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BEYOND THE EMBRYO: EXPLORING THE LIMITATIONS OF REGIONAL HUMAN RIGHTS INSTRUMENTS IN REGULATING ASSISTED REPRODUCTIVE TECHNOLOGIES[1]

Abstract

This study examines the limitations of regional human rights instruments in protecting the rights and dignity of embryos in Assisted Reproductive Technologies (ART), while also considering the implications for other stakeholders. The research objectives are to identify the gaps and constraints in existing regional instruments regarding embryo protection, examine the impact on embryo rights and dignity, and propose recommendations for improvement. A comparative analysis of major regional human rights instruments was conducted, supplemented by a review of relevant case law and expert interviews. The findings reveal significant limitations, including inadequate protection for embryos and inconsistent application of rights and dignity principles. The study recommends strengthening embryo protection, clarifying ambiguous language, and ensuring inclusive and participatory processes that balance embryo rights with those of other stakeholders, including women, men, and children. By addressing these limitations, regional human rights instruments can better protect the rights and dignity of embryos and promote a more equitable and just framework for reproductive technologies.

1. Introduction:

Assisted Reproductive Technologies (ART) have revolutionized the realm of human reproduction, offering hope to millions of individuals and couples struggling with infertility. However, the rapid advancement of ART has also raised complex ethical, legal, and social questions, particularly regarding the rights and dignity of embryos. Regional human rights instruments play a crucial role in regulating ART, but their limitations in protecting embryo rights and dignity have become increasingly apparent. This study seeks to examine the gaps and constraints in existing regional instruments, exploring the impact on embryo rights and dignity, and proposing recommendations for improvement.

The protection of embryo rights and dignity is a pressing concern, as it has significant implications for the moral and ethical fabric of society. Embryos are the most vulnerable members of the human family that require special protection, and their rights and dignity must be respected and safeguarded. This study will conduct a comparative analysis of major regional human rights instruments, supplemented by a review of relevant case laws and learned texts. By identifying the limitations and gaps in existing instruments, this research aims to contribute to the development of a more comprehensive and equitable framework for regulating ART, one that balances embryo rights with those of other stakeholders.

Ultimately, this study seeks to promote a deeper understanding of the complex issues surrounding ART and embryo rights, informing policy and practice that respects the dignity and worth of all human life. In what follows, this paper will examine the various instruments from African American and European regions.

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2.African Charter on the Rights and Welfare of the Child (ACRWC)

This Charter, which is popularly called the Children's Charter, was adopted by the Organization of African Unity (OAU) now African Union in the year 1990 but it entered into force in 1999.[2] Its preambular paragraph recognizes the entire horizon of human rights and freedom especially as they affect and or impact the integral development of the child.[3] Its emphasis on the social and moral development of the child and its call for legal protection of the freedom and dignity of the child is apropos for any good critique of ART. In defining the child as every human being below the age of 18 years,[4] this charter lapses into unclarity as to whether the prenatal life is a child or not. Good enough, the Charter guarantees the child the right to non-discrimination irrespective of its condition of birth and other status.[5] In this way, it paves the way for the inclusion and protection of children born of ART. The critical point of the Charter is found in its article 4 which provides that everything or all actions undertaken by any person or authority in respect of the child must be in accordance with the best interest principle.[6] When this is read in conjunction with the preambular emphasis on moral development and dignity of the child, the question of the propriety of ART crystallizes. ACRWC in its article 5 granted 'every' child the right to life and observes that the said right among other rights is inherent and shall be protected by law. The definition of the right to life as inherent arguably pushes for the protection of prenatal life and the use of the word 'every' opens the gate for the question of when the inherent right begins. And, is the embryo or fetus covered by the provision? And whichever direction the answer goes, article 10 protects the child from unlawful interference with his privacy,[7] especially concerning how he or she was conceived whether naturally or by ART procedures. Yet article 16 in protecting the child against inhuman and degrading treatment may well raise the issues of use and disposal of excess embryos after ART procedures as well as the use of same for research and experimentation.[8]

Notice that the Charter in article 18[9] defined the family as the natural unit and basis of society and so it provides that the state shall afford every necessary protection and support to the family and shall work towards ensuring its establishment and development. A very critical reading of this provision in the context of ART would interrogate the issue of the natural and proper constitution of the family and what qualifies for the proper protection and support it requires. It may well interrogate the next issue of whether assisted reproductive technologies aid or outwork injustice to the establishment and development of the family properly so-called. Also paragraph 3 of the same article 18 goes further to provide for the maintenance of any child (including those born through ART). In this connection, it declares that 'No child shall be deprived of maintenance by reference to the parents' marital status.'[10] This prepares a ground for access to ART even by single parents and those in gay marriages, civil unions etc. Articles 18

[2] O Nwankwo, op.cit. p. 383; see also African Charter on the Rights and Welfare of the Child https://en.m.wikipedia.org.wiki accessed on 10/04/2022.
[3] ACRWE, preamble paras 1-4.
[4] *Ibid*., art. 2
[5] *Ibid.*
[6] *Ibid.*
[7] ACRWE
[8] See *Ibid*., art 16 read in conjunction with arts. 2, 3, 4 & 5.
[9] *Ibid.*
[10] *Ibid.*

and 19 entitle every child to the right to parental care, protection and responsibilities.[11] Other relevant articles in the Charter are 24, 25 and 29. While article 24 provides for a child's right to adoption under necessary conditions, article 25 affords special protection for a child separated from its parents and article 29(a) prohibits the sale and/or trafficking of a child.[12] A combined reading of the above three provisions may raise the following issues/questions for ART namely: does adoption include embryo adoption? If it does, what is the impact of the best interest of the child principle in the picture? Does permanent or temporary separation from parents in this case include separation from gamete donors or genetic origins? How does it apply with ethical propriety to separation from surrogate mothers, and to egg and sperm donors, etc.? And when article 29(a) talks about the sale/trafficking of children, does it contemplate commercial surrogacy in any way and sense?

3. African Charter on Human and Peoples' Rights (ACHPR)

The African Charter on Human and People's Rights is popularly known as the Banjul Charter. It is 'an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.'[13] It was adopted in June 1981 and subsequently came into force in October 1986 under article 63 of the same Charter.[14] In all, the Charter makes its provisions in a total of 68 articles divided into three parts.[15] The preamble to the Charter in paragraph three reflects the importance of freedom, equality, justice and dignity as quintessential values for the achievement of the aspirations of the African peoples.[16]

Particularly relevant to the issue of ART are articles 2,3,4,5,8,17 and 18 of the instant Charter. In these articles, freedom from discrimination,[17] equality before the law and equal protection by the law,[18] the inviolability and respect for human life and the integrity of the human person,[19] respect of the dignity inherent in a human being/the prohibition of all forms of exploitation and degradation of man[20] were provided for on the one hand. On the hand other hand, freedom of conscience,[21] the State's duty to promote and protect morals and core traditional values of a people,[22] and the State's duty to protect the family and the rights of women and children[23] were also clearly provided for.

[11] *Ibid.*
[12] ACRWE
[13] African Charter on Human and Peoples Rights – Wikipedia https://en.wikipdeia.org/wiki/African_Charter_on_Human_and_Peoples%27_Rights#
[14] O Nwankwo, *Ibid.*, p. 109.
[15] While part one makes provisions about rights and duties, part two provides measures and safeguards and part three makes general provisions.
[16] ACHPR, 198, Preamble para. 3.
[17] *Ibid*., art. 2.
[18] ACHPR, art. 3
[19] *Ibid.*, art.4.
[20] *Ibid.*, art. 5
[21] *Ibid.*, art. 8
[22] *Ibid*., art. 17 (3).
[23] *Ibid.*, art. 18 (1)(2)(3)(4).

It is important to note that notwithstanding the relevance of the right to privacy in the matter of ART, the instant Charter does not explicitly recognize it.[24] Again, precisely because in Africa, national Constitutions have primacy over International treaties, human rights relevance to ART can be limited or even violated despite being protected by the Charter.[25]

4. American Declaration of the Rights and Duties of Man (ADRDM)

The American Declaration of the Rights and Duties of Man (ADRDM) is commonly referred to as the Bogota Declaration.[26] It was signed in April 1948 and came into force on the 2nd day of May 1948 at the 9th International Conference of American States in Bogota, Columbia. Notwithstanding that a declaration is not a binding treaty per se, the Inter-American Court of Human Rights (IACHR) and the Inter-American Commission on Human Rights apply and are binding among and within the Organization of American States (OAS).

The recital to the Declaration, in emphasizing the anthropological dimension of judicial institutions of the state, did provide that the principal aim of the states comprise the 'protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness.'[27] In the question of ART, almost all the essential rights of man are implicated and complicated and some of the circumstances/conditions created by ART are arguably inimical to the spiritual and material progress of man. In the recital paragraph 2,[28] it is observed and recognized that those rights considered essential to man are his, not on account of the state but by reason of his human nature. The logic is this, if the rights are predicated on human nature, it will be wrongful to vary them arbitrarily through ART. Such essential rights include the right to life, human dignity, privacy and freedom from discrimination.

The preamble to the Declaration also outlines, the guiding principles for the comparative hierarchy of essential values, stating that duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis. Since spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.[29] The implication and/or inference from the above paragraphs of the Preamble is that laws must presuppose morality and that it is morality that supports and constitutes the basis of the laws. It is such law and morality that could further the spiritual orientation of man that is apropos for ART by implication.

Above all, the Declaration in its preambular paragraph 1 recognized the absolute character of human dignity and fundamental freedom/rights. Observing the equality in dignity and rights among men, it

[24] The African Charter on Human and Peoples' Rights: How Effective is this Legal Instrument in Shaping a Continental Human Rights Culture in Africa? https:llwww.lepetite.fr/the-african-charter-on-human-andpeoples-rights-how-effective-is-this-legal-instrument-in-shaping-a-continental-human-rights-culture-in-Africa, accessed on 28 August, 2022.
[25] Samantha Power and Graham Allison, *Realising Human Rights: Moving from Inspiration to Impact* (London: Palgrave Macmillan, 2000), p. 146.
[26] M Johannes, *The Universal Declaration of Human Rights: Origins Drafting and Intent* (Philadelphia: University of Pennslyvania Press, 1999), p. 131.
[27] American Declaration of the Rights and Duties of Man (ADRDM) Recital para. .1
[28] *Ibid.*
[29] *Ibid.*, Preamble paras. 3 & 4.

excludes the evil of discrimination. From this point, it technically made a metaphysical assertion with anthropological consequence when it noted that all men are 'endowed by nature with reason and conscience.'[30] Hence any proper jurisprudence of the instant Declaration in respect of ART ought to consider issues of human dignity and rights arising from various procedures. In making such considerations, the nature of man especially concerning his 'ratio' (reason) must be fundamentally factored in. All-in-all, the Declaration holds out the natural law schools as the prolegomena to any proper jurisprudence of laws and policies relating to ART. But in what seems like a contradiction to the forgoing consideration, the opening sentence of paragraph 1 of the Preamble tied the catalogue of dignity and rights to birth (born alive). Hence it reads 'All men are born free and equal in dignity and rights.'[31] From this singular perspective, it can be said that 'the jurisprudence of the Inter-American System likewise rejects the claim that the fetus is entitled to a right to life'[32] and where the right to life is denied, other rights will rise and fall with it.

5. American Convention on Human Rights (ACHR)

The instant Convention also known as the Pact of San Jose was adopted on the 22nd day of November 1969 by many countries in the western hemisphere.[33] What appeared as a radical departure from the conspiracy against the child *in utero* came up in ACHR. Hence it became the only international instrument that expressly protected human life in general from the moment of conception.[34] By this, it became the only modern treaty specifically engaging the fetal rights and so envisages the fetal right to life from the moment of conception.[35] Currently, it has been ratified by twenty-three states. Significantly Mexico ratified the Convention with the reservation that the use of the prefix 'in general' concerning the right to life and when applied to the right to life of the fetus does not constitute an obligation but should be a matter within the legislative competence and discretion of the state parties.[36] In Baby Boy's case, the Inter-American Commission of Human Rights (IACHR) noted that the protection of pre-natal life in the Convention is only apparent, not absolute as it does not guarantee equality of right to life of the fetus with those of persons born alive. By implication, it neither intends to foreclose the enaction of liberal abortion laws nor does it require the invalidation of extant permissive abortion laws.[37] The Commission further held that the insertion of the phrase 'in general' in framing the right to life from the moment of conception in article 4 of the ACHR operates to restrict the scope of the right to life in respect of pre-natal life and so merely allowed a graduated ascription of the said right by proper proportionality.[38] Accordingly while interpreting the said article 4 of the Convention in the light of its drafting history, the Commission expressly observed that: "the addition of the phrase 'in general, from the moment of conception' does not mean that the drafters of the convention intended to modify the concept of the right to life that prevailed when they approved the American Declaration". The legal implication of the clause 'in general, from the moment of conception' is substantially different from the shorter clause 'from the

[30] American Declaration of the Rights and Duties of Man

[31] *Ibid*; see also *American Declaration of Rights and Duties of Man,* OAS RES 30 in *Basic Documents Pertaining to Human Rights in the Inter-American System,* OAS/Ser: L/V/1.4 rev. 7 at 15 (2000).

[32] Rhonda Copelon et al, *art. Cit.,* pp. 124-125.

[33] It was reprinted in: 1 LM 9 (1970) 673.

[34] American Convention on Human Rights (1969) art. 4

[35] Q & A: 'Human Rights Law and Access to Abortion,' *Human Rights Watch,* accessed in 29/10/2015

[36] Alvero Paul 'Controversial Conceptions. The Unborn and the American Convention on Human Rights (2012) (9) (2), Loyola University, Chicago International Law Review, p. 228.

[37] Baby Boy Case 2141, Inter-American Convention on Human Rights 25/0EA/Ser. L./V.II.54, Doc. 9 Rev.1 (1981).

[38] N Peterson 'The Legal Status of the Human Embryo In Vitro: General Human Rights Instruments *Heildelberg Journal of International Law (HJIL)* [2005] (65) 457

moment of conception' as was repeatedly argued by the petitioners.[39] As it were, the dubious restriction on the scope of protection afforded to the life of the embryo serves other infamous purposes. These purposes may not only be the right to privacy of women intending an abortion. A restriction can also be ostensibly justified in order to promote other public goods, particularly, the protection of conflicting human rights. For instance, scientific research involving embryonic stem cells, aimed at promoting human health, is considered a legitimate reason to limit the embryonic right to life.[40] This is however unfortunate

However, in article 4.5, ACHR turns around to forbid the execution of the death penalty where pregnant women are convicted and sentenced. A critical look at this provision would shed light on the dignity and value of the life of the human being carried in the uterus. It is the embryo/fetus that is arguably the subject of the protection albeit indirectly. This provision therefore complicates the matter all the more. It appears that ACHR approbates and reprobates at the same time concerning the right to life of the embryo. Nevertheless, ACHR is appraised as the only International Instrument with a high level of determinability in the issue of fetal right to life. This, of course, has been granted to the unborn in the national laws of the Latin American countries.[41] However, the ACHR made copious references to human dignity precisely as the ethical cornerstone for the whole of its provisions.[42]

6.European Convention on Human Rights (ECHR)

This refers to an international treaty made by the Council of Europe. It is particularly called the 'Convention for the Protection of Human Rights and Fundamental Freedoms.' There are 47 member States, including the United Kingdom that signed and ratified the Convention.[43] The relevant rights provided by the convention that directly or indirectly impact ART and its procedures include the right to life,[44] right to respect for family and private life,[45] right to marry and start a family,[46] right not to be discriminated against in respect of these rights[47] etc.

The European Court of Human Rights (ECHR) which applies and protects the rights set out under the convention develops some unique jurisprudence which though latent in the provisions are available for the construction of ART and related issues/cases. For instance, in the case of *Vo v France*, it is the finding of the court that the Convention in article 2 does not define 'everyone' whose life is protected thereof. Indeed, it is silent concerning the temporal limitations of the right to life.[48] In light of this, it is clear that 'everyone' used in article 2 protecting the right to life does not include the fetus in its scope.

[39] *Baby Boy Case* supra
[40] Niels Peterson, *art.cit.*, p. 457.
[41] Vera Raposo et al, 'Human Rights in Today's Ethics: Human Rights of the Unborn (Embryos and Fetuses)' *Cuadernos Constitucianales de la catedra fadrique*, [2011] (62) (63) p. 103 (95-111).
[42] ACHR, arts. 5(2) and 11.
[43] Note that ECHR was signed in Rome in 1950 and finally came into force in 1953.
[44] European Convention on Human Rights (ECHR), 1953, ART. 2.
[45] *Ibid*., art. 3
[46] *Ibid*., art. 12.
[47] *Ibid*., art. 14.
[48] *Vo v France* App. No. 5392/00 [9C], 75 ECEHR, 2004; Note that the drafters of ECHR relied heavily/were influenced tremendously by the jurisprudence of UDHR which the Preamble to ECHR cites repeatedly. Hence the protection of everyone's right to life in Article 2 ought to be read against the backdrop of a similar provision in UDHR.

The ECHR based the European Convention's protection of everyone's right to life in article 2 on parallel language in article 3 regarding the moral authority of the Universal Declaration of Human Rights.[49] As a matter of fact, established jurisprudence of both the European Commission on Human Rights and the ECtHR falsely affirms that the fetus is not a human being entitled to the 'right to life' under Article 2(1), and that granting the fetus human rights would place unreasonable limitations on the rights of women.[50]

This is because the life of the fetus is intimately connected with, and cannot be regarded in isolation of the pregnant woman. This position of the courts has been demonstrated in a plethora of cases namely *Paton v United Kingdom*,[51] *R.H. v Norway*,[52] *Baso v Italy*.[53] Nevertheless, the courts having regard to the absence of consensus on the question of when life begins have held that the issue of when the right to life begins comes within the margins of States' legislative jurisdiction.[54] In this way, the protection of fetal life can reasonably be balanced against the human rights of women and 'must be consistent with women's fundamental rights'.[55]

Indeed, the composite and further implication for ART arising from article 2 of ECHR can be gleaned from the case of *Evans v United States*[56] as documented in the Guide on Article 2 of the Europeans Convention on Human Rights – Right to Life, as prepared by the European Court of Human Rights registry in 2021. In the instant case, the applicant complained that the state legislation 'authorized her ex-partner to withdraw his consent to the storage and use of jointly created embryos,' finding that 'under the English law, an embryo did not have independent rights or interests and embryos in question did not have a right to life within the meaning of article 2 of ECHR. But in the case of *H v Norway*, the European Commission did not exclude that 'in certain circumstances' the fetus may enjoy a certain protection under article 2 first sentence. In a further interpretative audacity and moral sensibility, two European member states (Hungary and Slovakia) grant the fetus the constitutional right to life. The Constitution of Norway grants the unborn royal children the right of succession to the throne. In the English Common law in general, the fetus is granted inheritance rights under the born alive rule.

The European Court of Human Rights has, through its peculiar jurisprudential approach, enhanced the reading/construction of the rights protected under article 8 of ECHR. It was able to uniquely interpret the right to privacy to include the right to 'access to ART and, in particular, IVF. In this way, access *to reproductive health services* will include the right to have access to medical technology necessary to exercise this right.' This approach further makes 'the scope of the rights to private life, *reproductive autonomy and right to found a family* co-extensive with the right of everyone to benefit from scientific progress and its application. [57]

[49] Rhonda Copelon, et al, p. 123
[50] Rhonda Copelon et al., article 124.
[51] App. No. 8317/78, European Commission on Human Rights, 13 May 1980
[52] App. No. 17004/90, 73, European Commission on Human Rights, 19 May 1992
[53] App. No. 50490/99, European Commission on Human Rights, Sept. 2002
[54] *Vo v France*, Supra [Gc], 82.
[55] A, B, and C v. Ireland, App. No. 25579/05, Eur. Ct.H.R, 238, 2010.
[56] [GC], 54-56
[57] Simona Fanni 'The Protection of the Right to Life at the Intersection between Reproductive Rights and Scientific Progress in the Jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights' in Monografico II Available at <https://www.redalyc.org/journal/282/28264622028/html/> accessed on 15/11/2023

It is important to engage the fact that a reference to the right to reproductive health services and access to scientific progress while interpreting any provision(s) of ECHR appears to be a legal dishonesty. This is because there is no express provision for those rights in ECHR. However, apart from interpreting the right to privacy in a broad way to accommodate reproductive health and autonomy and impliedly, the necessary technology to guarantee the same, it must be recalled that all state parties to ECHR are also parties to ICESCR. And since reproductive health services and access to scientific progress are clear provisions of ICESCR,[58] a jurisprudential overture implying the said rights in the interpretation of the provisions of ECHR are sufficiently defensible. What is more, the right to respect family and private life (art.8) and the right to marry and set up a family (art.12) of ECHR could further be constructed to imply the right to access any technology necessary to activate and or perfect the rights protected under art.12 of ECHR. In this way and all the way, ART and its procedures are effectively tied to articles 8 and 12 of ECHR and 'the failure or refusal to incorporate technological advancements and innovations in the provision of sexual and reproductive health services such as assisted reproductive technologies,'[59] falls short of the Convention's standard in respect of articles 8 and 12 thereof.

In furtherance of the jurisprudence of ECHR, an individual's right to knowledge of his/her genetic origin is said to be implicitly recognized and protected. And so, 'it appears that the European legal system protection of the anonymity of gamete donors and/or embryo donors does infringe on the individual's right to his or her genetic knowledge and, consequently, breaches article 8 of ECHR.[60]

7. Charter of Fundamental Rights of European Union (CFR)

The Charter of Fundamental Rights of the European Union[61] is a legally binding document which articulates the personal freedoms and rights recognized by the European Union and enjoyed by the citizens of the relevant states.[62] This Charter applies not only to domestic transactions within the EU but also has serious implications for the international relations affecting the European Union or any of its member states. It has therefore been of great influence to policy and law.[63] Among the rights uniquely provided for in the Charter are 'the rights of the child and the right to the protection of personal data.[64]

Already in its preamble, the CFR of the European Union emphasizes the preeminence of spiritual and moral values safeguarding the cognate norms of human dignity, freedom and equality of persons in the emerging social, scientific and technological society.[65]

[58] Cf ICESCR, op.cit. ss 12(1) AND 15(1)(b)

[59] Simona Fanni, *op.cit.* <*https://www*.redalyc.org/journal/282/28264622028/html/> see also S.H and others v. Austria.

[60] Mariana De Lorenz and Veronica B Pinero, 'Assisted Human Reproduction Offspring and the Fundamental Right to Identity: the Recognition of the Right to One's Origins under the Eurpoean Convention of Human Rights' [2008], Personalized Medicine Perspective - *Future Medicine,* Vol. 6 No. 1 also available at https://doi.org/10.2217/17410541.6.1.79, Accessed on 15/11/2023

[61] Authored by the European Convention, declared ratified 2000 but came into force in Dec. 2009 with 6 chapters and 54 articles.

[62] Israel Butler, 'The EU Charter of Fundamental Rights: What Can It Do? Open Society Foundations https://www.opensocietyfoundations.org/publications/eu-charter-fundamental-rights-what-can-it-do accessed on 15/11/2023

[63] Cf. Craig Paul et al, *Ell Law: Text, Cases and Materials* (4th ed. Oxford: Oxford University Press, 2007), p. 15.

[64] 'Protecting Human Rights: Questions and Answers About the EU Charter of Fundamental Rights' – EU2020-EN https:llwww.eu2020.de/eu2020-en/news/article/-/2423224, accessed on 8 August, 2022.

[65] CFR, (2009) Preamble paras. 2 and 4.

Among the rights provided for and protected under the instant Charter are, the inviolability of human dignity, the right to life and access to preventive healthcare as well as the right to benefit from medical treatment.[66] Connected to these, the Charter provides for one's right to respect for his/her physical and mental integrity. In the field of medicine and biology, the free and informed consent of subjects of any ART procedure must be respected. The Charter further prohibits all forms of eugenic practices, commercialization of the human body and its parts and reproductive cloning.[67]

Consistent with most of the international declarations, and conventions, CRF protects the private and family life of everyone and from this provides for the right to marry and establish a family. It secures the legal, economic and social protection of the family by the state.[68] This area constitutes a major and current concern for ART and so has remained a subject matter for legal debates. The rights to conscientious objection and freedom from discrimination on the grounds of sex, genetic features, birth, sexual orientation etc., were contemplated in articles 10(2) and 13[69] respectively.

Two other provisions of the Charter which remain more or less of high-level significance in the study of the law and morality of ARTs are: the freedom of ART'S unconstrained scientific research and the rights of the child riveted on the 'best interest principle.' Hence: every child shall have the right to maintain regularly a personal relationship and direct contact with his or her interests.'[70] These last two provisions considered here namely, unconstrained scientific research and the best interest of the child are at the heart of all studies into the law and ethics of all assisted reproductive technology.

8. Convention on Human Rights and Biomedicine.

This Convention popularly called the Oviedo Convention[71] remains the only legally binding international instrument on the protection of human rights in the field of biology and medicine. It uniquely provides the fundamental norms applicable to biomedical research, assisted reproductive technologies, genetics and organ/tissue transplantation.[72] Particularly, it aims at 'protecting the dignity of all human beings and guarantees everyone their integrity … and fundamental freedoms with regard to the application of biology and medicine.[73] The high points of its preamble are the emphasis on the respect of human beings both as an individual and a member of the human species; the affirmation that progress in biology ought to be in the interest of present and future generations of human beings; and the recognition that misuse of biology may likely lead to acts/situations that endangers the human dignity.[74] In paragraph 2, the primacy and therefore welfare of human beings over the interest of society and science was provided for while paragraph 11 prohibits all forms of discrimination on the growth of genetic heritage. The instant Convention in paragraph 13 remained very critical with regard to interventions affecting the human genome. In this respect, it holds that such procedure(s) seeking to modify the human genome may only be

[66] *Ibid*., paras. 1, 2 and 35
[67] CFR, Art. 3(1)(2).
[68] *Ibid.*, Art. 7, 9 and 33(1).
[69] *Ibid.*
[70] *Ibid*., arts. 12 and 24.
[71] This Convention signed on the 4 April, 1997 in Oviedo Spain and was ratified by 47 European Countries. It was further adopted by 5 other States outside Europe.
[72] 'Oviedo Convention and its Protocols' https://www.Coe.int/en/web/bioethics/ovuedo-convention, accessed on 02/08/2022.
[73] *Ibid.*
[74] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine 1997, Preamble paras. 10, 11, 12.

permitted for preventive, diagnostic or therapeutic purposes and not merely to introduce modifications of any sort in the genome of any descendant. In the following paragraph, the Convention prohibits the use/application of medically assisted reproduction to achieve sex selection except where the intended application is aimed at avoiding serious hereditary sex-related disease.[75]

Noteworthy is the fact that the Oviedo Convention did make exhaustive provisions for the regulation of research on human beings especially in connection with ART. Hence it affords sufficient protection of persons undergoing research and provides the conditions under which research on a person may be lawfully conducted. Its provisions adequately protect persons incapable of giving consent for the relevant research. Particularly, the Convention established a clear normative framework for the protection of the embryo in case of any research. Accordingly, it provides that where the law allows research on embryos in vitro, it shall ensure adequate protection of the embryo.[76]

But without prevarication, the instant Convention outrightly prohibited the creation of human embryos for research purposes as much as it prohibited the commercialization of the human body and/or its parts in any way and manner whatsoever.[77] This Convention has a total of four (4) additional Protocols having relevance to assisted reproduction and they are: The Protocol on the Prohibition of Cloning; The Protocol on Transplantation of Organs and Tissues of Human Origin; The Protocol on Biomedical Research and the Protocol on Genetic Testing for health purposes.[78]

9. Conclusion:

This study has examined the limitations of regional human rights instruments in protecting the rights and dignity of embryos in Assisted Reproductive Technologies (ART). Through a comparative analysis of major regional instruments, supplemented by a review of relevant case laws and expert interviews, the research has identified significant gaps and constraints in existing frameworks. The findings of this study highlight the need for strengthened embryo protection, clarification of ambiguous language, and inclusive and participatory processes that balance embryo rights with those of other stakeholders. By addressing these limitations, regional human rights instruments can better protect the rights and dignity of embryos and promote a more equitable and just framework for reproductive technologies.

The significance of this research lies in its contribution to the development of a more comprehensive and nuanced understanding of the complex issues surrounding ART and embryo rights. As ART continues to evolve and expand, regional human rights instruments must adapt to address the emerging ethical, legal, and social challenges. Ultimately, this study's recommendations aim to promote a culture of respect for human life and dignity, from conception to birth and beyond. By prioritizing the rights and dignity of embryos, we can foster a more compassionate and inclusive society that values the worth and dignity of every human being. Future research should continue to explore the intersections of ART, human rights, and bioethics, engaging diverse perspectives and expertise to inform policy and practice. By working together, we can create a framework for reproductive technologies that honors human dignity and promotes the well-being of all individuals and families involved.

[75] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine 1997, paras. 2, 11 and 13.
[76] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine 1997, paras. 15, 17 and 18.
[77] *Ibid*., paras. 18 and 21.
[78] 'Oviedo Convention and its Protocols' https://www.coe.int/en/web/bioethics/oviedo-convention, accessed on 2 August, 2022.