A BIBLIOGRAPHY OF THE CUSTOMARY LAWS OF KENYA
(WITH SPECIAL REFERENCE TO THE LAWS OF WrONGS)

Richard L. Abel*

This bibliography was developed in the course of research in the customary laws of wrongs in Kenya,** and is therefore most thorough with respect to that subject. However, the nature of customary law is such that wrongs do not form a sharply differentiated substantive area. Moreover, other bodies of law—e.g., those pertaining to the family, to property rights, to procedural matters—clearly bear on the treatment of wrongs. Consequently, most sources cover a broad subject matter, and in seeking to include all those having any bearing on the laws of wrongs, I believe I have been reasonably comprehensive. Two areas were deliberately excluded. Non-customary laws—received English law, adopted Indian Acts, Moslem or Hindu law—where it has no bearing on customary practices, is not referred to. Within customary law itself, the rules of land law have only been dealt with incidentally, for the area is sufficiently specialized to constitute a separable subject matter, with an extensive bibliography of its own. (See especially Sorrenson, M.P.K. Land Reform in the Kikuyu Country: a study in Government Policy, pp. 253-56. New York: Oxford Univ. P. for E. Afr. Inst. Soc. Res., 1967.)


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Two other invaluable resources for study should be mentioned here. The Kenya National Archives contain an extensive collection of the records of colonial administration: District and Provincial Political Record Books, Annual Reports, and Handing-over Reports. (See Government of Kenya, Archives Microfilming Programme, Section I: Provincial and District Annual Reports, 75 pp. and map. Cyclostyled.) These frequently include statements of substantive rules and procedures, as well as discussions of problems in administering customary law (e.g., whether or not to impose a statute of limitations). Much of this material has been microfilmed and stored in the Syracuse University Library, from which it may be borrowed. (See Fedha, Nathan and John B. Webster A Catalogue of the Kenya National Archives Collection on Microfilm at Syracuse University; Syracuse: Program of Eastern African Studies, 1967; Gregory, Robert G., Leon Spencer and Robert Maxon, A Guide to the Kenya National Archives. Syracuse: Program of Eastern African Studies, forthcoming 1969.)

Second, the proceedings of the African Courts and of Appeals Magistrates (now District Magistrate's Courts) have been recorded for about a decade, generally in English but sometimes in Swahili. These reports include the testimony of parties and witnesses, a reasoned judgment, and the steps taken to execute it. They are filed in the highest court to have been seized of the case. In addition, Mr. T.A. Watts, while African Courts Officer (1963-67), collected about 5,000 copies of the judgments of Appeals Magistrates, which can now be consulted in the Law Courts, Nairobi.

Finally, several other bibliographies may assist the investigator:


I have organized the bibliography as follows:

I. General Background

II. Judicial and Legal System--General
   A. Legislation
   B. Cases
   C. Official Reports
   D. Published Sources
   E. Unpublished Sources

III. Substantive Law--General
   A. Contracts and Commercial Law
   B. Criminal Law
   C. Family Law
   D. Inheritance and Succession
   E. Land Law

IV. Substantive Law--by tribe
   A. Bantu
      1. Embu
      2. Gusii
      3. Kamba
      4. Kikuyu
      5. Kuria
      6. Luyia
      7. Meru
      8. Mijikenda
      9. Pokomo
     10. Samia
     11. Taïta
     12. Taveta
   B. Nilotic - Luo
      13. Tugen
      14. Turkana
The only significant omission of a tribe is the Somali, the reason being that practically no one has studied the Somali of Kenya, whereas those of the Somali Republic (q.v.) have been extensively described. In organizing the data by tribal categories, I have included some brief information to help identify the tribe:

Name (with alternate spellings, and constituent groups) (Population according to the most recent census). Principal home districts.

Following usual practice, I have dropped prefixes from the tribal names, e.g., Bantu: wa-, a-, aba-; Nilotic: jo-; Nilo-Hamitic: el-.

In the references which follow I have used a number of abbreviations.

ALS/SOAS: African Law Section, School of Oriental and African Studies, Univ. of London
Amer. Anthropol.: American Anthropologist
Beh. Sci.: Behavioral Science
E. Afr. Ann.: East African Annual
EAISR: East African Institute of Social Research (now Makerere Institute of Social Research)
E. Afr. Q.: East African Quarterly
Geog. J.: Geographical Journal
H.M.S.O.: Her Majesty's Stationery Office
Hum. Org.: Human Organization
Because the unpublished materials can only be consulted by persons able to travel to London or Kenya, I have listed them separately. All unpublished materials (except theses, which are filed at the degree-granting institution) are in the form of microfilm, and are at the ALS/SOAS, unless otherwise noted.

I. General Background


II. Judicial and Legal System—General

A. Legislation

*East Africa Protectorate, Orders in Council, King's (Queen's) Regulations, Ordinances, Rules, Proclamations and other official orders in force in the East Africa Protectorate on the 1st of January 1903. (1876-1902).*


*Subsidiary Legislation, vols. XXXVI-XXXIX (1957-1960).*


*Ordinances (1963).*

*Bills (1963—).*

*Legal Notices (1963—).*

*Laws of Kenya. (Ordinances in force on Jan. 1, 1924).*

3 vols. (1926),


*Orders in Council, Letters Patent and Royal Instructions relating to Kenya in force on September 1, 1927* (1928).

*Laws of Kenya (in force on Sept. 21, 1948)* (rev. ed.).

8 vols. (1949?).


B. Cases

*Law Reports of the Court of Appeals for Eastern Africa (EACA), vols. I-XXIII (1934-1956).*

*East Africa Protectorate Law Reports (EAPLR) (later Kenya Law Reports, KLR), vols. I-XXIX (1897-1956) (Kenya Supreme Court, later High Court).*
C. Reports


___ Native Affairs Department. Annual Reports.

___ African Affairs Department. Annual Reports.


D. Published Sources


E. Unpublished Sources


African Courts Officer. Circulars (miscellaneous). (Law Courts, Nairobi)


III. Substantive Law--General

A. Contracts and Commercial Law

Published Sources


Unpublished Sources


Rogers, Margaret. An Outline of the Commercial Law of East Africa.

B. Criminal Law

Published Sources


**Unpublished Sources**


**C. Family Law**


D. Inheritance and Succession


E. Land Law

Published Sources


Unpublished Sources

IV. Substantive Law--by Tribe

A. Bantu


Published Sources


Unpublished Sources


Embu District--Memorandum of Law. (n.d.)


Mr. Fazan's Memorandum on Native Customs: corresponding customs in Embu District. (Sept. 3-6, 1929).


Published Sources


Unpublished Sources
South Nyanza District Law Panel. Minutes of Meetings. (First meeting, Sept. 27, 1950; Mar. 24, 1961).


Published Sources


Middleton, John and Greet Kershaw. See Embu, supra.


Watt, Mrs. Stuart. In the Heart of Savagedom. London: Pickering & Inglis (n.d.)

Unpublished Sources


Published Sources
Augustiny, J. See Kamba, supra.


Dundas, Charles. (1921). See Kamba, supra.
Middleton, John and Greet Kershaw. See Embu, supra.
Morgan, W.T.W. See Kamba, supra.

Unpublished Sources

Fort Hall African District Council (Circumcision) By-Law, 1951.

Fort Hall District Law Panel. Consolidated Version of Minutes. (n.d.)

Fort Hall Law and Custom. (c. 1951).


Kiambu Local Native Council Resolutions. (1926; 1927; 1935).


Kikuyu Native Law and Custom. (c. 1910).


Middleton, J.F.M. See Kamba, supra.

Nyeri District Law Panel. Conclusions Arrived at after First and Second Meetings after Consulting the Loca- tional Athamaki Councils. (n.d.)


Penwill, D.J. See Kamba, supra.

Precis of a Meeting Held at Kyambu Station, Apr. 25-26, 1912. 6 pp.


Some Points in Native Custom and Native Tribunal Procedure Discussed at a Four-Days Debate at Karatina (Nyeri District), Sept. 3-6, 1929.


Published Sources

Knowles, O.S. See Gusii, supra.


Unpublished Sources


Kuria Land Law, 6 pp.


. Some Problems of Change amongst the Kuria. Paper read at EAISR conference, June 1957. 9 pp. (SOAS/ Makerere).
6. Luyia (Luhya, Bantu of North Kavirondo, Bantu Kavirondo; consisting of:
Bukusu (Vugusu), Holo, Idakho, Isukha, Kabras, Khayo, Kisa, Marach, Maragoli (Logoli), Marama, Nyala, Nyore, Tachoni, Tiriki, Tsotso, and Wanga). (1962 Census: 1,086,409). Kakamega, Busia, and Bungoma Districts, Western Province.

Published Sources


Burns, F. Francis M. "Trial by Ordeal Among the Bantu-Kavirondo," Anthropos, V (1910), 808.


Hamilton, R.W. See Kikuyu, supra.


Norden, Hermann. See Kamba, supra.


___. "Bantu Kavirondo of Mumias District (near Lake Victoria)," *Anthropos*, XIV-XV (1919-20), 968-80.


Unpublished Sources


Criminal Cases Tried by Indigenous Elders.
(Bukhayo Location Advisory Council, Sept. 24, 1953; Buholo, Sept. 8, 1953; Marach, n.d.; Bunyala, Sept. 29, 1953; Tiriki, Sept. 21, 1953; S. Bukusu, n.d.; Bunyore, n.d.)


Carr, Mrs. M.T. See Kamba, supra.


Fazan, S.H. See Kikuyu, supra.


Presidents and Assessors of the Native Tribunals in North Nyanza District. Minutes of a Meeting. (Jan. 3, 1951).


Published Sources


Dundas, Charles. (1913). See Kamba, supra.
_____ (1921). See Kamba, supra.
_____ (1915). See Kamba, supra.


Lambert, H.E. See Embu, supra.


Middleton, John and Greet Kershaw. See Embu, supra.


Unpublished Sources


Meru Native Law and Customs. (c. 1910). 3 pp.


8. Mijikenda (Swahili—the nine towns; also known as Nyika. This is a loose cultural grouping consisting of: Chonyi, Digo, Duruma, Jibana, Kauma, Kambe, Giriama, Rabai, and Ribe. 1962 Census: 414,887). Kilifi, Lamu Districts (Giriama); Kwale District (Digo, Duruma); Mombasa District (Rabai), Coast Province.
Mijikenda generally

Published Sources


Unpublished Sources


Digo

Published Sources

Dundas, Charles (1921). See Kamba, supra.


Unpublished Sources

Digo Criminal Offences. (n.d.)


Duruma

Giriama

Published Sources


Dundas, Charles (1921). See Kamba, supra.


Unpublished Sources

Assistant District Commissioner. Notes on the Wa-Giriama. (n.d.)

Rabai


Krapf, J. Lewis. See Kamba, supra.

Ribe


Johnstone, H.B. See Rabai, supra.

9. Pokomo (Riverine peoples, including the Korokoro). (1962 Census: 30,350). Tana River District, Coast Province; Carissa District, Northeastern Province.

Published Sources


Unpublished Sources
Rowlands, J.S.S. See Mijikenda generally, supra.


Published Sources

Unpublished Sources

Municipal Native Courts Officer. See Luyia, supra.


Published Sources


_____ (1909). See Kikuyu, supra.

Prins, A.H.J. See Mijikenda generally, supra.

Unpublished Sources
Gichuru, Isaiah. *Taita Marriage and Divorce in Mombasa*.
Harris, Alfred. *The Social Organization of the Wataita*.
    __ and Grace C. Harris. *Interim Report to the Colonial Social Science Research Council (Taita Project)*.
    __. *Some Aspects of Modern Conditions in Taita District, Coast Province*.
    __. *Wataita Today: some aspects of modern conditions among a hill people in Kenya Colony*.
Harris, Grace C. *The Position of Lower Chiefs in Taita*.
    __. *The Ritual System of the Wataita*.
Rowlands, J.S.S. See Mijikenda generally, supra.
*Teita District Law Panel. Minutes of Meetings*.
    (Jan. 21, 1953; Apr. 5-7, 1960).


Published Sources

Unpublished Sources
Provincial African Courts Officer, Coast Province. *Taveta Customary Law*.

Published Sources


Bohannan, Paul. "Patterns of Murder and Suicide" (1960). See Luyia, supra.


Hartmann, H. "Some Customs of the Luwo (or Nilotic Kavirondo) Living in South Kavirondo," Anthropos, XXIII (1928), 263-75.

Imperato, P.J. "Witchcraft and Traditional Medicine amongst the Luo of Tanzania," Tanzania Notes, LXVI (1966), 193-201.

Knowles, O.S. See Gusii, supra.


Norden, Hermann. See Kamba, supra.


Unpublished Sources

Advisory Committee on Luo Custom. Minutes of a Meeting. (Sept. 3, 1945).


Fazan, S.H. See Kikuyu, supra.


Luo Customs: civil law. (c. 1921). 6 pp.

Malo, Shadrack. Insult as an Offence in African Customary Law.


Municipal Native Courts Officer. See Luyia, supra.


Wilson, Gordon M. Controlled Social Change in Luo Land Tenure (1953).


C. Niló-Hamitic
I. General

Published Sources


Unpublished Sources

**Published Sources**


Evans-Pritchard, E.E. See Nilo-Hamitic group: general, *supra*.


**Unpublished Sources**


3. **El Molo.** (No census figure available; population less than one hundred.) Marsabit District, Eastern Province.


**Published Sources**

Bohannan, Paul. "Homicide and Suicide in North Kavirondo." See *Luyia, supra*.


Unpublished Sources


Published Sources

——. "Some Traits of the Kipsigis in Relation to their Contact with Europeans," Africa, IV (1931), 466-74.

**Unpublished Sources**

Carr, Mrs. M.T. See Kamba, supra.

Chebunye, Henry Tabiegan Arap. See Nilo-Hamitic: General, supra.


**Published Sources**

Bohannan, Paul. "Homicide and Suicide in North Kavirondo," See Luyia, supra.

Dundas, Kenneth R. See Luyia, supra.


**6. Kony (Elgony, Elgoni).** (A portion of the Sabao which, according to the 1962 Census, numbered 28,012.)

Bungoma District, Western Province.


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Huntingford, G.W.B. (1953). See Kipsigis, supra.


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Lawren, William L. See Kikuyu, supra.


Unpublished Sources


Published Sources


_____ (1953). See Kipsigis, supra.

Mallett, Marguerite. See Masai, supra.


Unpublished Sources


9. Pok (Bo'ok). (A portion of the Sabaot which, according to the 1962 Census, numbered 28,012). Bungoma District, Western Province.

Unpublished Sources

Fontaine, J.S. La Notes on Book Circumcision. 4 pp. Cyclostyled. (SOAS).


Conant, Francis P. "Korok: a variable unit of physical and social space among the Pokot of East Africa," Amer. Anthrop. LXVII (1965), 429-34.


Evans-Pritchard, E.E. See Nilo-Hamitic group: general, supra.


Huntingford, G.W.B. See Elgeyo, supra.

Macdonald, J.R.L. See Masai, supra.


—. "Pokot Folktales, Humor and Values," Folklore and Folkmusic Archives (Bloomington), IX (1967), 265-318.

—. "The Subsistence Role of Cattle among the Pakot and in East Africa," Amer. Anthropol., LIX (1957), 278-300.

Unpublished Sources


West Suk District Law Panel. Minutes of a Meeting. (May 4, 1961).


Published Sources


Unpublished Sources


Published Sources

Carson, J.B. "Among the Samburu," East African Annual (1946/47), 41-44.

Spencer, Paul. See Rendille, supra.

Webster, E.J. See Rendille, supra.

Unpublished Sources


See Rendille, supra.

**Published Sources**

Hennings, R.O. See Pokot, *supra*.

Huntingford, G.W.B. See Elgeyo, *supra*.

Weatherby, J.M. "Inter-tribal Warfare on Mount Elgon in the 19th and 20th Centuries (with particular reference to the part played by the Sebei-speaking group)," *Uganda J.*, XXVI (1962), 200-12.


**Unpublished Sources**


**Published Sources**


Beech, Mervyn W.H. See Pokot, *supra*.


Dundas, Kenneth R. See Pokot, *supra*.


Gulliver, Pamela, and P.H. Gulliver. See Iteso, *supra*.


---. A Preliminary Survey of the Turkana. (Communications from the School of African Studies, N.S., 26) Cape Town: Univ. of Cape Town P., 1951.


Hobley, C.W. See Pokot, *supra*.

Sandford, G.R. See Masai, supra.
Spencer, Paul. See Rendille, supra.

Unpublished Sources
Dyson-Hudson, Neville. See Nandi, supra.

D. Hamitic

Published Sources
Webster, E.J. See Rendille, supra.
Unpublished Sources


E. Aboriginal


Hobley, C.W. "Notes Concerning the Eldorobo of Mau, British East Africa," Man, III (1903), 33-34.


. See Elgeyo, supra.


Spencer, Paul. See Rendille, supra.


Huntingford, G.W.B. (1931) See Dorobo, supra.

F. Swahili

Swahili (1962 Census: 8,657). Kilifi, Kwale, Mombasa, and Lamu Districts, Coast Province.

Published Sources

Unpublished Sources