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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. Taita
      12. Taveta
   B. Nilotic - Luo
      13. Tugen
      14. Turkana

   C. Nilo-Hamitic
      1. General
      2. Elgeyo
      3. El Molo
      4. Iteso
      5. Kipsigis
      6. Kony
      7. Masai
      8. Nandi
      9. Pok
      10. Pokot
      11. Rendille
      12. Samburu
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. Anthrop.: 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).


_____ Ordinances (1963).

_____ Bills (1963- ).

_____ Legal Notices (1963- ).


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


B. Cases


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


_____ "When is a Wife not a Wife," J. Denning L. Soc., I (1966), 47-75.

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).


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


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


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Kihori, J. *Notes on Redemption of Land Amongst Akikuyu.* (c. 1952).


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

——. Memorandum on Infanticide. (1957).


——. Recommendations. (2/52; 4/55).

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.


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Knowles, O.S. See Gusii, supra.


Unpublished Sources


——. Ba-Kuria Laws, Manners and Customs. (1939).


Kuria Land Law, 6 pp.


——. Some Problems of Change amongst the Kuria. Paper read at EAISR conference, June 1957. 9 pp. (SOAS/Makerere).

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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.


(Swahili: *The Abaluyia of Nyanza Province, Kenya, in the Custom and Tradition in East Africa series.*)


___. "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).


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Dundas, Charles. (1913). See Kamba, supra.

____. (1921). See Kamba, supra.

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Lambert, H.E. See Embu, supra.


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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

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Krapf, J. Lewis. See Kamba, supra.

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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.

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


4. **Iteso (Itesio).** (1962 Census: 72,357). Bungoma District, Western Province.

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


6. **Kony (Elgon, Elgoni).** (A portion of the *Sabao* which, according to the 1962 Census, numbered 28,012.) Bungoma District, Western Province.


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


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D. Hamitic


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Unpublished Sources


E. Aboriginal


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- "Further Notes on the Eldorobo or Oggiek," Man, V (1905), 39-44.
- "Notes on the Dorobo People and other Tribes, gathered from Chief Karuri and others," Man, VI (1906), 119-20.


- 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.

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Unpublished Sources