

**Advancing knowledge-led
development through the
right to science in Africa**

11 November 2019

Addis Ababa University - School of Law

Regional human rights mechanisms: what attention for science?

Dr Elena Abrusci

Senior Research Officer, School of Law-Human
Rights Centre, University of Essex (UK)

elena.abrusci@essex.ac.uk

Outline

Regional human rights systems: a quick introduction

- What do they are?

- What do they do?

- Why are they important?

The European Court of Human Rights and the right to science

- The normative framework

- The case-law evolution

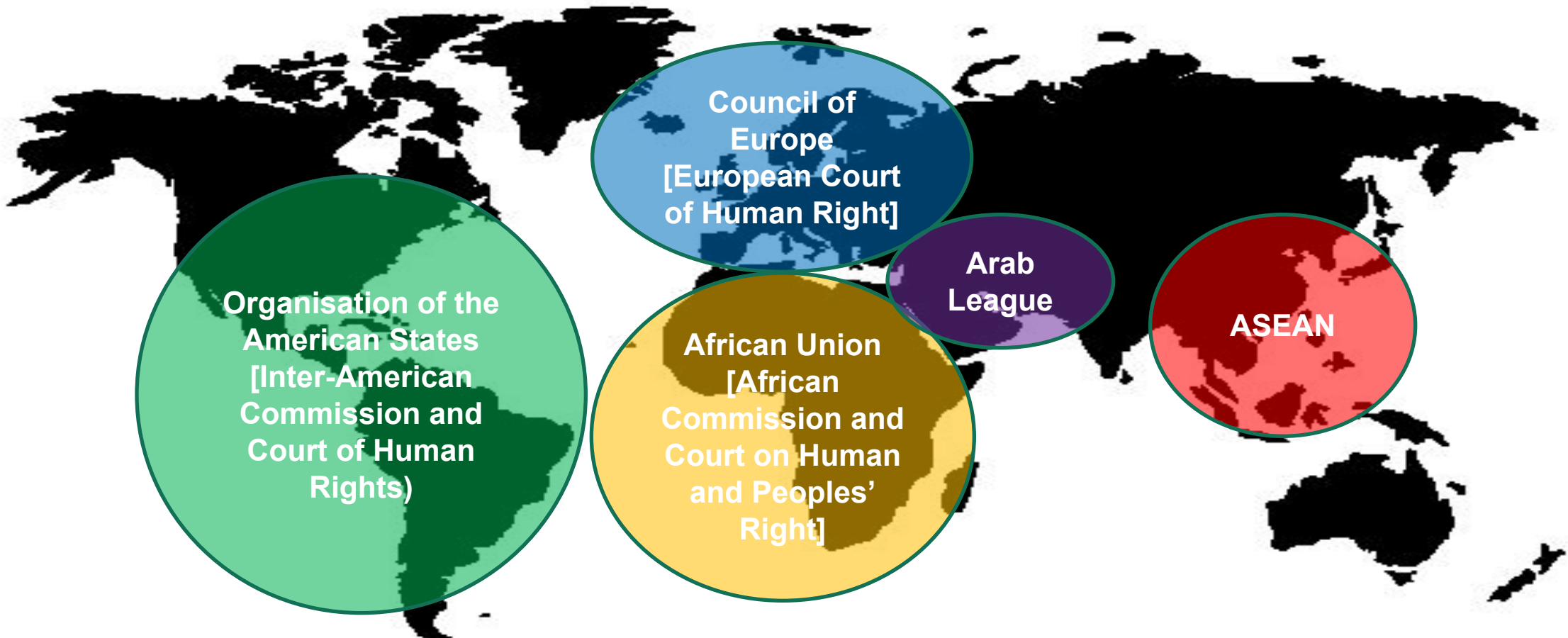
The Inter-American Commission and Court of Human Rights and the right to science

- The normative framework

- The case-law evolution

Conclusions

Regional Human Rights Systems



Regional Human Rights Systems: why are they important?

- Bring human rights closer to home
- Reconcile universality vs relativism of human rights
- Offer a practical, effective (Court's decisions are binding!) and tool for protecting human rights
- Last resort bodies to oversight states' activities and national courts' approaches

Regional Human Rights Systems

African Court of Human and Peoples' Rights	European Court of Human Rights	Inter-American Court of Human Rights
African Union	Council of Europe	Organisation of American States
Began functioning in 2006; first judgment in 2008	Began functioning 1959; first judgment 1960	Began functioning 1979; first judgment 1988
30 member states	47 member states	21 member states
+ African Commission (53 MS)	Standalone court (from 1998)	+ Inter-American Commission (34 MS)
binding judgments	binding judgments	binding judgments
45 judgments	58268 judgments	355 judgments
4.5/year	1004/year	12/year

Regional Human Rights Systems: who can bring a case?

African Court	European Court	Inter-American Court
Through Commission (individuals) Directly: member states (also on behalf of its citizens); an African Intergovernmental organisation; an accredited NGO; individuals against states that made a explicit declaration (8 so far)	Individuals; member states	Through commission (individuals) Directly: only member states
Victim, group or individual on behalf of the victim/group of victims, <i>actio popularis</i>	victim or directly affected; family member or next of kin if victim deceased or unable	Victim or on behalf of a group of victims (if also a victim); family member or next of kin in certain circumstances

Regional Human Rights Systems: which matters can be brought?

African Commission/Court	European Court	Inter-American Commission/Court
African Charter on Human and Peoples' Rights <u>PLUS</u> any other human rights obligation of the member state	European Convention on Human Rights and its Protocols	American Convention on Human Rights and San Salvador Protocol (ESCR for those who ratified it)

Regional Human Rights Systems: the timing

African Commission/Court	European Court	Inter-American Commission/Court
After exhausting domestic remedies	After exhausting domestic remedies	After exhausting domestic remedies
“within a reasonable time”	6 months from the last domestic judgment/commission of the violation	6 months from the last domestic judgment/commission of the violation

The European Human Rights System: normative framework on the right to science

- No mention of the right to science in the European Convention on Human Rights or in the additional protocols
- No mention of the right to science also in the European Social Charter nor in its revised version
- Failure to incorporate international standards into the European normative framework

The European Court of Human Rights: right to science through case-law?

Very little attention to the right to science or the importance of scientific development

Only mentions of 'scientific development' or 'science' in (few) cases related to:

- Reproductive rights (Evans v United Kingdom)
- Gender reassignment (Goodwin v United Kingdom)
- Abortion (A, B and C v Ireland)
- Embryos donation (Parrillo v Italy)

No mention of it in terms of rights, lots of Margin of Appreciation (MoA) granted to states

The Inter-American Human Rights System: normative framework on the right to science

San Salvador Protocol on Economic, Social and Cultural Rights:

Article 14: '1. The States Parties to this Protocol recognize the right of everyone: [...] b. To enjoy the benefits of scientific and technological progress; 2. The steps to be taken by the States Parties to this Protocol to ensure the full exercise of this right shall include those necessary for the conservation, development and dissemination of science, culture and art. 3. The States Parties to this Protocol undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States Parties to this Protocol recognize the benefits to be derived from the encouragement and development of international cooperation and relations in the fields of science, arts and culture, and accordingly agree to foster greater inter-national cooperation in these fields.'

The Inter-American Commission and Court: right to science through case-law?

No petition submitted under Article 14 San Salvador Protocol

Only 1 mention of the importance of benefiting from scientific development in *Artavia Murillo v Costa Rica* (Inter-American Court) and the need to balance science and the right to life (in vitro fertilisation case)

Yet, the Court did not formulate it in terms of right to science and did not mention Article 14 San Salvador Protocol

Conclusions

Regional human rights systems are extremely important for the development and enforcement of IHRL

BUT they have been dedicating very little attention to the right to science

The European normative is an obstacle and the ECtHR is not into opening to new rights when they may be challenged by religious, cultural, historical or societal concerns (MoA)

Risk for the Inter-American and African system to be put off by the European Court and be discouraged from embarking on a new jurisprudential path

**Advancing knowledge-led
development through the
right to science in Africa**

11 November 2019

Addis Ababa University - School of Law

[THANK YOU!]

Dr Elena Abrusci
Senior Research Officer, School of Law-Human
Rights Centre, University of Essex (UK)
elena.abrusci@essex.ac.uk