

Introducing childhood sexuality and law

1 The child as a sexual subject

It is true that under the Sexual Offences Act [Kenya], a child below 18 years old cannot give consent to sexual intercourse. However, where the child behaves like an adult and willingly sneaks into men's houses for purposes of having sex, the court ought to treat such a child as a grownup who knows what she is doing.¹

Any reasonable person in the circumstances of the accused person would have acted under the mistaken belief that the victim was not so young a person considering that she had had moments of sneaking out from her parent's house and sleep outside at her many boyfriends' homes where she had had her person carnally known with her unequivocal blessing.²

At first glance, these two paragraphs could read as if from a single source. However, they are juxtaposed excerpts from two unrelated court decisions, delivered at different times in two different countries. The first is from a judgment of the High Court of Kenya, and the second is the determination of a magistrate in Malawi. They are nonetheless related, as they reflect the reasoned opinions of a judge and a magistrate concerning girls who engaged in sexual intercourse with older males. The first case involved the prosecution of an older man for having sexual intercourse with a young girl, while the second concerned the prosecution of an older boy for a similar offence.

The first excerpt is from a judgment by Chitembwe J in the matter of *Martin Charo v Republic*³ delivered in 2016. The judge released a man in his early twenties who had been convicted of a sexual offence after having sex with a girl of 13. The judge justified the acquittal on the basis that the girl had willingly engaged in the act and had behaved like an adult, thus, in his view, disqualifying herself from claiming that she had been sexually violated.

1 *Martin Charo v Republic* Criminal Appeal 32 of 2015 (High Court of Kenya) (*Charo*).

2 *State v Charles Gondwe* Criminal Case 787 of 2020 (Magistrate's Court, Malawi) (*Gondwe*).

3 *Charo* (n 1).

Coincidentally, Magistrate Elijah Daniels, in *State v Charles Gondwe*⁴ in Malawi, some five years after the *Charo* judgment, expressed a similar opinion. In the magistrate's view, a girl who sneaks out of her parents' house to have sex with boys should not be considered young.

The Kenyan judge received the Golden Bludgeon in 2017. The Golden Bludgeon is an advocacy award given annually by Women's Link Worldwide to showcase the worst judgment due to its negative impact on women's rights.⁵ On the other hand, the judgment in Malawi, being from a lower court, did not receive the same international attention. However, the magistrate's flamboyant language caught the attention of a reviewing High Court judge in Malawi, who admonished him for his excessive style. The judge cited part of the judgment, from which I present an excerpt:⁶

They enjoyed the company of each other with no sense of restraint or guilt. When at it, they manifested pleasure and passion for each other's person. They crafted their own twisted, misguided and untimely sexual drive and amusement. Alas! The accused person was not the first in line neither was he the second nor perhaps the last; this I cannot say for certainty. He caused his penis to penetrate into what I would ordinarily say was an immature vagina of the victim in this case.

A commentator pointed out that the magistrate sensationalised the sexual history of the girl and used language that disparaged her, because she willingly engaged in sexual conduct.⁷ The commentator questioned the conception of childhood sexuality articulated in the magistrate's decision.

The Kenyan court decision has since attracted numerous commentaries on social media and has been the subject of academic theses, dissertations, papers and publications.⁸ Legal commentators such

⁴ *Gondwe* (n 2).

⁵ Correspondent 'Kenyan judge wins "Golden Bludgeon" award for worst verdict' *The Kenya Forum* 10 June 2017, <https://kenyaforum.net/politics/kenyan-judge-gets-award-for-making-worlds-worst-verdict/> (accessed 5 August 2025).

⁶ *Gondwe* (n 2).

⁷ C Rickard 'Under-age rape trial in Malawi results in steamy judgment by court' *African Lii* 2 July 2021, <https://africanlii.org/article/20210701/under-age-rape-trial-malawi-results-steamy-judgment-court> (accessed 3 July 2025).

⁸ TJ Kigen 'Minors, sex and the law: Rethinking the regulation of consensual sex between minors in Kenya' LLB dissertation, Strathmore University, 2018; TA Odero 'Minor-to-minor sexual consent in Kenya: An analysis of the set precedent' LLB dissertation, Strathmore University, 2020; LA Ondeng'e 'A critique of the criminalisation of consensual sexual interaction between adolescents in comparative jurisdictions' LLM thesis, Universiteit Leiden, 2021.

as Murithi criticised the judge for misinterpreting the law.⁹ Another commentator observed that the correct interpretation of the law is that '[i]t is not the minor's assent to sex or deceit that he or she is an adult that exonerates the offender, but the offender's reasonable belief, held after exercising due diligence, that the victim was an adult'.¹⁰

In 2021, the *Charo* judgment resurfaced when the Kenyan Judicial Service Commission (JSC) interviewed Chitembwe J for the position of chief justice. Asked about the judgment, he defended his position, which had drawn heavy criticism. A media house quoted one of his responses:¹¹

If you go to the prisons, there are fewer cases of robbery with violence than defilement. If we go to the law, then anyone who has sex with someone under the age of 18 is guilty. But how do you take a young 19-year-old to jail for 15 years, for having had a relationship with a 17-year-old girl? The number of magistrates who have called me to say 'thank you, you have freed us from the shackles of the Sexual Offences Act' is high.

Despite the Golden Bludgeon award, the *Charo* case has become fertile ground for academic debate. Even if Chitembwe J erred in law, the issues his determination raised are pertinent and suggest that the sexual offences law may need review. The challenges posed by 'defilement' laws are not unique to Kenya. Courts across Eastern and Southern Africa (ESA) have grappled with similar challenges.¹²

Although the discussion opens with cases from Kenya and Malawi, the book is not a comparative study. Rather, it is anchored in Malawi, which serves as the primary case study and an entry point for interrogating broader regional and global discourses on the legal and social construction of childhood sexuality. The central concern of this book is how law constructs and recognises the child as a sexual subject,

9 M Antony 'A missile to the defilement jurisprudence: *Martin Charo v Republic*' (2022) *SSRN Electronic Journal* 4262749.

10 FN Njue & SF Materu 'The legal, practical and policy dilemmas in enforcing the Sexual Offences Act of Kenya in relation to consensual adolescent sex' (2021) 65 *Journal of African Law* 282.

11 B Wasuna 'Justice Chitembwe defends 2017 release of defilement convict' *Daily Nation* 12 April 2021, <https://nation.africa/kenya/news/justice-chitembwe-defends-2017-release-of-defilement-convict-3359768> (accessed 25 August 2025).

12 GD Kangaude & A Skelton '(De)criminalising adolescent sex: A rights-based assessment of age of consent laws in Eastern and Southern Africa' (2018) 8 *SAGE Open* 1.

and the implications for advancing the sexual health and well-being of children.

2 The context

The *Charo* case represents a moment in which the long-standing historical contestation over childhood sexuality between adults and children became visible.¹³ As Fishman has stated, the study of childhood sexuality ‘shows us the attitude of adults toward childhood sexuality, what they defined as “normal” and “abnormal” in children, and the authority they sought to exercise over the sexual lives of children.’¹⁴

The law is just one domain where the tensions of childhood sexuality surface, but others include medicine, education and morality/religion.¹⁵ For example, medical debates on sexual precocity in pre-colonial England influenced parliamentary deliberations on the age of consent which, in turn, shaped colonial and post-colonial legal regimes in Africa.¹⁶ Sexuality in education, especially involving learners who are young children, is heavily contested. Several authors show how sexuality education restricts children’s access to knowledge and works to construct children as vulnerable subjects justifying regulatory practices.¹⁷ Myths of childhood innocence in morality discourses backed by religious and cultural institutions result in moral panics when addressing childhood sexuality.¹⁸ This is also reflected in public health.¹⁹

13 RD Egan & GL Hawkes ‘Imperiled and perilous: Exploring the history of childhood sexuality’ (2008) 21 *Journal of Historical Sociology* 355.

14 S Fishman ‘The history of childhood sexuality’ (1982) 17 *Journal of Contemporary History* 269.

15 See M Foucault *The history of sexuality: An introduction* trans R Hurley (1978); D Bhana *Gender and childhood sexuality in primary school* (2016); J Levine *Harmful to minors: The perils of protecting children from sex* (2002); A Moore & P Reynolds *Childhood and sexuality: Contemporary issues and debates* (2017).

16 V Bates ‘The child as risk: Precocious girls and sexual consent in late Victorian Britain’ (2017) 7 *Law, Crime & History* 126.

17 K Robinson & C Davies ‘Sexuality education in early childhood’ in L Allen & ML Rasmussen (eds) *The Palgrave handbook of sexuality education* (2017) 217-242; AW Davies, A Simone-Balter & T van Rhijn ‘Sexuality education and early childhood educators in Ontario, Canada: A Foucauldian exploration of constraints and possibilities’ (2021) 24 *Contemporary Issues in Early Childhood* 394-410.

18 L Tsaliki *Children and the politics of sexuality* (2016); KH Robinson ‘In the name of “childhood innocence”: A discursive exploration of the moral panic associated with childhood and sexuality’ (2008) 14 *Cultural Studies Review* 113-129.

19 Fishman (n 14) 276-277.

Most published literature on childhood sexuality originates from the Global North, and relatively little has come from the African continent.²⁰ Nonetheless, this Eurocentric body of knowledge is relevant to Africa. Colonialism introduced not only European legal systems, but also religious and educational frameworks that displaced indigenous knowledge.²¹ The laws interpreted by the two judicial officers in *Charo* and *Gondwe* trace their philosophical and legal lineages to eighteenth-century pre-colonial English sexual offences regimes.²² The issues surrounding childhood and sexuality that the Kenyan judge and Malawian magistrate addressed mirror those debated by eighteenth-century English courts and Parliament. At the heart of these debates lies a recurring question: How should legal systems respond to or treat young girls who express sexual agency?²³

On the African continent, childhood sexuality remains under-researched as a legitimate or positive subject of inquiry.²⁴ Instead, institutions such as the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), the monitoring body of the African Charter on the Rights and Welfare of the Child (African Children's Charter), tend to approach sexuality primarily through the lens of protection from abuse and exploitation.²⁵ While a protective lens is not inherently problematic, an exclusive focus on protection risks obscuring the positive and developmental dimensions of sexuality, and may ultimately foster restrictive attitudes toward children's normative sexual behaviour and expression. For instance, in *Charo* the

20 D Bhana 'Love, sex and gender: Missing in African child and youth studies' (2017) 42 *Africa Development* 243.

21 O Oyěwùmí *The invention of women: Making an African sense of western gender discourses* (1997).

22 HF Morris 'A history of the adoption of codes of criminal law and procedure in British Colonial Africa, 1876-1935' (1974) 18 *Journal of African Law* 6.

23 V Bates 'The legacy of 1885: Girls and the age of sexual consent' (2015) *History and Policy*; Bates (n 16) 135.

24 Bhana (n 20); D Bhana 'Gender and sexuality in early childhood: Lessons for African feminists' in K Kelly (ed) *Global education: Linking theory and practice* (2025) 49-64.

25 African Committee of Experts on the Rights and Welfare of the Child General Comment 7 on Article 27 of the African Charter on the Rights and Welfare of the Child: 'Sexual exploitation' (2020); African Child Policy Forum 'Sexual exploitation of children in Africa: A silent emergency' (2019). The two institutions have generated many reports on children and development, but when it comes to sexuality, the protection lens dominates.

judge could not conceive of the 14 year-old girl as a sexual subject with an evolving capacity for sexual agency. Consequently, he focused on the sexual agency of the man, and to exonerate him, had to position the child as a 'woman'.

Discussions of children and sexuality in Africa tend to be entangled with broader social issues that may obscure the role of adult power in shaping sexual subjectivities through social norms.²⁶ Child marriage is one example. However, as Naphambo has demonstrated, a singular emphasis on saving girls from marriage may mask adult-centric dynamics, such as the role of traditional leaders in structuring and controlling girls' sexual agency.²⁷

3 The aim of the book

Globally, governments are working to promote the sexual health and well-being of children and adolescents under the broad umbrella of development.²⁸ In the Eastern and Southern African (ESA) region, where I situate this discussion, governments are guided by regional legal and policy documents such as the African Children's Charter,²⁹ Africa's Agenda for Children³⁰ and the Ministerial Commitment on Sexuality Education and Sexual and Reproductive Health Services for Adolescents and Young People in Eastern and Southern Africa.³¹ Furthermore, governments have adopted national laws and policies to promote optimal

26 IC Agu and others 'Gender norms and ideologies about adolescent sexuality: A mixed-method study of adolescents in communities, south-eastern, Nigeria' (2022) 7 *Frontiers in Sociology* 810411.

27 EK Naphambo 'A vexing relationship between chiefship and girls' sexuality: Insights from rural Malawi' (2022) 70 *Journal of Adolescent Health* S36.

28 A Hassan & S Golub 'Sexual and reproductive health goals and the 2030 global agenda for sustainable development: Progress, prospects, and challenges' (2025) 38 *Journal of Pediatric and Adolescent Gynecology* 3-17; African Child Policy Forum 'The African report on child well-being 2018: Progress in the child-friendliness of African governments' (2018).

29 African Charter on the Rights and Welfare of the Child OAU Doc CAB/LEG/24.9/49 (1990) (African Children's Charter).

30 African Children's Committee *Africa's Agenda for Children: Fostering an Africa Fit for Children (Agenda 2040)* (2016).

31 United Nations Educational, Scientific and Cultural Organisation *Ministerial commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern Africa* (2013).

child development, including gender equality, and sexual health and well-being.³²

However, despite the legal and policy documents that articulate aspirations for childhood development, there is relatively little discussion about childhood sexuality. Yet, even in its invisibility, discourses surrounding childhood sexuality continue to shape societal attitudes and practices toward children.³³ The way in which the judge and the magistrate expressed themselves about girls' sexuality in *Charo* and *Gondwe* revealed thinking that is not unique to the courts; rather, these cases represent wider social narratives about the sexuality of the female child. In this book, I interrogate dominant attitudes toward childhood and adolescent sexuality, with the language used in the court judgments as my point of departure for a broader analysis of the legal and social construction of childhood sexuality.

The central question I explore in this book is: How do discourses expressed in legal and policy language, public pronouncements, and institutional practices participate in producing social constructions of the child as a sexual subject? Guided by this question, the book interrogates the dominant ideas that shape adult attitudes toward childhood and adolescent sexuality. These ideas shape institutional practices in ways that sometimes contradict the ideals of childhood well-being articulated in legal frameworks such as the African Children's Charter.

Children's experiences of sexuality in the hands of adults tend to remain invisible and unacknowledged, often staying just below the public radar. Occasionally, these issues erupt into the public domain, at times triggering moral panics, as in the debates on children and sexual activity following the *Charo* and *Gondwe* decisions.³⁴ In those

32 African Child Policy Forum 'The African report on child well-being 2020: How friendly are African governments towards girls?' (2020); African Children's Committee Report of the African Committee of Experts on the Rights and Welfare of the Child (2021), <https://africanlii.org/akn/aa-au/doc/report/2021-12-31/report-of-the-african-committee-of-experts-on-the-rights-and-welfare-of-the-child/eng@2021-12-31/source> (accessed 9 October 2025). The African Children's Committee reports on its monitoring of the implementation of child rights based on governments' commitments to the African Children's Charter.

33 Robinson (n 18); Bhana (n 24).

34 The concept of 'moral panic' has been widely used in sociology to describe episodes of exaggerated public concern around behaviours seen as threatening social order. See E Goode & N Ben-Yehuda *Moral panics: The social construction of deviance* (2009).

instances, the concern was children's sexual activity, and the panic was directed particularly at girls, whose sexuality adults seek to regulate and control. Over the last decade, several court rulings in the ESA region have highlighted the challenges posed by laws that criminalise consensual and non-exploitative sexual relations between children, that is, between persons under the age of 18 years.³⁵ Yet, these court cases may be only the tip of the iceberg, since many similar cases in magistrates' courts never come to public attention.

In Malawi, for example, ongoing debate surrounds the age of consent and its discriminatory effects, particularly on adolescent boys prosecuted for consensual relationships with girls below the legal age of consent. At the time of drafting the book manuscript, the Constitutional Court in Malawi was hearing a case in which the petitioners, boys below the age of 18, were challenging provisions of Malawi's Penal Code, Malawi's principal criminal law legislation governing sexual offences, for criminalising non-exploitative sex between consenting adolescents.³⁶ The matter did not proceed to full determination because the claimants negotiated with the Director of Public Prosecutions to withdraw the case from the Constitutional Court. However, there is still a challenge because the current law criminalises consensual sex between an 18 year-old and a 17 year-old because, in law, the older is an adult and the younger a child.

Apart from criminalising consensual and non-exploitative sexual conduct through the criminal justice system, the way in which adults handle childhood sexuality has implications for the child's well-being in other dimensions as well. The denial of children's sexual subjectivity can have material consequences, for instance, being expelled from school or being denied a healthcare service or commodity.³⁷

In this book I interrogate the language of legal and policy documents, in order to examine how they construct children in relation to sexuality.

35 Kangaude & Skelton (n 12); see also GD Kangaude 'Adolescent sex and "defilement" in Malawi law and society' (2017) 17 *African Human Rights Law Journal* 527.

36 *AJ (a minor) v State* Constitutional Case 4 of 2021 (High Court of Malawi); *State v The Inspector General of Police & The Attorney General ex parte Stanford Siliro Shaba on behalf of ST (a minor)* Constitutional Case 5 of 2021 (High Court of Malawi); Penal Code (Cap 7:01, Laws of Malawi), as amended by Act 16 of 2011.

37 See L Allen *Young people and sexuality education: Rethinking key debates* (2011); Human Rights Watch 'Leave no girl behind in Africa: Discrimination in education against pregnant girls and adolescent mothers' (2018).

While I focus on law and start by interrogating age of consent provisions and their interpretation, I extend the inquiry to how societal attitudes, embedded in language and institutional practices, impact children's lives and experiences in the educational and sexual health clinic settings.

Further, I discuss aspects of childhood sexuality to generate insights that can inform efforts to improve children's sexual health and well-being from a legal and human rights perspective. My interest is in questioning and unsettling adult attitudes and institutional practices that shape children's experiences as sexual subjects. In doing so, I identify opportunities for strengthening the formulation and implementation of laws and policies intended to advance gender equality and sexual and reproductive health and rights (SRHR), including for children.

4 A note on definitions and key terms

The term 'child', as defined by law, is not a natural or biological descriptor but a juridical construction. It refers to a category established and stabilised through legal discourse to demarcate a specific status of personhood: that of *childhood*, as distinct from *adulthood*. Legal regimes tend to organise human life through such categorical distinctions, and the boundary between childhood and adulthood profoundly shapes the allocation of rights, responsibilities and protections.³⁸

Across Africa, this construction of childhood as distinct from adulthood has attained normative coherence through regional and national legal instruments. The African Children's Charter, for instance, defines a child as a person below the age of 18.³⁹ Most African countries, including Malawi, Kenya and South Africa, have aligned their legislation with this definition of a child.

By contrast, 'adolescent' is not a technical legal term but rather a term used in public health discourse. Adolescence does not have the legal status that childhood does; instead, it is considered a transitional phase from childhood to adulthood. The World Health Organisation (WHO) defines adolescence as the age range between 10 and 19.⁴⁰ Unlike the legal

38 See D Archard *Children: Rights and childhood* (2004) 53-69.

39 African Children's Charter (n 29) art 2.

40 World Health Organisation 'Young people's health – A challenge for society: Report of a WHO study group on young people and "Health for All by the Year 2000"' *WHO Technical Report Series 731* (World Health Organisation

category of childhood, which is stable and fixed, adolescence is fluid and entails movement across constructed developmental thresholds.

In this book I focus primarily on the category ‘child’ and the concept of ‘childhood sexuality’. However, because the discussion draws on legal, public health and social science literature, it necessarily employs terminology from these different fields, sometimes in overlapping ways. In some cases, the parallel use of the terms *childhood* and *adolescence* may appear to conflate. This reflects the discursive entanglement of terms in both policy and practice. For example, the phrase ‘child and adolescent sexuality’ may seem tautological, given that adolescents below the age of 18 are legally children. This usage highlights the tensions and slippages in how subjecthood is constructed across different regimes of knowledge and governance in relation to childhood and adolescence.

The term ‘sexuality’ is central to this book. For present purposes, I adopt the definition of sexuality proposed by a panel of experts in 2002 at a meeting convened by WHO:⁴¹

Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors.

It is important to note that childhood sexuality and adolescent sexuality (or childhood and adolescent sexualities) are not neutral descriptors but deeply contested and politicised terms.⁴² In dominant cultural and legal imaginaries, children are frequently positioned as non-sexual or pre-sexual beings.⁴³ As such, the notion of childhood sexuality often appears incongruous or unintelligible within normative public discourse. This may explain why courts, such as in *Charo*, have had difficulty recognising

1986), https://iris.who.int/bitstream/handle/10665/41720/WHO_TRS_731.pdf?sequence=1&isAllowed=y (accessed 7 November 2019).

41 World Health Organisation ‘Defining sexual health: Report of a technical consultation on sexual health, 28-31 January 2002’ Geneva (World Health Organisation 2006).

42 Robinson (n 18); Foucault (n 15).

43 S Angelides ‘Feminism, child sexual abuse, and the erasure of child sexuality’ (2004) 10 *GLQ: A Journal of Lesbian and Gay Studies* 141.

the reality of children's sexual activity, and why countries such as Uganda and the Democratic Republic of the Congo (DRC) continue to criminalise child-on-child sexual conduct, even when it is consensual and non-exploitative.⁴⁴

The adolescent's location at the boundary between the non-sexual child and the sexual adult renders adolescent sexuality particularly volatile in political and cultural debates.⁴⁵ Thus, while adolescent sexuality may be acknowledged, it remains heavily contested, as evidenced in social institutions such as family, education, health, religion and law.⁴⁶

This book foregrounds childhood sexuality as the primary analytic category. Nevertheless, the overlapping terrains of childhood and adolescence, and the instability of these very categories, require that adolescent sexuality also be addressed at various points. This slippage is not an analytical flaw but rather a reflection of the discursive complexity at stake. Ultimately, what is at issue is not only how sexuality is defined, but also how childhood itself is constructed and regulated through legal, policy and cultural discourses.

The next chapter presents the feminist theoretical framework for unpacking these dynamics and situates the analysis within the broader politics of childhood and adolescent sexuality.

5 Nature of inquiry

This book is not based on empirical research. Rather, it is philosophical in orientation, using feminist and post-structuralist theory to interrogate how law constructs childhood sexuality.⁴⁷ Legal texts, judgments and other legal materials serve as the substrate for analysis and help generate insights on how various social actors working with children should understand children's sexuality in relation to law and power.⁴⁸ In this sense, the book is best read as an invitation to think differently: to

44 A Veit & S Beicker 'Love or crime? Law-making and the policing of teenage sexuality in Uganda and the Democratic Republic of Congo' (2022) 16 *Journal of Eastern African Studies* 138.

45 ST Russell, KS van Campen & JA Muraco 'Sexuality development in adolescence in LM Carpenter & JD DeLamater (eds) *Sex for life: From virginity to Viagra, how sexuality changes throughout our lives* (2012) 70-87.

46 S Angelides 'Subjectivity under erasure: Adolescent sexuality, gender, and teacher-student sex' (2008) 15 *The Journal of Men's Studies* 349.

47 C Weedon *Feminist practice and poststructuralist theory* (1987).

48 C Smart *Feminism and the power of law* (1989).

use theory as a lens to critically question common assumptions about childhood sexuality and to uncover new possibilities for law, policy and practice.

This inquiry is anchored in a feminist framework that conceives law as a cultural and political artefact, a social tool that contributes to producing meanings and shaping power relations including around sex, sexuality and gender.⁴⁹ The theoretical framework, elaborated in chapter 2, is explicitly feminist and post-structuralist. Post-structuralism provides a distinctive account of subjectivity and agency that underpins my analysis of legal texts.⁵⁰ From the analysis and critique of legal texts, I demonstrate how law employs language to open or foreclose possibilities for recognising children as agentic sexual subjects. Following this, I discuss insights around enhancing ethical sexual agency to contribute towards advancing sexual health and well-being of children and young people.

6 Scope

The first aspect of scope concerns the area of sexuality covered in this book. As noted above, sexuality is a broad concept encompassing many dimensions, including intimacy, desire, pleasure, peer cultures and relationships. This book does not attempt a comprehensive account of childhood sexuality. Rather, it focuses on how laws construct childhood sexuality, as reflected in institutional practices regulating consent to sex, gender relations in schools and access to sexual health services. This narrower lens allows for a deeper interrogation of how legal frameworks both reflect and reproduce dominant assumptions about children as sexual beings.

The second aspect of scope is the substantive legal analysis and feminist critique. In this book I use Malawi as a case study to examine how laws construct childhood sexuality. Among the legal instruments, I focus primarily on Malawi's principal gender equality law, the Gender Equality Act (GEA), given its direct relevance to gender and sexuality.⁵¹

49 M Davies *Asking the law question* (2017).

50 D Davies and others 'Constituting the feminist subject in poststructuralist discourse' (2006) 16 *Feminism & Psychology* 87-103.

51 Gender Equality Act 3 of 2013 (CAP 25:06) of the Laws of Malawi.

While the Malawian context anchors the analysis, the questions explored are not confined to a single jurisdiction.

To achieve the objectives of the book, I draw on materials and legal/policy texts from across ESA and beyond. Indeed, this book is primarily inspired by the case of *Charo* from Kenya, introduced above. Although it is not within the scope of this work to conduct detailed legal analyses of multiple jurisdictions, the Malawian example serves as an entry point for examining broader regional and global dynamics. Despite contextual differences, there is considerable homogeneity in how childhood and sexuality are conceptualised in law, policy and institutions across the region and globally. This shared inheritance stems partly from a common colonial legacy in Africa, which embedded similar regulatory frameworks in education, health and criminal law. The resonance of this legacy is evident, for example, in the conceptual similarities between the *Charo* decision in Kenya and the *Gondwe* decision in Malawi, where judicial officers constructed the sexually active adolescent girl in strikingly similar ways.

These convergences underscore the relevance of the analysis to the wider region, where legal and policy actors continue to grapple with comparable challenges in constructing the child as a sexual subject. Social norms, such as strong disapproval of adolescent sexual activity, particularly among unmarried girls, and discomfort with open discussions of sex, further enhance this resonance.⁵² While the legal texts examined are Malawian, the concerns they raise reflect broader debates about childhood sexuality, rights and regulation that extend well beyond the African continent.⁵³

52 M Chiweshe & M Chiweshe ‘“Not my child”: Parents’ denial about adolescent sexuality in Harare, Zimbabwe’ (2017) 11 *Journal of Family & Reproductive Health* 119; J Mwaisaka and others ‘“Those are things for married people”: Exploring parents’/adults’ and adolescents’ perspectives on contraceptives in Narok and Homa Bay Counties, Kenya’ (2021) 18 *Reproductive Health* 48.

53 RD Egan & GL Hawkes ‘Endangered girls and incendiary objects: Unpacking the discourse on sexualisation’ (2008) 12 *Sexuality & Culture* 291-311; D Bhana & S Lucke ‘Childhood sexualities: On pleasure and meaning from the margins’ (2025) *Sex & Sexualities* 192.

7 The book's road map

The book is divided into three parts. Part 1 lays the conceptual foundation and consists of the first three chapters.

Chapter 1 introduces the key themes by presenting the *Charo* and *Gondwe* cases in parallel. These cases serve as the launchpad for the book. The debates they have generated around childhood sexuality provide the impetus for this work. This chapter also outlines the book's aim: to interrogate dominant societal understandings of childhood sexuality and contribute to understanding how children's sexual health and well-being are conceptualised in legal and regulatory documents, and institutional practices.

Chapter 2 sets out the feminist and post-structural theories that provide the conceptual tools for analysing of constructions of childhood sexuality. The chapter is theoretically grounded and plays a crucial role in laying the foundation for examining how sexual subjectivities are produced. It enables the reader to consider, for example, how judicial officers in *Charo* and *Gondwe* constructed a particular image of the child as a sexual subject from among multiple possible constructions.

Chapter 3 bridges theory and practice by examining how legal and policy instruments construct and position the child as a sexual subject. It applies feminist post-structuralist tools to deconstruct key legal texts, particularly Malawi's GEA, to explore how the law imagines the transformation of gender and power relations. While the GEA is the primary focus, the analytical approach extends to other legal and policy instruments that purport to advance the sexual health and well-being of children and adolescents.

Part 2 of the book comprises three thematic chapters, with each chapter exploring a different domain in which children's sexual subjectivities are constructed and regulated: criminal (or penal) law, school settings and healthcare institutions.

Chapter 4 examines how adults have used criminal law to punitively regulate consensual sex between children. It traces these laws to their historical and colonial roots and analyses how current legal discourses on childhood and sexuality in Malawi and other countries reproduce these legacies.

Chapter 5 explores gender and sexuality within the school, which is an institution that plays a central role in the lives of most children. It

examines how schools often sanitise and suppress expressions of sexuality, thereby producing effects such as the invisibility of certain forms of sexual and gender-based violence. The failure to recognise students as sexual subjects contributes to the mishandling by school authorities of cases involving sexual expression.

Chapter 6 examines the notion of youth-friendliness in healthcare services. Many countries, including Malawi, have adopted Youth-Friendly Health Services (YFHS) standards to encourage children and adolescents to access sexual and reproductive health care. Drawing on post-structuralist tools, the chapter analyses how, despite these intentions, the ways in which society constructs child and adolescent subjectivities may undermine access to such services rather than promote it.

Part 3 concludes the book. It consists of a concluding chapter and an epilogue.

Chapter 7 synthesises the discussion on childhood sexuality and draws insights from the preceding thematic analyses. It offers concrete proposals for creating environments that recognise and affirm children as gendered and sexual subjects. This attitudinal shift is essential for realising the ideals of childhood development entrenched in international, regional, and national laws and policies on gender equality and SRHR.

The epilogue brings the book to a close through a personal reflection on the complex and often uncomfortable terrain of childhood sexuality. It examines a media account of girls dismissed from school for alleged inappropriate sexual behaviour. The episode is used as a lens through which the book's theoretical discussions are tested, asking whether they can guide societal responses to specific situations in ways that are attentive to the rights and dignity of children and adolescents.