LEGAL PRACTICE AND SOCIAL CONSTRUCTS OVERRIDE LEGAL INTENT: MAINTENANCE OF THE REVICTIMIZATION OF CHILD AND ADOLESCENT VICTIMS OF SEXUAL ABUSE[1]

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TABLE OF CONTENTS

LIST OF FIGURES

I. INTRODUCTION

Child and adolescent sexual abuse is an enormous problem in Cochabamba, Bolivia. Its consequences are devastating for the victim and for society. The perpetrators of this abuse are extremely dangerous and not like other criminals due to their ability to manipulatively destroy lives, leave no evidence, and deceive others as to their true identity. The victims of these sexual predators, children and adolescents, are some of the most vulnerable and defenseless persons among us. Thus, it is of the greatest importance for the Bolivian Government and society to prevent and manage appropriately the devastating personal and social effects of the sexual abuse of children and adolescents.

The Government of Bolivia, through its Constitution, international treaties, and national laws, has assumed the responsibility and made the promise to protect and care for children and adolescents. The Bolivian Government, therefore, has a duty to prevent sexual abuse, to protect children and adolescents who have been sexually abused, and to try, sentence, and incarcerate sexual predators. However, before sexual predators can be tried, sentenced, and incarcerated, they must first pass through the preparatory phase of the judicialization process. Therefore, in cases of sexual abuse, it is of the upmost importance to manage the development of the preparatory phase with sensitivity and precision.

Of particular concern are the practices and social constructs surrounding the preparatory phase of cases of sexual abuse. These practices and social constructs have given rise to frequent instances of revictimization for child and adolescent victims of sexual abuse, and have also obstructed the judicialization of sexual predators. The purpose of this article is to examine several of these practices and social constructs, how they affect the preparatory phase of the judicial process, and how these practices and social constructs create a situation that violates children and adolescents' constitutional and international rights. Each step of the preparatory phase deserves its own in-depth treatment, but due to considerations of time and space, only the most crucial aspects of seven vital steps of the preparatory phase are considered: denunciation; the medical forensic exam; declaration; apprehension; the imposition preventative detention; cessation of preventative detention; and the application of *medidas sustitutivas*.

However, before exploring these steps of the preparatory phase, it is necessary to first briefly review the literature on the prevalence of child and adolescent sexual abuse, the

consequences for the victim and society, the profile and strategies of sexual predators, and the vulnerability and fragility of the victim. This literature review serves two purposes: (1) to provide the context and perspective needed to better understand the gravity of the sexual abuse of children and adolescents, the character of those who sexually abuse children and adolescents, and the desperate need for society to better handle this atrocity; and (2) to provide an accessible, working bibliography of information on these topics for the judges, prosecutors, and attorneys of Cochabamba, Bolivia. Following the brief literature review is the analysis from the victim's perspective of the social constructs and legal practices surrounding the seven steps of the preparatory phase mentioned above.

II. MAGNITUDE OF THE PROBLEM

A well known professor, former judge, author, and practicing attorney in Bolivia, Filiberto Camargo, repeatedly stated that, "Sexual abuse is the worst of all crimes, worse than homicide, because it leaves the victim alive, though dead inside." Horrifyingly, sexual abuse is a hidden, silent, global pandemic. The prevalence of child and adolescent sexual abuse is estimated to vary from 4% to 29% for males[1] and 20% to 30% for females.[2] According to the United Nations General Assembly, child and adolescent sexual abuse crosses all racial, cultural, educational, and socio-economic lines, and occurs in every region and country of the world.[3]Proving no exception, in Cochabamba, Bolivia, 34% of girls and 23% of boys reported having been sexually abused.[4] Seventy percent of these victims reported that they had never told anyone about the abuse prior to the study.[5] Despite such alarming statistics, many cases of child

[1]Holmes & Slap, Sexual Abuse of Boys: Definition, Prevalence, Correlates, Sequelae, and Management, 280 The Journal of the American Medical Association 1855, 1856, 1857 (1998); The Independent Expert Paulo Sérgio Pinherio, Report of the Independent Expert for the United Nations Study on Violence Against Children, ¶ 44, delivered to the General Assembly, U.N. Doc. A/61/299 (Aug. 29, 2006) [hereinafter United Nations Study].

[2]Shanta R. Dube et al., Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim, 28 American Journal of Preventive Medicine 430 (2005); United Nations Study, supra note 1, at ¶ 44.

[3]United Nations Study, supra note 1, at ¶ 1.

[4]Brisa De Angulo, Child Sexual Abuse and the Conspiracy of Silence, 34 (2009). This study was conducted with 3,722 participants between the ages of 12 and 17, both male and female.

[5]Id., at 26.

and adolescent sexual abuse are never disclosed and remain hidden.[6] Some of the most frequently reported reasons for the underreporting of sexual abuse are:

1) Sexual abuse is difficult to identify and prove and easy to deny.

2) Children are given few legal rights and are often not believed.

3) Efforts to treat focus on punishing the offender. In family situations, the other family members are less likely to report because prosecution upsets the family balance both economically and physically.

4) Those investigating cases feel discomfort in talking about sexual issues and do not screen cases properly or do not recognize signals that sexual abuse is occurring.

5) Treatment methods are not coordinated or sufficiently effective to elicit a desire for treatment on the part of families or victims. Investigators, too, feel treatment is not effective enough to warrant the trauma children are exposed to when the case is reported.

6) Society's taboo on sexual deviations places a stigma on both victim and predator and therefore, not to report is not to suffer disgrace.[7]

Another possible aspect that may contribute to the underestimation of sexual abuse is the "false allegations movement." This movements maintains that when it comes to allegations of sexual abuse, parents may for a number of reasons fabricate false allegations that they actually believe to be true. Also, this movement holds that children will fabricate or embellish false allegations of sexual abuse to please adults in authority positions and their peers.[8] However, many authors debate the truth of these claims and have found that this movement may actually discourage those who would otherwise disclose sexual abuse.[9] The more child and adolescent

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[6] J. Bays & D. Chadwick, Medical Diagnosis of the Sexually Abused Child, 17 Child Abuse & Neglect 91-110, as cited in Kamala London, Maggie Bruck, Stephen J. Ceci & Daniel W. Shuman, Disclosure of Child: What Does the Research Tell Us About the Ways That Children Tell?, 11 Psychology, Public Policy, and Law 194 (2005).

[7] Cynthia Crosson-Tower, Understanding Child Abuse and Neglect 127 (4th ed. 1998).

[8] Id., at 125.

[9] See T. Nay, True and False Allegations of Child Sexual Abuse (1995) (discussing the false allegations movement).

[10] Understanding Child Abuse and Neglect, supra note 7, at 125.

victims think they will not be believed, the less likely they are to disclose the sexual abuse. This movement may, therefore, actually be contributing to non-disclosure and the underestimation of sexual abuse.[10]

III. CONSEQUENCES FOR THE VICTIM

Child and adolescent sexual abuse has lifelong, devastating effects on the victims. Camargo describes the consequences of sexual abuse as incalculable and states that the abuse becomes "a permanent source of pain and more pain that penetrates to the most profound aspects of the human being and profoundly affects relationships with other persons, and in some cases it affects the victim so much as to make her lose the will to live."[11] Felitti found that victims of sexual abuse presented an increased risk of developing unhealthy patterns and behaviors such as alcoholism, drug abuse, depression, suicide, smoking, poor self-rated health, sexual intercourse with more than 50 partners, sexually transmitted diseases, and an increased risk of developing severe obesity and physical inactivity.[12] Other consequences associated with child and adolescent sexual abuse are self-mutilation, sleep disorders, low self esteem, eating disorders, inability to trust, and attachment disorders.[13] Roland Summit reported that sexually abused children develop coping mechanisms such as pathological dependency, self-punishment, splitting of reality, selective reconstruction of reality, multiple personalities, hysterical reactions, projection of rage, altered consciousness, delinquency, and domestic martyrdom.[14]

Furthermore, Fellitti and colleagues found that adverse childhood experiences, such as child and adolescent sexual abuse, had a strong relationship with the ten leading causes of death in adults.[15] Child and adolescents sexual abuse has also been correlated with negative effects on areas of the brain such as the left neo-cortex, corpus callosum, amygdale, and the hippocampus.[16] Researchers have also found that victims of sexual abuse show increased electroencephalogram abnormalities[17] and decreased left/right cortical integration.[18] These effects on the brain negatively impact the productivity, health, and behavior of affected victims.

These consequences also have devastating effects on victims' ability to form stable relationships at the family level and work level. The ability of the victim to later in life trust a spouse or intimate partner is seriously eroded. Some victims' problems with depression, fits of

[11] Filberto Camargo, Las victimas niñas/os y adolescentes también tienen derechos, 7 (2003).

[12] Vincent J. Felitti et al., Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experience (ACE) Study, 14 American Journal of Preventive Medicine 245, 249, 250 (1998) [hereinafter ACE Study]. Felitti's study was conducted with 18,000 participants, 21.7% of whom reported having been victims of

sexual abuse.

[13] Eli Somer & Sharona Szwarcberg, Variables in Delayed Disclosure of Childhood Sexual Abuse, 71(3) American Journal of Orthopsychiatry 332 (2001); see D. Finkelhor, The sexual abuse of children: Current research review, 17 Psychiatric Annals 233 (1987).

[14] Roland C. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177, 184 (1983).

[15] ACE Study, supra note 12 (stating that the ten leading cause of death in adults are linked with adverse childhood experiences).

[16] Martin H. Teicher et al., The neurobiological consequences of early stress and childhood maltreatment, 27 Neuroscience and Biobehavioral Reviews 33, 35 (2003).

[17] Y. Ito et al., Preliminary evidence for aberrant cortical development in abused children: A quantitative EEG study, 10 Journal of Neuropsychiatry and Clinical Neuroscience 298 (1998), as cited in M.H. Teicher et al., Childhood Neglect Is Associated with Reduced Corpus Callosum Area, 56 Biological Psychiatry 80 (2004).

[18] F. Schiffer, M.H. Teicher, & A.C. Papanicolaou, Evoked potential evidence for right brain activity during the recall of traumatic memories, 7 Journal of Neuropsychiatry and Clinical Neuroscience 169 (1995), as cited in Childhood Neglect Is Associated with Reduced Corpos Callosum Area, supra note 17, at 80. rage and anger, and chronic suspicion of ulterior motives produce a great deal of suffering in children and family members, who often think the behavior of the victim is due to some fault of their own. Furthermore, chronic suspicion, paranoia, and inability to trust also affect many victims' ability to work productively with work associates.[19]

Not only does sexual abuse affect victims' ability to form relationships and be productive, but it also affects the safety of individuals within society. The U.S. department of justice found that abused children are 40% more likely to engage in delinquent activities and to commit crimes as adults.[20] The study also found that 40% of sexual aggressors were sexually abused as children. De Angulo and Losada stated that victims of sexual abuse often find it difficult to relate to others on non-sexual terms and tend to find themselves stuck in a "cycle of violence, continually generating violence against themselves and against other persons."[21] In short, the consequences of sexual abuse affect us all, and therefore we all have an interest in preventing and managing properly this atrocity and its devastating effects.

IV. THE SEXUAL PREDATOR

Sexual predators are a very distinct type of criminal. The personality of a sexual predator is close to that of a psychopath. Sexual predators are extremely charming, manipulative, conniving, and cruel; they are expert liars.[22] Some portray themselves as gentle and defenseless, and others portray themselves as people willing to help and save those who are in need.[23] Most predators abuse children and adolescents to feel power and control.[24] In an awareness program several inmates in a maximum security prison expressed their motivations for sexually abusing children and adolescents. One inmate stated, "I look for the kid who looks like he needs attention." Another inmate stated, "I used to be awed at the power I could have over my victims, like they had no idea what I was doing. I couldn't believe someone hadn't told them something about sex. But at that time, I'm sure I was glad no one had."[25]

[19] Ellen Bass & Laura Davis, The Courage to Heal: A Guide for Women Survivors of Child Sexual Abuse 321-44 (1988).
[20] Cathy Spatz Widom, The Cycle of Violence (1992).
[21] Luz Stella Losada & José Miguel De Angulo, Manual para el Manejo Integrado de Niños, Niñas, y Adolescentes que han sido Víctimas de Agresiones Sexuales 79 (2005) [hereinafter Manual].
[22] Anna C. Salter, Predators, Pedophiles, Rapists, & Other Sex Offenders: Who They Are, How They Operate, and How We Can Protect Ourselves and Our Children 40 (2003).
part about how sexual predators must lie, and because they do it so frequently, they become experts.
[23] Luz Stella Losada, Brisa L. De Angulo, & Jose M. De Angulo, Los Depredadores Silenciosos de Nuestras/os Hijas/os 88 (2004).
[24] Id., at 92.
[25] Understanding Child Abuse and Neglect, supra note 7, at 136.

The mind-bending part is that during the abuse, when the predator appears most demonic to the victim, the predator appears to everyone else as extremely gentle and charming. Sexual predators dedicate their lives to appearing gentle, charming, and caring, just in case one of their victims breaks the silence. At trial practicing attorneys repeatedly hear the phrase, "it's impossible that this could be true, this person [the predator] wouldn't even hurt a fly," or "Can't be! He was so nice, such a gentle, sweet, caring person." Most people overlook the fact that predators tend to gravitate toward activities and spaces where they will have frequent and trusting contact with children.[26] Overlooking this only reinforces the false notion that those in such positions cannot or will not hurt children. Furthermore, sexual predators have no profile. According to Judge Montero, "A profile of the sexual abuser does not exist, in all my years of practice I saw all types of men."[27]

Sexual predators of children and adolescents rarely have only one victim. Researchers state that there are few sexual predators, but "the percentage of sexual abuse committed by those few is frequently high."[28] Nearly 70% of sexual predators of children and adolescents have between one and nine victims.[29] Furthermore, an average serial sexual predator of children and adolescents may have as many as 117[30] to 400[31] victims in his life time. Also, these figures are an underestimation since around 70-90% of sexual abuse remains hidden.[32] Furthermore, some predators who are sentenced and serve jail time will abuse again once they have finished serving the sentence. Some imprisoned sexual predators rape children who visit the prison to see their parents or family members.[33] Though there seems to be contradicting research, most research states that sexual predators are recidivists.

[26] Such positions include, but are not limited to parenting, teachers, coaches, church leaders, doctors, lawyers, and psychologists.
[27] Las victims niñas/os y adolescentes también tienen derechos, supra note 11.
[28] Luz Stella Losada, Brisa Liliana De Angulo, & Jose Miguel De Angulo, Los Depredadores Silenciosos de Nuestras/os Hijas/os 87 (2004) [hereinafter Los Depredadores].
[29] Statistics Surrounding Child Sexual Abuse, http://www.darkness2light.org/knowabout/statistics_2.asp (last visited Sept. 3, 2010).
[30] Id.
[31] Sexual Abuse Statistics, http://www.prevent-abuse-now.com/stats.htm#Offenders (last visited Sept. 3, 2010).
[32] Child Sexual Abuse and The Conspiracy of Silence, supra note 4, at 34.
[33] Anonymous interview with lawyers and victims (Jul. 17, 2010) (on file with author).

There are five different frequently described phases of the sexual predator's behavior.[34] The first is the *detection phase.* In this phase the predator chooses the victim. The predator looks at the specific details of the potential victim such as strengths and weakness, which in turn will help him to perform his plan. The second is the *proximity phase.* During this phase the predator looks to get close to the potential victim. Sexual predators tend to be experts at attracting minors. The predator puts on a mask, converting himself into what he perceives the victim wants or needs. The predator molds his behaviors so that he appears to be the perfect friend. Another strategy used during this phase is getting close to the potential victim's parents. This allows the predator to spend more time with the victim without the parents suspecting anything.

The third is the *subjugation phase.* In this phase the predator focuses his energy on gaining control over the victim. The predator usually starts by giving the victim good advice and helpful suggestions, though through time the advice and suggestions become more like harsh criticisms and demands. During this phase the predator works the victim into a state of helplessness, isolating her from everyone close to her and stripping her of all defenses to the future abuse. In this phase the predator is carefully spinning a web to capture the victim.

The fourth is the *preparation phase.* In this phase the predator has gained complete control over the victim. He uses subtle and conniving ways to finish isolating the victim from other people. At the same time the predator makes the victim feel special and unique, thereby capturing the victim in the web. At this point the predator tests the victim's limits. The predator finds opportunities to get physically close to the victim, giving the victim kisses, hugs, or even wrestling. One major aspect of this phase is assuring that the victim will remain silent. Thus, the predator again tests the victim, repeatedly telling the victim to keep secrets and remain silent. Also, in this phase the predator manipulates the victim into believing that she has power over the adult predator.

The final and fifth is the *abuse phase.* In this phase the victim is completely and

helplessly trapped in the web. The predator begins the abuse. In order for the abuse to continue, the predator makes pleas, promises, and threats. The predator often tells the victim things such as "If you talk, you are going to hurt your parents, or they will get mad with you," or "If you tell

[34] Leigh Baker, Protecting Your Children from Sexual Predators, 39-55 (2002), as partially translated in Los Depredadores, supra note 23, at 98-104. These phases are not rigid categories, but rather they overlap to some degree, and the predator often jumps back and forth from one phase to another to make sure the victim remains trapped and silent.

your parents or anyone else, they will send you somewhere, or they will send me to jail," or even "If you tell anyone, they will think that you are a problem, that you are bad, and dirty." The longer the abuse continues the more shamed the victim is and the less likely the victim is to break the silence. In many cases the family or the predator will say, "You did not disclose what happened the first time because you liked it." These types of threats and statements, because of the child and adolescent's psychological vulnerability, are generally sufficient to keep the victims silent for many years and, in the majority of cases, for the rest of their lives.

V. THE VICTIM

Dr. Roland C. Summit, in his groundbreaking article, The Child Sexual Abuse Accommodation Syndrome,[35] developed an extremely well respected theory of the behavior of child and adolescent victims of sexual abuse that demonstrates their complete vulnerability and fragility. The theory captures the essence of the victim, and exposes the horrible world the victim faces. The theory utilizes five categories to describe the accommodation syndrome victims experience: Secrecy; helplessness; entrapment and accommodation; delayed, conflicted, and unconvincing disclosure; and retraction.[36] Each of these five categories is briefly explored below.

a. Secrecy

No child is prepared for sexual interaction with or molestation by a loved, respected, and trusted adult. Therefore, the child victim is dependent on the sexual predator for the meaning assigned to the abusive experience. Despite all the self-serving, illogical explanations offered by the predator, the only meaningful impression consistently received by the child victim is one of fearful outcome and danger based on secrecy, (e.g. "This is our secret, no one can know, and if you tell I will hurt you").[37] The secrecy of the victim becomes both a source that creates fear and a promise that assures safety, (e.g. "Everything will be alright if you don't tell anyone," or "If you

tell your mother or anyone, the family will break apart"). The predator's enforcement of the secrecy, whether explicit or implicit, intimidating or gentle, sends a message to the victim that something is wrong and dangerous about the situation, thereby stigmatizing the victim with a sense of badness and danger.[38]

[35] Roland C. Summit, The Child Sexual Abuse Accommodation Syndrome, 7 Child Abuse & Neglect 177 (1983) [hereinafter Accommodation Syndrome].
[36] Id. at 181.
[37] Id.
[38] Id.

b. Helplessness

The adult expectation that the child or adolescent victim will defend his or herself against the abuse by screaming, forcibly resisting, or escaping and immediately disclosing, ignores the helplessness and subordination of the victim within an authoritarian relationship with the predator.[39] The imbalance of power inherent in the authoritarian relationship increases when the predator is a respected, loved, and trusted adult. In this situation the victim is utterly helpless.[40]

Like small animals, children will not forcefully retaliate against larger and threatening predators. Instead, they "play possum," pretending to be frozen, dead, or asleep. The victims develop learned helplessness when they know they do not have the power to stop the abuse.[41] Some sexually abused children report waking up to a trusting adult fondling their genitals or probing his penis between their legs or inserting it into their mouths. Faced with this situation most victims react in a normal manner by pretending to be asleep, changing positions, rolling over, or pulling the covers up.

c. Entrapment and Accommodation

Sexual abuse usually is not a one-time incident for children and adolescents in a dependent, authoritarian relationship with a predator, and usually does not stop until it is discovered and forcibly prohibited, or the victim becomes capable of claiming autonomy. There is little hope for those victims that do not receive immediate intervention and protection. For these victims, the only healthy option is to accommodate to the abuse and survive.[42] A normal, healthy, and emotionally resilient child will learn to accommodate to and accept the reality of continual sexual abuse. Not only must the victims accommodate to continual abuse, but also to an increasing sense of being objectified and betrayed by those who are supposed to care for them,

love them, and protect them. To accommodate to this living nightmare, victims develop psychological coping mechanisms, some of which are very harmful.[43]

The entrapped victim also bears the overwhelming and awful burden of maintaining the secret. The victim is saddled with the responsibility to protect siblings from the sexual predator

[39] Id. at 182.
[40] Id. at 183.
[41] W. Scott Terry, Learning and Memory: Basic Principles, Processes, and Procedures 146 (2006).
[42] Accommodation Syndrome, supra note 14, at 184.
[43] Id., at 184, (stating that "Pathological dependency, self-punishment, self-mutilation, selective restricting of reality, and multiple personalities, to name a few, represent habitual vestiges of painfully learned childhood survival skills.").

("If you don't give me love, I will use your sisters"); to protect the mother from mental and emotional damage ("If your mother learns of this, it will kill her"); to protect the predator from engaging in negative behaviors ("If it weren't for you, I would be out with other women, or getting drunk in the bars"); and even to preserve the integrity and security of the home ("If the police find out, you will be sent to an orphanage and I will go to jail").[44]

The entrapped victims with these responsibilities must sacrifice themselves to ensure the survival, protection, and well-being of others. This self-sacrifice gives rise to inverted moral beliefs, where disclosure of the abuse becomes the ultimate wrong, and hiding it becomes the highest moral virtue. Sadly, children and adolescents with their minds in this twisted state appear to passively and without complaint accept or even seek the sexual abuse.[45]

d. Delayed, Conflicted, and Unconvincing Disclosure

Sadly, the victim's attempts to rupture the secret are often smothered by the disbelief, silence, hysterical reactions, punishment, or ignorance of adults. Almost all ongoing child or adolescent sexual abuse is never disclosed. Investigated, reported, or treated cases are not the norm, but the exception. As the victim grows older and becomes capable of increased peer or social involvement and of demanding an autonomy that challenges the caretakers' or predator's authority, the predator becomes more jealous and controlling. At this point many adolescent victims demonstrate rebellious behaviors and attitudes, such as drug abuse, promiscuity, delinquency, and even running away. Confronting these behaviors, the predator or caretakers may punish the adolescent victim, which may push the victim to reveal the sexual abuse out of anger toward the predator. The more rebellious, broken, and upset the victim is, the more others will assume the victim is falsely incriminating the predator.[46]

However, other victims accommodate by successfully concealing any indicators of the

sexual abuse. They adopt active and normal lifestyles. Some become overachievers and excellent students, athletes, performers, etc.[47] When a victim displaying normal and successful behaviors discloses abuse, the reaction of adults may be even more incredulous (e.g., "How could something like this happen to such a talented and fine young person," or "A person who went through something so sordid could not have turned out so well."). Other adults may even

[44] Id. at 185.
[45] Id. at 185.
[46] Id. at 186.
[47] Id. at 186, 187.

conclude that if the sexual abuse did happen, it obviously did not affect the victim because he or she "turned out fine." Regardless of the pattern of accommodation, the victim is met with the same rejection, disbelief, and distrust from adults. Faced with such distrust and disbelief, the victim loses all reason and incentive to maintain the disclosure of the abuse.

e. Retraction

After the initial disclosure, most victims recant that disclosure, and then later reaffirm what was initially disclosed.[48] The disclosure of the abuse is followed by several negative consequences. The threats made by the predator become real. The victim is abandoned and the family disintegrates. The victim is labeled a liar, and blamed for everything that is occurring or has occurred. Once again, the responsibility of protecting others and holding the family together is thrust directly on child or adolescent victim. Thus, the bad choice again becomes telling the truth, and the good or wise choice becomes denying the abuse and fabricating a lie for the family's sake. The simple, yet extremely powerful lie, "Nothing happened, I made it up," is often more easily and comfortably believed by adults than explicit claims the sexual abuse. Hearing this simple lie, adults may breathe a sigh of relief and blind themselves to the cries and pleas of the victim. Thus, the victim may again be violently thrown back into silence and pain. Adults and social authorities may improperly interpret this behavior of disclosure and retraction as evidence that children and adolescents "lie about sexual abuse," thus confirming and strengthening adult beliefs that children and adolescents cannot be trusted.[49] Therefore, for many adults and social authorities, claims of sexual abuse can justifiably be dismissed.

[48] T. Sorenson and B. Snow, How Children Tell: The Process of Disclosure in Child Sexual Abuse, 70 Child Welfare 3-15 (1991) (finding that 72% of sexual abused children denied being abused when first asked what had occurred); see also T.D. Lyon, False Allegations and False Denials in Child Sexual Abuse, 1 Psychology, Public Policy, and Law 429, 432 (1995) (stating that in several cases in which victims denied sexual abuse the abuse was confirmed by the predators guilty plea).
[49] Accommodation Syndrome, supra note 14, at 188.

VI. NATIONAL INTERESTS AND LAWS

The protection and wellbeing of children and adolescents from all forms of violence and abuse, including the horrors of sexual abuse, seems to be a major concern around the world. The fact that all of the world's nations, except two (the United States and Somalia), have committed to the Convention on the Rights of the Child and its binding obligations, suggests that children's rights are being placed at the cutting edge of the worldwide struggle for human rights.[50] The civil societies and governments of these nations are challenged with the responsibility to live up to the commitments required in the Convention.[51] As one of these nations, the Government of Bolivia has repeatedly expressed its strong commitment to the protection and wellbeing of children and adolescents.

Bolivia's Constitution maintains that children and adolescents' best interest are the priority, that their rights are preeminent, and that children will be the first to receive protection and aid, and attention and services in any circumstance.[52] As stated in the Codigo Niño, Niña, y Adolescente (CNNA), it is the duty of the State, society, and family to assure that children and adolescent's rights are being protected[53] and that the judicial and administrative authorities must prioritize the attention to the needs of children and adolescents.[54] Furthermore, the Convention on the Rights of the Child states that children and adolescents best interests must be primordial consideration in all areas pertaining to children and adolescents.[55]

As part of protecting children and adolescents, the Bolivian Government has through its legislation deemed it necessary for the harmony of society that the sexual abuse of children and

[50] Convention on the Rights of the Child: Frequently asked Questions, http://www.unicef.org/crc/index_30229.html (last visited Sept. 3, 2010).
[51] Susan Bennett, Stuart N. Hart, & Kimberly Ann Svevo-Cianci, The Need for a General Comment for Article 19 of the UN Convention on the Rights of the Child: Toward Enlightenment and Progress for Child Protection, 33 Child Abuse & Neglect 783, 785 (2009).
[52] "It is the duty of the State, society, and the family to guarantee the priority of the superior interest of the children and adolescents, by which is understood the preeminence of their rights, primacy in receiving protection and aid in any circumstance, priority in the attention of public and private services, and access to the administration of prompt and opportune justice, and with the assistance of specialized personnel." Nueva Constitucion Politica del Estado [NCPE], art. 60 (Bol.).
[53] "It is the duty of the family, of society, and of the State to assure boys, girls, and adolescents, with absolute priority, the exercise and complete respect of their rights." Código Niño, Niña, y Adolescente [CNNA], art. 7 (Bol.).
[54] "All boys, girls, and adolescents have the right to be attended to with priority by the judicial and administrative authorities."

Id., art. 8.

[55] "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Convention on the Rights of the Child, [CRC] art. 3(1), Mar. 8, 1990, 1577 U.N.S.T. 3.

adolescents be a crime.[56] Therefore, it is the responsibility of the Bolivian Government to start the judicialization process against those accused of sexually abusing children or adolescents, and to make every effect to assure that this process protects child and adolescent victims and is not aborted. Thus when a child or adolescent reports sexual abuse, the judicialization process should not provide incentive for the retraction and non-disclosure of the sexual abuse, nor the opportunity for predators to evade the judicialization process.

VII. LEGAL PRACTICE AND SOCIAL CONSTRUCTS

Despite all the written commitment to the protection and wellbeing of children and adolescents and to the judicialization of those accused of sexually abusing children or adolescents, there are several legal practices and social constructs in Bolivia that are permitting the hindrance of the fulfillment of the Government's national and international commitments. Considered here are the legal practices and social constructs surrounding seven vital steps in the preparatory phase of the judicialization process: denunciation, the medical forensic exam, declaration, apprehension, the imposition of preventive detention, the cessation of preventive detention, and the application of *medidas sustitutivas*. The myths surrounding, and the retardation and obstruction of these steps of the preparatory phase create a situation where the laws are flouted with impunity, leaving victims with the sense that they were betrayed and deserted by the judicial system.

a. Denunciation

Denunciation is the initial reporting of the crime to the proper authorities, and it can be done by any person or institution. Denunciation is voluntary for citizens and obligatory for public servants and medical personnel.[57] There are two authorities to which denunciations can be made: the national police (FELC-C) and the prosecutors.[58] A general prosecutor is present at the FELCC office 24 hours a day, 7 days a week. The FELC-C office is a very stark, crowded, and intimidating environment that is not easy to find, lying on the outskirts of the south side of city of Cochabamba. The FELC-C facility is composed of multiple small buildings that are difficult

[56] "The State has the end and essential function to construct a just and harmonious society … with complete social justice, and to guarantee the wellbeing, security and protection and equal dignity of the people." NCPE, art. 9 (Bol.). This determination is reflected in the Bolivian Codigo Penal at articles 308, 308 bis., and 309, all of which pertain to the crime of rape.

[57] Código de Procedimiento Penal [CPP], art. 286 (Bol.); Armando Córdoba Saaverda, Manual Práctico de Procedimiento Penal 45 (2009).
[58] CPP, art 288 (Bol.) (stating role of national police in judicial process); CPP, art. 289 (stating the role of prosecutors).

for new comers to navigate. Usually, those who go there to denounce are directed and redirected to the appropriate room multiple times. Once the person denouncing arrives to the appropriate room, she finds it is one small room designated for the denunciation. The wait is usually long, regardless of what time it is, day or night. Furthermore, the room is not closed, and all those waiting can look on and hear as the denunciation unfolds. Unfortunately, those denouncing sexual crimes are not always provided the privacy they deserve.

When a denunciation is made at the children and adolescent's prosecutor's office, it is often an uncomfortable event. There are only four prosecutors for crimes against children and adolescents in the jurisdiction of city of Cochabamba, Bolivia. The person denouncing must enter into a room that contains the desks of two prosecutors. In some, though uncommon cases the person denouncing must make the denunciation with other people present who can listen to every word that is said. The real problem, however, is the constant interruption. Because there are so few prosecutors, the denunciations are frequently interrupted by people knocking on the door. Two attorneys, who constantly accompany those denouncing, stated that someone knocks on the door of the prosecutors office every 20 or 30 seconds, and that because of this many those denouncing, including victims, have trouble getting out one complete thought without interruption.

Whether the denunciation is made at the FELC-C office or the prosecutors' office, the process is similar. Both locations provide limited privacy to those denouncing sexual abuse. The implications of a semi-public denunciation threaten the proper management of cases of sexual abuse of children and adolescents because being a victim of such a crime, unfortunately, carries with it very nasty social stigma. One such implication is the desire to decrease negative social stigma for the victim or those involved, which could lead to a partial, incomplete, or no denunciation. It is difficult enough to denounce sexual crimes in private (even if not committed directly against the person denouncing), not to mention in front of an unwanted audience composed of unknown persons.

b. Medical Forensic Exam

Further revictimizing to some victims is the process of the medical forensic exam. Medical

forensic doctors receive high amounts of cases every month, though few of these cases seem to continue in the judicial process. One forensic doctor reported seeing over 200 victims every month. Of these 200 plus victims, 30 on average do not return for their results. Of the nearly 170 left, this forensic doctor refers about 150 of them to CUBE. Of these 150 or so victims that are referred to CUBE, usually five to ten actually arrive to CUBE.[59]

After the victim, or person or institution known to the victim, goes through the harsh process of denunciation, the victim is often sent immediately for the medical forensic exam. The entire department of Cochabamba has 4 forensic doctors –3 men and 1 woman—who serve a population of over 1,000,000 residents and handle the forensic necessities of all crimes. The victim is sent to whichever doctor is available. Sometimes there are no doctors available, and the victim is simply told to return another day.

The office of the forensic doctor is cold and small. One prosecutor who has accompanied many victims to forensic exams reported that one of the forensic examination rooms has a large window which has no curtain. The child or adolescent victim is told to take her clothing off right in front of this window.[60]

Although the forensic doctors are improving their treatment, and some victims report that their experiences were not that traumatic, there are still some forensic examinations that are traumatizing experiences for victims of sexual abuse. One girl reported, "When I went to the forensic exam I was still disoriented from the drug they [the predators] used to rape me. I did not understand what was going on I just remember it being an awful experience. I was told to take my pants off and lie on the bed. I did. I thought they were going to use something to cover me, but I was naked and exposed. The fear was so intense that unintentionally I kept closing my knees. The doctor got very impatient and he roughly grabbed my knees, opened my legs, and started to probe, swab and touch my vagina. At that point I wished I had never told anyone about my rape." [61] Another victim stated, "the forensic exam was one of the most traumatizing experiences I had. The doctor was a male. Right after being raped, I was voluntarily taking my clothes off and getting ready for a male doctor to probe my genitalia. I knew it was important for the process so I did it. However, the doctor was with at least 4 male medical students. With my broken voice I begged the doctor for them to leave the room. At that point the doctor and the medical students laughed and told me to stop being a whiner. The five of them then looked at me

[59] Anonymous interview with forensic doctor from the district of Cochabamba, Bolivia (Jul. 18, 2010) (on file with author).
[60] Digital Recording: Anonymous interview with Prosecutor #1 (Jul. 11-15, 2010) (on file with author).
[61] Digital Recording: Anonymous interview with Victim #8 (Jul. 11-15, 2010) (on file with author). and commented between themselves during the entire exam. After that I have never been able to go to a gynecological exam." [62]

Some victims leave the medical forensic exam with an enormous sense of regret for having broken the silence. Some of these victims decide to return to the world of silence, rather than continue subjecting themselves to constant revictimization. This may be contributing to the non-judicialization of some sexual predators and to the non disclosure of sexual abuse.

A further problem that exacerbates those already mentioned is the myth held by many forensic doctors, prosecutors, and judges that if there is no rupture of the hymen, then there was no penetration, and therefore no rape.[63] However, medical research shows that in most cases penetration of the vagina does not produce lesions in the hymen. Dr. Kellogg reported that from 36 pregnant female adolescents, two presented changes in the hymen evidencing penetration.[64] Kellogg offered two possible explanations: One, visible tissue damage does not usually result from penetration, or two, acute injuries to the hymen heal completely.[65]Also, Doctors Botash and Florence Jean-Louis found that an imperforate hymen (one with no opening whatsoever) may develop from scaring following trauma to the hymen and that sexual abuse may be the cause of the imperforate hymen.[66] Distortion, tears, and scaring of the hymen are even more difficult to find when there is only partial penetration. Furthermore, in a five-year prospective study where 1,652 children disclosed sexual abuse, 95.6% had a normal forensic genital examination. The implication of these studies is that hymeneal evidence is in no way reliable to determine whether penetration occurred.

In Bolivia, where the hymen is very important to cases of sexual abuse, to have a thick, elastic hymen is to be cursed. Dr. Nawal El Saadawi makes the point that under such myths about the hymen (as believed in Bolivia), the young female child to be protected from rape must

[62] Digital Recording: Anonymous interview with Victim # 3 (Jul. 11-15, 2010) (on file with author).
[63] Judges and prosecutors often require evidence of a ruptured hymen to press charges or convict. However, the rape statutes do not require this particular type of evidence, simply evidence that there was carnal access. See CP, art. 308, 308 bis. (Bol.).
[64] N.D. Kellogg, Genital anatomy in pregnant adolescents: "Normal" does not mean "nothing happened", 113 Pediatrics 65, 67-69 (2004).
[65] Id.
[66] Ann S. Botash and Florence Jean-Louis, Imperforate Hymen: Congenital or Acquired from Sexual Abuse?, e53 Pediatrics 108 (2001); See also A Simulated "Acquired" Imperforate Hymen Following the Genital Trauma of Sexual Abuse, 26 Clin Pediatr 307, 308, 309 (1987) (reviewing the hymen of a 5 year old victim of sexual abuse which showed tears, distortion, and scars, but

which later healed and was covered by a thick layer of scar tissue with no orifice, and stating that an imperforate hymen does not rule out the possibility of sexual abuse).

possess not only a hymen, but a particular type of hymen. One that is inelastic, capable of ripping and bleeding profusely. Dr. Saadawi states:

> "No girl can be more unfortunate than she whom nature has endowed with an elastic hymen, capable of widening and stretching at the moment when a man's ... sexual organ penetrates upwards in the vagina, for such a hymen will not bleed. No girl can suffer a worse fate than she whom nature has forgotten to provide with a hymen, or whose hymen is so delicate it is torn away and lost by repeated riding on a bicycle or a horse, or by masturbation, or by one of those minor accidents that happen so often in childhood. No human being can know greater misery and humiliation than a girl whose hymen is thick, deprived of an orifice, and elastic. For then neither the male finger nor the man's penis can draw blood as it pushes the hymen before it like a rubber membrane."[67]

c. Declaration

Several days after these traumatic, revictimizing experiences, if the victim returns for the declaration, she finds a busy and hurried prosecutor. Since there are only four prosecutors for children and adolescents in the jurisdiction of city of Cochabamba, people constantly knock on the prosecutor's door, which causes continual interruption of the declaration, just as in the denunciation, though in this case it is always the victim who is interrupted. According to several victims, the declaration is an extremely difficult process. The continual interruption hinders their ability to recount their traumatic experience in an orderly, coherent fashion. The lack of order and coherence is sometimes used by the prosecutors to invalidate the declaration and invalidate the case. In some cases the prosecutors reason that the disorder and lack of coherence demonstrate that the victim is lying. Out of all cases that arrived to the declaration phase, only in 71 percent of the cases did the prosecutor decide to continue.[68]

If the victim is an adolescent, the declaration process is even harder. Adolescents are repeatedly met with disbelief.[69] One victim stated, "When I told my story to the prosecutor she

[67] Nawal El Saadawi, The Hidden Face of Eve, 25 (Zed Books, 8th ed. 1991) (1980), as cited in Julie Dror Chadbourne, Never Wear Your Shoes After Midnight: Legal Trends Under the Pakistan Zina Ordinance, 17 Wisconsin International Law Journal 179, 245 (1999).

[68] In CUBE, from 381 cases arriving to the declaration phase, only 272 cases continued past the declaration phase. This represents a loss of 109 cases at this stage, or in other words a loss of 28 percent.

[69] There is a belief among local prosecutors that adolescents claiming to have been raped are usually lying. They have developed

a number of mechanisms for detecting such liars, such as replicating the medical forensic examination three or six months later. If the exam results are different, the adolescent is a liar. seemed cold and disinterested. She just stared at me and kept looking at me as if I were lying."[70] Usually the declaration of an adolescent and the forensic exam will not be sufficient to continue the judicialization process. The prosecutors often require several psychological evaluations before they will believe the adolescent victim. This in turn drags out the revictimization process and creates incentive for the victims to retract the declaration.[71]

d. Apprehension

If or when the prosecutor is convinced that the suspect is the author or participant of the crime, and therefore the *imputado*, she may order the apprehension of the imputado.[72] The actual practice of apprehending the imputado is a circus, another revictimizing ordeal that the victim must survive to continue with the judicialization process. The victim, or the victim's family, must locate and follow the imputado, as well as learn his routine.[73] Once the victim or victim's family has located the imputado, they must then wait for the assigned police officer to be free in order to go capture the imputado. The victim or the victim's family must pay all of the transportation costs involved in the apprehension.[74] The victim or the victim's family must also accompany and assist the police during the apprehension. It is usually a wild goose chase until the imputado escapes or is apprehended. However, in some cases, the imputado escapes before the apprehension is ever attempted.

e. Preventive Detention

Within 24 hours of the apprehension the prosecutor must present to the judge the formal imputation of the accused.[75] The formal imputation must contain the solicitation of all *medidas cautelares*[76] that apply.[77] The prosecutor can solicit preventive detention if she can prove that: (1) there exist elements of conviction sufficient to sustain that the imputado is, with probability,

[70] Digital Recording: Anonymous interview with Victim #1 (Jul. 11-15, 2010).

[71] By requiring multiple psychological exams, the victim is forced to recant her traumatic experience multiple times. Each time, the recitation may be less emotional, less complete. Defense attorneys and prosecutors could use this change in the recitation to question the credibility of the victim's testimony.

[72] "The prosecutor can order the apprehension of the imputado when his presence is necessary and there exist sufficient indicia that the imputado is author or participant of a crime of public action sanctioned with privation of liberty, the minimum penalty of which is equal to or more than two years and the imputado can hide, flea, or leave the location or obstruction the discovery of the truth…" Ley No. 007, May 18, 2010, art. 226 (Bol.) (modifying CPP, art. 226).

[73] CPP art. 227 (Bol.); CPP art. 295(4 & 5) (Bol.). However, the victim or the victim's family collects the data to identify the imputado. Once collected, they give it to the police. In this manner the police "collect data to identify the imputado."

[74] Very few police officers in Bolivia have squad cars or motorcycles. The squad cars available frequently do not have gasoline. Most police officers travel by foot, or public transportation. Paying for transportation often requires paying for a taxi to take everyone to and from the location of apprehension, which sometimes involves travel to another department of Bolivia.

[75] "…The person apprehended will be brought before a judge within 24 hours to resolve the application of medidas cautelares… or declare his liberty for lack of indicia." CPP, art. 226 (Bol.).

author or participant of a punishable act, and (2) there exist sufficient elements of conviction that the imputado will not submit to the process or will obstruct the discovery of the truth.[78]

To demonstrate that the imputado will not submit to the process, the prosecutor must prove that the imputado will escape.[79] However, it is very easy for the imputado to prove that he will not escape. Generally, if the imputado can show that he has a home, a job, and a family, then the presiding judge will assume that there is a reasonable doubt as to whether the imputado will escape, and therefore will not use Article 234 to preventively detain the imputado. [80] [81]

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[76] *Medidas cautelares is a body of law created to guaranty that the liberty of the imputado will only be restricted when it is necessary to the discovery of the truth and the development of the judicial process. Arturo Ya~ez Cortes, Excepciones e Incidentes 327 (2009). See NCPE, art. 23 (Bol.); see CPP, art. 221 (Bol.). Preventive detention is one medida cautelar used to protect the goods of the penal process, including discovery of the truth, advancement of the process, and compliance with the law or the execution of the sentence. Tribunal Constitucional, Sentencia Constitucional 0012/2006-R.*

[77] CPP, art. 302 (Bol.).

[78] "Having realized the formal imputation, the judge can order the preventive detention of the imputado, on the well founded request of the prosecutor or *the victim even though the victim does not constitute the querellante*, when the following requirements concur: 1. The existence of elements of conviction sufficient to sustain that the imputado is, with probability, the author or participant of a punishable act. 2. The existence of elements of conviction sufficient [to show] that the imputado will not submit to the process or will obstruct the discovery of the truth." Ley No. 007, May 18, 2010, art. 233 (Bol.) (modifying CPP art. 226). [Modification in italics. Original read, "or of the *querellante*."].

[79] To prove the imputado will escape the prosecutor must prove one of the factors listed in Article 234.

Unmodified Article 234 of the CPP: "To decide with regard to the risk of escape, [the judge] will take into account the following circumstances: 1. That the imputado does not have domicile or habitual residence, nor family, negotiations, or work in the country; 2. The easiness of escaping or remaining hidden; The evidence that the imputado is realizing preparatory acts of escape; and, 4. The comportment of the imputado during the process or prior processes, to the degree that it indicates his will to not submit to the same [the system]."

Modified Article 234 under Ley 007: "By risk of escape is understood all circumstances that permit it to be sustained in a well found manner that the imputado will not submit to the process, looking to evade the action of justice. To decide on the presence of this risk, [the judge] will realize an evaluation of the totality of the circumstances having in account especially the following: 1. That the imputado does not have domicile or habitual residence, nor family, negotiations, or work in the country; The easiness of abandoning the country or remaining hidden; 3. The evidence that the imputado is realizing preparatory acts of escape; 4. The comportment of the imputado during the process or prior processes, to the degree that it indicates his will to not submit to the same [the system]; *5. The attitude that the imputado adopts voluntarily with respect to the importance of the compensable damages; 6. Having been an imputado for the commission of another knowingly criminal act or having received condemnation in the first instance restricting freedom; 7. Having given the imputado an alternative punishment for the intentional crime; 8. The existence of retired or anterior criminal activity. 9. The membership to criminal associations or criminal organizations. 10. Effective danger for society or for the victim or one who denounced; and 11. Any other circumstance duly accredited that permits it to be well sustained that the imputado is found in risk of escape."* The modified version of 234 expands the criteria for determining whether a risk of escape exists.

[80] Id., supra note 79, at art. 234(10).

[81] However, a recent change to Article 234 introduces a new factor, that of "effective danger to society or the victim." CPP, supra note 79, at art. 234(10) (Bol.). A recent Medidas Cautelares resolution held that danger to the victim was sufficient for detention, notwithstanding the fulfillment of the home, job, and family requirement (Medidas Cautelares hearings on Jun. 29). This change may open the door to victim friendly considerations that

To demonstrate that the imputado will obstruct the discovery of the truth has become more complicated due to a recent change in the law. Under the prior obstruction statute, which utilized future tense for all the factors to be considered, the prosecutor had to prove that the imputado *will obstruct* by showing that in the future the imputado probably *will* destroy, modify, hide, and/or

falsify elements of the evidence, etc.[82] However, under the modified obstruction statute, the prosecutor must prove that the imputado *will obstruct* by proving that he *in this present moment* destroys, modifies, hides, and/or falsifies elements of the evidence, etc. [83] [84]

The interpretation of the modified obstruction statute is giving rise to conflicting case precedent, [85] which has created chaos for practicing attorneys.[86] There are serious implications to these varying interpretations of the new statute. Under the interpretation that reads the modified statute as employing future tense, nothing changes. The test will continue be whether it is probable that in the future the imputado "will destroy, etc." However, if the interpretation that restricts the analysis to present moment becomes the norm, then it will become much more difficult to prove obstruction. Those judges utilizing the restricted analysis attribute to the present moment an omnipotent character, thereby making irrelevant considerations of past obstruction and the propensity to obstruct in the future.[87]

were formerly unavailable. Such considerations include the psychological vulnerability of the victim, the relationship between the victim and the predator (parent-child, siblings, cousins, neighbors, strangers, teacherstudent, pastor-parishioner, etc.), the power dynamics resulting from such relationships, and the implications of the imputado's behavior for the security of society.

[82] Unmodified CPP, art. 235: "To decide on the danger of obstruction of the discovery of the truth, [judges will take] into account, especially, la concurrence of the indicia that the imputado: 1. Will destroy, modify, hide, suppress, or falsify elements of the evidence; and 2. Will influence negatively the participants, witnesses, or experts to benefit himself."

[83] Factor 5 of both the previous and modified statutes remains in future tense (obstaculizara). However, with regard to the modified statute, judges have not utilized factor 5.

[84] Modified CPP, art. 235 under Ley No. 007, May 18, 2010: "By danger of obstruction is understood all circumstances that permit it to be sustained that the imputado with his comportment will interrupt the discovery of the truth. To decide on the [presence of the danger] it will be realized an integral evaluation of the existence circumstances, taking into account especially the following: 1. That the imputado *destroys, modifies, hides, suppresses, and or falsifies* elements of evidence; 2. That the imputado *influences* negatively the participants, witnesses, or experts so as to make them inform falsely or comport in a reticent manner." The Congressional Assembly of Bolivia changed the verb tense of the factors to be considered from future to present; the rest of the statute remains in future tense.

[85] One judge read the modified statute as employing future tense. Two other judges have required proof that the imputado is in the present moment actively obstructing, etc. Medidas Cautelares hearing on June 28, 2010.

[86] Medidas Cautelares hearing on June 29.

[87] However, what is understood by "present" is critical. If the "present" embraces actions of the recent past (as in 2 weeks to a month), and extends to the immediate future (as in 2 or 3 days), then there is still room to consider the recent behavior of the imputado. If, on the other hand, the "present" embraces only the immediate moment, the now, then all considerations are forbidden other than the imputado's activity in the immediate moment. Such a restricted analysis would consider the only the imputado's behavior while he is present before the judge. A nice smile and friendly comportment are sufficient to defeat such an analysis, which is absurd.

Furthermore, judges employing the restricted analysis may blind themselves to the power dynamics that exist between victims and predators, and the potential of these dynamics to obstruct the discovery of the truth. If in the preventive detention hearing, the judge looks only to signs of explicit, provable instances of direct or indirect influence on the victim that are taking place in the present moment, the judge will overlook the implicit, indirect psychological power that the sexual predator had, has, and will have over the victim.[88] Once the predator has been

apprehended, his ability to directly, physically contact and communicate with the victim is completely restricted, which eliminates the possibility of producing the tangible evidence believed necessary under the restricted analysis to prove present obstruction.[89] However, the predator continues to exercise psychological power indirectly and incessantly on the conscience of the victim,[90] which has the capacity to obstruct the development of the judicialization process. Over looking such power dynamics and ignoring their potential to indirectly obstruct the judicialization process is fatal to sexual abuse cases, and to the victim.[91] One victim reported, "when the judge decided not to keep him [the predator] in preventative detention I knew that my life and my family's life was in danger. He could come and do anything to silence me. I stopped going to school because I was so scared. I saw my mom with black eyes due to her sleepless nights. That is when I decided to tell the prosecutor that I had lied so that she [the prosecutor] would drop the charges. I knew that I was at more risk if he knew that I was going to keep the pressing charges, and at less risk if kept the secret. I still see him in the streets and it almost paralyzes me. I still cry my self to sleep. The worst part of all is that every one sees him as a poor

88 Sexual predators have tremendous power over their victims, especially the power to intimidate and influence the victim. There exists no equality between the victim and the predator; the predator exercises unilateral, tyrannical power over the victim. The strength of this implicit, psychological domination is demonstrated by the long period of time that victims generally keep silent before denouncing, which is on average 12 to 15 years. See Eli Somer & Sharona Szwarcberg, Variables in Delayed Disclosure of Childhood Sexual Abuse, 71(3) American Journal of Orthopsychiatry 332 (2001); see also J.M. Ussher & C. Dewberry, The Nature and Long-term Effects of Childhood Sexual Abuse: A Survey of Women Survivors in Britain, 34 British Journal of Clinical Psychology 177 (1995) (discussing delayed disclosure and the average time elapsed before disclosure). Moreover, the psychological trauma that results from the exercise of this power affects the victim whether or not the predator is present. This trauma follows the victim her entire life, even after the death of the predator.

One victim states, "Seeing my parents stress when they go to these hearings, and fearing that he [the predator] may come out of jail [preventive detention], makes me want to stop all the pain and tell a lie, and say that it didn't happen. Sometimes I feel this would be better for everybody." This statement makes clear the tremendous power the predator has to create intense fear in the victim, even from the confines of prison. The fear the victim experiences from being psychological dominated by predator is itself a form of obstruction. This intense fear can cause the victim to retract ever statement she made in the denunciation, which would completely destroy the case.

If the predator is free in streets, the power the predator exercises over the victim is even greater. The probability of retraction increases, for the predator has access to the victim and can thus directly confront the victim. Such confrontation is a living hell for the victim. If retraction will stop the confrontation, retraction will probably occur. In moments of direct confrontation, the victim's primordial consideration becomes survival; notions of justice become secondary.

89 The only exception to this general assertion would be evidence of the predator's action of inducing a third party to negatively influence the victim, witness, etc. This action would be indirect influence, not direct.

90 "Every day I wake in fear. Every night I fall asleep in fear. The only thing that gives me strength is to know that he is in jail, and can't hurt me." Anonymous interview with victim of sexual abuse, Jul. 11-15, 2010 (On file with author). Fear dominates the conscience of the victim of sexual abuse. The predator, even when dead, exercises psychological power over the victim. The predator continually lives in the mind of the victim.

One way to overcoming such fear is breaking the silence and initiating the judicial process. Therefore, protecting the victim and assuring the continuance of the judicialization process is of the utmost importance for the victim, and for society.

person who was falsely accused and everyone sees me as the liar. I will never be able to reopen my case. I just couldn't bare seeing my mom scared, fearing that he will come to get us."[92] [93]

From all imputados initially apprehended (272), 74% (202) were detained under the preventive detention statutes, leaving 26% in the streets. From the all the cases reported, there were 253 where the imputado was never detained. Eighty-six percent (219) of these cases were aborted. In 80% of these aborted cases, the victim disappeared and remains disappeared. From the 219 cases that were aborted, 25% were aborted due to the escape of the imputado. Only 14% (35) of those cases where the imputado was not detained continued or continue in the judicial process.

[91] Judges frequently overlook the seriousness of the fear held by the victim, and the power this fear has to cause the victim to retract; to cause the victim to lie and bury herself alive for the sake of her family and those close to her. This form of retraction is called "domestic martyrdom." See Ronald Summit, Accommodation Syndrome, supra note 14, at 188 (stating that domestic martyrdom—the act of deny oneself for the benefit of the others—is a coping mechanism victims develop when their family is faced with intense stress or disintegration due to denunciation of the sexual abuse).

[92] Digital Recording: Anonymous interview with Victim #1 (Jul. 11-15, 2010) (on file with author).

[93] In Centro Una Brisa De Esperanza [CUBE], a center for sexually abused children and adolescents in Cochabamba, Bolivia, from all imputados initially apprehended (272), 74% (202) were detained under the preventive detention statutes.

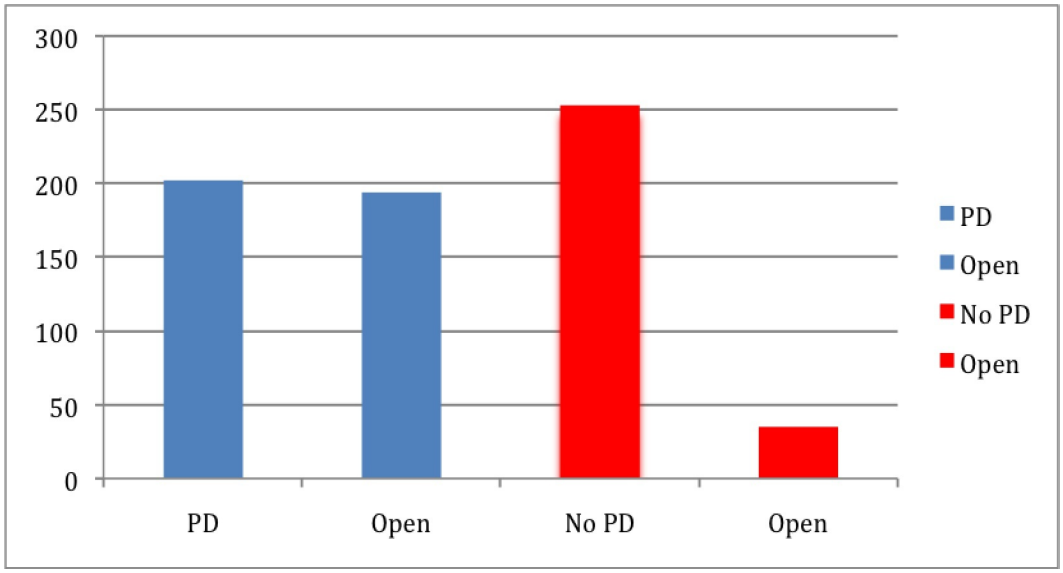

Figure 1: Prevetive Detention and the Continual of Cases

f. Cessation of Preventive Detention

The painful process for the victim does not stop with the imposition of preventive detention. The imputado will continually appeal the imposition of preventive detention, requesting cessation of preventive detention. Many imputados are released on appeal, and in those cases the judicialization process is almost always obstructed and the case aborted.

Cessation of preventive detention occurs when: (1) new evidence shows that the motives that grounded it [preventive detention] do not exist, or that it has become convenient that it [preventive detention] be replaced by another *medida cautelar*; (2) its [preventive detention] duration exceeds the minimum legal punishment established for the crime…; and (3) its [preventive detention] duration exceeds 18 months without there being accusation, or 36 months without there having been a judicial sentence.[94]

To introduce the new evidence, imputados in sexual abuse cases routinely marry while in

prison, obtain a short-term work contract, buy a home, or have a family member (such as their

[94] CPP, art. 239 (Bol.) (covering Cessation of Preventive Detention).

mothers) claim them as residents of the family household.[95] If the imputado was detained under Article 234 (*Peligro de Fuga*), then this type of "new evidence" is often sufficient to defeat the imposition of preventive detention.[96] If the imputado was detained under the modified Article 235 (*Obstaculizacion*), the imputado on appeal will introduce "new evidence" that he did not obstruct the judicial process during his time in preventive detention. This evidence has been sufficient to defeat the imposition of preventive detention under Article 235.[97]

g. Medidas Sustitutivas

If the judge does not impose preventive detention, then the judge may apply *medidas sustitutivas*.[98] There are a variety of medidas sustitutivas, however, the only relevant trait for this research is that in all medidas sustitutivas the imputado remains in liberty. In most cases of sexual abuse of children and adolescents where medidas sustitutivas are applied, the process is obstructed and the case is aborted. One victim commented, "Having the predator pay a fine or keeping him in his house is no guarantee that he will not come after me. For my own safety, I would rather leave the Bolivia, but I can't." Another said, "In my case, my predator was a family member. When he received medidas sustitutivas, he was sent to live with other family members, and he convinced them that he is innocent. Because I didn't have the support of my family, I had to choose between being part of my family, or fighting for myself. Because I am a minor, I choose to be silent and be with my family." Anything that allows the predator to come close to the victim or the victim's family obstructs the discovery of the truth. Furthermore, medidas sustitutivas have allowed some imputados to escape.

Unfortunately, victims must wait a long time before then can go to trial. The luckiest ones have their trial one year after initiating the judicialization process. Most of them wait three to five years before going to trial. In the process of waiting, the victim or the victim's family will be subject to many appellate hearings, etc. In most cases, after the long wait for the trial, the trial is postponed, and the victim must wait even longer.

VIII. VIOLATION OF CHILDREN AND ADOLESCENTS' RIGHTS

[95] Anonymous Interview with attorney (Jul. 16, 2010) (on file with author).
[96] CPP, art. 234(1). Exception, under the modified Article 234, the judge held that although the imputado meet all the requirements of 234(1), there still existed danger to the victim and therefore preventive detention would be imposed.
[97] Two hearings in July involving this issue. Case names and numbers cannot be mentioned here as a matter of confidentiality.
[98] CPP, art. 240 (Bol.). Medidas Sustitutivas are measures imposed by the court to ensure the presence of the imputado throughout the judicial process. These measures do not involve imprisonment, though confinement to ones house is an option.

In each of the seven steps of the preparatory phase discussed above, the constitutional and international rights of children and adolescents are being violated. Of particular concern is the systematic violation of Article 60 of the Bolivian Constitution, and the violation of Article 3, section 1 of the Convention on the Rights of the Child. What follows is an analysis of how each of the 7 seven steps of the preparatory phase violates one or another part of Article 60 of the Bolivian Constitution, and how each violates Article 3(1) of the Convention on the Rights of the Child. In every step of the preparatory phase there is some form obstruction, which is shown by the fact that 49% of all cases were aborted.

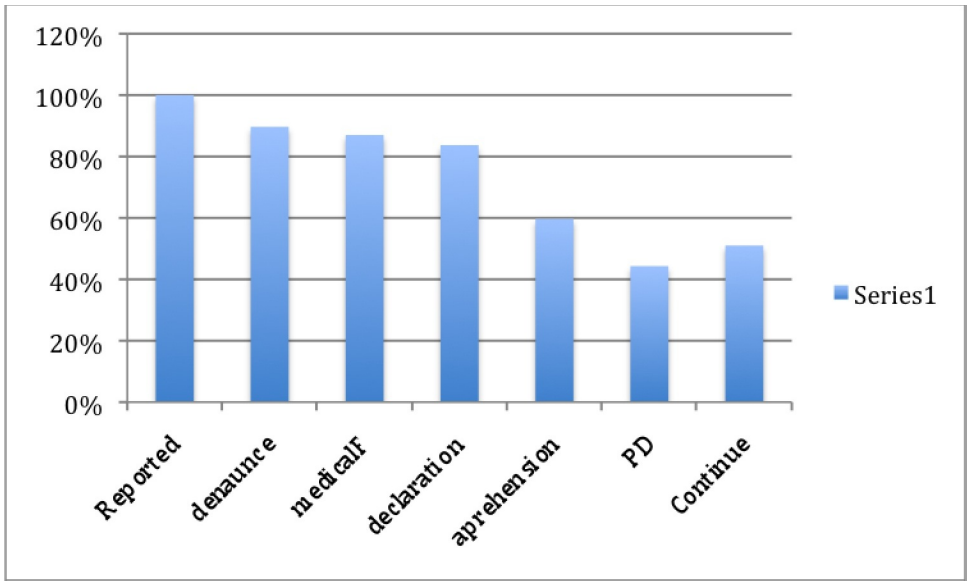

Figure 2: Decrease of Cases in Each of the Preparatory Stages

a. Article 60

Article 60 of the Bolivian Constitution states, "It is the duty of the State, the society, and the family to guaranty the priority of the best interest of the child and adolescent, by which is understood the preeminence of their rights, their primacy in receiving protection and aid in any circumstances, their priority in the attention from public and private services, and access to the prompt and opportune administration of justice with the assistance of specialized personnel."[99] This article can be broken in to four parts, each of which will be analyzed separately with regard to its violation by the seven steps of the preparatory phase discussed above: (1) preeminence of their rights; (2) primacy in receiving protection and aid in any circumstance; (3) priority in the attention from public and private services; and (4) access to the prompt and opportune administration of justice with the assistance of specialized personnel.

1. Preeminence of Their Rights

Key to understanding this part of Article 60 is the meaning of the word *preeminencia.* In Spanish, *preeminencia* means "privileged, preference that merits the respect of others, sublime, superior, most elevated."[100] To apply this term to children and adolescents' rights carries very serious implications. It implies that all those things guaranteed to children and adolescents in the Constitution and laws of Bolivia have a preeminent status, one that is most elevated, preferred and respected. By analyzing the other three parts of Article 60, it will be seen how in practice the preeminence of children and adolescents' rights is ignored.

2. Primacy in Receiving Protection and Aid in Any Circumstance

Children and adolescents are vulnerable, and are often the least capable of helping themselves. Therefore, it is fitting that they have the right to primacy[101] in receiving protection and aid in any circumstance. Primacy implies superiority with respect to others. Thus, those charged with the protection of the general population, should in any situation in which children or adolescents are involved, make efforts to protect the children or adolescents first, before others.[102] However, in all seven steps, the child or adolescent victims are often revictimized, rather than protected first.

In both the denunciation process, the identities of the child and adolescent victims are not closely protected, which sometimes opens-up the victims to the undeserved and nasty social stigma surrounding sexual abuse. In the denunciation process, lack of complete privacy

sometimes allows persons not involved with the cases to see and hear the persons denouncing. Thus, those persons who can see or hear the denunciation can also learn the name of the child or

[99] NCPE, supra note 52, at art. 60 (Bol.).
[100] Diccionario Magister de la Lengua Española, entries for *preeminencia* and *preeminente* (Ed. 2003/2004).
[101] By primacy is understood, "the superiority of one thing with respect to another." (Id. at entry for *primacía*.)
[102] "This right includes: (1) To be the first to receive protection and aid in dangerous situations, and (2) to be assisted and defended in their [children and adolescents] interests and rights, before all persons and authorities, and for any cause or motive." CNNA, art. 107 (Bol.).

adolescent that has been sexually abused. The identity of the child or adolescent, therefore, is not in these instances protected or kept private, but rather is passively allowed to become public and unprotected.

In the declaration, unlike the denunciation, it is always the child or adolescent victims that are speaking. Furthermore, the frequent interruption of the declaration affects the perceived validity of the victims' testimony, revictimizes the victims' due to the unnecessary repetition brought on by the interruptions, and affects the protection promised to the child or adolescent victims. The constant interruptions often prevent victims from relating their testimony in an order and coherent fashsion, which affects the perceived validity of the victims' testimony. When prosecutors perceive that the testimony of victims is unreliable, prosecutors are often less willing to proceed with the cases. Decreasing the willingness of prosecutors to take these cases decreases the victims' ability to have their cases come before a judge, which decreases victims' chances of receiving a judicial verdict on and finality in their cases. Therefore, interrupting the victims' declaration affects their overall chances of receiving the protection promised to them from the judicial establishment.

Also, the medical forensic exam threatens the personal integrity of the victims.[103] Included within personal integrity is psychological and physical integrity. The sometimes harsh environment of the medical forensic office, and sometimes harsh comportment of the doctors, subjects victims to what victims call "extremely traumatizing experiences," thereby jeopardizing psychological integrity. Trauma undoubtedly affects psychological integrity. Furthermore, the experience of being insensitively probed and examined immediately after being raped causes many child and adolescent victims to become sick to their stomachs, or causes them to vomit and tremble. The trauma of the medical forensic exam not only jeopardizes psychological integrity, but physical as well, which are both part of the protected personal integrity.

Another instance of revictimization in place of protection is due to the often absolute reliance of prosecutors, judges, and forensic doctors on the forensic examination for proof that rape has occurred. To protect child and adolescent victims of sexual abuse properly, a proper understanding of their anatomy is required.[104] This proper understanding sometimes being absent, prosecutors, judges, and forensic doctors by relying on the forensic examinations sometimes punish and stigmatize those brave child and adolescent victims that break the silence and happen to have elastic hymens, were born without a hymen, were abused months before and have healed completely, or who were partially penetrated or fondled.[105] In essence, those child and adolescent victims whose genitalia do not show signs of abuse, which is the majority,[106] do not receive any form of protection from the judicial system.

The apprehension process also often neglects to protect child and adolescent victims of sexual abuse. The manner in which the apprehension is conducted, with the victim or the victim's family locating and following the predator, places the victim or the victim's family in grave danger, an often permits the predators to escape. Furthermore, it is common that when there is an absence of forensic evidence proving abuse, the prosecutors will not order the apprehension of the predator, thus leaving the child or adolescent victim vulnerable to further abuse.

The courts also in many instances fail to protect the victims. Operating on the naive assumption that some sexual predators while in liberty will not intimidate or affect the victims, the courts permit sexual aggressors to remain in liberty until the trial. This practice negates all notions of protection for the child or adolescent victim of sexual abuse. It subjects the victims to psychological terrorism and jeopardizes in practically every way their personal integrity. The sexual predator does not need to have physical contact or communication with the victim, simply being in the streets outside of the confines of prison is sufficient to cause a victim to recant. Furthermore, if in liberty, sexual predators are free to rape the victims again, or rape other children or adolescents. They are free to intimidate and bribe the families, or even kill the victim. Sadly, the courts rulings are often based on appearances, and therefore the courts overlook the dynamics of sexual abuse and the unpredictable and sinister character of those who commit the crime. The cessation of preventive detention and the application *medidas sustitutivas* carry the

[103] Personal integrity is protected under CNNA, art. 158 (Bol.): "The State and society together have the obligation to give priority to the prevention of situations that could jeopardize the personal integrity of children and adolescents, and those rights recognized in this Code, leaving them [the State and society] responsible to adopt all measures that guaranty their [children and adolescents] complete and healthy development."

[104] Tribunal Constitucional, Sentencia Constitucional SC 0103/2004-R (Bol.) (stating that the prosecutor must "adopt all measures necessary to avoid that the process transforms into a new instance of victimization and pain for the same [the victim], this obligation becomes of greater relevance when the victim happens to be a child….").
[105] See the discussion above about the Medical Forensic Exam.
[106] Joyce A. Adams, et al., Examination Findings in Legally Confirmed Child Sexual Abuse: It's Normal to be Normal, 94(3) Pediatrics 310, 315 (1994).

same implications as the non-application of preventive detention: the predator is in liberty, and therefore the same risks are present.

3. Priority in the Attention from Public and Private Services

To state that children and adolescents will have the priority[107] in the attention from public and private services[108] is to grant them the status of those who receive such services before all others. However, in six of the seven steps of the preparatory phase discussed, children are in no way the first to receive services from public and private institutions.[109]

When someone denounces to FELC-C (a public institution) the sexual abuse of a child or adolescent, the person denouncing must wait in line just as everyone else. The children and adolescents' right to attention is not given priority. Similarly, in the forensic exam, children and adolescents are not the first to receive attention or services; they must wait for an available appointment, just as all other victims of all other crimes needing the attention of a forensic doctor. Furthermore, when the victim or the victim's family contacts the police to execute the apprehension, the victim or victim's family must wait for the assigned police officer to have time to execute the apprehension. The fact that the victim or victim's family must often wait for the police officers to finish other business denies the right of children and adolescents' to be the first to receive the attention of public and private institutions.

When handling matters of child and adolescent sexual abuse, the courts do not place cases of child and adolescent victims first on the day or week's docket list. These cases are simply placed on the list in whatever position they happen to receive. The courts are undoubtedly a public institution, which means the courts must treat children and adolescents' cases with priority, thereby respecting the preeminence of their rights.[110] However, by postponing child and adolescent victims' cases to handle other "more pressing" matters, and by not placing cases of child and adolescent victims first on docket lists, the courts are denying both the right to priority of attention and the preeminence of children and adolescents' rights. What is clear is that in all these steps children and adolescents are not the priority; they are not the first to receive attention and services.

[107] By priority is meant the "Anteriority of one thing with respect to another." Id. at entry for *prioridad*. By Anteriority is understood the quality of "preceding in place or time." Id. at entry for *anterior*.
[108] In addition to NCPE, art. 60 (Bol.), see also CNNA, art. 7 (Bol.) (stating, "It is the duty of the family, the society, and the State to assure to the child or adolescent, with absolute priority, the exercise and respect of their rights.").
[109] The prosecutors of the office for children and adolescents attend only to children and adolescents.
[110] See also CNNA, art. 8 (Bol.) (stating that, "[A]ll children and adolescents have the right to be attended to with priority by judicial and administrative authorities.").

4. Access to the Prompt and Opportune Administration of Justice with the Assistance of Specialized Personnel

Access to prompt[111] and opportune[112] justice is crucial for the protection of children and adolescents, and for societal respect for the preeminence of their rights. The justice to which children and adolescents are to have access to is to be rapid, and convenient for them. Child and adolescent victims of sexual abuse have a right to this convenience and promptness. This implies that the entire judicialization process, including the entire preparatory phase from denunciation to the application of *medidas cautelares* or *medidas sustitutivas*, should be rapid and convenient for the victim.

Sadly, the preparatory phase is not prompt, and is certainly not convenient. Child and adolescent victims are made to wait, told to come back later, and their hearings and trials are repeatedly postponed. The form of denunciations and declarations are not convenient. It is never convenient to tell before strangers a gruesome account of what just happened to oneself or another; it is never convenient to be constantly interrupted while telling such a gruesome account. Child and adolescent victims are often subjected to medical forensic exams long after the crucial moments for the effectiveness of the medical forensic exam have passed. Hearing and trial dates are all but opportune, and child and adolescent victims are not given preference or priority on dockets. Furthermore, the fact that many predators remain in freedom during the judicialization process strips the process of all sense of convenience. These child and adolescent victims are forced to continue living in fear during the judicial process.

Moreover, the personnel that assist child and adolescent victims throughout the judicialization process are not specialized in the appropriate manner. Child and adolescents have the right to be assisted by personnel that are specialized in matters pertaining to children and adolescents. During the declaration process, trained psychologists are generally the only barrier between the child and the prosecutor who is seeking to assault the child with questions in some type of attempt to prove the victim is a liar. Some prosecutors claim to have discovered a secret method for detecting liars among the victims of sexual abuse: repeat the forensic examination

three to five months after the initial forensic exam, and if the results differ from the initial

[111] Prompt here is a translation of *pronta*, which in Spanish means, "that is produced rapidly." Pequeña Larousse Ilustrado 844.
[112] Opportune here is a translation of *oportuna*, which in Spanish means, "That it happens or succeeds when convenient." Diccionario Magister de la Lengua Española, at entry for *oportuna*.

forensic exam, then the initial examination is to be considered part of a conspiracy to falsely incriminate the accused.[113] Also, some prosecutors believe that if the child or adolescent victim uses the words vagina or penis to describe the genital, then the victim has been coached and is therefore a liar; for, according to these prosecutors, child and adolescent victims only used words such a butterfly, froggie, and birdie to describe their genitals (ignoring the fact that schools and some families are teaching children the proper names of the genitals, and that the current generation of children are using these proper names without difficulty). These "secret methods" completely ignore the ability of the body to heal, and that children and adolescents are taught from a young age the appropriate names of their genitals.

Moreover, the medical forensic doctors, prosecutors, and judges believe that the forensic examination is the only way to prove rape; that if there is no forensic evidence, there is no rape. Also, most of the prosecutors and judges do not understand the dynamics between the victim and the predator, and thus see no problem with the predator being in liberty during the judicialization process, provided they pose no "immediate threat" [as in physical, immediate intimidation or violence] to the victim and have not attempted or are not attempting flee. Thus, the government personnel assisting child and adolescent victims of sexual abuse appear to be unequipped and improperly trained to carry out their assignments and obligations.[114]

The pattern that emerges from this analysis is that children and adolescents' rights are not in practice preeminent, that child and adolescent victims are not given priority in protection, and that they are not primary in the reception of attention and services from private and public institutions. It also emerges that there is no access to prompt and opportune justice with the assistance of specialized personnel. Overall, the violation of Article 60 of the Bolivian Constitution is a systematic violation of children and adolescents rights under the Bolivian Constitution.

b. Article 3(1) of the Convention on the Rights of the Child

Article 3(1) of the Convention on the Rights of the Child states, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts

[113] Discussion with Attorneys from the Department of Cochabamba, Jul. 15, 2010 (notes on file with author).
[114] Also, the Government of Bolivia has the obligation to provide the necessary resources for the functioning of programs that provide attention to children. CNNA art. 181 (Bol.). Also, the type of attention that children are entitled to is comprehensive attention. CNNA art. 1 (Bol.). To provide such comprehensive attention, it is necessary to have a comprehensive understanding of matters related to children and adolescents. Therefore, the state must provide to funds necessary to provide children and adolescents with comprehensive attention, which includes resources for research, and better facilities.

of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration."[115] This article assures exactly that which is more explicitly typified in Article 60 of the Bolivian Constitution. Both Articles protect and assure that the children and adolescents' best interest will be a primary consideration, or in other words, the priority of the children and adolescents' best interest. By violating Article 60 of its own Constitution, Bolivia is also violating Article 3(1) of the CRC. Therefore, the Government of Bolivia is not only in contravention of its own Constitution and laws, but is also in contravention of CRC, a binding international agreement.

IX. CONCLUSION AND PROPOSAL

Despite the magnitude and gravity of child and adolescent sexual abuse, the dangerousness of the criminals who commit this crime, the fragility and vulnerability of the victims, and the promise of the Bolivian Government to protect and care for these victims, government personnel in the application of procedural laws are not only revictimizing the victims and leaving them unprotected, but are also in some ways allowing many sexual predators to remain free and not judicialized. This current problems needs to be approached from various angles, particularly through educational efforts, the creation of protocols, and the implementation of a monitoring system.

The social constructs, or beliefs, that support the legal practices reviewed above need to be addressed and modified through continual education programs. Continual education should be a requirement for all those involved in the administration of justice, including lawyers (private and public), judges, clerks, police officers, and forensic physicians. For such education to be useful it must be informed by up-to-date research and information. Continual legal education will ensure that lawyers, judges, and clerks are familiar with the latest jurisprudence of the highest courts and modifications to the law. This will help prevent legal mistakes that lead to appeal, nullification, re-trials, postponement of cases, and the unnecessary prolongation of the criminal justice process. Also, providing up-to-date medical research and information to those involved in the justice system will prevent, for example, reliance on obsolete medical information or

disproved theories interpreting medical data (particularly those about evidence of a ruptured hymen). In this way, continual education for those involved in the justice system

[115] CRC, supra note 55, at art. 3(1).

offers hope for better services for victims of sexual abuse and decreased instances of revictimization and denial of justice.

Also, specialized educational seminars on sexual crimes are needed. Sexual crimes are different in nature from other crimes, and usually do not leave any of the evidence traditionally relied upon to build a criminal case. Education on this and also the dynamics of victim-predator relationships, the effects of the abuse, and on the myths surrounding sexual abuse will help to create a judicial environment more friendly to victims of sexual abuse.

Furthermore, the Bolivian Government needs to create widely published and easily accessible protocols on how to manage cases of sexual abuse, thereby reducing the frequency of procedural errors in the management of these cases. Such a protocol would provide clear and in-depth explanation of each step necessary for the appropriate and legal management of cases of sexual abuse. In this way the protocol will also help those institutions that manage cases of sexual abuse to stay within the requirements of national laws (both procedural and substantive), the Constitution, and binding international agreements.

In addition to a protocol, the Bolivian Government needs to create a monitoring system that facilitates quality control and prompt feedback concerning the management of cases of sexual abuse within the justice system, and which will impose sanctions in egregious cases of mismanagement. Such a monitoring system should also provide victims whose cases are in the system with the space and opportunity to voice their opinions about the quality of the criminal justice system, and what they think could be done to improve it. The victims perspective will offer insight that otherwise may not be available. This monitoring system should also review the docket lists of judges, the decisions of judges in hearings and trails in these cases, and the actions of prosecutors, private attorneys, and police officers as well. Such oversight will put pressure on all persons involved to correctly manage these cases in accordance with the law.

If such measures can be undertaken by the Bolivian Government, child and adolescent victims may feel more protected and more comfortable trusting in the judicial system. Such measures would not only help victims from Bolivia, but would be an example to other Nations around the world about how to properly manage cases of child and adolescent sexual abuse. As Abbott stated, "The progress of a state may be measured by the extent to which it safeguards the rights of its children."[116]

[116] G. Abbott, The Child and The State 5 (1938).