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.)


**This research was supported by a Marshall Scholarship in London and by a Foreign Area Fellowship in Kenya. I am extremely grateful to Professor A.N. Allott and Mr. Eugene Cotran, both of the School of Oriental and African Studies, University of London, for their help, and for allowing me access to the files of the Restatement of African Law project. I am also grateful to Mr. T.A. Watts, Assistant to the Registrar of the High Court of Kenya, for his generous assistance in Nairobi.
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
D. Hamitic - Galla
E. Aboriginal
   1. Dorobo
   2. Sanye
F. Swahili

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
J. Roy. Anthrop. Inst.: see J. Anthrop. Inst., supra
K.I.A.: Kenya Institute of Administration
R-L I.: Rhodes-Livingstone Institute
R-L J.: Rhodes-Livingstone Journal (also known as Human Problems in Central Africa)
SOAS: School of Oriental and African Studies, Univ. of London
Tang. Notes & Records: Tanganyika Notes and Records (later Tanzania Notes)
Ug. J.: Uganda Journal

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


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

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).
"Kortini Wiki Hii," Baraza (Nairobi). (This Swahili newspaper, published weekly by the East African Standard Co., generally has a column reporting cases decided by the two primary courts in Nairobi used by Africans: the District Magistrates of Makadara and Kibera.)

C. Reports
Colony and Protectorate of Kenya. Judicial Department.
___ 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).


**Published Sources**


LeVine, Robert A. "Gusii Sex Offenses: a study in social
_____. "The Internalization of Political Values in State-
_____. "The Role of the Family in Authority Systems: a
cross-cultural application of stimulus-generalization
_____. "Wealth and Power in GusiiLand," in Bohannan, Paul
and George Dalton, eds. Markets in Africa. Evanston,
_____. "Witchcraft and Co-Wife Proximity in Southwestern
_____. "Witchcraft and Sorcery in a Gusii Community," in
Middleton, John and E.H. Winter, eds. Witchcraft and
Sorcery in East Africa, pp. 221-56. London: Routledge
and Barbara B. LeVine. Nyansongo: a Gusii Com-
Mayer, Iona. "From Kinship to Common Descent: four
generation genealogies among the Gusii," Africa, XXXV
(1965), 366-84.
_____. The Nature of Kinship Relations: the significance
of the use of kinship terms among the Gusii. (Rhodes-
Livingstone Papers No. 37). Manchester: Manchester
Mayer, Philip. "Ekeigoroigoro: a Gusii rite of passage,
Man, LIII (1953), 3-6.
Inst., LXXXIII (1953), 9-36.
_____. Gusii Bridewealth Law and Custom. (Rhodes-Living-
stone Papers No. 18). London: Oxford Univ. P. for
R-L I., 1950.
_____. "The Joking of 'Pals' in Gusii Age-Sets," Afr.
Stud., X (1951), 27-41.
_____. The Lineage Principle in Gusii Society. (I.A.I.
Memorandum No. XXIV). London: Oxford Univ. P. for
I.A.I., 1949.
_____. "Privileged Obstruction of Marriage Rites among
_____. Two Studies in Applied Anthropology: 1) Agricul-
tural Cooperation by Neighbourhood Groups among the
Gusii; 2) Bridewealth Limitations among the Gusii.

Unpublished Sources
South Nyanza District Law Panel. Minutes of Meetings. (First meeting, Sept. 27, 1950; Mar. 24, 1961).
Kisii Land Law. 5 pp.


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.
___. (1915). See Kamba, *supra.*
___. (1906). See Kamba, *supra.*
___. (1911). 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 Law and Custom. (c. 1951).


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


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


McClure, H.R. (Dist. Comm'r, Nyeri). Kikuyu Native Law
Middleton, J.F.M. See Kamba, supra.

Nyeri District Law Panel. Conclusions Arrived at after First and Second Meetings after Consulting the Locational 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.


Published Sources

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).

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


   (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
Patel, L.R. "Notes on the Law of Succession in Three
Kenya Coastal Tribes: Wadigo, Waduruma and Wagiriama,"
Prins, A.H.J. The Coastal Tribes of the North-Eastern
Bantu. (Ethnographic Survey of Africa: East Central
Africa, Part III) London: Oxford Univ. P. for I.A.I.,
1952.
Werner, A. "Nyika," in Hastings, James, ed. Encyc. of Rel.
Clark, 1917.

Unpublished Sources
Rowlands, J.S.S. (Provincial African Courts Officer,
Coast). Customary Law Offences under Section 18(a)
[of the African Courts Ordinance]. (Letter to African
Courts Officer, Nairobi, Dec. 5, 1960).

Digo
Published Sources
Dundas, Charles (1921). See Kamba, supra.
Records, XXIII (1947), 80-96.

Unpublished Sources
Digo Criminal Offences. (n.d.)
District Commissioner, Kwale. Memorandum on the Subject
Gerlach, Luther Paul. The Social Organization of the Digo
Wijeyewardene, G.E.T. Administration and Politics in Two
Swahili Communities. Paper read at EAISF conference,
Some Aspects of Village Solidarity in Ki-
Swahili Speaking Coastal Communities of Kenya and

Duruma
Griffiths, J.B. "Glimpses of a Nyika Tribe (Waduruma),"
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


Published Sources
---

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


Unpublished Sources


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

B. Nilotic


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.


_____. *Twenty-five Years in East Africa*. Cambridge: Cambridge Univ. P., 1921.


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. Nilo-Hamitic

I. General

**Published Sources**

Bernardi, B. *"The Age-System of the Nilo-Hamitic Peoples,"* *Africa,* XXII (1952), 316-32.


**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
Orchardson. "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.*

6. Kony (Elgony, Elgoni). (A portion of the Sabaot which, according to the 1962 Census, numbered 28,012.) Bungoma District, Western Province.
Dundas, Kenneth R. See Luyia, *supra.*


Published Sources


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


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).


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

Dundas, Kenneth R. "Notes on the Tribes Inhabiting the
Anthrop. Inst., XL (1910), 49-72.

Edgerton, Robert B. "Pokot Intersexuality: an East
African example of the resolution of sexual incon-

and Francis P. Conant. "Kilapat: the 'Shaming
Party' among the Pokot of East Africa," Southwestern
J. Anthrop., XX (1964), 404-18.

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

Hennings, R.O. African Morning. London: Chatto & Windus
n.d. (c. 1951).

Hobley, C.W. "Notes on the Geography and People of the
Baringo District of the East Africa Protectorate,"

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

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

Peristiany, J.G. "The Age Set System of the Pastoral

"Pokot Sanctions and Structure," Africa, XXIV
(1954), 17-25.

Porter, P.W. "Environmental Potentials and Economic
Opportunities—a background for cultural adaptation,"

Schneider, Harold K. "The Moral System of the Pakot,"
in Ferm, Vergilius, ed. Encyclopaedia of Morals.

"Pakot Resistance to Change," in Bascom, William
R. and Melville J. Herskovits, eds. Continuity and
Change in African Cultures, pp. 144-67. Chicago:
Univ. of Chicago P., 1959.

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

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

Totty, L.H., G.H. Chaundy and G.W.B. Huntingford. The
People and District of West Suk. (Peoples of Kenya
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.


8. 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