MECHANISMS FOR THE RECAPTURE OF IMPUTADOS: A REVIEW AND PROPOSAL FOR BOLIVIA

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I. INTRODUCTION

Child and adolescent sexual abuse is one of the worst crimes known to humanity. To address the problems of the sexual abuse of children and adolescents, one requirement is that the State be able to capture and punish those who commit this atrocity. Not only is it important for the State to initially capture the imputado, but also to maintain control over the imputado after he or she has been captured. This control involves the imposition of preventative detention and the ability to recapture imputados when they escape. Without the ability to control imputados, the State losses much of its ability to contribute to the protection and defense of children and adolescents-who are without doubt some of the most vulnerable citizens among us.

Understanding this vulnerability is necessary to understanding the desperate need for robust mechanisms for the recapture of imputados and for the imposition of preventive detention in cases of sexual abuse. The main topic of this article is the need for mechanisms for the recapture of imputados, and the need to prevent the escape of imputados at its roots by enforcing preventive detention. However, before discussing the main topic, it is necessary to first briefly discuss the prevalence of child and adolescent sexual abuse and the vulnerability of children and adolescents.

1.1 Prevalence and Consequences of Child and Adolescent Sexual Abuse

The sexual abuse of children and adolescents is a problem that affects all social classes and all races of people, meaning that every region of the world suffers from this problem.[1] In Cochabamba, Bolivia, one of every three girls and one of every five boys are sexually abused before the age of 18.[2] Most of the sexual abuse in Cochabamba is committed by persons known to the child or adolescent, suggesting high levels of incest and abuse by family friends, teachers, religious authorities, etc.[3] This fact explodes the common myth that most rape occurs at night, in the dark corner of some obscure ally in a bizarre place of the city.

The damaging consequences of the sexual abuse for the child or adolescent victim are incalculable. Victims often suffer high levels of emotional pain, and often develop depression, and

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[1] 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).

[2] Brisa De Angulo, Child Sexual Abuse and the Conspiracy of Silence [Conspiracy of Silence], 42 (2009).

[3] Id., at 39 (stating that 64% of the participants reported in the post test that they had been abused by someone known to them.)

mental disorders[4] to deal with the reality of the abuse. Some victims develop obesity, patterns of substance abuse, and other self destructive behaviors, such as high numbers of sexual partners.[5] The trauma of the sexual abuse frequently affects the ability to concentrate in school, and sometimes results in extreme physiological changes in the structure of the brain.[6] Also, many victims of child and adolescent sexual abuse are inhibited in their ability to experience later in life intimacy and trust with their partners.[7]

Victim's families are often harmed as well. Family members are frequently thrown into cycles of guilt and depression because they did not notice that the abuse was occurring, or were unable to stop it.[8] Siblings often criticize themselves for not having protected their sisters or brothers, and many suffer from the memories of their sisters or brothers being abused.[9] The sexual abuse destroys the victim, the victim's family, and also has devastating effects on society.

Many children and adolescents who are abused run-away from home, which creates a substantial portion of homeless children. Also, abused children often find themselves stuck in cycle of violence, where they hurt themselves or others. Sadly, some child and adolescent victims of sexual abuse later become sexual predators, or engage in criminal activity. In short, the effects of sexual abuse affect everyone, including the future generations that are yet to be born, for when they enter into this world, and when they do, many will become targets of abuse as infants.

1.2. Vulnerability of Children and Adolescents

Children and adolescents are very vulnerable. For the first several years of their lives, children are dependent on adults for the meaning they assign to the phenomena they perceive with their every forming and transforming minds. This means also that young children are dependent on the sexual predator for the meaning they assign to the intrinsically harmful experience of

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[4] See Roland Summit, Child Sexual Abuse Accommodation Syndrome, 1983 (exploring the various types of coping mechanisms that children develop to accommodate the horrible reality of sexual abuse, and how adults use the various behavior patterns resulting from the coping mechanism to invalidate explicit claims of sexual abuse).

[5] 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).

[6] Martin H. Teicher et al., The neurobiological consequences of early stress and childhood maltreatment, 27 Neuroscience and Biobehavioral Reviews 33, 35 (2003); Martin H. Teicher et al., Childhood Neglect Is Associated with Reduced Corpus Callosum Area, 56 Biological Psychiatry 80 (2004) (discussing the damage that results to the brain from instances of childhood abuse, including sexual abuse).

[7] Ellen Bass & Laura Davis, The Courage to Heal, 223 (1988).

[8] Id., at 318-319.

[9] Id.

sexual abuse. Predators can take advantage of this and warp the child's mind, making the child believe that the uncomfortable, secretive, and scary experience is actually one of love and care.

Also, children are dependent on adults for their protection and wellbeing. Children are not able to fully protect themselves from the cruelties of this world without the constant help of adults. (As an aside, children due to their inherent vulnerability cannot be expected to protect themselves. Therefore, it is adult's responsibility to protect them.) Nor are children able to provide for themselves all the basic necessities of life.

Adolescents are a bit more independent, but are still dependent on adults for protection and wellbeing. Adolescents are in a formative stage of their lives and often need the advice or help of those who are older and more experienced (though this does not mean those who are older and more experienced do not often need the wisdom of those younger than them, such as children and adolescents). Just as children, adolescents are often dependent on adults for protection in circumstances such as sexual abuse. To challenge the tyranny of the predator alone is horrible, and very dangerous. Just as children, adolescents need the assurance and support of adults when they break the silence surrounding the sexual abuse.

1.3. Overview

The structure of this article takes the following form. Section 2 defines some key terms and concepts that are used throughout the article. Section 3 considers the necessity and importance of mechanisms for the recapture of imputados. Section 4 reviews the national and international rights of children and adolescents to protection. Section 5 explores Bolivia's actual mechanisms for the recapture of imputados. Section 6 considers the implications of these mechanisms for cases of sexual abuse of children and adolescents. Section 7 considers the general implications of the lack of mechanisms for the recapture of imputados. Section 8 considers how the lack of mechanism of recapture violates children and adolescents' rights. Section 9 puts forward a proposal for the improvement of the current mechanisms of recapture and for how to better enforce preventive detention. Finally, section 10 presents a brief conclusion.

2. Some Necessary Definitions

Before exploring the topic further, it is necessary to define some key terms and concepts that appear throughout the article. This will help maintain consistency and increase the clarity of the arguments. These definitions are broken into separate sections.

2.1. Sexual Abuse

In this article, sexual abuse is understood as the touching, fondling, or penetration by an adult to a child or adolescent's vagina, penis, scrotum, anus, or mouth, as well as the touching and fondling of the body, including the breast, thighs, buttock, etc. The touching or fondling does not have to occur through force or threat, nor through persuasion or lying, nor need it be unwanted or against the will (for a child or adolescent, due to their vulnerability and often gullibility, may not know or understand that the abuse occurring is wrong, and therefore may not form any type of mental resistance to the experience). Any act of sexual engagement by an adult with a child or adolescent is considered in this article to be sexual abuse.

2.2. Mechanisms of Recapture

Mechanisms of Recapture are those mechanisms that facilitate the location and physical apprehension of the *imputado* after the initial apprehension, and after a judge has declared the imputado *rebelde*. Location involves obtaining all information and materials needed to ascertain the location of the *imputado*. Apprehension involves going to the ascertained location, and then arresting and immediately detaining the imputado.

In this article only national mechanism for the recapture of imputados are explored. International mechanisms, such as Interpol and extradition treaties are therefore outside the scope of article. Thus, considered here are those mechanisms for the recapture of imputados within and between the nine departments of Bolivia.

2.3. Who is the imputado, and who imputes?

The *imputado* is the suspect whom the State formally charges (imputes[10]) with the commission of a crime. During the entirety of this article, the word imputado will refer to imputados in cases of sexual abuse. In cases of sexual abuse of children and adolescents, the formal imputation [*imputacion formal*] occurs when the prosecutor esteems that there exist indicators that (1) sexual abuse occurred, and (2) the suspect(s) participated in the perpetration of the sexual abuse.[11] The formal imputation marks the beginning of the *etapa preparatoria*,[12] and makes possible the rest of

[10] Impute (Spanish, *imputar*), "To attribute fault, a crime, or action." Diccionario Magister de la Lengua Español, entry for *imputar* (ed. 2003/2004).

[11] Código de Procedimiento Penal [CPP] art. 302 (Bol.) (stating, "If the prosecutor esteems that there exist sufficient indicators of the existence of the act and the participation of the imputado, the prosecutor will formalize the imputation through a well reasoned resolution….").

[12] CPP art. 301 (Bol.); see also Manual **P**ráctico de Procedimiento Penal, 68 (2009) (stating that the formal imputation starts the development of the preparatory phase); see also, CPP art. 323 (Bol.). The preparatory phase consists of 6 months of investigation that culminate in the formal accusation and the particular accusation. The formal accusation occurs when the State possess sufficient elements of conviction (elements of the crime committed) and evidence, not only indicators as in the formal imputation, and offers these elements of conviction and evidence

the criminal justice process. Therefore, the State's prosecutors, who effect the formal imputation, literally hold in their hands the key that opens the gate to criminal justice for child and adolescent victims of sexual abuse.

2.4. Delcaration of "Rebelde"

A judge or tribunal can declare the imputado *rebelde* [rebel] when the imputado: (1) without justification does not comply with a citation; (2) has evaded the place or establishment where he or she was detained; (3) does not comply with an order of apprehension emitted by a competent authority; and (4) leaves his or her assigned residence without permission from a judge or tribunal.[13]

Once a judge or tribunal has declared the imputado *rebelde*, it must order the apprehension of the imputado, or ratify an expedient for the apprehension of the imputado.[14] The tribunal must also order: (1) the gathering and publication of the personal data of the imputado in the mediums of communication for the search for and apprehension of the imputado; (2) the application of those *medidas cautelares reales*[15] that are considered convenient to the possessions of the imputado, so as to assure the eventual civil responsibility of the imputado for his or her act; (3) the execution of the bail that had been loaned; (4) the conservation of the evidence and information needed for conviction; and (5) the designation of a defense attorney to the imputado that will represent and assist the imputado with all the powers, faculties, and recourses available to all imputados.[16]

The declaration of *rebelde* does not interrupt the *etapa preparatoria*, but does interrupt the trial process. The *etapa preparatoria* continues until its completion, which is 6 months from the date of formal imputation.[17] However, trial must be suspended until the imputado is recaptured,

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to the court in accusation of the imputado. See, CPP art. 340, 341 (Bol.). The particular accusation is on behalf of the victim by a private criminal law attorney in addition to the formal accusation of the state. This accusation permits the private criminal law attorney to participate and coordinate with the prosecutor in the trial. See, CPP art. 375 (Bol.). Private criminal law attorneys include those that work at Centro Una Brisa de Esperanza [CUBE], which provides comprehensive legal, psychological, and social services to child and adolescent victims of sexual abuse.

[13] CPP, art. 87 (Bol.) See also, Nueva Constitución Político de Estado, art. 126 (II) (Bol.) (stating that the courts will not suspend any trials, and in the absence of the imputado the court will declare the imputado *rebelde*.) For the form the order of apprehension must take, see CPP, art 129(2) (Bol.).

[14] Id., art. 89 (Bol.)

[15] *Medidas Cautelares Reales* are restrictions applied to the property of those charged with crimes to assure their presence during the judicial process. CPP, art. 252 (Bol.).

[16] Id.

[17] Id., art. 90 (Bol.)

for the imputado cannot be condemned without having been heard and judged in accordance with the requirements of due process.[18]

If the *imputado rebelde* reappears or is recaptured, the trial process resumes. The imputado or those who know the imputado then have the opportunity to justify the absence of the imputado.[19] However, the *medidas cautelares* imposed upon the imputado retain their effect. Also, the imputado, or the *fiador*[20] of the imputado, pays all the costs of the rebellion.

Furthermore, the Código Penal[21] in article 180 authorizes the penalization of the act of escape of those who have been legally detained or condemned.[22] In article 181 it authorizes the penalization of the act of assisting escape.[23] Article 182 penalizes public officials when the escape occurred due to their mistakes.[24] Article 183 authorizes the punishment of those who elude the execution of a penal sanction imposed through a judicial sentence.[25]

In short, the CPP and the CP authorize the declaration of rebeldia, the order of apprehension and other necessary orders, and the punishment of those who escape and are eventually recaptured. However, neither of these codes mentions the actual mechanisms for the recapture of imputados, which perhaps are to be found in other codes. These other codes are explored below. But first, it is necessary to explore the theoretical reasons why mechanisms for the recapture of imputados are necessary.

3. Necessity and Importance of Mechanisms for the Recapture of Imputados

The criminal justice system has two ends: (1) the realization of justice, and (2) the prevention of crime in society. If the State cannot keep the imputado present during the criminal justice process, then the State cannot accomplish either of these ends. The realization of justice

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[18] Nueva Constitución Político del Estado [NCPE], art. 117 (Bol.); Corte Supremo de Justicia, Auto Supremo No. 433, Sucre, October 11, 2006.

[19] CPP, art. 88 (Bol.)

[20] The *fiador* is the one who pays bail on behalf of the *imputado*. E.g. CPP, art. 241 (Bol.).

[21] Considering the purpose of the penal code, which is to typify crimes and the penalties of for those crimes, nothing more could be expected from a penal code. Specific mechanisms are the subject of other codes, administrative codes. A separate matter of consideration is the actual punishment authorized (for example one month to one year in prison). The penalties imposed in these articles may be irrelevant to the phenomena of escape. Those who attempt escape probably do so because they believe they will not be caught. Affecting this belief is more crucial than the punishment imposed. If they those who contemplate escape understand that their attempt will almost certainly result in recapture, they will probably be deterred from attempting escape. Again, the area of recapture is outside the scope of material considered in the Código Penal.

[22] Código Penal [CP], art. 180 (Bol.).

[23] CP, art. 181 (Bol.).

[24] CP, art. 182 (Bol.).

[25] CP, art. 183 (Bol.).

demands the presence of the *imputado*, just as does the prevention of crime. What follows is an exploration of why mechanisms for the recapture of imputados are necessary for the realization of these two ends of the criminal justice system.

3.1. Realization of Justice depends on the presence of the imputado.

The first end of the criminal justice system, the realization of justice, involves six distinct types of justice: restitution, retribution, restoration, rehabilitation, reconciliation, and redistribution. However, in cases of sexual abuse, only four of these types of justice should be involved: restitution, retribution, restoration, and rehabilitation. In cases of the sexual abuse of children and adolescents, the betrayal, trauma, and damage caused by the crime are such that the State should have no interest in the eventual reconciliation of the parties involved. Also, there is no criminally misappropriated property or goods for the State to redistribute in cases of sexual abuse. Yet, of the four types of justice involved, each requires that the imputado be present during the entirety of the criminal justice process.

Restitution: The restitution of the rights of the victim involves stopping the violation of the rights of the victim, and placing the victim in a situation where her rights are respected and she can freely exercise those rights. For this restitution to occur, it is often necessary for the State to forcibly prohibit the predator from violating the rights of the victim. For this prohibition to occur, the State must be able to establish control over sexual predator, who later becomes the imputado. If the imputado (sexual predator) can escape that control, the escape nullifies the State's efforts toward restitution, meaning that the victim's rights are again threatened or violated. Therefore, the State needs robust mechanisms of recapture to prevent the escape of the imputado and the nullification of the State's efforts to restitute the rights of the victim.

Retribution: Retribution involves the punishment of those who violate the rights of others; of those who violate the social covenant. In cases of sexual abuse, it is the sexual predator that the State punishes with incarceration for the violation of the rights of the victim and for the violation of a fundamental precept of the social covenant. Incarceration of the sexual predator is only possible after the full trial process has transpired in accordance with the requirements of due process. Yet, it is the full trial process that cannot transpire without the presence of the sexual predator. Thus, if the imputed sexual predator can escape the control of the State, the entire trial process, and therefore all retribution, is by that escape nullified or made incapable of occurring.

Therefore, to achieve retribution in cases of sexual abuse, the State must have control of the imputados, and if they escape it must have mechanisms of recapture to *re*-apprehend those imputados (sexual predators) that escape.

Restoration: Restoration in cases of sexual abuse implies that the State makes efforts to restore the victim to the position (the state of physical and mental health) she occupied before the commission of the sexual abuse against her. Therefore, restoration in cases of sexual abuse also involves the protection of the victim, therapeutic services for the victim and the victim's family, assistance in school work or other social activities when necessary, etc. However, if the State cannot establish control over the imputado, these efforts toward restoration are in serious jeopardy. If the sexual predator has access to the victim, restoration is not possible, for there is no protection. Furthermore, if the predator is free, in the streets, that freedom of the predator may subject the victim and the victim's family to psychological torture, constant fear of what could happen, or, in other words, extreme unpredictability. This state of affairs would most likely hinder any protection or therapeutic services the State provides. To prevent this destruction of the restorative efforts of the State, and to facilitate the restoration of the victim and victim's family, it is necessary that State be able to control and recapture those imputados that escape its control. Also, it is the responsibility of the State to undertake restorative efforts, especially the recuperation and social reintergaiton of sexually abused children and adolescents (as well as all child and adolescent victims of maltreatment). Article 39 of the Convention on the Rights of the Child[26] states:

> States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Rehabilitation: Under the Bolivian penitentiary system, sexual predators, just as all person incarcerated, have a right to rehabilitation.[27] To rehabilitate sexual predators, the State must have the sexual predator in its custody, under its complete control. The State must be able to monitor

[26] **Convention on the Rights of the Child**, [CRC] art. 39, Mar. 8, 1990, 1577 U.N.S.T. 3.
[27] Código Penal, art. 96 (Bol.).

the sexual predator, and help the predator to progress in his or her rehabilitation. The predator needs to understand that sexual abuse is unacceptable, in every sense wrong, and extremely destructive. However, if the sexual predator can escape the control of the State, rehabilitation is impossible, for the sexual predator has access to both the person(s) already victimized and more potential victims. Thus, if the State cannot establish control over the sexual predator, stop the predator from abusing, and intensely focus on rehabilitation of the predator, the State is robbing the sexual predator of every opportunity for rehabilitation. Furthermore, without rehabilitation, there is no hope that the sexual predator will ever be able to safely re-enter society. Yet, in Bolivia, it is a safe and rehabilitated re-entry into society that is the right of the sexual predator. Therefore, to maintain the right of the sexual predator to rehabilitation, the State must be able to quickly recapture those predators that escape the control of the State.

3.2. Prevention of crime

The second end of the criminal justice system is the prevention of crime, and more specifically the prevention of sexual abuse. The prevention of sexual abuse is interwoven with the types of justice described above. Thus, in the course of administering the various types of justice, the State is also engaging in one or another form of crime prevention. Furthermore, the prevention of sexual abuse is at least partially dependent on the ability to stop the crime, establish control over the predator, and appropriately punish the predator.

Moreover, the Bolivian government has assumed the responsibility of the prevention of all activities that threaten the dignity of children and adolescents. This commitment is reflected in the article 158 of the *Código Niño, Niña, y Adolescente* [CNNA], which states:

> The State and Society in their entirety have the obligation to give priority to the prevention of situations that can attempt against the personal integrity of children and adolescents and the rights recognized in the present Code, and are responsible [the State and Society] to adopt the measures that guarantee their [children and adolescents] complete and healthy development.
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> The inobservance of the norms of prevention will import responsibility to the natural or juridical person that commits it [the inobservance], and the

obligation to repair the harm occasioned whether it be by action or omission, without prejudice to that which is stated in other laws.[28]

From the public health perspective, there are three levels of preventive activity: primary prevention, secondary prevention, and tertiary prevention. The various levels of preventive activity overlap and depend upon one another. Each of these levels of prevention is here considered from the perspective of preventing sexual abuse.

*Primary Prevention***:** Primary preventive efforts take place before the sexual abuse occurs. These efforts seek to reduce the incidence of sexual abuse by removing the causes that give rise to sexual abuse.[29] Removing the causes of sexual abuse implies intervention on a structural level, which means working with the basic political, social, educational, and familial environments surrounding children and adolescents. Removing the causes of sexual abuse also involves altering fundamental beliefs and attitudes that give rise to and tolerate the sexual abuse of children and adolescents, such as those beliefs that rationalize male dominance, the sexual objectification of children and adolescents, etc. In short, primary prevention on a fundamental level involves the deconstruction of androcentric and adultocentric belief systems.[30] (As an aside, this deconstruction implies the reconstruction of the beliefs surrounding the criminal justice system, which has historically been male dominant and adult centered.) Overall, primary prevention requires deep change in society at both the structural and fundamental levels that reduces the vulnerability of children and reduces or eliminates the basic causes that make possible the development of sexual predators in society.[31]

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[28] Código Niño, Niña, y Adolescente [CNNA], art. 158 (Bol.).

[29] Luz Stella Losada, Pilar Ponce De León, & José Miguel De Angulo, La Prevención de Las Agresiones Sexuales Contra Niños, Niñas, y Adolescentes 8 (2010) [hereinafter La Prevención].

[30] For a more detailed treatment of primary prevention, see Id., at 8-10 (2010).

[31] The Bolivian government has in the CNNA adopted several measures it calls "special prevention," which fall within the category of primary prevention, and which may be affected by the inability of the state to maintain control over imputados. These measures of special prevention are treated in Articles 160 through 168 of the CNNA. Topics treated include: the appropriateness of public programs (CNNA, art. 160); prohibition of the sale of particular items to children and adolescents (Id., at art. 161); the obligations of the mediums of communication (Id., at art. 162); the classification of videos (Id., at art. 163); restrictions on published materials (Id., at art. 164, 165); the inoculation and destruction of material that is harmful to the mental health of children and adolescents (Id., at art. 166); obligations of business owners to communicate (Id., at art. 167); and regulation of the application of these articles (Id., at art. 168).

Secondary Prevention: Secondary preventive efforts focus on reducing the prevalence of sexual abuse, or in other words, the number of existing cases.[32] This level of prevention "implies a wide spectrum of strategies that facilitate the rupture of the silence of the victims and immediate actions that impede the predator or the State from causing more harm."[33] One of the most important aspects of secondary preventive efforts is providing spaces where victims can safely rupture the silence surrounding the abuse. The rupture of silence permits those working with the victims to understand the gravity of the crime and conduct research on the topic, which in turn provides the knowledge needed to develop effective methods of primary prevention.

Once the silence is broken, the State can prosecute and appropriately punish sexual predators, which is another crucial element of secondary prevention. When the State prosecutes and appropriately punishes the sexual predator, the State sends a powerful message to the victim and to society that the State will no longer tolerate sexual abuse, will not leave victims unprotected, and will appropriately deal with those who commit sexual abuse. This message of the State is an indicator to victims that the State is abandoning its historical indifference to the suffering of children, adolescents, and women. This message, in turn, also encourages the rupture of the silence, which as has been seen reinforces primary preventive efforts.[34]

Tertiary Prevention: Tertiary preventive efforts deal with the effects or damage created by the sexual abuse that has occurred.[35] This type of prevention is crucial for both the restitution of rights and restoration of health. At this level of prevention, explicit efforts are made to accompany the victims in their efforts to rupture the silence, and services are provided to help them manage in healthy ways the devastating effects of the trauma. Tertiary preventive efforts also send a message to society that victims will not be left alone, that they will receive support and care, and that the sexual predators will not have the last word in the lives of victims. The support provided in

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[32] La Prevención, supra note 29, at 10. Also, the Bolivian Government in efforts to prevent all forms of maltreatment of children has imposed a duty to communicate: All persons in general, and especially the directors and masters of educational establishments, that detect any sign or indicator of maltreatment, violence, exploitation, abuse, possession or consumption of alcohol or prohibited drugs, is obligated to immediately communicate these situations to the parents or persons responsible and to the *Defensoria de la Niñez y Adolescencia* of their jurisdiction. CNNA, art. 159 (Bol.).

[33] Id., at 10.

[34] Id., at 11. For a more detailed treatment of secondary prevention, see La Prevención, supra note 29, at 10-12, 14-22 (2010).

[35] La Prevención, supra note 29, at 12.

tertiary preventive efforts also challenges the traditional myths surrounding sexual abuse,[36] which means that tertiary preventive efforts also play a role in primary prevention.[37]

3.3. Mechanisms for the Recapture of Imputados and Prevention of Sexual Abuse

Though thoroughly within the category of secondary prevention, mechanisms of recapture can also serve as a mechanism of primary prevention. Mechanisms of recapture carry the potential of having a deterrent effect on potential sexual predators, and on those imputados who would attempt escape. If the State consistently recaptures those imputados in sexual abuses cases that escape, at very least, other such imputados will be less likely to attempt escape.

However, it is important to note that the effectiveness of mechanisms of recapture as a deterrent "must be judged from the view point of the potential criminal," and thus mechanisms of recapture are effective as a deterrent only to the extent that they create the appearance of certainty of recapture.[38] Therefore, for mechanisms of recapture to deter imputados from attempting to escape, the imputados must be consciously aware that recapture will with certainty result from any attempt to escape.[39]

Furthermore, if victims are aware that the State recaptures those imputados that escape, victims may be more willing to disclose the abuse and provide information that is necessary to primary prevention. However, if the State cannot prevent the escape of imputados, or cannot recapture the imputados that escape, victims may not be willing to come forward and denounce the crimes committed against them. The unwillingness of victims to come forward could make it impossible to gather from them the information necessary for primary prevention, and could destroy the possibility of tertiary prevention. Thus, a failure of the State in its efforts at secondary

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[36] For a nice treatment of some common myths surrounding child and adolescent sexual abuse, see Eight Common Myths About Child Sexual Abuse, http://www.leadershipcouncil.org/1/res/csa_myths.html (last visited Sept. 3, 2010).

[37] La Prevención, supra note 29, at 12.

[38] Sanford H. Kadish, Stephen J. Schulhofer, & Carol S. Steiker, Criminal Law and Its Processes: Cases and Materials 95 (8th ed., 2007) (discussing the effectiveness of certainty of apprehension as a factor in the deterrence of crime).

[39] Interestingly, and contrary to many traditional forms of deterring crime, deterrence of crime actually depends more on certainty of capture than it does on the severity of the penalty. The National Academy of Sciences in the United States reported that an increase of 10 percent in the certainty of apprehension would deter twice as much crime as an increase of 10 percent in the severity of punishment. Albert J. Reiss, Jr. & Jeffery A. Roth, eds., Understanding and Preventing Violence: Report of the National Research Panel on the Understanding and Control of Violence 6 (1993). Increasing the severity of the penalty can actually have the effect of reducing the reporting of crime and could also have the effect of reducing "the risk of conviction, thereby leading to results contrary" to the purpose of severe penalties. Johannes Andenaes, The General Preventive Effects of Punishment, 114 U. Pa. L. Rev. 949, 965-970 (1966) as cited in Sanford H. Kadish, Stephen J. Schulhofer, & Carol S. Steiker, Criminal Law and Its Processes: Cases and Materials 95 (8th ed., 2007).

prevention very well could substantially impede the other two types of prevention, possibly to the point of non-function.

Therefore, if the State is to engage in its prevention function, it must be able to prevent the escape of imputados, and in the event that imputados escape the State must be able to recapture them. Furthermore, primary prevention is to a large extent dependent on the ability to gather directly from victims of sexual abuse accurate information about the phenomena surrounding the abuse. Tertiary and other secondary preventive efforts are dependent on the ability of the State to protect the victim and maintain control over the sexual predator. Without the protection of victims and the State's control over sexual predators, preventive efforts are in many ways not possible, and the administration of criminal justice for victims of sexual abuse becomes nothing more than an abstraction, a nice dream.

3.4. Practical Reasons for Mechanism for the Recapture of Imputados

Robust mechanisms for the recapture of imputados accomplish several things for the criminal justice system. Not only do they help make possible the two ends of the criminal justice system, but also they enable the smooth and consistent functioning of the system. If the State is able to recapture imputados when they escape, then the State is also able to try those imputados in a timely manner. This means that victims receive the prompt and opportune justice promised to them in the Constitution[40] with a minimum level of revictimization caused by constant fear and unpredictability. Such efficient functioning of the judicial system increases the confidence of those who place their trust in it. This in turn could reduce the number of individuals or families that choose to take justice into their own hands. Such a result is key to what the criminal justice system does: administer justice in a uniform and equitable fashion, adhering to principles of proportionality and due process. Such principles are absent in street justice, which is random and unregulated.

Furthermore, the criminal justice system is unable to function without the presence of the imputado. In cases sexual abuse this means no justice for the victims. The absence of the imputado paralyzes the system and mocks the victim's attempts to seek justice. When the State loses control over the imputado, the criminal justice system loses its ability function. Therefore, it is extremely important to ensure the recapture of those imputados that escape.

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[40] See NCPE, note 18, at art. 60 (Bol.).

Moreover, when the State loses control over the imputado, victims are left with the sense that the State has failed them. Victims, when they turn to the criminal justice system, are making the choice to not take justice into their own hands; victims are choosing to do exactly what the criminal justice system has asked them to do. However, when that system fails, victims are left with nothing; that are not permitted to take justice into their own hands, and the system that is to do justice for them literally does nothing. This sense of betrayal by the State could lead victims to recant, or in the future to not disclose the abuse, leading to a situation where defenseless victims are sexually abused with impunity.

4. The Right to Protection and Mechanisms of Recapture

Children and Adolescents possess the rights to protection and assistance, and the sources of these rights are manifold. The rights to protection and assistance are enshrined in the Convention on the Rights of the Child, a binding international agreement, to which Bolivia is party. As party, Bolivia has the duty to take those measures that are necessary to provide children and adolescents with protection from harm, and assistance if they are harmed. Fortunately, Bolivia has taken strides to reflect these rights in many of its own bodies of law. However, Bolivia lacks many of the necessary administrative mechanisms to make the protection and assistance of children and adolescents a reality.

Before proceeding to consider the content of Bolivia's mechanisms for the recapture of imputados, it is first necessary to make clear the seriousness of Bolivia's commitment to protect children and adolescents. To make clear the seriousness of this commitment, the pertinent portions of those key articles that best show the content of Bolivia's commitment are here reproduced. What follows is a series of selected Articles from the Convention on the Rights of the Child, the New Constitution of Bolivia, and the *Código Niño, Niña, y Adolescente*, all which share the common theme of protection of children and adolescents.

Convention on the Rights of the Child:

Article 3

2. States Parties shall undertake to ensure the child such ***protection*** and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or

her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to ***protect*** the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34

States Parties shall undertake to ***protect*** the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to ***prevent***:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Constitution:

Article 60*:* 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.[41]

Código Niños, Niñas, y Adolescentes:

Article 1*:* The present Code establishes and regulates the regimen of prevention, protection, and comprehensive attention that the State and society must guaranty to

[41] NCPE, supra note 18, art.60 (Bol.). Also, there is little or no Supreme Criminal Court or Constitutional Tribunal jurisprudence on the interpretation of this the New Constitution.

all children and adolescents with the end of assuring physical, mental, moral, spiritual, emotional, and social development in conditions of liberty, respect, dignity, equity, and justice.

Article 8*:* All children and adolescents have the right to be attended to with priority by the judicial and administrative authorities.

Article 13*:* All children and adolescents have the right to life and health. The State has the obligation to guaranty and protect these rights, implementing social policies that assure dignified conditions for their gestation, birth, and complete development.

***Article* 106**: It is the duty of all to watch over and protect the dignity of the child or adolescent, defend and put them to safety from any form of inhuman, violent, dehumanizing treatment, humiliating or repressive, and to denounce before the competent authority the cases of possible or confirmed maltreatment.

Article 107: This right [the right to help and protection] includes: (1) To be the first that receive protection and aid in dangerous situations; (2) To be assisted and defended in their interest and rights before any person or authority, and for any cause or motive.

Article 189: The policies of protection will consider the situation of the children or adolescents in a general manner and, in particular, the situation of social risk that threatens them by the noncompliance and violation of their rights.

Article 213: The State guaranties to all children and adolescents access, in equality of conditions, to justice in all instances.

As can be seen from these selected Articles, the commitment Bolivia has made to children and adolescents is of a systematic character, meaning systematically reaffirmed in a consistent and coherent manner in the various bodies of law. However, the mechanisms for making this profoundly coherent commitment a practical reality are lacking in an equally profound way. What follows is an exposition and critical analysis of one portion of these mechanisms, the mechanism for the recapture of imputados.

5. Bolivia's Mechanisms for Recapture of Imputados

As established above in section two, *mechanisms of recapture* only include those mechanisms utilized after the Judge declares the imputado *rebelde*. If the judge declares the imputado *rebelde*, the judge must, among other things, order the apprehension of the imputado. Also, for a Judge to declare the imputado *rebelde*, the identity of that imputado must be known. Thus, the exposition and analysis here is restricted to those mechanisms utilized for the location and apprehension of the imputado. The types of mechanisms of recapture considered here are those formally stated mechanisms of the national police. Such formal mechanisms include official, documented, and codified protocols and mechanisms for how to effect the recapture of the imputado. Street level, unwritten, unofficial, and unregulated mechanism are not the focus here.

5.1. Código de Procedimiento Penal [CPP]

What is present in the CPP is a minimum and general outline for the execution of the apprehension. The CPP specifics who can execute the apprehension, and under what circumstances. The National Police can utilize mechanisms of recapture only in two circumstances, when: (1) the police witness the imputado committing the crime [attempting to escape]: and (2) a judge declares *rebelde* the imputado and orders the apprehension the imputado.[42] Citizens can apprehend in two circumstances, when: (1) the citizens witness the *imputado* attempting escape or violating some restriction; and (2) the citizens witness the imputado fleeing from the active pursuit of the police.[43] As soon as citizens physically apprehend the *imputado*, they must take the criminal to the police, the prosecutor, or the nearest competent authority.[44]

Article 295 of the CPP states the faculties of the judicial police, or what is now called FELCC.[45] The one pertinent faculty is the apprehension of the suspected authors and participants

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[42] CPP, art. 227 (Bol.). In instances of *rebelde*, the order of apprehension emitted by the prosecutor is not an option. By the time *rebelde* is declared, cases of *rebelde* have progressed past the stage when prosecutors are able to order apprehension. See CPP, art 226 (Bol.).

[43] CPP, art 229 (Bol.). See, NCPE, supra note18, art. 23 sec. IV (Bol.).

[44] Id.

[45] For an even more general statement of the duties of the judicial police, what is now FELC-C, see Ley Organica del Ministerio Publico, art. 75 (Bol.) (stating, "The organs of the police that exercise functions of the judicial police in the investigation of crimes, will carry out the identification and apprehension of the suspects held responsible, the identification and help of the victims, and the accumulation, analysis, and securing of the evidence and all actuation of orders by the prosecutor that directs the investigation, which diligences will be remitted to the competent authority.").

of crimes (which includes *imputados*).[46] There is also a general guideline of basic principles to be followed during the moment apprehension. Articles 296 of the CPP states:

> In the cases that this Code authorizes apprehension of imputados, the members of the police must comply with the following basic principles of actuation:
>
> 1. Use force only when it is strictly necessary;
> 2. Do not utilize firearms, except when:
>
> a. There is resistance that puts at risk the life or physical integrity of persons; and
>
> b. In cases of escape when less extreme measures are insufficient to effect the apprehension of the imputado, with prior warning of their [firm-arms] use.
>
> 3. Do not inflame, instigate, or tolerate any act of humiliation, torture, or other cruel treatments or punishments, inhuman or degrading, as much in the moment of apprehension as during the time of detention.
> 4. Do not permit detainees to be presented to any medium of social communication, without their express consent, which consent will be granted in the presence of the defense attorney and made consistent with the respective diligences.
> 5. Identify yourself, by showing your credentials in the moment of apprehension, as a police authority indicating your first and last name, and ascertain the identity of the person or person against whom you proceed;
> 6. Inform the person in the moment of apprehension of the motive of the apprehension, that he or she has the right to remain silent without that silence being of prejudice and the right to the designation of a defense attorney.
> 7. Communicate the detention and establishment to which he or she will be conducted, to the parents or other person related to the *imputado*.
> 8. Register in an unalterable record the place, day, and hour of the detention.
>
> The inobservance of the norms contained in the present article will give place to

[46] CPP, art. 295 (Bol.).

administrative responsibility and the corresponding penalty.

Also, the CPP provides for the publication of the declaration of Rebeldia.[47] However, the guidelines for the moment of apprehension and publication of the declaration of rebeldia are the full extent of the CPP's mechanisms for the recapture of imputados. Each of the basic principles in article 296 of the CPP is a basic requirement for the moment of apprehension to be in accordance with the law.[48] Overall, the CPP simply authorizes the appropriate persons to apprehend imputados under specified and regulated circumstances. Such authorization is in accord with the purpose of the CPP, which is to specify a general procedure for the functioning of the criminal justice system. Nothing more could be expected of a code of criminal procedure. However, what is certain is that none of the practices or basic principles of apprehension contained in the CPP explain or regulate exactly how the police track the escaped imputado and arrive to the moment of apprehension. This information, therefore, must be, or at least should be, present in other codes.

5.2. Ley Orgánica de Policía Nacional and Internal Regulations

The *Ley Organica de la Policia Nacional* [LOPN] is the body of law that sets out the basic structure, rights, and duties of the national police force. Within this body of law, there are two articles that mention apprehension, article seven and article 43. Article seven states in the pertinent part, "The attributes of the National Police include: … i) Practice the diligences of the Judicial Police, to apprehend the delinquents and those guilty in order to bring them before the competent authorities."[49] Article 43 states, "The Crime Units have the responsibility to investigate crimes, identify and apprehend the authors, coauthors, and accomplices and remit them to the competent authorities."[50]

The LOPN also lists several obligations of the National Police, two of which are relevant to the recapture of imputados. The first is contained in article 55, which states, "The Police have the following obligations: … c) To protect and respect Human Rights and the dignity of the persons against all forms of prepotency, abuse of authority, extortion, etc." The second is contained in the

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[47] CPP, art. 89 (1) (Bol.) (stating that the judge or tribunal will order the publication in the media of the data or other material necessary for the search and apprehension of the imputado).

[48] The Constitutional Jurisprudence surrounding apprehension of imputados all appears to be focused on the moment of apprehension. For example, see Tribunal Constitucional, Sentencia Constitucional 0853/2007-R (Bol.) (discussing irregularities in the manner of apprehension, such as citizens impersonating police officers).

[49] Ley Orgánica de la Policía Nacional, art. 7 (Bol.).

[50] Id., at art. 43 (Bol.).

same article, "d) To know and practice that the rights of each person are limited by the rights of others, by the security of all, and by the just exigencies of the general wellbeing."

If these statements from the LOPN are all that guide the National Police in the recapture of imputados, then this is the guideline: (1) the police have the duty to apprehend imputados; (2) apprehension must be in accord with human rights; (3) remember that one persons rights are restricted by the rights of others, the security of all, and the general wellbeing; and (4) those requirements for the moment of apprehension contained in article 296 of the CPP, mentioned above.

If these are the only guidelines, there is nothing to guide the National Police to the moment of apprehension, save their own good judgment about what are correct and legal mechanisms to employ in the recapture of imputados that have escaped. All that is present in the LOPN and the CPP are statements that the duty to apprehend exists, and instructions for how to make legal the moment of apprehension. In addition to these general affirmations, there must be, or at least should be, some form of internal regulation or procedure for the recapture, or re-apprehension, or imputados.

However, after reviewing the relevant internal regulation codes of the National Police,[51] it appears that such internal regulations for the mechanisms of recapture, or apprehension, do not exist, and that those general affirmations reviewed above are actually all that exist with regard to mechanisms for the recapture of imputados. Indeed, there are various bodies of codified internal regulation, such as the uniform regulations, the order of processes in ceremonies, how to file documents, etc. What does not appear in any codified internal regulation scheme are mechanisms for the recapture of imputados. If such mechanisms exist, they are unwritten, unspoken mechanisms that are not subject to regulation or codification.[52]

6. Mechanisms for the Recapture of Imputados and the Sexual abuse of Children and Adolescents

The mechanisms of recapture seen above have serious faults. Two of these are (1) their insufficiency, and (2) the legal practices these procedures can support. Police officers often take

[51] See Ley del Estatuto del Funcionario Público (Bol.); Reglamento de Personal (Bol.); Reglamento de Régimen Interno (Bol.); Código de Conducta Policial (Bol.).

[52] It is possible that such mechanisms could exist in some obscure and inaccessible memo or resolution from many years past. However, if such is the case, the regulations are not subject to public view and are practically impossible to access or review. For something as important as the way in which the government will recapture imputados when they escape, having it hidden from public review is an unacceptable practice.

advantage of these legal procedures, relying on citizens to assume responsibilities that truly belong to the police.

The actual practice of the publication of the declaration of *rebelde* is not very effective. The declaration of *rebeldia* is paid for by the victim, is published in an obscure portion of the newspaper, and is printed in an extremely small font that is nearly impossible to read.[53] Most people are not going to spend their time squinting and straining threw a quite long resolution declaring the imputado *rebelde*. Occasionally, the police post the fugitive imputado's picture on light poles and walls.

The actual practices surrounding the publication of the declaration of *rebelde* defeat the usefulness of the mechanism. By making the victim pay for the publication of the declaration, the State is ensuring that the publication will not be of adequate size and will not be published in an easily viewable section of the newspaper. However, the posting of the imputado's picture is useful, for it allows citizens to be on the look-out for the imputado, assuming the citizens see the postings and call the police if they see someone fitting the description or picture.

Article 229 authorizes citizens to participate in apprehension when: (1) the citizens witness the *imputado* attempting escape or violating some restriction; and (2) the citizens witness the imputado fleeing from the active pursuit of the police. Some police officers have learned to take advantage of these permitted instances of citizen assistance. In cases of sexual abuse, when the victim wishes to recapture the imputado that has been declared *rebelde*, the victim or victim's family must request that a police officer accompany them to the location where the recapture will take place. Once there, it is often these citizens, and perhaps a lawyer, that physically grab the imputado. After the citizens have grabbed the imputado, the police officer identifies him or herself in accordance with all the requirements stated in article 296 of the CPP, and places the imputado under arrest. This practice allows the police to rely on citizens to effect the recapture, and reduces the role of the police to a rubber stamp of legality.

This practice implies added danger for the victim or the victim's family. The imputado may be more likely to retaliate against the unarmed victim or member of the victim's family than against one or more armed police officers. Incentivizing the imputados use of violence is the fact that the consequences of use of violence against the victim or victim's family is met with a lesser

[53] To understand the difficulty with reading these *rebeldia* postings, it is necessary to see a hard copy of one such newspaper. The online versions differ.

punishment than is the same use of violence against the police. Furthermore, the police are permitted to use firearms when the threatened with deadly force or force capable of producing serious bodily injury; citizens are not.[54]

The practice also implies added psychological trauma for the victim or victim's family. During the moment of recapture, the predator could threaten or mock the victim or victim's family. Coming again into contact with the predator could produce extreme levels of fear or stress, both of which can have negative effects on physical health. The prospect of such fear or danger could also dissuade the victim or victim's family from ever attempting recapture.

Furthermore, the child or adolescent victim's family member(s) could be filled with rage, nearly uncontrollable anger, toward the predator. During the moment of apprehension, such extreme emotion could result in the serious bodily injury predator. It is not wise to allow the relatives of the victim to effect the recapture, for it is not hard to imagine the moment of recapture becoming an opportunity for revenge. For all these reasons, the act of recapture more properly belongs to the police, who are regulated and not as deeply involved in the painful dynamics of abuse as the victim and family that directly suffered the instance of abuse.

7. Implications of the Lack of Mechanisms for the Recapture of Imputados

The lack of mechanisms for the recapture of imputados has serious effects. It affects the victims of sexual abuse, the families and friends of the victims, and the society as a whole. What follows is a consideration of these effects.

7.1. Victim and Revictimization

The overall lack of mechanisms for the recapture of imputados increases the vulnerability of the victim. If the imputado can escape and not be recaptured, then the imputado can also have access to the victim. Such access threatens the safety of the victim. When the imputado, in this case the predator, has such access to the victim, he is able to threaten, bribe, or even kill the victim. When imputados in cases of sexual abuse escape, it is not uncommon for the victim to disappear.[55]

Also, the lack of mechanisms for the recapture of imputados, and the consequent failure of the State to maintain control over the imputados, results in the revictimization of child and

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[54] CPP, art. 296(2) (Bol.).

[55] What such disappearance is due to bribery or threatens is unknown, but what is clear is that the case are dropped and the victim and victims family are not heard from again.

adolescent victims of sexual abuse. Child and adolescents victims in Bolivia are not afforded the consolation they deserve. When imputados in cases of sexual abuse escape the control of the Bolivian government, it subjects victims to nothing less than psychological terrorism. When these imputados escape, the victim knows that her predator has defeated the criminal justice system and can come for her at any moment. This produces the effect of living in constant fear. Such constant fear is, in this case, the fault of the State, for once the imputado is in the State's control, it is the responsibility of the State to maintain that control.

7.2. The Victim's Family

The predator can also threaten, physically assault, bribe, or even kill the family members that assist the victim. When family members are aware of the inability of the State to maintain control over imputados, they may be less willing to support the victim in her gruesome battle for justice. Family members may not only abandon, but also try to silence the victim for fear of what may happen if the victim denounces; for fear of the possible revenge the imputado may take if, or when, the State losses control of the imputado. Thus, family members of the victim my find themselves also living in a state of constant fear, or psychological terrorism. What is clear, though, is that the inability of the State to maintain control over and recapture imputados hurts not only the victim, but also the victim's family.

7.3. Delayed Justice

The Bolivian Government's failure to establish control over imputados has also caused delay in the administration of justice. As reviewed in section two, one consequence of the declaration of *rebeldia* is the indefinite suspension of trial. Such indefinite suspension effectively makes void, or worthless, the attempts to administer justice. The successful escape of the imputado literally stalls the justice system; it defeats the justice system. When the criminal justice system is stalled, so also is justice for the victims of sexual abuse. Victims of sexual abuse are thus forced to wait, often in terror, for the justice system to clean up its own mess of delayed justice.

Not only does the lack of mechanisms for the recapture of imputados deny the administration of justice, but it actually facilitates the escape of imputados. Imputados are more likely to escape when they know the chance of successful escape is high. Thus, the lack of mechanisms for recapture actually facilitates, or rather provides incentive to those imputados who would otherwise not attempt escape.

7.4. Justice Denied

This delay in justice is also a denial of justice. Many imputados are never brought before the courts to be tried and sentenced. Rather, their escape completely defeats the Bolivian criminal justice system. The failure of the system to maintain control over the imputados denies the victims all opportunities to have their cases heard before a court of law. The denial of this right to be heard is one of greatest denials of justice the State can perpetrate. Furthermore, this denial is directly linked to the State when it permits the imputado to successfully escape. Making matters worse, those cases that face this tragic denial of justice are often abandoned.[56] The victims lose faith in the justice system, and either give up on their hopes for justice or decide to take matters into their own hands.

7.5. Judicial Anarchy: The Effect on Society

When citizens take justice into their own hands, it produces judicial anarchy, which is another effect of lack of mechanisms for the recapture of imputados. When the State fails to maintain control over imputados as has the Bolivian Government, the judicial system gains the reputation of being ineffective. And when the people of society know that the judicial system is ineffective, such knowledge makes many reluctant to place their trust in the system, for the system to them is nothing more than a joke. When people begin to see the system as a joke, as a failed system, they also begin taking justice into their own hands. This situation is called judicial anarchy, and is exactly what is beginning to occur in Bolivia. Many Bolivian citizens no longer trust in their judicial system, and thus find ways to protect themselves, or in other words, they establish forms of community justice.

Sexual abuse is a serious offense, and some families and friends are willing to take justice into their own hands to effect retribution for an offense against a family member or friend. However, when such families or friends take justice into their own hands, they are also breaking the law, for the State possesses a monopoly on the right to effect retributive justice for the commission of a crime. The use of physical violence to punish the offender is against the law, as is murder, or torture. No one can torture, not even the State.

An unintended effect of this community justice may be the increased silence of the victims. If victims know that the State cannot control or recapture imputados and that it will likely

[56] From all cases in CUBE where the imputado escaped (25), 100% have been either abandoned or indefinitely suspended, or in other words all of these cases have been indefinitely delayed until the State can recapture the imputado.

detain friends or family members for taking justice into their own hands, then victims may be less likely to tell of the abuse they suffered. What possibly results from the State's failure to control and recapture imputados is a prison of silence for victims. It is a silence that the victim may not even dare to break, for there most often is no help, not from the family, and many times not even from the State.

8. Existing Procedures and Victims Rights

The current lack of mechanisms for the recapture of imputados and the resultant high rates of successful escape violates article 19(1) of the Convention on the Rights of the Child. Article 19(1) requires the state to take all appropriate legislative, administrative, social, and educational measures to protect children and adolescents from all forms of "physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent (s), legal guardian(s) or any other person who has the care of the child." The Bolivian Government has failed to do just this. The existing mechanisms of recapture are not sufficient to meet the standard of "all appropriate legislative, administrative, social, and educational measures." In light of the review and analysis in section five, it is reasonable to conclude that the Bolivian Government has not taken sufficient legislative, administrative, social and educational measures to effect the recapture of imputados.

Rather, the Bolivian criminal justice system's lack of mechanisms has resulted in a consistent pattern of imputados successfully escaping the control of the State.[57] This pattern of escape places victims in danger of both physical and mental violence, particularly further sexual abuse, and even death. Yet, this danger is exactly that which the State must take all measures to avoid. The insufficiency of the current mechanisms and the resultant pattern escape violates Article 19(1).

Furthermore, the current practice of recapture threatens and endangers victims and victim's families, destroys the faith of the public in the judicial system, and denies justice to victims. The current practice of recapture unnecessarily places victims and victims' families in excessive danger.

9. A Proposal for Bolivia:

[57] From 70 cases in CUBE where the initially apprehended imputados were not placed in preventive detention, 25% of those imputados escaped. A 25% escape rate for those imputados not in preventive detention establishes a consistent pattern of escape.

Considering the insufficiency of the current official mechanisms for the recapture of imputados, it is in order to make a proposal for their improvement. One consideration that shall be present throughout this proposal is the notion that the National Police should be prepared to effect the apprehension without the assistance or presence of citizens. Effectuation of the apprehension by the police without the participation of citizens is very important for the security of citizens, and so is given great weight here.

9.1. Augmentation of the Mechanisms for the Recapture of Imputados

The current mechanisms for the recapture of imputados are insufficient to effect the consistent recapture of those imputados that escape. Thus, to increase the consistency of recapture, there needs to be a robust set official mechanism in place, protocols that can be followed by the police in the event of escape. Such a set of mechanism and protocols should be codified and easily accessible to all police officers and to the public. Codification and publication will subject the mechanisms to public view, and this in turn may ensure that the mechanism respect human rights. These mechanisms and protocols should at minimum include sections on communication, identification, location, tracking and pursuing, and a section for the moment of apprehension.

9.1.1. Communication

Communication within and among the various departments of Bolivia is crucial for the effective recapture of imputados. Currently, internet communication within and among the various departments of Bolivia is excellent. An ATM withdraw in Tarija registers via internet with all similar banks in the Country almost instantly. Therefore, the infrastructure necessary for a nation-wide internet network is in place.

The Bolivian Government should utilize this network to increase communication among the various departments. As soon as an imputado escapes, the police force in every department and city of Bolivia should immediately be notified via internet of the escape. This immediate communication facilitates the mobilization of police for the recapture of imputados. If every police department in the Nation is immediately notified of the escape and provided with information on the imputado (such as background information, current information, and all available photographs in the system), the various police forces will likely be more able to identify and apprehend those imputados.

Also, the Bolivian Government should use this system to immediately send the information and photo of the imputado to all the bus terminals and airports in the Nation.

Providing such information to bus terminals and airports would make it more difficult for imputados to travel between the various departments, which in turn could make it easier to recapture them. In addition to notifying the bus terminals and airports, the Government should notify every official road check point in the Nation, so as to alert the police to likely travel of escaped imputados. A protocol for this immediate communication would greatly increase the efficiency of recapture efforts.

9.1.2. Identification

Identification of the imputado is also important. By identification is meant the public display of the imputado's photo and other necessary information. In *el correo* (a particular area of the city) in Cochabamba City, there is a high volume of traffic and people. On one of the buildings there is a large electronic screen that shows advertisements. The police department could utilize this screen (and other similar screens) to periodically display the face and information of the imputado. This would permit on duty police in the area, as well as citizens, to know of such updates and be on the look-out for escaped imputados.

Also, in the bus terminals, airports, and other locations where people frequently gather, the police department could post identification sheets (with a photo) of the imputado. This would make it possible for citizens in such locations to be on the look-out for escaped imputados. Such a system of identification would make it more difficult to escape and more easy to recapture.

9.1.3. Location

Location of the imputado is crucial, and very difficult. This requires a large team of investigators who examine past contacts and patterns of communication of the imputado. Learning the past patterns of the imputado may help to identify possible locations where the imputado could be. Also, the investigators should maintain constant contact with the police forces of other departments. Constant communication and investigation are perhaps the most useful tools for the location of escaped imputados.

Also, what is known as the "man hunt" is another useful mechanism for locating the imputado. Upon notification that the imputado has escaped, road blocks can be set up in strategic areas that require the identification of all that pass by. The police officers who employ these road blocks must have the photo of the imputado, so that they can identify the imputado. Such road blocks can be extremely effective in deterring the travel of escaped imputados. Another

mechanism that could be used is the mandatory (or even random) identification of persons passing from one department to another at the major checkpoints on main roads.

9.1.4 Tracking and Pursuing

Once the imputado has been identified or spotted, they must be tracked. The tracking of imputados requires a team, and not individuals. A team must be assembled to pursue the imputado. These teams must ask questions at the street level and be in constant communication with the investigators. The team must also be armed and prepared to encounter the imputado at any moment. The specifics of such a tracking team would be best developed by tracking experts.

Also, regulations on the pursuit of imputados must be in place. One such regulation must be that citizens only can assist in extreme circumstances. Furthermore, the reliance of the police on public transportation must be restricted. Police need to have their own means of transportation for the pursuit of imputados. Relying on public transportation is unwise, for many public transportation providers are unwilling to involve themselves in the pursuit of imputados for fear of possible revenge. The ability to bypass unreliable sources of transportation greatly increases the effectiveness of recapture efforts.

9.1.5 The Moment of Apprehension

As seen above, the CPP provides regulations for the moment of apprehension. These are in place to protect the rights of the imputado. Such regulations need to be expanded to require the presence of multiple police officers and should include a general prohibition on the presence of or assistance by citizens during the moment of apprehension. The presence of multiple police officers will decrease the likelihood that the imputado will escape the recapture efforts, and the absence of citizens will decrease the chance that citizens will be harmed.

9.2 The need for Administrative Brain Storming and Government Action

The development of truly effective mechanism for the recapture of imputados will require the collective brain-storming, or thinking, of the legislative, executive, and judicial branches of the government. It will require massive input from street level police officers from across the Nation, and the input of citizens that work at bus terminals, airports, and other common providers of transportation (such as public transportation unions). Government officials need to take action, but they must first be well informed of the reality on the street, a reality not easily accessed by foreigners.

Furthermore, the current Evo Morales administration is a pristine position to gather information from the impoverished, semi-rural communities that closely surround the cities. The Morales administration has gained extreme popularity in the rural and semi-rural areas, and for that reason has access to and open relations with these areas. This level of access is a major opportunity for the Government to gather the information necessary to be diligent over unusual, or rare, routes of travel, which are target routes for fugitives. This type of information will greatly assist the Government in crafting an effective set of mechanisms for the recapture of imputados.

Once the Government gathers the necessary street level, and community level information, it needs to create a uniform, codified protocol for all departments of Bolivia. The protocol needs to include mechanisms that are region specific. For example, tracking imputados may take a very different form in the city of Cochabamba than does tracking in the rainforest region of Chapare. Every region will have its peculiarities, and these peculiarities need to be taken into account. However, what is necessary is that the protocols be compiled, uniform, and easily accessible to police officers across the nation.

9.3 Stopping the Problem at its Roots: Enforcing Preventative Detention

Stopping the escape of imputados at the roots of the problems is the most effective and sustainable approach to resolving the current crisis. The problems of recapture are caused by the escape of imputados. Thus, the most effective and sustainable way to handle the current situation of escape is to prevent escape. (However, the Government must also be well prepared for the possibility that imputados will escape, regardless of the effectiveness of its mechanism for preventing escape.)

The most effective way to prevent escape in cases of sexual abuse is to strictly enforce preventive detention for these crimes. Not all criminals act alike, and different patterns of escape will emerge for each type of crime. For crimes a sexual abuse, there is a pronounced and consistent pattern of escape of those imputados that are not in preventive detention.[58]

To make the enforcement of preventive detention more effective, one particular preventive detention statute needs to be modified: Article 234 of the CPP (*Peligro de Fuga* [risk of escape]). This Article provides a list of factors for determining whether the imputado presents a risk of

[58] CUBE STATISTICS.

escape.[59] However, not among these factors is the *gravity of the penalty that will be imposed*.[60] In many Latin American Countries and in Europe a version of the *gravity of the penalty that will be imposed* is a factor for consideration in the *peligro de fuga* statutes. These Latin American Countries include Chile, Colombia, Costa Rica, Guatemala, Paraguay, and Peru.[61] In Europe, Spain includes a version of the *gravity of the penalty* factor in its *peligro de fuga* statute.[62]

These countries have for good reason included this *gravity of the penalty* factor. Without this factor, many criminal who commit very grave crimes, such as murder, rape, rape of children and adolescents, other forms of sexual abuse, and kidnapping, can go free during the preparatory phase of the case, putting in serious jeopardy the possibility of trail. However, when the *gravity of the penalty to be imposed* for the commission of the crime is a factor for the judges to consider, the judges are able consider the incentive that the imputado has to flee due to the gravity of the penalty that will be imposed upon conviction. A judge could decide that a rapist does not present any of the risk factors listed in article 234 of the Bolivian CPP, but it would be very difficult to conclude that 15 to 30 years in prison does not provide any incentive to escape. Losing one's liberty for one quarter to one half of one's life is about the largest imaginable incentive to escape. To think otherwise would be to ignore the strong tendency of human beings to take excessive and extreme measures to maintain their freedom.

Therefore, to prevent the escape of those who commit one of the gravest crimes known to humanity, child and adolescent sexual abuse, the State should in cases of sexual abuse uniformly impose preventive detention. So that this imposition of preventive detention will be consistent regardless of the social status, wealth or outward appearance (comportment and attitude) of the imputado, the legislature should modify Article 234 of the CPP to include a factor considering the *gravity of the penalty that will be imposed* upon conviction.[63]

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[59] CPP, art. 234 (Bol.) (requiring that judges in the imposition of preventive detention consider: (1) that the imputado does not have a domicile or habitual residence, nor family, a business, or work in the country; (2) The facilities to flee the country or remain hidden; (3) The evidence that the imputado is realizing preparatory acts to escape; (4) the comportment of the imputado during the process or in other moments, in the measure that it indicates his or her will to not submit to the process; (5) the attitude of the imputado voluntarily adopted with respect to the importance of the harm).

[60] Wilson Remberto Garcia Caba, Detencion Preventiva y el Presupuesto de "La Gravedad de la Pena Que Podría Llegar a Imponerse" en el Peligro de Fuga 134 (2009) [Detencion Preventiva y el Presupuesto].

[61] Id., at 136.

[62] Id.

[63] For a very thorough and wonderful exploration of this proposal, see Wilson Remerto Garcia Caba, Detencion Preventiva y el Presupuesto, supra note 59, at chapters 6,7, & 8 (2009).

10. Summary and Conclusion

The above exploration and analysis of the mechanisms for the recapture of imputados demonstrates that the two ends of the criminal justice (the realization of justice and the prevention of crime) are to some degree dependent on the presence of mechanisms for the recapture of imputados. It was also seen that Bolivia does indeed have mechanisms for the recapture of imputados (and that these mechanisms are necessary), but that these mechanisms are not in themselves sufficient to effect the consistent recapture of those imputados that escape the control of the State. What is need is to create a more comprehensive set of mechanisms, and with the mechanisms form a codified protocol that is accessible to all police in the Country and tailored to the peculiarities of each department and region. As further step, the Bolivian Government needs to stop the problem of escape in cases of sexual abuse at its roots, by modifying the preventive detention statutes, particularly the *peligro de fuga* statute to include the consideration of the *gravity of the penalty that will be imposed* upon conviction.