

Review Article

Section: Debates, Reactions and Theoretical Controversies

Pedophilia is a Mental Disorder and Sometimes a Legal Act: A Commentary

La Pedofilia es un Trastorno Mental y a Veces un Acto Legal: Un Comentario

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ABSTRACT

In the mental health literature, the assumption is that if a person is diagnosed with pedophilic disorder using clinical criteria established by the DSM-5, this individual is also engaging in illegal acts, with the further assumption that these acts will be penalized according to the penal code of the country where they occurred. This commentary argues that these assumptions are only partially correct, and that mental health professionals should carefully review legislations defining at what age sexual relationships are considered legal versus illegal before deciding to evaluate, diagnosis, and treat persons who engage in such relationships with children in a particular country. This argument is illustrated with a sample of countries in the Caribbean (e.g., Dominican Republic, Cuba), Central America (e.g., Panamá, Costa Rica), South America (e.g., Colombia, Venezuela), North America (Canada, México, and the United States), Asia (e.g., China, Iran), Europe (e.g., France, Spain), and Africa (e.g., Nigeria, Angola).

Keywords: adolescents, children, legislations, minimal age of consent, pedophilia, UNICEF

RESUMEN

En la literatura sobre la salud mental, se presume que si una persona es diagnosticada con trastorno mental de pedofilia con los criterios diagnósticos establecidos por el DSM-5 esa persona está también involucrado en un acto ilegal penalizado por el código penal del país en donde el acto ocurrió. Este comentario argumenta que esa presunción es parcialmente correcta, y que los profesionales de la salud mental deben revisar cuidadosamente las legislaciones que definen a que edad relaciones sexuales son consideradas legales versus ilegales antes de decidir evaluar, diagnosticar, y tratar personas involucradas en esas relaciones con niños/as en un país determinado. Este argumento es ilustrado con ejemplos de países en las regiones del Caribe (p.ej., Republica Dominicana, Cuba), América Central (p. ej., Panamá, Costa Rica), América del Sur (p. ej., Colombia, Venezuela), América del Norte (Canadá, México, y los Estados Unidos), Asia (p.ej., China, Irán), Europa (p.ej., Francia, España), y África (p.ej., Angola, Nigeria).

Palabras Claves: adolescentes, edad mínima de consentimiento, legislaciones, niños/as, pedofilia, UNICEF

INTRODUCTION

The general assumption is that the act of pedophilia is both a mental disorder and a crime that will be penalized with many years in prison. This assumption, however, is controversial (Kaplan, 2014; Muse & Frigola, 2003). Several mental disorders in the Diagnostic and Statistical Manual of Mental Disorders (5th ed.; DSM-5; American Psychiatric Association, 2013) are also considered violations of the criminal codes in many countries. These include conduct disorder (e.g., aggression to people and animals, destruction of properties), pyromania (purposeful fire-setting with the goal of feeling emotionally excited), kleptomania (stealing objects that are not needed for personal use or for their monetary value, but because the act emotionally excites the individual), antisocial personality disorder (violation of the right of others, often involving irritability and aggressiveness such as repeated physical fights or assaults), and the persistence of some substance-related and addictive disorders such as cannabis use (marijuana) and opioid use disorders. Pedophilic disorder is another mental disorder in the DSM-5 (APA, 2013), but in many countries this disorder is not necessarily a violation of the criminal code, and the behavior of the offender may be “excused” based on medical explanations. For example, Kaplan (2014) observes that pedophilic disorder may be a mental disorder with neurological (e.g., affecting the white matter in the brain) and neurodevelopmental origins (e.g., disturbances in the uterus). Kaplan (2014) therefore concluded that pedophilia is a mental disorder but not necessarily a crime.

The American Psychiatric Association (APA) agrees with Kaplan (2014) when it states that “*there is some evidence that neurodevelopmental perturbation in the uterus increases the probability of development of a pedophilic orientation*” (APA, 2013, p. 699). In addition, in the DSM-5 (APA, 2013) pedophilia is not a crime, it is a mental disorder (Citizen Commission on Human Rights International, 2017). This means that the emphasis should be on treating the client/patient suffering those medical and/or physical problems, with less (or zero) emphasis placed on legal matters associated with the pedophilic act. It should be noted that in the DSM-5 (APA, 2013) the other paraphilic disorders (exhibitionism, sadism, masochism, etc.) are also

considered mental disorders but not criminal acts against the victim.

When clinical diagnostic criteria proposed in the DSM-5 (APA, 2013) to diagnose mental disorders are used in the case of pedophilic disorder, little disagreement exists among mental health professionals regarding that this is, indeed, a mental disorder. The core disagreement is whether pedophilic disorder is also a crime. For example, the American Psychological Association (2013) disagrees with both Kaplan (2014) and the American Psychiatric Association (2013) when in its affirmation that “*The American Psychological Association maintains that pedophilia is a mental disorder; that sex between adults and children is always wrong; and that acting on pedophilic impulses is and should be a criminal act*” (p. 1). The Legal Information Institute (2021) agrees with the American Psychological Association when asserting that:

While pedophilia itself does not give rise to criminal liability, acting on it does. Many jurisdictions [in the United States] make it a felony to engage in sexual contact with minors [generally persons younger than 18 in most states], which would be an example of acting on pedophilia (p.1).

This commentary argues that the interpretation of pedophilic disorder as a crime depends on the region of the world in which the act of pedophilia occurs (Bhugra, 2010), and that the fact that someone is diagnosed with pedophilic disorder with DSM-5 clinical criteria (APA, 2013) does not necessarily mean that the act is also a crime. This argument is illustrated with a sample of countries from the Caribbean (e.g., Dominican Republic, Cuba), Central America (e.g., Panama, Costa Rica), South America (e.g., Colombia, Venezuela), North America (i.e., Canada, México, and the United States), Asia (e.g., Afghanistan, Iran), Europe (e.g., France, Spain), and Africa (e.g., Nigeria, Angola).

DIAGNOSIS OF PEDOPHILIC DISORDER IN THE DSM-5

The DSM-5 observes that the diagnosis of pedophilic disorder is more common among men than women, and is not only “*more uncertain [to verify], but is likely a small fraction of the prevalence in males*” (APA, 2013, p. 698). For this reason, the diagnosis of

pedophilic disorder in men is emphasized in the following discussion.

In the DSM-5, three diagnostic criteria (A, B, and C) are included for diagnosing pedophilic disorder. Criterion A requires that in the past six months the client/patient has been experiencing “*recurrent, intense sexually arousing fantasies, sexual urges, or behaviors [actual sexual acts] involving sexual activity with a prepubescent child or children (generally age 13 years or younger)*” (APA, 2013, p. 697). In this diagnostic criterion, the inclusion of fantasies is critical because this means that the client/patient could be diagnosed with pedophilic disorder on the basis of having such fantasies of engaging in sexual relationships with children in the absence of actual sexual behaviors. It is important to observe, however, that the fact that an adult is having fantasies of engaging in sexual relationships with children or adolescents is not in itself illegal (Fagan, Wise, Schmidt, & Berlin, 2002). Both these fantasies and the pedophilic behaviors (actually engaging in a sexual relationship with a child) are the concerns of mental health professionals (e.g., psychologists, psychiatrists) serving clients/patients diagnosed with pedophilic disorder (with emphasis on Criterion A in the DSM-5 (APA, 2013). In contrast, in the criminal justice system the main concern is the paraphilic behavior and not that the individual is having sexual fantasies about engaging in sexual relationships with children. In its present state, the criminal justice system cannot put people in jail because they are imagining having sex with children or adolescents during the act of masturbation (Fagan et al., 2002). As observed above, however, people can be diagnosed with pedophilic disorder in terms of Criterion A if they are only having fantasies involving sexual relationships with prepubescent children and not acting on those fantasies.

Another important difference between Criterion A in the DSM-5 (APA, 2013) and the criminal justice systems in the countries discussed in this commentary (see Tables 1–4) is that Criterion A emphasizes sexual inclinations towards prepubescent children as a condition for diagnosing people with pedophilic disorders, whereas the criminal justice system defines a pedophile as any person engaging in a sexual act with a minor, as defined in the penal code in such countries. In the criminal justice system, the term minor refers to persons below the age of majority as

defined by the statutory law of a given country regulating the age at which it is legal to engage in sexual relationships (Legal Information Institute, 2021). In the case of the countries discussed in this commentary, the designation of a minor generally ranges from persons younger than the age of 12 to persons younger than the age of 18 (see Tables 1–4). This range in age includes prepubescent children, but in many countries an individual would be considered a pedophile for violating the statutory law regulating the definition of minor and not only because that individual is having sex with prepubescent children (i.e., with children only 13 years or younger, as required by Criterion A in the in the DSM-5).

The DSM-5 (APA, 2013) names two other criteria for the diagnosis of pedophilic disorder. Criterion B requires that the client/patient reports that when he engages in such sexual urges, fantasies, or behaviors they cause “*marked distress or interpersonal difficulty*” (p. 697). The third criterion (Criterion C) stipulates that to be diagnosed with pedophilic disorder, the client/patient should be “*at least age 16 years and at least 5 years older than the child or children in Criterion A*” (p. 697). For example, if John Doe is 14 years old and is having sex with Jane Doe who is 13 years old, he would not be diagnosed with this mental disorder because he is not at least 16 years old and is not five years older than Jane Doe. In this example, although Jane Doe is a prepubescent child (Criterion A), John Doe would not be diagnosed with pedophilic disorder because he does not meet the stipulations in Criterion C.

In the case of Criterion C, the DSM-5 also includes a note stating that the clinician should not make the diagnosis of pedophilic disorder in the case of “*an individual in late adolescence involved in an ongoing sexual relationship with a 12- or 13-year-old*” (APA, 2013, p. 697). According to the World Health Organization [WHO] (2022), “*adolescents . . . are young people between the ages of 10 and 19 years*” (p. 1). The period of late adolescence covers the age between 17 and 19 years. That stipulation suggests that if John Doe is in the late adolescence period (17–19 years old) and is engaged in a sexual relationship with a child between the ages of 12 and 13, John Doe should not be diagnosed with pedophilic disorder, but he could be charged of criminal sexual offense against children. As noted below, however, an individual in late adolescence engaging

in sexual acts with children or adolescents would not necessarily be violating any laws because the criminal justice systems in various countries have different interpretations of what constitutes a criminal sexual offense against children or adolescents.

Additional stipulations in the diagnosis of pedophilic disorder include: (1) the therapist must also confirm during the initial clinical interview that the client/patient only experiences such sexual urges, fantasies, or behaviors (actual sexual relationship) with children (see APA, 2013, p. 697); (2) determine if the client/patient is sexually attracted to males, females, or to both genders (see, APA, 2013, p. 698); (3) determine if the pedophilic act is limited to incest and not to other sexual encounters in which children are involved (p. 698); and (4) it is important to avoid confusing pedophilic disorder with other mental disorders in the DSM-5 including, for example, antisocial personality disorder, alcohol and substance use disorders, and obsessive-compulsive disorder in which behaviors suggesting pedophilic disorder may be present but in the absence of clinical criteria specifically recommended in the DSM-5 for diagnosing people with pedophilic disorder (see APA, 2013, p. 700, for more details with emphasis on the differential diagnosis associated with the diagnosis of pedophilic disorder).

Of all the paraphilic disorders identified in the DSM-5 (APA, 2013), pedophilic disorder is one of three paraphilias with a high probability of being a concern to the criminal justice system in the United States (Grudzinska, & Henry, 1997; United States Attorney's Office Eastern District of North Carolina, 2021) and in other cultures (Bhugra, 2010). The others are exhibitionistic disorder (exposing the genitals to a nonconsenting person) and voyeuristic disorder (becoming sexually aroused by spying on others engaged in private sexual activity), which put the perpetrator at risk of ending up in the criminal justice system (Långström, 2010; United States Department of Justice, 2016; United States Attorney's Office-District of Columbia, 2021). Depending on the severity of the crime, the penalties for these paraphilic disorders generally include incarceration, fines, and probation (White, 2022).

In the case of other paraphilic disorders, however, three scenarios can be identified. First, the individual

clearly does not engage in a criminal act (Federoff, Di Gioacchino, & Murphy, 2013). For example, in the case of fetishistic disorder (attachment to nonliving objects such as females undergarments, leather clothing, female footwear, or to nongenital body parts such as feet, hair, and toes; see APA, 2013, p. 701) and transvestic disorder (becoming sexually aroused by cross-dressing), the individual has the choice to engage in these paraphilic disorders without criminal consequences (i.e., people cannot be put in jail because they feel sexually aroused by specific body parts during a sexual act, or because they become sexually excited when dressing in clothes from another gender). Second, the paraphilic act is considered criminal only if it is reported to authorities. For example, in the case of sexual masochism and sexual sadism disorders, a person might engage in a mutually agreed-upon sexual relationship, but then find that this relationship took a dangerous physical and/or emotional path. In the third scenario, the paraphilic act is reported to the police only after the victim has attempted to avoid it without success. This is the case with frotteuristic disorder, where the victim often tries to avoid being assaulted by either verbally demanding that the perpetrator stop or by moving away from them. If these tactics do not work, the victim may decide to call the police. In this scenario, the frotteuristic individual may avoid problems with the police by quickly fleeing, but will generally attempt the same frotteuristic act with a different victim.

Among all DSM-5 (APA, 2013) paraphilic disorders, however, in the United States pedophilic disorder is the only paraphilic disorder where the person convicted of this crime is required to register with the Department of Justice in a given state. Furthermore, the information about this behavior is available to the general public without consent from the perpetrator of the pedophilic act (Legal Information Institute, 2021).

Pedophilia is the only disorder among all paraphilic disorders in the DSM-5 where the age of the child is a critical component during the diagnosis of a client/patient with pedophilia (see APA, 2013, pp. 686–704). This emphasis on the age of the victim in the case of pedophilic disorder make the perpetrator of this disorder more likely to be jailed, in comparison with other paraphilic disorders in the DSM-5 (Savron, 2010). As noted below, however, the variability of the

age of consent in the countries included in this commentary (see Tables 1–4) is what creates problems labeling sexual relationships with children. Depending on the criteria, the same act may be labeled in several ways—either a pedophilic disorder in need of treatment (American Psychiatric Association, 2013; Kaplan, 2014), a crime which should be punished with many years in jail (American Psychological Association, 2013), or a completely legal sexual relationship between a child and an adult, because the legality of such relationships depends on the definition of age of consent established by the particular penal code under consideration in a given country (Chun, 2014; Gibson, 2019; Graupner, 2000; Legal Information Institute, 2021).

DEFINITION OF AGE OF CONSENT

Clinicians may not find it difficult to consider the age factor emphasized in the DSM-5 (APA, 2013) when diagnosing the client/patient with pedophilic disorder, but in the context of considering pedophilia illegal versus legal they may encounter a real dilemma. Namely, that what is illegal or legal depends on the minimum age of consent to engage in a sexual relationship as established by the criminal legal system of a given country.

The following narrative is an excellent illustration of the age of consent:

The age of consent is the legally defined age at which a person is deemed legally competent to consent to sexual activity. Any individual violating this law is open to prosecution under statutory rape laws. For example: Jane and John are in a romantic relationship. The age of consent that applies to their location is age sixteen. If Jon is fifteen and Jane is twenty-three, any sexual contact between them is considered statutory rape, regardless of whether or not it was consensual, and Jane can be criminally prosecuted [the inverse also applies if John is twenty-three and Jane is fifteen]. The individual whose age is below the age of consent is considered to be the victim, and the sexual partner whose age exceeds the age of consent is seen as the offender (What is the Age of Consent?, 2022a).

The term statutory rape

is defined as sexual contact with an individual who is below the legal age of consent. This law usually refers to adults engaging in sexual activity with minors.

There are many different terms, all of which can refer to statutory rape, sexual assault, rape of a child, corruption of a minor, and many others (What is Statutory Rape?, 2022b).

The United Nations International Children's Emergency Fund [UNICEF] (2022) recommends that the minimum age of consent should be 18 years, and that below this age the individual should be considered a child. This recommendation, however, is not universally applied across all countries in the world. This observation is illustrated with the following narratives.

VARIABILITY OF CONSENT ACROSS COUNTRIES IN THE WORLD

Table 1 shows a sample of Caribbean countries and Table 2 displays a sample of Central and South American countries illustrating the variability of the minimum age of consent to legally engage in a sexual relationship. The information in Tables 1 and 2 is in the public domain, and examples are in *Ages of Consent in North America* (2022), Murigi (2018) and Sedletzki (2016).

In Table 1, two areas are important to emphasize in the present context. First, in the case of Aruba and Saint Vincent/Grenadines, it is permissible to engage in a sexual relationship with a partner who is at least 15 years old. In the same table, however, the minimum legal age for sexual relationships changes to 16 years old (e.g., in Antigua and Barbuda) and 18 years old (e.g., in the Dominican Republic). Therefore, what is legal or illegal depends on the laws of a particular country.

Second, the fact that sexual relationships with minors (e.g., below the age of 15, 16, or 18 in the above examples) would be considered a crime (in terms of the violation of the legal definition of minimum legal age of consent in a given Caribbean country) does not necessarily mean that the individual having sex with minors also meets the clinical definition of pedophilic disorder according to the DSM-5 (APA, 2013). As observed above, the person initiating the sexual encounter with a minor would be diagnosed with pedophilic disorder only if he meets Criterion A in the DSM-5, which specifies sexual relationships with prepubescent children, that is, a person below the age of 13 (see American Psychiatric Association, 2013, p. 697).

Table 1

Minimum Age to Legally Engage in a Sexual Relationship with an Adult in a Sample of Caribbean Countries.

Minimum Age	Caribbean Country
15	Aruba, Saint Vincent/Grenadines
16	Antigua and Barbuda, Belize, Cuba, Dominica, Grenada
18	Jamaica, Puerto Rico, Saint Lucia
	Dominican Republic, Haiti, Trinidad and Tobago

The minimum legal age to engage in sexual relationships also varies across a sample of Central and South American countries (see Table 2). Again, while in some countries (e.g., Bolivia) it is legal for an adult to engage in a sexual relationship with a 14-year-old sexual partner, the issue of legality quickly changes in other countries in the same region (e.g., Costa Rica = 15 years old).

In addition, it is important to observe that in the case of Chile and Paraguay the minimum age of 14 years applies only in the case of heterosexual acts, but if the sexual relationship included homosexual acts, the minimum legal age to engage in such acts changes to 16 years in the case of Paraguay and 18 years in the case of Chile. Sedletzki (2016) observes that these changes in ages in the case of homosexual relationships may be perceived as discrimination and/or institutional racism (Paniagua, 2014) against the homosexual orientation or the LGBT community. Again, although it would be a crime to engage in sexual relationships with a partner below the minimum age established by countries in Table 2 the diagnosis of pedophilic disorder applies only when DSM-5 (APA, 2013) diagnostic criteria are met, and particularly Criterion A.

Table 2

Minimum Age to Legally Engage in a Sexual Relationship with an Adult in a Sample of Central and South America Countries.

Minimum Age	Central and South America Country
14	Bolivia, Brazil, Chile (heterosexual), Colombia, Ecuador, Honduras, Paraguay (heterosexual), Perú
15	Costa Rica, Uruguay
16	Paraguay (homosexual acts), Venezuela
18	Argentina, Chile (homosexual acts), El Salvador, Guatemala, Nicaragua, Panamá

In the case of countries in North America (Canada, México, and the United States), mental health professionals (clinical psychologist, psychiatrists, etc.) would essentially encounter the same dilemma with diagnostic versus legal issues when providing mental health services to adults who engage in sexual relationships with children and adolescents. In México, the law/legislation regulating the minimum age to legally engage in a sexual relationship with an adult varies across Mexican states, ranging from 12 to 18 years old (Gibson, 2019; Nares Hernández, (2019). For example, in the state of Jalisco the minimal age for a consenting sexual relationship is 18 years. But if John Doe wants to have sexual relationships with individuals below that age (18 years) without encountering problems with the legal system in México, the best strategy is for him to move either to México City or to Zacatecas where the minimal legal age of consent is 12 years. In these situations, John Doe would be diagnosed with pedophilic disorder according to Criterion A in the DSM-5 (APA, 2013) because he is having sexual relationships with prepubescent children, yet his sexual relationships with those children would be considered legal in both México City and Zacatecas.

In addition to México City, states in the Republic of México legally allowing sexual relationships with individuals at the age of 12 years include Guerrero, Michoacan, Morelos, Puebla, Sinaloa, Sonora, and Tamaulipas. In these states, a pedophile would most likely be diagnosed with pedophilic disorder according to Criterion A in the DSM-5 for having sex with prepubescent children (American Psychiatric Association, APA, 2013), but would not be put in jail. Committing these same acts with a 12-year-old child would land the pedophile in jail in all Caribbean, Central, and South American countries (see Tables 1–2), in all European countries (see Table 3), and several countries in Africa (see Table 4).

The Varghese Summersett legal team located in Fort Worth, Texas, is among the best sources for mental health professionals (e.g., psychologists, psychiatrists, social workers, etc.) and other professionals serving children (e.g., general physicians, pediatricians, etc.) interested in navigating the complexity of this issue in the United States. In one of their internet links, particularly applicable to the content of this paper, the Summersett legal team (Varghese, 2021) alerts mental health professionals about the fact that

the age of consent for sexual relationships in the United States depends on the particular state where the mental health professional is providing clinical services. For example, in Alabama the minimum age for an individual to legally consent to a sexual act is 16 years old. In Colorado, however, that age is 17 years, and 18 years in other states (e.g., California). Across the United States, an individual could be clinically diagnosed with pedophilic disorder if he meets diagnostic criteria established by the DSM-5 (American Psychiatric Association, 2013), but the designation of pedophilia as a criminal act depends on the state where the incident occurred. For example, the sexual act would be considered criminal in California if it occurs with a sexual partner who is below 18 years old, but the same act would be considered legal in Alabama, because in this state it is legally allowed to have sexual relationships with individuals at the age of 16 years.

In the case of Canada:

The age of consent for nonexploitative sexual activity is now 16 years . . . Nonexploitative activity is defined as sexual activity that does not involve prostitution or pornography, and where there is no relationship of trust, authority or dependency between the persons involved. A coach, spiritual leader, teacher, school principal, guidance counsellor or family member are all examples of persons in a position of trust or authority with youth. (Bellemare, 2008, p. 475)

In Canada, therefore, John Doe could be charged of a criminal offense if he is engaged in a sexual act with Jane Doe who is below the age of 16 years. But the diagnosis of pedophilic disorder would apply only if he were at least 16 years old and at least five years older than Jane (Criterion C in the DSM-5) when he engaged in that act. It should also have been reported during the clinical interview that he has been engaged in actual sexual relationships with pre-pubescent children or been having fantasies about such relationships (Criterion A), and that this situation was creating “marked distress or interpersonal difficulty [Criterion B]” (American Psychiatric Association, 2013, page. 697). As noted in Table 3 (see Ages of Consent in Europe, 2022), in Europe, the age of consent also varies by country. Again, in these countries the adult would be diagnosed with pedophilic

disorder only in terms of diagnostic criteria established by the DSM-5 (American Psychiatric Association, 2013).

Table 3
Minimum Age to Legally Engage in a Sexual Relationship with an Adult in Europe.

Minimum Age	European Country
14	Albania, Austria, Bosnia and Herzegovina, Bulgaria, Estonia, Germany, Hungary, Italy, Liechtenstein, Montenegro, North Macedonia, Portugal, San Marino, Serbia
15	Croatia, Czech Republic, Denmark, France, Greece, Iceland, Monaco, Poland, Slovakia, Slovenia, Sweden
16	Andorra, Armenia, Azerbaijan, Belarus, Belgium, Finland, Georgia, Kazakhstan, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Northern Cyprus, Norway, Romania, Russia, Spain, Switzerland, Ukraine, United Kingdom.
17	Cyprus, Ireland.
18	Turkey.

The data in Table 4 (see Ages of Consent in Africa, 2022) again shows the dilemma of differentiating the legal definition of a pedophile based on statutory laws versus the clinical definition of pedophilic disorder using DSM-5 criteria (APA, 2013). For example, in Niger the age of consenting sexual relationship is 13 years. Therefore, although it is legal in Niger to have sex with a 13-year-old child, the person who engages in such activities would be diagnosed with pedophilic disorder according to Criterion A (i.e., sex with prepubescent children, generally age 13 or younger) in the DSM-5 (APA, 2013).

Table 4
Minimum Age to Legally Engage in a Sexual Relationship with an Adult in a Sample of African Countries.

Minimum Age	African Country
13	Niger
14	Angola, Cape Verde, Madagascar, Mauritius
15	Comoros, Djibouti, Guinea, Seychelles, Togo
16	Algeria, Benin, Cameroon, Chad, Ghana, Lesotho, Malawi, Namibia, Senegal, South Africa, Zambia, Zimbabwe.
18	Burundi, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Kenya, Lesotho, Liberia, Mauritania, Nigeria, Rwanda, Sierra Leone, Somalia, Tunisia, Tanzania, Uganda.

Table 4 shows results similar to those reported in the previous tables. Namely, that what is considered legal versus illegal in a sexual relationship in African countries depends on the statutory law regulating the age at which sexual relationships are permitted. For example, in Niger it is legal to engage in such relationships with 13-year-olds, but the same relationships are illegal in other African countries where the minimum age to engage in sexual relationships is higher than 13 years (e.g., Angola, Comoros, Algeria, and Botswana).

In the present context, two observations are relevant. First, the problem regarding the variability of the minimum age for consenting sexual relationships across all countries previously discussed is also a problem in Asian countries (see *Ages of Consent in Asia*, 2022). For example, in Mainland China the age of consent for sexual activity is 14 years, whereas in Hong Kong it is 16 years, and in Bhutan it jumps to 18.

Second, it may be very difficult to determine under which situations sexual relationships among people are legal versus illegal in countries without specific statutory laws. Examples of countries with no legal age of consent include Afghanistan, Iran, Kuwait, Maldives, Oman, Qatar, and Saudi Arabia (*Ages of Consent in Asia*, 2022). In these countries, one must be married to be involved in a sexual relationship with a sexual partner (a situation probably very difficult to monitor and penalize with criminal and/or civil laws). In addition, in some of these countries a minimum age is legally established to allow their citizens to marry. For example, in Afghanistan the minimum age of marriage is 16 for men and 18 for women, but in Pakistan both the man and the woman must be 18 years old to be allowed to marry. In Saudi Arabia, however, all marriages under the age of 18 years for both men and women require court approval.

DISCUSSION

The main argument in this commentary is that diagnosing people with pedophilic disorder does not mean that this condition will necessarily lead to a criminal offense. This argument was illustrated with data from several regions around the world, in which the legality of sexual relationships depends on the statutory law defining the age of consent in such

relationships. This commentary also makes a distinction between the clinical definition of pedophilic disorder in terms of DSM-5 (APA, 2013) diagnostic criteria and the legal definition of a pedophile. For example, in the Dominican Republic and Haiti, people charged with having sex with a partner below the age of 18 years would be considered pedophiles and put in jail for many years, but they would only be diagnosed with pedophilic disorder if they met the diagnostic criteria in the DSM-5 (APA, 2013), particularly Criterion A (sex with prepubescent children). The same observation can be illustrated with other countries in Tables 1–4.

UNICEF defines children as boys and girls below the age of 18 (Najeeb, 2020; UNICEF, 2019, 2022a). This organization (UNICEF, 2019) suggests that the main reason for adopting this definition (children = below 18 years) is that:

entering a marriage [or a sexual relationship] before 18 years leads to a range of negative consequences, particularly for girls. These include a higher probability of early pregnancy and childbirth, which results in higher-than-average maternal morbidity and mortality, increased likelihood of experiencing intimate-partner violence, higher rates of depression and a lower chance of completing education and reaching economic empowerment. (p. 3)

Looking at the data (Tables 1–4), it is clear that the definition of the term child suggested by UNICEF (2019, 2022a) is not shared by many countries in the world in regards to applying a minimum legal age of consent to sexual relationships. Several countries listed in Tables 1–4, follow the age recommendations from UNICEF (e.g., Dominican Republic, Argentina, Turkey, and Egypt). A major goal of UNICEF, however, is to have a worldwide standard mandating that the legal definition of a child is a person below 18 years of age (Najeeb, 2020). If the proposed definition of a child by UNICEF (2019, 2022a) is universally accepted by all countries in the world, the assumption is that mental health professionals would be able to inform their clients/patients diagnosed with pedophilic disorder with DSM-5 (APA, 2013) criteria that they are in violation of the criminal code dealing with the minimum age of consent for sexual relationships, regardless of the country where that diagnosis is applied.

In this situation, however, it would be necessary to review the first and third diagnostic criteria for pedophilic disorder in the DSM-5 (APA, 2013) for revision in future editions of the DSM. These criteria currently state that to make this diagnosis the clinician must be sure that the client/patient is engaging (or is having fantasies) associated with sexual relationships with prepubescent children (Criterion A) and that the client/patient “*is at least age 16 and at least 5 years older than the child or children*” (page. 697, Criterion C). If the American Psychiatric Association (which produces the DSM) agrees with the definition of the term child proposed by UNICEF (2019, 2022a), Criterion A in the DSM-5, which emphasizes “*sexual activity with a pre-pubescent child or child (generally age 13 years or younger)*” (American Psychiatric Association, 2013, p. 687), would need to be changed in future editions of the DSM-5 as follows: “*The individual is at least 18 years old and the sexual partner is below the age of 18 years*”. In addition, the stipulation that the individual must be “*at least 5 years older than the child or children [Criterion C]*” (p. 697) would not be necessary to make the diagnosis of pedophilic disorder and this diagnosis would not conflict with statutory laws regulating the minimum age for consenting to sexual relationships, assuming that the age below 18 years in the definition of the term child is shared by all countries in the world as per UNICEF’s (2019, 2022a) recommendation.

At this moment, however, there are some countries (Chun, 2014; Green, 2002) that are against adopting that recommendation from the UNICEF (2019, 2022a) for cultural reasons. For example, Green (2002) observes that the culture of the Siwa Valley, North Africa, allows its people to engage in sexual relationships with prepubescent children. Chun (2014) observes that such culturally-accepted relationships among the Siwans would create a dilemma for clinicians applying DSM-5 (APA, 2013) criteria when diagnosing pedophilic disorder in the Siwa culture. This means that mental health professionals would have to make sure that they were well informed about statutory laws across different cultures regulating the minimum age to consent to sexual relationships. This recommendation would help those professionals to avoid two important problems in their clinical practice. First, they would avoid conflicts between those laws and the diagnosis of their client/patient with

pedophilic disorder. Second, clinicians would avoid arguments with their clients/patients who believe, correctly, that their sexual activities with prepubescent children (13 years old and younger) as well as with children meeting the definition of the term child recommended by UNICEF (i.e., below 18) are legal in the particular country where the client/patient is engaged in such relationships (see Tables 1–4).

The fact that statutory laws are created to define the term minimum age of consent does not imply that these laws are protecting the rights of children to disagree with them. This is particularly the case when the child is considerably below the age UNICEF recommends to define a child (i.e., below 18 years) including, for example, 13 years old (in Niger), 12-year-old (in México City), and other examples in Tables 1–4 with countries enforcing statutory laws regulating the age at which sexual relationships are legal among their people and including individual below the age of 18 considered children in the definition of this term recommended by UNICEF. Actually, in the present context the rights of children are violated because they do not have the political power to prevent those laws from imposing on them the age at which is legally appropriate to engage in sexual relationships with adults. As noted by UNICEF, children have the right to know their rights, and particularly their “*right to say what they think should happen when adults are making decisions that affect them and to have their opinions taken into account*” (UNICEF, 2022b, Article 12).

That knowledge, however, has no meaning in the minds of children when they find out their rights to express their opinion regarding important matters in their lives are severely restricted by statutory laws they are not able to change in their favor such as, for example, laws permitting adults to have a sexual partner at ages ranging from 12 to 17 years, dictating that children can be married with permission from their parents, or requiring the rapist to marry an adolescent victim instead of putting him in jail (Gray, 2016; Sedletzki, 2016; Stark, Bancroft, Cholid, Sustikarini, & Meliala, 2012; United Nations Children’s Fund, 2020). In addition, as observed by Federoff et al. (2013), “*sex acts without consent by definition are criminal*” (p. 4). Federoff et al. (2013) also points out that “*children cannot legally give consent*” (p. 4). In the present context, this means that statutory law takes the lead in terms of deciding when the sexual

relationship between an adult and a child is legal or not legal (criminal) without the explicit consent of the child who, by definition, is not legally allowed to give consent.

The author's opinion of this commentary is that all sexual activities with individuals below 18 years should be considered illegal regardless of the country where they reside. In addition, the main criteria to diagnose an individual with the pedophilic disorder should be applied to individuals at least age 18 years and having sex with another individual who is below 18 years (i.e., a child, in the definition of this term by UNICEF, which includes a prepubescent child). At this moment, however, this recommendation is challenging to enforce in many countries, mainly because of their statutory laws regulating the age at which people are legally engaged in sexual relationships and cultural considerations (Bhugra, 2010; Green, 2002). In this scenario, the moral and ethical action required of mental health professionals and other professionals serving children (e.g., physicians) implies they should join forces with UNICEF, which is prominent among the organizations dealing with the rights of children, in defining as children people under age 18 and to protect them from adult sexual predators.

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