

**BOLIVIAN SOCIO-CULTURAL PATTERNS DISCRIMINATE AGAINST FEMALE  
ADOLESCENT VICTIMS OF SEXUAL ASSAULT.**

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The aim of this article is to expose some of the harmful socio-cultural patterns that discriminate against and oppress female adolescent victims of sexual assault<sup>1</sup> in Bolivia. This analysis of these socio-cultural patterns is based on interviews with members of the general public and prosecutors, and on a review of written judicial opinions. What was found was a highly discriminatory and oppressive set of beliefs held by the general public, prosecutors, and judges that have led to practices that violate female adolescent victims' internationally protected human rights.

The present analysis of these harmful social-cultural patterns looks only at the current state of Bolivia society. However, these social-cultural patterns are part of a larger historical problem of systematic discrimination against and oppression of women.<sup>2</sup> Thus, this article represents an effort to reverse the historical trend toward male dominance, and to create a cultural atmosphere that is more sensitive to the suffering of female adolescents and the crime that most affects them: sexual assault.

A discussion of the magnitude and consequences of sexual aggression and of the importance of disclosure and supportive response in cases of sexual assault is provided to establish a context for the analysis of the interviews and judicial opinions. Following the analysis is a review of female adolescents' internationally protected human rights, and an argument that the practices stemming from Bolivia's harmful socio-cultural patterns violate these rights.

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<sup>1</sup> In this article, I have chosen to use the term "sexual assault," rather than "sexual abuse." The term "abuse" connotes a certain type of wrong or bad use of something, a misuse. Children, adolescents, and adults are not things or objects to be used or misused. Rather, they are persons, subjects of rights. A subject of rights is not misused, but attacked or assaulted. Thus, when a person (whether child, adolescent, or adult) suffers sexual violence, that person has not suffered an abuse or misuse, but an attack, an assault.

<sup>2</sup> For an interesting discussion of women's historical oppression, see Riane Eisler, *The Chalice and the Blade* (1987) (discussing the historical shift from the partnership model of gender relations to an andocratic, male dominant model, and discussing the need to return to the partnership model); see also Gerda Lerner, *The Creation of Patriarchy* (1986) (offering an historical perspective, with gender as the central analytical concept, of the emergence of patriarchal systems).

## *I. Magnitude and Consequences of Sexual Aggression*

The largest study in Bolivia on child sexual assault showed that 30% of girls are sexually assaulted before the age of 18.<sup>3</sup> This percentage is similar to those around the world: 20% to 36%.<sup>4</sup> According to the prosecutors in the sectors of Sacaba and Cercado<sup>5</sup> of Cochabamba, Bolivia, each prosecutor receives three to four cases of sexual assault per day.<sup>6</sup> “Most all of the sexual abuse cases received are of adolescent victims.”<sup>7</sup> According to a prosecutor from Sacaba, “90%- 95% or more of all of the cases that we receive are cases of sexual abuse.”<sup>8</sup> Though these numbers produced by the prosecutors are their rough estimates, they nevertheless represent the prosecutors’ perceptions that there is a high volume of sexual assault cases, and that the great majority of these cases involve female adolescent victims.

Although the statistics gathered in large studies are alarming, it is thought that these numbers are an underestimation of the reality of sexual assault.<sup>9</sup> Many girls who are being sexually assaulted don’t know that they are being assaulted, and many of those who know chose to remain silent for fear of social stigmatization and the possible consequences of their disclosure. In the majority of sexual assault cases, 60 to 70 percent,

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

<sup>4</sup> Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 *American Journal of Preventive Medicine* 430 (2005); Paulo Sérgio Pinheiro, *Report of the Independent Expert for the United Nations Study on Violence Against Children*, ¶ 44, U.N. Doc. A/61/299 (Aug. 29, 2006) [hereinafter *Violence Against Children*].

<sup>5</sup> The prosecutors’ names have been kept anonymous. The prosecutors are classified by district and the order in which they were interviewed. Thus, for example, a prosecutor from the District of Cercado who was the first to be interviewed is called “Prosecutor DC1,” and a prosecutor from the District of Sacaba who was the second to be interviewed is called “Prosecutor DS2.”

<sup>6</sup> Interview with Prosecutor DS1, General Prosecutor, Prosecutor’s Office of Sacaba, in Cochabamba, Bolivia (Oct. 27, 2011); Interview with Prosecutor DS2, General Prosecutor, Prosecutor’s Office of Sacaba, in Cochabamba, Bolivia (Oct. 27, 2011); Interview with Prosecutor DC1, Prosecutor of the Division of Minors, Prosecutor’s Office of Cercado, in Cochabamba, Bolivia (Oct. 17, 2011); Interview with Prosecutor DC2, Prosecutor of the Division of Minors, Prosecutor’s Office of Cercado, in Cochabamba, Bolivia (Oct. 20, 2011).

<sup>7</sup> Interview with Prosecutor DS2, *supra* note 6.

<sup>8</sup> *Id.*

<sup>9</sup> Dube et al., *supra* note 4.

the victim does not disclose the sexual assault.<sup>10</sup> Furthermore, of those victims that disclose, many recant due to the negative consequences they experience.<sup>11</sup> Also, in seventy to ninety percent of cases the perpetrator is a family member or someone close to the victim.<sup>12</sup>

Sexual assault has been correlated with several negative consequences such as: the ten leading causes of death (drug abuse, alcoholism, suicide, depression, poor self-rated health, more than 50 sexual intercourse partners, smoking, sexually transmitted diseases, and an increase in severe obesity and physical inactivity)<sup>13</sup>; and psychological dysfunctions (mood disorders, substance abuse, anxiety, feelings of fear, betrayal, helplessness, self mutilation, pathological dependency, self-punishment, multiple personalities, hysterical reaction, delinquency and others).<sup>14</sup> Sexual assault has also been correlated with functional and neurobiological brain damages to the left neocortex, corpus callosum, amygdala, and the hippocampus.<sup>15</sup>

## ***II. Importance of Disclosure and Supportive Response in Cases of Sexual Assault***

The responses that a victim receives when she discloses the assault affect and dramatically determine the future of that victim. The harm to the adolescent and the negative consequences of sexual assault are caused by the incident of sexual assault itself, as well as by the responses of others to the adolescent's disclosure.<sup>16</sup> Negative and non-

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<sup>10</sup> J. Bays & D. Chadwick, *Medical Diagnosis of the Sexually Abused Child*, 17 *Child Abuse & Neglect* 91 (1993); see also Kamala London et al., *Disclosure of Children: What Does the Research Tell Us About the Ways That Children Tell?*, 11 *Psychology, Public Policy, and Law* 194 (2005).

<sup>11</sup> Roland C. Summit, *The Child Sexual Abuse Accommodation Syndrome*, 7 *Child Abuse & Neglect* 177 (1983).

<sup>12</sup> D. Finkelhor, *Current Information on the Scope and Nature of Child Sexual Abuse*, 4 *Future Child* 31 (1994).

<sup>13</sup> 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.

<sup>14</sup> D. Lisak, *The Psychological Impact of Sexual Abuse: Content Analysis of Interviews with Male Survivors*, 7 *Journal of Traumatic Stress* 525 (1994); Summit, *supra* note 11; B. E. Molnar et al., *Child Sexual Abuse and Subsequent Psychopathology: Results from the National Comorbidity Survey*, 91 *American Journal of Public Health* 753 (2001).

<sup>15</sup> 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).

<sup>16</sup> Summit, *supra* note 11.

supportive<sup>17</sup> responses are associated with a variety of negative consequences,<sup>18</sup> and may enhance the severity of the trauma experienced as a consequence of sexual assault.<sup>19</sup> These responses may cause a victim to feel unsafe and unprotected, and to recant or remain silent, which in turn could prevent the adolescent from engaging in the healing process.<sup>20</sup>

If the victim recants or remains silent, she may continue to be assaulted because her silence gives the aggressor control and power. Remaining silent may cause the victim not to seek psychological help, thereby decreasing the possibility of dealing with or giving meaning to the assault experience. One common response among those victims who remain silent is self-blame, which is the beginning of a number of psychological disorders.<sup>21</sup>

Recovery is extremely difficult when the victim remains silent. And though disclosure is painful, it is far more painful not to disclose. Those who conceal their suffering cannot expect to heal.

However, the recovery of an adolescent victim, and the prevention of negative consequences, is greatly enhanced when she can disclose and is believed. In a study conducted with 3,220 women, it was found that those who disclosed their rape soon after it occurred were at a lower risk for later psychosocial difficulties when compared with those who delayed their disclosure or never disclosed. Those who waited longer than a month to disclose had a significantly higher past-year prevalence of post-traumatic-stress disorder and had major depressive episodes.<sup>22</sup> Dr. Spies found in her research that adolescents who “are believed and supported ... are able to progress in their healing process faster than [those] who were not supported and believed by their parents.”<sup>23</sup>

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<sup>17</sup> Steven J. Collings, *Non-supportive disclosure in child sexual abuse: some conceptual considerations*, 6 *Journal Child Abuse Research in South Africa* 13 (2005).

<sup>18</sup> Matthew Jordan Akal, *Non-Supportive Disclosure in Child Sexual Abuse* (2011).

<sup>19</sup> Gloudina Maria Spies, *Sexual Abuse: Dynamics, Assessment, & Healing* (2006).

<sup>20</sup> Aleida Hermina Smit, *Adolescents' Experiences of Parental Reactions to the Disclosure of Child Sexual Abuse* 28 (September 2007) (unpublished M.S.D. thesis, University of Pretoria)(on file with author).

<sup>21</sup> Luz Stella Losada and José Miguel De Angulo, *Manual para el Manejo Integrado de Niños, Niñas y Adolescentes que han sido Víctimas de Agresiones Sexuales* 17-79 (2005).

<sup>22</sup> Kenneth J. Ruggiero et al., *Is Disclosure of Childhood Rape Associated with Mental Health Outcome? Results from the National Women's Study*, 9 *Journal Child Maltreatment* 62 (2004).

<sup>23</sup> Smit, *supra* note 20.

Also critical to the recovery process is the supportive response of the justice system. The justice system is the broadest and most powerful platform for disclosure. Thus, the responses of judges and prosecutors should be supportive of the victim's disclosure, even if judges and prosecutors later should conclude that no assault occurred. Hostile skepticism from judges and prosecutors obstructs the judicial process, as well as the healing process by threatening to silence victims of sexual assault.

The negative and non-supportive responses that female adolescent victims of sexual assault receive upon disclosure from society and the justice system are predominantly a function of discriminatory socio-cultural patterns. These social-cultural patterns have the capacity to hinder the proper treatment of cases of female adolescent victims of sexual assault. As the Inter-American Commission on Human Rights pointed out:

[t]he influence exerted by discriminatory socio-cultural patterns may cause a victim's credibility to be questioned in cases involving violence, or lead to a tacit assumption that she is somehow to blame for what happened, whether because of her manner of dress, her occupation, her sexual conduct, relationship or kinship to the assailant and so on. The result is that prosecutors, police and judges fail to take action on complaints of violence. These biased discriminatory patterns can also exert a negative influence on the investigation of such cases and the subsequent weighing of the evidence, where stereotypes about how women should conduct themselves in interpersonal relations can become a factor.<sup>24</sup>

The presence of discriminatory socio-cultural patterns in Bolivia's general public and justice system is the subject of investigation and analysis here. In short, it appears that the Commission's words are a reality in Cochabamba, Bolivia.

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<sup>24</sup> *Access to Justice for Women Victims of Violence in the Americas*, Inter-Am. C.H.R., OEA/Ser.L/V/II, doc. 68, ¶ 155 (2007).

### *III. General Public: Comments and Practices.*

#### **A. Comments**

Several members of the general public were randomly selected to respond to questions about female adolescent victims of sexual assault. These participants were selected in accordance with their willingness to be interviewed. I asked 25 strangers who walked through the central plaza if they would like to be interviewed. All 25 were willing to be interviewed, but wanted first to know what the interview was about. After telling them it was about female adolescent victims of sexual assault, only 5 agreed to participate. The remainder of this section is based on the responses of these 5 participants.

All of those who were interviewed held myths about female adolescent victims of sexual assault, but nevertheless were empathetic to child victims of sexual assault. However, as soon as the participants were asked about female adolescent victims of sexual assault their demeanors changed completely. All of them without exception, men and women, even those who had been victims of sexual assault, were harsh, discriminatory, and biased against female adolescent victims of sexual assault.

Some of the most pronounced themes in the participants' responses were: 1) female adolescent victims are not to be trusted; 2) sexual aggressors of female adolescents are not completely at fault; and 3) the adolescent or the adolescent's parents are to be blamed for the sexual assault. Throughout all of the interviews it was also clear that there is a negative and detrimental social stigma toward female adolescent victims of sexual assault.

When Participant 1 (hereinafter P1) was asked, "Would you believe a female adolescent if she were to tell you that she had been sexually assaulted?" he hesitantly responded, "It depends . . . depends on the time and place. Like if they were in a dark place at 12:00 am."<sup>25</sup> Participant 4 (hereinafter P4), a 25-year-old woman, was also hesitant and said in response to the same question, "No I don't think so. I would have my

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<sup>25</sup> Interview with Participant 1 (P1), Plaza 14 de Septiembre, Cochabamba, Cochabamba, Bolivia (Oct. 7, 2011).

doubts because I am not an expert.”<sup>26</sup> These comments show that there is a reluctance to believe female adolescents when they disclose sexual assault.

The participants also reflected a strong tendency to diminish the aggressor’s culpability and to blame the female adolescent for the sexual assault. These notions were reflected when the participants responded to the question, “When a female adolescent is sexually assaulted, whose fault is it?”

A 37-year-old woman, Participant 2 (hereinafter P2), who had been a victim of childhood sexual assault, responded that female adolescents are the ones to be blamed. She stated, “The man proposes and the woman decides whether to accept.”<sup>27</sup> The woman is to be blamed, because when a woman does not want to be raped, she will not be raped. When a woman wants to be raped, she allows it.”<sup>28</sup> P4 also blamed the female adolescent. She stated, “Female adolescents are the ones who cause this type of aggression by the way they dress and because they relate to people that they shouldn’t relate to.” One middle-aged man, Participant 3 (hereinafter P3), stated, “When female adolescents live in *libertinage*<sup>29</sup> and see life like party, they are to blame. If the adolescent was reserved, then it is the fault of the aggressor.”<sup>30</sup>

P1 stated that both the victim and the aggressor are at fault, and that each is 50% responsible. He stated that female adolescents are at fault because “they do not learn how to keep their composure. Especially a female adolescent, she needs to be careful of the places where she goes, what times she goes, and who she goes with. Because as men we tend to do and let ourselves be persuaded to do what the female adolescents say.”<sup>31</sup>

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<sup>26</sup> Interview with Participant 4 (P4), Plaza 14 de Septiembre, Cochabamba, Cochabamba, Bolivia (Oct. 7, 2011).

<sup>27</sup> “El hombre propone, y la mujer dispone.” This a common phrase used in Bolivia that implies that the duty of the man is to propose sexual advances and it is the woman who decides whether or not to provide. This common phrase is used to place the responsibility or blame on the woman whenever she complains of unwanted sexual interactions.

<sup>28</sup> Interview with Participant 2, Plaza 14 de Septiembre, Cochabamba, Cochabamba, Bolivia (Oct. 7, 2011).

<sup>29</sup> *Libertinage* is a term commonly used in Bolivia to express perverted freedom—that under the claim of freedom the person engages in seriously perverted actions.

<sup>30</sup> Interview with Participant 3, Plaza 14 de Septiembre, Cochabamba, Cochabamba, Bolivia (Oct. 7, 2011).

<sup>31</sup> Interview with Participant 1, *supra* note 25.



Participant 5 (hereinafter P5) stated, “The aggressor has more fault than the adolescent if the aggressor used physical force.”<sup>32</sup> P2 stated that an aggressor is at fault only when he “hit the woman or drugged the woman.”<sup>33</sup>

When the participants were asked, “Why do you think female adolescents are raped?” they again reflected the belief that the female adolescent or her parents are partly at fault for the assault. P3 stated that female adolescents are raped because they are “very loose.... Their parents do not control them. Parents have to control who the female adolescents go out with, who their friends are; parents have to be after their children.”<sup>34</sup> P4 stated that female adolescents “have no one to guide them and thus they live in *libertinage*.”<sup>35</sup>

One prosecutor related her experience of the public’s blaming of the victim. Prosecutor DC1, stated, “I have repeatedly heard ‘It happened because she dresses a certain way’ or ‘she goes to this specific club.’ They [the general public] say that she [the victim] was looking for it, that she was not taking care of herself.”<sup>36</sup> Prosecutor DC1 further stated that the general public tends to blame the female adolescent victim, and that “people blame her [the victim] and question her innocence by saying ‘why didn’t you defend yourself, why didn’t you scream, why didn’t you talk about it.’”<sup>37</sup> Some people even state that female adolescent victims remain silent because they like the assault.

These comments reflect the tendency to blame persons other than the aggressor. The reluctance to place 100% of the blame on the aggressor assumes that the aggressor in some circumstances is partially justified in committing the sexual assault. The notion that the aggressor in some circumstances has some minimal right to sexually assault the victim psychologically torments the victim and diminishes the severity of the aggressor’s actions. A culture infected with this notion is extremely toxic for victims of sexual assault, and for society as a whole.

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<sup>32</sup> Interview with Participant 5, Plaza 14 de Septiembre, Cochabamba, Cochabamba, Bolivia (Oct. 7, 2011).

<sup>33</sup> Interview with Participant 2, *supra* note 28.

<sup>34</sup> Interview with Participant 3, *supra* note 30.

<sup>35</sup> Interview with Participant 4, *supra* note 26.

<sup>36</sup> Interview with Prosecutor DC1, *supra* note 6.

<sup>37</sup> *Id.*

Throughout the interviews the participants reflected the notion that if a female adolescent suffers sexual assault it is better for her to remain silent than to disclose due to negative social stigma. P2 stated that “there is a bad social stigma on victims. People see you as dirty. Instead of helping her [the victim], people start gossiping about her.”<sup>38</sup> P2 also stated that female adolescents who are assaulted “do not talk because they are afraid of their communities.”<sup>39</sup> P5 stated, “There is complete rejection toward them [female adolescent victims]. People believe they have no value left.”<sup>40</sup> He further stated if a female adolescent victim discloses the assault, “society will discriminate against her and will not take her into account. Furthermore, she will receive aggression from the family of the aggressor.”<sup>41</sup>

P4 stated that it is better for the female adolescent to remain silent because if she discloses the assault “she will be psychologically abused” by society and “people will say it is her fault, that she looked for it because of the way she dresses and because of who she relates with. Society does not see her as a victim, but sees her as the one who is at fault.” This creates an absurd paradox in which people expect a female adolescent victim of sexual assault to remain silent to avoid the social stigma of acknowledging what has taken place, but, if she remains silent, they think it is because she wanted to be assaulted or because it was her fault.

Prosecutor DS1, a male prosecutor from the District of Sacaba, is also aware of societal discrimination toward female adolescent victims of sexual assault. He stated that in his experience as prosecutor he has seen that “most adolescents [who disclose sexual assaulted] are discriminated against by and expelled from society.”<sup>42</sup>

The comments of the participants, and of the prosecutors about the general public, are evidence of a socio-cultural pattern that discriminates against and oppresses female adolescent victims of sexual assault. This socio-cultural pattern may be one of the reasons why 80-90% of adolescent victims tend to remain silent about the sexual assault they

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<sup>38</sup> Interview with Participant 2, *supra* note 28.

<sup>39</sup> *Id.*

<sup>40</sup> Interview with Participant 5, *supra* note 32.

<sup>41</sup> *Id.*

<sup>42</sup> Interview with Prosecutor DS1, *supra* note 6.

have suffered. Also, these comments help to explain why many of those victims who disclose the assault later recant, and why in some cases the family of the victim forces her to remain silent.

## **B. Practices**

In addition to the oppressive and discriminatory comments, a very common practice among the general public of Bolivia is *tranze*. *Tranze* is an illegal, negotiated agreement between the victim's family and the aggressor or aggressor's family.

According to local prosecutors and lawyers, in many cases the aggressor offers money or property (e.g. a car, big screen television, a piece of land, etc.) to the victim's parents or extended family in exchange for the victim's silence. Upon acceptance, the parents or extended family will go to great lengths to silence the victim. Sometimes the victim disappears, is sent to live with family in another department of Bolivia, or is forced to go to the prosecutor's office and negate all prior declarations. The practice of *tranze* shows: 1) that the victim's dignity has a price and that her silence can be bought; and 2) a socio-cultural tendency to hide crimes of sexual violence.

Prosecutor DC1, a female prosecutor from the District of Cercado, explained why *tranze* is such an attractive solution for the aggressor and the family of the victim: "Most sexual assault occurs in the semi-urban areas where people are poor. So when there is a possibility of a transaction or an agreement, the moms convince the victims to change their stories."<sup>43</sup> Prosecutor DC2, also a female prosecutor from the District of Cercado, stated that "in 40 to 50% of cases of sexual assault the victim does not continue the process. Many of these victims drop their cases because there is *tranze*."<sup>44</sup> Prosecutor DC3, another female prosecutor from the District of Cercado, stated that "In some cases they make the victims disappear so that the victims don't continue the case. There is a lot of *tranze*. The parents make an agreement and then make the victims disappear, and we have no way of finding them."<sup>45</sup>

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<sup>43</sup> Interview with Prosecutor DC1, *supra* note 6.

<sup>44</sup> Interview with Prosecutor DC2, *supra* note 6.

<sup>45</sup> Interview with Prosecutor DC3, Prosecutor of the Division of Minors, Prosecutor's Office of Cercado, in Cochabamba, Bol. (Oct. 20, 2011).

#### *IV. Prosecutors: Comments and Practices*

##### **A. Comments**

All of the prosecutors from the Division of Minors of the District of Cercado were asked to participate in the interviews. Only one of the four prosecutors refused to participate and stated that she only recently had begun to work as a prosecutor, that she had not even taken one case to court, and that as a result she could not provide much useful information. Also, all of the prosecutors from District of Sacaba were asked to participate in the interviews. From the 3 prosecutors that work in Sacaba, 2 were interviewed. The third declined the interview, stating that he was new to the job. Thus, five prosecutors were interviewed. The remainder of this section is based on their responses.

Sadly, the prosecutors, who are supposed to defend and fight for adolescent victims of sexual assault, hold discriminatory myths that hinder them from properly and fairly representing female adolescent victims. Some of the most pronounced myths held by prosecutors are: 1) female adolescents are less credible than children and adults (or not credible at all) and they frequently lie about being victims of sexual assault; 2) if an adolescent did not physically defend herself, then she wanted to be raped; and 3) victims of sexual assault have a say in whether they are assaulted. As can be seen, the prosecutors and the general public hold similar myths.

All of the prosecutors interviewed reflected their views that adolescents are less credible than children. They also recognized that in society there is a strong belief that adolescents lie and that this societal belief makes adolescent's cases harder to prosecute. Prosecutor DC1 stated that it is easier to take the cases of young children because the stories of "those over 12 [years of age] are less credible."<sup>46</sup> Adolescent's stories are less credible because adolescents "have more contact with other adolescents and sometimes they are influenced by them."<sup>47</sup> According to Prosecutor DC1, prosecutors prefer to take small children's cases rather than those of adolescents because when the victim is "under

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<sup>46</sup> Interview with Prosecutor DC1, *supra* note 6.

<sup>47</sup> *Id.*

12 years of age, one has more to win at trial because there is the culture that children don't lie, so it is easier to prove that children are telling the truth. However, when the victim is an adolescent it is harder because society sees them differently."<sup>48</sup> She further stated that in cases where the victim is an adolescent, "it is commonly thought that their stories are directed or selected."<sup>49</sup>

Prosecutor DC2 also portrayed the belief that adolescents are less credible than children. When asked which cases are easier to take, she stated that she prefers to take young children's cases because "when they are smaller it is easier to believe them. With an adolescent you have to be more careful because they don't tell you everything at the beginning."<sup>50</sup>

Prosecutor DC3 said that female adolescents "are ambivalent and thus they lie."<sup>51</sup> She further stated that "adolescents tend to say one thing and then change, to the point where not even the psychologist knows what is the truth."<sup>52</sup>

In addition to believing that adolescents are less credible than children, or not credible at all, some prosecutors believe that the majority of female adolescents lie about being victims of sexual assault. Prosecutor DS1, from the District of Sacaba, stated, "The majority of adolescents ... lie about being victims of sexual assault because they fear reprisal from their parents."<sup>53</sup> He further stated that from all the cases of sexual assault that he receives, "the majority [of the female adolescents], 7 out of 10, end up pregnant due to consensual relationships and then lie and say they were victims of rape."<sup>54</sup> He stated that these adolescents "lie and say that they have been victims of rape when in reality they had consensual relationships. And innocent people are being placed in jail due to the lies of these adolescents."<sup>55</sup> He stated that the age group he was referring to is "of a mean of adolescents between 12 and 16 years of age."<sup>56</sup> Prosecutor DC1 stated that

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Interview with Prosecutor DC2, *supra* note 6.

<sup>51</sup> Interview with Prosecutor DC3, *supra* note 45.

<sup>52</sup> *Id.*

<sup>53</sup> Interview with Prosecutor DS1, *supra* note 6.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

female adolescents often claim that they are victims of rape when in reality “they were dating and they made up the lie of rape when they were discovered by their parents.”<sup>57</sup>

Another harmful belief that arose during the interviews with the prosecutors was the thought that if an adolescent did not defend herself from the assault she somehow allowed it to happen or accepted it. PC2 stated that if you are an “adolescent between the ages of 14 to 16, you should know how to defend yourself and not allow any one to sexually assault you.” PC2 further stated that “only by being in the victims’ position could one know why she did not ask for help, why she accepted it, or why she allowed the assault to continue.”

Another commonly held harmful belief among prosecutors is that the sexual aggressor is not 100% at fault for the sexual aggression committed. The adolescent victim or the parents of the adolescent victim are frequently blamed, as well. Prosecutor DS2, a female prosecutor from the District of Sacaba, stated that adolescent victims are “about 20%” at fault for the sexual assault they suffer.”<sup>58</sup> When asked why she thinks adolescents are sexually assaulted, she stated, “There is a lot of lack of information and parents don’t have time to teach them [female adolescents] what is good and what is bad or how they should behave in front of a man . . . There are girls who have these type of relationships and they don’t know how to take care of themselves. They don’t know what days they can have sex and what days they can’t.”<sup>59</sup>

## **B. Practices**

When an adolescent victim denounces a crime of sexual assault, the prosecutors modify the accepted legal protocol for the reception of cases of suspected sexual assault. The prosecutor’s normal, accepted legal protocol consists of five steps: 1) the victim officially denounces the sexual aggressor; 2) the prosecutor informs the judge that an investigation has begun; 3) the victim gives her declaration of the events that occurred; 4) the prosecutor then orders the apprehension of suspected aggressor; and 5) the prosecutor orders a psychological evaluation of the victim, which is used later at trial (called the

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<sup>57</sup> Interview with Prosecutor DC1, *supra* note 6.

<sup>58</sup> Interview with Prosecutor DS2, *supra* note 6.

<sup>59</sup> *Id.*

*peritaje*).<sup>60</sup> However, when the victim is an adolescent, the prosecutors order an extra psychological evaluation: one after the declaration, and thus before the apprehension, called either the *pre-peritaje* or *evaluacion psicologica*.<sup>61</sup>

The protocol for adolescents thus consists of six steps, rather than the accepted five. This added step is not part of the accepted legal procedures. Moreover, the reason given for this extra evaluation reveals the discriminatory attitudes of prosecutors. Prosecutors order the extra psychological evaluation because they doubt the veracity of the adolescent victim's initial declaration.<sup>62</sup> This evaluation serves to corroborate what the adolescent victim stated in her initial declaration. The only other victims of sexual assault subjected to two psychological evaluations are children below the age of 3, because the great majority lack the verbal language skills to accurately and coherently relate the assault they suffered.<sup>63</sup>

#### ***V. Judges: A Review of Three Written Opinions***

What follows is an analysis of the only three trial court opinions to which the courts of Cochabamba gave me access. In each of these three cases the judges reflect common socio-cultural patterns that discriminate against female adolescent victims of sexual assault and demonstrate common and usually unchallenged discriminatory practices.

In case one,<sup>64</sup> a 13-year-old victim claimed that the defendant, her 29-year-old professor of religion, ethics, and morals, took her at night to his house to revise her homework, and once in his home sat next to her, then went behind her and reached under her shirt, touching her right breast. The defendant conceded that he took her at night to his house to revise her homework, and claimed that he sat next to her, put his arm around her, and then gave her a hug to congratulate her for her good work. The court found that

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<sup>60</sup> UNICEF & Centro Una Brisa de Esperanza, *Manual de la Ruta Jurídica de Atención en Delitos de Violencia Sexual a Niños, Niñas y Adolescentes* 30 (2011).

<sup>61</sup> Interview with Tatiana Cespedes, Private Attorney for Victims of Sexual Assault, Centro Una Brisa de Esperanza, Cochabamba, Bolivia (Oct. 3, 2011); Interview with Carmen Arispe, Private Attorney for Victims of Sexual Assault, Centro Una Brisa de Esperanza, Cochabamba, Bolivia (Nov 27, 2011).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Sentencia No. 12/2010, de las 22:10, 22 March 2010, Tribunal de Sentencia No. 2, District of the Capital, Cochabamba (Bol.) [hereinafter Sentencia No. 12/2010].

the defendant did in fact hug the victim; that it was possible that the defendant's hand may have accidentally rested upon, touched, or been in area of one of the victim's breasts; that the adolescent misinterpreted the defendant's actions; and that the defendant lacked the criminal intent to commit sexual assault. The court held that the defendant did not commit a sexual crime against the victim.

The court concluded that the adolescent victim misinterpreted the defendant's actions by relying on a psychologist's finding that the victim was "extremely sensitive, with diminished psychosexual maturity in relation to her age . . . ." <sup>65</sup> The court then went on to explain that due to "the position in which they found themselves and the position of the furniture, it is not very probable that the defendant could have surprised her from behind, and in that case touch her right breast, because by logic . . . [it] would have been physically accessible to touch the left breast, thus making it more coherent that the defendant hugged her, putting his arm around her and his hand evidently reaching the right breast, which the adolescent interpreted as a true invasion of her intimacy, unleashing a traumatic process . . . ." <sup>66</sup>

In case two, <sup>67</sup> the victim claimed that the defendant had repeatedly raped her since she was 12 years old. In dismissing the possibility that the victim was raped, the court stated, "[The victim] was punctual, responsible, dedicated to studies, an excellent student[.] [N]evertheless it is indicated that the victim is depressed, deceived, with fear and anguish[.] [Y]et, experience teaches us that a person who has been sexually assaulted since 12 years of age has low academic performance, cannot have normal relations with the opposite sex, has low self-esteem, [and] in the end has traumas that do not permit the victim to be a normal girl." <sup>68</sup> The court in dismissing the victim's testimony also stated, "the judges gave more credibility to the declaration of the grandmother than to the victim because she is an older person and has no direct interest as does the victim . . . ." <sup>69</sup>

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<sup>65</sup> *Id.* at 19. (Brisa De Angulo trans.)

<sup>66</sup> *Id.*

<sup>67</sup> Sentencia No. 14/10, de las 11:30 a.m., 25 June 2011, Tribunal de Sentencia, District of Quillacollo, Cochabamba (Bol.) [hereinafter Sentencia No. 14/10].

<sup>68</sup> *Id.* at 15. (Brisa De Angulo trans.)

<sup>69</sup> *Id.*



In case three,<sup>70</sup> the 16-year-old victim claimed that the 26-year-old defendant had raped her for 8 months, often multiple times per day. The tribunal held that “due to the strong personality of the victim it is impossible to conceive that the victim has been” raped.<sup>71</sup> Thus, the tribunal changed the crime charged from rape to *estupro*,<sup>72</sup> a crime carrying a lesser penalty.<sup>73</sup> It should be noted that *estupro* is not a lesser-included offense of rape. The elements of rape do not subsume those of *estupro*.<sup>74</sup> Moreover, the tribunal stated that it could see that the victim “finds herself in a current process of recuperation. These elements generate in the tribunal doubt about the extent of the damage incurred in the victim; thus it has been decided to use the universal principal of “in dubio pro reo” [when in doubt, rule in favor of the accused] with respect to” the aggravating circumstances in article 310(2) of the Código Penal.<sup>75</sup> This article states that there will be an addition of five years to the sentence if the crime “produces a grave trauma or psychological damage in the victim.”<sup>76</sup>

These three cases reflect the profound discrimination toward female adolescents that judges frequently demonstrate. The judges in these three cases used discriminatory beliefs to invalidate the female adolescent victims’ claims and to embrace a default rationalization of the defendant’s position.

In case one, where the teacher took the student to his house at night and touched her, the court demonstrated a reluctance to make reasonable inferences from circumstantial evidence that impugn the defendant’s position. The court ignored alarming facts that the teacher took a young student of the opposite sex to his house, in the night,

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<sup>70</sup> Sentencia No. 03/2003, de las 14:30, 28 March 2003, Tribunal de Sentencia No. 4, District of the Capital, Cochabamba (Bol.) [hereinafter Sentencia No. 03/2003]

<sup>71</sup> *Id.* at 5. (Brisa De Angulo trans.)

<sup>72</sup> The person who commits *estupro* is the one “. . . who through seduction or deception, had carnal access with a person of one or the other sex older than 14 years of age and younger than 18 years of age . . .” Código Penal, art. 309 (Bol.).

<sup>73</sup> Sentencia No. 03/2003, *supra* note 70, at 6.

<sup>74</sup> On appeal, the Superior Court overturned the trial court’s opinion and ordered a new trial because the trial court, among other things, modified the type of crime attributed to the defendant (a violation of the principle of congruence in Article 362 of the Código de Procedimiento Penal of Bolivia). Corte Superior de Justicia, Auto de Vista de 05/06/2003, *José Miguel De Angulo v. Eduardo Gutiérrez Angulo / apelación restringida*, p. 3 (Bol.). The Superior Court stated that there were no legal precedents supporting this practice of attributing to the defendant the crime of *estupro* when the defendant has been charged for rape. *Id.*

<sup>75</sup> Sentencia No. 03/2003, *supra* note 70, at 6 (Brisa De Angulo trans.).

<sup>76</sup> Código Penal, art. 310(2) (Bol.) (Brisa De Angulo trans.).

and engaged in physical contact with that student alone in the living room. Under any respectable code of teacher-student ethics, this defendant's behavior is alarming. Moreover, the court ignored the unlikelihood that an adolescent would go through the horrors of the Bolivian legal process and public humiliation simply because a teacher congratulated her for her work with a hug.

Rather, the court used other superficial circumstantial evidence such as the position of the furniture in the living room to rationalize the defendant's argument. The court inferred the probability of touching one breast rather than the other from the physical position of the defendant and the victim, which was itself a highly disputed fact in the case. The court's reasoning reflects an underlying sense that the female adolescent's story is less credible than the defendant's, even if circumstantial evidence is more supportive of her story.

Also, the court's assertion that the adolescent victim misinterpreted the defendant's actions because she was "extremely sensitive, with diminished psychosexual maturity in relation to her age . . ." <sup>77</sup> reflects a belief that adolescents are less credible than adults and somewhat ignorant. The assertion presupposes that extreme sensitivity and diminished psychosexual maturity make a 13-year-old female adolescent incapable of properly interpreting a man's touching of her body. It also implies that she is incapable of determining whether her teacher's hand was under or over her shirt. And that therefore her account of the events was less credible. The logical validity of this assertion is questionable at best.

Case two also reflects the court's concerted effort to invalidate the female adolescent's claims and to rationalize the defendant's claims. In case two, the victim claimed that the defendant had raped her since she was 12 years old and the court used the victim's good academic performance to invalidate her claim. The court stated that there was reasonable doubt that rape occurred because "[the victim] was punctual, responsible, dedicated to studies, [and] an excellent student[.]" <sup>78</sup>

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<sup>77</sup> Sentencia No. 12/2010, *supra* note 64, at 19.

<sup>78</sup> Sentencia No. 14/10, *supra* note 67, at 15.

This is an excellent example of how adolescents are trapped in an ever-losing position. Some adolescent victims of sexual assault accommodate to the assault by successfully hiding any type of indicators of the assault.<sup>79</sup> They tend to passively adopt a lifestyle that appears normal and some even become popular and overachievers in an attempt to please peers and teachers.<sup>80</sup> As seen in this case, when a successful, normal adolescent disclosed sexual assault the reaction of the court was incredulous: “experience teaches us that a person who has been sexually assaulted since 12 years of age has low academic performance, cannot have normal relations with the opposite sex, has low self-esteem, [and] in the end has traumas that do not permit the victim to be a normal girl.” The court’s reaction was similar to that of many other adults. “How could something like this happen to such a talented and fine young person?” “A person who went through something so sordid could not have turned out so well.”

On the other hand, some adolescent victims of sexual assault develop the opposite pattern of accommodation. Some victims engage in rebellious behavior, such as drug use, promiscuity, delinquency, and have poor academic performance. The more broken and rebellious the adolescent is, the more the adult will assume that the adolescent is a delinquent and untrustworthy, and that the adolescent is falsely incriminating the defendant.<sup>81</sup> As Dr. Roland Summit stated, it does not matter what pattern of accommodation the adolescent adopts, she will be equally met with distrust, rejection, and disbelief.<sup>82</sup> Thus, female adolescents face an almost lost battle in the courts of law.

The court’s argument in case two fundamentally relies on cultural myth to rationalize the defendant’s position. Note that the court stated, “experience shows us . . . .”<sup>83</sup> Reliance on experience is not always inappropriate. But in matters of sexual assault, particularly when the case involves complex psychological patterns of accommodation to continual sexual assault, reliance on ad hoc experiences must bow before well-documented patterns of psychological accommodation that have been repeatedly shown in respected and replicated psychological studies.

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<sup>79</sup> Summit, *supra* note 11.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Sentencia No. 14/10, *supra* note 67, at 15.

The contemporary psychology of sexual assault does not support the court's thinking. Rather the contemporary psychology of sexual assault rejects the court's line of reasoning, and exposes it as reliance on cultural myth, namely the myth that the trauma of sexual assault always manifests itself in adolescents as poor academic performance, inability to have normal interpersonal relations with the opposite sex, and an inability to function within range of psychological normality.

Furthermore, the court's statement in case two that the "judges gave more credibility to the declaration of the grandmother than to the victim because [the grandmother] is an older person and has no direct interest as does the victim . . ." <sup>84</sup> reflects the belief that older people generally tell the truth more than adolescents. While the court legitimately used direct interest as a factor in determining the credibility of witness testimony, the court here failed to explain or justify the relevance of age as a factor –though in some instances age is a legitimate factor. Rather, the court simply asserted that older age increased the grandmother's credibility as a witness.

Furthermore, the court's use of age as a factor in this instance raises the issue of discrimination based on age. Here, the victim was an intelligent, studious female adolescent, certainly capable of remembering that she had been raped. The court's reliance on age in this instance implies, at very least, that the victim was, by virtue of being adolescent, to some extent less credible as a witness than was the grandmother. However, when comparing an adolescent and an adult, the capacity for accurate memory and the tendency to tell the truth do not necessarily improve with age. In short, the court the erroneously relied on age as a legitimate factor for determining witness credibility.

Moreover, the court's idea that the testimony of an adult is to some extent more reliable than the testimony of an adolescent simply because of the age difference, raises the question of whether the court embraces this notion as axiomatic when it evaluates the testimony of an adult sexual aggressor and that of the adolescent victim. If so, the court operates under the influence of a severe bias toward the adolescent merely because the adolescent is younger than the adult aggressor.

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<sup>84</sup> *Id.*

In case three, the judges dismissed the 16-year-old female adolescent's claims of sexual assault due to the strength of her personality, and declined to increase the penalty for aggravating circumstances because the victim was in the process of recuperation. The court's assertion that "due to the strong personality of the victim it is impossible to conceive that the victim has been" raped<sup>85</sup>, is illogical. The assertion takes this form as a syllogism: female adolescents with strong personalities cannot be raped; the victim here has a strong personality, and therefore she was not raped.

The major premise that adolescents with strong personalities cannot be raped is patently false. Whether a female adolescent is raped has nothing to do with the strength of her personality. It has everything to do with the unfortunate event of crossing paths with a sexual aggressor, and falling prey to the deception, lies, and threats, i.e. the grooming mechanisms that sexual aggressors employ to trap their victims, even those with very strong personalities.<sup>86</sup>

Also in case three, where the judges decided not to increase the severity of the penalty to correspond to the aggravating circumstances, it is implied that if a victim is in the process of recuperation, then she could not have suffered grave trauma or psychological damage. For the court's assertion to make any sense, it must assume that a person cannot recuperate in any way from grave trauma or psychological damage. However, this assumption is unfounded. People often recuperate from grave trauma and psychological damage, though for many the recuperation is partial, slow, and painful.<sup>87</sup>

Prosecutors also perceive the discriminatory attitudes of judges toward female adolescent victims of sexual assault. Prosecutor DC1 stated,

"Judges normally don't believe us [prosecutors] if the victim is over 12 years old, especially if the victim is between 14 to 16 years old. They say, they always think, 'why didn't she defend herself?' And we have the

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<sup>85</sup> Sentencia No. 03/2003, *supra* note 70, at 5.

<sup>86</sup> See generally Anna C. Salter, *Predators: Pedophiles, Rapists, and Other Sex Offenders—Who They Are, How They Operate, and How We Can Protect Ourselves and Our Children* 31-45 (2003) (offering an in-depth discussion of the double life that sexual aggressors live for the purpose of entrapping their victims); see also Losada & De Angulo, *supra* note 21, at 17-79 (also offering an in-depth discussion of the use of deception and grooming techniques by sexual aggressors).

<sup>87</sup> Losada & De Angulo, *supra* note 21.

grave problem that for cases where the victim is between 14 to 16 years old, we need there to be physical violence. If there is no physical violence, the judges think that there was no sexual abuse and that it was a consensual relationship. Thus, for adolescents we need the extra evidence of physical violence, which is not needed for children.”<sup>88</sup>

Prosecutor PC3 stated that it is harder to take cases when the victim is an adolescent because the female adolescent victim carries an extra burden to persuade the judges that she was sexually assaulted. She further stated, “We have trouble when the adolescent goes to court after going to therapy because the female adolescent seems more in control and more at ease. Because of this the judges have a hard time believing the adolescent;” the judges expect the adolescent to be completely out of control when relating her experience. For adolescents to remain in a believable state for the judges, all therapy would have to be suspended until trial, and it usually takes 6 months to 2 years, or more, to reach trial.

Prosecutor DC2 stated,

“It is hard to create belief in the truth of her [the female adolescent’s] testimony. In one case, where the adolescent did very well with her testimony, the judges stated in their sentence that the testimony of the victim was half-believable, which means that they did not believe her. Judges tend to believe the smaller children more than the adolescents. Judges think that young children cannot lie, and that it is very difficult for someone to teach them what to say. Thus, it is easier [for judges] to believe the little children than to believe adolescents.”<sup>89</sup>

## ***VI. Cumulative Analysis of Comments and Practices***

When taken together, the comments and practices of the general public and of those who make up the Bolivian justice system show the existence of a socio-cultural pattern of discrimination against and oppression of female adolescent victims of sexual

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<sup>88</sup> Interview with Prosecutor DC1, *supra* note 6.

<sup>89</sup> Interview with Prosecutor DC2, *supra* note 6.

assault. Some of the most pronounced myths are: 1) female adolescents are less credible than small children and adults; 2) female adolescents frequently lie about being victims of sexual assault; and 3) female adolescent victims and/or their parents are partially at fault for the sexual assault the victims suffered. The result of these myths is that when female adolescents disclose sexual assault, they will likely be disbelieved or blamed for the assault they suffered.

The notion that female adolescents are less credible due to the mere fact that they are adolescents, or younger in age, does not make any sense. The credibility of a person lies not in how old she is, but in her personal character. Credibility must be assessed on an individual basis. This generalized notion that female adolescents are less credible fails to recognize the individualized nature of credibility.

The notion that female adolescents frequently lie about being victims of sexual assault also stands on shaky ground. According to Bolivian experts on the psychology of sexual assault, less than 1% of female adolescents lie about being victims of sexual assault, even though they may lie about other things.<sup>90</sup> When an adolescent discloses that she has been a victim of sexual assault, she is taking the chance of being negatively stigmatized by society, and being rejected, expelled from her community or family, and thought of badly. It is more likely that an adolescent who has been sexually assaulted will lie and say that the assault did not occur, than disclose the assault.<sup>91</sup> In a study conducted in Cochabamba, Bolivia with 3,722 adolescents, where 30% of the female adolescents were victims of sexual assault, a large percentage stated that they had not disclosed their sexual assault experience due to “fear of not being believed.”<sup>92</sup> Also, according to Paulo

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<sup>90</sup> Interview with Monica Meza, Psychologist/Trauma Specialist, Centro Una Brisa de Esperanza, in Cochabamba, Bol. (Oct. 7, 2011); Interview with Fatima Gamboa, Psychologist/Trauma Specialist, Centro Una Brisa de Esperanza, in Cochabamba, Bol. (Oct. 7, 2011). Both of these psychologists are regarded as among the highest authorities in Bolivia on the psychology of child and adolescent sexual assault.

<sup>91</sup> G.S. Goodman et al., *Child Sexual and Physical Abuse: Children's Testimony and Children's Eyewitness Memory* (1987); T.D. Lyon, *False Allegations and False Denials in Child Sexual Abuse*, 1 *Psychology, Public Policy, and Law* 4291 (1995); K.J. Saywitz et al., *Children's Memories of a Physical Examination Involving Genital Touch: Implications for Reports of Child Sexual Abuse*, 59 *Journal of Consulting and Clinical Psychology* 682 (1991).

<sup>92</sup> De Angulo, *Conspiracy of Silence*, *supra* note 3.

Pinheiro, fear is a crucial reason why the sexual assault of adolescents often remains hidden or undisclosed.<sup>93</sup>

Another aspect that is commonly overlooked is the fact that many victims of sexual assault often recant due to the negative consequences of disclosure. Over 60% of sexual assault victims recant their initial declarations.<sup>94</sup> According to Dr. Roland Summit, it is a psychologically normal reaction for the victim of sexual assault to cycle between disclosing and recanting the assault. In the aftermath of disclosure, many of the victim's fears become reality. She is blamed for the assault, threatened by the aggressor, faces the hysteria of adults and the disintegration of her family, and shoulders the overwhelming burden of maintaining the unity of the family. She is also saddled with the responsibility of protecting the perpetrator and blamed for all that has occurred. In this context, a female adolescent often adopts an inverted morality, where the "good" choice is hiding the assault for every one's sake and the "bad" choice is disclosure of the assault. The adolescent's simple lie, "I made everything up," is more believable for adults and authorities than claims of sexual assault. This lie strengthens and confirms the tendency of adults and authorities to dismiss the claims of female adolescent victims of sexual assault.<sup>95</sup>

This tendency to recant may be one reason why prosecutors think that adolescent victims lie frequently about sexual assault, when in reality the victims are behaving in a psychologically normal manner by retracting their allegations due to fear of the negative consequences of disclosure. Another tendency that prosecutors notice is the tendency for adolescents to change their stories, a tendency which prosecutors use to invalidate the female adolescent victim's claims. This tendency, as stated previous paragraph, is normal.

Also, the notion that female adolescent victims or their parents are partially at fault for the sexual assault likewise rests on shaky ground. The way a female adolescent

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<sup>93</sup> Pinheiro, *Violence Against Children*, *supra* note 4; De Angulo, *Conspiracy of Silence*, *supra* note 3.

<sup>94</sup> Safe Places, *When an Adolescent Has Been Sexually Abused: An Aftercare Guide for Parents, Families, and Other Persons who Care* 11 (2009). For an electronic copy of this document, visit [http://www.safeplaceslr.org/How\\_to\\_survive\\_abuse\\_of\\_your\\_adolescent-revised\\_12-2009.pdf](http://www.safeplaceslr.org/How_to_survive_abuse_of_your_adolescent-revised_12-2009.pdf)

<sup>95</sup> Summit, *supra* note 11.



dresses, where she happens to be, and how her parents raise her do not justify sexual assault or confer some minimal right upon the sexual aggressor that justifies his actions. As stated by the U.S. Department of Justice, rather than blaming the victim of sexual assault, it is important to “[r]eassure these victims that regardless of their behavior (e.g., using alcohol and drugs, engaging in illegal activities, or hitchhiking), no one has the right to sexually abuse them, and they are not to blame for the abuse.”<sup>96</sup> While U.S. governmental officials are required to clearly state and affirm that there are no reasons or situations or behaviors of the sexual assault victims that justify the sexual assault, in Bolivia governmental officials, such as prosecutors and judges, hunt for any context, situation, or behavior that could be used to incriminate, question, and transfer fault to the female adolescent victim.

## ***VI. Violations of Female Adolescents’ Internationally Protected Rights***

### **A. Rights and Obligations**

Under international law, women have the right to be free from discrimination. Pursuant to article 3 of the Convention of Belem do Para (hereinafter CBDP), “Every woman has the right to be free from violence in both the public and private spheres,”<sup>97</sup> and this right includes the right to be free from all forms of discrimination.<sup>98</sup> The CBDP defines violence as “any act or conduct, based on gender, which causes . . . psychological harm or suffering to women, whether in the public or the private sphere.”<sup>99</sup> The Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter CEDAW) defines discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the

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<sup>96</sup> U.S. Department of Justice, Office on Violence Against Women, *A National Protocol for Sexual Assault Medical Forensic Examinations: Adults/Adolescents* 32 (2004).

<sup>97</sup> *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (“Convention of Belem do Para”) art. 3, June 9, 1994, 33 I.L.M. 1534 (entered into force Mar. 5, 1995) [hereinafter CBDP]. Bolivia ratified this treaty on October 26, 1994.

<sup>98</sup> *Id.* at art. 6(a).

<sup>99</sup> *Id.* at art. 1.

political, economic, social, cultural, civil or any other field.”<sup>100</sup> Also, discrimination that causes psychological harm or suffering to women therefore constitutes violence.

Women also have the right under international law to equal protection of and before the law. This right is protected under article 24 of American Convention on Human Rights,<sup>101</sup> article 4 of the CBDP,<sup>102</sup> and article 15(1) of the CEDAW.<sup>103</sup> However, establishing *de jure* equality before the law is not sufficient.<sup>104</sup> *De facto* discrimination violates this right if that discrimination affects equality before the law.<sup>105</sup>

Under the CBDP and the CEDAW, the Bolivian Government must take measures to prohibit and eliminate legal and customary practices that discriminate against female adolescents. The CBDP, in article 7(e) requires that Bolivia undertake “to take all appropriate measures, including legislative measures . . . to modify legal or customary practices which sustain the persistence and tolerance of violence against women.”<sup>106</sup> Similarly, article 2(e) of the CEDAW requires that Bolivia undertake “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.”<sup>107</sup> In addition, under article 2(b) of the CEDAW Bolivia must take the same measures to prohibit all discrimination against women.<sup>108</sup>

Moreover, the Government of Bolivia has the duty to ensure that its agents, officials, authorities, personnel, and institutions refrain from engaging in any practice or act of discrimination against female adolescents. This affirmative duty is found in Article

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<sup>100</sup> *Convention on the Elimination of All Forms of Discrimination Against Women* art. 1, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]. Bolivia Ratified this treaty . . . . Also, The Inter-American Commission has incorporated this definition into its case law in case *Maria Eugenia Morales De Sierra v. Guatemala*, Case 11.625, Inter-Am C.H.R., Report No. 28/98, OEA/Ser.L/V/II.95, doc. 7 rev. ¶ 32 (1997).

<sup>101</sup> Organization of American States, *American Convention on Human Rights* art. 24, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978) [hereinafter ACHR]. Bolivia ratified this treaty on June 6, 1979.

<sup>102</sup> CBDP, *supra* note 97, at art. 4.

<sup>103</sup> CEDAW, *supra* note 100, at art 15(1).

<sup>104</sup> *Access to Justice and Social Inclusion: The Road Toward Strengthening Democracy in Bolivia*, Inter-Am C.H.R., OEA/Ser.L/V/II., doc. 34, ¶ 307 (2007).

<sup>105</sup> *Id.*

<sup>106</sup> CBDP, *supra* note 97, at art. 7(e).

<sup>107</sup> CEDAW, *supra* note 100, at art. 2(e).

<sup>108</sup> *Id.* at art. 2(b).

7(a) of the CBDP.<sup>109</sup> The CEDAW, in article 2(d) imposes the same duty on Bolivia to “refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation.”<sup>110</sup>

## **B. Violations of Rights and Obligations**

The discriminatory notions held by judges, prosecutors, and the general public are largely the result of Bolivia’s failure to educate them about the nature of sexual assault as crime and its horrific impact on female adolescents. This failure to educate is a violation of the Bolivia’s obligation to ensure that its public authorities and institutions refrain from engaging in any practice or act of discrimination against female adolescents, which leads to the discrimination and other violations discussed below.

Bolivia’s failure to educate judges can be seen in the judges’ use of scientifically unsupported psychology to invalidate female adolescent claims of sexual assault. The use of this false psychology to invalidate claims of sexual assault offers extra protection to sexual aggressors. Not only must the female adolescent disclose the assault, but she must remain in a state of utter devastation for months, if not years, so that she can convince the judges that she was sexually assaulted. The victim must also react to the sexual assault as the judges expect, and not in the widely varying forms of reaction and accommodation that are documented in the psychological literature.

This use of false psychology and the discriminatory notions held by judges violate female adolescent victims’ right to equal protection of and before the law. In the cases reviewed, the judges were biased against female adolescent victims by using scientifically unsupported psychology to invalidate their claims of sexual assault, and by maintaining that the testimony of an adolescent is less credible than that of an older adult. These actions of the judges have the effect of denying equal protection before the law to female adolescent victims of sexual assault. The biases of the judges are biases in favor of sexual aggressors.

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<sup>109</sup> CBDP, *supra* note 97, at art. 7(a).

<sup>110</sup> CEDAW, *supra* note 100, at art. 2(d).

The notion among prosecutors that female adolescents lie frequently about sexual assault also represents a restriction on their right to equal protection before the law, as well as their right to access to justice. Though it is true that adolescents have in rare instances lied about being sexually assaulted, it is not the norm. The rarity of these instances does not permit generalized assertions about the majority of adolescents. Yet it is the extrapolation from these rare instances to the majority of adolescents that constitutes the violation of their rights. The prosecutors create from the rare instances a generalized notion that adolescents frequently lie about sexual assault, which in practice prejudices those adolescents who muster the courage to disclose the assault and start the legal process. The prosecutors are the gatekeepers who determine whether the adolescent's claim will proceed in the justice system. When the prosecutors approach the case of a female adolescent victim with unjustified skepticism and disbelief, they are effectively closing the female adolescent's access to the courts and cutting off her opportunities for equal protection before the law.

Moreover, these discriminatory notions held by judges and prosecutors constitute in themselves discrimination, and even violence against female adolescent victims of sexual assault. When the judges' or prosecutors' employment of these discriminatory notions creates psychological suffering in the victims, it rises to level of violence.

In addition, the discriminatory views held by the general public constitute discrimination against female adolescents. Without doubt, the onslaught of blame and stigma create psychological suffering to the victim of sexual assault. Moreover, the de facto discrimination that exists among the public, and the negative stigma that arises from it, may cause many victims to remain in silence, and thereby also restrict their access to justice and equal protection before the law.

Due to the existence of these discriminatory notions held by judges, prosecutors, and the general public, Bolivia has violated its obligation to prevent discriminatory practices among its officials and all persons. Despite Bolivia's admirable efforts to implement many policies and laws on the national, departmental, and municipal level that

aim to eliminate and reduce the “scourge of violence against women,”<sup>111</sup> discriminatory attitudes that establish *de facto* discrimination against female adolescent victims of sexual assault still exist. As has been shown, the existence of these attitudes gives rise to various practices that violate the internationally protected human rights of female adolescent victims of sexual assault.

Thus, Bolivia is in violation of article 24 of the ACHR, articles 3, 4, 6(a), 7(a), and 7(e) of the CBDP, and 2(b), 2(d), 2(e), and 15(1) of the CEDAW.

### ***VII. Conclusion***

Among all victims of sexual assault in Bolivia, female adolescent victims seem to receive the most negative responses to disclosure in the form of discrimination, lack of protection, and neglect of their cases. And though there is a culture of blame and disbelief toward all victims of sexual assault, blame and disbelief are exacerbated when the victim is a female adolescent. Female adolescent victims are often seen as less credible than child and adult victims, and as frequent liars. These discriminatory beliefs are held equally among judges, prosecutors, and general public.

The existence of these discriminatory beliefs among judges and prosecutors prevents them from fulfilling their obligation to identify victims of sexual assault and their aggressors, which hinders the function of the justice system in general. Moreover, it prevents the thorough investigation of suspected sexual assault. And once aggressors are identified, it prevents the proper attribution of fault.

When sexual assault has occurred, fault lies with the aggressor, never the victim. The aggressor knows what he has done, and provocation is no defense. In matters of sexual assault, the concept of contributory negligence has no place.

The most obvious remedy for this problem of discrimination and violation of victims’ rights is to educate judges, prosecutors, and the general public about the nature

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<sup>111</sup> Committee on the Elimination of Discrimination against Women, *Consideration of reports submitted by States Parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: Combined second, third and fourth periodic reports of States parties—Bolivia*, ¶ 66, CEDAW/C/BOL/2-4 (March 27, 2006).

of sexual assault as a crime and its devastating effects on female adolescent victims (and on all victims). Discriminatory beliefs can be changed through educational campaigns, such as inclusion of information on sexual assault in school curriculums and mandatory educational sessions for judges and prosecutors. Destruction of these harmful socio-cultural patterns and change of oppressive historical trends cannot come soon enough for victims of sexual assault.