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Review Article

# A Human Rights-Based Approach to Health in Assisted Reproductive Care in Spain

**Rocío Paricio-del-Castillo; Ph.D.[1], María de los Ángeles Cano-Linares; Ph.D.[2], Mónica Díaz-de-Neira-Hernando; Ph.D.[1]**

1 Department of Mental Health, Puerta de Hierro University Hospital, Majadahonda, Madrid, Spain
2 Department of Public International Law and International Relations. Rey Juan Carlos University, Móstoles, Madrid, Spain

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## Abstract

**Objective:** Assisted reproductive techniques (ART) have evolved significantly since the early 20th century, driven by biomedical advances and profound socio-cultural shifts worldwide, particularly in Spain. This expansion has enabled access to parenthood in previously inaccessible situations, such as infertility and diverse family structures, yet it also poses risks of human rights violations.

**Materials and methods:** A reflective analysis is conducted on the practices in Spanish healthcare related to assisted reproduction, based on national legislation and its alignment with international human rights legislation. The review of international standards was carried out using normative sources from the United Nations (UN), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the World Health Organization (WHO), the Universal Declaration on Bioethics and Human Rights of UNESCO, and those adopted in the European regional context by the Council of Europe, particularly the Convention on Human Rights and Biomedicine.

**Results:** This article examines potential human rights violations within Spain's ART healthcare framework, identifying gaps in international human rights compliance. Despite Spain's progressive legislation on ART, discrepancies remain with evolving European standards, especially concerning oocyte donation and donor anonymity.

**Conclusion:** The goal is to promote reflection, improve the quality of care, and protect the health and rights of women, children, and families using ART, while ensuring that clinical practices align with human rights principles.

**Keywords:** Women; Human Rights; Assisted Reproductive Techniques; Reproductive Health; Right to Identity

## Introduction

Since the initial use of artificial human insemination in the early 20th century, assisted reproductive techniques (ART) have undergone significant development, both in variety and use, with exponential growth in recent decades (1). The expansion of ART usage since the mid-20th century can be attributed to multiple factors. Chief among them is the relentless biomedical and technological advancement that has revolutionized the

**Correspondence:**
*Dr. Rocío Paricio-del-Castillo*
*Email: roparicio@gmail.com*

healthcare landscape and significantly impacted human reproduction, especially since the birth of the first baby conceived via in vitro fertilization (IVF) in the UK in 1978 (2). Additionally, the substantial social and cultural changes over the past few decades in many countries have influenced both social fertility and the transformation of family models. The World Health Organization (WHO) indicates that currently, 1 in 6 people globally experiences some form of infertility (3). This increase in infertility is multifactorial, partly explained by the increasing delay in maternal age, which is associated with a physiological decline in female fertility, consequently reducing spontaneous conception opportunities (4). The delay in maternal age is a globally observed phenomenon but is more pronounced in developed countries, particularly in Spain, which currently has the second highest maternal age in Europe (5). Furthermore, in relation to the transformation of family models, recent years have seen an increase in the use of ART by women choosing to become mothers outside of heteronormative partnerships (6, 7).

The expansion of assisted human reproduction has opened new and complex scenarios, offering undeniable benefits for women and their partners by allowing them access to motherhood in situations previously impossible (such as infertility or the desire for motherhood outside a heterosexual partnership), but also entailing potential risks and violations of human rights for both women and the children conceived through these methods. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, and the International Covenants on Human Rights (the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights) form the basis of the relationship between human rights and health (8-10). The WHO, as the United Nations organization tasked with promoting health for all people, has developed its guidelines in accordance with these internationally recognized human rights (11). In this regard, healthcare in which ART is included, as part of sexual and reproductive health care, must also be governed by the human rights-based approach to health. This approach offers strategies to combat discrimination, unequal treatment, and power imbalances to improve health outcomes and ensure the highest attainable standard of health for all individuals (12).

In Spain, the regulation of assisted reproductive techniques is governed by one law and two Royal Decrees: Law 14/2006, of May 26 on Assisted Reproduction Techniques; Royal Decree 412/96 establishing mandatory study protocols for donors and recipients related to the practice of assisted reproduction techniques; and Royal Decree 9/2014 establishing quality and safety standards for the donation, procurement, evaluation, processing, preservation, storage, and distribution of human cells and tissues (13-15).

Despite the approval of Law 14/2006 on Assisted Reproduction Techniques eighteen years ago, it remains one of the most progressive European legislations in recognizing the right to assisted reproduction. However, there are some legal gaps and certain differences compared to the latest European trends, particularly regarding the regulation of oocyte donation and the right to identity and anonymity of gamete donors. This can occasionally lead to practices that contravene international human rights legislation.

This study analyzes the potential human rights violations that can be identified in the healthcare provided within the framework of ART usage in Spain. The objectives are to identify deficiencies in the implementation of international human rights regulations concerning healthcare in assisted reproduction to promote reflection, improve care quality in this expanding field, enhance the health of women, children, and families utilizing assisted reproduction, and contribute to combating possible human rights violations in its clinical practice.

## Materials and methods

A reflective analysis is conducted on the practices in Spanish healthcare related to assisted reproduction, based on national legislation and its alignment with international human rights legislation. To this end, a review of international legislation and the main international human rights treaties was conducted, assessing the alignment of current Spanish legislation on assisted reproduction from the perspective of the human rights-based approach to health. The review of international standards was carried out using normative sources from the United Nations (UN), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the World Health Organization (WHO), the Universal Declaration on Bioethics and Human Rights of UNESCO, and those adopted in the European regional context by the Council of Europe, particularly the Convention on Human Rights and Biomedicine.

## Results

Examining the principles defining the human rights-based approach to health (non-discrimination, availability, accessibility, acceptability, quality, accountability, and universality), it is evident that significant violations of these principles continue to occur in the provision of assisted reproductive care in Spain.

Most potential human rights violations in assisted reproduction relate to the infringements on women's rights in healthcare and sexual and reproductive health. Additionally, bioethical issues arise from the biomedical technological use in managing genetic material, gametes, and embryos. In some cases, there are potential violations of the rights of individuals conceived through these methods regarding the knowledge of their origins.

**1. Rights of Patients Using Assisted Reproduction Techniques to Have Their Human Rights and Dignity Respected**

Biomedical and technological advancements have compelled international organizations to reflect and legislate on human rights that may be threatened by these new scenarios, highlighting the importance of bioethics. The rights of patients must be considered the foundation of relationships within healthcare services, as recognized in the Convention on Human Rights and Biomedicine (Oviedo Convention) of the Council of Europe, which came into force in Spain on January 1, 2000 (16). This Convention establishes the protection of human rights and dignity in the application of biology and medicine, aiming to harmonize legislation between countries by recognizing patients' rights to information, informed consent, and privacy of health information. Additionally, UNESCO's Universal Declaration on Bioethics and Human Rights, which obligates member states to comply, stipulates that practices related to medicine, life sciences, and related technologies must respect the following principles: human dignity and human rights, maximizing benefits and minimizing risks, autonomy and individual responsibility, consent, respect for human vulnerability and personal integrity, privacy and confidentiality, equality, justice and equity, non-discrimination and non-stigmatization, respect for cultural diversity and pluralism, solidarity and cooperation, social responsibility and health, shared benefits, protection of future generations, and environmental, biosphere, and biodiversity protection (17).

Through the Oviedo Convention of the Council of Europe and the Universal Declaration on Bioethics and Human Rights, the Spanish State is obliged to respect and ensure respect for principles of autonomy and informed consent, as well as the dignity of individuals, privacy, justice, and equality in healthcare.

In assisted reproduction, the individuals being treated (mostly women) must make decisions regarding their health with complete healthcare information and respect for their dignity, freedom, and autonomy.

***a) Healthcare Information:*** Many problems persist regarding healthcare information in the field of fertility and assisted human reproduction. Deficiencies in the right to healthcare information begin in the preconception stage. Preconception care refers to the continuous health care provided to women of reproductive age so that when they decide to become pregnant, they are in the best possible health (18). In Spain, however, general healthcare information campaigns on fertility and its natural cycle are not conducted, resulting in widespread ignorance about the evolution of age-related reproductive risks. This is compounded by a tendency among young women to overestimate their fertility (19-20). Both situations limit women's ability to make genuinely free decisions about their motherhood. As a result, some women consider motherhood when spontaneous conception is very difficult, health outcomes may be compromised, or assisted reproduction involves more psychologically complex techniques, such as egg donation. Therefore, it is essential to ensure proper preconception healthcare information so that women can make genuinely free reproductive and contraceptive decisions, avoiding undesired future scenarios as much as possible.

Additionally, it has been identified that, during initial consultations on fertility and assisted reproduction, comprehensive, timely, and truthful information is sometimes not provided about the most common psychological obstacles women may face during these processes, arising from physical and emotional stress due to hormonal treatments, invasive procedures, and cycles of hope and frustration that may recur, as well as specific issues related to techniques involving gamete or embryo donation (such as genetic mourning or uncertainty about revealing the child's origins) (21).

For egg donors, data suggest that the healthcare information provided by fertility clinics to women considering donation minimizes the risks they face,

which can be potentially serious, including, in a minority of cases, hospitalization, infertility, or oncological processes, as recognized by the Ministry of Health, Social Services, and Equality (22).

Lastly, it is also crucial to ensure proper information for women considering oocyte cryopreservation as a method to postpone motherhood. In Spain, the number of women deciding to freeze their eggs to maximize future reproductive possibilities has tripled in recent years (23). According to Spanish legislation, cryopreservation centers must contact women who have frozen their eggs at least every two years to maintain their consent and pay the maintenance fee. In practice, however, women are not allowed to cease egg preservation without giving another use to them unless their fertile period has ended. This is because article 1.2 of Law 24/2006 distinguishes between "pre-embryo" or "preimplantation embryo" and "embryo" or "post implantation embryo," providing both with the same level of protection, and currently, eggs are being conceptualized as "pre-embryos" (which is not the case for male gametes) (24). Thus, in practice, women in Spain who have not reached menopause are prevented from discarding their frozen eggs, while men can discard their frozen sperm. This situation is generally not properly communicated to women who choose to cryopreserve their eggs.

***b) The Problem of Autonomy:*** Regarding disability, Law 14/2006, in its fifth additional provision, states that disability cannot be a reason for discrimination in access to assisted reproduction techniques (ART) and stipulates that "*the information and advice referred to in this law will be provided to people with disabilities in conditions and formats accessible to their needs*" and that the woman or the couple can access ART as long as they are capable of giving free, conscious, and formal informed consent. Law 14 states that no one can give consent to undergo assisted reproduction treatments or techniques on behalf of another person, meaning that legally incapacitated individuals cannot access ART.

If a person is not legally incapacitated but has a mental disorder or another condition that may interfere with decision-making, the medical team is responsible for assessing their mental state and decision-making capacity. Therefore, the Law proposes that, in cases of doubt regarding the woman's capacity, the medical team should make the decision in communication with her. The main practical obstacle to this principle is the management of most ethically controversial reproductive techniques (such as egg donation and embryo donation) by private companies. While professionals in the National Health System do not receive direct financial compensation for their interventions, the economic remuneration associated with each treatment in private clinics can interfere with and distort professionals' decision-making. The same applies to cases where women or couples undergo assisted reproduction procedures abroad to circumvent social services.

It is crucial to note that the current legislative perspective does not consider the possible repercussions of the woman's or couple's incapacity on their offspring, a situation that requires special care in certain cases. In Spain, in 2017, the press reported a case of a 64-year-old woman, who had previously lost custody of her older daughter and had a history of mental health problems, who had twins conceived through assisted reproduction and lost custody of both babies after failing to meet the commitments set by Social Services in evaluating the case (25). This case exemplifies the deficiencies in the system when adequately combining reproductive rights, autonomy assessment, and the rights of future generations, which will be addressed later.

**2. Women's Right to the Highest Possible Level of Health in the Periconceptional Stage**

The right to enjoy the highest attainable standard of physical and mental health is recognized in the Universal Declaration of Human Rights (8). Article 12 of the International Covenant on Economic, Social, and Cultural Rights recognizes "*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*", which also includes the right to sexual and reproductive health (9). Sexual health and reproductive health are closely related but not equivalent. While sexual health is "*a state of physical, emotional, mental, and social well-being in relation to sexuality*" (26), reproductive health refers to the freedom to make informed, free, and responsible reproductive decisions, including access to health services, goods, and information that allow individuals to make such decisions with genuine freedom and responsibility (27). Therefore, the right to sexual and reproductive health also includes rights related to adequate healthcare in the periconceptional stage.

Additionally, the gender perspective associated with human reproduction care cannot be overlooked.

Thus, the healthcare provided in assisted reproduction processes must be conceptualized within the healthcare offered to women, which, as stated in Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), must be guaranteed free from discrimination based on sex (28). Article 12 emphasizes the importance of ensuring that women have equal access to health services, including those for family planning, and receive appropriate care during pregnancy and motherhood.

However, numerous situations prevent women from having their health rights properly guaranteed concerning their fertility and assisted reproduction processes. These include limited public accessibility to many assisted reproduction services (forcing women to resort to private clinics), violations of their rights to autonomy, healthcare information, dignified treatment, and freedom from violence, and the tendency to neglect the mental health of women undergoing assisted reproduction processes. These situations hinder the provision of adequate healthcare in Spain for many women undergoing assisted reproduction.

***a) Accessibility and Availability of Assisted Reproductive Services:*** As previously mentioned, Spanish legislation broadly recognizes the right to assisted reproduction. Compared to some other European countries, the regulation in Spain may be less restrictive in terms of who can access assisted reproductive treatments and how many cycles they can receive. Moreover, Spain was one of the first European countries to legally permit access to assisted reproduction for same-sex couples, as its regulation allows for sperm and egg donation, supported by a well-established gamete donation system and a large number of donors.

Additionally, Spain provides public coverage for assisted reproduction processes under certain conditions, included in the National Health System's Service Portfolio, facilitating access for those who cannot afford private treatments) (29). However, numerous exclusion criteria still prevent a significant number of women from accessing public coverage for assisted reproduction, such as maternal age or having a prior child. Furthermore, long waiting lists for some treatments in the public healthcare system drive some women to opt for private care, as the increase in maternal age due to delays in these techniques can act as a disadvantageous factor for achieving pregnancy. Of the more than 400 assisted reproduction centers existing in Spain in 2022, only 10 to 20% were public (30). The growth of the private fertility network in Spain is associated with the market niche established around assisted reproduction, with treatment costs varying but generally amounting to several thousand euros, leading to economic inequities for women seeking motherhood through assisted reproduction (31, 32).

***b) Right to Dignified and Respectful Treatment: The Issue of Obstetric Violence:*** Obstetric violence constitutes a serious threat to the human rights of women, as it discriminates against them based on gender, undermines their autonomy, and compromises their right to health. This problem arises at the intersection of structural violence against women and violence within healthcare institutions stemming from power relations. The term refers to violent practices, whether physical or psychological, occurring in gynecology, obstetrics, or sexual and reproductive health services, perpetrated by healthcare professionals on women's bodies and reproductive processes. Common violent practices include the pathologization of pregnancy and childbirth, and paternalistic or disrespectful treatment, violating women's rights to health information and autonomy. Obstetric violence has severe consequences for women's mental, physical, and sexual health, constituting a public health issue (33).

Obstetric violence has been the focus of strong activism by women in recent decades, particularly in Latin America, with a special emphasis on inadequate practices occurring in childbirth care (34). In this context, in 2014, the WHO published a statement titled "*Prevention and Elimination of Disrespect and Abuse During Facility-Based Childbirth*" (35). In a study commissioned by the WHO and published in The Lancet in 2019, carried out in Ghana, Guinea, Myanmar, and Nigeria, it is stated that "*women and girls suffer this violence when seeking other forms of sexual and reproductive health care, such as gynecological exams, abortion, fertility treatments, and contraceptive services, among other sexual and reproductive health contexts*", recognizing that gynecological violence can affect women in their various sexual and reproductive health care settings, including fertility consultations and assisted reproduction processes (36). Also in 2019, the UN Special Rapporteur on Violence against Women, its Causes and Consequences analyzed the violence and mistreatment still occurring in reproductive health services worldwide, recognizing that obstetric violence constitutes a widespread and systematic

phenomenon that had not been fully addressed from a human rights perspective (37). That same year, the Parliamentary Assembly of the Council of Europe also recognized the existence of obstetric and gynecological violence (38).

Healthcare services for assisted reproduction processes are often offered, wholly or partially, within reproductive health services, and thus, women using these services may suffer various forms of obstetric violence, as noted by the WHO in 2019 (36). It is important to consider that all women undergoing assisted reproduction processes have the right to a violence-free and dignified treatment in their healthcare, both for patients seeking to fulfill their reproductive desires and for those acting as egg donors.

It is worth noting that dignified treatment of women is incompatible with any form of exploitation or commercial transactions for reproductive purposes, which will be analyzed in the following section.

***c) Right to Mental Health Care in Reproductive Processes:*** Mental health is an indisputable part of health, and thus there can be no health without mental health (39). Therefore, the effective implementation of the right to the highest attainable standard of health necessarily involves protecting and addressing mental health from an integrative health perspective.

In fertility and human reproduction healthcare, the psychological dimension must be particularly considered due to the emotional significance these processes hold for many individuals. Assisted reproduction processes can be associated with various stress factors, directly or indirectly, with negative consequences for mental health (40). These stressors can originate from a wide range of sources, including invasive medical interventions women must undergo (blood tests, hormonal treatments, vaginal punctures, and many others), socioeconomic determinants (class, gender, sexual orientation, the cost of private treatments...), or the biographical history and previous experiences of women, who may have turned to assisted reproduction after previous perinatal losses (21). It should not be overlooked that, according to the WHO, infertility itself can generate psychological suffering comparable to that produced by oncological processes (41). The emergence and chronicity of mental health problems in women who have undergone assisted reproduction techniques have been associated with four well-defined factors: treatment failures, dissatisfaction with the partner, a limited social support network, and negative cognitions regarding infertility (42).

In any case, it is essential that women about to undergo assisted reproduction processes are adequately informed about the unpleasant emotions and psychological obstacles most frequently associated with them. Likewise, the integral health perspective obliges healthcare services to offer specialized mental health care to those women who require it and are experiencing infertility or assisted reproduction processes.

**3. Risk of Reproductive Exploitation of Women and Human Trafficking: Risk of Human Trafficking**

Regarding the risk of reproductive exploitation of women associated with biotechnology development, two procedures have been mainly associated with it: egg donation, or oocyte donation (which is legal in Spain), and surrogacy (illegal in Spain, but practically legalized through the mechanism of international adoption).

***a) Egg Donation:*** Currently, Spanish legislation considers that gamete donation must always be an altruistic, free, and voluntary act, which cannot be remunerated, thus not allowing the commercial sale of gametes. However, it does recognize economic compensations for the inconveniences derived from the procedures carried out to obtain gametes (eggs or sperm), although these cannot act as incentives for obtaining gametes. These compensations are assessed through periodically updated tables, estimating the compensation for male donors at around 50 euros, while that for female donors is around 1,000 euros (24). This notable difference in compensations arises from the numerous inconveniences that egg retrieval may entail, requiring women donors to undergo lengthy and invasive procedures, with potential side effects and risks to their health. However, it cannot be ignored that an economic compensation almost equivalent to the minimum wage in Spain may act as an economic incentive for young women in precarious situations, interfering with an act theoretically meant to be altruistic.

Egg donation is a widely practiced procedure in Spain. In fact, our country has been termed the "*egg bank of Europe*", being the primary destination for European reproductive tourism (43). Reproductive tourism refers to transnational travel aimed at undergoing assisted reproduction techniques in other countries due to their greater accessibility or availability (44). In Spain, approximately 5% of assisted reproduction treatments performed in 2019 were in the context of reproductive tourism, with

54.3% of these being related to egg donation (45). Egg donation is the main attraction of Spanish reproductive tourism due to legal restrictions on it in many European countries (such as Germany or Italy), long waiting lists for accessing donated eggs (as in the UK), and the maintenance of donor anonymity, which still persists in Spain, whereas it has been abolished in most of Europe, as will be discussed later.

Previously mentioned limitations seem to exist in the health information provided to potential egg donors, as well as the undeniable economic incentive effect of the current compensation of 1,000 euros on young women (in Spain, the age limit for egg donation is 35 years, while for sperm donation it is 50 years) and generally in precarious economic situations (24). Therefore, respecting the human rights of women in egg donation processes implies creating mechanisms to ensure that the act is genuinely altruistic, to avoid what could effectively become a sale of genetic material, and ensuring adequate information is provided to donors about the procedures they will undergo so they can make truly free, voluntary, and autonomous decisions.

***b) Surrogacy:*** Surrogacy poses a significant risk to the human rights of both the surrogate mothers and the children thus conceived.

Regarding women, the European Parliament Resolution of December 17, 2015, on the Annual Report on Human Rights and Democracy in the World (2014) and the EU's policy on the matter (2017/C 399/19) states in paragraph 115 that the European Union "*condemns the practice of surrogacy, which is contrary to the human dignity of the woman, as her body and reproductive functions are used as a commodity; believes that this practice should be prohibited*" (46). Similarly, the UN Special Rapporteur, in her report on the sale and sexual exploitation of children, notes that the perspective of some legislations that refer to pregnant women without a genetic link to the babies as mere "*gestational carriers*" is based on "*the controversial premise that a woman who gestates and gives birth to a child is no more a mother than someone who takes care of children. It also assumes that the surrogate mother is never a mother because she has no genetic link to the child, which contradicts the practice of granting parental rights to intended parents who also have no genetic link*" (47).

Regarding the children thus conceived, it is noteworthy that Article 35 of the Convention on the Rights of the Child obligates States Parties to prevent the sale or trafficking of children for any purpose or in any form, and the Optional Protocol to the Convention on the Rights of the Child prohibits the sale of children in Article 1, defining it in Article 2.a) as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration" (48, 49).

Nationally, the Spanish Penal Code, in Article 221.1, clearly prohibits surrogacy: "*any formalization of a surrogacy contract in Spain, regardless of its form, will be null and void and may result in legal responsibilities, both civil and criminal*" for those who intervene or participate (50). However, Law 54/2007, of December 28, on international adoption, allows the adoption of children abroad, including those born through surrogacy (51). Thus, an international legal void is created in cases of children born through surrogacy abroad, leading Spanish courts to typically resolve this legal situation by allowing the adoption of these children and their admission into Spain, citing the best interest of the child. In this way, through adoption, children born via surrogacy are accepted as Spanish citizens, participating in the functioning of companies operating internationally for profit through surrogacy, which could be committing a human trafficking offense (52).

**4. Assisted reproduction techniques must adhere to internationally recognized bioethical principles and human rights, and they must not compromise the well-being of future generations under any circumstances.**

As noted in section 1, the Oviedo Convention of the Council of Europe and UNESCO's Universal Declaration on Bioethics and Human Rights mandate respect for human rights and human dignity in the application of technology and the development of medicine and life sciences, which include assisted reproduction techniques. Additionally, the Universal Declaration on Bioethics and Human Rights acknowledges the principle of "*protection of future generations*", primarily in the context of genetic research decisions. This principle of protection of future generations is highly relevant in the field of assisted reproduction, as clinical decisions in this area can affect the well-being and health of those conceived through these methods, who constitute future generations.

The previous Law 35/1988, now repealed, required that women be in good physical and mental health to undergo assisted reproduction procedures. However, the current Law 14/2006, of May 26, on

Assisted Reproduction Techniques, does not include this condition, thereby allowing a broader range of individuals to access these techniques. While the benefits of this inclusiveness for women and their partners are undeniable, the unrestricted legislative approach regarding age or physical and/or mental health introduces new dilemmas about decision-making capacity and the welfare of the children conceived through these methods.

Indeed, the law does not specify age limits for women undergoing assisted reproduction techniques, leaving this decision to the responsible medical team. Most experts agree on setting this limit at 50 years, the typical age of menopause in women. This situation can be particularly problematic given that most assisted reproduction techniques are performed in private centers, which have a direct financial interest based on the number of procedures they perform, heavily influenced by economic criteria. The law also does not consider the potential repercussions on the offspring conceived through assisted reproduction from the physical or mental health issues of the women or couples using these techniques, as previously noted in the section on autonomy and capacity. Therefore, current decision-making regarding assisted reproduction techniques, as outlined in the law, may prioritize the reproductive desires and autonomy of women over the best interests of the children conceived, potentially leading to ethically challenging situations. An example is the case of a Spanish woman who became a mother of twins at the age of 64 through assisted reproduction, despite having previously lost custody of her older daughter, and subsequently lost custody of her babies due to social services deeming there were risks to the children's welfare (25).

Thus, it is necessary to reflect on the possible limitations for adults accessing assisted reproduction based on the potential compromise of the children's well-being when there is advanced age or concurrent conditions that suggest severe limitations in adequately performing parental functions. Law 14/2006 itself recognizes this in Article 3.1, stating that assisted reproduction techniques should only be performed "*when there are reasonable chances of success, they do not pose a serious risk to the health of the woman or the potential offspring, and with the prior free and informed consent of the woman*". The unstoppable development of assisted reproduction techniques and the foreseeable increase in ethically complex situations make it advisable to reevaluate the current legal gaps to align the law with new scenarios, ensuring the rights and necessary protection of children conceived through these techniques.

## 5. Right to Identity of Children Conceived through Assisted Reproduction Techniques

One of the central issues in Law 14/2006, of May 26, on Assisted Human Reproduction Techniques is the maintenance of donor anonymity, whose breach is considered a serious offense (13). Anonymity can only be lifted in severe health situations where such knowledge may be relevant (e.g., genetic diseases or if the conceived person later develops leukemia requiring a bone marrow transplant) or as required by criminal procedural laws. Additionally, the legislation does not allow directed donation, implying a prohibition on selecting the gamete donor or altruistic donation among known individuals, with the donor being chosen by the medical team.

Thus, in Spain, the right to donor autonomy and respect for their wish to remain anonymous is prioritized over the offspring's right to know their genetic origins. This could violate the human right to identity, which includes knowledge of one's origins. The right to identity is essential for the personal and social development of individuals and is closely related to other fundamental human rights, such as the right to non-discrimination, freedom, and personal security. This right to identity, including genetic identity, can be understood to be recognized in the Universal Declaration of Human Rights (Article 6, "*Everyone has the right to recognition everywhere as a person before the law*") and the International Covenant on Civil and Political Rights (Article 16, "*Everyone shall have the right to recognition everywhere as a person before the law*") (8, 9). These articles are seen as protectors of all other rights since, if a person is not recognized under the law, none of their rights will be recognized. However, considering the new realities and developments in this field, the protection of personality should include all dimensions of the person, including genetic identity.

For the matter at hand, the Convention on the Rights of the Child is particularly relevant. In Article 8, it states that children have the right "*to preserve their identity, including nationality, name, and family relations as recognized by law without unlawful interference*"; adding in the second paragraph that "*where a child is illegally deprived of some or all of the elements of their identity, States Parties shall provide appropriate assistance and protection, with a*

*view to re-establishing speedily his or her identity*" (48). Therefore, it is much more specific in protecting the child's identity.

Spanish legislation, in line with international human rights law, recognizes individuals' right to know their biological origins. Significant legislative changes have been made in recent decades to ensure this right for adopted individuals. However, this right, recognized for children by natural filiation and for those adopted, is currently not recognized for those born through the donation of genetic material. Despite the undeniable fact that genetic ancestry constitutes an "*element*" of one's identity, which can be highly significant, denying the offspring the possibility of obtaining information about it violates their right to identity. While it is true that, legally, there is no family relationship between the gamete donor and the conceived person, the psychological, identity, and even genetic and reproductive health impacts of knowing one's genetic ancestry are significant for many people.

Following this principle that recognizes everyone's right to know their identity and biological origins, a comparative law examination indicates that many states in our environment are tending to abolish gamete donor anonymity, considering that, in the conflict between the right to identity and the right to anonymity, the former should prevail. Sweden was the first country to eliminate donor anonymity in 1985 (53). Since then, a significant number of European countries have adopted this perspective: Norway (2003), the Netherlands (2004), the United Kingdom (2005), and Finland (2006) have abolished donor anonymity, while Austria, the Netherlands, Switzerland, and Germany allow donor identification (54). Recently, Portugal has considered gamete donor anonymity to be constitutionally inadmissible (2018), and since August 2022, France requires donors to consent to their identity being disclosed to adult offspring who request it to facilitate access to their personal origins (55).

The Parliamentary Assembly of the Council of Europe, in its Recommendation 2156/2019, has also echoed the movement in favor of recognizing the right to know one's biological origins, promoting the annulment of anonymity for future gamete donations, and prohibiting the use of anonymously donated gametes, with the donor's identity being revealed to the child when they reach adulthood (56). The Recommendation also acknowledges the individual's right not to know the identity of their donor if they so wish.

In Spain, the Spanish Bioethics Committee, following the trend of other European countries, has proposed a reform of the Spanish law to eliminate the current anonymity in gamete donation (57). This legal change is necessary but not sufficient to address the new scenarios in assisted reproduction, as it must be accompanied by a cultural shift involving all three parties (parents, children conceived through assisted reproduction, and gamete or embryo donors) to balance rights and responsibilities, always starting with honest, truthful, and respectful information about the right to autonomy.

However, resistance to this legislative change remains strong. The Spanish Fertility Society (SEF) has openly supported maintaining anonymity, arguing that abolishing anonymity would reduce donations in Spain and that the parental role of couples using gamete donation could be threatened by the donor's figure (58).

The cultural change referred to by the Spanish Bioethics Committee and the threat to the parental role highlighted by the SEF underscore the documented reluctance of many families to disclose their origin to their children conceived through donation. This reluctance has multiple factors, including the secrecy and social taboo still surrounding non-traditional motherhood, parents' fear of their child's emotional reaction upon learning their origins, and fear of a potential relationship with their genetic mother (59). However, inherited fears from earlier stages before the development and expansion of assisted reproduction techniques should not be barriers preventing the resolution of conflicts arising from this reality, especially considering the increasing use of these techniques, nor should they perpetuate the violation of the rights of the people conceived through them.

On one hand, there are identified risks to the human rights of women undergoing medical treatment in ART processes, necessitating the urgent implementation of a human rights-based health approach in assisted reproduction. On the other hand, there are risks related to the reproductive exploitation of women, as well as risks arising from the improper use of genetic material and embryos within these techniques. Additionally, new types of genetic relationships without familial bonds are emerging, resulting in difficulties in guaranteeing the right to identity for individuals conceived through these techniques, especially when conception occurs using

donated gametes or embryos.

## Discussion

Spanish legislation broadly recognizes women's reproductive rights. However, it presents aspects that may lead to ethically conflicting situations, such as the absence of age or psychophysical health limitations for access to ART. Furthermore, it is significantly distanced from European legislative trends by maintaining donor anonymity, prioritizing it over the right to identity of individuals conceived from gametes. It also poses potential risks associated with the reproductive exploitation of women, particularly concerning oocyte donation.

There is an urgent need to analyze and update the regulation of new scenarios in assisted reproduction to address legal gaps and ensure the protection of the involved human rights. This includes evaluating the conditions for access to ART, protecting the welfare of future generations, and balancing the rights and responsibilities of all parties involved, ensuring honest, accurate, and respectful information about the right to autonomy. In Spain, regulatory updates should also consider abolishing donor anonymity, following European trends and international recommendations, and implementing measures to prevent reproductive exploitation and ensure the proper use of genetic material and embryos.

## Conclusion

The biotechnological advancements and sociocultural changes in recent decades have accelerated the development and utilization of assisted reproductive technologies (ART), making their use widespread globally, with an increasing presence in countries like Spain. This has created new bioethical scenarios with undeniable benefits for fulfilling individuals' reproductive desires, but also with potential risks of human rights violations.

## Conflict of Interests

Authors declare no conflict of interests.

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