

# ENHANCING CO-OPERATION AMONG AFRICAN LAW SCHOOLS: COMPARATIVE LAW STUDIES WITHIN THE AFRICAN CONTEXT

Paper 4

by Kivutha Kibwana

Centre for Human Rights

University of Pretoria

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## **ABSTRACT**

In this paper I enquire into the nature of comparative legal studies in Africa, I conclude that African comparative legal enquiry, although of immense value to the development of African law and of African countries and the continent, is currently extremely underdeveloped. Some reasons for this are offered. I then proceed to highlight practical steps regarding the strengthening of African comparative legal discipline.

The paper therefore can also be read as a partial proposal aimed at catalysing further work to develop a full-fledged proposal on how best to introduce a comprehensive scheme of African comparative legal studies and tradition.

The Author

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## **INTRODUCTION**

A major preoccupation of an African legal pedagogy and training is the studying and teaching of and researching in foreign or imported laws. This is largely a function of the legal systems having been founded on imposed law as well as legislators continuing to uncritically use foreign legal values, concepts, models and rules. Usually, the legal scholar and legislator hardly address the issues of autochthonizing borrowed law or deriving peculiarly local laws. And yet the problems which need legal intervention and rectification are essentially - and first and foremost - local problems. Whenever the comparative method is applied in African legal scholarship, the comparisons sought are those of the local situation vis a vis the common law system, the civil law system (including Roman and Roman Dutch law) and the Socialist law system. Also the comparison may be undertaken between the local situation and that obtaining in the former colonizing power. Whatever the comparison, it tends to be outwardly directed, that is the comparison of Africa and the developed Western world.

I wish to argue for a modification of this trend so that there can be a development of and an emphasis on comparative study inter se African countries and their legal systems.

## **VALUE OF COMPARATIVE LEGAL STUDY**

Where we compare an individual African country's legal system or components thereof to that/those of Western countries, it is hoped that the problems besetting the African case can be seen in sharper relief since the two systems are, historically, travelling on the same path: that of the Western legal tradition. Pitfalls that the West fell into can also be avoided. Also Africa does not have to reinvent the wheel.

And yet the comparison may be between two seemingly similar but dissimilar creatures. Even

when the same law obtaining in a Western country is transplanted onto African soil, it may not operate in the same way owing to specific local conditions. If this is so, the comparison of legal systems of countries which are by and large similarly suited in economic, cultural, social, historical etc. terms may yield more comparative and practical value. Africa could solve her legal problems better if the experiences of all her countries are described and analyzed and used in fashioning common legal solutions.

Unfortunately, there is little comparison of African legal systems inter se. Existing comparative African legal studies tend to compare two neighbouring countries, or a region (eg East Africa or Western Africa). As yet African legal scholars have not in principle agreed that African comparative legal studies should be prioritized. After such agreement, the relevant scholars would then have to determine the province of the studies and then engage in them.

### **WHAT IS A LIKELY PROVINCE OF AFRICAN COMPARATIVE LEGAL STUDIES?**

The broad concern of African comparative legal studies would be comparative study of laws, legal institutions, legal concepts, legal values and cultures etc on a continent wide basis. Comparative study could also be undertaken on a regional basis. For example if several countries wish to trade together, the laws which regulate trade in all the relevant countries can be collated for reference and analysis to determine whether they will facilitate the anticipated trade. Comparative study between two or slightly more countries is also a proper concern of African comparative legal study. If in the future greater harmonization of African laws is to occur as we move towards continental unity, then comparative legal study must be emphasized so that it reveals the similarities which must be strengthened and the differences which must be explained and resolved.

In African comparative legal study, one can also examine:

- The legal systems of the Ancient African civilizations, the extent to which such systems formed the basis and/or influenced other legal systems and similarities/differences between such systems and present African legal systems.
- How foreign laws have fared on African soil. Are the experiences of African countries similar? What makes foreign laws do better in some African countries as compared to others? (if at all).
- Do any unique African features exist within the present legal systems?
- How have indigenous or customary laws fared?
- How has law fared in each country as a discipline and as a regulatory system?
- What conditions give rise to the strengthening of the legal system? For example in countries where the rule of law, constitutionalism, human rights etc. are substantially respected, what is the basis for this? What creates problems vis a vis the institutionalization of the above values?
- What families of legal systems operate in Africa?
- What constitutional systems operate in the continent?

- Is there any differences in the legal systems of former socialist oriented and capitalist oriented countries? What is their significance?
- What distinctive differences exist in each branch of the law?
- What differences exist in legal education and training and the legal profession?

Obviously these are random suggestions regarding the avenues of comparative work. A comprehensive list has to be developed after examining what comparative legal work exists in Africa and in light of the usual scope of comparative legal study.

### **CONCRETE STEPS TO BE TAKEN IN THE DEVELOPMENT OF AFRICAN COMPARATIVE LEGAL TRADITION**

Normally African legal scholars and other legal personnel have contacts with counterparts in the former colonizing power or generally the West. Usually, contacts inter se African legal scholars and other personnel are very limited. We have to deliberately cultivate these. To boost African comparative legal studies then, the following could be undertaken.

1. Development of an association of law teachers to be called Association of African Law Teachers (AALT). Such organization could have regional and country chapters.
2. Development of an association of law students to be called Association of African Law Students (AALS). Similarly this organization could have regional and country chapters.
3. Through research and writing African legal scholars could develop a theory regarding African comparative legal studies in Africa.
4. The subject of African Comparative Law should be developed and made part of the law curriculum.
5. Law scholars should emphasize African comparative legal enquiry especially in the students' research work.
6. Exchange of publications and other materials. The originating country should ensure a translation into either English or French. Case law and statutes would fall under this category.
7. Exchange of teachers and researchers. We must learn to take sabbatical leave within Africa even if it is not financially rewarding.
8. Exchange of syllabi.
9. Student exchanges.
10. Competitions among students eg moots and other competitions.
11. There should be an attempt to develop similar law curricula at least in a broad sense. We should unify the broad goals of legal education. Whenever a country is developing or changing law curriculum, it should invite as many other African law schools as possible.

12. Compilation of list of law teachers specifying their teaching and research interests.
13. Compilation of legal research on a country and subject basis.
14. Compilation of the law schools specifying any special interests or distinctive feature(s) of any school.
15. Determination of the existence of any organization which has an interest in African comparative legal studies (eg The African Society of International and Comparative Law).
16. Organization of cross-country and regional and even continental conferences, seminars, symposia etc. to enhance co-operation especially among African law schools.
17. Develop substantially the same level of standards in teaching so that similar law degrees are taken to be of equivalent status.
18. Standardize the manner of qualifying for practice of the law.
19. Interest students studying law abroad in the AALT (for postgraduate students) and AALS (for undergraduate students). Regional chapters could exist abroad. Indeed law teachers and researchers abroad would belong to the relevant AALT chapter.
20. Develop a system of external examination which emphasizes drawing on African legal expertise.
21. Develop similar standards for recruiting teachers. A system of identifying persons - Africans and others - who have failed as teachers in any one country should be devised. Such information should be circulated to all African law schools.
22. Liaise with other continental or regional bodies engaged in similar work in other disciplines.
23. Each country AALT and AALS chapter would liaise with relevant national bodies which assist the chapter in its work.
24. Devise a mentor system in which distinguished African legal scholars take under their wings young talented scholars who are not necessarily in their institutions.
25. Develop a strategy for determining and popularizing research priorities.
26. Discover and popularize the journals which are published in Africa and elsewhere on African legal issues.
27. Develop a Journal or Journals' capacity as well as publish a newsletter.

The above proposed agenda is by no means exhaustive. Some of the suggestions may not be attainable especially in the short run. Moreover, extensive funding is needed for actualizing the above proposals. It is mandatory that most of such funding comes from African countries

and organizations. Foreign donors are rapidly developing donor fatigue. Africans have to learn to start raising funds for their important causes and projects internally.

## **CONCLUSION**

Currently the discipline of African comparative legal studies is very weak. African law schools tend to emphasize comparative studies of their countries and the West or East. Such trend must be reversed so that comparative legal studies inter se African countries are emphasized without excluding comparison with foreign countries. It is critical that African countries get to know what each of them is doing. Only in the context of such knowledge can the political and economic integration that will save Africa from collapse and ruin take place.

To ensure the institutionalization of African comparative legal studies, organizations for both law teachers and other legal personnel and law students will have to be created. Ultimately, we should develop an Institute of African Comparative Legal Studies which will be a postgraduate and advanced research body.

Apart from establishing and popularizing African comparative legal studies, the proposed AALT and AALS can give support to law teachers and students who for some reason are targets of political persecution. Both the AALT and AALS could also advise African governments on constitutional, legal, law reform and related issues.

### **NOTE:**

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At the time of writing the author was a senior lecturer in the Department of Private Law, University of Nairobi, Kenya. The author is presently the Dean of the Law Faculty, University of Nairobi.

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