These rights should fully apply to adolescents. To ensure realisation of these rights, states are obligated to take steps including transformation of legal and policy frameworks, such as by eliminating laws that indiscriminately criminalise consensual sexual conduct between adolescents.

## HIGHLIGHT

### ADOLESCENT CONSENSUAL SEXUAL CONDUCT

Social norms, religious norms, and criminal law regulate sexual conduct. In many traditional settings in African countries, a girl matures at puberty, and is prepared for sexual activity thereafter. In settings where certain religious norms take precedence, the person is allowed to engage in sexual activity only after celebration of marriage. States also regulate sexual conduct through criminal laws by setting age of consent to sex.

The two *Teddy Bear* decisions of the South African Courts addressed the criminalization of consensual adolescent sexual conduct. Both courts found that indiscriminate criminalization of consensual sexual conduct infringed upon the rights of children and adolescents. These decisions are revolutionary in positing the idea that adolescent consensual sex should not always be viewed as problematic. In the second *Teddy Bear* case, Justice Sisi Kampepe affirmed that consensual sexual conduct between adolescents may not only be innocuous, but is critical for normal and healthy development.

Treating adolescent sexuality as problematic negatively influences how society addresses adolescent sexuality, especially in health care and educational institutions. Adolescents have been denied sexual health information, education, and services for fear that it would encourage them to engage in sexual conduct. They have been subjected to violations of their rights: for getting pregnant outside wedlock, for instance, girls have been denied the opportunity to continue with education, as in the student pregnancy case in the Constitutional Court of South Africa.<sup>26</sup>

Further, sex laws are not necessarily benevolent for the adolescent who it is designed to protect from harm. As Justice Kampepe noted in the second *Teddy Bear* case, criminalization drives adolescent sexual behaviour underground. It puts the adolescent through the harsh criminal justice system, when it is really not necessary. The two South African cases invite a reflection on how Africa has used criminal law to disempower adolescents and infringe on their rights, including, the rights to privacy and dignity. It is noteworthy that these criminal regimes reflect problematic conceptions about sexuality of children and adolescents. Instead of using criminalization to protect adolescents from harm arising from consensual sexual conduct, governments can enhance sexuality education programs, counselling, and comprehensive sexual and reproductive health services for adolescents to achieve the same objective but in ways that conform to the rights of the child.<sup>27</sup>

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