THE ETHIOPIAN LAW OF FILIATION REVISITED

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THE INTERNATIONAL ACADEMY OF COMPARATIVE LAW

It seems fitting to *preface* this GONGRESS REPORT on the Ethiopian Law of Filiation with a few words on this Faculty's past relations with the International Academy of Comparative Law.

The Academy's Congresses are held every four years. The undersigned participated in the Academy's Sixth Congress (Hamburg, 1962) with a report on the Regime of Parliament in Ethiopia (reproduced in the *Journal of Ethiopian Studies*, Vol. 1, 1963, p. 68). He represented this Faculty at the Academy's Seventh Congress (Upsala, 1966) with a report on Legislation on Natural Filiation in Ethiopia (reproduced in *Journal of Ethiopian Law*, Vol. 3, 1966, p. 511), and at its Eighth Congress (Pescara, 1970) with a report on the Role of Equity in Ethiopian Civil Law (reproduced in *Journal of African Law*, Vol. 13, 1969, p. 145). At the Academy's Ninth Congress (Teheran, 1974), this Faculty was represented by Dr. Fasil Nahum, and it submitted three reports from Ethiopia. At the Academy's Tenth Congress (Budapest, 1978), this Faculty was represented by the undersigned with one report written by him and another by a practising lawyer (Ato Yeneakal Yehualeshet).

All reports are preserved in the Academy's Archives and mentioned in its publications, which include general comparative reports by topic, each based on all national reports on the given topic.

Contacts with the International Academy of Comparative Law, its publications, its Congresses, are of particular value for those African countries whose legal systems are *eclectic*, i.e. not influenced by primarily one foreign legal system (e.g. the French or the English), but by a wide spectrum of systems from which selective choices are made. Among those countries, Ethiopia stands prominent: its legal system is a conspicuous and continuing creation of the science of comparative law. The Academy's reports and Congresses further this science, which knows no frontiers.

This writer's reports to the last two Congresses appear, the first below, the second in the following issue of this journal. Both reports deal with topics of *current* interest in Ethiopia. The first, suitably up-dated, concerns "filiation", a subject still hotly disputed in and out of court. This report is supplemented by a 1980 ADDENDUM on "new trends", and an older but impressive case decision and comment. The forthcoming second report, concerns "products liability", a nascent legal problem concomitant of economic development.

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THE REPORT*

INTRODUCTION

Our present theme overlaps with that concerning "Legislation on Natural Filiation", which was discussed by our Seventh Congress. Since the Rapporteur for Ethiopia (myself) then submitted a comprehensive report on this topic,[1] he must now approach it from new angles to avoid unnecessary redundancies.[2]

Another difficulty concerns the wording of the title. In Ethiopian law, the most usual mode of affiliation (by legal presumption) is common to children born in marital and extra-marital unions. As to the section on proof of filiation, its rules are the same for all children. Finally, the effects of filiation are identical in practically all cases.[3] The category of children who, in the themes set, are called "natural" (Seventh Congress) or with the same connotation, "born out of wedlock" (Ninth Congress), is therefore, in Ethiopia, devoid of juridical significance. For this reason we had to modify the title of this report and the scheme proposed for it by the General Rapporteur.[4]

Discussion of affiliation logically precedes that of its effects. In turn, consideration of maternal affiliation necessarily precedes that of the paternal one, which is contingent on the former. Our plan is set accordingly. We use the term "filiation" to denote the legal bond between a child and its mother or father' while "affiliation" points to the operative fact(s) creating (establishing) the filiation bond.

A. MATERNAL FILIATION

We shall successively discuss its (1) establishment, (2) non-contentious proof, (3) contentious proof and (4) contestation.

1. Establishment

"Maternal filiation results from the sole fact of birth" (Art. 739).[5] The legal bond between mother and child is established by the mere physical fact of birth of a given child from a given woman, whether married or unmarried. The only thing that matters here is the biological truth. Consent or acknowledgement by the mother required in some jurisdictions for completing the maternal affiliation of an extra-marital child[6] - are immaterial in Ethiopian law.

2. Non-contentious[7] Proof

Preservation of reliable birth-evidence is important for both private and administrative purposes. For this reason, our Civil Code requires that maternal (and paternal) affiliation be proved by a "pre-constituted"[8] record of birth[9] (Art. 769) entered upon

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* This report to the Ninth Congress appears in this Journal with minor improvements. The ADDENDUM on New Trends is *added*.

1. Hereinafter cited as "*prior report*". Published, with a post-Congress Addendum, in the *Journal of Ethiopian Law* (1966), Vol. 3, pp. 511-523. The somewhat reworded content of the Addendum is reproduced in the Conclusion to this report.
2. Ethiopia enacted no new legislation on this topic.
3. Saving that of rape or abduction (see below).
4. Professor Gabriel Garcia Cantero of Valladolid University.
5. Unless otherwise qualified, the expressions "Art." and "Article" denote Articles of the Ethiopian Civil Code.
6. See Aurelian Jonasco, General Report to our Seventh Congress (1966), p. 8, ftn. 2.
7. We here use "non-contentious" to mean "other than contentious" For "contentious", see ftn. 17. Cf. *prior report*, p. 519.
8. I.e. set up in advance before need for proof arises.
9. "Acte de naissance".

mandatory declaration (Art. 101(2)) in the Register of Civil Status (Art. 74 ff.) by officers appointed to this end (Art. 48 ff.) These and other Code provisions concerning registers and records of civil status are, however, indefinitely *suspended*[10] by a transitory provision (Art. 3361(1)) which provides that proof of birth[11] shall be made by (non-pre-constituted) "acts of notoriety" (Art. 3361 (2). This rule, in turn, cannot apply because the profession of "notaries" trained in the drawing up of such acts is *non*-existent.[12] Even if it were existent, the *non*-suspended permanent provision which prescribes, in default of birth records, proof by "possession of status" (Art. 770) rather than acts of notoriety, would prevail over said transitory provision[13] (this proposition is disputable).

In many foreign jurisdictions maternal filiation is routinely proved by producing the child's pre-constituted birth record from civil status registers. In Ethiopia, because of the above-mentioned situation, it seems that *the only correct non-contentious* mode of proving maternal (and paternal: see below) filiation is *possession* of status. The child must be shown (by 4 witnesses) to be treated by his parent, the latter's relatives and society as her (his) child (Art. 770(2)). With respect to maternal filiation, this system of non-contentious proof functions quite somoothly.

Although proof of maternal filiation by "possession of status" is, as a rule, oral and indirect,[14] such "possession" may be legally challenged only by producing four witnesses who contest its legal elements[15] (Art. 771 (2)). We are, so far, unaware of any High Court cases[16] where this has occurred with respect to maternal filiation.

3. Contentious[17] Proof

We are similarly unaware of the occurrence of contentious claims of maternal filiation.[18] We must neverthless mention the legal conditions set for such claims by Articles 772-773.[19]

The action to "claim" a maternal filiation status can be brought only where the claimant does not possess such status or where his possession of it is validly contested (see above).[20] Moreover, the action may not be "instituted" without a preliminary court-authorization based on constant facts pointing to the probable justification of the claim. Once these *two* conditions are met, the affiliational facts of "birth" and "identity" (between the child born and the claimant) may be proved by any means apt to convince the court.[21]

4. Contestation

Possessed maternal filiation can be con-

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10. *Inapplicable until* enacted by an Order published in *Negarit Gazeta*.
11. And marriage or death.
12. The alternative of appointing other persons to this end by the Minister of Interior (Art. 3361(2)) does not seem to be used. As a relic from Italian occupation, "notaries" seem to subsist in Eritrea. On the doubtful legal value of the sporadic voluntary birth-registrations made under the "Municipalities Proclamation" of 1945, see *prior report*, ftn. 62.
13. The inept wording of which seems due to hasty drafting. See G. Krzeczunowicz, "New Quizzes in Family Law", *J. Eth. L.* (1973), Vol. 9, p. 205, and *Problems in Family Law* (Addis Ababa, Faculty of Law, 1978), Problem 24.
14. Neither a pre-constituted record nor direct evidence of the affiliational fact of birth of A from B (see ESTABLISHMENT, above) are required.
15. In classical terminology, the *tractatùs* (treatment by . . .) and *fama* (reputation). For lack of fixed family names, the first classical element *nomen* (name) is not included.
16. Caution: not all cases are published by or recorded in the Law Faculty.
17. We use "contentious" to denote proof of the original affiliational facts in the action to claim non-possessed status.
18. In French "Action en recherche de maternité".
29. Their mistranslated English version erroneously considers only child-claimants. The claimant may be the mother (or father): Art. 775(2).
20. This condition is logical. As in property law (chattels, Art. 1193), so in filiation law (Art. 770), possession is proof of title, which need not be "claimed" by the possessor.
21. The "acts of notoriety" procedure prescribed in this connection (Art. 772) seems inapplicable for the same reason as that mentioned in the text preceding ftn. 12.

tested by *any*, interested person (Art. 778) provided that a preliminary court-authorization (analogous to that required for contentious claims of non-possessed status[22]) has been granted (Art.779). Once this is obtained, the non-occurrence of the affiliational facts (birth, identity) may be proved by any means by the contestor[23] against the possessor of the maternal filiation.[24]

We are unaware of any High Court cases involving contestation of possessed maternal filiation (i.e. of the defendant's "right" to possess it). Generally speaking, maternal filiation seems to create few, if any,difficulties at the level of judicial decisions.

B. PATERNAL FILIATION

For several reasons,[25] paternal affiliation creates, in Ethiopia, incomparably more problems than the maternal one: the law governing it is not wholly clear; High Court cases concerning it are legion; the relevant judicial decisions are often controversial and inconsistent; succession law, itself not wholly clear, is usually co-involved.

Following the same scheme as that used for maternal filiation, we shall, in turn, discuss (1) the establishment of paternal filiation and (2) its non-contentious proof; (3) contentious proof; (4) contestation.

1. Establishment

Because of the inherent lack of absolute certainty connected with the paternal "begetting" of a child, this physical factor cannot be directly used to establish paternal filiation by analogy to the "birth" factor's role in maternal affiliation. Even the protagonists of the "biological truth" approaches to filiation have largely to depend on legal "presumptions" or "acknowledgements" of paternity which make the begetting only probable. These two devices are deep-rooted in jurisdictions where, traditionally, the "fidelity duty" or "consent" doctrines of affiliation[26] overweigh the "biological truth" ones.[27] The Ethiopian system is both original and unembarrased by theoretical controversy on the above lines. As shall be seen, neither of said doctrines wholly fits the solutions of Ethiopian law.

The modes of establishment of paternal filiation in Ethiopia are as follows: (a) The legal presumption of paternity, (b) the acknowledgement of paternity, (c) exceptionally, a judicial declaration of paternity.

(a) Legal Presumption[28]

(i) Principle

The presumption *pater is est quem nuptiae demonstrant*,[29] known in most developed legal systems, is part of Ethiopian law (Art. 741). In the latter, however, its scope is immensely enlarged to include "irregular unions" (concubinages) (Art. 745). It can therefore be reworded for Ethiopia to read *pater is est quem aut nuptiae aut concubinatus demonstrant*. Since, as shown at a later point,[30] this presumption is almost irrebuttable (Art. 743(2)),[31] is seems to constitute, with respect to concubinage, an original feature of Ethiopian law. The legal institution of marriage and the state of fact called, for short, concubinage,[32] are equiparated for the purpose of paternal affiliation of children "conceived or born in them". Where this

22. See above.
23. For elaboration, see *prior report*, p. 521, 5.
24. Note that it is not the possession of but the *right* to possess the maternal filiation that is contested in this action.
25. Apart from the common reason that physical paternity can never be determined with absolute certainty.
26. Attaching, respectively, to marriage (fidelity) or acknowledgement (consent).
27. On this point, see Aurelian Jonasco, cited at ftn. 6.
28. For details and the policy involved, see *prior report*, p. 513.
29. "Father is he whom marriage demonstrates"
30. See 4. CONTESTATION, below.
31. In particular, it cannot be invalidated by the *exceptio plurium concumbentium* (defence pointing to the mother's sexual relations with other men). Cf. Art. 788.
32. This term, apter than "irregular union", fits the Code's definition: "state of *fact* which is created when a man and a woman live together like husband and wife without having contracted marriage" (emphasis added) (Art. 708).

condition is satisfied, paternal filiation automatically results from the "maternal" one (see above).

(ii) Exception

The above presumption includes children born up to 300 days after dissolution of the marriage or cessation of the concubinage (Art. 743(1) *cum* 745(2)). However, where the child is born more than 210 days after the dissolution or cessation, the presumption is qualified by the possibility for *the* legal father to contract away his paternity to a man wishing to acknowledge the child.[33] Legislative concern for truth or the child's interest is not expressed, but seems implied in the requirement that such paternity-assignment be homologated by the court after hearing the mother (Art. 766).[34]

(iii) Conflict

The same possibility of striking a bargain over who is the father is open to two men who are *both* legal fathers of the same child (Art. 762). This occurs in cases of conflict between the presumption attaching to marriage and that attaching to the wife's simultaneous concubinage[35] with another man.[36] The contract settling the question between the two men involved must (presumably in the interest of the child) be homologated by the court after hearing the mother (Art. 763). A subsidiary provision applying in the absence of contractual regulation gives preference to the marriage-attached presumption (Art. 764(a)).

(b) **Acknowledgement**

In view of the detailed coverage of this topic by our prior report,[37] we shall here stress only its less usual features:

Affiliation by acknowledgement is provided only with respect to paternity.

Only a child who has no legal father (Art. 746), whether presumptive or self-acknowledged (Art. 757),[38] may be acknowledged. This precludes the possibility of paternity conflicts other than of the above-mentioned kind.

Acknowledgement of paternity is valid even where the acknowledger did not desire its effects. As to the acknowledger's relatives, they have no standing to oppose the acknowledgement despite being affected by the resulting affiliation.[39]

The acknowledgement must be made in written form (Art. 748), but requires no official authentication.

Where the child's father is dead or incapacitated, the acknowledgement may be made in his name by a paternal grandparent of the child (Art. 750).

Paternal acknowledgement is of no effect unless accepted as well-founded by the child's mother[40] or, if she is dead or incapacitated, by, as a rule, a maternal grandparent of the child (Art. 751). Again, it is of no effect unless accepted by the child if he (she) is of age at the time (Art. 752).[41] The respective acceptances may be tacit (Art. 753).

A deceased child may be acknowledged if he (she) left descendants (Art. 754).

The acknowledgement is irrevocable, with one exception: a minor who acknowledged a child without his guardian's consent may revoke such acknowledgement within one year from reaching majority (Art. 755).

The acknowledgement can be annulled on ground of violence. But it cannot be annulled

33. See Art. 765 and CONCLUSION, 3, e).

34. See *prior report*, p. 518, 4.

35. Such concubinages are especially frequent in cases of the husband's prolonged absence or factual separation from the wife.

36. For another example of conflict between said presumptions, see *prior report*, p. 518, ftn. 61, (2).

37. Pp. 514-517, See CONCLUSION, 3(c-d), below.

38. Or exceptionally determined pursuant to the rules set forth under (a) (ii) above, or (c) below.

39. In, e.g., the field of maintenance or succession law.

40. Note that this requires an ascertainment of "who is" the legal mother (usually by showing her "possession" of this status). Here as elswhere, paternal affiliation is contingent on the maternal one.

41. The age of majority is 18 years (Art. 198).

on ground of error or fraud unless the acknowledger decisively proves that the child could not have been conceived of him (Art. 756). Thus, both an acknowledger who was deceived by an unfaithful mistress into believing that a child is his own, and one who fraudulently acknowledged a child not his own but is now repenting,[42] may remain without remedy.

Legal paternity, whether presumptive[43] or acknowledged, can never be contested by a person other than the legal father himself.

(c) Judicial Declaration

Where a child has no legal father, an exceptional[44] "judicial declaration of paternity" may be obtained where its mother was *raped or abducted* within the time deemed to be that of conception[45] (Art. 758).

The two years limitation period for the action, which is brought by the mother,[46] runs from the child's birth or from the criminal conviction for the rape or abduction in issue (Art. 759). Where the latter is established, the judicial declaration of paternity *must* be granted unless the rapist or abductor decisively proves that the child could not have been conceived of him[47] (Art. 760).

The policy behind this exceptional mode of establishing paternity seems different from that behind the other modes. Both the presumption attached to a stable union[48] and, in the latter's absence, the voluntary acknowledgement, normally denote a strong probability of paternity. The same is not the case with an involuntary paternity forced on a rapist or mere abductor. This "forced" paternity seems to constitute, so to say, a private penalty: it is a peculiar[49] private sanction of criminal conduct. This is borne out, for example, by the fact that, contrary to the principle that effects of filiation are the same in all cases, a child never owes "maintenance" to a "judicially declared" father (Art. 810), who is nevertheless bound to support it (Art. 808(1)).[50]

A "judicial declaration" of paternity can *never* be "demanded or made" in a case *other* than that of rape or abduction (Art. 761).[51] This restriction is further supported by Art. 721 to the effect that relations between a man and a woman who are neither married nor living in concubinage have *no* juridical effect. Children born of such relations (which, by contrast, we venture to call "occasional") have a juridical bond *only* with their mother.[52] The scope of this restriction is further extended by providing[53] that neither the interested parties nor third parties' may avail themselves in court of such relations for any purpose whatever (e.g., that of claiming damages in tort in the absence of faults other than fornication).[54]

The first-mentioned restrictions reflect, in sharper form, the pre-1912 French principle[55] that "search for paternity is pro-

42. See CONCLUSION, 3, d.
43. See 4. CONTESTATION, below.
44. See Art. 761.
45. 180 to 300 days after the rape or abduction (cf. Arts. 743 and 783).
46. Or by the child's guardian if the mother is dead or incapacitated.
47. E.g. because of his sterility.
48. Marriage or concubinage.
49. Not based on Art. 2035 *cum* 2091.
50. Cf. René David, *Le droit de la famille dans le code civil éthiopien* (Milano, Giuffre, 1967), p. 66 *in fine*.
51. The context compels us to infer that the finding of an affiliation based on marriage, concubinage or acknowledgement is *not a "declaration"* of paternity.
52. Without prejudice, of course, to a subsequent paternal acknowledgement.
53. Contrary, it seems, to French practice (see work cited at ftn. 56).
54. See G. Krzeczunowicz, "Civil Code Articles 758-761, Side Issues", *J. Eth. L.* (1965) Vol. 2, p. 185. But see Art. 584.
55. The "Loi du 16 Novembre 1912" has liberalized the French system. Further liberalization was achieved recently by the "Loi du 7 Janvier 1972".

hbiited".[56] They contrast with the modern legislative trends abroad[57] towards making search for paternity free or freer.[58] Such search *was* free in pre-1960 Ethiopia. The present restrictions aim at eliminating "stale and flimsy affiliational claims brought for inheritance purposes".[59] These restrictions conflict with customary practices and are at times circumvented by the courts. The trend to liberalize (or re-liberalize) the filiation law is thus, in Ethiopia, not legislative but judicial. Scarce understanding of the concepts and categories used by the Code facilitates this process. In particular, the courts often fail clearly to distinguish the modes of establishment of paternity (e.g. acknowledgement) from modes of proof of paternity (e.g. possession of status).[60]

2. Non-Contentious[61] Proof

Proof of paternity by a pre-constituted "record of birth" (within the meaning of the law) or by an "act of notoriety" is generally unavailable for the same reasons as those mentioned before with respect to non-contentious proof of maternity and, it seems, with the same result of converting *possession* of status into *the only correct non-contentious* mode of proving paternal filiation.

This situation greatly reduces the effects of the limitation of modes of affiliation to the legal presumption[62] and the acknowledgement.[63] Indeed, where a child is treated by a man as his own and is similarly treated by that man's relatives and by society (Art. 770(2)), upon that man's intestate death the child, in order to inherit, need only prove the respective treatments by producing 4 witnesses to that effect (Art. 771(1)).[64] Thereafter, a challenger *cannot* put the child to the proof of the mode of establishment of his (her) paternal filiation, unless he is first able to disprove the child's "possession" of that filiation by evidence of nominally equal strength (4 witnesses, Art. 771(2)). Only then must the child, if persisting, "claim" his status by demonstrating the affiliational facts such as, e.g., an "acknowledgement" in terms of the law. The courts sometimes fail to distinguish between these two stages. On the other hand, they occasionally favour the child by accepting a single element of "possession of status", e.g., treatment of a child as if it were his by the alleged father alone,[65] as evidence of an alleged "acknowledgement" which does *not* meet the legal requirements for its validity.

"Can a child of unknown maternal filiation be allowed to prove, by possession of status, his paternal filiation alone?"[66] As argued in our prior report, such possibility seems absurd (there is no case in point). It is, however, not excluded by the wording of (Art. 770(2)).[67]

3. Contentious[68] Proof

Where a child claims a non-possessed paternal filiation,[69] he (she) must prove the

56. Save in the case of rape or abduction. On later changes, see J. Vidal, *L'Evolution de la legislation sur la filiation naturelle* (Paris, Cujas, 1966). On the "Loi" of 1972, see Dagot & Spiteri, *Le nouveau droit de la filiation* (Paris, Lib. techniques, 1972).
57. Described in 1966 by Aurelian Jonasco (cited at ftn. 6) and continuing since.
58. By e.g., admitting claims based on seduction or on informal admission of paternity.
59. See CONCLUSION, 2.
60. (Text omitted)
61. For the meaning of this term, see ftn. 7.
62. Attaching to marriage or concubinage.
63. The mode based on rape or abduction (Art. 758) is practically insignificant: no cases arise (in customary practices the consequence is often marriage, less often vengeance or fine). But see the exceptional mode provided by Art. 765 and referred to at ftn. 38.
64. Moreover, the courts often in fact mitigate these legal requirements by not demanding that *each* witness attest *all* the elements of possession of status.
65. Through, e.g., paying for the maintenance and education of a child which is *not* generally known to be his and treated as such.
66. See *prior report*, p. 520, top.
67. See "treated by a man *or* a woman."
68. For the connotation of this term, see ftn. 17.
69. On the controversial meaning of Art. 777(2) which, *prima facie*, absurdly requires that *all* filiation claims by a child be instituted against the *mother*, see G. Krzeczunowicz, "New Quizzes in Family Law", *J.Eth.L.* (1973), Vol. 9, p. 204, and *Problems in Family Law* (Addis Ababa, Faculty of Law, 1978),Problem 25.

original affiliational facts, which normally are (a) conception or birth in marriage (Art. 741), or (b) conception or birth in concubinage (Art. 745), or (c) acknowledgement (Art. 747).[70] While the affiliational fact of maternity (birth *cum* identity) can, as said before, be proved by any means, marriage, concubinage and acknowledgement have their own regimes of proof, on whose proper application contentious proof of paternity depends:

(a) Marriage

Proof of marriage by "records of marriage" (within the meaning of the law)[71] or "acts of notoriety" is legally (Art. 3361(1)) or in fact (Art. 3361(2)) unavailable for the same reasons as those given before with respect to filiation. This seems to convert "possession of status"[72] (of spouses) into the only correct non-contentious mode of proving marriage. For our purpose,[73] such "possession" of marital status must of course be contemporaneous with the time of the child's birth, or the legal period of its conception (Art. 743). In the absence of an uncontested possession (Art. 700) of marital status[74] between the child's mother and its alleged father, the claimant (child or father: Art. 775) must obtain a preliminary court authorization[75] (Art. 703) to proceed further. Thereafter, he may bring proof of the conclusion of the marriage (Arts. 577-580) which, in a paternal filiation suit, must be shown by the claimant to have occurred before the child's conception or birth. Conversely, the burden of showing a dissolution, if any, of such marriage before the child's conception or birth is on the defendant in the paternity suit. It seems worth mentioning that annulment of a marriage does not affect filiation bonds arisen from the union.[76]

(b) Concubinage

As in the case of marriage (but without invoking the absence of a "record"), non-contentious proof of concubinage is by possession of status.[77] In such proof, the fine distinction of whether the two partners live together "as" (Art. 699) or only "like" (Art. 718)[78] spouses is immaterial for our purposes, since the affiliational effect is the same in either case. What matters is the contemporaneousness of the union with the time of the claimant's birth or the legal period of his conception. The legislator should have stopped at this point. Instead, he provided a second regime of legal proof (Art. 720)—incompatibly patterned, by reference, after that of marriage (Art. 702-706)—for the case where the *fact* of concubinage. called "irregular union" (Art. 708 cum 718), is contested by 4 witnesses (Art. 719). This pointless provision is unavoidably disregarded by the judiciary.[79]

(c) Acknowledgement

The paternal acknowledgement, which must be in written form, "may not be proved by witnesses"[80] (Art. 748). The document itself must be produced in evidence of the

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70. Ethiopian law knows *no* "cas d'ouverture" which legally *open* searches for factual paternity. In certain foreign systems, such "opening" are (or were) based on initial proof of, for example, a seduction or admission (cf. J. Vidal, cited at ftn. 56). Obversely, the Ethiopian modes of paternal affiliation are both legally circumscribed and peremptory

71. See Art. 698.

72. Similarly defined and proved or disproved (Art. 699-700) as in filiation law.

73. Which is "contentious" proof of paternal filiation.

74. Art. 701. For reasons already given (text before ftn. 12), we omit all mentions of "acts of notoriety" in this Article and the related context.

75. Based on a religious record of marriage (cf. Art. 579), a "contract of marriage" (Art. 683 (1)), or serious circumstantial evidence.

76. See Art. 696(3) and compare G. Krzeczunowicz, *Case Comment*, appearing below in this issue.

77. In our view proof of the fact of concubinage should not be encumbered with this device: G. Krzeczunowicz, *Problems in Ethiopian Family Law* (Addis Ababa, Faculty of Law, 1978), Problem 17.

78. In the non-controlling English version of this Article (and Art. 708) this distinction is further blurred by the use of "as" instead of "like".

79. See G. Krzeczunowicz, *Problems in Family Law* (Addis Ababa, Faculty of Law, 1978), Problem 18.

80. Who, for example, declare that they have seen it or signed it in attestation pursuant to Art. 1727(2).

acknowledgement.[81] The exception provided by reference to the "acts of notoriety" procedure prescribed by Art. 146, seems ineffective for the general reasons discussed before.[82]

4. Contestation

The presumptive paternal filiation attaching to marriage or concubinage[83] can be contested *only* by the legal father himself[84] *and only* on the grounds mentioned in our prior report. These grounds are, primarily "non-access" to the mother during the whole legal conception-period (Art. 783), or absolute impossibility of begetting the child (e.g., because of sterility) (Art. 785).[85] The mother's adultery or admission that the child is the fruit of infidelity are insufficient grounds for the contestation of its paternal filiation (Art. 788).

In a famous case, the High Court correctly rejected a contestation of a marriage-derived affiliation of a child to a deceased father who never disowned the child but was a medically certified castrate.[86]

C. EFFECTS OF FILIATION

The effects of *legal* filiation are *the same* for all children regardless of the way in which it is established.[87] For example, rights to maintenance by (Art. 808(1)) and succession to (Art. 842) the father or mother are equal.

Obversely, the only effect attached to notorious factual filiation which is *not legally* established is the so-called *publicae honestatis*[88] impediment to marriage (Art. 584).

CONCLUSION

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. Obversely, such equality is a long-established axiom in Ethiopia.

2. An effective equalization of the legal condition of marital and extra-marital children requires also that PROOF of the filial bond be made largely free. This seems to be the view held and tendency followed by 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 since 1960 restricted the (also traditional) freedom of proof of their status. These restrictions were caused by the proliferation of stale and flimsy affiliational claims brought for inheritance purposes. Since such purposes are little relevant in countries where inheritable private property is insignificant, large freedom of proof of paternity prevails mostly in socialist countries. In Ethiopia, it is reflected not in the law, but in its lenient construction by the judiciary (see ftns. 64-65 and accompanying text).

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 *NINTH* Congress.

(a) Ethiopia attaches a legal and almost irrebuttable presumption of paternity to the man living in concubinage ("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-conten-

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81. It is therefore advisable to have such acknowledgements registered in courgt.

82. And because this reference is incongruous in the context of Art. 146.

83. Although Art. 785 is *prima facie* applicable also to a "self-acknowledged" father, such application would in practice duplicate that of Art. 756(2).

84. Action to "disown" the child.

85. The only other ground arises from a child's *claim of maternal filiation* against the contester's wife or concubine: case contemplated by Arts. 789 cum 775(3) and 777(2-3).

86. See G. Krzeczunowicz, *Case Comment*, appearing below in this issue.

87. Save in the exceptional case concerning a rape or abduction (see above).

88. "Public honesty"

tiously by mere possession of status (without any need, in such case, to demonstrate the occurrence of any of the prescribed modes of affiliation). In this respect, there is an illuminating similarity between proof of filiation by possession of status (Art. 770(1-2)) and proof of ownership by possession of chattels (Art. 1193 *cum* 1140).

(c) In several foreign legal systems where acknowledgement of paternity must be accepted by the mother, an effective acknowledgement is 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.

(d) In Ethiopia "fraudulent" acknowledgement of paternity[89] cannot be annulled otherwise than by the acknowledger himself decisively proving the impossibility of his paternity.[90]

(e) In striking contrast with foreign systems, more concerned than the Ethiopian 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, contractually assigned by the legal father to another man acknowledging the child. Also, problems of "double" legal paternity may be solved by contract between the presumed fathers.

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 proof (possession of status) and qualified free contentious[91] proof of maternal filiation by birth.

(b) Essentially free non-contentious proof of paternity (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 concubinage ("irregular union"). Due to the above three qualifications, the effects of this restriction are much less sweeping than a *prima facie* reading of Art. 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[92]. This aim (1) is balanced with, without being surrendered to, the sometimes non-convergent aim of discovering the biological truth and safeguarding the child's interests,[93'94] and (2) is occasionally made to prevail over the world-known principle that personal status rights are not disposable.[97]

1980 ADDENDUM ON NEW TRENDS

A. JUDICIAL TRENDS

In recent years, the judicial tendency to mitigate the strictness of the rules on "establishment" of filiation by a lenient construction of the rules on "proof" of filiation[96] seems to have become more pronounced. In socialist Ethiopia, the "inheritance" purposes of paternity claims necessarily became less valuable,[97] and numerous claims are brought by unmarried mothers in need of a maintenance allowance for the child

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

90. Art. 756(2). But the acknowledgement is null from the outset if the child has another legal father (Art. 746).

91. "Qualified" here points to the requirement of a motivated court-permission to proceed (Art. 773-774). Thereupon, the physical fact of birth can be proved by any means (which clearly is not the case with the physical fact of paternal begetting).

92. An aim supported by the limitations on the establishment of paternity, and on its contestation (by disownining) once established

93. An aim promoted by, e.g., the requirements of acceptance under Arts. 751-752, or of court-approval under Arts. 763 and 766.

94. The two aims seem to converge in the presumption of paternity attached to "irregular union" (Art. 745).

95. Arts. 762 and 765.

96. See CONCLUSION 2., above.

97. See *ibid.*

represented by them. Even before the impending change in filiation law, if any,[98] the judges understandable sympathy with the genuine plight of some of the unmarried mothers induces the courts to *relax* the requirements of "possession of status" and/or those of "acknowledgement" in order to impose a "maintenance" order (Art. 808(1)) on the alleged father. This appears to be done in one or more of the following ways:

1. Not requiring that each of the four witnesses (Art. 771(1)) attest each of the three elements (Art. 770(2)) of possession of status, that is, treatment of the child by (i) the alleged father, and (ii) the latter's relatives and (iii) society as his child.

2. Finding that the first of the three elements of possession of status (treatment of child as his by the alleged father) amounts to "acknowledgement" (Art. 747), despite non-satisfaction of the "written form" requirement imposed by Art. 748(1) on pain of invalidity of the acknowledgement.

3. Confusing the two notions, despite that the first (possession of status) is but a rebuttable presumptive evidence of paternity, while the second (acknowledgement) is an irrevocable affiliational fact directly establishing the paternity.

We hope to procure, for another issue of this Journal, some judgment-extracts illustrating the above trends.

B. LAW REFORM TRENDS

Reforms aimed at simplifying the law and making it conform with socialist philosophy are envisaged by the Ministry of Justice Law Revision Commission. The first-stage preparatory work was done by a number of subordinate committees. Committee No. 1 dealt with the Civil Code's first three Books, of which the second includes the subject-matter of the above Report. Below, "LAW REVISION" shall stand for "Committee 1 of Law Revision Commission, Revised Draft of Books I, II and III Civil Code (June 1976, Addis Ababa)"[99], and "DRAFT LAW" shall stand for the Committee's draft Chapter on Filiation (part of draft Title IV).

A detailed critique of DRAFT LAW would require a monograph-size treatment. Besides, it would be premature, since the Committee's LAW REVISION does not, as yet, represent the views of the parent Commission. We shall therefore limit ourselves to some essentials. Our analyses will only attempt roughly to answer three main queries:

(i) To what extent, if any, does Draft Law *simplify* the problems of filiation?

(ii) To what extent, if any, does Draft Law preserve *equality* between marital and extra-marital children?

(iii) To what extent, if any, does Draft Law reflect, or oppose, the judicial trend towards *liberalization* of the Law of Filiation in the interest of the extra-marital child?

B I. SIMPLIFICATION

A prominent merit of Law Revision consists in the simplification of Family Law, whose many intricacies and inconsistencies defy the clarification efforts of qualified jurists.[100] In the draft Law of Filiation, few lawyers will regret the disappearance of the "Conflicts of Paternity" Section, or of most provisions (Arts. 772-777) of the "Proof of Filiation" Section,[101] or the trimming to smaller size of several other Sections.

B II. EQUALITY?

1. The *present law* nowhere formulates a principle of "equality" between marital and extra-marital children. For children with established and proved paternity this is unnecessary, since (i) such equality is unquestionable (no distinction made)

98. See B, below.

99. The expressions "Article" or "Art." continue to denote Articles of the Civil Code, while "Draft Article" or "Draft Art." shall denote Articles of LAW REVISION.

100. See G. Krzeczunowicz, *Problems in Family Law* (Addis Ababa, Faculty of Law, 1978).

101. See *ibid*, Problems 24-25.

under both the Law of Maintenance (Art. 808(1)), and the Law of Succession (Art. 584). Such equality is further promoted in the law of (ii) establishment of filiation, where the legal presumption of paternity is attached equally to marital (Art. 741) and extra-marital (Art. 745) unions. Finally, both the lenient (Arts. 770-771) and the restrictive (Arts. 772-777) rules on (iii) proof of filiation are equal for all children. In the light of all above, there is no need for a theoretical affirmation of the principle of *equality*.

2. Obversely, *Draft Law* starts from a theoretical affirmation of the principle of "equality" (Draft Art. 253[102]), which is immediately contradicted in the next section (establishment of paternity) by an unequal treatment, in two distinct paragraphs, of "Children born *in wedlock*" and "Children born *out of wedlock*" (see B III, 1, below), categories that are devoid of juridical significance in the present law.[103] Under Draft Law, they are distinctly treated also in the Section on Proof of Filiation (see B III, 2, below). Note, however, that equality between children whose filiation is already established and proved remains preserved: see Law of Succession (Draft Art. 303[104], clearly) and Law of Maintenance (presumably).

B III. LIBERALIZATION? 1. ESTABLISHMENT of Filiation

A liberalization of the Law of Filiation may consist in facilitating the latter's (1) establishment (determination) or (2) proof. The two notions are often confused, but should be considered separately.[105] Below we consider ESTABLISHMENT of paternal filiation by (a) legal presumption, (b) acknowledgement and (c) judicial declaration:

(a) Legal presumption

So far from being facilitated by Draft Law, the establishment of paternity by legal presumption is severely restricted by the *elimination of extra-marital unions*[106] from the field of application of the legal presumption of paternity; the provision of Art. 745 is obliterated.

(b) Acknowledgement

Depending on the judicial construction of Draft Article 262(1)[107], the latter *may or may not greatly facilitate* the establishment of paternal filiation by acknowledgement. The majority of citizens being still illiterate, most customary forms of acknowledgement necessarily dispense with writing. Moreover, custom often implies acknowledgement from an incomplete possession of status (see A.2.) But if such implication or other unwritten forms of acknowledgement are "recognized", this will prevent the application of the draft rule of proof on producing the (written) "instrument" of acknowledgement (see B III, 2. (b)).

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102. "Art. 253. Equality of Children.
No distinction shall be made between children born in wedlock and out of wedlock."

103. See INTRODUCTION to the above Report, para. 2.

104. "Art. 303. First-degree heirs:
1) The children of the deceased shall be the first to be called to his succession.
2) Each of them shall receive an equal portion of the succession."

105. The confusion is increased by the Draft Law's (English version) retention of the Code's mistranslation of the French term "determination" as "ascertainment". While the affiliational facts (see a, b and c, below) given by Draft Law Section 2 *establish* (create, determine) the paternal filiation bond (see "result" in present Art. 740), the existence of the filiation bond is ascertained by application of Draft Law Section 4 on *Proof* of Filiation.

106. Which are widely practised in Ethiopia.

107. "Art. 262. Form of acknowledgement.
(1) Acknowledgement of paternity shall be in writing or in any other *recognized* customary form" (emphasis added).

(c) **Judicial declaration**

Draft Article 266[108] retains the present rule whereby a judicial declaration of paternity may be obtained on grounds of rape or abduction (Art. 758), to which it adds another ground: "seduction". The latter ground is, however, severely restricted by clearly implying ("convicted") that "seduction" denotes the offence defined in Article 596 Penal Code which protects only female "minors". This would exclude non-minor females, *inter alia* those now protected by the paternity presumption attached to extra-marital unions (presumption eliminated by Draft Law: see (a) above). Incidentally, in many foreign systems concubinage *or* (as in most socialist countries) any sexual intercourse with the mother (regardless of whether it constitutes a penal offence) occurring within the statutory period of conception, suffices to support an action for judicial declaration of paternity. The systems vary as to what defences to such actions may or may not be admitted.[109]

B III. LIBERALIZATION? 2. PROOF of Filiation

Contrary to the present law, the draft "Proof of Filiation" law deals separately with "Children born *in wedlock*" (Draft Article 276), and "Children born *out of wedlock*" (Draft Article 277). But the opening sub-articles (1) concerning records of birth or filiation are substantially similar in both Draft Articles and are similarly deprived of effect by the circumstances referred to under C, below. Also substantially similar are the respective sub-articles (3), which relegate "possession of status"[110] from second to third place in the hierarchy of proof. Thus, the essential difference between the two Draft Articles results from the wording of *the respective sub-articles* (2):

(a) *In Draft Article* 276 (*marital* children), sub-article (2)[111] allows the claimant to prove paternal filiation by the facts constituting the legal presumption of paternity. These facts are birth or conception in marriage: Draft Article 255(1)[112]. But Law Revision eliminates the present rules on proof of marriage (Arts. 697-707), which include "*possession of status*" (Art. 699). This may make proof of paternity "*via* marriage" impossible where, as happens frequently, no record of marriage can be produced.

(b) *In Draft Article* 277 (*extra-marital* children), sub-article (2)[113] allows the claimant to produce the "instrument" of acknowledgement (but what if the latter was made in customary oral form? See B III, 1, b), or the record of judicial declaration of paternity (but such declarations are exceptional: see B III, 1, c).

In view of the above limitations, it seems

108. "Art. 266. Judicial declaration of paternity.
(1) Where the mother of the child has been the victim of an abduction, rape or of *or of seduction* at the time when the conception of the child is considered to have taken place, an action for a judicial declaration of paternity may be instituted against the person who has been *convicted* of such offence" (emphasis added).

109. A comparative law treatment of these points would require a separate paper. But see, for example, Articles 85-86, Polish Family Code. See also D. Lasok, *Polish Family Law* (Leyden, 1968), pages 162-165, which mention the solutions of some Western legal systems as well (omit the passage on Soviet law: it is outdated). More recent law reforms are practically all in favour of the extra-marital child and its mother: e.g. P. Sedugin, *New Soviet Legislation on Marriage and Family* (Moscow, 1973).

110. The definition of "possession of status" in Draft Article 278 is identical with that given in present Article 770(2).

111. Which reads: "Where the record of birth cannot be produced, filiation may be proved by the facts constituting the legal presumption of paternity"

112. Which reads: "A child conceived or born in wedlock has the husband as father." This is identical with the wording of present Article 741.

113. Which reads: "Where such record [of birth] cannot be produced, filiation may be proved by producing the instrument of acknowledgement or the record of the court in which the judicial declaration of paternity was made."

114. This, unless the courts give a severe construction to the phrase ". . . filiation may be proved by the possession of status of a child provided that the reasons for not producing the documents are satisfying" (Draft Art. 277(3)). What if these documents never existed?

that the theoretically degraded "possession of status" device may in fact continue, under Draft Law, to play a dominant role in the field of proof of filiation.[114]

C. CIVIL STATUS REGISTER

Both present law (Art. 769) and Draft Law (Draft Arts. 276 and 277) require that filiation be proved by the *record of birth*,[115] and authorize other methods of proof only in the latter's absence. But such *absence*, which is exceptional in most modern jurisdictions, is usual in Ethiopia, where resort to less certain methods of proving filiation (in particular by "possession of status") is therefore unavoidable (see Report, A 2 and B 2). Proof of filiation by records of birth depends on the solution of the wider problem of "Civil Status" registers containing records of birth, marriage and death.

Legislation on Civil Status registers and records is not normally part of a Civil Code. It is part of Administrative Law and is concerned primarily with the *public* interest. Comprehensive and certain data on birth, marriage and death of citizens alone permit the rational administrative, social, economic and military planning required in a modern state. This does not prevent such registered records from having an important impact on *Civil* Law, since they alone may provide *authoritative pre-constituted evidence* for the subsequent civil law cases whose outcome will depend on the particulars of birth, marriage or death of a person.

In 1960, when the Civil Code was enacted, the practical possibilities of creating a general Civil Status Registers system were nil, despite the attempt made by the "Municipalities Proclamation" of 1945.[116] Nevertheless, the *Civil Code* (Title 1, Ch. 3) includes a host of detailed provisions on Civil Status officers, registers and records, application of which is *suspended* by a transitory provision (Art. 3361(1)) "until a day to be notified by an order published in the Negarit Gazeta". This day never came and is not in sight. But the prospect of fruitful developments at grass-root level has recently been created by the "Urban Dwellers Associations Consolidation and Municipalities Proclamation No. 104/1976". Among the duties of the local "Kebele Urban Dwellers Associations", Article 9(14) of said Proclamation mentions the duty "*to keep a register* of births, marriages and deaths *within the Kebele*" However, the development of the potentialities inherent in this brief sentence will depend on the enactment of implementing provisions by either:

—putting in force, gradually and district by district, selected provisions from the suspended Chapter 3 of Title I Civil Code, or

—replacing the text of the suspended Chapter with a more suitable text and putting it in force gradually as suggested above.[117]

Among the particular consequences of the present vacuum in this field, the following deserve the attention of students of filiation law:

As suggested before, the only correct "*non*-contentious" mode (see Report, ftn. 7) of proving maternal filiation (see Report, A 2) and paternal filiation (see Report, B 2) is possession of status. At this point, we must elaborate on this suggestion by showing why, in Article 769 (and Art. 770(1)), the words "record of birth" cannot mean records other than those contemplated by the suspended provisions of Title I, Chapter 3, Civil Code.[118] The words "records of birth" must be seen in context. Just as Article 698 on proof of marriage by a "record" drawn up in accordance with "law" must be read in conjunction with Articles 605(3) and 606(3) showing that the "law" referred to in Article 698 are the suspended provisions of Chapter 3 dealing with Officers, Registers and Records of Civil

115. Not of baptism.

116. Proclamation No. 74, Article 9. Incidentally, even when the municipality officer performed a marriage, he did not record the deed of marriage (given to the spouses) in a register.

117. Incidentally, LAW REVISION would eliminate the suspended Chapter without enacting *anything* in its stead (perhaps leaving this matter to Administrative Law?).

118. Incidentally, Article 3361(1) does not suspend Articles 56, 71, 78 and 132, which are irrelevant to our topic.

Status, so Article 769 on proof of filiation by a *record of birth* must be read in conjunction with the rest of Family Law as denoting a record drawn up in accordance with said *suspended* provisions after their enactment. Indeed, the presence of "records of birth" in the first category of the hierachy of proof of filiation will make sense only after the suspended provision of Article 97 (or a like provision) giving such records a higher than normal probatory force[119] is enacted together with some other suspended (or like) provisions ensuring the accuracy of civil status records. These are found primarily under:

—Articles 74-89 (conerning the Registers of Civil Status);

—Articles 90-98 (concerning the records to be entered in these registers and their probatory force);

—Articles 99-103 (concerning, in particular, the records of birth);

—Articles 138-145 (concerning sanctions for non-observance of rules).

In particular, let us stress that:

(a) The record of birth must be drawn up *within* 3 *months* from birth (Art. 62(a)). This is to ensure that it is entered in the register while the declarants are alive and their memory is "fresh" A record of birth entered later (otherwise than pursuant to a judgment), or not entered, is mere information without special probatory value (Arts. 63 and 98).

(b) The record of birth shall *indicate the father* and the mother (Art. 99(d)).

(c) The birth *must* be declared by the father or, in his default, by the mother (or guardian or caretaker) of the child, or by the civil status officer if aware of the birth (Art. 101). We suggest, after foreign precedents,[120] that a similar duty should lie on any persons having attended the birth.

(d) The persons bound to declare birth who fail to do it within the prescribed 3 months period, or refuse to do it, or knowingly make a false official declaration, are subject to *punishment* (Arts. 142-143).

Non-enactment of such provisions need not affect the informational value of Registers of Civil Status for the purposes of approximate governmental statistics. But it would gravely affect their evidential value for Civil Law purposes, including that of proving filiation. Indeed, information provided by a Register lacking accuracy safeguards would be less reliable than that provided by some of the documents given second priority by Draft Articles 276-277.

POSTSCRIPT

The above Report and Addendum have so far advanced no basic policy preferences regarding the problems of filiation. In this postscript, however, it does not seem improper briefly to express our opinion that the Ethiopian law of filiation should be radically *liberalized* (cf. ADDENDUM, B III). The arguments in support of such policy are as follows:

(1) This policy is implemented in most socialist and some non-socialist countries[121] for self-evident humanitarian and/or egalitarian reasons.

(2) Such policy seems, moreoever, particularly indicated in this country, which cannot, as yet, afford a social welfare legislation providing state support for legally fatherless children, who are legion

(3) Customary maintenance of a minor child by the mother is so cheap in Ethiopia that

119. According to Article 97, evidence contrary to the regularly registered record "cannot be adduced except where it is authorized by the court" Consequently, a man regularly but improbably declared father by the child's mother needs a prior court authorization to bring an application for a judicial correction of the corresponding record (Art. 125).

120. For example, Article 56 French Civil Code.

121. See the materials cited at ftn. 109. See also G. Garcia Cantero, "La situation juridique des enfants nés hors marriage" in *Rapports généraux au IX Congrès international de Droit comparé* (Bruxelles 1977), e.g. p. 348, n. 70-IV.

most extra-marital fathers may be able to afford it.

We therefore tentatively propose that the following *measures* be considered:

1. Preserve the legal presumption of paternity attached by Article 745 to concubinage as defined in Article 708.

2. Repeal Articles 758-761. Instead, enact provisions admitting actions for judicial declaration of paternity grounded on the defendant's sexual intercourse with the mother within the period between the 300th and the 180th day before birth. The defences to such action could be as follows:

(a) notorious or professional sexual promiscuity of the mother occurring within said period, *or*

(b) the defendant's sterility[122] or negative blood test, *or*

(c) the mother's sexual intercourse with another man within said period[123] *if* the other man's paternity is more likely.[124] Some of the criteria might be the frequency and/or timing (nearer that period's middle) of the other man's intercourse, the physical resemblance, a gynaecologist's opinion, etc.

(d) Limitation of action.[125]

Finally, we respectfully submit that, since the Law Revision Commission is an all-male body, it might be useful to consult the Ethiopian Women's Association on the above points.

122. The "use of contraceptive", if included, would create impossible probatory problems.

123. The term of art for this defence is *exceptio plurium concumbentium.*

124. Such is the solution of Article 85(2) Polish Family Code (solution unaffected by this Code's Revision of 1975). See also pp. 164-165 in *Lasok* (cited at ftn. 109).

125. In some countries the child's action (usually brought by the mother) is subject to drastic *limitation.* The latter is perhaps shortest in Austria: 1 year from birth *(Zivilgesetzbuch,* Art. 308). See *Lasok* (cited at ftn. 109), p. 161, n. 130. The purpose is to prevent the abuses and uncertainties often connected with the bringing of "stale" claims. This limitation does not affect filiations established by legal presumption or acknowledgement, or those proved by records of birth or possession of status.