

THE LAW OF FILIATION UNDER THE CIVIL CODE*

By George Krzeczunowicz**

A. INTRODUCTION

1. *Illegitimacy*

In the Ethiopian church, as in other churches, the concept of sin has led to a distinction between legitimate and natural children, which has affected the law of succession. According to the Ethiopian Christians' ancient book of law, the 16th century *Fetha Negast*, illegitimate children cannot inherit unless there is a testament in their favour.¹ Such distinction, however, has not prevailed, or has disappeared in practice, the customary law making, as a rule, no distinction between the status of legitimate and natural child.²

2. *Filiation*

The *Fetha Negast* contained no provisions whatever about any modes of parental affiliation of children. (Incidentally, this makes one doubt whether the mentioned old distinction between legitimate and natural children was ever very real.) In customary law prior to the 1960 codification, proof of filiation was free, all evidence being admitted. A very common mode of establishing paternal filiation was a Christian mother's religious oath, indicating the alleged father (who could be, if she was married, a man other than her husband). Such oaths had a particular force if made by an unmarried girl, and were in all cases hardly rebuttable if taken before a priest at the child's baptism or *in articulo mortis*.³

The fact that (a) filiation could be so easily established, coupled with (b) the disappearance of any distinction and the equality of rights as between "legitimate" (marital) and "natural" (extra-marital) children, and (c) the lack of any time limits for the bringing of the affiliational and the concomitant successorial claims, have caused a host of confused successorial suits, brought by alleged natural children on flimsy grounds.⁴ In order to cope with this unsatisfactory situation while preserving the traditional legal equality between marital and extra-marital children, the Ethiopian Civil Code of 1960 severely limits the admissible modes of establishing filiation. These modes of affiliation are discussed below.

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** Faculty of Law, Haile Sellassie I University.

1. See I. Guidi, *Il Fetha Nagast o Legislazione del re* (Roma 1899), pp. 419 and 541.

2. Cf., e.g., C. Conti Rossini, *Principi di diritto consuetudinario dell'Eritrea* (Roma 1916), p. 315; F. Ostini, *Trattato del diritto consuetudinario dell'Eritrea* (Asmara 1956), p. 80.

3. Cf., e.g., Conti Rossini, work cited above at note 2, pp. 286-88; Ostini, work cited above at note 2, p. 70.

4. As shown by the largely unreported case law on this topic. For a case based on serious grounds (informal paternal recognition: *tractatus*), see *Mulunesh Hailu v. Bekelech Hailu* (Sup. Imp. Ct., 1965, Civil App. No. 36/57) (unpublished).

B. MODES OF AFFILIATION⁵

Summary view

Under the opening provision of the Code's Chapter X on filiation, the rules on the legal "determination"⁶ of a child's father and mother may not be derogated by agreement, except where the law expressly provides otherwise. It follows that the Code's enumeration of the modes of establishing a maternal or paternal filiation (in Section 1 of said chapter) is limitative, except for the express rules of Section 2 on the contractual regulation or assignment of paternity. The modes of establishing a maternal or paternal filiation must be distinguished from the modes of proving that such a filiation has been established, which latter modes are mandatorily governed by the provisions of Section 3 of said chapter.

The modes of *establishing*, in law, the blood relationship of the first degree called filiation (with its consequences in family and succession law) between a child and a given woman or man, can be summarized as follows:

I. *Maternal* filiation is simply established by the physical fact of birth of the child from a given woman.⁷

II. Logically, *paternal* filiation should be established by the physical fact of begetting of the child by a given man. Since this fact is impossible to determine, paternal filiation is attached by the Code to one of the following situations or acts, which at least probably coincide with true physical begetting:

1. Paternal filiation results from the maternal one (which is established by childbirth) where a marriage, or a so-called irregular union existed between the mother and a given man at the time of the birth or conception of the child.⁸

2. In the absence of an affiliation under rule (1), paternal filiation can be established by a man's acknowledgement of the child as his own.⁹

3. In the absence of an affiliation under rule (1) or (2), paternal filiation may be established by a judicial declaration of paternity based on the rape or abduction of the mother.¹⁰

4. Paternal filiation may be contractually assigned by the legal father in the case of a child born between 210 and 300 days after dissolution of a relationship under rule (1).¹¹

5. Where a child has, *prima facie*, more than one legal father, such conflict is solved by a contract or by legal presumptions.¹²

We shall presently analyze, one by one, the above enumerated modes of *paternal* affiliation.

5. Compare Workinesh Bezabish v. Yideneku (Sup. Imp. Ct., 1963), *J. Eth. L.*, vol. 1, p. 17.

6. Mistranslated as "ascertainment" in the Code's English version.

7. Art. 739. (All footnote references are to the Civil Code except where it is stated otherwise.)

8. Arts. 740(1) *cum* 741-45.

9. Arts. 740(2) *cum* 746-57.

10. Art. 758.

11. Art. 765.

12. Arts. 762 and 764.

LAW OF FILIATION IN ETHIOPIA

1. *Paternal Affiliation through Marriage or Irregular Union*

While *mater semper certa est* because birth is easy to determine, determination of the father creates difficulties in all legal systems. All developed systems cope with these difficulties primarily by attaching a more or less conclusive presumption of paternity to whoever is the husband of the mother at the time of birth or conception,¹³ in accordance with the maxim *pater is est quem nuptiae demonstrant*.¹⁴ The Ethiopian legislator adheres to this method, which he supports by an almost irrebuttable presumption that a child born more than 180 days after celebration of marriage or less than 300 days after its dissolution is conceived during the marriage.¹⁵ Here the very close similarity of our law to foreign systems ends. We must discuss, in turn, (1) the scope of the presumption of paternity in Ethiopia and (2) the force of this presumption:

1. The *scope* of the presumption: does it cover only marriage or also other unions? Foreign legal writers often justify the presumptive paternity of the husband by the legal duty of sexual fidelity and co-habitation, which exists only in marriage.¹⁶ In Ethiopian law an *irregular union* between man and woman, in which no such duty exists, is put for the purpose of filiation on exactly the same footing as marriage. In order to create an irregular union, merely the behaviour of the man and woman must be analogous to that of married people.¹⁷ Such *faux ménage* creates in fact, in spite of the absence of a "fidelity" duty, a probability of conception by the man perhaps not less than in marriage. Such probability is sanctioned by the legal presumption of paternity.¹⁸ The absolute non-discrimination between marital and extra-marital children in Ethiopia is not limited to the effects of filiation. As shown above, it extends also to the modes of affiliation, which are the same for marriage and irregular union.

2. The *force* of the presumption: who may rebut it and how and when may he do it? Ethiopian law is fairly near to the French¹⁹ in its severely restrictive approach to this question:

a. *Who* may rebut the presumption of paternity? *Only* the presumptive father can bring an action for disowning the child. Neither the (unfaithful) mother nor her lover nor the child himself may institute such action²⁰ (as they may be tempted to do in order to claim or acknowledge another paternity). The interest in maintaining the peace of a household and preventing litigation prevails here, irrespective of truth, over less meritorious interests.

13. Except, in Ethiopian law, where birth occurs after a declaration of absence. Cf. Arts. 744 *cum* 157(1).

14. See J. Carbonnier, *Droit Civil* (Paris 1955), T.I. No. 150; cf. Art. 741.

15. Art. 743, as qualified by Art. 782 ff.

16. See Carbonnier, work cited above at note 14; cf. Arts. 643 *cum* 640.

17. Art. 709(1); cf. G. Krzeczunowicz, "Code and Custom in Ethiopia," *J. Eth. L.*, vol. 2 (1965), p. 425, s.v. Judicial Interpretation.

18. Art. 745.

19. See Carbonnier, work cited above at note 14, Nos. 154-55.

20. Art. 790.

b. *How* may the presumptive father rebut the presumption of his paternity? The legislator's answer is again severely restrictive. The presumptive father must prove:

- i. that he had no relations with the mother within the legal conception period (Between the 300th and the 180th day before birth);²¹ or
- ii. with court permission based on preliminary circumstantial evidence, that his paternity is absolutely impossible.²² The court may not justify its permission by the mere fact of the mother's adultery or admission.²³
- iii. Proof against the presumption is free only where the maternal affiliation (by birth) is itself not determined but is being established by an action to claim status.²⁴

c. *When* may the presumptive father bring an action to disown the child? The answer is again restrictive. He must do it within 180 days from the birth of the child or from the final judgment on the (above-mentioned) action to claim status.

Conclusion

The scope of the presumption of paternity in Ethiopia is large, since it includes "irregular unions." Its force is great because of the restrictions on by whom, how and when it may be rebutted.

2. *Paternal Affiliation by Acknowledgement*

Children not born from a marriage or an irregular union, but from less stable relations, have a juridical bond only with their mother and have no father unless a voluntary acknowledgement or an adoption has taken place.²⁵ An acknowledgement of paternity consists in a man's declaration that he considers himself the father of the child concerned.²⁶ Only a child who has no legal father can be so acknowledged. In an important respect, the effects of such acknowledgement differ from those of an artificial filiation created by adoption;²⁷ adoption has no effect with regard to the adopter's relatives who have opposed the adoption, while no such limitation has been enacted with respect to acknowledgement, which therefore, if validly made (see below), affects even unwilling relatives.²⁸ We shall now discuss the following seven points regarding acknowledgement of paternity:

21. Arts. 783 *cum* 784.

22. Arts. 785-87. The preliminary circumstantial evidence may consist, e.g., in extreme physical dissemblance (black child of white parents). As to impossibility, it is demonstrated, e.g., by sterility or by negative "blood" tests.

23. Art. 788.

24. Art. 789 *cum* 772.

25. Art. 721(3). Or unless paternity has been judicially declared (see below).

26. Arts. 746-47.

27. Arts. 796-806. See also Art. 558.

28. The acknowledgee acquires maintenance and/or succession rights as against them.

1. *Who may acknowledge or be acknowledged?*

a. As a rule, only the alleged father himself may acknowledge the child. But if he is dead (or unable to manifest his will²⁹), a paternal ascendant may acknowledge the child in the father's name.³⁰

b. As a rule, only a living child may be acknowledged. A dead child cannot be acknowledged unless he has left descendants.³¹

2. *Formal requirements.*

a. The acknowledgement must be made in writing, including the signature of two witnesses.³²

b. Save in the case of a power of attorney which is both special³³ and approved by the court, the declaration of acknowledgement must be made personally.³⁴

3. *Necessity of acceptance.*

Acknowledgement of paternity is of no effect unless accepted as well founded by the child's mother or, if she is dead (or unable to manifest her will), by one of her parents,³⁵ or by the child's guardian.³⁶ If the child is a major (no guardian) he must also assent.³⁷ The required acceptances may be tacit, i.e., consist in raising no objection within one month of taking cognizance of the acknowledgement.³⁸ These acceptance requirements show that paternal affiliation by acknowledgement presupposes, as do other modes of paternal affiliation, a prior maternal affiliation as established by child-birth. (It thus seems that a foundling can be adopted but not acknowledged.) They provide a check on the truth of the acknowledgement and increase the chances that the child's interests will be considered.

4. *Revocation and avoidance.*

In the interest of stability in the legal status of children, no or little protection is given to a repenting acknowledger of a child:

a. An acknowledgement of paternity is, as a rule, *irrevocable* (except if contained in a testament, since testaments are essentially revocable³⁹). Its author cannot revoke it unless he was a minor and acts within a year from reaching majority.⁴⁰

29. As where he is permanently unconscious, or is declared absent under Article 154.

30. In the terms of Article 750.

31. Art. 754.

32. Arts. 748(1) *cum* 1727 and 1677. As to Article 748(2), it is merely concerned with an exceptional mode of proving (by act of notoriety) that a valid acknowledgement has been given.

33. Arts. 749(2) *cum* 2206(1).

34. Art. 749(1).

35. In the terms of Article 751.

36. Who will then be, ordinarily, one of the relatives mentioned under Article 210(d-e)

37. Art. 752.

38. Art. 753.

39. Art. 859(2).

40. Art. 755.

b. Where the acknowledger's consent is *vitiated*, his acknowledgement can be avoided if it was extorted by violence (duress).⁴¹ It may *not* be avoided on the ground of error (mistake) or fraud,⁴² unless the acknowledger also decisively proves the impossibility of his paternity.⁴³ Thus, an acknowledger who was defrauded by an unfaithful mistress into believing himself to be the child's father has, as a rule, no remedy.

5. *Two acknowledgements.*

Where a child was, and remains, validly acknowledged by a man in accordance with the requirements under 1-4, above, any subsequent acknowledgement by another man is of *no effect*.⁴⁴

6. *Attacking the acknowledgement.*

The acknowledgement can be denied or challenged:

a. By *any* interested person, such as an affected relative, by showing that the acknowledgement was not given by the required person (see 1, above), or not accepted by required person, (see 3, above), or not "written" and personally declared as required (see 2, above), or was directed at an already acknowledged child (see 5, above).

b. By the acknowledger *alone*,⁴⁵ if avoidance of the acknowledgement is sought on ground of vitiated consent or decisive impossibility of begetting by him. (See 4-b above.)

7. *Juridical nature of the acknowledgement.*⁴⁶

a. Is acknowledgement of paternity a *juridical act* which, in law, presently creates the affiliation, or is it merely a *mode of proof* (by admission) which ascertains (retroactively) a past affiliation? In practical terms, can the child claim his part in inheritances accrued before his acknowledgement?⁴⁷ The answer is not easy. Acknowledgement does not figure among the modes of proving filiation which are mentioned under Section 3 of the Code's chapter on filiation.⁴⁸ Obversely, it figures among the modes of establishing the legal bond of filiation.⁴⁹ But Article 747(2) provides that the acknowledger need not have *intended* to produce the legal effects of acknowledgement, while an intention to produce legal effects is a requisite of "juridical" acts. Acknowledgement thus at least partakes of the nature of the mode of proof called admission, so that we may perhaps consider its effects as

41. Arts. 756(1) *cum* 1706.

42. Arts. 756(2) *cum* 1696-1704.

43. E.g., by establishing that he is sterile.

44. Art. 757.

45. Cf. Art. 1808(1).

46. Cf. Carbonnier, work cited above at note 14, No. 167; V. Motin, *La nature juridique de la reconnaissance d'enfant naturel*, these, Rennes (1934).

47. E.g., by the *petitio hereditatis* under Articles 999-1001. This may have a disturbing effect on accrued successions and be an incentive to frauds.

48. Arts. 769-72: record of birth, or possession of status, or act of notoriety.

49. Art. 1740.

retroactive. This solution coincides with common-sense requirements: A man either is not the father, or is the father from the time of conception. It is only in the distinct case of artificial affiliation, called adoption (Civ. C., Art. 796), that the juridical act involved has no retroactive effects. Indeed, adoption of another's child (an act creating a new situation) is clearly distinct from acknowledgement of one's own child (an act declaratory of an existing situation).

b. Is that sometimes inchoate juridical act, called acknowledgement of paternity, *unilateral*, or is it in the nature of an *agreement*? The latter seems true in view of the requirement for its "acceptance." (See 3, above.) Practical consequence: the acknowledgement may be avoided by the acceptor if her acceptance was vitiated by violence. (Cf. 6-b, above.) More obviously, a testamentary (posthumous) acknowledgement is inoperative in the absence of a (tacit or express) acceptance.

3. *Paternal Affiliation by Judicial Declaration*

Where a child has neither a presumptive father under the rules of section 1, above, nor a self-acknowledged one under the rules of section 2, above, his paternal affiliation may be judicially declared if his mother was "raped" or "abducted" at what is considered the time of conception.⁵⁰ It follows that:

1. This action cannot be brought by a raped or abducted mother of a child who already *has* a valid affiliation.

2. The requirement of "rape" or "abduction" not being defined, we must understand it in the sense given it by the *Penal Code*.⁵¹ The affiliation judgement will ordinarily follow upon a criminal conviction for rape or abduction. The respective proceedings may be joined.⁵²

3. The "time of conception" may be fixed by analogy to that determined by Article 783, i.e., between the 300th and 180th day preceding birth.

Other characteristics of this remedy:⁵³

4. *Who* may bring the action? As a rule, only the raped or abducted mother. If she died (or is unable to manifest her will), the child's guardian may bring it.

5. *When* may the action be brought? Only within two years from the child's birth or from the relevant criminal conviction.

6. *Defence* to the action: it is a conclusive defence for the rapist or abductor to prove decisively (e.g., by establishing his sterility) that he could not have conceived the child.

7. *No action* for judicial declaration of paternity may be brought on other grounds. This does not exclude actions concerned with proving that filiation has been established by the other modes discussed in this report. It merely means that

50. Art. 758.

51. Pen. C., Arts. 558 and 589.

52. See Ph. Graven, "Joinder of Criminal and Civil Proceedings," *J. Eth. L.*, vol. 1 (1964), pp. 135-50.

53. See Arts. 759-61.

the mode "judicial declaration of paternity" is limited to the grounds of rape or abduction and does not comprise those of, e.g., seduction or admission.⁵⁴ The rationale for such severity has been given in the introduction to this report.

8. *Effects of judicial affiliation.* Since judicial affiliation is a sanction of blamable conduct, its effects differ from those of ordinary affiliation in the following respect: While the rapist or abductor must support the child, the converse is not true and the child need not support him. The child owes no maintenance to a "judicially declared" father.⁵⁵

4. *Affiliation by Assignment of Paternity*

According to a well-known brocard, rights of status are not *in commercio*. They are fixed by law and should not be bargained about. This principle is *not* firmly established in Ethiopian law (and tradition).⁵⁶ The legal father of a child born less than 300 days after the dissolution of his marriage or irregular union with a woman,⁵⁷ may assign his paternity to another man. The material and formal requirements for such assignment are as follows⁵⁸:

1. The child must be born more than 210 days after the dissolution and the other man must declare the child to be his.

2. The assignment must be attested by four witnesses and approved by the court after hearing the mother.

Assignment of paternity is irrevocable and its avoidance is subject to restrictions similar to those concerning acknowledgement of paternity⁵⁹ and enacted for similar reasons.

5. *Conflict of Paternal Filiations*⁶⁰

A mother in childbirth may have, simultaneously, a husband and an irregular union with another man. Or, a child conceived in a prior marriage or union may be born in a subsequent one. In order to solve the ensuing double paternity conflicts,⁶¹ the legislator permits the men concerned to decide by *agreement* who is father. Requirements: four witnesses and court approval after hearing the mother. Such agreed regulation of the conflict is irrevocable and its avoidance is as difficult as that of an assignment or an acknowledgement of paternity. (See above.) It is only in the absence of such agreement that the legislator solves the conflict himself by giving preference to the quality of husband, or to the time of birth, as criterion for determining paternity.

54. Cf. G. Krzczunowicz, "Civil Code Articles 758-761: Side Issues," *J. Eth. L.*, vol. 2 (1965), pp. 185-87.

55. Arts. 808(1) *cum* 810.

56. Cf. G. Krzczunowicz, "Code and Custom in Ethiopia," cited above at note 17, s.v. Para-Legal Outlets, Family Law.

57. Cf. Art. 743.

58. See Arts. 765-66 and 768.

59. Art. 768. Compare Art. 756.

60. See Arts. 762-64 and 768.

61. Between: (1) The rule of Article 741 and that of Article 745(1), or (2) the criteria "born" and "conceived" within Article 741 or 745(1).

C. PROOF OF FILIATION

Foreword

Modes of proving filiation are discussed in a separate Code section and are thus distinguished from the modes of establishment of filiation. Filiation from the mother is established by birth, from the father (begetting being unprovable) by the afore-discussed modes. But such birth, plus the marriage or irregular union, or the acknowledgement or assignment of paternal filiation, must somehow be proved. The child-successor,⁶² at his parent's death, often has no direct evidence of his affiliation on hand. He is, however, legally presumed to be the rightful child (and thus heir *ab intestato*) if he has a record of birth or a possession of status of child.⁶³ These means of proof are non-contentious because, taken separately, they are effective only in the absence of their valid contestation⁶⁴ while taken together they prevent any action from arising.⁶⁵ We shall discuss, in turn, the non-contentious and contentious modes of proving filiation.

1. *Non-contentious Proof of Filiation*

1. By virtue of the Code's transitory provisions,⁶⁶ enquiry-based *acts of notoriety* must be used instead of records of birth for proving birth. But the "officers of civil status or notaries" required by Article 146 to dress such acts of notoriety *do not exist* and, in the absence of implementing legislation, there seems also to exist no personnel "appointed for the purpose by the Minister of Interior."⁶⁷

2. In view of the above, the paramount mode of non-contentious proof of filiation in Ethiopia is possession of status, as attested by four witnesses.⁶⁸ A person possesses the status of child if he is "treated by a man or woman, by their relatives and by society" as being his or her child. This covers the requirements of *tractatus* and *fama* of the corresponding continental doctrines on possession of status. Another requirement, the *nomen*,⁶⁹ is omitted, probably because it is not suitable to a country where family names are not yet in general use.⁷⁰

3. There are no major problems where a maternal filiation or, perhaps, a joint filiation with respect to both parents is shown by possession of status. But

62. Filiation problems in Ethiopia arise mostly on occasion of successions. Sometimes the occasion is created by a maintenance claim.

63. Arts. 769-70.

64. Arts. 97 and 771(2).

65. Arts. 774 and 780: both, claims of (another) status by, and contestation of status against a person whose record of birth is corroborated by possession of status are inadmissible.

66. Article 3361, suspending the application of the Civil Register legislation. But, as a result of the pre-Code Municipalities Proclamation, 1945, Art. 9 Proc. No. 74, *Neg. Gaz.*, year 4, no. 7, following upon the Administrative Regulations Decree, 1942, Part 74(d), Decree No. 1, *Neg. Gaz.*, year 1, no. 6, sporadic cases of registration of birth, etc. occur in a few areas regardless of both the substantive and the transitory Code provisions on this subject. The legal value of such registrations is therefore, to say the least, doubtful.

67. Art. 3361(2)

68. Arts. 770-71(1).

69. On the three requirements, compare Mazeaud & Mazeaud, *Leçons de droit civil* (Paris 1959), T.I., No. 830.

70. See Arts. 3358-60.

can a child of unknown maternal filiation be allowed to prove, by possession of status, his paternal filiation *alone*?⁷¹ Although the words "treated by a man or woman" do not literally exclude such contention, it seems ruled out by the whole logic of our system. As shown before, the modes of establishment of paternity are merely accessory to establishing maternity. The same applies, *a fortiori*, to proof of such establishment. For instance, a foundling can neither be acknowledged, nor have his paternal filiation proved by possession of status.

2. Contentious Proof of Filiation

1. It sometimes happens that the child or parent *does not possess* his status, i.e., is not treated as child or parent. Or else the required elements of such treatment by family and relatives and society are so doubtful that they have been contested⁷² by four witnesses.⁷³ In such case the burden is on the child or parent⁷⁴ to claim and prove the filiation bond *contentiously* in a special action to claim status. Strangely enough, the procedure prescribed in this connection is that of notoriety, which, as we have seen, the Code's transitory provisions have already, and ineffectively, introduced as a surrogate for non-contentious proof by Civil Register records. The re-introduction of the "notoriety" procedure⁷⁵ at the contentious stage of proof may remain ineffective for the same reasons as those given by us when discussing non-contentious filiation.

2. Whatever be the procedure, the proof at this stage will no more be directed to showing a "possession of" filial-parental status (which possession is here, by hypothesis, non-existent or deficient), but to showing a *right* to possess such status. By any means of evidence, the very facts establishing filiation, that is, the birth plus, e.g., the marriage or the acknowledgement must be proved to have specifically occurred. But another kind of possession of status may play an incidental role where the existence of a marriage or irregular union at birth or conception time is sought to be proved by showing possession of the corresponding status as between mother and alleged father (not between father and child).⁷⁶

3. Claims of filial-parental status by its non-possessors are disturbing for the social order. The Ethiopian legislator admits them only upon a special court authorization based on "circumstantial evidence resulting from facts which are constant⁷⁷ and sufficiently serious." The relevant fact may, for instance, consist in a child's patent physical resemblance to the alleged parent. On such basis, the claimant may be allowed to bring other evidence and proceed with his action.

71. E.g., in order to inherit from alleged father.

72. Such contestation of possession of status must be carefully distinguished from contestation of status itself. The latter contestation (Arts. 778-81) does not disprove the child's possession of status but his *right* to possess it, as where he is shown not to be born from the "possessed" mother.

73. Art. 771(2). On liability of witnesses, see Art. 2061.

74. The relevant article, Article 772, is fantastically mistranslated in its English version. The action is *not* limited to the child.

75. Laid down in Arts. 148-51.

76. Arts. 699 *cum* 741 and 718 *cum* 745.

77. "Constant" in this context (Art. 773), means "presently and undisputably established."

4. A child's⁷⁸ action to claim status must, as a rule, be brought in his lifetime. The child's heirs are barred⁷⁹ from bringing it, unless the child died before the age of twenty and they act within one year from such death. In accordance with the logic discussed before and the provision that the action shall be instituted *against the mother*,⁸⁰ paternal affiliation is merely incidental to the maternal one. Indeed, as next provided, "the mother *and* the person to whom paternity will be attributed *in case* the action is successful, must be made a party to the suit." As a general proposition, maternity is thus a legal pre-requisite of paternity with respect to both non-contentious and contentious proof of filiation.

5. How can a (possessed) filiation be *disproved*? Actions to contest (disprove) maternal filiation⁸¹ and paternal filiation⁸² are just as disturbing for the social order as are the above-discussed actions (by non-possessors) to claim it. For this reason, they are submitted to the same *restrictive* requirement of a preliminary court authorization based on serious and constant evidence.⁸³ The severely circumscribed father's action to disown a child by overcoming the presumption that he begot it has been discussed before in connection with the presumption of paternity resulting from marriage or irregular union. As to maternal filiation, it is easily contested by proving the non-occurrence of a birth at the relevant time, or the non-identity between the child then born and the defendant child (the latter's contested status may be claimed by the former).

D. CONCLUSION

The Ethiopian codified law of filiation constitutes a peculiar *blend* of traditional Ethiopian notions with modern legal techniques and concepts. The traditional Ethiopian principle of equality between marital and extra-marital children has been maintained with respect to both the effects of filiation and the modes of its establishment. But the modes of establishing filiation and proving such

78. A parent's action against the child is less usual in Ethiopia. A mother's action may be incidental to her contestation, under Article 778, of the child's existing filiation (babies may have been exchanged).

79. Such bar applies only to contentious proof of filiation in the action to claim filial status. There is no such limit with respect to non-contentious proof of filiation, for example in succession claims. It follows that, e.g., for the purpose of the *petitio hereditatis*, which has no time limit where it relates to "family immovables" (Arts. 999 *cum* 1000(2)), proof of "possession" of filial status, as distinct from proof of "right to" possess it, is admissible generations back. The relevant genealogies are often notorious among relatives. But how will the four "witnesses" requirement of Article 771(1) be satisfied? Perhaps it may be liberally construed for such purposes, in view also of cognate Article 1168(1): "... any member of such family may at any time claim such land." On "family property" see Tenagno Worke Abdi v. Yejote Worke Legesse (H. Ct., Addis Ababa, 1964), *J. Eth. L.*, vol. 2, p. 73. On "possession of status" see contra: Workinesh Bezabih v. Yideneku, cited above at note 5. (Our comment on this decision: (a) Possession of status is at no stage a legal situation. It is a non-contentious mode of proof of such situation. (b) Provisions on modes of proof may be retroactively applied. Cf. Carbonnier, work cited above at note 14, No. 164, 2.)

80. See Art. 777(2).

81. And won by solely proving by any means the physical fact of the child's birth from the alleged mother. See Arts. 777 *cum* 739.

82. Arts. 782-95.

83. Arts. 773, 779 and 786.

establishment, which were unlimited in traditional law, have been severely limited in accordance with a policy of reducing litigation and a technique influenced by the French legal system. The latter system also constitutes the source for the categories and classifications used by the Ethiopian law of filiation.

ADDENDUM

Due to delay in the publication of this report in the Journal of Ethiopian Law, several months have elapsed since it was submitted to the Seventh International Congress of Comparative Law at Upsala (August 1966).⁸⁴ In light of the general rapporteur's⁸⁵ paper and of the discussions held in Section II, A, 2 of that Congress, it is now possible to add the following comments:

1. Modern legislative reforms abroad seek gradually to achieve (or have only recently achieved) an equality of legal status as between marital and extra-marital children. Such equality is a long-established axiom in Ethiopia, *unique* in this respect among Christian countries.

2. According to the national rapporteur for Rumania,⁸⁶ an equalization of the legal condition of marital and extra-marital children necessarily postulates that proof of the filial bond be made largely free. This seems also to be the view held and tendency gradually followed by the legislative reformers abroad. Ethiopia constitutes a striking *exception to this parallelism* in that, while retaining the traditional equality between marital and extra-marital children, it has *restricted* the traditional freedom of proof of their status. These restrictions were rendered necessary by the proliferation of stale and flimsy affiliational claims brought for inheritance purposes. Since such purposes are hardly relevant in countries where inheritable private property is almost nonexistent, extreme freedom of proof of paternity prevails mostly in socialist countries.

3. *Paternal* affiliation is, in Ethiopia, restricted to limitatively enumerated modes. Below are singled out such *original* features of this system as were not discovered in any or most of the other national reports available at the Congress:

a) Ethiopia alone attaches a legal and almost irrefutable *presumption* of paternity to the man living in *concubinate* ("irregular union") with the mother. He is treated for this purpose on equal footing with husbands.

b) In Ethiopia, not only maternity but also paternity can be proved non-contentiously by mere *possession* of status (without any need, in such case, to demonstrate the existence of any of the prescribed modes of affiliation). In this respect, there is an illuminating similarity between proof of filiation by possession of status (Article 770(1-2) Civil Code) and proof of ownership by possession of chatels (Article 1193 *cum* 1140 Civil Code).

c) In several foreign legal systems where *acknowledgement* of paternity must be accepted by the mother, an effective acknowledgement seems impossible if the mother is dead or insane. It is possible in Ethiopia, where, in such case, the acknowledgement *may* be accepted by the mother's ascendant or the child's guardian.

84. The Congress' general reports will be published in *Rapports généraux au VII^e congrès international de droit comparé*, edited by Centre interuniversitaire de droit comparé, Bruxelles. The national reports, of which the above paper is one, are published in the countries to which they refer.

85. Professor Aurelian Ionascu, of Cluj University.

86. Professor Ion Rucareanu, of the Rumanian Institute of Juridical Research.

d) In Ethiopia *fraudulent* acknowledgement of paternity⁸⁷ probably cannot be annulled otherwise than by the acknowledger himself decisively proving the impossibility of his paternity.⁸⁸

e) In striking contrast with foreign systems, more concerned than the Ethiopian one with the biological truth of filiation or else with the principle that personal status is not *in commercio*, in Ethiopia paternity may be, in certain specified circumstances,⁸⁹ contractually assigned by the legal father to another man acknowledging the child. Also, as shown earlier in this paper, problems of "double" legal paternity may be solved by contract between the presumed fathers. Since the above-mentioned agreements are lawful, it even seems that they may be made for consideration.

4) Apart from the oft-mentioned "equality of status" principle, the basic tendencies of the Ethiopian law of filiation may be summarized as follows:

a) Essentially free non-contentious and moderately free contentious⁹⁰ proof of maternal filiation by birth.

b) Essentially free non-contentious proof of paternity, e.g. by way of possession of status.

c) Radical *restriction* on (1) *contentious* (2) *paternal* affiliation of (3) *such* extra-marital children as are not already acknowledged or covered by the paternity presumption attached to "irregular unions." Due to the above three qualifications, the effects of this restriction are much less sweeping than a *prima facie* reading of Article 761 Civil Code would suggest.

d) Policywise, the Ethiopian law of filiation's implicit *aim*, among others, is to reduce inheritance (or alimony) litigation and preserve the peace of stable households, whether marital or extra-marital.⁹¹ This aim: (1) is judiciously *balanced* with, without being surrendered to, the sometimes non-convergent aim of discovering the biological truth and safeguarding the child's interests,⁹² (2) is occasionally made to prevail over the world-known principle that personal status rights are not disposable.⁹³

87. Sometimes given "by courtesy" (*par complaisance*) or for other purposes.

88. Argument *a pari* from Article 756(2). But the acknowledgement is null from the outset if the child has another legal father (Art. 746).

89. Art. 765.

90. The qualification "moderately" points to the necessity to obtain prior court-permission to proceed. Arts. 773-74. Thereupon, the physical fact of birth can be proved by any means (which clearly is *not* the case with the physical fact of paternal conception).

91. An aim supported by, both, the limitations on the establishment of paternity and on its contestation (by *disowning*) once established.

92. An aim promoted by, e.g., the requirements of acceptance under Articles 751-52, or of court-approval under Articles 763 and 766. The two aims converge in the presumptions of paternity attached to "irregular unions."

93. See Arts. 762 and 765.

