The programme of the *diplôme d'études spéciales* in customary law will include

(*a*) two compulsory subjects:
special questions of customary law;
introduction to Islamic law;
(*b*) two optional subjects.

3.—Research and other activities

Several members of the Faculty are preparing studies on the Congolese customary law:

J. Pauwels, conflict of tribal laws and formation of a uniform urban custom in Leopoldville, 1926-1940 (to be published in 1966);

J. Herbots, appeal and reversal of customary law judgments in the Congo;

C. Mafema, study of property in Congolese marriage.

During the summer holidays, 1965, fifteen students of the Law Faculty carried out research in the customary law courts of the Congo. They studied Lunda law (under the direction of C. Mafema) the annulment of customary decisions (under the direction of J. Herbots) and the urban custom of Leopoldville (under the direction of J. Pauwels). It is hoped that several publications will result from these investigations.

In 1966, several members and students of the Law Faculty will present a cycle of courses and lectures directed towards the judges and the personnel of the customary law courts of Leopoldville. The programme of this cycle will be as follows: introduction to law—analysis of the *décret* on customary law courts—survey of customary law—the customary law applied in Leopoldville—the judicial function—deontology—the drafting of judicial decisions.

CONTRIBUTED BY J. M. PAUWELS

UGANDA: REPORT OF THE COMMISSION ON MARRIAGE, DIVORCE AND THE STATUS OF WOMEN

It has long been recognized that the law governing marriage, divorce and succession in Uganda is in serious need of reform. During the colonial period, though this was fully acknowledged, the problem of reconciling conflicting views and interests—of the churches, the traditionalists and the feminists—proved too formidable a task, and, after the ambitious scheme of survey and reform initiated by Sir Philip Mitchell in the late nineteen-thirties had been abandoned on the outbreak of war, no further serious attempt was made by the Government to tackle the problem. Widespread interest was, therefore, aroused when in 1964 a Commission was appointed:

> "to consider the laws and customs regulating marriage, divorce and the status of women in Uganda, bearing in mind the need to ensure that those laws and customs while preserving existing traditions and practices, as far as possible, should be consonant with justice and morality and appropriate to the position of Uganda as an independent nation and to make recommendations."

The main recommendations of the Commission, which follow closely the provisions of the Ghana Marriage, Divorce and Inheritance Bill[1], are as follows:

1. No person should in future be allowed to register more than one marriage, except in so far as a subsequent marriage may be registered if the earlier marriage has been dissolved. Those who at present have more than one wife would however be permitted to register all their existing marriages. In all other cases the registration of more than one marriage would be a criminal offence.

2. Provision should be made that where a man and woman "have been living together or otherwise" for a period of not less than one year as man and wife, it should not be lawful for either of them to deny the subsistence of a marriage between them when that status is called in question by the other party and that "therefore, either party should be liable to the disabilities if any, and enjoy the privileges incidental or conducive thereto." The comment on this recommendation states that it is "to put on a statutory basis what at common law is known as an irregular marriage, even though equally valid as a marriage contracted under statute law".

3. The mother of a child should have the right to sue the putative father for adequate maintenance of herself and her child.

4. The father of a child born out of wedlock should be given the opportunity at any time to legitimise the child by an affidavit supported by a further affidavit sworn by the mother.

5. Procedure in the case of divorce should be as follows. A petition would be submitted to a judge of the High Court who would then appoint a divorce committee composed of persons "whose wisdom and experience are respected in the locality" with himself as chairman. The committee would have the power to call and examine witnesses and their aim would be the reconciliation of the parties. If reconciliation were to fail then the Committee might grant a divorce. Except in special circumstances, however, a divorce would not be granted within the first three years of marriage. No specific grounds for divorce should be laid down.

6. Where a man dies intestate, his widow, if the marriage has been registered, should take a life interest in one third of his self-acquired property, which would terminate if she were to re-marry. The remaining two thirds of the self-acquired property pass to the children, whether or not born of the registered marriage, as tenants in common. If there is a surviving parent of the deceased then he also gets a share with the children but with a life interest in it only.

[1] This Bill was first introduced 1962, subsequently modified and finally withdrawn.

7. Any person who is of age should be able to make a will, the provisions of which would not be restricted by the provisions of customary law. Such wills would have to be in writing and witnessed and the law regarding them would in general follow the provisions of the English Wills Act. If such a will did not make reasonable provision for the maintenance of the testator's children, then the High Court could on application direct that such provision should be made out of the estate.
8. Any woman who is of age, whether married or not, should have capacity to execute a contract and to hold and deal with property in her own right in any manner she thinks fit.

Many of the Commission's recommendations are to be welcomed in that they go a considerable way towards remedying the outstanding weakness of the present position—the inadequacy of the protection which the law affords to a wife or widow, particularly the latter. Any change in the law ensuring, for example, that a widow is entitled to some share of her husband's estate on his death intestate or that a man can leave property to his wife by will if he so desires without the danger of such a will being upset as contrary to customary law is a step forward.

So too the proposed legislation regarding registration of marriages deserves support in that it should encourage the spread of monogamy without at the same time making it a criminal offence, as it is at present, for a customary union with another woman to follow a registered marriage. Even if it did no more than bring the marriage law into touch with reality, in a way that the present law, with its penal provisions regarding additional customary marriages which are never enforced, is not, this would in itself be a welcome reform.

The Report does, however, suffer from a number of weaknesses of which the following are some. In the first place there seems from paragraphs 85-87 of the Report to be a certain misconception as to the operation of the existing marriage law. It seems somewhat strange that a charge of discrimination should be brought against the present law on the grounds that there is both a Marriage Ordinance and a Marriage of Africans Ordinance. The special provision in the Marriage of Africans Ordinance that the cumbersome requirements regarding preliminary notice of marriage etc. was to be dispensed with was, of course, the result of the long battle fought by Bishop Tucker on behalf of the African population to ensure that these provisions in the original Marriage Ordinance of 1902 should not be imposed upon those to whom they might be both irksome and impracticable. Anyone who wishes to make use of the Marriage Ordinance with its more elaborate procedure is, however, free to do so. So too there seems a strange misunderstanding of the implications of section 30 of the Marriage Ordinance, which provides for the conversion of a customary marriage into a marriage under the Ordinance. This section does not, as the Report states, imply that a customary marriage is not a legal marriage—customary marriages have always been treated by the courts as such. What the section does is to provide for the conversion of a legal marriage of one type

into a legal marriage of another type—a registered marriage by which the parties are "legally bound to each other as man and wife so long as they both shall live".

The most controversial recommendation of the Commission is probably that dealing with "irregular marriages". This recommendation seems to envisage that there shall in future be broadly three types of recognized marriage: a registered marriage, which may or may not be coupled with a customary marriage contract and/or a religious ceremony, a non-registered customary marriage, and an "irregular marriage" where there has been neither registration nor a customary marriage contract. The Commission recommends that the parties to an "irregular marriage" shall be "liable to the disabilities if any, and enjoy the privileges incidental or conducive thereto". But what would these privileges and liabilities be? Under customary law, there would presumably be no privileges nor any liabilities other than those attaching to any other extra-marital relationship. How would section 150 A of the Penal Code, concerning adultery, affect the parties to such a marriage? It may be doubted whether the introduction of the recognition of this form of marriage into an already complex situation will, in fact, be of any advantage.

As has been mentioned above, the recommendation that a widow should be entitled to a share of her late husband's estate on intestacy is certainly to be welcomed. It is, however, somewhat surprising that having so recommended in the case of intestacy, the Commission did not see fit to extend the principle to testate succession. In commenting on their recommendation that application should be permissible to the High Court to ensure that reasonable provision was made for the maintenance of the children of a testator whose will did not make such provision, the Commission indicates that they considered the provisions of the English Inheritance (Family Provisions) Act 1938, but came to the conclusion that "taking the structure of our society into account . . . at least for the time being our recommendations should be restricted to the impeachment of a will" in respect of a child's maintenance only. It does seem a pity that, having gone so far, the Commission did not see fit to go the whole way and recommend similar protection for the widow. Furthermore, the widow's share which the Commission recommends she should receive on intestacy is confined to the "self-acquired property" of the deceased. Since in many cases the deceased may have no property but that which has not been self-acquired, it seems unfortunate that this distinction between self-acquired and other property, one which though well-known in Ghana and elsewhere in West Africa has so far not been a feature of the customary law of Uganda, should be in this particular context introduced into Uganda.

Finally a word may be said about the proposals on divorce. At present divorce proceedings, which in respect of a registered marriage may be instituted, in the case of Africans, in the court of a magistrate grade I, rarely take place. This is partly, though by no means entirely, because of the difficulty and expense involved, the parties and their families agreeing instead to what amounts in

practice, but not in law, to a divorce by consent, with or without recourse to the local court for adjudication upon return of marriage consideration. It may well be that if divorce proceedings may in future only be instituted by petition to the High Court, couples seeking to end their marriage will be even less inclined to make use of the procedure provided by law. As regards the proposal to set up divorce committees, which clearly has its origin in the Ghana Bill, these committees might well, in fact, prove useful in reducing the incidence of divorce, but their creation will entail a departure from present customary procedure if persons who are not members of the families of the parties are to be responsible for attempted reconciliation and the ultimate decision on a divorce. Were members of the families concerned to be included in a committee's membership, then its decisions might, in practice, find more ready acceptance.

The Commission's Report was published in October 1965[1] and the public have been invited to comment on it.

H. F. MORRIS

[1] Government Printer, Entebbe.

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