

A Comparative Analysis of the Enforceability of Social and Economic Rights: Nigeria and South Africa as Case Studies

Authors : Foluke Abimbola

Abstract : There are two separate groups of a recognised body of human rights. These are known as Civil and Political Rights, and Economic and Social Rights. There is however an impression that civil and political rights are enforceable in courts while socio-economic rights are not. Nigeria is an example of one of such countries whose constitution has social, economic and cultural rights' provisions as well as civil and political rights. However, the socio-economic rights provided in the Nigerian constitution are not justiciable or are unenforceable in a court of law. On the other hand, a comparative examination of the socio-economic right provisions in the South African constitution and judgments of the constitutional court of South Africa reveals that socio-economic rights may be enforceable. This position may ensure the protection of the socio-economic rights of the poor and vulnerable groups. These rights include the rights to food, adequate shelter, health, and education. Moreover, the African Charter on Human and Peoples' Rights (African Charter) which incorporates similar socio-economic right provisions, has been recognized as a domestic law in Nigeria and its provisions are enforceable by the domestic courts by virtue of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004. It is not only a regional treaty signed and adopted by Nigeria but has been passed into law by the National Assembly and can be enforced like any other local law. This paper will propose that in view of the provisions of the African Charter and mechanisms for implementation as well as other international conventions and national constitutional provisions on human rights, domestic courts may be able to assess state responsibilities in the light of socio-economic rights. Cases decided by South African courts and other jurisdictions will be discussed in order to lend weight to the notion that socio-economic rights can be enforced in jurisdictions such as Nigeria even though the constitution provides otherwise.

Keywords : african charter, constitutional court of south africa, nigerian constitution, socio-economic rights, south african constitution

Conference Title : ICIESCR 2019 : International Conference on International Economic, Social and Cultural Rights

Conference Location : Rome, Italy

Conference Dates : March 05-06, 2019