# Comparative Legal Research: A Brief Overview

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**Introduction**

Fombad has argued that, legal research on any legal system, legal traditions or topic is either explicitly or implicitly comparative because none is self-contained or self-reliant. Comparative legal research and comparative law is evolving and attracting a lot of attention in the legal scholarly work. Africa, as a region is not an exception. It is very common in Africa to come across research papers or thesis dissertations at undergraduate, masters and doctorate level, where the authors assert that they are undertaking a comparative study. In most cases, the comparative legal research will involve countries beyond the African borders, or doctrines that have evolved and are more established in other jurisdictions. But do the outcome of the research reflect a comparative legal research or what should authors consider when selecting a comparative research method?

In short, at what point does a researcher conclude that, indeed, a comparative

study is relevant for their research project? It was during my own research presentation, when I posited that, my study was a comparative study between the European Union (EU) and Common Market for Eastern and Southern Africa (COMESA), I realized despite having used the term 'comparative analysis' on various occasions, it was more than what I had contemplated. The questions that followed left me dumbfounded and I could not answer them clearly and with certainty.

The questions asked were: how was my study an actual comparative study?; why a comparative study?; why did I choose the EU and not the US or any other existing regional regime in Africa?; what was the 'construct equivalence'?; what was I going to compare? and why the comparison?; how was I going to compare the two?; and which method of data collection was I going to use in carrying out the comparative analysis? Finally, what was my research question and how was I going to use both cases to provide an answer? Was a comparative research necessary? Would I still answer my research question and objectives without a comparative study?

The essence of these questions border on understanding comparative research methods. It also seeks to enable a researcher answer the why, where, what, when and how questions in selecting a research method and design. Having difficulty answering these questions I decided to delve further into what comparative research method constitutes by attending research methods classes and reviewing available literature on comparative research methods and I hope this article helps anyone who is seeking to employ a comparative legal research.

**Selecting a research method and design**

Before you select any research method and design, the first thing as a researcher, is to formulate a clear research question informed by your research topic, aim, interests and theoretical framework. The assumption is that, you have selected a research topic that not only interests you, but is relevant and contributes to the ongoing conversation.

The next step as vogt provides is to select a research design and method that

will provide an answer to the research question. This implies that, you must have a great understanding of research methods and designs as noted by Cane and Kritzer in his detailed book on empirical legal research. Choosing a research method or design is not easy and it is not exclusive either. A researcher can employ mixed methods if necessary to provide an answer to the research question and provide evidence to their argument in a logical manner.

**What is comparative legal research?**

As this article focuses on comparative legal research, before choosing to employ it, it is critical to understand what it constitutes. Hoecke notes that, 'researchers get easily lost when embarking on a comparative legal research. The main reason being that there is no agreement on the kind of methodology to be followed, nor even on the methodologies that could be followed'. According to Paris the lack of definition of what comparative law is, or what the method of comparative law is has exacerbated the situation.

Despite these concerns, comparative legal research emanates from comparative research methods which is the study of more than two or more macro-level units with the aim of explaining the differences and similarities between the units of analysis. The term 'comparative' implies that, a researcher seeks to compare one subject with another.

At the core of comparative research methods, some authors argue that some extent of similarities referred to as, the 'comparability' or 'construct equivalence' should exist. Esser and Vliegenthart assert, 'a key issue in concluding comparative empirical research is to ensure equivalence, that is, the ability to validly collect data that are indeed comparable between different contexts and to avoid biases in measurement, instruments and sampling`. Yet, in real life scenarios, 'comparability' may not reflect similarities. Explaining equivalence is also undermined by the single reason that, meaning of any concept is contextual.

Örücü has argued that the concept of comparability which stipulates that things to be compared must be comparable is not entirely practical. What a researcher requires to show, is why they believe that the two unit of analysis

should be compared by studying both similarities and diversity and taking into consideration the social context. Understanding the aim and goal of comparative study is therefore critical. This takes us to the next question, why comparative legal research?

**Why comparative legal research?**

After understanding, what is comparative legal research, you have to justify why you selected it. Paris posits that, 'the researcher in a comparative law, while going through the different stages of the comparative analysis, has to set her own parameters of research within the theoretical framework provided in the comparative law literature and has to justify the direction she chooses to give as regards her methodological choices. In short, the researcher has to master the art of justifying her choices about why and how she uses comparative law'.

In answering the why question, it will be prudent to understand the aims and theoretical underpinnings of comparative research methods which seek to provide conclusions beyond single cases. Mills and others argue that, 'the underlying goal of comparative analysis is to search for similarity and variance'. According to Wilson, 'by looking overseas, by looking at the other legal systems, it has been hoped to benefit the national legal system of the observer, offering suggestions for future developments, providing warnings of possible difficulties, giving an opportunity to stand back from one's own national system and look at it more critically, ***but not to remove it from first place on the agenda'***.

In the modern globalized world and multidisciplinary research, comparative legal research is not limited to the analysis of national legal systems as was conceptualized in the 19$^{th}$ and 20$^{th}$ century. Further the traditional aims of comparative legal studies which sought to harmonize laws especially in the Europe are questionable in the modern age. For instance, after colonization, most of the African countries adopted laws that were entirely a transplant of their former colonies as a result of western imperialism missing the contextualization of the African societies. This has led to massive reforms of the laws to reflect the realities in the various African societies. Scholars such as

Shako have called for the need to dismantle the legacies of colonization.

**Justifying the case selection**

As you seek to justify why you selected comparative legal research methods, another hurdle is justifying case selection. Case selection and the sampling in comparative research methods is closely linked to the concept of 'comparability' and 'construct equivalence' as discussed above. As a researcher you must carry out a thorough contextual approach. This will involve considering the historical and socio-economic context of the subjects under study to provide a better understanding and avoid unnecessary biasness.

In essence case selection, narrows down to the 'why' question and understanding the aim of comparative research methods. For instance, you can use comparative analysis where a doctrine originated in a certain jurisdiction and it is well embedded to inform its application in another jurisdiction where the doctrine is still novel. So, before you indicate that you are carrying out a comparative analysis study between Nigeria and the US, on the fight against terrorism, you must justify why you chose US and not Kenya. For guidance see Erbele, Eser, Fombad. Epstein and Martin, Cane and Kritzer.

You have justified why you selected a comparative legal research to answer your research question and also your case selection, the next hurdle is to explain how you are going to use the comparative legal research design. In what way are you going to compare these two cases? Hoecke, posits six methods for comparative research: 'the functional method, the structural method, the analytical method, the law-in-context method, the historical method and the common-core method'. To understand these methods and how you can employ each see Michaels, Karst, Monateri, Leckey, Eberle, and Frohlich.

**Conclusion**

As this blog article is limited to word limit, we cannot discuss everything related to comparative research methods in legal studies. However, before employing a comparative legal research method, understand what it entails, why you are adopting, justify the case selection and sampling. Finally, be very clear how you

are going to carry out the comparative analysis.

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