

2024

The Inter-American Court of Human Rights Address "Obstetric Violence" in Rodriguez Pacheco et al. v. Venezuela

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Recommended Citation

Cantor, Lily (2024) "The Inter-American Court of Human Rights Address "Obstetric Violence" in Rodriguez Pacheco et al. v. Venezuela," *Human Rights Brief*. Vol. 27: Iss. 2, Article 6.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol27/iss2/6>

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**THE INTER-AMERICAN
COURT OF HUMAN RIGHTS
ADDRESSES “OBSTETRIC
VIOLENCE” IN RODRIGUEZ
PACHECO ET AL V.
VENEZUELA**
*by Lily Cantor**

The Inter-American Court of Human Rights (“the Court”) issued a decision on reparations and costs in the case of *Rodriguez Pacheco et al. v. Venezuela*, ruling that the plaintiff, Balbina Francisca Rodríguez Pacheco, had her rights violated under the Convention of Belem do Para.¹ In 1999, Balbina Francisca Rodríguez Pacheco brought a criminal case of medical malpractice in Venezuelan court against a team of surgeons who performed the botched cesarian of her third child.² However, administrative mishandling of Ms. Rodríguez Pacheco’s original claim led to her case not being heard before the Court until 2012.³ Citing the statute of limitations, the Venezuelan court dismissed Ms. Rodríguez Pacheco’s claim.⁴ Subsequent appeals courts upheld the dismissal.⁵

In 1998, at the time of the alleged violation, Rodríguez Pacheco was a thirty-one-year-old surgeon with two children.⁶ She attended a pre-natal appoint-

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1 *Rodriguez Pacheco et al. v. Venezuelav*, Preliminary Exceptions, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 504 (Sept. 1, 2023) [hereinafter *Pacheco v. Venezuela*].

2 *Id.*

3 *Id.*

4 *Id.*

5 *Id.* at ¶ 72.

6 *Id.* at ¶ 33; See also Mayo Clinic, *Placenta Previa*, MAYO CLINIC STAFF, (May 11, 2022), <https://www.mayoclinic.org/diseases-conditions/placenta-previa/symptoms-causes/syc-20352768#risk-factors>.

ment at a private medical clinic in Venezuela, where her obstetrician diagnosed her with placenta previa, a condition where the placenta covers the opening of the cervix.¹¹ In such cases, vaginal birth is impossible and dangerous to both mother and child.⁷ To ensure that both survived the birth, doctors recommended a cesarian section.⁸ Following her doctor’s advice, Ms. Rodríguez Pacheco scheduled the procedure. While undergoing the cesarian section, Ms. Rodríguez began to bleed from the placenta, resulting in severe hemorrhage.⁹ While both she and her husband requested a hysterectomy by name, the surgeon refused, instead electing to remove some placental tissue.¹⁰ He claimed that the bleeding subsided, and a hysterectomy was not necessary.

The surgeon directly endangered Rodríguez Pacheco’s life by refusing to perform a hysterectomy.¹¹ Within hours she began bleeding from her genitals, and experienced severe pain.¹² The same surgeon subjected Rodríguez Pacheco to a “partial hysterectomy” by removing her uterus but not the uterine lining.¹³ Because the doctor refused to perform a hysterectomy and address the hemorrhage at its source, Rodríguez Pacheco was subject to a five-day stay in an intensive care unit and six total surgeries.¹⁴ By the end of her ordeal, Rodríguez Pacheco endured severe trauma that scarred her for life and left her unable to function normally.¹⁵ In a report on the extent of Rodríguez Pacheco’s disability, an evaluator estimated she had a “permanent partial incapacity for work of 50 percent,”¹⁶ meaning that her ability to work and function had been reduced by at least half due to her injury.

Rodríguez Pacheco was subsequently hospitalized several times for, among other conditions, “moderate to severe osteoporosis, hyperactive bladder, decreased post-surgical bladder size, reactive depression, [and] sexual dysfunction,”¹⁷ all side effects of her doctor’s poor performance. The Court noted that among Rodríguez Pacheco’s traumas, she needed to

7 Mayo Clinic Staff, *supra* note 7.

8 *Pacheco v. Venezuela*, *supra* note 1, at ¶ 33.

9 *Id.* at ¶ 35.

10 *Id.* at ¶ 35.

11 *Id.* at ¶ 35.

12 *Id.* at ¶ 36.

13 *Id.*

14 *Id.* at ¶ 33-46.

15 *Pacheco v. Venezuela*, *supra* note 1, at ¶ 45.

16 *Id.*

17 *Id.* at ¶ 44.

use a wheelchair for almost a year and required the use of adult diapers and urinary catheters due to incontinence.¹⁸ Her post-surgical care was also subpar, leading to hospitalizations for hyperthyroidism, gonadal dysfunction, and post-surgical menopause.¹⁹ When undergoing medical testing in 2020, Pacheco Rodriguez showed signs of continuing medical problems including a chronic urinary tract infection, osteoporosis secondary to surgical menopause, and chronic insomnia.²⁰

When addressing the issue of whether the Venezuelan State provided Ms. Rodriguez Pacheco an adequate avenue by which she could have her complaints addressed in a court of law, the Court declared that the Venezuelan justice system committed a fundamental violation of Ms. Rodriguez Pacheco's rights.²¹ The violation occurred when the justice system so mismanaged her case that it was never heard, bouncing it from court to court at different levels of appeal through administrative negligence, and the case was ultimately dismissed due to the statute of limitations.²² During this process, there was never even a basic investigation into the doctor who operated on Ms. Rodriguez Pacheco.²³ The Court noted a sharp lack of due diligence in investigating the complaint and concluded that the failure of the Venezuelan judicial system to investigate and prosecute Ms. Rodriguez Pacheco's claim was not just a due process issue, but also interfered with her rights to personal integrity and health.²⁴

After this analysis, the Court detailed Rodriguez Pacheco's c-section and subsequent lack of care to be "an act of obstetric violence,"²⁵ which the Court defined as a form of gendered violence which "encompasses all situations of disrespectful, abusive, negligent treatment, or denial of treatment, during pregnancy and [pre-pregnancy], and during childbirth or postpartum, in public or private health centers."²⁶

The judgment affirmed that Venezuela failed in its duty to give Ms. Rodriguez Pacheco adequate due process.²⁷ To this point, the Court noted constant and needless delays in her case, resulting in an unfair dis-

missal by Venezuelan appellate courts in 2012.²⁸ If the Venezuelan justice system addressed Rodriguez Pacheco's complaint in a timely way according to her rights under the IACHR she would not have experienced harm by the Venezuelan State.

In its ruling, the Court ordered considering both mental and physical impacts, the costs of Rodriguez Pacheco's care after her disability, and her lost earning potential when she was no longer able to work.²⁹ The Court also ordered Venezuela to establish safeguards to ensure a speedy and satisfactory resolution for future victims and to protect maternal health and autonomy.³⁰ Highlighting the importance of prevention as well as reparations, the Court required Venezuela to educate its doctors and medical students on forms of obstetric violence through medical school curricula and continuing education programs.³¹ To ensure that the public was aware of the ruling, the Court also mandated that the Venezuelan government publish a notice in the national media and on the webpages of the Supreme Court and health ministry.³²

In its final judgment, the Court ruled that Venezuela violated Ms. Pacheco Rodriguez's right to a fair trial, personal integrity of fair treatment, and health. The Court also asserted that Venezuela violated Ms. Pacheco's rights under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belem do Para"), specifically rights related to respect of physical, mental, and moral integrity, the right to equal protection before the law, and the right to prompt recourse from a competent court.³³

Ms. Rodriguez Pacheco's case is one of several that the Court analyzed in recent years relating to women's obstetric health, indicating a rising interest in the area of reproductive rights.³⁴ In January 2023, the Inter-American Commission on Human Rights open-

18 *Id.* at ¶ 42.

19 *Id.* at ¶ 48.

20 Pacheco v. Venezuela, *supra* note 1 at ¶ 46.

21 *Id.* at ¶ 150.

22 *Id.* at 68.

23 *Id.* at 187.

24 *Id.* at 114.

25 *Id.* at ¶ 81.

26 Pacheco v. Venezuela, *supra* note 1 at ¶ 103

27 *Id.* at ¶ 160.

28 *Id.* at ¶ 68.

29 *Id.* at ¶¶ 178, 181, 182.

30 *Id.* at ¶ 8.

31 *Id.* at ¶ 105.

32 Pacheco v. Venezuela, *supra* note 1 at ¶ 174

33 The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, ORG. OF AMER. STATES, art. (4)(b) (June 9, 1994).

34 The Court previously heard the case of Ramos Durand y Otros v. Peru, which addressed the forced sterilizations of indigenous women under the Fujimori regime in Peru throughout the 1990s; *Ramos Durand y Otros v. Perú*, INFORME No. 24/19 (2019).

ly called for advancement in the areas of reproductive rights for women and girls.³⁵ This follows a larger trend of increased interest in women's rights across a number of areas, reflected in global demands for equality in all aspects of life, including education, employment, health, religion, and many other areas. The international law community should continue to follow this trend as it continues to develop over the coming years and consider its role in advancing women's rights.

³⁵ Press Release, Interamerican Court of Human Rights, IACHR calls for progress in the recognition and protection of reproductive rights in the region, (Jan. 31, 2023), https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2023/011.asp