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Transgression of sexual and reproductive rights during the professional training of female graduate doctors: a form of violence against women

Original Article

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SUMMARY

Introduction. *Our purpose is to determine if the hospital care institutions and / or the university institutions impose repressive norms on the medical graduate students due to their pregnancy condition.*

Methods: *We performed a prospective, cross-sectional observational study; 400 postgraduate residents of the Division of Graduate Studies of the Faculty of Medicine of the University of Zulia answered a survey on reproductive rights in medical residents.*

Results: *70% of the sample knows the existence of a protection law regarding any type of violence against women. 90% of respondents do not know or do not remember the existence of a "Universal Declaration of Sexual Rights". 100% of the respondents do not know the current legal regulations on maternal rights in Venezuela. 90% were informed upon admission to the medical residency about*

the existence of some type of regulation that forced them to abandon postgraduate activities because they were pregnant.. 100% of residents who became pregnant during their academic period (n = 100) were forced to abandon their teaching academic care activities. 100% were unaware of legal mechanisms to protect their right to reproduction and maternity.

Conclusion: *The lack of knowledge of current legal regulations on sexual and reproductive rights of postgraduate medical residents by the Division of Graduate Studies of the Faculty of Medicine of the University of Zulia, in Maracaibo, Venezuela as well as the academic committees of each graduate residence is evident.*

Keywords: *Violence, transgression, medical residencies, medical resident, sexual rights, reproductive rights, human rights, postgraduate.*

INTRODUCTION

Sexuality is an evolving concept that includes sexual activity, gender identities, eroticism, pleasure, intimacy and reproduction. It is constituted by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors (Villaverde, 2006).

Sexual rights emanate from the rights to freedom, equality, privacy, autonomy, integrity and dignity of all people, thus promoting the freedom to decide and fully exercise sexuality.

Sexual rights are part of the basic rights of all people; therefore, they are universal and inalienable. Sexual reproductive health can not be achieved without sexual rights; consequently, it is not clear how repressive norms have been established for women doctors residing in postgraduate training in university institutions where they carry out their postgraduate studies, in relation to pregnancy (Castillo and Garibay, 2015).

Training of human resources through postgraduate medical residencies, an important pillar of the health system,

guarantees the preparation of medical professionals, not only in the academic part, but also in the human part; under this scenario, the medical residences are a social process of great importance that guarantees training and preparation of the future medical specialists, so that they reach a greater improvement in their professional practice; however, the theoretical conceptions are reluctant to consider the reality of institutional violence (hospital and university), transgressing or discriminating and abusing the right to sexual health of medical residents who become pregnant during postgraduate studies (Montes-Villaseñor, 2018).

Pregnant medical residents are subjected to an arbitrary disincorporation of their postgraduate studies for a period of six months, under the justification of their pre and post-natal rest conferred by the Venezuelan legal framework; their school program is suspended despite having completed it, based on the regulations for graduate studies at the University of Zulia.

In this context, we must consider how institutional care or postgraduate university system has implemented labor administrative control mechanisms with unfair distinctions to the detriment of a universal human right that every woman has; it would be a form of violence against women as stipulated in Article 15 in numerals 1, 3 and 6, stating: "It is all behavior that threatens or violates the right of women to voluntarily and freely decide their sexuality,... Omissis" (Gómez, 2014). The numeral 16 establishes the existence of Institutional Violence when the actions or omissions made by the authorities, officials, professionals, personnel and agents belonging to any public entity that, contrary to the proper exercise of their attributions, delay, hinder or prevent

women from have access to public policies and exercise the rights provided in this Act, to ensure a life free of violence.

Institutional control has tried to maintain the distinction, as a source of discrimination, through normative regulation of sexual reproductive manifestations of postgraduate medical residents, who often ignore important legal aspects such as the right to motherhood (Article 76), the right to education (articles 102 and 103), the principle of autonomy (article 20) and the principle of freedom of conscience (article 61), all of them contained in the current Venezuelan constitution.

In this sense, the Venezuelan Civil Code establishes in article 2 that "ignorance of the law does not excuse compliance"; The Venezuelan Penal Code establishes in its article 60 that "ignorance of the law does not excuse any crime or lack" (Pérez D'Gregorio, 2010).

Since the 1997 declaration of the "Universal Declaration of Sexual Rights" or the so-called "Declaration of Valencia", it became one of the fundamental elements of the new document on Sexual Health that was elaborated by the World Organization of the Health (WHO) in the year 2000.

Sexual rights are universal human rights based on inherent freedom, dignity and equality for all human beings. Since health is a fundamental human right, sexual health must be a basic human right, including reproductive free and responsible decisions. This includes the right to decide whether or not to have children, the number and space between them, and the right to full access to methods of fertility regulation. Therefore, sexual rights are fundamental and universal human rights (Belli, 2013).

It is important to mention the legal nature of postgraduate medical residences in Venezuela. The specialty university medical residency is a fourth level study in postgraduate university residences under the auspices and supervision of a University that grants a specialist degree; article 1 of the Regulation of Graduate Studies of the University of Zulia approved by the University Council according to the conferred conferred in ordinal 21 of article 26 of the Law of Universities dictates the following: "Studies for graduates, are those organized for those who have obtained a degree in Higher Education in National or Foreign Universities, or in University Institutes, and that comply with those established in the Norms for the Accreditation of Studies for Graduates, of the National Council of Universities or any other issue issued by the National Council of Universities ". It is the system for training medical specialties that exists in Venezuelan universities according to article 10 of the General Regulations for Postgraduate Studies for Universities and Institutes duly authorized by the National Council of Universities (CNU).

Medical Postgraduate Residencies of the different specialties have as main objective to train doctors in the different areas or clinical and/or surgical specialties, according to the scientific and technological advances, with a humanistic approach and with the capacity to aspire to execute an specialty. Postgraduate medical assistance residences have a limited period in their performance, as well as in their selection, which will be adjusted to the regulations for the granting of contracts and/or postgraduate scholarships and welfare residences programmed by the Ministerio del Poder Popular para la Salud (MPPS) or the Venezuelan Institute of

Social Security (IVSS). The training system in postgraduate residences in Venezuela leads to the legal concept of an employment relationship between the training specialist (resident) and the hospital center in which he acquires his training or learning, a contractual relationship that presents the characteristics of a mixed teaching-assistance contract; the contract will have the following characteristics:

- a. It is a labor contract. There is no doubt that resident doctor is linked to the institution to which he is attached with a postgraduate training contract and medical assistance of an employment nature, with training regulations; it involves the provision of professional services in authorized hospital centers for that end.
- b. It has a peculiar nature. The peculiarity of the contract is undeniable; residents are undoubtedly linked to public or private administration by employment contracts and their relationship is strongly inculcated by an academic-educational-training nature; it is classified as a Adhesion contract of mixed nature, scholarship type and exclusive dedication.
- c. It has a temporary duration. legal relationship of the resident doctor with the hospital institution where he exercises and acquires his knowledge, has a temporary nature and jurisprudence also recognizes that quality. In the case of postgraduate university studies, this is contemplated in the Regulation of studies for graduates of the University of Zulia, in article 45 numeral 3 that states: "The

permanence in the program may not be greater than four (4) years".

- d. Permanence regime. It is governed by a permanency system that generates rights and obligations for resident physicians.

The objective of this research is to identify the experiences of hospital institutional and/ or university violence towards the medical graduate residents of the Division of Graduate Studies of the Faculty of Medicine of the University of Zulia, Maracaibo, Venezuela, through standards repressive for the simple condition of pregnancy during some period of their academic teacher training, ignoring and violating what is stated in the Venezuelan legal system where motherhood has protection with constitutional rank.

METHODS

This is a prospective, cross-sectional, observational study, using a data collection instrument based on an anonymous, standardized survey questionnaire with a randomly and intentionally chosen simple obtained in the units of postgraduate program residency. the Division of Studies for Graduates of the Faculty of Medicine of the University of Zulia, Maracaibo, Venezuela.

We included a pool of open and closed questions, using as parameters the content of article 15, numeral 1, 3, 6 and 16 of the organic law on the right of women to a life free of violence and other laws that provide protection to the woman in her pregnancy condition.

Sample was constituted by 400 female medical residents of the postgraduate studies programs of the

teaching hospital units of programmed residences of the Graduate Studies Division of the Faculty of Medicine of the University of Zulia. A bibliographic search was carried out concerning transgression of the sexual and reproductive rights during the professional training of the postgraduate medical residents as a form of violence against women, as well as the legal implications of their action or omission.

Variables of the sample are displayed in the form of graphs for their better compression, visualization and to be able to focus the differences. Research was carried out attentively to ethical, moral and legal principles, following the current regulations (requirements of the Good Clinical Practices - GCP-, regulatory provisions and ethical principles originated in the Helsinki Declaration).

The variables included were:

- a. Medical residence. Set of activities that must be fulfilled by a resident doctor in his training period, to carry out studies and postgraduate practices, with respect to the discipline of the health area in which they intend to specialize within an academic medical unit receiving residents, during the time and in accordance with the requirements indicated in the respective academic-teaching-assistance provisions.
- b. Resident doctor. Those who once completed the Rotary internship or the rural boarding school and have complied with article 8 of the Law on the Exercise of Medicine beginning their stage of specialized medical training, product of the selection by a contest; is hired exclusively by the State to work in

a Hospital for a minimum period of four (4) years, according to the plans and programs duly approved by the university (university residence) or by the General Directorate of Health and Schools of respective Doctors (Scheduled Residences); they will be assigned to a Department or Service and will share with the active medical body the medical assistance activities to the patients and will fulfill the functions and attributions that for their formation and training have been contemplated in the program of the respective residence.

RESULTS

400 female residents were included, assigned to the graduate residence units of the Division of Graduate Studies of the Faculty of Medicine of the University of Zulia, Maracaibo, Venezuela.

70% of the population (n = 280) was aware of the existence of a law that protects them against any type of violence against women; in this sense, 90% of the population (n = 360) was unaware of the existence of the Universal Declaration of Sexual Rights, a document that protects the right to reproduction as an important part of sexual health established by the World Health Organization, including the right to decide whether or not to have children, the number and the space between each one (figure 1).

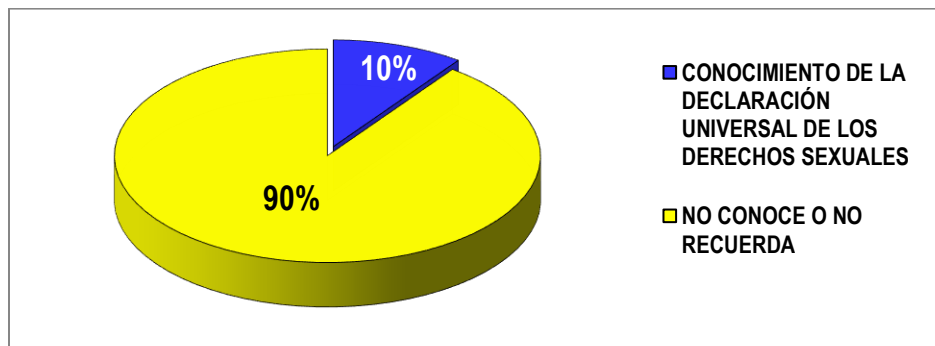


Figure 1. Percentage of knowledge of the existence of the Universal Declaration of Sexual Rights of Venezuela

The totality of the studied population (n = 400) ignored the legal norm on maternal jurisdiction, concerning the right sexual reproduction and therefore the right to protection of motherhood. The coordination of the postgraduate academic committees, following indications of the direction of the Division of Studies for graduates of the Faculty of Medicine of the

University of Zulia, gave indications to 90% of the population studied (n = 360) regarding the implementation of a supposed normative that allows to disincorporate postgraduate medical residents for a period of one semester, due to their condition of pregnant women (figure 2).

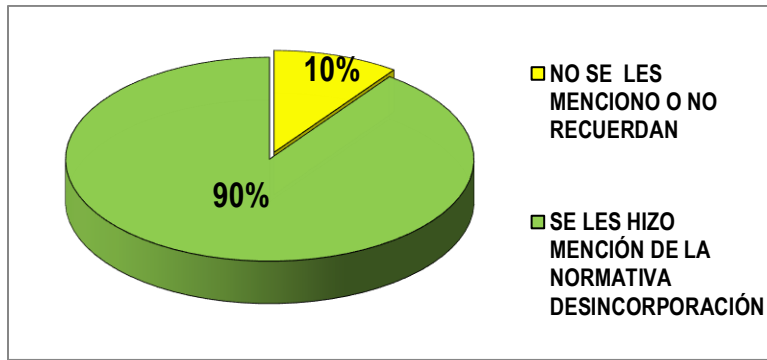


Figure 2. Percentage of knowledge about the existence of regulations on the academic and labor disincorporation in case of pregnancy

25% of female residents who became pregnant during their school period were forced to interrupt their academic, teaching and assistance activities, in relation to their right to prenatal and postnatal maternity rest, through a written document prepared by the direction of the Division of Studies for Graduates of the Faculty of Medicine of the University of Zulia. Likewise, the academic committees of each graduate residence rescheduled the activities not performed by the resident physician while she was on prenatal and postnatal rest, compensating the assistance activity (consultations, medical journal in

hospitalization, guards, among others) for the time it lasted, without any type of contractual benefit; they established that the salary had been canceled, omitting the contingency in health that covers social security in the case that the worker is pregnant. Finally, the Directorate of the Graduate Studies Division of the Faculty of Medicine of the University of Zulia proceeded to paralyze their degree process despite having completed their schooling, violating the right to education contemplated in article 102 of the Venezuelan Political Constitution (figure 3).

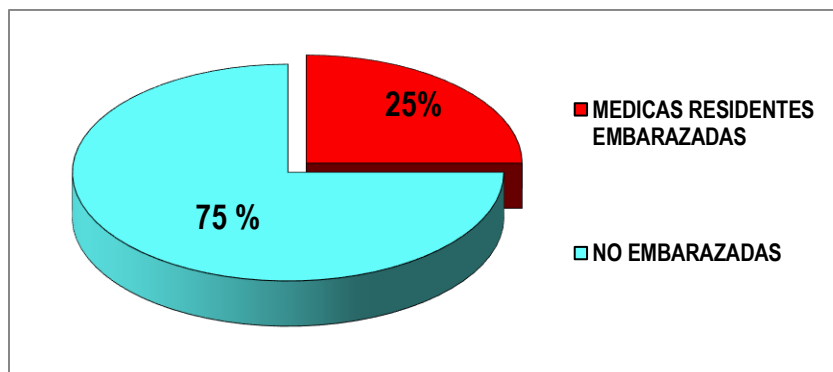


Figure 3. Percentage of the sample studied in which after their pregnancy they were disincorporated from their work and academic activities.

DISCUSSION

Violence against women represents a problem that is essentially social in all the ways in which it occurs; violence against women today represents a national problem, because it is one of the most frequent violations of human rights; constitutes a public health problem that violates the human rights of women. One type of violence against women is represented by the violation of their right to sexual health and therefore their right to motherhood, that is, violence against pregnant women (Benítez, 2004).

Sexual rights are universal third-generation human rights, based on the dignity and equality and inherent freedom for all human beings. Given that health is a primordial human right, sexual and reproductive health must also be a basic human right; women can decide the right to whether or not have children, the number and the space between each one (Arguedas, 2014).

The experiences of institutional violence within the studied sample of the postgraduate medical residents of the Division of Studies for Graduates of the Faculty of Medicine of the University of Zulia Maracaibo-Venezuela allows us to determine these are comparable, or even slightly higher, than those reported in other parts of the world.

The present investigation was not designed to evaluate the sources of violence against the sexual and reproductive health rights of postgraduate medical residents in their pregnancy condition, but, only to identify them, in order to determine the institutions involved.

The Bolivarian Constitution dedicates its Title III to human rights and guarantees, and in its article 19 states that "The State shall guarantee to every person, in accordance with the principle of progressivity and without any discrimination, the enjoyment and inalienable, indivisible and interdependent exercise of the human rights". Therefore, sexual and reproductive rights represent the fundamental support for the exercise of citizenship, understood this beyond the simple possibility of making decisions in the public sphere. Citizenship also implies the possibility for women and men to make autonomous decisions about their own bodies and lives in the fields of their sexuality and reproduction (Pérez D'Gregorio, 2014).

Sexual rights recognize the citizenship of women, since they involve the right to be considered as full, worthy and free citizens; it also includes the right to be treated as people and to position them as protagonists of development processes in which health is a condition that demands respect throughout its life cycle and not only during reproductive age (Pérez D'Gregorio, 2014).

The problem arises when this right to reproduction is converted into a reason for administrative sanction, work. According to the Venezuelan Organic Law for a life free of violence against women, in its article 15° numeral 16, the institutional violence against pregnant graduate doctors constitutes a violation of their human rights, both as a form of gender violence and as a form of gender-based violence. because of her condition as pregnant women and the perspective of the right to sexual and reproductive health; these rights are established in the Bolivarian National Constitution and in the different organic laws; example of this

is the Law on the protection of families, maternity and paternity, which states in Article 18 that: "The State will develop programs aimed at ensuring assistance and comprehensive protection of motherhood and fatherhood, in accordance with the Constitution of the Bolivarian Republic of Venezuela and the law ". As well as the different regulations that refer to the problem treated (Villaverde, 2006).

Our Bolivarian constitutional text protects motherhood in its article 76 ° when it states that: "Maternity and paternity are fully protected,... The State will guarantee assistance and comprehensive protection to motherhood, generally from the moment of conception, during pregnancy, childbirth and puerperium,... Omissis. "

Likewise, the LOTTT bases the protection to maternity in its article 335 by stating that: "The pregnant worker will enjoy special protection from immobility from the beginning of the pregnancy and up to two years after the birth, in accordance with the provisions of the law".

The resident doctor in training does not have to be forced by her employer labor institution, much less adjoin a bad or erroneous interpretation of article 97 of the regulations of studies for LUZ graduates, which indicates that: The regular student may request his disincorporation to the program in which it is registered, when there are fully justified and proven causes, in the opinion of the Academic Committee and approved by the respective Technical Council, without prejudice to the provisions of numeral 45.3 of Article 45 and Article 47 of these Regulations. "Both numerals state that the permanence in the program may not be greater than four (4) years from its entry.

It is not logical that the direction of the Division of Studies for Graduates of the Faculty of Medicine forces the resident doctors of postgraduate to complete a period of six months, once finished their schooling; the duration of the postgraduate course is three to four years, depending on the specialty studied; this is based on the simple fact of enjoying the benefit of the LOTTT on pre and post natal rest in article 336: "The worker in pregnancy is entitled to a break for six weeks before delivery and twenty weeks after , or for a longer time because of an illness, which according to medical opinion prevents him from working ".

In these cases, residents will retain their right to work and to get a salary, in accordance with the provisions of the regulations governing Social Security. That is, the Venezuelan Institute of Social Security (IVSS), the body responsible for paying benefits for the contingency of the maternity of the resident medical graduate, is required by law to pay a fee of the wages earned by the doctor resident on the occasion of the pre and post natal period. However, the period of pre and post natal rest is a necessary legal figure for each worker in a pregnant state, in order to face the difficult process of giving birth to a new life, a new human being. To do this, the Venezuelan labor legislator established a period of rest prior to childbirth and, after this as established by article 336 of the LOTTT.

Article 91 of the Constitution of the Bolivarian Republic of Venezuela clearly states the following: "Every worker has the right to a sufficient salary that allows him to live with dignity and cover for himself and his family the basic needs... Omissis." This article elevates the right to salary to constitutional rank.

However, because the Bolivarian Republic of Venezuela is constituted in a democratic and social State of Law and Justice, with the pre-eminence of human rights and in accordance with the provisions of Article 2 of the Constitution of the Bolivarian Republic of Venezuela, it is of great human interest to safeguard the life and health of people, workers, and their children born or to be born; in this sense, it is necessary and just that the employer should assume the burden of medical assistance in the case of the resident medical worker in her pre and post natal rest.

The graduate medical resident can not be required to comply with an additional period of six months without salary compensation for the simple fact of pregnancy, since this decision violates all regulations both from the workplace and the university; the officials that impose this sanction may incur penalties, both criminal and administrative; this is determined by Article 79 of the Law on the Statute of Civil Service that states that "Public officials shall be held criminally, civilly, administratively and disciplinary for the crimes, misdemeanors, wrongful acts and administrative irregularities committed in the exercise of their functions. This responsibility shall not exclude that which may correspond to them by effect of other laws or their status as citizens".

Inexcusable fault on the part of the officials in charge of the hospital or university institutions can not be justified on the application of a supposed normative that forces the disincorporation of the medical residents from their teaching-academic-assistance activity during their postgraduate studies product of the pregnancy situation; the responsibility for

the damage that this situation produces must be assumed by its instructors, team leader and, eventually, by the coordinator or director of the graduate program. This damage is direct, as a result of the non-observance of current legal regulations on the sexual and reproductive rights of postgraduate medical residents, which is attributable and compensable in Venezuela through the unlawful acts of the Venezuelan Civil Code in force stipulated in article 1,185: "He who, with intent, or negligence or recklessness, has caused harm to another, is obliged to repair it", and the 1,196th: "The obligation of reparation extends to all material or moral damage caused by the unlawful act".

Likewise, the acting civil servants can assume an objective civil institutional liability, which includes civil subsidiary; it is verified when the action of violating the right exposed in the subject is carried out by a third party that is civilly responsible (director, coordinator or administrator of a hospital institution, postgraduate director, dean and academic committee), that is, the one that is referred to the obligated subject. In this same context, it also includes supplementary civil liability, which does not exist and is imposed on the third party (director, coordinator or administrator of a hospital institution, postgraduate director, dean and academic committee) not as a consequence of pre-existing civil liability, but rather in absence. It is convenient to include joint and several liability; in this case, he responds equally civilly, both the criminally responsible and those who are not (director, coordinator or administrator of a hospital institution, postgraduate director, dean and academic committee).

On the other hand, article 1221 of the civil code establishes that they are bound to the same thing, so that each one can be constrained to compensate the

damage, even though each one is therefore responsible for their actions. Finally, Article 124 of the Criminal Code provides for the joint and several liability of the persons when stating: "If the punishable act is attributable to several persons, they are jointly and severally liable for the damage caused".

Sexual rights include the ability of postgraduate medical residents to express and enjoy autonomously and responsibly their reproductive sexuality, with planned or desired pregnancies, without coercion, violence and discrimination.

CONCLUSION

The recognition and protection of sexual and reproductive rights as human rights are of very recent date and are not enshrined in a single normative body of the Venezuelan legal framework. It is a fundamental pillar for the exercise of citizenship of postgraduate medical residents to become pregnant during the permanence of postgraduate studies and exercise their right to motherhood which is enshrined in the constitutional text.

In the present investigation it was evidenced that the causes of the transgressions to the sexual and reproductive rights through the maternity of the postgraduate resident doctors are related to the direction of the Division of Studies for Graduates of the Faculty of Medicine of the University of Zulia Maracaibo -Venezuela with the academic committees of each graduate medical residency; it evidences a clear lack of knowledge of the current legal regulations. There was no legal support system for the resident doctor, which violates her right to motherhood and

therefore her sexual and reproductive rights.

With this research, institutional, labor and academic violence is made visible as a real problem that affects the citizenship of female postgraduate residents, which represents a type of violence against women. It will also serve as a basis for new lines of research that help generate legal, labor and academic legal protection mechanisms, aimed at reducing this problem that occurs during the professionalization of female medical personnel who are studying postgraduate and working in the sector Health.

REFERENCES

1. Villaverde. M. (2006). Salud Sexual y Procreación Responsable. Jurisprudencia Argentina, Buenos Aires.: 31-32.
2. Castillo, L. y Garibay, L. (2015). Presencia de las mujeres en las especialidades médicas una mirada desde la perspectiva de género. Revista Electrónica de Psicología Iztacala. 18(4): 1706-1728.
3. Montes-Villaseñor, Evangelina, García-González, Janet, Blázquez-Morales, María Sobeida Leticia, Cruz-Juárez, Alma, & De-San-Jorge-Cárdenas, Xóchitl María del Carmen. (2018). Exposición a la violencia durante la formación profesional de los residentes médicos. Ciencia UAT, 12(2), 54-66.
4. Gómez PI, Oizerovich S, Jefferson L. FLASOG. (2014). Propuesta de Contenidos en Salud Sexual y

- Reproductiva para incorporar en currículos de Pre y Posgrado.
5. Belli L.F. (2013). La violencia obstétrica: otra forma de violación a los derechos humanos. Revista Red bioética/UNESCO.
 6. Pérez D'G R. (2010). Obstetric violence: A new legal term introduced in Venezuela. Int J Gynecol Obstet.; 111(3):201-202.
 7. Benítez Guerra, Gidder, Peña, Alejandra, & Peña, Denise. (2004). Violencia contra la mujer durante el embarazo: Resumen de casos. Revista de Obstetricia y Ginecología de Venezuela, 64(4), 211-213.
 8. Arguedas G. (2014) La violencia obstétrica: propuesta conceptual a partir de la experiencia costarricense.11 (1):166-172.
 9. Pérez DGregorio, Rogelio. (2014). Derechos sexuales y reproductivos. Revista de Obstetricia y Ginecología de Venezuela, 74(2), 73-77.
 10. Asamblea Nacional Constituyente. Constitución de la República Bolivariana de Venezuela. (2000). Gaceta Oficial de la República Bolivariana de Venezuela. N° 5.453. Marzo 24 de 2000.
 11. Asamblea Nacional. Ley Orgánica sobre el Derecho de las Mujeres a una Vida Libre de Violencia (Gaceta oficial de la República Bolivariana de Venezuela N° 38.668 del 23-04-07).
 12. Asamblea Nacional. Ley para protección de las familias, la maternidad y la paternidad. Gaceta oficial de la República Bolivariana de Venezuela N° 38.773, del 2007.
 13. Congreso de la Republica. Código Civil de Venezuela. (3) Caracas: Ediciones Dabosan, 1982
 14. Norma Oficial para la atención integral de la salud sexual y reproductiva. República Bolivariana de Venezuela. Ministerio de Salud y Desarrollo Social, noviembre 2003. Una publicación de MSDS, OPS y UNFPA.
 15. Declaración del XIII Congreso Mundial de Sexología, 1997 Valencia (España). Revisada y aprobada por la Asamblea General de la Asociación Mundial de Sexología (WAS) el 26 de agosto de 1.999, en el XIV Congreso Mundial de Sexología (Hong Kong).

